

46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Because an exemption from the Federal transportation conformity rule does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1995. Filing a petition for reconsideration of this final rule by the Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: January 13, 1995.

Barbara J. Goetz,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2308 is amended by adding paragraph (c) to read as follows:

§ 52.2308 Area-wide nitrogen oxides (NO_x) exemptions.

* * * * *

(c) The Texas Natural Resource Conservation Commission submitted to the EPA on May 4, 1994, a petition requesting that the Victoria County incomplete data ozone nonattainment area be exempted from the requirement

to meet the NO_x provisions of the Federal transportation conformity rule. The exemption request was based on monitoring data which demonstrated that the National Ambient Air Quality Standard for ozone had been attained in this area for the 35 months prior to the petition, with the understanding that approval of the State's request would be contingent upon the collection of one additional month of data. The required additional month of verified data was submitted later and, together with the data submitted with the State's petition, demonstrated attainment of the NAAQS for 36 consecutive months. The EPA approved this exemption request on March 2, 1995.

[FR Doc. 95-2283 Filed 1-30-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR PART 52

[WI43-01-6261a; AMS-FRL-5139-1]

Clean Air Act Approval and Promulgation of Employee Commute Options Program; Wisconsin

AGENCY: Environmental Protection Agency (EPA)

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Wisconsin on November 15, 1993 for the purpose of establishing an Employee Commute Options (ECO) program in the Milwaukee, severe-17, ozone nonattainment area. Wisconsin submitted the SIP to satisfy the provisions of the Clean Air Act (Act), that require that an ECO Program be established for employers with 100 or more employees for the purpose of reducing the number of vehicle trips being made to the worksite during the peak commuting period. The rationale for the approval is set forth in this document; additional information is available at the address indicated below. **DATES:** This final rule is effective April 3, 1995 unless someone submits adverse comments by March 2, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision and EPA's technical support documents are available at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments can be mailed to: Carlton Nash, Chief, Regulation Development Section (AT-18J), Air Toxics and Radiation Branch, Air and Radiation, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John M. Mooney, (312) 886-6043. Anyone wishing to come to the Region 5 offices should contact John M. Mooney first.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Act will require employers with 100 or more employees in the seven county Milwaukee Severe-17 ozone nonattainment area to participate in a trip reduction program. The concerns that lead to the inclusion of this Employee Commute Options (ECO) provision in the Act are that more people than ever before are driving and they are driving longer distances. The increase in the number of drivers and the increase in the number of vehicle miles traveled (VMT) currently offset a large part of the emissions reductions achieved through the production and sale of vehicles that operate more cleanly. It is widely accepted that shortly after the year 2000, without limits on increased travel, the increased emissions caused by more vehicles being driven more miles under more congested conditions will outweigh the benefits derived from the fact that each new vehicle pollutes less, resulting in an overall increase in emissions from mobile sources. The ECO provision in the Act outlines the requirements for a program designed to minimize the use of single occupancy vehicles in order to gain emissions reductions beyond those obtained via stricter tailpipe and fuel standards.

Section 182(d)(1)(B) of the Act requires that employers submit their compliance plans to the State 2 years after the SIP revision is submitted to EPA. These employer developed compliance plans are designed to convincingly demonstrate an increase in the average passenger occupancy (APO) rates of employees who commute to work during the peak period by no less than 25 percent above the average vehicle occupancy (AVO) of the nonattainment area. These compliance plans must "convincingly demonstrate" that the employers will meet the target no later than 4 years after the SIP is submitted. The target APO must be at least 25 percent higher than the AVO for the nonattainment area.

On November 15, 1993 the State of Wisconsin submitted a SIP revision to

the EPA to satisfy the requirements of section 182(d)(1)(B) of the Act. In order to receive approval, the State submittal must contain each of the following ECO Program elements: (1) The AVO for each nonattainment area; (2) the target APO which is no less than 25 percent above the AVO; (3) an ECO program that includes a process for compliance demonstration; and (4) enforcement procedures to ensure submission and implementation of compliance plans by subject employers. Pursuant to section 108(f) of the Act, the EPA issued guidance on December 17, 1992 interpreting various aspects of the statutory requirements (Employee Commute Options Guidance, December 1992). A copy of this guidance has been included in this rulemaking docket.

II. Analysis

The State has met the requirements of section 182(d)(1)(B) by submitting a SIP revision that implements all required ECO Program elements as discussed below.

1. The Average Vehicle Occupancy

Section 182(d)(1)(B) requires that the State determine the AVO at the time the SIP revision is submitted. The State has met this requirement by determining that the AVO for the Milwaukee area, at the time of SIP submittal, was 1.14, based on a home interview survey conducted by the Southeast Wisconsin Regional Planning Commission. The EPA concludes that this survey accurately represents the Milwaukee ozone nonattainment area AVO.

2. The Target APO

Section 182(d)(1)(B) indicates that the target APO must be at least 25 percent above the AVO for the nonattainment area. An approvable SIP revision for this program must include the target APO. The State has met this requirement by setting the target APO at 1.40 which is 25 percent above the AVO of 1.14.

3. ECO Program

State or local law must establish ECO Program requirements for employers with 100 or more employees at a worksite within severe and extreme ozone nonattainment areas. In the ECO Program Guidance issued in December 1992 the EPA states that automatic coverage of employers of 100 or more should be included in the law. In addition, States should develop procedures for notifying subject employers regarding the ECO Program requirements.

States and/or local laws must require that initial compliance plans "convincingly demonstrate" prospective

compliance. Approval of the SIP revision depends on the ability of the State/local regulations to ensure that the Act requirement that initial compliance plans "convincingly demonstrate" compliance will be met. This demonstration can take on any of four forms or any combination of these.

One option is for the State to provide evidence that State agency resources are available for the effective plan-by-plan review of employer-selected measures to ensure the high quality of compliance plans, and demonstrate that plans that are not convincing will be rejected.

As explained more fully in the EPA's Technical Support Document, the State of Wisconsin has met this requirement by providing evidence in the SIP that agency resources are available to implement the ECO program in an effective manner. Section 144.3712 of the Wisconsin Statutes authorizes the WDNR to administer the ECO program in the Milwaukee area. Administrative and training costs for the program will be provided by the State, as well as through monies received through Congestion Mitigation and Air Quality (CMAQ) provisions of the Intermodal Surface Transportation Efficiency Act (ISTEA). To ensure compliance, State regulations establish requirements for the WDNR to notify employers of the ECO program requirements, as well as prescribing schedules for the submittal of compliance plans by employers. Also contained in Wisconsin's ECO rule is a requirement that employers designate and register at least one employee transportation coordinator for purposes of administering the ECO program at individual worksites. Wisconsin's ECO rule requires that employers submit compliance plans by November 15, 1994 with full compliance with the program requirements by November 15, 1996. The EPA believes that the State's demonstration that adequate resources are available to implement the program is acceptable and sufficient to achieve the effective plan-by-plan review of employer-selected measures to ensure the high quality of compliance plans.

4. Enforcement Procedures

States and local jurisdictions must include in their ECO regulations penalties and/or compliance incentives for an employer who fails to submit a compliance plan or an employer who fails to implement an approved compliance plan according to the compliance plan's implementation schedule. Penalties should be sufficient to provide an adequate incentive for employers to comply and be no less than the expected cost of compliance. Wisconsin's ECO SIP has met this

requirement by including in its ECO regulations severe penalties for failure to comply with provisions of the regulation. A violator may be subject to fines of up to \$25,000 per day per violation.

III. Final Rulemaking Action

The State of Wisconsin has submitted a SIP revision that includes each of the ECO Program elements required by section 182(d)(1)(B) of the Act and EPA guidance issued pursuant to section 108(f) of the Act. The SIP includes a verifiable estimate of the areawide AVO at the time that the SIP was submitted and a target APO that is at least 25 percent above the areawide AVO. Employers with more than 100 employees are required to submit compliance plans to the State that convincingly demonstrate that the plan will increase the APO per vehicle in commuting trips between home and the worksite during peak travel periods to a level not less than 25 percent above the areawide AVO for all such trips. EPA is, therefore, approving this submittal.

IV. Procedural Background

Because EPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on April 3, 1995. However, if the EPA receives adverse comments by March 2, 1995, then the EPA will publish a document that withdraws this action, and will address the comments received in response to the requested SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**. Comments will be addressed in the final rule on the proposal. The EPA will not initiate a second comment period on this action.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on

September 30, 1993. The OMB has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to any State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Nitrogen oxide, Ozone, Volatile organic compounds.

Dated: December 19, 1994.

David A. Ullrich,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(77) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(77) On November 15, 1993, the State of Wisconsin submitted a revision to the State Implementation Plan (SIP) for the implementation of an employee commute options (ECO) program in the Milwaukee-Racine, severe-17, ozone nonattainment area. This revision included Chapter NR 486 of the Wisconsin Administrative Code, effective October 1, 1993, and Wisconsin Statutes sections 144.3712, enacted on April 30, 1992 by Wisconsin Act 302.

(i) Incorporation by reference.

(A) Chapter NR 486 of the Wisconsin Administrative Code, effective October 1, 1993.

(B) Wisconsin Statutes, section 144.3712, enacted on April 30, 1992 by Wisconsin Act 302.

[FR Doc. 95-2284 Filed 1-30-95; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-172; RM-7726, RM-7800, RM-7801]

Radio Broadcasting Services; Cushing and Cleveland, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Texas Classical Radio, Inc., substitutes Channel 246C for Channel 246C1 at Cleveland, Texas, and modifies the construction permit of Station KRTK(FM) to specify operation on Channel 246C. The coordinates for Channel 246C at Cleveland, Texas, are 30-32-06 and 95-01-05. This document also dismisses the petition filed by Cavalier Broadcasting proposing the allotment of Channel 245A to Cushing, Texas, and its counterproposal to allot Channel 245C3 at Cushing, Texas. See 56 FR 29450, June 27, 1991. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 17, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-2173.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 91-172, adopted January 19, 1995, and released January 26, 1995. The full text of this Commission decision is available for inspection and copying during normal

business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 246C1 and adding Channel 246C at Cleveland.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-2362 Filed 1-30-95; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[Federal Acquisition Circular 90-23 Correction]

Federal Acquisition Regulation; Technical Correction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical correction.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing a correction to Federal Acquisition Circular 90-23 published on December 28, 1994, at 59 FR 67010. Miscellaneous typographical, editorial, and technical errors appeared in the following areas: the introductory document, FAR Case 93-609—Section 4c Price Adjustments, FAR Case 91-13—Acquisition of Utility Services, FAR Case 92-36—Walsh-Healey Definitions, and in FAR Case 93-304—Defense Production Act Amendments.

EFFECTIVE DATE: December 28, 1994.