

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 Chapter 50, Railroad Transportation—Public Hearings, was repealed by R.1989 d.607, effective December 18, 1989.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).

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SUBCHAPTER 1. STATUTORY AUTHORITY

Law Review and Journal Commentaries

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

16:50-1.1 Statutory authority

(a) 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 employer, who is scheduled to report at the affected work location during the 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 assigned primarily for the purpose of performing work for the employer.

"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 location during peak periods, 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 location by 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.

"Carpool" means a group of two to six employees commuting to and from work by means of a vehicle with a seating capacity of 15 or fewer adult occupants.

“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,” “plan,” “update plan,” “revised plan” or “maintenance plan” means a plan an 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 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 affected work locations.

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

“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 assigned primarily 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 employer, and reports to the 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 individuals employed through independent contract companies.

“Employee commute options (ECO) program” means a program, required to be implemented by an 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” means the president, executive or managing director, other chief executive or operating officer, or other highest ranking employee located at an 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.

“Peak period” means the time period between the hours of 6:00 A.M. and 10:00 A.M. inclusive, Monday through Friday.

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

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

“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 for an entire day the location at which its work is performed; that is, work assigned to be done at the 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 work location, such that the employee makes a substitution for the commute trip to the affected work location for the entire day.

“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 employees commuting to and from work by means of a vehicle with a seating capacity of not more than 15 adult 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.

SUBCHAPTER 3. SCOPE AND REQUIREMENTS

16:50-3.1 Scope

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 affected employers that have fewer than 33 employees reporting to work during the peak period or that employ an average of less than 100 employees for the immediately preceding 12 month period may apply to the Department for an exemption from the requirements of this chapter.

16:50-3.2 Employer requirements

(a) Seven actions are required of affected employers. An affected employer 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 option (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.

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, Bureau of Employer Group Reduction, 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 shall not be required to submit the standard registration form, but shall submit an ETRP return card 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 after registering with the Department must submit a new registration form within 60 days of the date of the relocation.

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 at the location and the number assigned to report to the work location during the 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. An affected employer may designate a single contact person to receive APO survey and compliance plan forms for all affected locations.

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 an affected work location as the perfor-

mance measure against which an 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 affected location, and is equal to the number of employees arriving at the location during the peak period divided by the number of passenger vehicles in which the employees arrive at the same location during the peak period.

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 location during the 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 the Update Plan, in accordance with N.J.A.C. 16:50-8.

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 employer shall conduct APO surveys of the commute patterns of the employees who are scheduled to report to its affected location during the peak period. APO surveys shall be conducted no earlier than December 6, 1993 and in each year that the employer is required to make a submission to the Department. An 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 affected employer with more than one location in the State shall conduct a survey at each affected location.

16:50-7.2 Notice of requirement to survey

The Department shall, within 180 days of receiving completed registration forms from affected employers, but not later than May 1, 1994, notify each 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. The notice shall include copies of the required APO survey and compliance plan forms.

16:50-7.3 Survey procedure

(a) An affected employer shall conduct an APO survey of all employees assigned to report to the work location during the 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. 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 judgement, 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.

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. Immediately follows a week in which a holiday was observed on Friday or precedes a week in which a holiday will be observed on Monday;
 - iii. Is a week during which the employer holds a rideshare fair or other intensive information promotion related to the ECO program;
 - iv. 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
 - v. 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 within one month of the anniversary date of the previous survey, but no earlier than January of the submittal year.

4. An affected employer shall survey all affected employees scheduled to report to the affected location during the peak period in the survey week, except that an employer with 1,000 or more employees arriving at a single location during the peak period may survey a random sample of those employees. Employers desiring to conduct a random sample survey shall submit to the Department, Bureau of Employer Trip Reduction, a sampling methodology that is recognized 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 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 affected 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.

16:50-7.4 Reporting of survey results

An 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 no later than May 1, 1994. An 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 alone as an APO survey report.

16:50-7.5 Calculating work location APO

(a) An 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 affected 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 at the location between 6:00 A.M. and 10:00 A.M., Monday through Friday of the survey week, and

Vehicles Arriving is: total number of passenger vehicles in which these employees arrive at the location between 6:00 A.M. and 10:00 A.M., 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 affected location APO shall count employees scheduled to report at the location during the peak periods, Monday through Friday of the survey week as follows:

i. Each employee that is scheduled to report at the location during the 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 between 6:00 A.M. and 10:00 A.M., but that actually arrives at the primarily affected work location prior to 6:00 A.M. or after 10:00 A.M. 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 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 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 affected 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 affected work location.

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

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

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

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

ii. Motorcycles and mopeds.

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

i. Vanpools with seven or more employees;

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 affected work location.

6. An employee that is scheduled to report at the affected work location during the 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 they arrived the first day and then in a zero vehicle for each consecutive day they remain on-site or at work.

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

8. An employee that is dropped off at the affected 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 affected 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) 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 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.

SUBCHAPTER 8. COMPLIANCE PLANS AND APO REPORTS

16:50-8.1 Requirements

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

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, Bureau of Employer Trip Reduction, ATTENTION Compliance Unit, 1035 Parkway Avenue, 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. An employer that becomes an affected employer or an affected employer with a non-affected work location that becomes affected after May 1, 1994 shall be given a minimum of 180 days from the date it registers with the Department, as required by N.J.A.C. 16:50-6, to prepare and submit an initial compliance plan. This employer 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 employer that has achieved the required APO target shall prepare and submit to the Department a maintenance plan for each affected work location as described in N.J.A.C. 16:50-8.4(c).

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

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

5. Not later than November 15, 1997, each affected 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 affected work location. Other compliance plans revised for other minor corrections may be submitted directly to the Department for review and approval.

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.

16:50-8.4 Components of a standard compliance plan

(a) An affected employer shall prepare the compliance plan 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 work location, and name, title, and telephone number of the Employee Transportation Coordinator (ETC) at the work location appointed by the employer;
2. The tabulated 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; and

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

(b) Each affected employer shall provide information included in (a)1 through 6 above in the initial plan to establish a baseline against which future years can be compared.

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

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.

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. 16:50-8.4(a)1 through 6, 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. Letter 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 letter signed by the highest ranking responsible officer at the work location or plan preparer, if different from the employer, who shall attest to the correctness of the information included in the plan; and

5. A letter 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.

16:50-8.6 Required components of APO survey reports

(a) A complete APO survey report submittal will 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 letter 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.

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, an affected employer 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 location or two or more separate affected employers may submit a consolidated plan or report for any or all of the affected locations, provided that collectively the affected work locations reach the appropriate average target APO.

2. Employers submitting consolidated plans or APO Survey reports for affected 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 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:

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 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:

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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

affected 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 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 affected 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.

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

An affected employer shall designate an employee transportation coordinator (ETC) at each work location with 100 or more employees to administer the ECO program at that work location.

16:50-8.10 Document recordkeeping

(a) An 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; and
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.

(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.

SUBCHAPTER 9. PLAN CERTIFICATION

16:50-9.1 Selection and approval of certifiers

(a) Prior to submittal to the Department, 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.

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 an 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.

16:50-9.3 Plan certification criteria

(a) In assessing whether a 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.

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

(a) 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 affected work location. A plan not returned to the employer by the Department within 180 days of submittal shall be considered approved by the Department.

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 affected employers' ECO programs reviewed and certified by each certifier for review and audit, in accordance with the criteria presented in N.J.A.C. 16:50-9 for plan review and certification.

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.

SUBCHAPTER 11. (RESERVED)**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 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.

16:50-12.2 Noncompliance

An affected employer shall be considered in noncompliance and subject to civil administrative penalties for violations of any provisions of this chapter. Upon determining that a violation has occurred, the Department shall 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.

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;

(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 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 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) The Commissioner may assess the above mentioned penalties at his or her discretion, 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.

(e) 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.

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 and signed by the highest ranking responsible officer at the site. A request for an extension of the deadline to register as an affected employer shall be submitted not less than 30 days in advance of the deadline for registration. A request for extension of the deadline to submit a compliance plan or report shall be submitted not less than 90 days in advance of the deadline. The Department shall have 15 days from receipt of the 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.

16:50-13.2 Exemptions

(a) An employer that meets any of the criteria described in (a)1 and 2 below may apply to the Department for an exemption 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.

1. An employer that employs 100 or more employees at a single work location, but that has fewer than 33 employees arriving during the 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.

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 upon notification of intent to impose penalties for non-compliance and in the manner further provided for "good faith effort" waivers established 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.
2. The Department shall grant or deny a request for a waiver within 120 days of receipt of such a request. If the employer so chooses, prior to the decision on the request, the Department shall forward the request to a ETRP Review Board, for its consideration. The ETRP Review Board, consisting of 11 members, the membership of which shall include one representative each from the Departments of Transportation, Environmental Protection and Energy, and Labor; New Jersey Transit Corporation; one independent certifier; one representative from an environmental interest group; and one citizen; and four affected employers, two each from an affected employer having between 100 and 500 employees, and an employer affected employer having more than 500 employees, selected and trained by the Department, shall review employers' requests for waivers and make a recommendation on disposition of the request to the Assistant Commissioner. 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 conflicts exists.
3. 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.

16:50-13.4 Application fees for extensions, exemptions and waivers

All requests for extensions, exemptions, and waivers shall be accompanied by an application of \$250.00 per request. If the request is granted, the application fee shall be refunded.

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

(a) An 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?

16:50-13.6 Scope of waivers

All waiver requests shall be made based on work location 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 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 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 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, Policy and Planning, of the Department, who shall rule on the request for appeal. If the ruling is not satisfactory to the employer or the certifier, the employer 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.

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.