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SMART MOVES PROGRAM

Proposed Readoption with Amendments: N.J.A.C. 16:50

Proposed Repeals: N.J.A.C. 16:50-3, 5.2 and 8

Proposed New Rules: N.J.A.C. 16:50-1.1 and 1.2

Proposed Repeal and New Rule: N.J.A.C. 16:50-5.1

Submit written comments by July 4, 2008 to:
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The agency proposal follows:

Summary

In accordance with N.J.A.C. 1:30-6.4 and Executive Order No. 66 (1978), N.J.A.C. 16:50 is scheduled to expire on September 27, 2008. The Department has reviewed N.J.A.C. 16:50 and has determined that the rules remain necessary, reasonable, adequate, and responsive to the purposes for which the Department originally promulgated the chapter, and as those purposes and rules have been modified over the years to respond to the changes in the applicable Federal and State enabling legislation. The Department proposes to readopt the chapter with amendments, repeals, recodifications, and new rules as discussed below. Because the Department has provided a 60-day comment period, this notice is excepted from the rulemaking calendar requirement of N.J.A.C. 1:30-3.3(a)5.

The Smart Moves Program established by N.J.A.C. 16:50 is a Statewide initiative to develop, implement and monitor travel options and commute alternatives through a variety of strategies and programs. Using employer tax credits, the program encourages New Jersey employers to develop and implement voluntary employer trip reduction programs, known as "Smart Moves for Business Programs." These programs seek to reduce work-related vehicle trips and vehicle miles traveled to the worksite by encouraging employees to use public transit, to share rides in carpools and vanpools, and to use other commuting alternatives. Parking management strategies and incentives to promote teleworking are other components of Smart Moves for Business Programs. The rules set forth the criteria and procedures for employer eligibility for tax credits which are incentives for employers to implement voluntary trip reduction programs.

In 1993, the Department adopted N.J.A.C. 16:50 as the Employer Trip Reduction Program to implement provisions of the New Jersey Traffic Congestion and Air Pollution Control Act of 1992 (Act), P.L. 1992, c. 32, and the 1990 Federal Clean Air Act Amendments, 42 U.S.C. §7511a(d)(1)(B). 25 N.J.R. 3132(a) (July 19, 1993); 25 N.J.R. 5494(b) (December 6, 1993).

In 1995, the Department amended the chapter to add provisions establishing an employer tax credit. 26 N.J.R. 756(a) (February 7, 1994); 27 N.J.R. 521(a) (February 6, 1995). Also in 1995, the Department adopted amendments and new rules amending the requirements for an employee transportation coordinator, establishing rules regarding Department disclosure of

information about the program, and amending the noncompliance provisions. 27 N.J.R. 827(a) (March 6, 1995); 27 N.J.R. 2436(b) (June 19, 1995).

On November 1, 1996, the Legislature repealed the mandatory trip reduction requirements of the Act. P.L. 1996, c. 121. In response to the repeal of sections of the Act, the Department repealed N.J.A.C. 16:50, Employer Trip Reduction Program, and simultaneously established in place of the mandatory program a voluntary travel demand management program called the "Smart Moves Program." 29 N.J.R. 2794(a) (July 7, 1997); 29 N.J.R. 4295(b) (October 6, 1997).

The Department terminated the Challenge Grant Program as of July 1, 2003 and, accordingly, the Department is proposing to repeal Subchapter 8, Smart Moves for Business Challenge Grants, in its entirety. The Department currently supports the NJ Smart Workplaces Program, a partnership between the eight New Jersey Transportation Management Associations (TMAs) and the Department. The program develops partnerships with employers who provide alternative commuter choices for their employees and helps those employers assist employees with their daily commutes.

N.J.S.A. 27:26A-15, a provision granting tax credits to employers incurring expenses to provide commuter transportation benefits in support of a Smart Moves for Business Program, ended on December 31, 2007. The Department has determined that it is appropriate to readopt Subchapter 9 with amendments, notwithstanding the sunset of N.J.S.A. 27:26A-15, since corporations that made use of this provision may wish to request a tax credit for 2007. The requests could be made sometime after December 31, 2007.

The chapter is summarized as follows:

Subchapter 1 is reserved.

Subchapter 2 provides definitions used throughout the chapter.

Subchapter 3 describes the entities eligible to participate in the Smart Moves for Business Program and provides additional information resources.

Subchapter 4 is reserved.

Subchapter 5, Employer Participation, provides rules governing employer participation and registration. The subchapter sets forth the registration schedule and procedures for completion and submittal of registration forms.

Subchapter 6, Narrative Standards, Submittal Schedule, and Components, contains the requirement that narratives be submitted. The subchapter sets forth the narrative submittal schedule and the components of standard narratives and TMA Member Employer Summary Narratives, the latter of which are described at N.J.A.C. 16:50-6.3(c). It recommends employers conduct transportation surveys and designate an employee transportation coordinator. It authorizes single narratives for multiple site employers, and explains record retention requirements.

Subchapter 7, Narrative Review Process, sets forth the review procedures applicable both to Smart Moves for Business Program Narratives and TMA Member Employer Summary Narratives, the latter of which are described at N.J.A.C. 16:50-6.3(c).

Subchapter 8, Smart Moves for Business Challenge Grants, describes the purpose, intent, eligibility criteria, and application procedures of the Smart Moves for Business Challenge Grant Program.

Subchapter 9, Smart Moves for Business Program Tax Credit, contains the rules governing employer tax credits. The subchapter sets forth applicable standards and describes the types of expenses that are eligible for credit for taxation purposes. It provides that the Department

is to report tax credit eligible employers to the Division of Taxation and outlines the appeal process.

Subchapter 10, Disclosure of Information, contains the rules governing disclosure of information about the Smart Moves for Business Program.

Subchapter 11, Program Monitoring, sets forth procedures for the Department's compliance review and audit of work location programs and information reported by TMAs, and provides for noncompliance determinations and remedies.

Subchapter 12, Appeals, contains the rules governing the appeal process that tax credit employers or TMAs are to use upon a determination that they are in noncompliance with the chapter.

The amendments, repeals and new rules proposed as part of this readoption are as follows:

For the purposes of clarification and reorganization, the Department is proposing to add a new Subchapter 1, General Provisions, which establishes the purpose and scope of the chapter and provides contact information. New N.J.A.C. 16:50-1.1, Purpose and scope, includes some language from current N.J.A.C. 16:50-3.1(a), which subsection is being deleted. New N.J.A.C. 16:50-1.2, Information resources, includes some language from current N.J.A.C. 16:50-3.1(b), which subsection is being deleted, and is amended for grammatical correctness and to provide current contact information. The word "programs" is changed to "program" as only one program remains in the Smart Moves for Business Program. In the address provided, the Division name, PO Box, zip code and Internet address are updated.

N.J.A.C. 16:50-2.1 is amended for clarity and to ensure compliance with current Department practices and policies. The definition of "Approved Smart Moves for Business Program" has been amended because the challenge grant program has been terminated by the Department. For consistency, references to the challenge grant program are deleted throughout the rules. The phrase "the standard documentation" is changed to "the required documentation." The definition of "compressed work week" is amended to correct an error in punctuation by inserting quotation marks before the expression "nine day-72 hour" schedules. The definition of "'employee transportation coordinator' or 'ETC'" is amended to conform to current Department usage. The acronym "ETC" is deleted. The acronym will be deleted whenever it appears in this chapter. The definition of "'highest ranking responsible officer' or 'HRRO'" is amended to remove the acronym "HRRO" as it is not used in the text of the rules. The definition of "'single occupant vehicle' or 'SOV'" is deleted in its entirety because the term is no longer used in this chapter. The definition of "'Smart Moves for Business Challenge Grant or 'Challenge Grant'" is deleted in its entirety because the program has been terminated by the Department. The definition of "'Smart Moves for Business Program Narrative' or 'Program Narrative'" is amended to streamline language. The alternative term "Program Narrative" is deleted and replaced with the word "narrative." This change will be made throughout the rules. The definition of "Smart Moves for Business Program Tax Credit" is amended to correct a grammatical error by replacing the word "know" with "known" and to delete the acronym "ETR" because it is not used by the Department. The phrase "Employer Trip Reduction Program" is added in place of the acronym. The definition of "tax credit employer" is amended for consistency and compliance with statutory authority. The word "subchapter" is changed to "chapter" to clarify the definition's applicability and the statutory reference to P.L. 1940, c. 4 (N.J.S.A. 54:30A-16 et seq.) is deleted because it no longer appears in N.J.S.A. 27:26A-15 as amended by P.L. 2001, c. 162, effective July 17, 2001.

Language found in current N.J.A.C. 16:50-3.1(a) is relocated as N.J.A.C. 16:50-1.1. Language found in current N.J.A.C. 16:50-3.1(b) is amended and relocated as N.J.A.C. 16:50-1.2. Subchapter 3 will be reserved.

N.J.A.C. 16:50-5.1 and 5.2 are proposed for repeal and replacement with a new N.J.A.C. 16:50-5.1, Registration, which encompasses language from the two current sections. This change is being made to clarify the registration process and to put all necessary information in one section.

N.J.A.C. 16:50-6.2(a) is amended to provide current contact information. The Division name, PO Box and zip code are updated. N.J.A.C. 16:50-6.2(a)2 is deleted because it specifies a requirement for submitting individual narratives which is no longer in use. As N.J.A.C. 16:50-6.2(a)1 now contains the complete narrative submission schedule, it is merged with subsection (a). The heading of N.J.A.C. 16:50-6.3 is amended for consistency. The term "standard narrative" is changed to "narrative"; the heading now reads, "Components of a narrative." N.J.A.C. 16:50-6.3(a) is amended to delete "standard" before "form." N.J.A.C. 16:50-6.3(b) is amended for consistency. The word "form" is deleted after "narrative." N.J.A.C. 16:50-6.3(c) is amended to replace the second use of the phrase "TMA Member Employer Summary Narrative" with the word "narrative." N.J.A.C. 16:50-6.6(a) and (b) are amended to replace the acronym "ETC" with the phrase "employee transportation coordinator."

N.J.A.C. 16:50-6.7(a)3 is amended to add an additional category, "number of employees participating," to the list of documents that a tax credit employer is required to maintain. N.J.A.C. 16:50-6.7(b) is amended to replace the acronyms "ETC" and "HRRO" with the terms "employee transportation coordinator" and "highest ranking responsible officer," respectively.

N.J.A.C. 16:50-7.1 is amended for clarity, to correct punctuation and to remove unnecessary language. The text "and shall return incomplete and inconsistent Program Narratives to the tax credit employer or TMA preparer for revisions. If the Department returns a narrative, the Department shall concurrently notify the Division of Taxation that the narrative was returned and the reason(s) for which it was returned" after "the Department shall review the narrative for completeness and consistency with the provisions of this chapter" is deleted, replaced by "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 reasons(s) for which it is being returned." The sentence "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" is inserted. A hyphen is added to the word "resubmit" when it appears the second time in the paragraph. In the third sentence, "Program" is added to correct the name of the Smart Moves for Business Program Tax Credit.

The Department terminated the Challenge Grant Program as of July 1, 2003 and, accordingly, the Department is proposing to repeal Subchapter 8, Smart Moves for Business Challenge Grants, in its entirety. Subchapter 8 will be reserved.

N.J.A.C. 16:50-9.1(a) is amended to include the statutory authority for the Smart Moves for Business Program Tax Credit. The words, "pursuant to the "Traffic Congestion and Air Pollution Control Act", specifically N.J.S.A. 27:26A-15." are inserted. N.J.A.C. 16:50-9.1(a)1 is amended to provide the correct name of the tax credit and to provide the citation for the Division of Taxation's rule. N.J.A.C. 16:50-9.1(a)3 is amended for clarity, grammatical correctness, and to remove unnecessary language. The words "the original ETR Program Report as well as those subsequently submitted in a" are deleted. The word "Narrative" is pluralized and the words "any" and "that have been submitted to the Department" are inserted in the second sentence, which now reads, "The review may address expenses identified in any Smart Moves for Business Program Narratives that have been submitted to the Department." N.J.A.C. 16:50-9.1(a) is amended to include the correct statutory reference and to emphasize that the statute and the regulations are to be used in conjunction when employers claim the business tax credit. N.J.A.C. 16:50-9.1(a)4 through 5, 7 through 12, and 14 through 16 are deleted in their entirety. These provisions contain information about the Smart Moves for Business Program Tax Credit which is available at N.J.S.A. 27:26A-15. N.J.A.C. 16:50-9.1(a)6

is recodified as paragraph (a)4 and is amended to replace the word "cost" with "credit." It now reads, "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." N.J.A.C. 16:50-9.1(a)13 is recodified as paragraph (a)5 and amended. The reference to expenses being 'eligible for a tax credit is clarified, and the requiring "shall" concerning submission of a revised Program Narrative is changed to "may." New N.J.A.C. 16:50-9.1(a)6 is being added to provide the mailing address and the website of the Division of Taxation, for obtaining additional information.

N.J.A.C. 16:50-9.2(a) is amended for accuracy. The phrase "a Department-approved TMA" is replaced with "an appropriate TMA." N.J.A.C. 16:50-9.2(a)1 is amended for consistency. The acronym "ETC" is replaced with "employee transportation coordinator."

N.J.A.C. 16:50-9.3, concerning Department submission to the Division of Taxation of a list of tax credit employers who have registered and submitted Narratives, for the purpose of credit determination, is amended for consistency and clarity. The reference to "acceptable" Narratives is changed to "approved" Narratives. The sentence "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" is added.

Social Impact

The rules proposed for readoption with amendments, repeals and new rules would continue to provide information to employers who assist their employees with commute alternatives. Employers who voluntarily assist their employees receive incentives through tax credits and additional opportunities. Pursuant to N.J.S.A. 27:26A-15, tax credits to employers incurring expenses to provide commuter transportation benefits sunset on December 31, 2007. However, the Department is readopting the Smart Moves rules since employers that made use of this provision may request a tax credit for 2007.

The continued participation of employers in commute trip reduction activities is vital to the State's efforts to reduce traffic congestion and improve air quality. The rules proposed for readoption with amendments, repeals and new rules would assist in promoting the healthful benefits of trip reduction programs, such as improvements in air quality; and the social benefits from reduced vehicle miles traveled and reduced traffic congestion, such as reduced stress on commuters and the roads on which they travel, and improved mobility. Inasmuch as the mandatory nature of trip reduction program implementation was repealed in 1997, this program imposes no social burden upon employers or commuters other than those who elect to participate in the program.

The Department is proposing to repeal Subchapter 8, Smart Moves for Business Challenge Grants, as this program was terminated as of July 1, 2003. N.J.A.C. 16:50-8.5(k) allows the Department to terminate the Smart Moves for Business Challenge Grant Program at any time for reasons including, but not limited to, lack of funding, lack of application merit or viability, or other constraints placed on the Department. Currently, the Department is actively involved in promoting the NJ Smart Workplaces Program. This program is a partnership between the eight New Jersey Transportation Management Associations and the Department. The program supports and encourages employers to provide transportation alternatives, such as telecommuting and flextime programs and information about vanpools and carpools. These alternatives help employees get to work while reducing traffic congestion and improving air quality.

Economic Impact

The Department does not expect the rules proposed for readoption with amendments, repeals and new rules to result in any new costs to employers participating in the Smart Moves for Business Program. The rules will continue to allow tax credits for employers that voluntarily offer commute options for their employees up through December 31, 2007.

Implementation of successful Smart Moves for Business Program strategies with minimal financial impact on employers ordinarily would take the form of activities beneficial to the employer's business objectives and operations. Participation in the program is voluntary. The Department does not assess administrative fees or penalties for non-participation. The annual costs per participating employer will vary, depending upon several factors. These factors may include the employer's previous investments in trip reduction programs and the costs of trip reduction strategies the employer may choose to offer. For example, alternative work schedules and carpool programs are generally lower-cost strategies than telecommuting and vanpool programs. Another factor influencing employer participation is the cost of any financial incentives the employer may choose to provide for its employees at its worksite. For example, providing preferential parking may not be as costly as providing free or discounted transit passes.

The Department has terminated the Smart Moves for Business Challenge Grant Program that awarded financial assistance grants to New Jersey employers to implement innovative commuter assistance services at their worksites. The Smart Moves for Business Challenge Grant Program has been supplanted with the NJ Smart Workplaces Program. The NJ Smart Workplaces Program is a partnership between the eight New Jersey Transportation Management Associations and the Department to help employers assist employees with their daily commute. The Department provides funding to the Transportation Management Associations through its Statewide Transportation Improvement Program.

Federal Standards Statement

The rules proposed for readoption with amendments, repeals and new rules meet, but do not exceed, the requirements of §182(d)(1) of the Clean Air Act Amendments of 1990, 42 U.S.C. §7511a(d)(1)(B).

Except as indicated above, the rules proposed for readoption with amendments, repeals and new rules are not subject to any Federal law, standards, or requirements. Therefore, a Federal standards analysis pursuant to Executive Order No. 27 (1994)/P.L. 1995, c. 65 is not required.

Jobs Impact

The rules proposed for readoption with amendments, repeals and new rules are not intended to have, nor have the current rules had, any effect on the generation or loss of jobs. The rules are intended to assist employers who participate in the Department of Transportation's Smart Moves for Business Program and file a tax return claiming a Smart Moves for Business Program Tax Credit with the Division of Taxation.

Agriculture Industry Impact

The rules proposed for readoption with amendments, repeals and new rules have no impact on the agriculture industry in New Jersey. The rules are not intended to regulate farming, crop, or animal production.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments, repeals and new rules impose reporting, recordkeeping and compliance requirements on small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., who voluntarily elect to participate in the Smart Moves for Business Program. Small businesses that elect to participate are eligible for employer tax credits, provided they submit a simple program narrative and maintain documents related to program development costs and records of employee participation for four years. The Department does not assess any fees or penalties against businesses, regardless of size, for not participating in this program.

The costs per participating employer will vary from \$0 to several hundreds of dollars, depending on variables not linked directly to the size of the business or its worksite. The economic impact on small businesses is the same as would be experienced by participants generally, as described in the Economic Impact above. The Department has provided no lesser or differing requirement standards based upon business size. Participation is voluntary and the Department has determined that the application, eligibility, reporting, recordkeeping, and compliance requirements that the rules impose are the minimum necessary to achieve the goals of the enabling legislation to reduce traffic congestion and air pollution, while monitoring compliance.

Businesses may incur costs for professional services if they choose to hire professionals to administer the program, and those costs may vary based on such variables as the qualifications of the professional retained, the size of the program administered, and the geographic location of the employer's worksites. This expense may be lessened somewhat if employers rely instead, in whole or in part, on available assistance offered by the Department or an appropriate Transportation Management Association (TMA) to implement their programs and to ensure tax credit eligibility of their expenses.

Membership in a TMA is not required to participate in the Smart Moves Program. Businesses that are non-TMA members may incur fees if they seek the services of a TMA to prepare program narratives.

Smart Growth Impact

Smart growth is based on the concept of focusing new growth into redevelopment of older urban and suburban areas, protecting existing open space, conserving natural resources, increasing transportation options and transit availability, reducing automobile dependency, stabilizing property taxes, and providing affordable housing. This is the same basic approach that underlies the State Development and Redevelopment Plan. The rules proposed for readoption with amendments, repeals and new rules will encourage employers to provide commute alternatives for their employees. Employer interest in, and commitment to, the Smart Moves for Business Program has reduced, and would continue to reduce, work-related vehicle trips and vehicle miles traveled. The rules may have an effect on preserving open space or farm land, environmental resources, land-use planning, development or redevelopment. An added benefit may be the discouragement of sprawl, air pollution, congestion, and deterioration of urban communities. Thus, the Department believes the rules proposed for readoption, with amendments, repeals and new rules could have a positive impact toward the achievement of smart growth and the implementation of the State Development and Redevelopment Plan, within the meaning of Executive Order No. 4 (McGreevey 2002). Neither the rules proposed for repeal, nor the effect of their repeal, have resulted or would result in any impact on the achievement of smart growth or implementation of the State Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:50.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 16:50-3, 5.1, 5.2 and 8.

Full text of the proposed amendments and new rules follow (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. [(RESERVED)] **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 reductions 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/.

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.

. . .

"Approved Smart Moves for Business Program" means a program of an employer that has voluntarily registered with the Department, has submitted the [standard] **required** 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].

. . .

"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.

. . .

"Employee transportation coordinator" [or "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.

. . .

"Highest ranking responsible officer" [or "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.

. . .

"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].

. . .

["Single occupant vehicle" or "SOV" means a motor vehicle used for commuting purposes occupied by only one person.]

. . .

["Smart Moves for Business Challenge Grant" or "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" or ["Program Narrative"] "**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] **Employer Trip Reduction Program** Tax Credits.

. . .

"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 [subchapter] **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.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.

...

SUBCHAPTER 3. (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/.

(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.

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 [Program Narratives] **narratives** to the Department also, but reporting is not required.

16:50-6.2 Narrative submittal schedule

[(a)] 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 [Transportation Systems Planning] **Multimodal Services**, NJ Department of Transportation, 1035 Parkway Avenue, PO Box [609] **600**, Trenton, NJ 08625-[0609]**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 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] narrative

(a) Tax credit employers shall prepare [Smart Moves for Business Program Narratives] **narratives** using a [standard] form developed by the Department. The [Smart Moves for Business Program Narrative] **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.-5. (No change.)

(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] **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 [(ETC)], if one is appointed by the employer at the work location;

2.-3. (No change.)

(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] **narrative** shall include the following:

1.-4. (No change.)

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] **employee transportation coordinator** is not required.

(b) Employers are not required to send any designated [ETC] **employee transportation coordinator** 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.-2. (No change.)

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 [ETC] **employee transportation coordinator** or the [HRRO] **highest ranking responsible officer** for a period not less than four years from the date the documents were first generated.

(c)-(d) (No change.)

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 [and shall return incomplete and inconsistent Program Narratives to the tax credit employer or TMA preparer for revisions. If the Department returns a narrative, the Department shall concurrently notify the Division of Taxation that the narrative was returned and the reason(s) for which it was returned]. **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.

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. (No change.)

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] **any Smart Moves for Business Program Narratives that have been submitted to the Department.**

[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.]**4.** The [cost] **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.

[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 the Department a Smart Moves for Business Program Narrative listing the expenditures that the tax credit employer will claim as a Smart Moves for Business Program Tax Credit. The Department shall provide a summary of the Smart Moves for Business Program Narratives to the Division of Taxation.

12. All records relating to a Smart Moves for Business Program 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.]**5.** Tax credit employers incurring expenses **eligible for a tax credit** that were not identified in the original Smart Moves for Business Program Narrative [that would be eligible for a tax credit shall], **may** submit to the Department a revised Program Narrative [outlining those expenses]. 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.

[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 and report its results to the Department. The Department shall notify the Division of Taxation of the failure.

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.]

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>.

16:50-9.2 Eligible expenses

(a) Tax credit employers may seek, and the Department shall provide, guidance from the Department or [a Department-approved] **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 [ETC] **employee transportation coordinator** (100 percent if the [ETC] **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.-5. (No change.)

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 [acceptable] **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.**

SUBCHAPTER 11. PROGRAM MONITORING

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.

(b)-(c) (No change.)

(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 12. APPEALS

16:50-12.1 Standards

(a) (No change.)

(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.