

**CHAPTER 50****SMART MOVES PROGRAM****Authority**

N.J.S.A. 27:1A-5, 27:1A-6 and 27:26A, specifically 27:26A-4.3 and 27:26A-15; and 42 U.S.C. §7511a(d)(1), specifically §182(d)(1).

**Source and Effective Date**

R.2008 d.255, effective July 29, 2008.  
See: 40 N.J.R. 2214(a), 40 N.J.R. 5062(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 50, Smart Moves Program, expires on July 29, 2015. See: 43 N.J.R. 1203(a).

**Chapter Historical Note**

Chapter 50, Railroad Transportation—Public Hearings, was adopted and became effective prior to September 1, 1969.

Chapter 50, Railroad Transportation—Public Hearings, was repealed by R.1989 d.607, effective December 18, 1989. See: 21 N.J.R. 3258(b), 21 N.J.R. 3929(b).

Chapter 50, Employer Trip Reduction Program, was adopted as R.1993 d.626, effective December 6, 1993. See: 25 N.J.R. 3132(a), 25 N.J.R. 5494(b).

Subchapter 15, Employer Trip Reduction Program Tax Credit, was adopted as R.1995 d.75, effective February 6, 1995. See: 26 N.J.R. 756(a), 27 N.J.R. 521(a).

Subchapter 11, Disclosure of Information, was adopted as R.1995 d.338, effective June 19, 1995. See: 27 N.J.R. 827(a), 28 N.J.R. 2436(b).

Chapter 50, Employer Trip Reduction Program, was repealed and a new Chapter 50, Smart Moves Program, was adopted as R.1997 d.407, effective October 6, 1997. See: 29 N.J.R. 2794(a), 29 N.J.R. 4295(b).

Chapter 50, Smart Moves Program, was readopted as R.2003 d.168, effective March 31, 2003. As a part of R.2003 d.168, Subchapter 1, Statutory Authority, and Subchapter 4, Employer Notification, were repealed, effective May 5, 2003. See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).

Chapter 50, Smart Moves Program, was readopted as R.2008 d.255, effective July 29, 2008. As a part of R.2008 d.255, Subchapter 1, General Provisions, was adopted as new rules; and Subchapter 3, Entities Eligible to Participate; Information Resources, and Subchapter 8, Smart Moves for Business Challenge Grants, were repealed, effective September 2, 2008. See: Source and Effective Date. See, also, section annotations.

**Law Review and Journal Commentaries**

Employment Law Supplement Overview: Commuting Statute. Michael K. Furey, Lynne A. Anderson, Shelly A. Dean, Scott A. Ohnegian, 136 N.J.L.J. No. 15, S4 (1994).

Rules of Employer Trip Reduction Program. G. Thomas Reynolds, 138 N.J.L.J. No. 8, 10 (1994).

Gearing Up for the Employer Trip Reduction Program. Peter J. Herzberg, Brian Montag, 160 N.J.Law. 27 (Mag.) (April 1994).

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**SUBCHAPTER 1. GENERAL PROVISIONS****16:50-1.1 Purpose and scope**

This chapter governs the administration of the Smart Moves for Business Program which encourages all New Jersey employers to voluntarily implement programs that reduce work-related vehicle trips and vehicle miles traveled to the worksite. Additionally, the rules articulate the criteria and procedures that make employers eligible for tax credits when implementing voluntary trip reduction programs. Participation in the Smart Moves for Business Program is voluntary. Employers that offer commute options to their employees are encouraged to register and report their activities to the Department to help the State document reduc-

tions in traffic congestion and air pollution resulting from the Smart Moves for Business Program. Employers that intend to apply for the Smart Moves for Business Program Tax Credit must register with the Department and submit a Smart Moves for Business Program Narrative.

### 16:50-1.2 Information resources

Information about the program described in this chapter is available from the Department upon request directed to the following address: Smart Moves for Business Program, Division of Multimodal Services, NJ Department of Transportation, 1035 Parkway Avenue, PO Box 600, Trenton, NJ 08625-0600; and on the Internet at: [www.state.nj.us/transportation/commuter/smartmoves/](http://www.state.nj.us/transportation/commuter/smartmoves/).

## SUBCHAPTER 2. DEFINITIONS

### 16:50-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Alternative fuel vehicle” means a vehicle solely powered by energy sources that are non-polluting or produce emissions substantially below those of gasoline-powered vehicles. Alternative fuels shall include: electricity, natural gas, propane, methanol, and other fuels as defined in The Comprehensive National Energy Policy Act of 1992, Title 3: Section 301, Public Law 102-486, approved October 24, 1992.

“Alternative work schedule” means a compressed work week schedule, flextime or other flexible work hours schedule, or staggered work hours schedule.

“Approved Smart Moves for Business Program” means a program of an employer that has voluntarily registered with the Department, has submitted the required documentation and has been certified by the Department as eligible for the Smart Moves for Business Program Tax Credits.

“Buspool” means and includes the operation of an autobus or autobuses, with a seating capacity of 16 or more persons, on a regular schedule between fixed termini, which provide service to a predetermined group of employees pursuant to a written contract between the employer or their designated agent and an authorized motorbus operator.

“Carpool” means a group of two to six occupants commuting to and from a work location by means of a vehicle with a seating capacity of 15 or fewer occupants. The driver of a taxi or other livery service is not counted as a carpool occupant.

“Clean Air Act” means the Federal Clean Air Act, as amended by Pub.L. 101-549 (42 U.S.C. §§ 7401 et seq.) and as amended by P.L. 104-70.

“Commissioner” means the Commissioner of Transportation of the State of New Jersey.

“Commute alternative” means the mode of travel between an employee’s place of residence and place of employment, which is other than in a motor vehicle occupied by one person. Commute alternatives include, but are not limited to, public transportation, carpools, vanpools, buspools, ferries, bicycling, and walking, which may be used independent of or in conjunction with alternative work schedules, teleworking and like measures. For purposes of these rules, teleworking and telecommuting are considered commute alternatives.

“Commuter transportation benefit” means the cost to employers of providing benefits to an employee for utilizing commute alternatives and the cost of providing services and facilities which would encourage or facilitate use by employees of commute alternatives. The benefit shall include the costs of parking by employees at park-and-ride lots if used to benefit an employer’s program.

“Compressed work week” or “compressed work schedule” means a schedule in which employees work either 35 or more hours in fewer than five consecutive week days or 70 or more hours in fewer than 10 consecutive week days. Compressed work schedules shall also include: “four day-40 hour”, “three day-36 hour”, “nine day-80 hour”, “nine day-72 hour” schedules, and other work schedules that reduce the number or frequency of commute trips.

“Cost” means the invoice cost, purchase price, or contract amount of an eligible Smart Moves for Business Program expense, excluding interest on the debt of a capital improvement. The term does not include peripheral or indirect costs associated with the purchase, installation or construction of equipment, or the costs associated with the advertisement, solicitation of bids, and/or awarding of a contract. Ineligible costs, include, but are not limited to, sales tax and shipping costs.

“Department” means the New Jersey Department of Transportation.

“Division of Taxation” means the New Jersey Department of Treasury, Division of Taxation.

“Dual fuel vehicle” means a highway vehicle with the capability to be powered by either of two fuels, one of which is gasoline and the other of which is an alternative fuel, such as natural gas, propane, methanol, or other fuel as defined in The Comprehensive National Energy Policy Act of 1992, Title 3, Section 301, Public Law 102-486, approved October 23, 1992, (42 U.S.C. § 13211).

“Eligible expense” means a direct expenditure made by a tax credit employer to provide commuter transportation benefits in support of its Smart Moves for Business Program. The expenses must be outlined in the employer’s Smart Moves for Business Program Narrative and approved by the Department of Transportation as eligible for the Smart Moves for Busi-

ness Tax Program Credit. Categories of eligible expenses are identified in N.J.A.C. 16:50-9.2.

“Employee” means a partner or limited partner in a partnership, or any person employed by an employer, in a full-time or part-time, permanent, temporary, or contract position, excluding volunteers.

“Employee survey” means a survey of employees’ commute patterns that may be conducted at an employer’s work location to determine the mode choice and participation level of employees in commute alternatives. An employee survey is not required under this chapter.

“Employee transportation coordinator” means an employee that may be appointed by an employer to develop and administer a Smart Moves for Business Program at a work location.

“Employer” means any person, partnership, association, corporation, institution, trust, legal representative or any organized group of persons which hires or employs employees in New Jersey and shall also include all public and quasi-public employers, including without limitation the United States and any of its governmental instrumentalities, the State of New Jersey and its instrumentalities, State departments or agencies, and subdivisions, county governments, municipal governments, and all State and bi-State authorities, corporations, commissions, boards, and like bodies.

“Highest ranking responsible officer” means the president, executive or managing director, other chief executive or operating officer, or other highest ranking employee located at a registered work location, who has primary responsibility for the operation and management of the work location.

“Maximum yearly credit” means the maximum amount of the tax credit allowable in a tax year.

“Participating employee” means an employee of a participating or tax credit employer that is utilizing a commute alternative at least one day, Monday through Friday, inclusive.

“Participating employer” means an employer that employs one or more employees at any work location in New Jersey and that provides commute options to their employees and voluntarily registers with the Department as a good corporate citizen and does so regardless of interest or eligibility for Smart Moves for Business Tax Credits.

“Public transportation” means rail passenger service, motorbus regular route service, paratransit service, and motorbus charter service or other transportation services such as ferry services, available to the traveling public whose purpose is to carry passengers between two or more points.

“Smart Moves Program” means the Department’s program to develop, implement and monitor a variety of innovative travel alternatives, projects and programs which support and

inform the State’s businesses and travelers regarding travel options and intermodal connections.

“Smart Moves for Business Program” means an employer trip reduction program that is voluntarily implemented by an employer at a work location to reduce vehicle trips to the work location and to reduce commute trip vehicle miles traveled by employees at the location.

“Smart Moves for Business Program Narrative” or “narrative” means the report submitted to the Department describing the work site commute alternative activities and expenses associated with such activities in accordance with N.J.A.C. 16:50-6.

“Smart Moves for Business Program Tax Credit” means the tax credits for which tax credit employers are eligible, previously known as the Employer Trip Reduction Program Tax Credits.

“Subchapter” means a subchapter of these rules.

“Tax credit employer” means a participating employer that is eligible and intends to apply for Smart Moves for Business Program Tax Credits. As used in this chapter, a tax credit employer is a taxpayer subject to the provisions of any of the following: the “Corporation Business Tax Act (1945),” P.L. 1945, c.162 (N.J.S.A. 54:10A-1 et seq.), the “Financial Business Tax Law (1946),” P.L. 1946, c.174 (N.J.S.A. 54:10B-1 et seq.), the “Savings Institution Tax,” P.L. 1973, c.31 (N.J.S.A. 54:10D-1 et seq.), the tax imposed on marine insurance companies pursuant to N.J.S.A. 54:16-1 et seq., the tax imposed on fire insurance companies pursuant to N.J.S.A. 54:17-4 et al., the tax imposed on insurers generally, pursuant to P.L. 1945, c.132 (N.J.S.A. 54:18A-1 et seq.), the public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed pursuant to P.L. 1940, c.5 (N.J.S.A. 54:30A-49 et seq.), or that is a taxpayer in respect of a distributive share of partnership income under the “New Jersey Gross Income Tax Act,” N.J.S.A. 54A:1-1 et seq., or any other tax administered by the Division of Taxation.

“Teleworking” or “telecommuting” means a strategy in which an employee substitutes the location at which their work is performed; that is, work assigned to be done at the work location is instead done at the employee’s residence or other work location, such that the employee makes a substitution for the commute trip to the work location for the entire day, or for part of the day, that is less than the mileage between the employee’s residence and work location.

“Transportation Management Association” or “TMA” means a nonprofit corporation that coordinates local commuter transportation services, including, but not limited to, public transportation, vanpools, carpools, bicycling and pedestrian modes, and trip reduction strategies such as alternative work schedules and teleworking; and provides other similar services for New Jersey corporations, employees, developers, individuals, and other groups.

“TMA member” means, for purposes of employer tax credit eligibility, an employer that meets the definition of “member” as specified in the by-laws of the TMA for their designated service area, and that provides all the necessary documentation specified in N.J.A.C. 16:50-6 which provides a basis for approval of the TMA’s summary narrative by the Department.

“Vanpool” means a group of seven or more occupants commuting to and from work by means of a vehicle with a seating capacity of not more than 15 occupants.

“Vehicle” means a highway vehicle powered by gasoline or diesel internal combustion engine with fewer than nine seating positions for adults and used for commuting purposes. This shall include alternative fueled vehicles.

Amended by R.2003 d.168, effective May 5, 2003.  
See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).

Rewrote the section.

Amended by R.2008 d.255, effective September 2, 2008.  
See: 40 N.J.R. 2214(a), 40 N.J.R. 5062(a).

In definition “Approved Smart Moves for Business Program”, substituted “required” for “standard” and deleted “or a Smart Moves for Business Program Challenge Grant” following “Credits”; in definition “Compressed work week” inserted a beginning quotation mark preceding “nine day-80 hour” and “nine day-72 hour”; in definition “Employee transportation coordinator”, deleted “or ‘ETC’ ” preceding “means”; in definition “Highest ranking responsible officer”, deleted “or ‘HRRO’ ” preceding “means”; in definition “Participating employer”, deleted “or Smart Moves for Business Program Challenge Grants” from the end; deleted definitions “Single occupant vehicle” and “Smart Moves for Business Program Challenge Grant”; in definition “Smart Moves for Business Program Narrative”, substituted “ ‘narrative’ ” for “ ‘Program Narrative’ ”; in definition “Smart Moves for Business Program Tax Credit”, substituted “known” for “know” and “Employer Trip Reduction Program” for “ETR”; and in definition “Tax credit employer”, substituted “chapter” for “subchapter”, and deleted “P.L. 1940, c.4, and” preceding “P.L. 1940, c.5” and “54:30A-16 et seq. and” preceding “54:30A-49 et seq.”.

## SUBCHAPTERS 3 THROUGH 4. (RESERVED)

## SUBCHAPTER 5. EMPLOYER PARTICIPATION

### 16:50-5.1 Registration

(a) Any employer with one or more work locations in New Jersey that voluntarily chooses to register those locations with the Department may do so at any time and shall complete a Smart Moves for Business Narrative. The narrative can be obtained on the Department’s website at: [www.state.nj.us/transportation/commuter/smartmoves/](http://www.state.nj.us/transportation/commuter/smartmoves/).

(b) The narrative shall indicate the number of work sites that will be participating in the program and the total number of employees at each work site.

(c) For tax credit employers, submittal of a narrative must occur prior to filing any tax return in which a Smart Moves for Business Program Tax Credit is claimed.

(d) A participating employer may designate a single contact person to receive narratives for all registered locations or may choose to have the narratives forwarded to each work site individually.

Amended by R.2003 d.168, effective May 5, 2003.

See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).

Repeal and New Rule, R.2008 d.255, effective September 2, 2008.

See: 40 N.J.R. 2214(a), 40 N.J.R. 5062(a).

Section was “Registration schedule”.

### 16:50-5.2 (Reserved)

Repealed by R.2008 d.255, effective September 2, 2008.

See: 40 N.J.R. 2214(a), 40 N.J.R. 5062(a).

Section was “Completion and submittal of registration form”.

## SUBCHAPTER 6. NARRATIVE STANDARDS, SUBMITTAL SCHEDULE, AND COMPONENTS

### 16:50-6.1 Standards

Each tax credit employer or TMA, as appropriate, shall prepare Smart Moves for Business Program Narratives in accordance with the procedures established in this subchapter. The Department encourages other employers to submit narratives to the Department also, but reporting is not required.

Amended by R.2008 d.255, effective September 2, 2008.

See: 40 N.J.R. 2214(a), 40 N.J.R. 5062(a).

Substituted “narratives” for the last occurrence of “Program Narratives”.

### 16:50-6.2 Narrative submittal schedule

Each tax credit employer shall submit Smart Moves for Business Program Narratives, as described in this subchapter, to the Smart Moves for Business Program, Division of Multimodal Services, NJ Department of Transportation, 1035 Parkway Avenue, PO Box 600, Trenton, NJ 08625-0600, prior to filing a tax return claiming a Smart Moves for Business Tax Credit with the Division of Taxation.

Amended by R.2003 d.168, effective May 5, 2003.

See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).

Amended by R.2008 d.255, effective September 2, 2008.

See: 40 N.J.R. 2214(a), 40 N.J.R. 5062(a).

Deleted designations (a) and (a)1; deleted (a)2; rewrote the remaining paragraph.

### 16:50-6.3 Components of a narrative

(a) Tax credit employers shall prepare narratives using a form developed by the Department. The narrative shall include the following:

1. The name of the tax credit employer, address of the work location, and name, title, and telephone number of the designated contact person or employee transportation coordinator, if one is appointed by the employer at the work location, and the tax identification number of the employer;
2. The total number of employees at the work location;

3. A list of the Smart Moves for Business strategies currently available to employees at the work location;

4. A schedule of the actual and projected costs (with actual and anticipated implementation periods) to develop, implement, and monitor the Smart Moves for Business Program, and the number of employees participating in commute alternatives; and

5. A statement signed by the highest ranking responsible officer at the work location attesting that the information contained in the narrative is accurate and correct and that the employer will retain all Smart Moves for Business documents on file, as required by N.J.A.C. 16:50-6.7, and make such documents available for review by the Department or its agent.

(b) Other participating employers, not proposing to apply for the Smart Moves for Business Tax Credit, are encouraged to report their activities to the Department using a narrative. Participating employers may also utilize the services of a TMA in their area for reporting purposes. Participating employers shall be requested to provide the following information:

1. The name of the participating employer, address of the work location, and name, title, and telephone number of the designated contact person or employee transportation coordinator, if one is appointed by the employer at the work location;

2. The total number of employees at the work location; and

3. A list of the Smart Moves strategies currently available to employees at the work location, and the number of employees participating in commute alternatives.

(c) TMAs that submit program information for member employers shall prepare and submit TMA Member Employer Summary Narratives using a standard form developed by the Department. The narrative shall include the following:

1. A list of tax credit employer members, their respective tax identification number, the work location address of each tax credit member employer, and the date the employer became a member of the TMA;

2. The total number of employees at the work location and the number of employees participating in commute alternatives, and a list of the commute alternatives offered;

3. The total costs to develop, implement, and monitor the Smart Moves for Business Program for each tax credit member employer; and

4. A statement signed by the TMA executive director or president who shall attest to the correctness of the information included in the narrative and that the employers included in the narrative are current members in good standing of the TMA, and that the TMA will retain all Smart Moves for Business documents on file, as required

by this subchapter, and make such documents available for review by the Department or its agent. Notwithstanding this provision, an employer claiming eligible expenses and the employer tax credit remain wholly responsible and liable for the information provided to the TMA for submittal by the TMA to the Department.

Amended by R.2003 d.168, effective May 5, 2003.

See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).

Amended by R.2008 d.255, effective September 2, 2008.

See: 40 N.J.R. 2214(a), 40 N.J.R. 5062(a).

Section was "Components of a standard narrative"; in the introductory paragraph of (a), substituted "narratives" for "Smart Moves for Business Program Narratives" and "narrative" for "Smart Moves for Business Program Narrative"; in (a)1 and (b)1, deleted "(ETC)" following "coordinator"; in the introductory paragraph of (b), substituted "narrative" for "simplified standard Smart Moves for Business Program Narrative form"; and in the introductory paragraph of (c), substituted "narrative" for "TMA Member Employer Summary Narrative".

#### 16:50-6.4 Employee survey

Although not required to do so, employers are encouraged to conduct an employee survey and report the results of an employee survey to the Department. However, tax credit employers may use the results of periodic employee transportation surveys as one method of documenting the number of participating employees for purposes of determining eligible expenses for the employer tax credits provided for in this chapter.

#### 16:50-6.5 Multiple site employers

(a) An employer with more than one participating location may submit one narrative for any or all of the participating locations, provided that the same tax identification number applies to all work locations. A multiple site employer shall submit individual narratives for each tax identification number against which the employer tax credit shall be claimed.

(b) The Multiple Site Employer Smart Moves for Business Program Narrative shall include a list of all of the participating work locations.

(c) An employer may only submit a Multiple Site Narrative that represents information relative to its own worksites. An employer shall not submit a Multiple Site Narrative with another employer.

#### 16:50-6.6 Appointment of an employee transportation coordinator

(a) Employers are encouraged to designate an employee transportation coordinator at each participating work location to administer the Smart Moves for Business Program at that work location. However, the appointment of an employee transportation coordinator is not required.

(b) Employers are not required to send any designated employee transportation coordinator to training.

Amended by R.2008 d.255, effective September 2, 2008.

See: 40 N.J.R. 2214(a), 40 N.J.R. 5062(a).

In (a), deleted "(ETC)" following the first occurrence of "coordinator"; and in (a) and (b), substituted "employee transportation coordinator" for "ETC".

### 16:50-6.7 Document recordkeeping

(a) Each tax credit employer shall maintain copies of all documents prepared or used in the document preparation by the employer or by other entities acting on behalf of the employer in accordance with these rules. These documents shall include, but not be limited to, documents related to:

1. Preparation of Smart Moves for Business Program Narratives;
2. Costs and expenses relative to the development, implementation and monitoring of the Smart Moves for Business Program; and
3. Documentation of employee participation, such as: periodic employee surveys, personnel records reflecting alternative work schedules, employee registration for commuter transportation benefits, number of employees participating, etc.

(b) A tax credit employer shall maintain the documents set forth in (a) above in the office of the employee transportation coordinator or the highest ranking responsible officer for a period not less than four years from the date the documents were first generated.

(c) Each TMA shall maintain copies of all documents prepared or used in the document preparation by the TMA on behalf of their employer members in accordance with these rules. These documents shall include, but not be limited to, documents related to:

1. Preparation of Smart Moves for Business Program Narratives; and
2. Costs and expenses relative to the development, implementation and monitoring of the Smart Moves for Business Program as reported by the member employer.

(d) A TMA shall maintain the documents set forth in (c) above in the office of the executive director or president for a period not less than four years from the date the documents were first generated.

Amended by R.2003 d.168, effective May 5, 2003.  
See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).

In (d), substituted "(c)" for "(b)" following "set forth in".  
Amended by R.2008 d.255, effective September 2, 2008.  
See: 40 N.J.R. 2214(a), 40 N.J.R. 5062(a).

In (a)3, inserted "number of employees participating,"; and in (b), substituted "employee transportation coordinator" for "ETC" and "highest ranking responsible officer" for "HRRO".

## SUBCHAPTER 7. NARRATIVE REVIEW PROCESS

### 16:50-7.1 Narrative review schedule

Within 180 days of receipt of a Smart Moves for Business Program Narrative from a tax credit employer or a TMA Member Employer Summary Narrative from a TMA, the Department shall review the narrative for completeness and consistency with the provisions of this chapter. Incomplete and inconsistent narratives shall be returned by the Department to the tax credit employer or TMA preparer for revisions, along with an explanation of the reason(s) for which it is being returned. An applicant whose narrative is returned has the option to revise and re-submit the narrative to the Department, either by itself or through a TMA, but must revise and re-submit a corrected narrative to the Department prior to filing a tax return claiming a Smart Moves for Business Program Tax Credit with the Division of Taxation. Upon the Department's receipt of a complete narrative, the tax credit employer shall be deemed registered and eligible for the Smart Moves for Business Program Tax Credit. If the Department does not return a narrative within 180 days of submittal, the narrative shall be considered approved by the Department.

Amended by R.2003 d.168, effective May 5, 2003.  
See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).

Rewrote the section.

Amended by R.2008 d.255, effective September 2, 2008.  
See: 40 N.J.R. 2214(a), 40 N.J.R. 5062(a).

Rewrote the section.

### 16:50-7.2 (Reserved)

Repealed by R.2003 d.168, effective May 5, 2003.  
See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).

Section was "Program narrative review guidelines".  
Administrative correction.  
See: 40 N.J.R. 192(a).

## SUBCHAPTER 8. (RESERVED)

## SUBCHAPTER 9. SMART MOVES FOR BUSINESS PROGRAM TAX CREDIT

### 16:50-9.1 Standards

(a) A tax credit employer incurring expenses to provide commuter transportation benefits in support of a Smart Moves for Business Program is entitled to a business tax credit, subject to the Traffic Congestion and Air Pollution Control Act, specifically N.J.S.A. 27:26A-15, and to the following limitations:

1. The employer shall register with the Department as a participating employer prior to the date of filing a tax return claiming a Smart Moves for Business Program Tax Credit with the Division of Taxation (see N.J.A.C. 18:7-3.19).

2. Expenses for which an employer plans to claim the tax credit shall be reflected in the Smart Moves for Business Program Narrative to be submitted to the Department in accordance with N.J.A.C. 16:50-6. Expenses which are not identified in the original Program Narrative may still be claimed for tax credit if they are submitted to the Department as part of a revised Smart Moves for Business Program Narrative prior to the date of filing of the tax return with the Division of Taxation.

3. The State may review the activities of tax credit employers to ensure the eligibility of claimed expenses, upon 72 hours notice consistent with N.J.A.C. 16:50-11. The review may address expenses identified in any Smart Moves for Business Program Narratives that have been submitted to the Department.

4. The credit shall be based on eligible expenses made for specific commuter transportation benefits or specific commute alternatives less the amount of revenue received as a direct result of the same specific benefit or alternative in a Smart Moves for Business Program.

5. Tax credit employers incurring expenses eligible for a tax credit that were not identified in the original Smart Moves for Business Program Narrative, may submit to the Department a revised Program Narrative. The Department may elect to review the employer's program and its documentation to ensure the validity of the amended Program Narrative and the eligibility of claimed expenses.

6. Additional information about the Smart Moves for Business Program Tax Credit is available from the New Jersey Division of Taxation, Information and Publications Branch, PO Box 281, Trenton, NJ 08695-0281 and on the internet at <http://www.state.nj.us/treasury/taxation>.

Amended by R.2003 d.168, effective May 5, 2003.

See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).

Substituted "the Department" for "NJDOT" throughout; in (a), inserted "Program" preceding "Smart Moves for Business" in 12 and inserted "of the failure" at the end of 15.

Amended by R.2008 d.255, effective September 2, 2008.

See: 40 N.J.R. 2214(a), 40 N.J.R. 5062(a).

In the introductory paragraph of (a), inserted "to the Traffic Congestion and Air Pollution Control Act, specifically N.J.S.A. 27:26A-15, and"; in (a)1, inserted "Program" and "(see N.J.A.C. 18:7-3.19)"; in (a)3, substituted "any" for "the original ETR Program Report as well as those subsequently submitted in a" and "Narratives that have been submitted to the Department" for "Narrative"; deleted former (a)4 and (a)5; recodified (a)6 as (a)4; in (a)4, substituted "credit" for "cost"; deleted former (a)7 through (a)12; recodified (a)13 as (a)5; in (a)5, inserted "eligible for a tax credit", substituted ", may" for "that would be eligible for a tax credit shall" and deleted "outlining those expenses" following the second occurrence of "Narrative"; deleted (a)14 through (a)16; and added new (a)6.

## 16:50-9.2 Eligible expenses

(a) Tax credit employers may seek, and the Department shall provide, guidance from the Department or an appropriate TMA regarding expenses that they expect to be eligible for tax credit prior to incurring those expenses. Eligible expenses fall into five categories, as follows:

1. "Administration costs" are the costs of personnel working directly on a Smart Moves for Business Program. The eligible administration costs include only salary, benefits, and training (not overhead or indirect costs) for an employee transportation coordinator (100 percent if the employee transportation coordinator works full-time on the Smart Moves for Business Program). Also included is a pro-rated percentage of the salary and benefits for other in-house staff working on the Smart Moves for Business Program planning, survey conduct or processing, Program Narrative preparation and/or implementation, and a pro-rated percentage of the salary and benefits for other staff used in support of the Smart Moves for Business Program, such as security and/or parking management personnel. The invoice cost to contract with outside agencies to provide these services would also be an eligible administration cost.

2. "Facilities/vehicle costs" are the invoice costs of capital improvements to add/upgrade facilities that support commute alternatives (for example, bike racks; showers and lockers; information display racks; transit signs and shelters; construction/maintenance costs for passenger loading facilities; and parking management costs such as signing, striping, controlled access equipment and Smart Cards).

i. The term also includes purchase/lease and operating costs for vans or other vehicles registered to the tax credit employer and used for ridesharing, and for buses used for shuttles, buspools, etc.; and contracts with outside operators for the operation, administration, and/or management of buspools and/or express bus service.

ii. The conversion/purchase of alternative fuel vehicles is an eligible expense under this category.

iii. The conversion/purchase of dual fuel vehicles is an eligible expense under this category.

iv. The cost to purchase/lease and maintain teleworking equipment, including computers, fax machines, and telephones, is an eligible expense under this category if the purpose for the purchase or lease of the equipment is to provide a participating employee with the opportunity to telework at least one day a week. This would apply to such improvements at a participating employee's residence or eligible off-site location.

3. "Financial incentive costs" are direct expenditures provided by an employer to employees for utilizing a commute alternative. The term includes the cost of on-going or

occasional subsidies, such as free/discounted transit passes, cash/parking/gas subsidies for rideshares, vanpool start-up payments, and empty seat subsidies for vanpools, that are provided to employees as an incentive to increase the use of commute alternatives. Cash or in-kind gifts of greater than nominal value provided to employees, in exchange for their participation in a commute alternative pursuant to a Smart Moves for Business Program, are also an eligible financial incentive cost.

4. "Marketing costs" are the supply and salary costs directly related to promotion of a Smart Moves for Business Program. The term includes a pro-rated percentage of the salary and benefits (not overhead or indirect costs) for in-house staff who develop text/graphics for communications materials such as brochures and posters; the per-item cost of printing/copying such materials; and the invoice cost of promotional items provided to employees as part of Smart Moves for Business marketing. The invoice cost to contract with outside agencies to provide any or all of these services is also an eligible marketing cost.

5. "Other Program Services costs" are expenses that the Department approves as eligible for the Smart Moves for Business Program Tax Credit, but that do not fit into the categories of administration, facilities/vehicle, financial incentives, or marketing. The term includes, but is not limited to, the cost of a guaranteed ride home program with an outside vendor such as a taxi or rental car company; and the cost of providing or obtaining ridematching services (for example, purchasing ridematching software and establishing a hookup to a regional ridesharing database).

Amended by R.2003 d.168, effective May 5, 2003.  
See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).

Substituted "the Department" for "NJDOT" and "Smart Moves for Business Program" for "Smart Moves for Business" throughout; in (a), deleted "wish to" following "employers may" in the introductory paragraph.

Amended by R.2008 d.255, effective September 2, 2008.  
See: 40 N.J.R. 2214(a), 40 N.J.R. 5062(a).

In the introductory paragraph of (a), substituted "an appropriate" for "a Department-approved"; and in (a)1, substituted "employee transportation coordinator" for "ETC" twice.

### 16:50-9.3 Proof of registration

The Department shall supply the Division of Taxation with a list of tax credit employers that have registered and submitted approved Smart Moves for Business Program Narratives, for purposes of determining whether a Smart Moves for Business Program Tax Credit may be claimed. The list shall be provided to the Director of the Division of Taxation within 90 days of registration or 90 days of being deemed complete.

Amended by R.2003 d.168, effective May 5, 2003.  
See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).

Substituted "The Department shall" for "NJDOT will" and inserted "Program" following "Smart Moves for Business".

Amended by R.2008 d.255, effective September 2, 2008.  
See: 40 N.J.R. 2214(a), 40 N.J.R. 5062(a).

Substituted "approved" for "acceptable" and inserted the last sentence.

### 16:50-9.4 Appeals

A tax credit employer whose expenses the State determines to be ineligible for a Smart Moves for Business Program Tax Credit shall have the opportunity to appeal the determination in accordance with the procedure set forth in the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. An appeal shall be submitted to the Department in writing not later than 30 days after receipt of notification of the expenses having been deemed not eligible by the State for a Smart Moves for Business Program Tax Credit.

Amended by R.2003 d.168, effective May 5, 2003.  
See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).  
Rewrote the section.

## SUBCHAPTER 10. DISCLOSURE OF INFORMATION

### 16:50-10.1 Administration of the Smart Moves for Business Program

No disclosure of information obtained from and identifiable to specific employers in the course of administering the requirements of the Smart Moves for Business Program shall be made directly or indirectly, except as authorized by the Commissioner or his or her representative in accordance with this subchapter.

### 16:50-10.2 Authorized disclosure of information

(a) Disclosure of any information in the course of administering the Smart Moves for Business Program may be authorized in the following cases for the following purposes:

1. To the Division of Taxation to verify eligible expenses and deductions claimed for State income tax purposes;

2. To officers or employees of any agency of the Federal government or New Jersey State government which is lawfully charged with the administration and monitoring of a Smart Moves for Business or employee trip reduction program. Persons or agencies requesting information must do so in writing indicating the intended use of the information, that the information will be used for the intended purpose only and must also certify in writing that the confidentiality of the disclosed information will be maintained.

3. To other interested parties only to the extent and for such purposes that such disclosure shall not impede the operation of, and is not inconsistent with, the purposes of this subchapter, and as may be expressly authorized by the Commissioner of Transportation. Such persons or agencies requesting information shall do so in writing and must also certify in writing that the confidentiality of the disclosed information shall be maintained.

4. To employees, employers, the press or media, and the public, disclosure of the number of registered participating employers by geographic location, as well as the aggregate number of employees. Such release shall not include numbers of employees, voluntary trip reduction strategies, or projected expenses identifiable to individual employers. Aggregate data which is not identifiable to individual employers may be released to anyone upon written request to the Department;

5. Mailing lists developed by the Department, which identify only the name and address of registered participating employers, shall be released to any interested party. Persons or agencies requesting information shall do so in writing indicating the intended use of the list. Fees for mailing lists shall be determined by considering the amount of staff time involved in gathering information. In addition, fees for the cost of duplication shall be in accordance with N.J.A.C. 16:1A-1.8(g) which establishes fees in accordance with N.J.S.A. 47:1A-5.

6. Information related to employer or TMA non-adherence to the standards set forth in this chapter shall not be considered confidential and may be released upon request;

7. Any citizen or agency requesting information provided for in this subchapter shall refer to N.J.A.C. 16:1A regarding the sale of public records and costs associated with duplication of such records.

Amended by R.2003 d.168, effective May 5, 2003.

See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).

In (a), rewrote 1 and amended N.J.A.C. and N.J.S.A. references in 5.

## SUBCHAPTER 11. PROGRAM MONITORING

### 16:50-11.1 Work location reviews

To verify information regarding work location programs, the Department shall have the authority to randomly or otherwise select for audit, Program Narratives of tax credit employers or Summary Narratives of TMAs, including field visits as appropriate. The Department shall notify an employer with a work location selected for a review not less than 72 hours in advance of the review. The tax credit employer shall provide the Department access to all records pertaining to the development, implementation, and administration of the Smart Moves for Business Program relative to eligibility for the employer tax credit described in the employer's Narrative, and access to employees at the location.

### 16:50-11.2 TMA reviews

To verify information regarding work location programs as reported by the TMAs, the Department shall have the authority to conduct or cause to be conducted reviews of a TMA office. The Department shall notify a TMA selected for a review not less than 72 hours in advance of the review. The

TMA shall provide the Department access to all records pertaining to employer membership and the TMA Member Employer Summary Narrative submitted to the Department.

Amended by R.2003 d.168, effective May 5, 2003.

See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).

Inserted "a" following "notify" in the second sentence; substituted "Narrative" for "Report" in the third sentence.

### 16:50-11.3 Non-adherence to program standards

(a) A tax credit employer submitting a claim for tax credits shall be considered in noncompliance for failure to adhere to the program standards defined in this chapter.

(b) Upon determining that a tax credit employer is in noncompliance, the Department shall have the authority to issue the tax credit employer a notice of noncompliance that shall describe the area of noncompliance, the actions required to correct the noncompliance, the deadline by which noncompliance must be corrected, and the consequences for continued noncompliance. If the tax credit employer has not corrected the situation by the deadline specified in the notice of noncompliance, the tax credit employer found to be in noncompliance shall not be eligible for the Smart Moves for Business Program Tax Credit.

(c) A tax credit employer found to be in noncompliance shall not be subject to civil administrative penalties.

(d) A TMA that is found to have falsified TMA membership information in order to certify a tax credit employer's Smart Moves for Business Program for tax credit eligibility may be subject to disciplinary action by the Department relative to the TMA grants awarded by the Department.

Amended by R.2003 d.168, effective May 5, 2003.

See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).

In (b), inserted "Program" following "Smart Moves for Business".

Amended by R.2008 d.255, effective September 2, 2008.

See: 40 N.J.R. 2214(a), 40 N.J.R. 5062(a).

In (a), deleted "or that has received a Smart Moves for Business Challenge Grant" following "credits"; and in (d), deleted "or Challenge Grant eligibility" following "credit eligibility".

## SUBCHAPTER 12. APPEALS

### 16:50-12.1 Standards

(a) A tax credit employer that is found to be in noncompliance with any provision of this chapter and to whom the Smart Moves for Business Program Tax Credit has been denied, shall have the opportunity to appeal such action in accordance with the procedures set forth in the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:1. An appeal shall be submitted to the Department in writing not later than 30 days after receipt of notification of noncompliance.

(b) A TMA that is found to have falsified membership records relative to employer tax credit eligibility under this

chapter, and subsequently is disciplined by the Department, shall have the opportunity to appeal such action in accordance with the procedures set forth in the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1. An appeal shall be submitted to the Department in writing not later than 30 days after receipt of notification of noncompliance.

Amended by R.2003 d.168, effective May 5, 2003.

See: 34 N.J.R. 3580(a), 35 N.J.R. 1921(a).

In (a), inserted "Program" following "Smart Moves for Business".

Amended by R.2008 d.255, effective September 2, 2008.

See: 40 N.J.R. 2214(a), 40 N.J.R. 5062(a).

In (b), deleted "or Challenge Grant eligibility" following "credit eligibility".