

CHAPTER 50**EMPLOYER TRIP REDUCTION PROGRAM****Authority**

N.J.S.A. 27:26A-1 to 27:26A-14 (P.L. 1992, c.32), N.J.S.A. 27:1A-5, 27:1A-6 and Section 182(d)(1)(B) of the Clean Air Act Amendments of 1990 (42 U.S.C. Section 7511a(d)(a)(B)).

Source and Effective Date

R.1993 d.626, effective December 6, 1993.
See: 25 N.J.R. 3132(a), 25 N.J.R. 5494(b).

Executive Order No. 66(1978) Expiration Date

Chapter 50, Employer Trip Reduction Program, expires on December 6, 1998.

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 Chapter 50, Railroad Transportation—Public Hearings, was repealed by R.1989 d.607, effective December 18, 1989.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. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

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).

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. STATUTORY AUTHORITY**

16:50-1.1 Statutory authority

SUBCHAPTER 2. DEFINITIONS

16:50-2.1 Definitions

SUBCHAPTER 3. SCOPE AND REQUIREMENTS

16:50-3.1 Scope
16:50-3.2 Employer requirements

SUBCHAPTER 4. EMPLOYER NOTIFICATION

16:50-4.1 Notification mailing
16:50-4.2 Published notice

SUBCHAPTER 5. EMPLOYER REGISTRATION

16:50-5.1 Registration deadlines
16:50-5.2 Completion and submittal of registration form

SUBCHAPTER 6. AVERAGE VEHICLE OCCUPANCY (AVO) ZONES AND AVERAGE PASSENGER OCCUPANCY (APO) TARGETS

16:50-6.1 Designation of ETRP performance measure

16:50-6.2 Designation of ETRP performance targets
16:50-6.3 Number of AVO Zones
16:50-6.4 Baseline AVO
16:50-6.5 Target APO
16:50-6.6 Deadline for compliance with the target APO

SUBCHAPTER 7. AVERAGE PASSENGER OCCUPANCY (APO) SURVEY

16:50-7.1 Requirement to survey
16:50-7.2 Notice of requirement to survey
16:50-7.3 Survey procedure
16:50-7.4 Reporting of survey results
16:50-7.5 Calculating work location APO

SUBCHAPTER 8. COMPLIANCE PLANS AND APO REPORTS

16:50-8.1 Requirements
16:50-8.2 Plan and report submittal schedule
16:50-8.3 Plan filing fees
16:50-8.4 Components of a standard compliance plan
16:50-8.5 Required components of compliance plan submittals
16:50-8.6 Required components of APO survey reports submitted by affected work locations
16:50-8.7 Consolidated plans and averaging APO reports
16:50-8.8 Alternative plan preparers
16:50-8.9 Requirement for an ETC
16:50-8.10 Document recordkeeping

SUBCHAPTER 9. PLAN CERTIFICATION

16:50-9.1 Selection and approval of certifiers
16:50-9.2 Certification procedures
16:50-9.3 Plan certification criteria
16:50-9.4 Certification fees

SUBCHAPTER 10. COMPLIANCE PLAN REVIEW

16:50-10.1 Plan review schedule
16:50-10.2 Plan review guidelines
16:50-10.3 Additional review by Department of sample of plans

SUBCHAPTER 11. DISCLOSURE OF INFORMATION

16:50-11.1 Administration of the Employer Trip Reduction Program
16:50-11.2 Authorized disclosure of information

SUBCHAPTER 12. ENFORCEMENT AND PENALTIES

16:50-12.1 Work location audits
16:50-12.2 Notice of noncompliance
16:50-12.3 Penalties for noncompliance
16:50-12.4 Noncompliance authority

SUBCHAPTER 13. EXTENSIONS, EXEMPTIONS, AND WAIVERS

16:50-13.1 Deadline extensions
16:50-13.2 Exemptions
16:50-13.3 Waivers
16:50-13.4 (Reserved)
16:50-13.5 Definition of "Good Faith Effort"
16:50-13.6 Scope of waivers

SUBCHAPTER 14. APPEALS

16:50-14.1 Requirements

SUBCHAPTER 15. EMPLOYER TRIP REDUCTION PROGRAM TAX CREDIT

16:50-15.1 Definitions
16:50-15.2 Requirements

16:50-15.3 Eligible expenses
 16:50-15.4 Proof of registration
 16:50-15.5 Appeals

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) To reduce traffic congestion in the State and comply with the 1990 Federal Clean Air Act Amendments (CAAA), in June, 1992 the New Jersey State Legislature passed State legislation, P.L. 1992, c.32; N.J.S.A. 27:26A-1 to 27:26A-14, the "New Jersey Traffic Congestion and Air Pollution Control Act" (Act). The Act, which assigns responsibility for developing and administering the Employer Trip Reduction Program to the New Jersey Department of Transportation, requires each employer with 100 or more employees at a single work location to develop and implement employee commute option (ECO) programs to reduce vehicle trips and vehicle miles travelled to the site by encouraging employees to use public transit, share rides in carpools and vanpools, or use another commute alternative. The Act further establishes a deadline, November 15, 1996, by which employers must achieve a target average passenger occupancy of passenger vehicles arriving at their work locations during the peak morning commuting period.

(b) Section 182(d)(1)(B) of the Clean Air Act Amendments (CAAA) of 1990 (42 U.S.C. Section 7511a(d)(1)(B)), requires states with pollution levels defined by the Federal government as "severe" or "extreme," of which New Jersey is one, to implement programs to reduce vehicular emissions. Further, states with severe or extreme ozone pollution are required to develop and implement "Employer Trip Reduction Programs," or ETRPs, designed to reduce work related vehicle trips and vehicle miles travelled during peak commuting periods in the ozone "non-attainment" areas.

(c) Consistent with the aforementioned State and Federal laws, this chapter establishes an Employer Trip Reduction Program to reduce traffic congestion and air pollution in the State of New Jersey.

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 "New Jersey Traffic Congestion and Air Pollution Control Act" (P.L. 1992, c.32; N.J.S.A. 27:26A-1 to 14).

"Affected area" means a geographic area designated in N.J.A.C. 16:50-6, which is considered a highly congested area or is an ozone non-attainment area for which an ETR program is required under the Clean Air Act.

"Affected employee" means an employee, employed by an affected or registered non-affected employer, who is scheduled to report at the affected or registered non-affected work location during the employer identified peak period.

"Affected employer" means an employer that employs 100 or more employees as averaged over the immediately preceding 12 month period at any single work location in an affected area of New Jersey.

"Affected work location" or "affected location" means a work location of an affected employer where 100 or more employees report to work or are primarily assigned.

"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.

"Average passenger occupancy" or "APO" means the average passenger occupancy of commuting vehicles arriving at an employer's affected or registered non-affected location during the employer identified peak period, as calculated by the formula in N.J.A.C. 16:50-7.

"APO survey" means the survey of affected employees' commute patterns required to be conducted at an affected or registered non-affected location by affected and registered non-affected employers in accordance with N.J.A.C. 16:50-7.

"Average vehicle occupancy" or "AVO" means the average occupancy of all commuting vehicles arriving at all work locations within an AVO zone of an affected area during the peak period.

"Average vehicle occupancy zone" or "AVO zone" means an ozone non-attainment area or portion of a non-attainment area as described in N.J.A.C. 16:50-4.

"Care facility" means a day care facility, nursery school, private residence, or other building or facility at which preschool age children are cared for during normal working hours. Additionally, health care or custodial care facilities that provide services for elderly or handicapped individuals are also considered care facilities.

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

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

“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.

“Compliance plan,” “initial plan,” “update plan,” “revised plan” or “maintenance plan” means a plan that an affected or registered non-affected employer is required to submit to the Department in accordance with N.J.A.C. 16:50-8.

“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.

“Consolidated plan” means a plan, submitted by one employer for two or more of the employer’s affected or registered non-affected work locations within any target APO area, or submitted by several employers with work locations within any target APO area, that satisfies the plan submittal requirement of N.J.A.C. 16:50-8 for each of the participating work locations.

“Department” or “DOT” means the New Jersey Department of Transportation.

“Dependent” means any person who is a relative by blood, marriage, or adoption; foster child; or any other person who lives in the home as a family member, and who receives at least half of his or her total financial support, from the household of the employee claiming the dependent.

“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).

“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, who either reports to work or is primarily assigned to a work location 80 or more hours per 28-day period for at least two consecutive months. A contract position is one in which the employee has a direct contractual relationship as an individual with the affected or registered non-affected employer, and reports to the affected or registered non-affected work location for a period of at least six consecutive months and whose work hours and assignments are defined by the employer. A contract position shall not include those positions employed through independent contract companies.

“Employee commute options (ECO) program” means a program, required to be implemented by an affected employer or voluntarily implemented by a registered non-affected employer at a work location in accordance with this chapter to reduce vehicle trips to the work location during the peak period, increase the location APO, and reduce commute trip vehicle miles travelled by employees at the location.

“Employee transportation coordinator (ETC)” means an employee appointed by an employer to develop and administer an employee commute options (ECO) 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.

“Employer trip reduction program” or “ETRP” means the program, required to be implemented by the State of New Jersey under the CAAA, to reduce vehicle trips arriving at work locations within the State and vehicle miles travelled by employees arriving at those work locations for commutation purposes.

“Government employer” means the United States and any of its governmental instrumentalities, the State of New Jersey and its instrumentalities and subdivisions, and county and municipal governments.

“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 an affected or registered non-affected work location, who has primary responsibility for the operation and management of the work location.

“Independent government employer” means an independent or semi-autonomous State authority, corporation, commission, board or like body which does not receive State appropriations and shall also include any bi-state authority which has work locations within the State, and the South Jersey Port Corporation notwithstanding that it may receive a State appropriation.

“Newly affected employer or newly affected work location” means a work location that was not previously registered as an “affected employer,” but now has 100 or more employees as averaged over the immediately preceding 12 month-period; an affected work location that was previously granted an exemption from the requirements of N.J.A.C. 16:50 by the Department but is no longer exempt; or a affected employer that has been sold to or taken over by a new corporation or owner. An affected employer or work location that has undergone only a change in name, operating structure, highest ranking responsible officer or chief executive officer would not be considered a newly affected employer.

“Non-affected employer” means a New Jersey employer that employs fewer than 100 employees as averaged over the immediately preceding 12-month period at any single work location in an affected area of New Jersey; an employer that is located outside of an affected area of New Jersey; or an affected employer that was previously granted an exemption from the requirements of N.J.A.C. 16:50 by the Department.

“Non-affected work location” or “non-affected location” means a work location of a non-affected employer or a work location of an affected employer where fewer than 100 employees are primarily assigned.

“Peak period” means the time period identified and adopted by an affected employer or registered non-affected employer which shall be the designated peak period for their work location and shall be the requisite peak period for their work location relative to all surveys, compliance plans and other requirements under this Chapter. An affected employer or registered non-affected employer shall identify one of the two defined peak periods, which are the time periods between the hours of 6:01 A.M. and 9:59 A.M. inclusive, Monday through Friday, or between the hours of 6:31 A.M. and 9:29 A.M., inclusive, Monday through Friday. An employer shall designate the same peak period for its initial plan and any subsequent plans which it is required to submit under the requirements of this Chapter. If an initial plan has been submitted as of June 19, 1995, the employer shall notify the Department of the employer identified peak period through the submittal of a revised initial plan if the employer identified peak period shall be 6:31 A.M. to 9:29 A.M. No notification is required if the employer identified peak period shall be 6:01 A.M. to 9:59 A.M.

“Primarily assigned work location” or “primarily assigned location” means the location to which the employee would report more than 50 percent of his or her time to perform work for the employer. The primarily assigned work location of an employee who does not report to any single location more than 50 percent of his or her time or who teleworks more than 50 percent of his or her time, is the location to which the employee would report for purposes of employer administration. An employee who does not report to any single location more than 50 percent of his or her time is primarily assigned to the location to which the employee would report for the purposes of employer administration, provided the employee physically reports to such location more than two days in a typical week.

“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.

“Registered non-affected employer” means a non-affected employer that is located in an affected area of New Jersey and that voluntarily participates in the ETR Program and is registered as such with the Department.

“Registered non-affected work location” or “registered non-affected location” means a non-affected work location that is located in an affected area of New Jersey and that voluntarily participates in the ETR Program and is registered as such with the Department.

“Scheduled to report” means the employee is directed by the employer to be prepared to begin or continue a compensated portion of the work day.

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

“State department or agency” means a department or agency of the Executive, Legislative, or Judicial branches of State government.

“Subchapter” means a subchapter of these rules.

“Teleworking” or “telecommuting” means a strategy in which an employee substitutes the location at which its work is performed; that is, work assigned to be done at the affected or registered non-affected work location is instead done at the employee’s residence or other work location that is not more than 10 miles and not more than 50 percent of the distance from the employee’s home to the affected or registered non-affected work location, such that the employee makes a substitution for the commute trip to the affected or registered non-affected work location for the entire day, or for part of the day, provided that the part of the day spent teleworking occurs within the employer identified peak period, and the employee affected does not arrive at the affected work location during the employer identified peak period.

“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.

“Travel demand management (TDM)” means a system of actions whose purpose is to alleviate traffic-related problems through improved management of vehicle trip demand. These actions, which are primarily directed at commuter travel, are structured to reduce the dependence on and use of single occupant vehicles, or to alter the timing of travel to other, less congested time periods, or both.

“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.

“Work location” or “location” means an area, building, or grouping of buildings located within the target APO area, which are in actual physical contact or separated only by a private or public roadway or other private or public right-of-way, other than a limited access or center median divided highway, which are under the ownership, operation, or control of the same employer, and where employees perform work. Businesses that are owned by the same employer and are physically located in the same or adjacent buildings, shall be considered separate work locations, if they are operated separately and distinctly.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

SUBCHAPTER 3. SCOPE AND REQUIREMENTS

16:50-3.1 Scope

(a) The requirements of this chapter apply to all affected employers as defined in N.J.A.C. 16:50-2, including government employers and independent government employers, except that the following employers may apply to the Department for an exemption from the requirements of this chapter:

1. Affected employers that have fewer than 33 employees scheduled to report to a single work location during the affected employer's identified peak period, when averaged over the immediately preceding 12 month period. Employers that received an exemption from the

requirements of this chapter prior to June 19, 1995 because they had fewer than 33 employees scheduled to report to the work location during the affected employer's identified peak period are not required to reapply for an exemption provided the number of employees scheduled to report to the location does not exceed 33 in any single month; and

2. Affected employers that employ an average of less than 100 employees for the immediately preceding 12 month period.

(b) A registered non-affected employer shall be subject to provisions of this chapter as subsequently described.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).
Rewrote the section.

16:50-3.2 Employer requirements

(a) Seven actions are required of affected employers. Such employers shall:

1. Register with the Department as an employer subject to the provisions of this chapter (N.J.A.C. 16:50-5);
2. Designate an employee transportation coordinator (ETC) at each affected work location (N.J.A.C. 16:50-8);
3. Periodically conduct an APO survey of its employees at each affected work location to determine employees' current commute patterns and report the results of the survey to the Department (N.J.A.C. 16:50-7);
4. Develop and submit to the Department by November 15, 1994 and in subsequent years as required by this chapter, compliance plans that describe activities to be implemented at the location under an employee commute options (ECO) program (N.J.A.C. 16:50-8).
5. Implement the program outlined in the compliance plan (N.J.A.C. 16:50-8);
6. No later than November 15, 1996, increase the average passenger occupancy (APO) at each affected location to the target APO for the affected zone or subarea as defined in N.J.A.C. 16:50-6; and
7. Maintain the target APO after achieving the target.

(b) An affected employer failing to undertake any or all of these actions shall be considered in violation of this chapter and shall be subject to penalties in accordance with N.J.A.C. 16:50-13.

(c) There are three actions required of a registered non-affected employer or work location. Non-affected employers and non-affected work locations that desire to voluntarily participate in the ETR Program shall:

1. Register with the Department as a “registered non-affected work location”;

2. Periodically conduct an APO survey of its employees to determine employees' current commute patterns; and

3. Report the results of the survey to the Department.

(d) Any registered non-affected work location failing to undertake any or all of the actions listed in (c) above shall forfeit its designation as a registered non-affected location.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Added (c) and (d).

SUBCHAPTER 4. EMPLOYER NOTIFICATION

16:50-4.1 Notification mailing

(a) The Department shall notify employers, by the following procedure, of the requirements of this chapter:

1. On or about January 3, 1994, the Department of Labor or the Department (DOT) as its designee, shall notify affected employers by certified mail of their obligations under the ETRP rules. On or about January 31, 1994, all other employers shall be notified by regular mail of the requirements of these rules. The notification letter shall outline the procedure for employer registration and be accompanied by a standard registration form described in N.J.A.C. 16:50-5.

2. In each year after the initial notices are mailed, DOL or DOT as its designee, shall send notices to any employer added to the list since the previous notification mailing.

3. DOL shall transmit copies of all mailing lists to DOT within seven calendar days of the date of each notification mailing.

16:50-4.2 Published notice

On or about January 3, 1994, and annually thereafter, the Department of Transportation shall publish a general informational notice of New Jersey employers' obligations under this chapter. The notice shall provide information on how employers can obtain required forms from the Department and shall establish a date by which affected employers must return a completed form to 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. The Department also shall publish the notice in the first New Jersey Register released after the date of the first notification mailings.

SUBCHAPTER 5. EMPLOYER REGISTRATION

16:50-5.1 Registration deadlines

(a) By the due date specified in the notification mailing and as published in the public notice (see N.J.A.C. 16:50-4), each affected employer shall submit a completed standard registration form to the Department. Notwithstanding that

an employer may not have been mailed or received the notice or form, an affected employer shall in any event complete the required registration form, copies of which may be obtained upon request from the Department of Transportation, Employer Trip Reduction Program, and submit the completed form to the Department by the deadline specified in the published notice.

(b) Each employer that receives a notification packet shall respond even if the employer believes it is not subject to this rule. An employer that does not meet the definition of affected employer or that meets a test for exempted employer described in N.J.A.C. 16:50-13 shall not be required to submit the standard registration form, but shall submit an ETRP return form for non-affected employers, included in the notification packet, indicating the reason for non-applicability. The Department may request the employer to submit additional documentation to verify the employer's non-affected status.

(c) An employer that is not subject to this chapter at the time the first notices are mailed, but that subsequently becomes an affected employer or an affected employer with a non-affected work site that subsequently becomes affected, shall submit a registration form to the Department within 60 days of becoming an affected employer.

(d) An affected employer that moves its work location within the State after registering with the Department must submit a new registration form within 60 days of the date of the relocation.

(e) An employer with one or more non-affected work locations in affected areas of New Jersey that voluntarily chooses to register such locations with the Department may do so at any time.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

In (b) inserted the provision concerning exempted employer tests; in (d) inserted "within the State"; and added (e).

16:50-5.2 Completion and submittal of registration form

(a) Each affected employer shall complete a standard registration form for each affected location in New Jersey. The form must be signed by the highest ranking responsible officer at the location who shall attest to the accuracy of the information reported. An affected employer shall provide the following information on the form:

1. The name of the affected employer and address of the affected work location;

2. The name and telephone of the highest ranking responsible officer at the affected work location;

3. Designation of the location as a single site, headquarters, or branch;

4. The total number of employees primarily assigned to the location and the number scheduled to report to the work location during the employer identified peak period. The employer shall also identify the peak period which shall be fixed for the work location. An employer that has submitted an initial plan and APO report using the 6:01 A.M. to 9:59 A.M. peak period, but fails to submit a revised initial plan which changes the employer identified peak period, shall be assumed to be retaining the 6:01 A.M. to 9:59 A.M. peak period.

5. The name, telephone number, and address (if different from that named in (a)1 and 2 above) of the person at the location who will serve as the employer's contact with the Department; and

6. The name, telephone number and address of a contact person who is designated to receive APO survey and compliance plan forms.

(b) An affected employer with more than one location in New Jersey shall complete a separate registration form for each affected location, but individual registration forms may be submitted together.

(c) An employer that chooses to register one or more non-affected locations in the ETR Program shall complete a standard registration form for each such location. An employer with more than one non-affected location in New Jersey must complete a separate registration form for each non-affected location the employer chooses to register, but individual registration forms may be submitted together.

(d) An affected employer may designate a single contact person to receive APO survey and compliance plan forms for all affected and registered non-affected locations.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

In (a)4 substituted "primarily assigned" for "at" and "scheduled" for "assigned", and added the last two sentences; in (b) deleted a sentence allowing affected employers to designate single contact persons; and added (c) and (d).

SUBCHAPTER 6. AVERAGE VEHICLE OCCUPANCY (AVO) ZONES AND AVERAGE PASSENGER OCCUPANCY (APO) TARGETS

16:50-6.1 Designation of ETRP performance measure

The Department has established average passenger occupancy (APO) at a work location as the performance measure against which an affected employer's compliance with the State's ETR program will be measured. APO is a measure of the average occupancy of passenger vehicles arriving at a single location, and is equal to the number of employees arriving at the location during the employer identified peak period divided by the number of passenger vehicles in which the employees arrive at the same location during the employer identified peak period.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Substituted "affected employer" for "affected work location".

16:50-6.2 Designation of ETRP performance targets

The Department has established four performance targets, called target APOs, each to apply in a distinct, designated affected area of the State as described in (c) below.

The performance target for each AVO zone has been set as 125 percent of the average vehicle occupancy (AVO), the average occupancy of all commuting vehicles arriving at all work locations in the affected area, as measured by a 1992 telephone survey, conducted by the Department, of employees employed at New Jersey work locations.

16:50-6.3 Number of AVO Zones

(a) For the purpose of establishing ETRP performance targets, the Department has divided the State into two AVO zones, hereinafter referred to as the Urbanized Area Zone and the Suburban Area Zone, that will be included in the ETRP. These areas, which were designated as severe ozone non-attainment areas by the CAAA, were also designated as separate AVO zones based on their substantially similar development characteristics and availability of transportation services and facilities. The AVO zones are defined as follows:

1. The Urbanized Area Zone shall include the following New Jersey counties, inclusive except where otherwise noted:

- i. Bergen County;
- ii. Essex County;
- iii. Hudson County;
- iv. Union County; and
- v. Passaic County, municipalities of Clifton, Paterson, and Passaic only.

2. The Suburban Area Zone shall include the following New Jersey counties, inclusive except where otherwise noted:

- i. Burlington County;
- ii. Camden County;
- iii. Cumberland County;
- iv. Gloucester County;
- v. Hunterdon County;
- vi. Mercer County;
- vii. Middlesex County;
- viii. Monmouth County;
- ix. Morris County;
- x. Ocean County;
- xi. Somerset County;
- xii. Salem County;
- xiii. Sussex County; and

xiv. Passaic County, all municipalities EXCEPT Clifton, Paterson, and Passaic.

16:50-6.4 Baseline AVO

The Department has determined baseline AVOs, that is, baseline levels of vehicle occupancy, for each AVO zone for the base year 1992 as follows:

AVO Zone Designation	Baseline AVO
Urbanized Area Zone	1.22
Suburban Area Zone	1.10

16:50-6.5 Target APO

The Department has calculated the target APO for each AVO Zone at 25 percent above the baseline AVO for the zone (baseline AVO x 1.25). The Department further has established target APOs that affected employers in each zone must meet. In the Urbanized Area Zone, three target areas have been established based on the employment density of the target area. In the Suburban Area Zone, a single target APO has been established. Target APOs for affected areas in each zone are as follows:

AVO Zone Designation	Target APO
1. Urbanized Area Zone	
i. Target area 1: Urban Core (Newark CBD, Jersey City CBD and Hoboken) covering zip codes: 07030, 07102, 07302, 07303, 07306, 07310, and 07311	1.97
ii. Target area 2: Remainder of Hudson County	1.73
iii. Target area 3: Bergen County, Union County, remainder of Essex County, and Clifton, Passaic, and Paterson in Passaic County.	1.46
2. Suburban Area Zone (entire zone)	1.38

16:50-6.6 Deadline for compliance with the target APO

Not later than November 15, 1996, each affected employer is required to increase the APO at the employer's affected work locations during the affected employer's identified peak period to the target APO of the target area in which the employer is located. An employer that has achieved the target APO is required to maintain the location APO at a level at least as high as the target APO, but is not required to increase its APO beyond the target APO. Each affected employer shall document achievement of the target APO at each affected location through the APO survey, described in N.J.A.C. 16:50-7, and report the location's compliance with the target APO to the Department, in accordance with N.J.A.C. 16:50-8.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

In the first sentence inserted "affected employer's identified"; and in the last sentence deleted a requirement that the report be submitted in the Update Plan.

SUBCHAPTER 7. AVERAGE PASSENGER OCCUPANCY (APO) SURVEY

16:50-7.1 Requirement to survey

For the purpose of documenting the work location APO, each affected and registered non-affected employer shall conduct APO surveys of the commute patterns of the employees who are scheduled to report to its affected and registered non-affected locations during the employer identified peak period. APO surveys shall be conducted in each year that the employer is required to make a submission to the Department, but in no case earlier than December 6, 1993. An affected or registered non-affected employer that has not demonstrated achievement of the target APO by November 15, 1996 shall additionally conduct an APO survey in 1997 as specified in N.J.A.C. 16:50-7.3(a). An employer with more than one affected or registered non-affected location in the State shall conduct a survey at each such location.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Inserted the provisions regarding affected and non-affected employers and locations; and inserted "employer identified".

16:50-7.2 Notice of requirement to survey

The Department shall, within 180 days of receiving completed registration forms from affected and registered non-affected employers, notify each affected and registered non-affected employer of the requirement to conduct an APO survey and to develop and implement a compliance plan in accordance with the requirements of N.J.A.C. 16:50-8. In subsequent years that employers are required to make a submittal to the Department, the Department shall notify each affected and registered non-affected employer of the requirements at least 180 days prior to any required submittals. The notice shall include copies of the required APO survey and compliance plan forms.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Inserted "and registered non-affected"; and added the sentence concerning subsequent years.

16:50-7.3 Survey procedure

(a) Each affected and registered non-affected employer shall conduct APO surveys of all employees assigned to report to its affected and registered non-affected work locations during the employer identified peak period, except as provided in (a)4 below, using the following procedure:

1. An employer shall use the standard APO survey form provided by the Department, and designed to collect information on the commute patterns of affected employees to allow the employer to calculate the work location APO as described in N.J.A.C. 16:50-7.5. In years when a survey is not required, an employer that intends to submit a revised plan to the Department, shall use the standard APO survey form provided by the Department. The standard form shall be used without alteration, except that the Department may permit an employer to substitute a different survey form that collects information that is substantially similar to that collected by the standard form if the employer's form has been submitted to and approved by the Department, prior to administration of the survey. The Department shall have the authority to refuse approval of any form that could be expected, in the Department's judgment, to produce different survey results than if the standard form had been used. An employer shall be permitted to attach additional survey forms to the standard form, if desired, without prior approval of the Department. Notwithstanding these provisions, alterations, such as photocopying the survey on company letterhead, that do not add or delete questions or change the wording or order of questions, will be permitted without prior written approval of the Department. Notwithstanding these provisions, employers that conduct interim surveys that do not require plan revisions, may use either the standard form or any variation thereof.

2. Employers shall choose a typical week in which to conduct the APO survey. A week shall not be considered typical if it:

- i. Includes a holiday observed by the employer;
- ii. Is a week during which the employer holds a rideshare fair or other intensive information promotion related to the ECO program;
- iii. Is a week in which the location has a partial or complete shutdown of its operation causing a significant fluctuation in the number of employees scheduled to report to the affected work location; or
- iv. Is a week with any other anomalous change or fluctuation in the number of employees scheduled to report to the affected work location.

3. APO surveys conducted for subsequent plan submittals (1996, 1997 and after, if required) shall be conducted no earlier than January of the submittal year.

4. Each affected and registered non-affected employer shall survey all affected employees scheduled to report to its affected and registered non-affected locations during the employer identified peak period in the survey week, except that an employer with 1,000 or more employees arriving at a single location during the employer identified peak period may survey a random sample of those employees. Employers desiring to conduct a random sample survey shall submit to the Department, Employer Trip Reduction Program, a sampling methodology that is rec-

ognized as statistically valid with a 95 percent confidence level, and documentation that the person or persons conducting the survey have the qualifications to ensure the survey will be conducted in a statistically valid manner. The Department shall grant or deny approval for the random survey within 30 days of receipt of the methodology. Employers utilizing random sampling surveys shall be subject to the same requirements for document recordkeeping (N.J.A.C. 16:50-8.10) and work location audits (N.J.A.C. 16:50-11.1) as employers using the standard survey procedures.

5. An employer may use its own staff to conduct the APO survey or arrange with a market research or transportation consultant, local government, TMA, or other entity outside the employer to conduct the survey.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Added provisions governing non-affected employers and work locations throughout; added "employer identified" throughout; and in (a)(1) added sentences concerning years when surveys are not required and employers who conduct interim surveys.

16:50-7.4 Reporting of survey results

Each affected and registered non-affected employer shall tabulate the APO survey results and report the results to the Department on a standard form to be provided by the Department. The employer shall submit the APO survey results as a component of the compliance plan in accordance with N.J.A.C. 16:50-8. In years in which the employer is required to document its work location APO to the Department but is not required to submit a plan, survey results shall be submitted as an APO survey report on standard forms provided by the Department.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Substituted "Each affected and registered non-affected employer" for "An affected employer"; and in the last sentence inserted "on standard forms provided by the Department".

16:50-7.5 Calculating work location APO

(a) Each affected and registered non-affected employer shall demonstrate its compliance with the ETRP by documenting achievement of the target APO as described in N.J.A.C. 16:50-6. The Department shall measure each such employer's performance, as documented by the work location APO, against the target APO.

1. An employer shall calculate the APO for its work location from the results of the APO survey as follows:

$$\text{Work Location APO} = \frac{\text{Number of Employees Arriving}}{\text{Number of Vehicles Arriving}} \quad \text{where:}$$

Employees Arriving is: total number of employees scheduled to report to the location during the employer identified peak period, Monday through Friday of the survey week, and

Vehicles Arriving is: total number of passenger vehicles in which these employees arrive at the location, during the employer identified peak period, Monday through Friday of the survey week.

To illustrate the calculation of APO, the following example is provided:

	Mon.	Tue.	Wed.	Thur.	Fri.	Total Week
No. Employees	200	200	200	200	200	1,000
No. Vehicles	165	170	180	175	170	860

$$\text{Work Location APO} = \frac{1,000 \text{ Employees Arriving}}{860 \text{ Vehicles Arriving}} = 1.16$$

2. Calculation of APO shall count employees scheduled to report at the location during the employer identified peak period, Monday through Friday of the survey week as follows:

i. Each employee that is scheduled to report to the location during the employer identified* peak period shall be counted as one employee arriving for each of the days Monday through Friday of the survey week that the employee reports to the location, regardless of the actual arrival time or length of time the employee remains at the location. An employee that is scheduled to report, during the employer identified peak period but that actually arrives at the primarily assigned work location prior to the employer identified peak period shall be counted as arriving at the scheduled to report time.

ii. Each employee that teleworks shall be counted as one employee scheduled to report during the employer identified peak period for each day the employee teleworks.

iii. Each employee that works a compressed work week shall be counted as one employee scheduled to report during the employer identified peak period for each day worked as well as each compressed work week day off.

iv. An employee that is scheduled to report to the primarily assigned work location but that does not report at all shall not be counted for the day that he or she does not report to the work location.

v. An employee that is scheduled to report to the work location during the employer identified peak period and then remains on-site or at work for more than 24 continuous hours shall be counted as arriving each consecutive day he or she remains on-site or at work.

vi. Beginning in 1995 and in any subsequent year, each employee that was scheduled to report during the employer identified peak period in the survey week documented in the approved 1994 or initial plan and whose scheduled to report time was subsequently, purposefully changed to a time outside of the employer identified peak period, other than changes caused by regularly scheduled shift work changes, shall be counted as one employee scheduled to report for each survey day the employee arrives at the work location.

vii. An employee who transports a dependent for at least 50 percent of the total one way commute or two miles, whichever is less, to a care facility shall be counted as arriving in a carpool or vanpool. For the calculation of APO, each dependent shall be counted as a carpool or vanpool occupant, as appropriate.

3. For calculation of APO, the count of vehicles arriving shall include:

i. Passenger cars and trucks, with fewer than seven occupants; and

ii. Motorcycles and mopeds.

4. The following shall be counted as zero vehicles arriving:

i. Vanpools with seven or more occupants;

ii. Public or private buses, trains, or other mass transportation vehicles;

iii. Bicycles and other non-motorized vehicles; and

iv. Alternative fuel vehicles.

5. An employee that works a compressed work week or teleworks shall be counted as arriving at the work location in a zero vehicle on the day he or she does not report to the work location.

6. An employee that is scheduled to report to the work location during the employer identified peak period and then remains on-site or at work for more than 24 continuous hours shall be counted as arriving in the commute mode in which he or she arrived the first day and then in a zero vehicle for each consecutive day he or she remains on-site or at work.

7. Beginning in 1995 and in any subsequent year, each employee that was scheduled to report during the employer identified peak period in the survey week documented in the approved 1994 or initial plan and whose scheduled to report time was subsequently, purposefully changed to a time outside of the employer identified peak period, other than changes caused by regularly scheduled shift work changes, shall be counted as one employee arriving in a zero vehicle for each survey day the employee arrives at the work location at a time other than the employer identified peak period.

8. An employee that is dropped off at the work location by another employee or employees commuting to their work location or locations shall be counted as arriving in a share of a vehicle proportional to the number of occupants in the vehicle, even if the other employees do not work for an affected employer.

9. An employee that is dropped off at the work location by a person not proceeding on to a work location as an employee shall be counted as arriving in a single occupant vehicle.

10. An employee that commutes in a commute alternative for at least 50 percent of the total length of his or her one way trip to work or in a commute alternative for two or more one-way miles, whichever is less, shall be counted as arriving in that commute alternative in the APO calculation.

11. An employer shall not count employees who have disabilities which require the use of a single-occupant vehicle for commuting in the APO calculation. The vehicles of such employees shall not be counted in the APO calculation.

12. An affected employee that does not respond to the APO survey as described in N.J.A.C. 16:50-7.3(a)4 shall be counted as one employee arriving in one vehicle for the purposes of the APO calculation. Notwithstanding this provision, however, if the employer has achieved a response rate among employees scheduled to report during the employer identified peak period of the survey week of 90 percent or higher, nonresponding employees shall be assumed to have commute patterns proportional to the commute patterns of respondents.

13. A dual fuel vehicle used for commuting shall be counted as a zero vehicle on the days it arrives at the work location, regardless of whether it was powered by gasoline or the alternative fuel for that commuting day.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).
Made numerous changes throughout.

SUBCHAPTER 8. COMPLIANCE PLANS AND APO REPORTS

16:50-8.1 Requirements

Each affected and registered non-affected employer shall prepare and implement compliance plans and/or shall prepare APO reports in accordance with the procedures and schedules established in this subchapter.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).
Inserted "and registered non-affected".

16:50-8.2 Plan and report submittal schedule

(a) Each affected employer shall submit compliance plans and APO reports, as described in N.J.A.C. 16:50-8.4 and 8.5, respectively, to the Department of Transportation, Employer Trip Reduction Program, ATTENTION: Employer Assistance Unit, 1035 Parkway Avenue, CN 619, Trenton, NJ, 08625 in accordance with the following schedule:

1. Not later than November 15, 1994, each affected employer shall prepare and submit to the Department an initial compliance plan for each of its affected work locations. Work locations that become affected work

locations, that becomes affected after May 1, 1994 shall be considered newly affected work locations and given a minimum of 180 days from the date they register with the Department, as required by N.J.A.C. 16:50-6, to prepare and submit initial compliance plans. These work locations further shall not be required to demonstrate achievement of the target APO in effect on the date of the initial submittal for the newly affected work location until two years following submittal of the initial plan.

2. Not later than November 15, 1996, each affected work location that has achieved the required APO target shall prepare and submit to the Department a maintenance plan for each such work location as described in N.J.A.C. 16:50-8.4(c).

3. Not later than November 15, 1996, each affected work location that has not achieved the required APO target shall prepare and submit to the Department an update plan as for each such work location as described in N.J.A.C. 16:50-8.4(c).

4. After November 15, 1996, each affected work location shall maintain the target APO for the employer's target area. Subsequent compliance plans shall be required if mandated by the Federal Environmental Protection Agency (EPA), if required by the New Jersey Department of Environmental Protection to comply with EPA's mandated State Implementation Plan requirements, or if an affected work location is not in compliance with the required target APO.

5. Not later than November 15, 1997, each employer whose 1996 APO survey showed it did not meet the target APO for an affected work location shall prepare and submit to the Department an APO Survey Report for each such work location documenting the results of a 1997 survey.

6. An affected employer that moves its work location within the State, desires to modify the elements of its compliance plan, or experiences a change in its work location operations that could reasonably be expected to affect the appropriateness or effectiveness of an approved compliance plan, shall submit a revised plan within 90 days of the change. A revised compliance plan must be reviewed by a certifier prior to submittal to the Department when the revision is necessitated by a relocation of the work location. Other compliance plans revised for other minor corrections may be submitted directly to the Department for review and approval.

(b) Registered non-affected work locations shall submit an initial APO Survey Report to the Department within 180 days of registering with the Department. The initial APO Survey Report shall represent only the APO for the individual registered non-affected work location.

(c) Registered non-affected work location shall submit subsequent APO Survey Reports to the Department not more than two years after the initial report was submitted or

in conjunction with the submittal of an affected work location's update or maintenance plan.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

In (a) added provisions governing work locations; and added (b) and (c).

16:50-8.3 Plan filing fees

(a) Each affected employer shall submit a filing fee upon submittal of a compliance plan in accordance with the following fee schedule:

1. For locations with 100 to 499 employees, \$200.00 for the initial filing and \$400.00 for each subsequent biennial filing.
2. For locations with 500 to 749 employees, \$400.00 for the initial filing and \$800.00 for each subsequent biennial filing.
3. For locations with 750 to 999 employees, \$600.00 for the initial filing and \$1,200 for each subsequent biennial filing.
4. For locations with 1,000 or more employees, \$800.00 for the initial filing and \$1,600 for each subsequent biennial filing.

(b) Notwithstanding the fee schedule described in (a)1 above, an employer with more than five affected locations shall not pay a combined fee of more than \$4,000 for an initial filing or more than \$8,000 for subsequent biennial filings.

(c) The filing fee for submitting a consolidated plan shall be equal to the highest fee any of the employers participating in the consolidated plan would pay if filing a plan for its work location alone.

(d) Government employers other than independent government employers shall be exempt from the payment of filing fees.

(e) Registered non-affected employers shall be exempt from the payment of filing fees.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Added (e).

16:50-8.4 Components of a standard compliance plan

(a) Affected employers shall prepare compliance plans using a standard compliance plan form developed by the Department. The plan will include all information required by the standard plan form, including the following:

1. The name of the affected employer, address of the affected work location, and name, title, and telephone number of the Employee Transportation Coordinator (ETC) at the work location appointed by the employer.

2. The results of the current APO survey and any previously required APO surveys and a description of the procedure used to conduct the APO survey;

3. A description of the physical and transportation service characteristics of the work location, and demographic, work, and travel-related characteristics of the employee population;

4. A description of ECO strategies currently available to employees at the work location and additional ECO strategies the employer will implement at the work location. An employer desiring advice and suggestions on ECO strategies should refer to resource materials provided by the Department. One strategy that could be included, as encouraged by the Act (Section 5(l)) is a reduction in the number of parking spaces available for employees at work locations and designation of the most desirable parking spaces as reserved for high occupancy vehicles;

5. Activities planned by the employer to implement the ECO program and a time schedule for implementation of the program;

6. A description of the process by which the employer will periodically monitor and review progress toward the APO target; and

7. A description of the actual and projected costs to develop, implement, and monitor the ECO program.

(b) Each affected employer shall provide information included in (a)1 through 7 above in the initial plan to establish a baseline against which future years' plans can be compared. An affected employer must identify and adopt the peak period that shall be utilized and reflected for the initial plan or the revised initial plan and all subsequent plan submittals.

(c) Beginning with the 1996 update plan and for any subsequent update plan, each employer with an affected work location that has not achieved the target APO also shall provide the following information:

1. A discussion of the employer's "good faith efforts," described in N.J.A.C. 16:50-13.5, to achieve the target APO;

2. An explanation of why the ECO strategies included in the initial plan did not produce the target; and

3. A discussion of how the employer plans to achieve the target within one year.

(d) Maintenance plans, only if required by USEPA after 1997, shall consist of an APO Survey Report, as described in N.J.A.C. 16:50-8.6. If the employer's APO has fallen below the target APO, the maintenance plan shall include an explanation of why the APO is less than the target and a description of activities that are intended to be undertaken by the employer in order to meet the target within six months of filing the maintenance plan.

(e) Each registered non-affected work location shall prepare APO Survey Reports using a standard form developed by the Department. The report will include all information required by the standard form, including:

1. The name of the employer, address of the registered non-affected work location, and name, title, and telephone number of the employer's contact at that work location;
2. The results of the current APO survey and a description of the procedure used to conduct the APO survey; and
3. A registered non-affected employer shall identify the peak period that shall be utilized and reflected in the initial APO Survey Report and all future APO Survey Reports.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Added (a)7; in (b) added the last sentence; in (c) substituted "each employer with an affected work location" for "an affected employer"; and added (e).

16:50-8.5 Required components of compliance plan submittals

(a) A complete compliance plan submittal to the Department shall consist of the following elements:

1. The plan elements described in N.J.A.C. 16:508.4(a)1 through 7, and a summary, prepared by the certifier as described in N.J.A.C. 16:50-9, of plan information included in N.J.A.C. 16:50-8.4(a)3 through 6. Update plan submittals also shall include the information required in N.J.A.C. 16:50-8.4(c);
2. The appropriate filing fee as specified in N.J.A.C. 16:50-8.3(c);
3. A statement signed by the highest ranking responsible officer at the work location who shall attest that the employer will implement the plan as described, retain all ECO documents on file, as required by N.J.A.C. 16:50-8.10, and make such documents available for review by the Department or its agent;
4. A statement signed by the highest ranking responsible officer at the work location or plan preparer, if different from the employer, who shall attest to the corrections of the information included in the plan; and
5. A statement signed by an approved certifier who has reviewed and certified the plan in accordance with the procedures established in N.J.A.C. 16:50-9.

(b) A complete APO Survey Report submitted by a registered non-affected work location shall consist of the following elements:

1. The report elements described in N.J.A.C. 16:50-8.4(e)1 and 2;
2. A statement signed by the highest ranking responsible officer at the work location or report preparer, if different from the employer, who shall attest to the correctness of the information included in the report; and

3. APO Survey Reports submitted by registered non-affected work locations are not required to be reviewed and certified by Department approved compliance plan certifiers.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Added (b); and substituted "statement" for "letter".

16:50-8.6 Required components of APO survey reports submitted by affected work locations

(a) A complete APO survey report submittal from an affected work location shall consist of the following elements:

1. A completed APO survey report, prepared on standard forms provided by the Department;
2. A summary of current program elements which the employer agrees to continue; and
3. A statement signed by the highest ranking responsible officer at the work location or report preparer, if different from the employer, who attests to the accuracy of the information included in the report.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

In (a) substituted "from an affected work location shall" for "will"; and in (a)3 substituted "statement" for "letter".

16:50-8.7 Consolidated plans and averaging APO reports

(a) Beginning in 1996 and in any future year for which an affected employer is required to submit an update plan or APO survey report, such employers may submit a consolidated plan or report, as defined in N.J.A.C. 16:50-2, subject to the following provisions:

1. An employer with more than one affected or registered non-affected location or two or more separate affected or registered non-affected employers may submit a consolidated plan or report for any or all of the affected or registered non-affected locations, provided that collectively the participating work locations reach the appropriate average target APO.
2. Employers submitting consolidated plans or APO Survey reports for work locations located within a single APO target area shall average the APOs for all of the work locations participating in the consolidated plan. The average APO shall be calculated as the total number of employees scheduled to report at all participating locations during the employer identified peak period of the survey week, divided by the total number of vehicles in which those employees arrive.
3. Employers submitting consolidated plans or APO survey reports for two or more work locations located in different APO target areas shall determine the averaged target APO for the participating work locations. This shall be done by first determining the theoretical maximum vehicles allowed for the individual participating work locations, as if the individual work location were to come into compliance itself. This shall be calculated as:

$$\text{Maximum vehicles allowed (at each work location)} = \frac{\text{Affected employees at each location}}{\text{APO Target at each location}}$$

	Employer "A"	Employer "B"
Affected Employees	1,000	500
Individual APO Target	1.40	1.97
Maximum Vehicles Allowed	714	254

The Averaged "Target" APO shall be as calculated as:

$$\text{Average Target APO} = \frac{\text{Sum of Affected Employees}}{\text{Sum of Maximum Vehicles Allowed}} \text{ Where:}$$

Employees are: Total number of employees scheduled to report at a participating location during the employer identified peak period of the survey week; and

Maximum Vehicles are: The maximum number of passenger vehicles that could arrive at the affected work location and still have the individual work location meet its APO target. Using the employer examples shown above, the Averaged APO Target would be calculated as:

$$\text{Averaged APO} = \frac{1,000 \text{ employees} + 500 \text{ employees}}{714 \text{ vehicles} + 254 \text{ vehicles}}$$

$$\text{Averaged APO Target} = 1.54$$

Both the number of affected employees and the maximum number of vehicles allowed at each participating location shall be determined for each location. Each participating work location shall be assigned the averaged APO target as the APO target for each individual location. To determine compliance, the actual average APO shall be calculated as the sum of employees scheduled to report at each work location divided by the sum of the actual number of arriving vehicles at each location.

4. An employer that submits a consolidated plan for multiple affected and/or registered non-affected work locations and averages its APO shall prepare a consolidated maintenance plan.

5. Multiple employers participating in a consolidated plan shall individually prepare plan sections for each participating work location, accompanied by a jointly-prepared APO survey report, signed by the highest ranking responsible officer for each employer participating in the plan. The APO calculation shall present the results of the APO calculation as though the participating locations were one employer or one location.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

In (a)1 substituted "participating" for "affected"; in (a)2 inserted "employer identified"; and inserted "registered non-affected" throughout.

16:50-8.8 Alternative plan preparers

An employer may contract with a transportation planning consultant, TMA or outside entity to prepare or assist in preparation of a compliance plan or report. The use of an outside entity for this purpose shall not, however, remove or reduce the responsibility of the employer with regard to any of the requirements of this chapter.

16:50-8.9 Requirement for an ETC

(a) Each affected employer shall designate an employee transportation coordinator (ETC) at each affected work location to administer the ECO program at that work location.

(b) An affected employer is not required to send its designated ETC to training. However, the Department shall provide affected employers with a list of Department approved ETC trainers and Training courses.

(c) The Department shall issue a request for qualifications (RFO) for ETC Trainers and select candidates from among trainer applicants. To be considered for selection as a candidate trainer, applicants must have two years experience in the direct conduct of adult education classes or courses, or may substitute a bachelor's degree in education for experience in the conduct of adult education courses and in addition must also have at least two years of education or experience in the field of transportation demand management, transportation planning or closely related field.

(d) To be approved as ETC Trainers, candidates must attend and complete a training course developed and sponsored by the Department, and must pass a proficiency examination at the completion of the course. ETC Trainer candidates who successfully complete the Department sponsored training course, will be required to sign a Memorandum of Understanding with the Department agreeing to provide ETC Training with the course content and materials provided for and required by the Department, and to provide the Department with appropriate documentation of ETC Training conducted by the ETC Trainer and other reports as requested by the Department. Additionally, all ETC course materials shall be reviewed and approved by the Department. Participation in the Department provided ETC Trainer training course may be at the expense of the candidate trainer. The Department may require candidate trainers to pay for Department provided training in the event that there is not sufficient funding allocated to the Employer Trip Reduction Program, either by the State legislature or through the authorization of Federal highway funds.

(e) Department approval shall be conferred on individuals only, not the company or organization by whom they are employed. The Department shall approve ETC Trainers for one-year renewable periods. The Department may deny or may revoke the ETC Trainer's approval if the Department receives multiple complaints from employers regarding the ETC Trainer's conduct of training courses or fees, or if a Department audit of such training courses provided by the ETC Trainer indicates that such courses are not being conducted as approved by the Department. The ETC Trainer may appeal revocation of approval in the same manner as provided for certifiers in N.J.A.C. 16:50-14.

(f) Notwithstanding any other provision of this chapter, there is no prohibition against an ETC Trainer charging a fee for ETC Training.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

In (a) substituted "affected work location" for "location with 100 or more employees"; and added (b) to (f).

16:50-8.10 Document recordkeeping

(a) Each affected 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. Conduct of the APO survey;
2. Calculation of work location APO;
3. Preparation of compliance plans and reports;
4. Program implementation, including all organizational policies and procedures;
5. Program monitoring and evaluation;
6. Development of the affected employer's ECO Program, including survey forms and results, policies and procedures related to the ECO Program, etc. Such documentation need not include draft writings or preliminary policies and procedures developed by the affected employer; and
7. Costs and expenses relative to the development, implementation and monitoring of the ECO Program.

(b) An affected employer shall maintain the documents set forth in (a) above in the office of the ETC for a period not less than five years from the date the documents were first generated.

(c) Each registered non-affected work location shall maintain copies of all documents prepared or used in 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 may not be limited to, documents related to:

1. Conduct of the APO survey;
2. Calculation of work location APO; and
3. Preparation of reports.

(d) A registered non-affected employer shall maintain the documents set forth in (c) above in the office of the ETC or other designated person for a period not less than five years from the date the documents were first generated.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).
Added (a)7, (c) and (d).

SUBCHAPTER 9. PLAN CERTIFICATION

16:50-9.1 Selection and approval of certifiers

(a) Prior to submittal to the Department, initial compliance plans shall be certified as to accuracy and efficacy by a person approved by the Department as qualified to so certify plans. Notwithstanding this provision, an employer that submits a revised plan in accordance with N.J.A.C. 16:50-8 shall not be required to have the plan certified prior to its submittal to the Department. Certification shall be conducted in accordance with the following procedure:

1. The Department shall issue a request for qualifications (RFQ) for certifiers and select candidate certifiers from among certifier applicants. Following the initial RFQ, the Department may issue subsequent RFQs at its discretion to ensure an adequate number of approved certifiers. To be considered for selection as a candidate certifier by the Department, applicants must have a Bachelor's degree from an accredited college or university, and four years of experience in transportation demand management, transportation planning, or other closely related field.

i. Applicants not possessing one of either the required minimum education or experience may substitute years of experience and years of education at the rate of two years of experience in the fields listed above, for one year of college education.

2. If the number of candidate certifiers that the Department can train and approve is limited by the time constraints of the Act, the Department may select a lesser number of candidate certifiers, based on the amount and degree of experience in transportation demand management, from the applicants that meet the minimum qualifications.

3. Applicant certifiers may be independently employed or employed by an organization, but approval to certify shall be conferred only on individuals, not on organizations.

4. To be approved as certifiers, candidate certifiers must complete a training course developed and sponsored by the Department and must pass a proficiency examination at the completion of the course.

5. The Department shall approve certifiers for one-year, renewable periods. Approved certifiers shall sign and abide by a certifier's code of ethical conduct in certifying plans, including notifying the Department of any potential conflict of interest between themselves and an affected client employer. The Department may deny renewal or may revoke the certifier's approval if the Department receives multiple complaints from employers regarding the certifier's conduct, fees or review of plans, or if a Department audit of a sample of plans reviewed by the certifier indicates the certifier has not followed the certification procedures and criteria set forth in this chapter. The certifier may appeal revocation of approval as provided for in N.J.A.C. 16:50-14.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).
In (a) inserted "initial".

16:50-9.2 Certification procedures

(a) The following procedure shall govern plan certification:

1. The Department shall provide to each affected employer, along with required compliance plan forms, a list of approved certifiers. Employers shall select a certifier from among those on the list and send prepared plans directly to the certifier of their choice for review. An employer shall choose a certifier who is independent of the employer. A certifier shall not be considered independent if:

i. The certifier is currently an employee of the employer or was employed by the employer within the past six months;

ii. The certifier or an organization that employs the certifier prepared and/or will assist the employer to implement the plan; or

iii. The certifier or any organization by which the certifier is employed is currently under contract to the employer to provide or receive payment for any ETR or ECO related product, other than review and certification of a compliance plan, professional service, or membership fee, or was under such contract within the past six months.

2. The certifier shall review the plan utilizing training from the Department and the criteria described in N.J.A.C. 16:50-9.3. The certifier may contact the employer to clarify questions related to the plan or to request reasonable additional documentation from the employer.

3. If the certifier deems the plan to meet the certification criteria, the certifier shall certify the plan and return it to the employer for submittal to the Department. Plans not meeting the certification criteria shall be returned to the employer with an explanation of the reasons the plan was returned, indication of the sections of the plan that are unacceptable, and guidance on additions or changes that the employer could consider to bring the plan into compliance. The employer shall revise its plan as appropriate and re-submit the revised plan any approved certifier.

4. It is the responsibility of each affected employer to allow adequate time for certification. Failure of the certifier to certify the employer's plan in time to allow submittal of the plan to the Department prior to the deadline shall not excuse the employer from this obligation. Notwithstanding this provision, however, an employer that submits a certifiable plan to a certifier at least 90 days prior to the plan submittal deadline shall not be considered in violation of the plan submittal deadline until 60 days after the scheduled submittal date to the Department.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

In (a)4 substituted "each affected employer" for "an affected employer".

16:50-9.3 Plan certification criteria

(a) In assessing whether an initial compliance plan can be certified, a certifier shall consider the following criteria:

1. The completeness of the plan and its consistency with the provisions of this chapter;

2. The accuracy of the work location APO computation;

3. The appropriateness of the commute alternatives proposed in the plan to the location and employee population;

4. The appropriateness of the ECO program services and incentives selected by the employer to the commute alternatives;

5. The likely effectiveness of the ECO strategies in producing the target APO by the scheduled deadline;

6. The ability of the proposed implementation schedule to ensure ECO strategies included in the plan are implemented in a timely and thorough manner; and

7. The ability of the proposed monitoring process to allow a timely and effective review of the employer's progress toward the target APO.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

In (a) substituted "an initial" for "a".

16:50-9.4 Certification fees

Notwithstanding any other provisions of this chapter, there is no prohibition against a certifier charging a fee for its services.

SUBCHAPTER 10. COMPLIANCE PLAN REVIEW

16:50-10.1 Plan review schedule

Within 180 days of receipt of a plan, the Department shall review the plan for completeness and consistency with the provisions of this chapter and shall return an incomplete and inconsistent plan to the employer for revisions. If a plan is returned to the employer, concurrently, the Department shall notify the appropriate certifier that the plan was returned and the reason(s) it was returned. An employer whose plan is returned shall have 60 days from the date of return to revise and resubmit the plan to the Department. The employer shall not be required to have the plan recertified prior to resubmittal to the Department if the revised plan is not precipitated by a relocation of the work location. A plan not returned to the employer by the Department within 180 days of submittal shall be considered approved by the Department.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

In the second to the last sentence substituted "work location" for "affected work location".

16:50-10.2 Plan review guidelines

(a) The Department shall review plans for completeness and consistency, using the following criteria:

1. The presence of all required plan sections and minimum plan requirements, as described in N.J.A.C. 16:50-8;
2. The presence of the correct filing fee, as established in N.J.A.C. 16:50-8;
3. The accuracy of the APO calculation, in accordance with the formula provided in N.J.A.C. 16:50-7; and
4. A demonstration of approval by a certifier, in accordance with the procedures defined in N.J.A.C. 16:50-9.

16:50-10.3 Additional review by Department of sample of plans

The Department shall select a portion of the compliance plans reviewed and certified by each certifier for review, in accordance with the criteria presented in N.J.A.C. 16:50-9 for plan review and certification.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Substituted "compliance plans" for "affected employers' ECO programs" and following "for review" deleted "and audit".

SUBCHAPTER 11. DISCLOSURE OF INFORMATION

Authority

N.J.S.A. 27:26A-1 to 27:26A-14 (P.L.1992, c. 32 (New Jersey Traffic Congestion and Air Pollution Control Act); N.J.S.A. 27:1A-5, 27:1A-6 and Section 182(d)(1)(B) of the Clean Air Act Amendments (CAAA) of 1990 (42 U.S.C. Section 7511a(d)(a)(B)).

Source and Effective Date

R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

16:50-11.1 Administration of the Employer Trip Reduction Program

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

16:50-11.2 Authorized disclosure of information

(a) Disclosure of any information in the course of administering the ETR 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 any properly identified employee or duly authorized representative of an affected employer required to file a compliance plan, APO Survey Report or other information in accordance with this subchapter;

i. Requests for employer information received directly from an employee or duly authorized representative, in writing, will be honored once the identity of the requestor has been verified. Only information related to the employee's employer shall be released. Persons 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;

ii. Telephone or informal requests are not to be honored;

iii. Written requests from an attorney or other individual who states that he or she is the employer's representative are not to be honored unless the employer provides the Department with a signed and dated authorization for the release of the specified information. Persons 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 officers or employees of any agency of the Federal government or New Jersey State government which is lawfully charged with the administration, monitoring or enforcement of an employer trip reduction or employee commute option 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;

4. To other interested parties only to the extent and for such purposes that such disclosure will not impede the operation of, and is not inconsistent with, the purposes of the New Jersey Traffic Congestion and Air Pollution Control Act and this subchapter, and as may be expressly authorized by the Commissioner of Transportation. Such persons or agencies requesting information must do so in writing and must also certify in writing that the confidentiality of the disclosed information will be maintained;

5. To employees, employers, the press or media, and the public, disclosure of the number of affected employers by geographic location, as well as the aggregate percentage of employees by mode, and current aggregate APO of affected employers. Such release shall not include numbers of employees, trip reduction strategies, and the incentives identifiable to individual employers. Aggregate data which is not identifiable to individual employers may be released to anyone upon written request to the Department;

6. Mailing lists developed by the Department, which identify only the name and address of affected employers, shall be released to any interested party. Persons or agencies requesting information must do so in writing indicating the intended use of the list and the medium in which the mailing list is requested. Fees for mailing lists shall be determined by the medium in which it is requested, and the agency cost for duplication;

7. Information related to violations or penalties shall not be considered confidential and may be released upon request;

8. Any citizen or agency requesting information provided for in this subchapter shall refer to N.J.A.C. 16:1-2.2(f) and (g) regarding the sale of public records and costs associated with duplication of such records.

SUBCHAPTER 12. ENFORCEMENT AND PENALTIES

16:50-12.1 Work location audits

To verify implementation of work location programs, the Department shall have the authority to conduct or cause to be conducted audits of an employer's affected location. The Department shall notify an employer with a work location selected for an audit not less than 24 hours in advance of the audit. The employer shall provide the Department access to all records pertaining to the development, implementation, and administration of the ECO program described in the employer's plan, and access to employees at the location.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

In the second sentence inserted "with a work location".

16:50-12.2 Notice of noncompliance

(a) An affected or registered non-affected employer shall be considered in noncompliance for violations of any provisions of this chapter. An affected employer shall be subject to civil administrative penalties for violations of this chapter. Registered non-affected employers shall lose their designation and shall not be eligible to participate in consolidated plans or APO averaging for violations of this chapter.

(b) Upon determining that a violation has occurred, the Department shall have the authority to issue the affected employer a notice of noncompliance that shall describe the violation, the actions required to correct the violation, the deadline by which the violation shall be corrected, and the penalty that shall be assessed for continued noncompliance. If the affected employer has not corrected the violation by the deadline specified in the notice of noncompliance, the Department shall have the authority to assess penalties in accordance with N.J.A.C. 16:50-12.3.

(c) Upon determining that a violation has occurred, the Department shall have the authority to issue the registered non-affected employer a notice of noncompliance that shall describe the violation, the actions required to correct the violation, the deadline by which the violation shall be corrected, and the consequences for continued noncompliance. If the non-affected employer has not corrected the violation by the deadline specified in the notice of noncompliance, the non-affected employer shall lose its designation and shall not be eligible to participate in consolidated plans or APO averaging.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Designated existing text as (a) and (b); rewrote (a); in (b) inserted "have the authority to"; and added (c).

16:50-12.3 Penalties for noncompliance

(a) An affected employer, including an independent government employer, found to be in noncompliance, as defined by N.J.A.C. 16:50-12.2, shall be subject to a penalty of not more than \$250.00 for each violation, except as follows:

i. A penalty of not more than \$250.00 per month for the first two months and not more than \$500.00 per month thereafter for each work location for which an employer fails to submit a registration form as required by N.J.A.C. 16:50-6;

ii. A penalty of not more than \$1,000 per month for each work location for which an employer fails to file a plan or report as required by N.J.A.C. 16:50-8; and

iii. A penalty of not more than \$5,000 per month for each work location which fails to achieve the APO target required by N.J.A.C. 16:50-4.

(b) Each month of noncompliance with the provisions of this chapter shall be considered an additional, separate, and distinct offense. However, the Commissioner shall impose no initial penalties for a period of one year following the date of adoption of this rule, unless the employer has been notified in writing of the violation and the assessment of the penalty, been given a 30-day grace period from the date of the notice of violation to correct the violation, and failed during that time to comply. In addition to the penalties in (a) above, an employer filing a plan during the grace period shall be subject to a \$100.00 late filing fee.

(c) An employer with an affected location that fails to meet the target APO in 1996, but whose 1996 update plan is approved by the Department, shall not be subject to the \$5,000 penalty for failure to meet the target APO until one year after the date by which the update plan is required to be filed. An employer with an affected location that fails to meet the target APO in 1996 and who fails to submit an update plan or submits an update plan the Department does not approve, shall be subject to the penalty for failure to reach the target APO in accordance with the provisions of (b) above.

(d) A government employer failing to comply with any provision of this chapter shall, in the case of the State departments or agencies, receive a notice of violation addressed to the head of the department or agency. Upon receipt of the notice, the head of the department or agency shall consult with the Commissioner as to actions to be taken by the department or agency to comply with the provisions of this chapter. Failing appropriate action by the department or agency, the Commissioner may recommend to the Attorney General that action be taken to effect compliance. In the case of government employers other than State departments or agencies, the department may request the Attorney General to institute civil proceedings in the Superior Court to enjoin the government employers to comply with the provisions of this chapter. The Court is authorized to impose fines for continued noncompliance in the same amount as the civil administrative penalties provided for in (a) above.

(e) A registered non-affected employer found to be in noncompliance shall not be subject to civil administrative penalties, but shall forfeit its designation as a registered non-affected employer.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

In (c) inserted "with an affected location" where appearing through-out; deleted former (d); recodified existing (e) as (d); and inserted a new (e).

16:50-12.4 Noncompliance authority

The Commissioner has the authority, at his or her discretion, to determine if a violation has occurred and the amount of the penalties assessed, if any, not to exceed the maximum amount allowed by law, taking into account the nature, seriousness, and circumstances of the violation, whether there is a pattern of noncompliance, and the good faith efforts that are being made by the employer to achieve compliance.

New Rule, R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

SUBCHAPTER 13. EXTENSIONS, EXEMPTIONS, AND WAIVERS

16:50-13.1 Deadline extensions

An employer that, for reasons beyond its control, is unable to meet a deadline established in this chapter may petition the Department for an extension of the deadline. All requests shall be submitted in writing, be signed by either the highest ranking responsible officer at the site or the Chief Executive Officer of the employer, and include a complete explanation of the circumstances precipitating the request. This explanation should include, but not be limited to, the reasons for the delay, a proposed new commitment date for plan submittal, and the good faith efforts that the employer is undertaking. A request for an extension of any deadline shall be submitted in advance of the deadline. Notwithstanding the date of the request, the Department shall have 30 days from receipt of a complete request to rule on extensions of scheduled deadlines. Extensions may be considered for hardship circumstances or other unusual circumstances that may make it impossible to meet the deadlines established in this chapter.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Inserted the provision concerning Chief Executive Officers and the sentence concerning what the explanation should include.

16:50-13.2 Exemptions

(a) An employer with a work location that meets any of the criteria described in (a)1, 2, or 3 below may apply to the Department for an exemption for that work location from the requirements of this chapter. Requests for exemptions shall be made in writing and shall be signed by the highest ranking responsible officer at the work location or the Chief Executive Officer of the employer.

1. An employer that employs 100 or more employees at a single work location, but that can document that fewer than 33 employees averaged over the immediately preceding 12 month period are scheduled to report during the employer identified peak period; or

2. An affected work location which changes status due to a decrease in employment and that can document that it now employs an average of less than 100 employees for the immediately preceding 12 month period; or

3. An employer with a registered non-affected location that chooses to remove the location from the ETR Program.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

In (a) added provisions on work location and Chief Executive Officers; in (a)1 substituted "can document that" for "has" and "averaged over the immediately preceding 12 month period arrive" for "arriving"; and added (a)3.

16:50-13.3 Waivers

(a) Each affected employer is required to comply with all provisions of this chapter, including the requirement to achieve the target APO as specified in N.J.A.C. 16:50-4. However, an affected employer that would suffer extreme financial hardship may petition the Department for a "hardship" waiver. An employer seeking a hardship waiver must demonstrate, on the basis of evidence submitted to the Department, that the costs of compliance would substantially impair its ability to continue as a going concern. The Department may adjust the terms and conditions of the waiver, and will outline the specific non-financial strategies that an employer will be required to implement, if any. Hardship waivers shall not remove the requirement to achieve the APO target. Hardship waivers may be applied for in the manner described in this subchapter. An affected employer for which a hardship waiver is approved shall not be assessed a penalty for non-compliance.

(b) An affected employer that has implemented an approved plan in "good faith," as defined in N.J.A.C. 16:50-13.5, but that has not achieved the target APO by November 1997, may petition the Department for a "good faith" waiver of the penalty for failure to achieve the target as follows:

1. A request for a waiver shall be made in writing, shall include the results of the employer's 1997 APO survey, an explanation of why the ECO strategies included in the 1996 update plan did not achieve the APO target, and shall be signed by the highest ranking responsible officer at the work location. A request for a good faith waiver shall not be made sooner than November 15, 1997.

(c) The Department shall act on a request for any waiver within 120 days of receipt of such a request. If the request cannot be resolved favorably within that period, the Department shall forward the request to the ETRP Review Board for its consideration.

(d) The ETRP Review Board shall consist of five members, which shall include; the Executive Director of the State Planning Commission or his or her designee; one independent certifier; three certifiers shall be selected and serve on a rotating basis; one representative from an environmental interest group; and two affected employers, one from an affected employer having between 100 and 500 employees, two such employer representatives shall be selected, with one serving as the primary representative and one serving as an alternate; and one affected employer having more than 500 employees, two such employer representatives shall be selected, with one serving as the primary representative and one serving as an alternate. All representatives shall be selected by the Commissioner. The ETRP Review Board shall review employer requests as a group, with all meetings requiring a quorum of three and make a recommendation based on a majority of those present on the disposition of the request to the Assistant Commissioner for Planning. The Executive Director of the State Planning Commission or his or her designee shall serve as the chairperson of the ETRP Review Board. Each representative to the ETRP Review Board shall be responsible for identifying any conflicts of interest which may arise in the review of requests and shall remove themselves from

such review while such conflict or appearance of conflict exists. In instances when a conflict of interest is identified, the designated alternate shall participate in the review of the request, unless they also identify a conflict of interest.

(e) Any interested party may submit nominations for the certifier representative. Environmental interest groups may submit nominations of individuals that would serve as their representative to the ETRP Review Board. Any affected employer may nominate representatives from the two categories of employer. The members of the ETRP Review Board shall serve one year terms on the Board, except for the Executive Director of the State Planning Commission, who shall serve for the duration of his or her appointment as Executive Director. All terms shall be served on a calendar year basis, January through December. Persons interested in nominating representatives to the ETRP Review Board should submit their nominations in writing to: W. Dennis Keck, Acting Assistant Commissioner for Planning, New Jersey Department of Transportation, CN 600, Trenton, NJ 08625-0600. Nominations must be submitted by June 1 of each year for the next year's term.

(f) A waiver, when granted, shall be in effect for a one-year period from the time the waiver is granted, unless otherwise determined by the ETRP Review Board. An employer desiring an extension of a waiver shall submit a subsequent request to the Department.

Amended by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Relettered (b)2 as (c) and (d); rewrote (c) and (d); added (e); and relettered (b)3 as (f).

16:50-13.4 (Reserved)

Repealed by R.1995 d.338, effective June 19, 1995.
See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Section was "Application fees for extensions, exemptions and waivers."

16:50-13.5 Definition of "Good Faith Effort"

(a) Each affected employer shall develop and implement an ECO Program in good faith at each affected location. In determining an employer's good faith, the Department shall first consider whether the employer implemented an approved plan in accordance with an approved implementation plan, but may consider any or all of the following additional criteria:

1. Did management at the location demonstrate significant commitment to implementation of the program and institute written employee policies that encouraged the use of commute alternatives?
2. Did the employer assess the transportation needs and interests of employees through employee surveys or other techniques?
3. Did the employer periodically review its progress toward the target APO, at a minimum through conduct of an APO survey of its employees in 1995, and through other actions designed to assess the continuing appropriateness of the employer's ECO program services and incentives?

4. If the employer's 1995 APO survey showed the APO increase was less than 50 percent of that needed to achieve the target APO, did the employer increase and/or modify its program to include appropriate contingency strategies?

5. Did the employer seek advice from a certifier, the Department, a TMA, a transportation consultant, or other entity with TDM experience, prior to November 1996, regarding desirable future actions to increase APO?

6. Did the ETC attend a Department-authorized ETC training course?

7. Did the APO at the work location increase a reasonable amount compared to other employers with similar work location characteristics and employee populations?

8. Did the employer consider, and utilize feasible, options for consolidated plans and APO averaging?

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Substituted "Each" for "An".

16:50-13.6 Scope of waivers

All waiver requests shall be made based on work location.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

Following "work location" deleted "and all fees shall be applied per work location".

SUBCHAPTER 14. APPEALS

16:50-14.1 Requirements

(a) An employer that is found to be in noncompliance with any provision of this chapter and on which a penalty was assessed in accordance with this chapter shall have the opportunity to appeal such penalty in accordance with the procedures set forth in the New Jersey Administrative Procedures Act (NJAPA), 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 the violation.

(b) A certifier whose approval to certify is revoked shall have the opportunity to appeal such revocation in accordance with the procedures set forth in the New Jersey Administrative Procedures Act (NJAPA), N.J.S.A. 52:14B-1 et seq. An ETC Trainer whose designation as a Department approved trainer is revoked shall have the opportunity to appeal such revocation in accordance with the procedures set forth in the New Jersey Administrative Procedures Act (NJAPA), N.J.S.A. 52:14B-1 et seq. An appeal shall be submitted to the Department in writing not later than 30 days after receipt of notification of the revocation.

(c) The Department shall, if desired by the employer, the ETC Trainer, or the certifier, submit the request for appeal to the ETRP Review Board prior to its disposition through the procedures of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:1. An employer, ETC Trainer, or certifier is not required to utilize the Review Board, and may choose to appeal directly to the Commissioner through the provisions of the Administrative Procedures Act. The ETRP Review Board, described in N.J.A.C. 16:50-13, shall make a recommendation to the Assistant Commissioner for Planning, of the Department, who shall rule on the request for appeal. If the ruling is not satisfactory to the employer, ETC Trainer, or the certifier, the employer, the ETC Trainer, or the certifier may appeal the ruling of the Assistant Commissioner to the Commissioner as provided for N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1.

Amended by R.1995 d.338, effective June 19, 1995.

See: 27 N.J.R. 827(a), 27 N.J.R. 2436(b).

In (b) added the sentence concerning ETC Trainers; and extended (c) to include ETC Trainers.

SUBCHAPTER 15. EMPLOYER TRIP REDUCTION PROGRAM TAX CREDIT

Authority

N.J.S.A. 27:26A-1 to 14 (P.L. 1992, c.32 "New Jersey Traffic Congestion and Air Pollution Control Act"); N.J.S.A. 27:1A-6; Section 182(d)(1)(B) of the Clean Air Act Amendments (CAAA) of 1990 (42 U.S.C. Section 7511a(d)(1)(B)); N.J.S.A. 27:26A-15 et seq. (P.L. 1993, c.150, approved June 24, 1993); and N.J.S.A. 54A:6-23 et seq. (P.L. 1993, c.108, approved April 16, 1993).

Source and Effective Date

R.1995 d.75, effective February 6, 1995.

See: 26 N.J.R. 756(a), 27 N.J.R. 521(a).

16:50-15.1 Definitions

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

"Affected employer" means an employer that employs 100 or more employees as averaged over the immediately preceding 12 months period at any single work location in an affected area of New Jersey and is subject to the Employer Trip Reduction Program pursuant to this chapter. As used in this subchapter, an affected 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 Act," 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.

"Buspool" means and includes the operation of an auto-bus 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.

"Commuter transportation benefit" means the cost to employers of providing benefits to an employee for utilizing an alternative means of commuting and the cost of providing services and facilities which would encourage or facilitate use by employees of alternative meanings of commuting. The benefit shall include the costs of parking by employees at park-and-ride lots if used to benefit an employer's ECO program.

"Cost" means the invoice cost, purchase price, or contract amount of an eligible ECO 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.

"Eligible expense" means a direct expenditure made by an affected employer to provide commuter transportation benefits in support of its ECO program. The expenses must be outlined in the company's annual compliance plan and approved by the Department of Transportation (NJDOT) as eligible for the ECO tax credit. Categories of eligible expenses are identified in N.J.A.C. 16:50-15.3.

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

"NJDOT" means the New Jersey Department of Transportation.

"Plan" means the "compliance plan," "update plan," "revised plan" or "maintenance plan" an affected employer is required to submit to NJDOT in accordance with N.J.A.C. 16:50-8.

16:50-15.2 Requirements

(a) An affected employer incurring expenses to provide commuter transportation benefits in support of an ECO program is entitled to a business tax credit, subject to the following limitations:

1. The affected employer must register with NJDOT as an ETR participant prior to the date of filing a tax return claiming an ETR tax credit with the New Jersey Division of Taxation.

2. Expenses for which an affected employer plans to claim the tax credit must be outlined in the compliance plan required to be submitted to NJDOT in accordance with this chapter. Expenses which are not identified in the approved compliance plan may still be claimed for tax credit if they are submitted to NJDOT as part of a revised compliance plan (N.J.A.C. 16:50-8.2(a)6) prior to the date of filing of the tax return with the New Jersey Division of Taxation.

3. The State may audit affected employers to ensure the eligibility of claimed expenses, upon 24 hours notice consistent with N.J.A.C. 16:50-12.1. The audit may address expenses identified in the original compliance plan as well as those subsequently submitted in a revised compliance plan.

4. The maximum yearly credit shall not be more than five percent of the amount spent per employee participating in the plan on eligible ECO 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 affected employees considered in the plan, specifically those employees scheduled to report between 6:00 A.M. and 10:00 A.M. at their work site. Expenses not specific to an individual employee may be averaged over the number of participating employees. For 1995 through 2004, the maximum yearly credit shall not be more than 10 percent of the amount spent per employee participating in the plan on eligible ECO 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 1995 through 2004 shall be defined as all affected employees participating in a commute alternative. 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, 2004, 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. 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 an ECO program.

6. 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 "affected employee" in N.J.A.C. 16:50-15.1.

7. 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.

8. The credit or partnership deduction shall not apply to accounting or privilege periods ending after December 31, 2004, and shall appear on the tax return as a cash basis or accrual basis credit or partnership deduction consistent with the basis currently used by the affected employer.

9. 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.

10. The affected employer shall file with NJDOT a "Plan Implementation Summary" listing the expenditures for which the affected employer has or will claim as an ETR tax credit. NJDOT will provide the Plan Implementation Summary to the New Jersey Division of Taxation.

11. All records relating to an ETR tax credit or partnership deduction claimed by an affected employer must be held by the affected 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 must also be held by the affected employer for four years subsequent to the date of the filing on which such credit is claimed.

12. Affected employers incurring expenses which were not identified in the approved plan but which would be eligible for a tax credit must submit to NJDOT a revised plan outlining those expenses. NJDOT may elect to audit the employer and its documentation to ensure the validity of the amended plan and the eligibility of claimed expenses.

13. An employer having liability for more than one of the taxes enumerated in the definition of "affected employer", at N.J.A.C. 16:50-15.1, 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.

14. A credit or partnership deduction shall be disallowed if the taxpayer fails to either meet the average passenger occupancy (APO) target as defined in N.J.A.C. 16:50-6 or fails to receive a hardship or good faith waiver from NJDOT pursuant to N.J.A.C. 16:50-13, within three years from the due date of the tax return reflecting a liability against which a credit or partnership deduction was claimed. If a company is not in substantial compliance, or did not receive a hardship or good faith waiver from NJDOT, then NJDOT shall notify the New Jersey Division of Taxation.

16:50-15.3 Eligible expenses

(a) Affected employers may wish to seek guidance from NJDOT 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" is the cost of personnel working directly on an ECO program. The eligible administration costs include only salary, benefits, and training (not overhead or indirect costs) for the ETC (100 percent if the ETC works full-time on ECO). Also included is a pro-rated percentage of the salary and benefits for other in-house staff working on ECO program planning, survey conduct or processing, plan preparation and/or implementation; and a pro-rated percentage of the salary and benefits for other staff used in support of the ECO, 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" is the invoice cost 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 costs 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 affected 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 a commute alternative. The term includes the cost of on-going or occasional subsidies, such as free/discounted transit passes, cash/parking/gas subsidies for rideshares, vanpool start-up payments, and empty seat subsidies for vanpools, that are provided to employees as an incentive to increase the use of commute alternatives. Cash or in-kind gifts of greater than nominal value provided to employees, in exchange for their participation in a commute alternative pursuant to an ECO program, are also an eligible financial incentive cost.

4. "Marketing costs" are the supply and salary costs directly related to promotion of an ECO 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 ECO 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 ETR tax credit, but that do not fit into the categories of administration, facilities/vehicles, 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 POOLMATCH software and establishing a hookup to a regional ridesharing database).

16:50-15.4 Proof of registration

NJDOT will supply the New Jersey Division of Taxation with a list of all affected employers who have an approved plan, for purposes of determining whether an ETR tax credit may be claimed.

16:50-15.5 Appeals

An affected employer whose expenses are deemed not eligible by the State for an ETR tax credit shall have the opportunity to appeal same in accordance with the procedures set forth in the New Jersey Administrative Procedure Act (NJAPA), 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 an ETR tax credit.