

**EXECUTIVE DEPARTMENT**  
**Delaware Economic Development Office**

Statutory Authority: 29 Delaware Code, Section 5005(11), (29 **Del.C.** §5005(11))  
1 **DE Admin. Code** 402

**PROPOSED**

**PUBLIC NOTICE**

The State of Delaware, Delaware Economic Development Office hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 **Del.C.** §5005(11) and in compliance with Delaware's Administrative Procedures Act, 29 **Del.C.** §10115. The proposed changes to regulations amend the fees for submitting an application for economic assistance under the Delaware Strategic Fund, to better reflect the actual cost to process those applications. Additionally, the proposed regulations to Award Approval and Standards will reflect actual practice and market conditions.

The Division solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the *Delaware Register of Regulations*.

Any such submissions should be mailed or delivered to Lee Porter, Delaware Economic Development Office, 99 Kings Highway, Dover, DE 19901 by October 30, 2009.

**402 Procedures Governing The Delaware Strategic Fund**

**1.0 Enabling Legislation**

Pursuant to 29 **Del.C.** §§5027-5029 (the "Act"), as amended, the Delaware Strategic Fund (the "Fund") was established. The Fund was created to assist the Delaware Economic Development Office (the "Office") through The Delaware Economic Development Authority (the "Authority") with efficiently administering financing programs as well as with developing new programs to retain, attract and expand Delaware employment. Section 5029(a) of the Act directs the Authority to draft rules and regulations pertaining to Fund eligibility. The following regulations (the "Regulations") have been adopted by the Authority pursuant to the foregoing provision of the Act. 29 **Del.C.** §5005(11) also gives the Director of the Office general power to promulgate rules and regulations governing the Office.

**5 DE Reg. 1141 (11/1/01)**

**2.0 Purpose**

The purpose of these Regulations is to establish criteria for the administration of the Fund. The Regulations contain procedures governing the process for applying to the Authority for economic assistance under the Fund, pre-closing and post-closing procedures and criteria for the Authority's approval or disapproval of an application for economic assistance under the Fund.

**3.0 Definitions**

Unless otherwise indicated below, all capitalized terms used herein shall have the meaning ascribed to such terms in 29 **Del.C.** §5052.

The terms defined in 1.0 of this Regulation shall have the meanings ascribed to such terms therein.

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

**"Application"** means an application made to the Authority on such form or forms, together with all relevant attachments, as the Authority may, in its sole discretion, require in connection with administration of the Fund.

**"Applicant"** means any person, including individuals, firms, partnerships, associations, societies, trusts, public or private corporations, not for profit corporations or other legal entities, including public or governmental bodies as well as natural persons for which a Project is undertaken or proposed to be undertaken.

**"Award"** shall have the meaning ascribed to such term in 18.0 hereof.

**"Brownfield"** means any vacant, abandoned or underutilized real property, the development or redevelopment of which may be hindered by the reasonably held belief that the real property may be environmentally contaminated.

**"Brownfield Assistance"** shall have the meaning ascribed to such term in 19.0 hereof.

**"Certified Brownfield"** means a Brownfield that the Secretary of the Department of Natural Resources and Environmental Control has certified as a Brownfield pursuant to the regulations promulgated under 7 **Del.C.** §9104(b)(2)p.

**"Chairperson"** means the Chairperson of the Authority.

**"Council"** means the Council on Development Finance created by 29 **Del.C.** §5007.

**"Development Assistance"** shall have the meaning ascribed to such term in 15.0 hereof.

**"Eligible Project"** shall have the meaning ascribed to such term in 19.0 hereof.

**"Final Approval"** means the final approval of an Application by the Chairperson.

**"Financial Assistance"** shall have the meaning ascribed to such term in 17.0 hereof.

**"GII Loan"** shall have the meaning ascribed to such term in 11.0 hereof.

**"Green Industries Initiative"** means the program created by the memorandum of understanding between the Delaware Development Office, predecessor in interest to the Office, and the Department of Natural Resources and Environmental Control dated December 2, 1991.

**"Loan"** shall have the meaning ascribed to such term in 10.0 hereof.

**"Participation"** shall have the meaning ascribed to such term in 9.0 hereof.

**"Program"** shall have the meaning ascribed to such term in 18.0 hereof.

**"Relocation Assistance"** shall have the meaning ascribed to such term in 16.0 hereof.

**"SBIR"** shall have the meaning ascribed to such term in 18.0 hereof.

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### 4.0 Fees

#### 4.1 Application Fees

4.1.1 ~~A non-refundable fee of two hundred fifty dollars (\$250) shall accompany every Application before such Application shall be considered by the Authority. The fee shall be in the form of a check made payable to "The Delaware Economic Development Authority."~~

#### 4.2 Closing Fees

4.2.1 ~~For loans or participations in any amount up to and including one hundred thousand dollars (\$100,000), a fee of one half percent (.5%) of the loaned amount shall be paid at closing.~~

4.2.2 ~~For loans or participations excess of one hundred thousand dollars (\$100,000) up to and including two hundred twenty five thousand dollars (\$225,000), a fee of one percent (1%) of the loaned amount shall be paid at closing.~~

4.2.3 ~~For loans or participations in excess of two hundred twenty five thousand dollars (\$225,000), a fee of one and one half percent (1.5%) of the loaned amount shall be paid at closing.~~

4.2.4 ~~The Application fee shall be credited toward the closing fee required to be paid under 4.2. In no event shall the closing fee and the Application fee total less than two hundred fifty dollars (\$250).~~

#### 4.3 Post-Closing Fees

4.3.1 ~~Any fees or costs incurred by the Authority in connection with executing a document or granting a consent or waiver related to a Project after closing, including, without limitation, attorney fees, shall be paid by the Applicant.~~

- 4.3.2 ~~Any fees or costs incurred by the Authority for modifying or restructuring payment terms for financial assistance after closing, shall be paid by the Applicant.~~
- 4.3.3 ~~Closing documentation for all Projects shall contain the Applicant's covenant to pay the fees and costs described in 4.3.1 and 4.3.2.~~

#### 4.4 ~~Waiver of Fees~~

- 4.4.1 ~~The foregoing fees shall, unless otherwise waived by the Authority in its sole discretion, be paid with respect to all financial assistance granted by the Authority.~~

#### 4.1 Application Fees:

- 4.1.1 A non-refundable fee of two hundred fifty dollars (\$250) on Applications for requests of financing up to and including one hundred thousand dollars (\$100,000).
- 4.1.2 A non-refundable fee of seven hundred fifty dollars (\$750) on Applications for requests of financing in excess of one hundred thousand dollars (\$100,000), up to and including one hundred fifty thousand dollars (\$150,000).
- 4.1.3 A non-refundable fee of one thousand two hundred fifty dollars (\$1,250) on Applications for requests of financing in excess of one hundred fifty thousand dollars (\$150,000), up to and including two hundred fifty thousand dollars (\$250,000).
- 4.1.4 A non-refundable fee of one thousand seven hundred fifty dollars (\$1,750) on Applications for requests of financing in excess of two hundred fifty thousand dollars (\$250,000), up to and including three hundred fifty thousand dollars (\$350,000).
- 4.1.5 A non-refundable fee of two thousand two hundred fifty dollars (\$2,250) on Applications for requests of financing in excess of three hundred fifty thousand dollars (\$350,000), up to and including four hundred fifty thousand dollars (\$450,000).
- 4.1.6 A non-refundable fee of two thousand seven hundred fifty dollars (\$2,750) on Applications for requests of financing in excess of four hundred fifty thousand dollars (\$450,000), up to and including five hundred fifty thousand dollars (\$550,000).
- 4.1.7 A non-refundable fee of three thousand two hundred fifty dollars (\$3,250) on Applications for requests of financing in excess of five hundred fifty thousand dollars (\$550,000), up to and including six hundred fifty thousand dollars (\$650,000).
- 4.1.8 A non-refundable fee of three thousand seven hundred fifty dollars (\$3,750) on Applications for requests of financing in excess of six hundred fifty thousand dollars (\$650,000), up to and including seven hundred fifty thousand dollars (\$750,000).
- 4.1.9 A non-refundable fee of four thousand two hundred fifty dollars (\$4,250) on Applications for requests of financing in excess of seven hundred fifty thousand dollars (\$750,000), up to and including eight hundred fifty thousand dollars (\$850,000).
- 4.1.10 A non-refundable fee of four thousand seven hundred fifty dollars (\$4,750) on Applications for requests of financing in excess of eight hundred fifty thousand dollars (\$850,000), up to and including nine hundred fifty thousand dollars (\$950,000).
- 4.1.11 A non-refundable fee of five thousand two hundred fifty dollars (\$5,250) on Applications for requests of financing in excess of nine hundred fifty thousand dollars (\$950,000), up to and including one million fifty thousand dollars (\$1,050,000).
- 4.1.12 A non-refundable fee of five thousand seven hundred fifty dollars (\$5,750) on Applications for requests of financing in excess of one million fifty thousand dollars (\$1,050,000), up to and including one million one hundred fifty thousand dollars (\$1,150,000).
- 4.1.13 A non-refundable fee of six thousand two hundred fifty dollars (\$6,250) on Applications for requests of financing in excess of one million one hundred fifty thousand dollars (\$1,150,000), up to and including one million two hundred fifty thousand dollars (\$1,250,000).
- 4.1.14 A non-refundable fee of six thousand seven hundred fifty dollars (\$6,750) on Applications for requests of financing in excess of one million two hundred fifty thousand dollars (\$1,250,000), up to and including one million three hundred fifty thousand dollars (\$1,350,000).

- 4.1.15 A non-refundable fee of seven thousand two hundred fifty (\$7,250) on Applications for requests of financing in excess of one million three hundred fifty thousand dollars (\$1,350,000), up to and including one million four hundred fifty thousand dollars (\$1,450,000).
- 4.1.16 A non-refundable fee of seven thousand seven hundred fifty dollars (\$7,750) on Applications for requests of financing in excess of one million four hundred fifty thousand dollars (\$1,450,000), up to and including one million five hundred fifty thousand dollars (\$1,550,000).
- 4.1.17 A non-refundable fee of eight thousand two hundred fifty dollars (\$8,250) on Applications for requests of financing in excess of one million five hundred fifty thousand dollars (\$1,550,000), up to and including one million six hundred fifty thousand dollars (\$1,650,000).
- 4.1.18 A non-refundable fee of eight thousand seven hundred fifty dollars (\$8,750) on Applications for requests for financing in excess of one million six hundred fifty thousand dollars (\$1,650,000), up to and including one million seven hundred fifty thousand dollars (\$1,750,000).
- 4.1.19 A non-refundable fee of nine thousand two hundred fifty dollars (\$9,250) on Applications for requests for financing in excess of one million seven hundred fifty thousand dollars (\$1,750,000), up to and including one million eight hundred fifty thousand dollars (\$1,850,00).
- 4.1.20 A non-refundable fee of nine thousand seven hundred fifty dollars (\$9,750) on Applications for requests for financing in excess of one million eight hundred fifty thousand dollars (\$1,850,000), up to and including one million nine hundred fifty thousand dollars (\$1,950,000).
- 4.1.21 A non-refundable fee of ten thousand dollars (\$10,000) on Applications for requests of financing in excess of one million nine hundred fifty thousand dollars (\$1,950,000). The fee shall be in the form of a check made payable to "The Delaware Economic Development Authority."
- 4.2 Modification Fees**
  - 4.2.1 In any event in which a recipient of funding requests a modification to a previously awarded Application, a non-refundable fee of \$500 shall be due at the time of approval.
  - 4.2.2 The fee shall be in the form of a check made payable to "The Delaware Economic Development Authority."
- 4.3 Waiver of Fees-The foregoing fees shall, unless otherwise waived by the Authority in its sole discretion, be paid with respect to all financial assistance granted by the Authority.**

## **5.0 Loan Terms**

- 5.1 Interest Rate**
  - 5.1.1 The interest rate on a direct loan with a term up to and including one hundred twenty (120) months shall be sixty percent (60%) of the prime rate published in The Wall Street Journal.
  - 5.1.2 The interest rate on a direct loan with a term of more than one hundred twenty (120) months shall be seventy percent (70%) of the prime rate published in The Wall Street Journal.
  - 5.1.3 The interest rate on a participation loan with a term up to and including one hundred twenty (120) months shall be sixty percent (60%) of the participating bank's commercial rate.
  - 5.1.4 The interest rate on a participation loan with a term of more than one hundred twenty (120) months shall be seventy percent (70%) of the participating bank's commercial rate.
- 5.2 Maturity**
  - 5.2.1 Loans for which the proceeds are used for working capital purposes shall not have a maturity of greater than five (5) years.
  - 5.2.2 Loans for which the proceeds are used for purposes other than working capital and the purchase or renovation of real estate shall not have a maturity of greater than ten (10) years.
  - 5.2.3 Loans for which the proceeds are used to purchase or renovate real estate shall not have a maturity greater than twenty (20) years.
- 5.3 Repayment**
  - 5.3.1 Loans will be amortized and repaid to the Authority on a monthly basis. Any amortization of Loan repayment other than monthly principal and interest shall be at the sole discretion of the Authority.

- 5.3.2 Participations will be amortized to mirror those of the financial institution from which the Participation was purchased.

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**6.0 Application Procedure**

- 6.1 Before submitting an Application, the Applicant should consult with the Authority to determine if the Project is eligible for consideration.
- 6.2 To apply for financial assistance, an Applicant must submit a completed Application concerning the Project to the Authority for review, together with the non-refundable Application fee. No application will be reviewed by the Authority until it is complete to the satisfaction of the Authority.
- 6.3 Applicants may obtain Application forms by contacting the Director of Financial Programs, Delaware Economic Development Office, 99 Kings Highway, Dover, DE 19901. Phone (302) 739-4271 / Fax (302) 739-5749.

**7.0 Evaluation Process**

- 7.1 When an Application is complete to the satisfaction of the Authority, the Authority will evaluate the Project, which evaluation may be based on the following:
  - 7.1.1 Visitation to the Applicant's place of business, which may take place prior to the Application as a part of the meeting to determine eligibility.
  - 7.1.2 Analysis of historical and projected financial statements and a comparison to industry peers.
  - 7.1.3 An independent industry study (using source material such as RMA Annual Statement Studies), comparing the Applicant's projections to the study, and considering the short term and long term outlook for the industry.
  - 7.1.4 Contact with the Applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timelines of delivery, length of the relationship, likelihood of the relationship being continued, and customer's opinions of the Applicant's management.
  - 7.1.5 Contact with the Applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of Applicant's management.
  - 7.1.6 Contact with the Applicant's bank(s) to ascertain credit history and obtain an opinion of the Applicant's management.
  - 7.1.7 An analysis of collateral available to secure any requested financing as to adequacy of amount, quality, condition, and marketability.
  - 7.1.8 Independent credit investigations of the Applicant and its principals, which may include judgment and lien searches.
  - 7.1.9 Independent inquiries about the Applicant and its principals with other agencies of the State, other states, or the United States.
- 7.2 After completing the evaluation, a determination shall be made regarding the merits of the request, the adequacy of the collateral available to secure the requested financing, if applicable, and, if applicable, the likelihood of repayment.
- 7.3 If a positive determination is made, the requested financing will be presented to the Chairperson for preliminary approval.

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**8.0 Approval Process**

- 8.1 The Authority shall use its reasonable best efforts to complete its review of the Application and to forward the Application to the Chairperson for preliminary approval or disapproval within sixty (60) days from the date it deems an Application complete.

- 8.2 Upon preliminary approval by the Chairperson, an Application shall be submitted to the Council for review, and the Council shall make a recommendation with respect to the Application.
- 8.3 If the Chairperson of the Authority determines that a Project has substantial economic development content, is in the public interest, and that the Authority's financial support would represent a prudent use of State funds, consistent with the Act, then the Chairperson may recommend financial assistance for such Project to the Council which exceeds any dollar limitations, conditions to, or restrictions on, assistance contained in these Regulations.
- 8.4 Upon recommendation by the Council, the Application shall be submitted to the Chairperson for consideration and final approval or disapproval.
- 8.5 Final Approval shall constitute official action on the part of the Authority demonstrating its intent to adopt a resolution authorizing the issuance of the requested financial assistance. Final Approval will be binding on the Authority provided, however, that the Authority may withdraw Final Approval at any time prior to the disbursement of financial assistance, if it determines that (1) the Applicant's circumstances have changed adversely since the date of Final Approval or since completion of the Application, if such adverse change did not come to the Authority's attention prior to Final Approval or (2) the Application contained a statement that was materially false or failed to include information necessary to prevent the Application from being materially false.
- 8.6 Final Approval will be effective for a period not to exceed one (1) year, and all funds committed for a Project must be completely dispersed by the Authority within that time. The Authority, in its sole discretion, may make limitations or grant extensions with respect to this one-year period.
- 8.7 The Applicant shall be issued a commitment letter outlining the terms and conditions of the Final Approval. When the commitment letter has been accepted by the Applicant and returned to the Authority together with any required fees, and all required documentation is prepared in form and content satisfactory to the Authority, a closing is scheduled and financial assistance is made available to the Applicant.

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### **9.0 Participation Loan Program**

#### **9.1 Program Description**

- 9.1.1 The Authority is empowered to purchase participations from financial institutions that are approved by the Authority (a "Participation"). A Participation shall be no more than thirty percent (30%) of the eligible bank debt with respect to a Project. The Authority may, in its sole discretion, limit the amount of its Participation in any Project to any amount less than thirty percent (30%).
- 9.1.2 The maximum amount of a Participation ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount shall be thirty thousand dollars (\$30,000).
- 9.1.3 Proceeds of Participations can be used for any Project, subject to 9.2.2 below.
- 9.1.4 The maximum term of a Participation shall be twenty (20) years and the minimum term shall be two (2) years. The actual term will be based on usage of the proceeds and will mirror the term of the underlying loan.

#### **9.2 Eligibility Standards**

- 9.2.1 To be eligible for a Participation, a Project should serve a public purpose by maintaining or expanding full-time employment in the State, maintaining or diversifying business and industry in the State, and/or maintaining or increasing its tax base. Also, the Applicant must be able to demonstrate to the satisfaction of the Authority that financial assistance from the State is necessary to effectuate the outcome of the Project.
- 9.2.2 The following projects do not qualify for a Participation:
- 9.2.2.1 Private speculative real estate ventures;
  - 9.2.2.2 Projects which do not attract or retain employment opportunities;
  - 9.2.2.3 Restaurants and professional office buildings;
  - 9.2.2.4 Refinancing of existing debt; and,

9.2.2.5 Funding projects located outside the State.

9.3 Project Approval Standards

9.3.1 Findings. - As a precondition to approving a Participation, the Authority shall make the findings and determinations required by 29 **Del.C.** §5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

9.3.1.1 Employment Standard. - The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to purchasing a Participation, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing gainful employment within the State. The standards to be considered by the Authority will include, but not be limited to, the number of permanent, quality, full-time jobs created or retained as a result of the Project, the wage scale applicable to persons to be employed as a result of the Project, the economic situation in the State at the time of filing of the Application, the effect of the Project on the tax base of the State or of the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

9.3.1.2 Abandonment Standard. - When applying the "employment standard" set forth in 9.3.1.1 above, the Authority shall take into consideration whether the Project will cause or result in unnecessary abandonment of an existing facility elsewhere in the State by the Applicant. The Authority, in its sole discretion, may disapprove a Participation for a Project involving relocation within the State if the relocation will result in a job loss and/ or hardship for existing employees or abandonment.

9.3.1.3 Capability Standard; Adherence to Law. In determining whether the Project will assist in creating or retaining "direct, permanent, quality full-time jobs" in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its sole discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any operator or principal user of the Project.

9.3.1.4 Prior Lending Commitment. - Prior to Final Approval the Applicant must provide a written commitment from a bank or other recognized lending institution evidencing its commitment to lend to the Applicant the required portion of the bank debt necessary to complete the proposed Project.

9.3.2 Collateral Provisions. - The Participation shall be collateralized to the satisfaction of the Authority which shall use standard underwriting procedures to determine such collateralization. In the case of a privately held company, personal guarantees from active owners (whose ownership is 20% or greater) will normally be required.

9.3.3 Mandatory Provisions in Closing Documents. - The closing documents for a Participation shall state that, if applicable, the participating financial institution will provide evidence to the Authority that the Applicant maintains property insurance policies on any collateral. The Authority shall be listed as loss payee, as its interests may appear, and the participating financial institution will provide evidence to the Authority that the Applicant maintains public liability insurance naming the Authority as an additional insured, as its interests may appear.

9.3.4 Post-Loan Period - Annual Reporting. - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, for a period of five (5) years following the funding of a Participation, submit to the Authority, on an annual basis, financial statements in a form acceptable to the

Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

## **5 DE Reg. 1141 (11/1/01)**

### **10.0 Direct Loan Program**

#### **10.1 Program Description**

- 10.1.1 The Authority is empowered to make direct loans to Applicants (a "Loan").
- 10.1.2 The maximum amount of a Loan ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount shall be thirty thousand dollars (\$30,000).
- 10.1.3 Proceeds of a Loan can be used for, but are not limited to, the acquisition of land, buildings, machinery and equipment, the expansion of an existing building, or the renovation of machinery, equipment, and buildings. Proceeds can also be used to augment working capital.
- 10.1.4 The maximum term of a Loan shall be twenty (20) years and the minimum term shall be two (2) years. The actual term of the Loan will be based on usage of the proceeds.

#### **10.2 Eligibility Standards**

- 10.2.1 To be eligible for a Loan, a Project should serve a public purpose by maintaining or expanding employment in the State, by maintaining or diversifying business and industry in the State, and/or by maintaining or increasing its tax base. Also, the Applicant must be able to demonstrate to the satisfaction of the Authority that financial assistance from the State is necessary to effectuate the outcome of the Project.
- 10.2.2 The following projects do not qualify for a Loan:
  - 10.2.2.1 Private speculative real estate ventures;
  - 10.2.2.2 Projects which do not attract or retain employment opportunities;
  - 10.2.2.3 Restaurants and professional office buildings;
  - 10.2.2.4 Refinancing of existing debt; and,
  - 10.2.2.5 Funding projects located outside the State.

#### **10.3 Project Approval Standards**

- 10.3.1 Findings. - As a precondition to approving a Loan, the Authority shall make the findings and determinations required by 29 **Del.C.** §5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:
  - 10.3.1.1 Employment Standard. - The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to making a Loan, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing gainful employment within the State. The standards to be considered by the Authority will include, but not be limited to, the number of permanent, quality, full-time jobs created or retained as a result of the Project, the wage scale applicable to persons to be employed as a result of the Project, the economic situation in the State at the time of filing of the Application, the effect of the Project on the tax base of the State or of the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.
  - 10.3.1.2 Abandonment Standard. - When applying the "employment standard" set forth in 10.3.1.1. above, the Authority shall take into consideration whether the Project will cause or result in unnecessary abandonment of an existing facility elsewhere in the State by the Applicant. The Authority, in its sole discretion, may disapprove a Loan in a Project involving relocation within the State if the relocation will result in a job loss and/or hardship for existing employees or abandonment.



- 10.3.1.3 **Capability Standard; Adherence to Law.** In determining whether the Project will assist in creating or retaining "direct, permanent, quality full-time jobs" in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any operator or principal user of the Project.
- 10.3.2 **Collateral Provisions.** - The Loan shall be collateralized to the satisfaction of the Authority which shall use standard underwriting procedures to determine such collateralization. In the case of a privately held company, personal guarantees from active owners (whose ownership is 20% or greater) will normally be required.
- 10.3.3 **Mandatory Provisions in Closing Documents.** - The closing documents for a Loan shall state that, if applicable, the Applicant will provide evidence to the Authority that the Applicant maintains property insurance policies on any collateral with the Authority listed as loss payee, as its interests may appear, and public liability insurance policies with the Authority listed as an additional insured, as its interests may appear.
- 10.3.4 **Post-Loan Period - Annual Reporting.** - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, for a period of five (5) years following the funding of a Loan, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

#### **5 DE Reg. 1141 (11/1/01)**

### **11.0 Green Industries Loan Program**

#### **11.1 Program Description**

- 11.1.1 The Authority is empowered to make loans to Applicants who have been approved for eligibility under the Green Industries Initiative (a "GII Loan"). The maximum amount of a GII Loan by the Authority shall be thirty percent (30%) of the eligible bank debt with respect to a Project. The Authority may, in its sole discretion, limit the amount of its GII Loan in any Project to any amount less than thirty percent (30%).
- 11.1.2 The maximum amount of a GII Loan ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount shall be thirty thousand dollars (\$30,000).
- 11.1.3 Proceeds of a GII Loan can be used for projects including, but not limited to, the acquisition of land, buildings, machinery and equipment, the expansion of an existing building, or the renovation of machinery, equipment, and buildings. Proceeds can also be used to augment working capital. Proceeds shall not be used for vehicles or other equipment that may be classified as "rolling stock."
- 11.1.4 The maximum term of a GII Loan shall be twenty (20) years and the minimum term shall be two (2) years. The actual term of the GII Loan will be based on usage of the proceeds.
- 11.1.5 GII Loans may also be made through Participations. The term of a GII Participation will mirror the underlying loan from the financial institution.

#### **11.2 Eligibility Standards**

11.2.1 To be eligible for a GII Loan, a Project should serve a public purpose by demonstrating the reduction, abatement, or prevention of pollution of the state's environment or protecting its natural resources.

11.2.2 The following projects do not qualify for a GII Loan:

- 11.2.2.1 Projects for which the Applicant has not been approved for the Green Industries Initiative;
- 11.2.2.2 Projects which do not demonstrate the reduction, abatement, or prevention of pollution of the State's environment or the protection of its natural resources;
- 11.2.2.3 Refinancing of existing debt;
- 11.2.2.4 Speculative ventures;
- 11.2.2.5 Funding projects located outside the State; and
- 11.2.2.6 Private, non-profit activities.

### 11.3 Project Approval Standards

11.3.1 Findings. - As a precondition to approving a GII Loan, the Authority shall make the findings and determinations required by 29 **Del.C.** §5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

11.3.1.1 Pollution Control Standard. – The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to making a GII Loan, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing for the control, abatement, or prevention of land, water, or general environmental pollution within the State. The standards to be considered by the Authority will include, but not be limited to, the environmental situation in the State at the time of filing of the Application, the effect of the Project on the State or of the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

11.3.1.2 Abandonment Standard. – When applying the "Pollution Control Standard" set forth in 11.3.1.1 above, the Authority shall take into consideration whether the Project will cause or result in unnecessary abandonment of an existing facility elsewhere in the State by the Applicant. The Authority, in its sole discretion, may disapprove a GII Loan in a Project involving relocation within the State if the relocation will result in a job loss and/ or hardship for existing employees or abandonment.

11.3.1.3 Capability Standard; Adherence to Law. In determining whether the Project will assist in the reduction, abatement, or prevention of pollution of the State's environment or whether it will protect the State's natural resources, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any operator or principal user of the Project.

11.3.1.4 Prior Lending Commitment. – Prior to Final Approval the Applicant must provide a written commitment from a bank or other recognized lending institution evidencing its commitment to lend to the Applicant the required portion of the bank debt necessary to complete the proposed Project.

11.3.2 Collateral Provisions. – The GII Loan shall be collateralized to the satisfaction of the Authority which shall use standard underwriting procedures to determine such collateralization. In the case

of a privately held company, personal guarantees from active owners (whose ownership is 20% or greater) will normally be required.

- 11.3.3 Mandatory Provisions in Closing Documents. – The closing documents for a GII Loan shall state that, if applicable, the Applicant will provide evidence to the Authority that the Applicant maintains property insurance policies on any collateral with the Authority listed as loss payee, as its interests may appear, as well as public liability policies with the Authority listed as additional insured, as its interests may appear.
- 11.3.4 Post-Loan Period - Annual Reporting. – Unless waived or amended by the Authority in its sole discretion, the Applicant shall, for a period of five (5) years following the funding of a GII Loan, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

#### **5 DE Reg. 1141 (11/1/01)**

**12.0 Reserved.**

**13.0 Reserved.**

**14.0 Reserved.**

#### **15.0 Development Incentive Assistance**

##### 15.1 Program Description

- 15.1.1 The Authority is empowered to make financial assistance in the form of grants to Applicants ("Development Assistance").
- 15.1.2 The maximum amount of Development Assistance with respect to a Project ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount shall be thirty thousand dollars (\$30,000).

##### 15.2 Eligibility Standards

- 15.2.1 To be eligible for Development Assistance, a Project should serve a public purpose by maintaining or expanding employment in the State, maintaining or diversifying business and industry in the State, and/or maintaining or increasing its tax base. Development Assistance may be used for the following activities: the acquisition of land, buildings, machinery and equipment, the expansion of an existing building, or the renovation or reconstruction of machinery, equipment, and buildings.
- 15.2.2 The following projects do not qualify for Development Assistance:
  - 15.2.2.1 Private speculative real estate ventures;
  - 15.2.2.2 Projects which do not attract or retain employment opportunities;
  - 15.2.2.3 Restaurants and professional office buildings;
  - 15.2.2.4 Refinancing of existing debt; and
  - 15.2.2.5 Funding projects located outside the State.

##### 15.3 Project Approval Standards

- 15.3.1 Findings. - As a precondition to approving Development Assistance, the Authority shall make the findings and determinations required by 29 Del. C. §5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:
  - 15.3.1.1 Employment Standard. - The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to making Development Assistance, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing gainful employment within the State. The standards to be considered by the

Authority will include, but not be limited to, the number of permanent, quality, full-time jobs created or retained as a result of the Project, the wage scale applicable to persons to be employed as a result of the Project, the economic situation in the State at the time of filing of the Application, the effect of the Project on the tax base of the State or of the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

- 15.3.1.2 Abandonment Standard. - When applying the "employment standard" set forth in 15.3.1.1 above, the Authority shall take into consideration whether the Project will cause or result in unnecessary abandonment of an existing facility elsewhere in the State by the Applicant. The Authority, in its sole discretion, may disapprove Development Assistance for a Project involving relocation within the State if the relocation will result in a job loss and/or hardship for existing employees or abandonment.
- 15.3.1.3 Capability Standard; Adherence to Law. - In determining whether the Project will assist in creating or retaining "direct, permanent, quality full-time jobs" in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any operator or principal user of the Project.
- 15.3.1.4 Business Standard. - In making findings and determinations with respect to the capital investment in a Project, the Authority will consider capital investment made and to be made in the proposed Project. If the Project involves an Agricultural Business or a Commercial Business, as those terms are defined in the Act, the Project must require a capital investment of at least ten thousand dollars (\$10,000), which funds, including the amount of Development Assistance will be available or expended on the date that the Authority provides such Development Assistance. The term "capital investment" shall be applied in accordance with generally accepted accounting principles.
- 15.3.1.5 Operator and User Standard. - An Applicant shall, if requested by the Authority or required in the Application, submit such information as is requested or required for each proposed operator or principal user of the Project. The Authority shall apply the same standards with respect to the operators and principal users of the Project as are applied to the Applicants, unless there is good reason, established by the Applicant, to make the findings and determinations with respect to the Applicant alone. The financial strength of the Applicant and capacity to manage or operate the Project, among other considerations, may be the basis for omitting such findings and determinations with respect to the operators or principal users.
- 15.3.2 Clawback Provision. - The Authority shall determine, in its sole discretion, appropriate clawback provisions for each Applicant under which the Applicant may be required to repay some or all of the Development Assistance granted under this section 15.
- 15.3.3 Post-Grant Period - Annual Reporting - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, for a period of five (5) years following the award of Development Assistance under the Program, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

## 16.0 Relocation Assistance

### 16.1 Program Description

16.1.1 The Authority is empowered to provide financial assistance to businesses to offset some of the expenses associated with physically relocating personnel and/or equipment related to the establishment of their Delaware operation ("Relocation Assistance").

16.1.2 The maximum amount of Relocation Assistance ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount shall be thirty thousand dollars (\$30,000).

### 16.2 Eligibility Standards

16.2.1 To be eligible for Relocation Assistance, a Project must serve a public purpose by creating new employment in the State, and should be from targeted industries which include manufacturers, wholesalers, laboratories, data processing, engineering, financial services (except banks subject to bank franchise tax), or administration and/or provide a minimum of 25 new jobs by either transferring out-of-state employees to new residences in the State or by attracting new employees for the Delaware operation.

16.2.1.1 The following criteria are used to determine eligibility:

16.2.1.1.1 A company not presently in the State relocates to the State.

16.2.1.1.2 A distinct division, subsidiary, or company with an existing Delaware presence that relocates additional operations to the State.

16.2.1.1.3 A significant expansion of an existing Delaware operation by relocating new and distinct operations not currently being done in the State, but previously done out-of-state that:

16.2.1.1.3.1 increases permanent full-time employment over their current Delaware base;

16.2.1.1.3.2 demonstrates that new and distinct operations being relocated are added to the existing Delaware operation.

16.2.1.1.4 The assistance provided should be a critical element in the relocation decision.

16.2.2 Applicant for Relocation Assistance shall provide for substantiation of eligibility before funding of a Project will occur.

16.2.2.1 The following criteria are used to determine substantiation:

16.2.2.1.1 Machinery & Equipment - The Applicant must provide actual receipts of expenses associated with the physical relocation and installation of equipment from a previous location to the State. (The purchase and installation of new equipment is not eligible).

16.2.2.1.2 Personnel - The Applicant shall provide evidence of the physical relocation of those employees which have moved and established a new residence in the State.

### 16.3 Project Approval Standards

16.3.1 Findings. - As a precondition to approving Relocation Assistance, the Authority shall make the findings and determinations required by 29 **Del.C.** §5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

16.3.1.1 Employment Standard. - The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to making Relocation Assistance, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing gainful employment within the State. The standards to be considered by the Authority will include, but not be limited to, the number of permanent, quality, full-time jobs created or retained as a result of the Project, the wage scale applicable to persons to be employed as a result of the Project, the economic situation in the State at the time of filing of the Application, the effect of the Project on the tax base of the State or of the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

- 16.3.1.2 Capability Standard; Adherence to Law. - In determining whether the Project will assist in creating or retaining "direct, permanent, quality full-time jobs" in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any operator or principal user of the Project.
- 16.3.1.3 Business Standard. – In making findings and determinations with respect to the capital investment in a Project, the Authority will consider capital investment made and to be made in the proposed Project. If the Project involves an Agricultural Business or a Commercial Business, as those terms are defined in the Act, the Project must require a capital investment of at least ten thousand dollars (\$10,000), which funds, including the amount of Relocation Assistance will be available or expended on the date that the Authority provides such Relocation Assistance. The term "capital investment" shall be applied in accordance with generally accepted accounting principles.
- 16.3.1.4 Operator and User Standard. - An Applicant shall, if requested by the Authority or required in the Application, submit such information as is requested or required for each proposed operator or principal user of the Project. The Authority shall apply the same standards with respect to the operators and principal users of the Project as are applied to Applicants, unless there is good reason, established by the Applicant, to make the findings and determinations with respect to the Applicant alone. The financial strength of the Applicant and his capacity to manage or operate the Project, among other considerations, may be the basis for omitting such findings and determinations with respect to the operators or principal users.
- 16.3.2 Clawback Provision. - The Authority shall determine, in its sole discretion, appropriate clawback provisions for each Applicant under which the Applicant may be required to repay some or all of the Relocation Assistance granted under this section 16.
- 16.3.3 Post-Grant Period - Annual Reporting. - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, for a period of five (5) years following the award of Relocation Assistance, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

#### **5 DE Reg. 1141 (11/1/01)**

### **17.0 Exempt Persons Development Assistance**

#### **17.1 Program Description.**

- 17.1.1 The Authority is empowered to make financial assistance ("Financial Assistance") in the form of grants or loans to Exempt Persons, as defined in the Act. Exempt Persons are governmental units and certain non-profit organizations described in section 501(c)(3) of the federal Internal Revenue Code of 1986.
- 17.1.2 The maximum amount of Financial Assistance with respect to a Project ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount of such assistance shall be thirty thousand dollars (\$30,000).

#### **17.2 Eligibility Standards**

17.2.1 To be eligible for Financial Assistance, a Project shall demonstrate potential to contribute to the prosperity, health or general welfare of the citizens of the State by contributing, directly or indirectly, to the retention and expansion of existing Delaware businesses, to the recruitment of new businesses to the State, or to the formation of new businesses in the State.

17.2.2 If the Applicant involves individuals or organizations other than Exempt Persons in a Project, then the Applicant must also demonstrate that the involvement of such individuals or organizations on the Project will contribute to the prosperity, health or general welfare of the citizens of the State by contributing, directly or indirectly, to the retention and expansion of existing Delaware businesses, to the recruitment of new businesses to the State, or to the formation of new businesses in the State, and the Applicant must define such individual's or organization's responsibilities and document their willingness and ability to perform.

### 17.3 Project Approval Standards

17.3.1 Findings. - In connection with the approval of Financial Assistance for a Project, the Authority shall make the findings and determinations required by 29 Del.C. §5054(f)(2) with respect to the Project. The Authority shall apply the following standards where applicable in making such findings and determinations:

17.3.1.1 General Findings Standard. - The Authority will review the information submitted by the Applicant to determine whether the Project will tend, directly or indirectly, to maintain or provide gainful employment within the State. The standards to be considered will include, but not be limited to, the number of permanent, quality, full-time jobs that could be created or saved as a result of the Project, the economic situation in the State, and the expected effect that the Project will have on the development of new or expanded economic activity within the State. If the Project is for pollution control purposes, the Authority will determine whether the Project will reduce, abate or prevent pollution of the State's environment or protect its natural resources.

17.3.1.2 Public Purpose Standard. - The Applicant must demonstrate that the proposed Project will serve a public purpose by contributing to the prosperity, health, or general welfare of the citizens of the State.

17.3.1.3 Adherence to Law. - Should the Applicant involve individuals or organizations in conjunction with a Project, findings and determinations must be made that such individuals and organizations have not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application.

## 5 DE Reg. 1141 (11/1/01)

## 18.0 SBIR Bridge Grant Assistance

### 18.1 Program Description

18.1.1 In order to encourage Delaware small businesses to participate in the federal Small Business Innovation Research ("SBIR") program, the Authority has set forth criteria to help maintain continuing SBIR program research and development. The purposes of the SBIR program are to (i) stimulate technological innovation; (ii) use small business to meet federal research and development needs; (iii) encourage the participation by disadvantaged and minority persons in technological innovation; and (iv) increase private sector commercialization of results derived from federal research and development.

18.1.1.1 The SBIR program is divided into three phases. The purpose of SBIR Phase I is to show: (i) that the Assisted Person can do high quality research and development; (ii) that the proposed effort is technically feasible; and (iii) that sufficient progress has been made to justify a much larger federal agency investment in an Assisted Person's project in connection with SBIR's Phase II. An SBIR Phase I Award can be as much as one hundred thousand dollars (\$100,000). The SBIR Phase II is the principal research and development effort, with a duration which normally does not exceed two years. Federal

awards for SBIR Phase II are based upon the results of SBIR Phase I and the scientific and technical merit of the SBIR Phase II proposal. The object is to continue the research and development initiated under SBIR Phase I. An SBIR Phase II award can be as much as five hundred thousand dollars (\$500,000). However, the federal government is not obliged to fund any specific Phase II proposal. SBIR Phase III encourages small businesses to seek commercialization funding principally from the private sector (no Federal SBIR funding is provided).

18.1.1.2 The SBIR Bridge Grant Assistance program (the "Program") seeks to permit the Applicant to maintain its staff and continue its research pending SBIR Phase II approval, which may take as long as nine months after the submission of an SBIR Phase II proposal. Thus, a Program grant of financial assistance (an "Award") may be used to help cover the salaries of personnel after completion of Phase I and before Phase II monies become available. In addition, an Award may be used to help defray expenses connected with scientific research, patent search and applications, strategic and business plan development, market research, product planning and product development. Capital equipment and construction or modifications of facilities are not covered.

#### 18.1.2 Award Approval and Standards

18.1.2.1 Findings. - In connection with the approval of an Award, the Authority shall make the findings and determinations required by 29 **Del.C.** §5055 with respect to the Applicant and the Project. The Authority shall apply the following standards in making such findings and determinations:

18.1.2.1.1 SBIR Participation. - In order to be eligible for an Award, an Applicant must establish that it has been granted an SBIR Phase I award and has submitted a proposal to the appropriate federal agency for, but has not yet received, SBIR Phase II funding.

18.1.2.1.2 Principal Place of Business Standard. - In determining whether an Applicant's principal place of business is in the State, an Applicant shall demonstrate to the Authority that its Delaware operation is either its sole operation or its primary business location.

18.1.2.1.3 Economic Benefit Standard. - When applying the "Economic Benefit Standard" the Authority will review the information submitted by an Applicant to determine whether the Project will tend to maintain or provide gainful employment within the State. The standards to be considered will include, but will not be limited to, the wage scale applicable to persons to be employed as a result of the research project, the economic situation in the State, the effect of the project on the tax base of the State, and of the county or municipality in which the project is to be located, and the expected effect that the research project will have on the development of new economic activity within the State.

18.1.2.1.4 Employment Standard. - The Authority shall require that an officer or principal of the Applicant certify to the Authority that the Applicant maintains a full-time equivalent of not more than one hundred (100) employees at the time of the Award.

18.1.3 Approval. - The Authority may, after applying the foregoing standards, approve a Project and provide an Award to an Applicant up to a maximum of fifty thousand dollars (\$50,000). ~~No more than three (3) Awards will be granted to an Applicant in any five (5) year period. The maximum amount of Awards an Applicant may receive in a lifetime is two hundred thousand dollars (\$200,000).~~ No more than four (4) Awards will be granted to an Applicant in a rolling ten (10) year time period. Additional Awards may be granted by the Authority, but the Authority may, in its discretion, require repayment of such additional awards. An Award may be made, at the sole discretion of the Authority, in a lump sum or in installments. The specific conditions under which the Authority shall make an Award to an Applicant shall be set forth in a commitment letter between the Authority and the Applicant.

18.1.4 Post-Award Documentation. - The following documentation shall be required of all Applicants receiving Awards:



- 18.1.4.1 A summary of the work performed under the Award no later than August 31 of each of the five (5) years following the Award or otherwise as required by the Authority. Such summary shall include projections or documentation of any actual commercialization of the Project (such as patents obtained, new products developed, etc.) and any economic impact (in terms of employment and/ or sales impact with the company, etc.) of such commercialization.
- 18.1.4.2 Notification of Phase II SBIR award results immediately after the award is made or denied.

#### **5 DE Reg. 1141 (11/1/01)**

### **19.0 Brownfield Assistance**

#### **19.1 Program Description**

- 19.1.1 The Authority is empowered to make financial assistance in the form of matching grants to Applicants for the costs of conducting environmental assessments and remediation at Certified Brownfield sites ("Brownfield Assistance").
- 19.1.2 The maximum amount of Brownfield Assistance by the Authority with respect to any single Certified Brownfield shall be the lesser of (a) fifty thousand dollars (\$50,000), or (b) fifty percent (50%) of the total costs of environmental assessment and remediation with respect to that Certified Brownfield (an "Eligible Project"). The Authority may, in its sole discretion, limit the amount of Brownfield Assistance for any Eligible Project to any amount less than fifty thousand dollars (\$50,000) or fifty percent (50%) of environmental assessment and remediation at the Eligible Project. The Authority may not award more than one million dollars (\$1,000,000) of Brownfield Assistance, in aggregate, during any fiscal year of the State.

#### **19.2 Eligibility Standards**

- 19.2.1 The following criteria will be used to determine eligibility for Brownfield Assistance:
  - 19.2.1.1 The proposed investment should have the potential to serve a public purpose by maintaining or expanding employment in the State by maintaining, expanding, or diversifying business and industry in the State, and/or maintaining or increasing its tax base.
  - 19.2.1.2 Since Brownfield Assistance is in the form of matching grants, the Applicant shall demonstrate to the satisfaction of the Authority that funds are available for environmental assessment and remediation expenses at the Eligible Project that will equal or exceed the amount of Brownfield Assistance requested.
  - 19.2.1.3 Because Eligible Projects must be Certified Brownfields, the Applicant must submit with its Application the written certification of the Eligible Project as a Brownfield issued by the Secretary of the Department of Natural Resources and Environmental Control.
- 19.2.2 The following expenses or types of real property do not qualify for Brownfield Assistance:
  - 19.2.2.1 Expenses for environmental assessment and remediation incurred prior to January 16, 2001;
  - 19.2.2.2 Expenses for environmental assessment which are considered by the Authority, in its sole discretion, as normal and ordinary in the course of any financing or real estate transfer transaction or Phase One assessments;
  - 19.2.2.3 Any site with respect to any portion of which enforcement action has been initiated under 7 **Del.C.** Ch. 63, Ch. 74 or §9101; 42 **U.S.C.** § 6901 et seq.; or 42 **U.S.C.** § 9606 or § 9607;
  - 19.2.2.4 Sites which are owned by a governmental unit of the State; and
  - 19.2.2.5 Sites located outside the State.

#### **19.3 Project Approval Standards**

- 19.3.1 Findings. - As a precondition to approving Brownfield Assistance, the Authority shall make the findings and determinations required by 29 **Del.C.** §5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

- 19.3.1.1 Capability Standard; Adherence to Law. - In determining whether the Project may assist in creating or retaining employment in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any proposed operator or principal user of the Eligible Project.
- 19.3.1.2 Operator and User Standard. - An Applicant shall, if requested by the Authority or required in the Application, submit such information as is requested or required for each proposed operator or principal user of the Eligible Project. The Authority shall apply the same standards with respect to the operators and principal users of the Eligible Project as are applied to the Applicants, unless the Applicant establishes good reason to make the findings and determinations with respect to the Applicant alone.
- 19.3.2 Clawback Provision. - The Authority shall determine, in its sole discretion, appropriate clawback provisions for each Applicant under which the Applicant may be required to repay some or all of the Brownfield Assistance granted under this section 19.
- 19.3.3 Post-Grant Period - Annual Reporting. - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, within ninety (90) days after completing the environmental assessment and/or remediation at the Eligible Project, submit to the Authority a written report setting forth the total costs for management and labor, equipment, sampling and analysis and the removal and disposal of hazardous waste or other materials at the Eligible Project.

**5 DE Reg. 1141 (11/1/01)**

**13 DE Reg. 489 (10/01/09) (Prop.)**