

Sec. 32-9p-5. Manufacturing facilities requirement

(a) To qualify for the issuance of an eligibility certificate, in addition to being located in a distressed municipality, a manufacturing facility must:

(1) consist of a plant, building, other real property improvement, or part thereof;

(2) be

(A) constructed or substantially renovated or expanded; or

(B) acquired by a business organization which is unrelated to or unaffiliated with the seller after having been idle for at least one year prior to its acquisition, regardless of its previous use, except in the case of a facility located in an enterprise zone designated pursuant to Section 32-70 of the statutes, the idleness requirement shall be as set forth in subsection (d) of Section 32-9p of the statutes as amended; and

(3) be used for:

(A) the manufacturing, processing or assembly of raw materials, parts or manufacturing products;

(B) the significant servicing, overhauling or rebuilding of machinery and equipment for industrial use;

(C) the distribution in bulk of manufactured products other than on a retail basis;

(D) research and development activities directly related to manufacturing. Research and development activities are considered to be directly related to the manufacturing process when the company has any of the standard industrial classification codes as listed in Section 32-9p-5 (h) (1) of these regulations; or

(E) in the case of a facility located in an enterprise zone designated pursuant to Section 32-70 of the statutes, for services satisfying the requirements of Section 32-9p-5 (h) (5) of these regulations.

(b) A manufacturing facility may consist of an entire plant, building, structure or other real property improvement or group of buildings or improvements, or may consist of a part, section, wing or floor of a plant, building or structure. In the event the acquisition or construction, substantial renovation or expansion is of a portion of a plant, the part, section, wing or floor so acquired, constructed, renovated or expanded will be designated as the manufacturing facility. The existing plant or structure need not itself house a business activity which would qualify the plant or structure as a manufacturing facility, as long as the activity carried on in the improvement or addition which is designated to be the manufacturing facility is an activity described in Section 32-9p-5 (a) (3) of these regulations.

(c) A manufacturing facility which is newly constructed will qualify for an eligibility certificate. An existing plant or building or part of floor thereof which is substantially renovated or an existing plant or building which is expanded will also qualify for an eligibility certificate. Substantial renovation or expansion for this purpose means the making of improvements or additions to the structure of a facility which involve capital expenditures equal to or greater than 50% of the current assessed value of the building, structures or part thereof being renovated or expanded and constituting the manufacturing facility. The improvements may be made for any business reason, but must be of a nature requiring the issuance of a building permit and must in the judgment of the Department be likely to have the direct result of increasing employment or expanding the tax base in the distressed municipality.

(d) A manufacturing facility is acquired for the purposes of the statutes if (1) title to the facility is acquired by a new owner through purchase or (2) the facility is leased as provided in Section 32-9p-5 (f) herein to a new occupant or occupants. The purchaser or seller or lessor and lessee of an acquired facility may not be related or affiliated in any manner at all, whether business, familial or otherwise. Thus, the parties may not have any common owner, stockholder, director, officer or employee, nor may the owners or employees of the parties be members of the same family either by blood or marriage. This paragraph is intended to deny the benefits of the statutes to the participants in any acquisition which is not transacted at arms length by the parties. In appropriate instances where a strict application of the provisions of this paragraph would be contrary to the purpose of the statutes and where the purchaser and seller or lessor and lessee are in all practicality unrelated and unaffiliated the Department may deem this requirement to be met.

(e) A manufacturing facility will not be deemed to have been acquired unless a substantial portion of its productive capacity is again utilized on a continuous basis after a period of idleness of at least one year. Idle facilities are those which have not been used or occupied at all during the entire one year period. In instances where a facility has been used on a very limited basis, such as temporary usages for maintenance or for product or equipment testing, but nonetheless has been essentially unoccupied and not productive during the one year period, the Department may deem the facility to have been idle if the Department determines that such a finding will further the purposes expressed in the statutes. The uses of an acquired facility prior to the one year period of idleness will not affect the issuance of an eligibility certificate, as long as the use which is made of the facility subsequent to its acquisition is one described in Section 32-9p-5 (a) (3) of these regulations. Notwithstanding any provisions of this subsection, for a facility located in an enterprise zone designated pursuant to Section 32-70 of the statutes, the idleness requirement shall be as follows: for a facility with an average total employment of between 6 and 19 employees for the six months prior to the acquisition of the facility, the idleness requirement shall be six months; and for a facility which has five or fewer employees, the idleness requirement shall be waived provided no more than one eligibility certificate shall be issued for the same facility within a three year period. The Department may waive the requirement of idleness if it determines that absent qualification as a manufacturing facility, there is a high likelihood that the facility will remain idle for one year. Factors that the Department will consider in making this determination include the marketability of the facility, general economic condition of the distressed municipality, the size of the facility, the number of employment positions to be established and the importance of benefits of the statutes in the decision of the manufacturer to acquire the facility.

(f) No leasing of a manufacturing facility constitutes an acquisition unless the contract of lease is for an initial minimum term of five years and evidences by its provisions a substantial, long term commitment in the form of a renewable option at the request of the lessee for an aggregate term which shall not be less than ten years, or the right of the lessee to purchase the facility at any time after the initial five-year term, or both. This commitment will be determined based upon an evaluation of all facts and circumstances involved in each case. Factors which would tend to indicate a substantial commitment include the construction of leasehold improvements at the lessee's expense and contractual provisions

for a renewal of the lease at the lessee's option and for liquidated damages payable by the lessee upon a breach of the lease. Notwithstanding any provisions of this subsection, for a facility located in an enterprise zone and designated pursuant to Section 32-70 of the statutes that employs an average of 10 or fewer employees over the six month period preceding acquisition, the contract for lease: may be for an initial minimum term of three years with a renewable option at the request of the lessee for an aggregate term which shall not be less than six years or may include the right of the lessee to purchase the facility at any time after the initial three-year term or both; and may include the right for the lessee to relocate to some other space within the same enterprise zone provided the space is under the same ownership or control as the originally leased space or if such space is not under the same control as the originally leased space, permission to relocate is granted by the lessor of the originally leased space, provided that such relocation shall not extend the duration of benefits granted under the original eligibility certificate.

(g) An acquisition will be deemed to have occurred when the deed or lease for the facility is executed. The construction, renovation or expansion of a manufacturing facility will be deemed to have occurred when most of the construction time, expenditure of funds and physical improvement involved in the process has been completed.

(h) The facility for which an eligibility certificate is issued must be one in which the occupant conducts one of the following five qualified manufacturing or related activities:

(1) The manufacture, processing or assembly of raw materials, parts or manufactured products. All activities which are currently classified as manufacturing activities by the Standard Industrial Classification Manual (prepared by the Executive Office of the President, and published and periodically revised by the United States Government Printing Office) will meet this requirement. These activities are given SIC major group numbers 20 through 39, and are generally described as follows:

Major Group 20.	Food and kindred products
Major Group 21.	Tobacco manufacturers
Major Group 22.	Textile mill products
Major Group 23.	Apparel and other finished products made from fabrics and similar materials
Major Group 24.	Lumber and wood products, except furniture
Major Group 25.	Furniture and fixtures
Major Group 26.	Paper and allied products
Major Group 27.	Printing, publishing and allied industries
Major Group 28.	Chemical and allied products
Major Group 29.	Petroleum refining and related products
Major Group 30.	Rubber and miscellaneous plastics products
Major Group 31.	Leather and leather products
Major Group 32.	Stone, clay, glass, and concrete products
Major Group 33.	Primary metal products

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- Major Group 34. Fabricated metal products, except machinery and transportation equipment
- Major Group 35. Machinery, except electrical
- Major Group 36. Electrical and electronic machinery, equipment, and supplies
- Major Group 37. Transportation equipment
- Major Group 38. Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks
- Major Group 39. Miscellaneous manufacturing industries

Any activity not classified as manufacturing by the Manual, such as services and retail trade, will not qualify under this restriction. The use of the manufacturing facility for purposes which are functionally related, ancillary and subordinate to and are required for the primary manufacturing activity carried on at the facility will not disqualify the facility under the program. Examples include a small administrative area for the management of plant operations, or a small area for the testing of products produced by the facility.

(2) The significant servicing, overhauling or rebuilding of machinery and equipment for industrial use. This activity is an adjunct to the manufacturing process involving major repairs to industrial machinery and equipment. Machinery and equipment used for production in activities classified as manufacturing by the Standard Industrial Classification Manual is considered industrial machinery and equipment. A facility which services, overhauls or rebuilds industrial stamping presses, lathes or generating equipment will qualify as a manufacturing facility, but one which is involved in the repair of televisions, automobiles or other consumer goods will not. As a further example, facilities which service, overhaul or repair computers will qualify only if the computers are directly used in the industrial or manufacturing process.

(3) The warehousing and distribution in bulk of manufactured products on other than a retail basis. This activity is a further adjunct to the manufacturing process involving the bulk distribution of manufactured products prior to their retail sale. Only those facilities for the warehousing and distribution of manufactured products on other than a retail basis which are newly constructed or which represent an expansion of an existing facility qualify as manufacturing facilities. Manufactured products are products which are produced through activities classified as manufacturing by the Standard Industrial Classification Manual. A facility which is a regional center for the distribution in bulk of automobiles, furniture, clothing or glassware to retail outlets will therefore qualify as a manufacturing facility. One which houses warehouse sales directly to the public, performs mail order warehouse sales, or warehouses and distributes to its own retail stores will not qualify, however, since each involves retail sales and sales in small rather than bulk quantities.

(4) Research and development directly related to manufacturing as defined in Section 32-9p-5 (a) (3) (D).

(5) If located in an enterprise zone designated pursuant to Section 32-70 of the statutes as amended, establishments having the following standard industrialization classifications or operating or auxiliary units of such establishments, provided that the establishments, operating, or auxiliary units do not regularly involve direct business with, or service to, the general public:

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0912	Commercial fishing - finfish
0913	Commercial fishing - shellfish
0919	Commercial fishing - miscellaneous marine products
0921	Commercial fishing - fish hatcheries and preserves
4215	Courier services, except by air
4221	Farm product warehousing and storage
4222	Refrigerated warehousing and storage
4226	Special warehousing and storage, not elsewhere classified
4231	Terminal and joint terminal maintenance facilities for motor freight transportation
4412	Deep sea foreign transportation of freight
4424	Deep sea domestic transportation of freight
4432	Freight transportation on the Great Lakes–St. Lawrence Seaway
4449	Water transportation of freight, not elsewhere classified
4491	Marine cargo handling
4492	Towing and tugboat services
4499	Water transportation services, not elsewhere classified
4512	Air transportation, scheduled
4513	Air courier services
4731	Arrangement of transportation of freight and cargo
4741	Rental of railroad cars
4783	Packing and crating
4789	Transportation services, not elsewhere classified
6011	Federal reserve banks
6019	Central reserve depository institutions, not elsewhere classified
6021	National commercial banks
6022	State commercial banks
6029	Commercial banks, not elsewhere classified
6035	Savings institutions, federally chartered
6036	Savings institutions, not federally chartered
6061	Credit unions, federally chartered
6062	Credit unions, not federally chartered
6081	Branches and agencies of foreign banks
6082	Foreign trade and international banking institutions
6091	Nondeposit trust facilities

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6099	Functions related to depository banking, not elsewhere classified
6111	Federal and federally sponsored credit agencies
6141	Personal credit institutions
6153	Short-term business credit institutions, except agricultural
6159	Miscellaneous business credit institutions
6162	Mortgage bankers and loan correspondents
6163	Loan brokers
6211	Security brokers, dealers, and flotation companies
6221	Commodity contracts brokers and dealers
6231	Security and commodity exchanges
6282	Investment advice
6289	Services allied with the exchange of securities or commodities, not elsewhere classified
6311	Life insurance
6321	Accident and health insurance
6324	Hospital and medical service plans
6331	Fire, marine and casualty insurance
6351	Surety insurance
6361	Title insurance
6371	Pension, health and welfare funds
6399	Insurance carriers, not elsewhere classified
6712	Offices of bank holding companies
6719	Offices of holding companies, not elsewhere classified
6722	Management investment offices—open ended
6726	Unit investment trusts, face amount certificate offices, and closed-end management investment offices
6732	Educational, religious and charitable trusts
6733	Trusts except educational, religious and charitable
6792	Oil royalty traders
6794	Patent owners and lessors
6798	Real estate investment trusts
6799	Investors, not elsewhere classified
7323	Credit reports services
7371	Computer programming services
7372	Prepackaged software
7373	Computer integrated systems design

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7374	Computer processing and data preparation and processing services
7375	Information retrieval services
7376	Computer facilities management services
7377	Computer rental and leasing
7378	Computer maintenance and repair
7379	Computer related services, not elsewhere classified
8071	Medical laboratories
8072	Dental laboratories
8731	Commercial physical and biological research
8732	Commercial economic, sociological, and educational research
8733	Noncommercial research organizations
8734	Testing laboratories

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