

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

N.J.S.A. 27:1A-5, 27:1A-6, 27:26A, and Section 182(d)(1) of the Clean Air Act Amendments of 1990 (42 U.S.C. § 7511a(d)(1)(B)).

**Source and Effective Date**

R.1997 d.407, effective October 6, 1997.  
See: 29 N.J.R. 2794(a), 29 N.J.R. 4295(b).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 50, Smart Moves Program, expires on April 4, 2003. See: 34 N.J.R. 3580(a).

**Chapter Historical Note**

Chapter 50, Railroad Transportation—Public Hearings, was filed 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 Chapter 50, Railroad Transportation—Public Hearings, was repealed by R.1989 d.607, effective December 18, 1989.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 Chapter 50, Employer Trip Reduction Program, was repealed and a new Chapter 50, Smart Moves Program, was adopted by R.1997 d.407. See: Source and Effective Date.

**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. STATUTORY AUTHORITY****Law Review and Journal Commentaries**

Air Pollution Law Changes Target Nitrogen Oxides. Neale R. Bedrock, 136 N.J.L.J. S17 (1994).

**16:50-1.1 Statutory authority**

(a) As provided for by N.J.S.A. 27:26A-4.1 to 4.4 (P.L. 1996, c.121), the program established by this chapter is intended to replace sections of P.L. 1992, c.32, N.J.S.A. 27:26A-1 to 27:26A-14, known as the "New Jersey Traffic Congestion and Air Pollution Control Act" (Act), and to encourage New Jersey employers to develop and implement

voluntary employer trip reduction programs, now known as "Smart Moves for Business Programs," that will reduce vehicle trips and vehicle miles traveled to the site by encouraging employees to use public transit, share rides in carpools and vanpools, or use another commute alternative.

(b) In accordance with Section 182(d)(1) of the Clean Air Act (42 U.S.C. § 7511a(d)(1)(B) as amended by P.L. 104-70, the Commissioner of the New Jersey Department of Environmental Protection shall submit a revision to the State Implementation Plan submitted to the U.S. Environmental Protection Agency pursuant to the Clean Air Act replacing the provision that requires employers to reduce work-related vehicle trips and miles traveled by employees with one or more alternative measures that will achieve emission reductions equivalent to those that would have been achieved with the mandated employer trip reduction program.

(c) Consistent with the State and Federal laws referenced in (a) and (b) above, this chapter continues the travel demand management (TDM) program, now known as the "Smart Moves Program," established as a Statewide initiative to reduce vehicle trips and vehicle miles traveled through a variety of strategies and programs.

## 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.

"Act" means P.L. 1996, c.121, N.J.S.A. 27:26A-4.1 to 27:26A-4.4.

"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 standard documentation and has been certified by the Department as eligible for the Smart Moves for Business Program Tax Credits or a Smart Moves for Business Program Challenge Grant.

"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 ended by Pub. L. 101-549 (42 U.S.C. § 7401 et seq.) 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, for example, 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” or “NJDOT” means the New Jersey Department of Transportation.

“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 (NJDOT) as eligible for the Smart Moves for Business Tax credit. Categories of eligible expenses are identified in N.J.A.C. 16:50-8.2.

“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 (ETC)” 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” (HRRO) 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 or Smart Moves for Business Challenge Grants.

“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.

“Single occupant vehicle” (SOV) means a motor vehicle used for commuting purposes occupied by only one person.

“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 Challenge Grant” means a grant awarded by the Department to employers to assist the employer in the implementation of an innovative Smart Moves for Business Program.

“Smart Moves for Business Program 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 ETR Tax Credits.

“Subchapter” means a subchapter of these rules.

“Tax credit employer” means a participating employer that is eligible for the Smart Moves for Business Program Tax Credits and intends to apply for same. As used in this subchapter, 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.4, and P.L. 1940, c.5 (N.J.S.A. 54:30A-16 et seq. and 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 (TMA)” means a nonprofit corporation that coordinates local commuter transportation services, including but not limited to public transportation, vanpools, carpools, bicycling and pedestrian modes, as well as 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 for a basis for approval of the TMA’s summary 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.

## SUBCHAPTER 3. SCOPE

### 16:50-3.1 Scope

All New Jersey employers are encouraged to participate in the “Smart Moves for Business Program” by offering commute options for their employees. Participation is entirely voluntary. All employers that offer commute options to their employees are encouraged to register and report their activities to the Department to help the State document reductions in traffic congestion and air pollution resulting from the Smart Moves Program. Employers that intend to apply for the Smart Moves for Business tax credit or for a Smart Moves for Business Challenge Grant must register with the Department and submit a Smart Moves for Business Program Narrative.

## SUBCHAPTER 4. EMPLOYER NOTIFICATION

### 16:50-4.1 Notification mailing

By April 3, 1998, the Department shall notify all employers previously affected by the Employer Trip Reduction mandate of the opportunities provided for by this chapter.

### 16:50-4.2 Published notice

The Department shall publish a general informational notice of New Jersey employers’ opportunities under this chapter. The notice shall provide information on how employers can register their Smart Moves for Business Programs with the Department. The Department shall publish the notice beginning on the date of the first notification mailings and shall run the notice for at least three days over a two week period in at least six newspapers having circulation in various parts of the State.

## SUBCHAPTER 5. EMPLOYER PARTICIPATION

### 16:50-5.1 Registration schedule

All employers are encouraged to provide commute options for their employees. The Department also encourages all employers to voluntarily register with the Department, indicating their interest in and commitment to the “Smart Moves for Business Program.” Any employer with one or more work locations in New Jersey that voluntarily chooses to register such locations with the Department may do so at any time. For tax credit employers, registration and submission of a Smart Moves for Business Program Narrative must occur prior to filing any tax return in which a Smart Moves for Business Tax Credit is claimed; however, the Registration form and the first Smart Moves for Business Program Narrative may be submitted together to the Department.

**16:50-5.2 Completion and submittal of registration form**

(a) An employer that chooses to register one or more locations in the Smart Moves for Business Program shall complete a registration form. The registration form shall indicate the number of work sites that will be participating in the program and the total number of employees at each work site.

(b) A participating employer may designate a single contact person to receive Smart Moves for Business Program Narrative forms for all registered locations or may choose to have such forms forwarded to each work site individually.

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**SUBCHAPTER 6. SMART MOVES FOR BUSINESS PROGRAM NARRATIVES**
**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 Program Narratives to the Department also, but reporting is not required.

**16:50-6.2 Program narrative submittal schedule**

(a) Each tax credit employer shall submit Smart Moves for Business Program Narratives, as described in N.J.A.C. 16:50-7, respectively, to the Department of Transportation, ATTENTION: Smart Moves for Business Program, Division of Transportation Systems Planning, 1035 Parkway Avenue, PO Box 600, Trenton, NJ 08625-0600 in accordance with the following schedule:

1. Tax credit employers must submit a Smart Moves for Business Program Narrative to the Department prior to filing a tax return claiming a Smart Moves for Business Tax Credit with the New Jersey Division of Taxation.
2. Tax credit employers that are members of a TMA, as defined in N.J.A.C. 16:50-2, shall be considered as having an approved Smart Moves for Business Program and shall not be required to submit individual narratives to the Department. Notwithstanding this provision, membership in a TMA does not remove or reduce the responsibility of the employer to maintain all necessary documentation with regard to the number of employees participating in commute alternatives and the expenses associated with such activities.

**16:50-6.3 Components of a standard Smart Moves for Business Program Narrative**

(a) Tax credit employers shall prepare Smart Moves for Business Program Narratives using a standard form developed by the Department. The Smart Moves for Business Program 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 (ETC), 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 simplified standard Smart Moves for Business Program Narrative form. 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 (ETC), 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 TMA Member Employer Summary 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.

#### 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 (ETC) at each participating work location to administer the Smart Moves for Business Program at that work location. However, the appointment of an ETC is not required.

(b) Employers are not required to send any designated ETC to training.

#### 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, etc.

(b) A tax credit employer shall maintain the documents set forth in (a) above in the office of the ETC or the HRRO 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 (b) 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.

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### SUBCHAPTER 7. SMART MOVES FOR BUSINESS PROGRAM NARRATIVE REVIEW

#### 16:50-7.1 Program 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 Report, the Department shall review the narrative or report for completeness and consistency with the provisions of this chapter and shall return an incomplete and inconsistent Program Narrative to the tax credit employer for revisions. If the Department returns a Program Narrative to the tax credit employer, the Department shall concurrently notify the Division of Taxation that the Program Narrative was returned and the reason(s) it was returned. A tax credit employer whose Program Narrative is returned has the option to revise and re-submit the Narrative to the Department, but must revise and resubmit the Program Narrative to the Department prior to filing a tax return claiming a Smart Moves for Business Tax Credit with the New Jersey Division of Taxation. A Program Narrative not returned to the employer by the Department within 180 days of submittal shall be considered approved by the Department.

**16:50-7.2 Program narrative review guidelines**

The Department shall review Program Narratives submitted by tax credit employers for completeness and consistency, including the presence of the standard Program Narrative sections, as described in N.J.A.C. 16:50-6.

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**SUBCHAPTER 8. SMART MOVES FOR BUSINESS CHALLENGE GRANTS**
**16:50-8.1 Purpose and intent**

(a) The Smart Moves Challenge Grants Program is a Department-funded program that shall award financial assistance grants to New Jersey employers to implement innovative commuter assistance services at their worksites.

(b) The Department has developed the Smart Moves for Business Challenge Grant Program to support successful implementation of the Smart Moves for Business Program. The Department believes that continued participation of employers in commute trip reduction activities is vital to the State's efforts to reduce traffic congestion and improve air quality.

(c) The grant program has three goals:

1. To encourage employers to continue or begin voluntary worksite commuter assistance programs;
2. To encourage development of innovative commuter assistance services employers otherwise might not be willing to undertake; and
3. To document and disseminate results of effective commuter assistance services for application by other New Jersey employers.

**16:50-8.2 Eligibility criteria**

(a) Any participating employer may apply for a Smart Moves for Business Challenge Grant. The basic minimum standards for Challenge Grant eligibility are:

1. The organization shall do business in the State of New Jersey and the grant shall be for a work location within the boundaries of the State of New Jersey; and
2. The organization shall register with the Department as a participant in the Smart Moves for Business Program.

**16:50-8.3 Requests for applications**

(a) The Department shall provide standard Challenge Grant application forms to all interested employers on request.

(b) Applications shall be submitted to: The Department of Transportation, ATTENTION: Smart Moves for Business Program Challenge Grants, Division of Transportation

Systems Planning, 1035 Parkway Avenue, PO Box 600, Trenton, NJ 08625-0600.

**16:50-8.4 Submission requirements**

(a) Each application to the Department for a Smart Moves Challenge Grant shall be submitted to the Department by January 15 of each year. The application shall include the following information:

1. The name and location of work location(s) included in the grant proposal;
2. The number of employees expected to be impacted by the project; and
3. A detailed description of the proposed program or strategy to be undertaken by the employer.

(b) Employers may work together and submit a single application to the Department. Innovation and partnerships are strongly encouraged.

Public Notice: Application deadline extension.  
See: 29 N.J.R. 5029(a).

**16:50-8.5 Application and review procedures**

(a) The Department establishes the guidelines set forth in this section for determining eligible strategies or activities which can be funded under this incentive program, because it intends to ensure that all registered employers have an opportunity to suggest a wide range or type of activities or strategies that meet or have the potential to meet the objectives of the Program. The Department intends to fund innovative activities for which performance can be demonstrated in the reduction of overall employee trip making or vehicular miles of travel, the reduction in employee single occupant vehicular trip making or vehicular miles of travel, or the increase in employee tripmaking in carpools, vanpools, buspools and transit. Examples of eligible strategies or activities which support employee trip reduction and/or reductions in vehicle miles of travel include, but are not limited to, applications of innovative strategies which encourage or provide incentives for employee participation in ridesharing or transit usage, alternate work schedules, employee parking management strategies, and/or telecommuting concepts at specific worksites.

(b) The Department will expect employer applicants to demonstrate both financial and policy commitment to the strategies and activities, which are proposed. The Department expects the employer applicant to designate a staff person to act as a contact person and who will also coordinate the project at the worksite.

(c) The total budget amount of the grant program is approximately \$600,000. The individual awards will likely vary depending upon the type of strategies which are suggested by employers. Each application received for the Challenge Grant Program will be evaluated on a case-by-case basis. It should be expected that prior to January 15,

of each year for which funds are available, the Department will encourage employers to submit applications for any innovative trip reduction incentive activities or strategies that they would like to see funded by the Department under this program.

(d) All applications shall be thoroughly reviewed by the Department, with input from members of the Smart Moves for Business Program Advisory Committee and the TMA Council.

(e) The Department shall consider grant awards in the following categories:

1. Employers having less than 100 employees;
2. Employers having between 100 and 499 employees; and
3. Employers having 500 or more employees.

(f) The Department shall consider applications on an annual basis. Applications for the first grant cycle shall be received by January 15, 1998, unless otherwise advised by the Department.

(g) In addition to the criteria listed in (a) through (c) above, applications shall be considered on a case-by-case basis. The Department's consideration for the approval, modification, or denial of a grant application shall include, but is not limited to, the following:

1. Anticipated level of project impact: The level of expected benefits on traffic congestion, mobility, air pollution, and/or other social-economic factors, and how quickly the benefits are expected to occur;
2. Degree of innovation: The project has not been implemented in New Jersey, or the project has been implemented in New Jersey, but not in the setting identified in the proposal;
3. Project cost: Is the project cost reasonable?;
4. Extent of organizational commitment: Apportionment of an ETC; plus sufficient staff to ensure project success and adequate monitoring, and demonstrated management commitment to the project, perhaps including employer funds allocated to the project;
5. Compatibility with existing transportation services: The project utilizes or builds on existing services, where available, and does not compete with or duplicate existing services;
6. Existence of a partnership: The project involves more than one employer and/or participation of a TMA, local government, or community group; and
7. Readiness of the project: The employer can implement the project quickly.

(h) Applicants will be notified of approval, request for modifications, or denial not later than May 1 of each year.

(i) Employers to whom Challenge Grants are awarded shall sign an award agreement with the Department, specifying the terms and conditions of the grant award.

(j) The number and funding levels of individual grants shall be dependent upon the number of applications received from employers in each category, the relative merit of the application based on the criteria listed in (g) above, and the availability of funds. In the event that the number of applications of equal merit exceeds the total available funding, the award of grants shall be based on the date a complete application was received by the Department. Despite the announcement of the Smart Moves for Business Challenge Grant Program, the Department is not obligated to award any grants and may at any time terminate the Challenge Grant Program, for reasons including, but not limited to, lack of funding, lack of application merit or viability, or other constraints placed on the Department.

#### 16:50-8.6 Monitoring

(a) The Department shall monitor all grant recipients. Monitoring shall be for the purpose of assuring that the employer receiving the grant meets the terms of the grant agreement and complies with any condition or requirement thereof.

#### 16:50-8.7 Rescission and withholding of funds

(a) The Department, in addition to any other rights or remedies available pursuant to law, may withhold, reduce or terminate payment of a grant or any portion thereof for good cause. The circumstances under which this may occur include:

1. Failure to comply with the requirements of this subchapter, or other applicable State laws or rules;
2. Failure to comply with any condition or requirement of the grant agreement;
3. Failure to maintain the required documents;
4. Submission of false or misleading information, or failure to submit relevant information to the Department;
5. Insolvency, bankruptcy or other conditions affecting the financial integrity of the applicant; and
6. Failure to comply with any condition or requirement of the Department.

(b) The Department shall provide written notice to the employer of its intent to withhold, reduce or terminate the grant. The business may request, in writing, reconsideration of the Department's decision. The determination to withhold, reduce or terminate a grant shall be solely within the Department's discretion.

(c) In the event that a grant is to be terminated, the business shall immediately refund the total amount granted by the Department.

**16:50-8.8 Severability**

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

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**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 following limitations:

1. The employer shall register with NJDOT as a participating employer prior to the date of filing a tax return claiming a Smart Moves for Business Tax Credit with the New Jersey Division of Taxation.

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 NJDOT 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 NJDOT as part of a revised Smart Moves for Business Program Narrative prior to the date of filing of the tax return with the New Jersey 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 the original ETR Program Report as well as those subsequently submitted in a Smart Moves for Business Program Narrative.

4. The maximum yearly credit shall not be more than five percent of the amount spent per employee participating in the program on eligible Smart Moves for Business expenses in 1994, up to a maximum credit of \$36.00 per employee participating in a commute alternative. Participating employees for purposes of receiving a tax credit in 1994 shall be defined as all employees participating in a commute alternative, specifically those employees scheduled to report to the work location between 6:00 A.M. and 10:00 A.M., inclusive, Monday through Friday. Expenses not specific to an individual employee may be averaged over the number of participating employees. For 1995 through 1997, the maximum yearly credit shall not be more than 10 percent of the amount spent per employee participating in the program on eligible Smart Moves for Business expenses, up to a maximum credit of \$72.00 per employee participating in a commute alternative. Participating employees for purposes of receiving a tax credit in the tax period of 1995 through 1997 shall be

defined as all employees scheduled to report between the hours of 6:00 A.M. and 10:00 A.M., inclusive, Monday through Friday, and that are participating in a commute alternative. For 1998 through 2007, the maximum yearly credit shall not be more than 10 percent of the amount spent per employee participating in the program on eligible Smart Moves for Business expenses, up to a maximum credit of \$100.00 per employee participating in a commute alternative. Participating employees for purposes of receiving a tax credit in 1998 through 2007 shall be defined as all employees participating in a commute alternative, regardless of the time of day they are scheduled to report to the work location. Expenses not specific to an individual employee may be averaged over the number of participating employees.

i. These amounts will be adjusted annually for inflation based on the consumer price index for all urban consumers in the New York and Northeastern New Jersey, and the Philadelphia areas, as reported by the U.S. Department of Labor.

ii. In the case of a partnership receiving partnership income, a partnership shall not be allowed a credit under this section directly. For accounting and privilege periods beginning on or after January 1, 1994, a partnership shall be entitled to reduce total partnership income distributed to the partners and subject to tax under N.J.S.A. 54A:5-1k by the lesser of 71.5 percent of the amount of commuter transportation benefits provided pursuant to law or \$515.00 for each employee receiving such benefits. For accounting and privilege periods beginning on or after January 1, 1995, but ending no later than December 31, 2007, the reduction to partnership income allowed under this section shall be the lesser of 143 percent of the cost of commuter transportation benefits provided or \$1,030 for each employee receiving such benefits for the relevant accounting or privilege period, as appropriate, subject to the other tax limitations identified in this chapter.

5. Notwithstanding the maximum yearly credits specified above, the employee limit for a taxpayer which filed a certified ETR compliance plan with the Department of Transportation required by section 5 of P.L. 1992, c.32 (N.J.S.A. 27:26A-5) on or before the plan submittal date established by the Department, and which was filed on or before May 31, 1996, shall be \$150.00 for the accounting or privilege periods ending on or after July 31, 1996 but ending not later than June 30, 1997.

6. The cost 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.

7. The credit allowable in a given tax year shall not exceed 50 percent of the tax liability otherwise due for any one of the taxes enumerated in the definition of employer in N.J.A.C. 16:50-2.

8. The amount of the tax credit shall not reduce the tax liability below the statutory minimum tax provided at N.J.S.A. 54:10A-5(d) and (e), 54:10B-3 and 54:10D-3.

9. The credit or partnership deduction shall not apply to accounting or privilege periods ending after December 31, 2007, and shall appear on the tax return as a cash basis or accrual basis credit or partnership credit consistent with the basis currently used by the tax credit employer.

10. The enabling legislation permits both a tax credit or partnership deduction and an expense deduction, if the item is allowed as an expense deduction pursuant to applicable statutes and rules.

11. The tax credit employer shall file with NJDOT a Smart Moves for Business Program Narrative listing the expenditures for which the tax credit employer will claim as a Smart Moves for Business Tax Credit. NJDOT will provide a summary of the Smart Moves for Business Program Narratives to the New Jersey Division of Taxation.

12. All records relating to a Smart Moves for Business Tax Credit or partnership deduction claimed by a tax credit employer must be held by the tax credit employer for four years subsequent to the date of the filing on which such credit or partnership deduction is claimed. Examples of documentation required are payroll records, invoices, contracts, payment receipts, and leases.

i. Each employee who receives money towards commuter transportation benefits from the employer shall submit suitable proof to the employer in the form of receipts, ticket stubs, or the like, that the employee used those monies for a commute alternative. These records shall also be held by the participating employer for four years subsequent to the date of the filing on which such credit is claimed.

13. Tax credit employers incurring expenses which were not identified in the original Smart Moves for Business Program Narrative but which would be eligible for a tax credit shall submit to NJDOT a revised Program Narrative outlining those expenses. NJDOT may elect to review the employer and its documentation to ensure the validity of the amended Program Narrative and the eligibility of claimed expenses.

14. An employer having liability for more than one of the taxes enumerated in the definition for "tax credit employer," at N.J.A.C. 16:50-2, shall proportionally allocate the credit to the liabilities. This shall be done by calculating the percentage that each liability bears to the total liabilities and apportioning the credit in the same percentage that the liability to which it is applied bears to the total liabilities.

15. A credit or partnership deduction shall be disallowed if the taxpayer fails to register with NJDOT and report their results to NJDOT. NJDOT shall notify the New Jersey Division of Taxation.

16. An employer that is awarded a Challenge Grant may also apply for the tax credit for any expenses in excess of those covered by the grant award, but may not claim expenses covered by the grant.

#### 16:50-9.2 Eligible expenses

(a) Tax credit employers may wish to seek guidance from NJDOT or a Department approved 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 ETC (100 percent if the ETC 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, 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; parking management cost such as signing, striping, controlled access equipment, 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 AFV's 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 ongoing 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 NJDOT approves as eligible for the Smart Moves for Business 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).

### 16:50-9.3 Proof of registration

NJDOT will supply the New Jersey Division of Taxation with a list of all tax credit employers who have registered and submitted an acceptable Smart Moves for Business Program Narrative, for purposes of determining whether a Smart Moves for Business Tax Credit may be claimed.

### 16:50-9.4 Appeals

A tax credit employer whose expenses are deemed not eligible by the State for a Smart Moves for Business Tax Credit shall have the opportunity to appeal same 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 NJDOT 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 Tax Credit.

## 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 Department of Treasury, Division of Taxation, for the purposes of verifying 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-1.5(g) which establishes fees in accordance with N.J.S.A. 47:1A-2, "The New Jersey Right to Know Law."

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.

(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 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 or Challenge Grant eligibility may be subject to disciplinary action by the Department relative to the TMA grants awarded by the Department.

## 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 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 Report submitted to the Department.

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

(a) A tax credit employer submitting a claim for tax credits or that has received a Smart Moves for Business Challenge Grant shall be considered in noncompliance for failure to adhere to the program standards defined in this chapter.

## 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 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 or Challenge Grant 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.