

States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Small business assistance program.

**Note:** Incorporation by reference of the SIP for the State of Arkansas was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 24, 1995.

**William B. Hathaway,**  
*Acting Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 E—Arkansas**

2. Section 52.170 is amended by adding paragraph (c)(31) to read as follows:

**§ 52.170 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(31) The State is required to implement a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM) as specified in the plan revision submitted by the Governor on November 6, 1992. This plan submittal, as adopted by the Arkansas Commission on Pollution Control and Ecology on November 5, 1992, was developed in accordance with section 507 of the Clean Air Act. On April 23, 1993, the Governor submitted Act 251 of 1993 which establishes the Compliance Advisory Panel (CAP) for the PROGRAM.

(i) Incorporation by reference.

(A) Act 251 of 1993 approved by the Governor on February 26, 1993. Included in this Act are provisions creating a CAP, establishing membership of the CAP, and addressing the responsibilities and duties of the CAP.

(B) Arkansas Department of Pollution Control and Ecology, Minute Order No. 92–81, adopted November 5, 1992.

(ii) Additional material.

(A) Revision entitled, “Arkansas Small Business Stationary Source Technical and Environmental Compliance Assistance Program SIP Revision”, adopted November 5, 1992.

(B) Legal opinion letter dated November 5, 1992, from Steve Weaver, Chief Counsel, Arkansas Department of Pollution Control and Ecology, regarding legality of Commission teleconference meeting.

3. Section 52.183 is added to subpart E to read as follows:

**§ 52.183 Small business assistance program.**

The Governor of Arkansas submitted on November 6, 1992, a plan revision to develop and implement a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM) to meet the requirements of section 507 of the Clean Air Act by November 15, 1994. The plan commits to provide technical and compliance assistance to small businesses, hire an Ombudsman to serve as an independent advocate for small businesses, and establish a Compliance Advisory Panel to advise the program and report to the EPA on the program’s effectiveness. On April 23, 1993, the Governor submitted Act 251 of 1993 which establishes the Compliance Advisory Panel for the PROGRAM.

[FR Doc. 95–5442 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–P

**40 CFR Part 52**

[IN39–3–6715; FRL–5158–1]

**Approval and Incorporation of Employee Commute Option Program in the State Implementation Plan; Indiana**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** On August 18, 1994, the United States Environmental Protection Agency (USEPA) approved the Employee Commute Options (ECO) regulation for Lake and Porter Counties, Indiana. On the same day (August 18, 1994), a proposed rule was also published which established a 30-day public comment period noting that, if adverse comments were received regarding the direct final rule, the USEPA would withdraw the direct final rule and publish an additional final rule to address the public comments.

Adverse comments were received during the public comment period from the Indiana Chamber of Commerce, the Northwest Indiana Forum, three affected employers, three motorcycle associations, and three individuals. This final rule summarizes these comments and USEPA’s responses and finalizes the approval of the ECO program for Lake and Porter Counties.

**EFFECTIVE DATE:** This action will be effective on April 7, 1995.

**ADDRESSES:** Copies of the SIP revision, public comments and USEPA’s responses are available for inspection at the following address: (It is recommended that you telephone Jessica Radolf at (312) 886–3198 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this SIP revision is available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), room 1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Jessica Radolf, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–3198.

**SUPPLEMENTARY INFORMATION:**

**I. Background Information**

The ECO regulations (326 Indiana Administrative Code Article 19) discussed in this rule were submitted on February 25, 1994, by the Indiana Department of Environmental Management (IDEM) for the severe ozone nonattainment area that includes Lake and Porter Counties. These rules were submitted to satisfy section 182(d)(1)(b) of the Clean Air Act (Act) which requires that employers in severe ozone nonattainment areas with 100 or more employees at a worksite participate in a trip reduction program. On August 18, 1994 (59 FR 42506) the USEPA approved the ECO regulation as a revision to the Indiana ozone SIP. (For further information refer to the August 18, 1994, final rule.) Because adverse comments were received regarding the direct final rule, USEPA removed the direct final rule on November 7, 1994 (59 FR 55368). This final rule addresses the comments which were received during the public comment period and announces USEPA’s final action on the

ECO regulation for Lake and Porter Counties.

## II. Public Comments and USEPA Responses

### *Comment*

Several commenters believe that employees will be forced to change their commuting habits. Employees note that driving is a privilege and that the USEPA is trying to take it away with the ECO program. There is concern that employees will face substantial penalties if they do not meet the ECO regulations. Employers believe they will be required to force their employees to change their commuting habits. The employers note that ECO will create opportunities for legal challenges from angry employees against employers put in the position of infringing on employee's commuting choices and personal schedules.

### *USEPA Response*

There is nothing in the Act that would force an employee to change commuting habits. The Act requires employers to provide incentives to employees so that employees may choose alternatives to driving alone. The Act gives employers flexibility to use any incentives they choose to promote compressed work weeks, mass transit, vanpools, carpools, telecommuting, bicycling, and walking. An employee may accept or reject an employer's incentives to stop driving alone to work.

Many employees will benefit from the ECO program. Coordinated ridesharing programs will facilitate carpooling and vanpooling that can reduce employee stress and save employees money. Efforts by employers to support coordinated transportation planning at the regional level may improve transportation services, such as added bus routes, so that employees will have more choices in how they get to work. Guaranteed ride home programs have been found to cost employers very little and provide assurance to employees who do not drive to work that their transportation needs can be met in case an emergency arises.

Consequently, the privilege of driving is not being taken away with the ECO program and employees will not face penalties for not meeting the ECO requirements. Employees will voluntarily decide whether or not to change their commuting habits. Conversely, employers will not be required to force their employees to change their commuting habits. Employers will develop a program of incentives with the goal of influencing

their employees to voluntarily decide to commute differently.

### *Comment*

One commenter objects to the need for an ECO program since new cars are built to be much cleaner. The commenter notes that if the ECO program goes into effect, money developing these cleaner cars will have been wasted since people can't drive the clean cars.

### *USEPA Response*

The Act requires implementation of an ECO program in those areas that have been classified as severe or extreme nonattainment for ozone or serious nonattainment for carbon monoxide. Fourteen areas in eleven States, including Lake and Porter Counties in Northwest Indiana, must implement an ECO program.

These severe and extreme ozone nonattainment areas will have to reduce emissions by a very large amount to achieve the health-based ambient air quality standard for ozone. A study currently being conducted for the Chicago, Milwaukee, and Northwest Indiana areas by the Lake Michigan Air Directors Consortium and the States of Indiana, Illinois, Wisconsin, and Michigan indicates that current levels of emissions, considering growth, will need to be reduced by as much as 40 to 60 percent, or more to achieve attainment of the ozone air quality standard by the year 2007.

Implementation of numerous control measures for stationary, area, and mobile sources of emissions will have to occur to achieve this percentage reduction. Mobile sources, which include automobiles, account for almost 47 percent of the ozone pollution in Northwest Indiana.

The growth in the use of automobiles is one of the primary reasons it has been difficult to achieve better ozone air quality. Vehicle miles traveled have experienced a growth rate over the past 25 years which is nearly three times the rate of the population growth. While hundreds of millions of dollars have been invested over the past 25 years to reduce vehicle emissions by applying good technology to both the vehicles and the fuel, it is predicted that the growth in total emissions due to continued growth in vehicle miles traveled may eventually outweigh those gains.

The ECO program is part of the Act's strategy to address the growth in vehicle miles traveled. The purpose of the ECO program is to reduce air pollution caused by vehicle traffic and congestion through reductions in the number of

work-related drive-alone trips. Although work-related commute travel is only about a third of all travel, it is uniquely suited to promote alternatives to single occupant vehicle travel. There are concentrations of people going to the same place at the same time who can share rides. The ECO program was mandated by Congress because Congress believes there is a need to address how people travel as a part of the solution to cleaning the air and reducing travel congestion.

Therefore, even though new cars are built to be much cleaner, there is a need for ECO and the money spent to develop cleaner cars will not have been wasted. The ECO is a means to reduce, not eliminate, automobile usage and, thus, maintain the emission reduction benefits derived from cleaner cars.

### *Comment*

One commenter opposes ECO as a "band-aid" solution to the ozone problem. The commenter notes that the appropriate approach is for the Federal Government to mandate that the automobile manufacturers produce more natural gas powered vehicles. The commenter points out that natural gas is plentiful in this country, inexpensive and clean burning, and that the technology exists. The commenter notes that all that is needed is to make natural gas available to the consumer. The commenter suggests that the phase-in of natural gas vehicles should begin now, so future generations naturally have that option.

### *USEPA Response*

A major goal of the Act is to promote vehicles that pollute less than conventional gasoline powered vehicles or not at all. Act initiatives include promotion of natural gas vehicles which are recognized as an available and clean technology.

The Clean Fuel Fleet (CFF) (section 246) program explicitly addresses the phase-in of lower emitting vehicles and trucks beginning in model year (MY) 1998 for fleets of 10 or more vehicles, that are either centrally fueled or determined to be "capable" of being centrally fueled, and which are located or primarily operated in an affected nonattainment area. The CFF program will require that specified percentages of a covered fleet operator's new vehicle acquisitions in a given model year consist of low emitting vehicles. The light-duty clean fuel vehicle (up to 8,500 pounds GVWR) phase-in requirements are 30 percent in MY 1998, 50 percent in MY 1999, and 70 percent thereafter. The heavy-duty clean fuel vehicle (8,500 to 26,000 pounds

GVWR) phase-in requirement is 50 percent each year starting in MY 1998. Fleet owners will receive emission credits for purchasing ultra low emitting vehicles.

USEPA ECO guidance issued on December 17, 1992, recognizes the importance of encouraging the use of vehicles operated by means other than a gasoline or diesel operated internal combustion engine. For the purpose of calculating the average passenger occupancy (APO), States may develop factors to be applied to the vehicle count which would reflect the lower emission levels from alternatively fueled vehicles that include natural gas vehicles.

#### *Comment*

Several commenters believe the program will result in great costs to area ECO employers, but will not result in any environmental benefits. The commenters cite that the results of an ECO pilot project in Northwest Indiana show that despite great expense and sincere effort to make the program successful, employees simply were not responding.

#### *USEPA Response*

As discussed above, the ECO program is part of the Act's strategy for addressing the growth in vehicle miles traveled. Congress mandated ECO as a starting point for changing travel behavior so air quality problems associated with single-occupancy automobiles usage can be solved. The program should not be thought of as a short-term effort. It is really the beginning of a ten- or twenty-year effort to expand employees' choices and opportunities for travel. The funding provisions of the Intermodal Surface Transportation and Efficiency Act make it possible for Federal dollars to be used for public transportation projects which can support ECO long-term goals. The USEPA believes that the ECO program will play a significant role in making people aware of how they travel and this awareness will eventually extend beyond work-related trips to trips taken throughout the day. This awareness will have important implications related to traffic congestion, air quality, climate change and energy usage.

The results of the ECO pilot project cannot be used to substantiate claims that ECO will not work in Indiana. Employer plans only began to be implemented in the late spring of 1994 and there has not been enough time to evaluate effectiveness or costs. In addition, participants in the ECO pilot project were not required to develop the full scale compliance plans that will be

required when the program is fully implemented.

#### *Comment*

Several commenters address the unlikely success of carpooling in Northwest Indiana. The commenters note that employees of any one company are spread out over a wide geographic area, and many worksites have multiple shifts beginning during the peak travel period of 6:00 a.m. to 10:00 a.m. The commenters also discuss that the nature of their work requires that employees have use of their car at all times. The commenters note that they often do errands on the way to and from work, such as taking children to and from daycare, and are concerned about handling a family emergency that may occur in the middle of the day.

#### *USEPA Response*

Carpooling and vanpooling will be important elements of many ECO programs. While there will always be employees that cannot carpool because of individual needs, there will be many employees that will be able to carpool. Moreover, the needs of commuters will change over time. For example, employees that must drop children off at daycare currently may be able to carpool in the future when their children are older. The ECO program provides an opportunity to establish commuting options, such as carpooling, public transit or other alternatives, to meet future commuting needs.

Employers cannot determine that their employees are spread out over too wide a geographic area for carpooling to succeed until they have conducted their APO surveys that include employee locations and attitudes. Even if employees are spread out over a large area, there may be small pockets of employees willing to carpool. In addition, more employers in close proximity may operate cooperative carpooling programs in which their employees would be given the opportunity to carpool together.

The potential success of carpooling in any area will largely be determined by the amount of effort by employers to provide educational programs and measures that support ridesharing. Guaranteed ride home programs provide assurance to employees who do not drive to work that their transportation needs can be met in case of a midday emergency. All of the participating employers in the Northwest Indiana ECO pilot project have included a guaranteed ride home program in their compliance plan. Employers may also establish on-site amenities that will make it less necessary for employees to

have their own vehicle, including automatic teller machines, cafeterias, and daycare facilities.

Other support measures for carpooling include: offering preferential or subsidized parking for carpools and vanpools; charging drive alones for parking; cashing out parking with cash equivalents to free parking; sponsoring or subsidizing carpools and vanpools; providing comprehensive rideshare matching services; subsidizing shuttles during midday to local shopping areas; and providing company-owned vehicles for ridesharing.

Several alternative measures would address the concern over multiple shifts during the peak travel period. The ECO can be looked at as an opportunity for employers to reevaluate how they do business. At some worksites, it may be possible to reschedule shifts by reducing the number of starting times to consolidate the number of employees arriving at worksites at the same times. Other alternatives include changing work schedules to accommodate compressed work weeks in which employees work longer shifts over fewer days. This gives employers the opportunity to offer their employees more favorable schedules such as four day work weeks and three-day weekends. Some employers may want to allow certain employees to telecommute, or work at home, one or two days a week.

Employers can also adopt incentive programs to encourage employees to use public transit if it is available. Where public transit is not available, employers may want to turn to the private sector and sponsor subscription bus services. Employers can also improve facilities to promote bicycle use and walking options.

#### *Comment*

Several commenters object that the ECO program is required all year long, although the ozone season is only April through October. The commenters note that high ozone levels typically are recorded only during exceptionally hot and dry periods in June, July or August.

#### *USEPA Response*

The ozone season in Indiana is April through September, not October. However, excessive driving of single occupied vehicles during the 6 a.m. to 10 a.m. peak commuting period and the resulting traffic congestion occurs all year long. Indiana chose to implement its ECO program on an annual basis because the State believes it would be difficult to change commuting habits, such as reforming carpools, just in the spring and summer. The State believes

it makes financial sense, as well as practical sense, to implement several of the alternative commuting measures on a year-round basis, thereby avoiding continual start-up costs and the initial resistance of commuters to changing their commuting habits.

#### *Comment*

Several commenters note that high ozone levels have been recorded only in one urbanized area of Lake County and no monitoring data exist to justify expansion of the ECO program to all of Lake County or any of Porter County.

#### *USEPA Response*

Lake and Porter Counties, Indiana are part of the Chicago consolidated metropolitan statistical area (CMSA) as determined by the census bureau. Section 107(d)(4)(A)(iv) of the Act requires that the boundaries of any ozone nonattainment area classified as serious, severe, or extreme by operation of law include the entire CMSA. Congress thus ensured that the entire area contributing ozone forming pollutants would be included in the nonattainment area. The inherent nature of ozone formation is that volatile organic compounds and oxides of nitrogen are emitted in one area and carried downwind while reacting in the presence of sunlight to form ozone. Thus, the highest concentrations of ozone are not necessarily experienced in the area producing the greatest amount of pollutants but instead the highest ozone readings may be recorded many miles downwind.

Section 181(a) of the Act also requires that the years to consider when determining the classification of an area were to be the years 1987 to 1989. In the case of Lake and Porter Counties, the monitoring site at Ogden Dunes in Porter County recorded 4 days during 1987, 10 days during 1988, and 0 days during 1989, with ozone exceeding the National Ambient Air Quality Standard (NAAQS). The highest 1-hour ozone level at the Ogden Dunes site was during 1988 and was 0.192 parts per million (ppm). The monitoring site in Lake County with the most ozone exceedances during this time period was in Hammond, Indiana which recorded 1 exceedance day during 1987, 5 days during 1988, and 0 days during 1989. The highest 1-hour ozone concentration was 0.186 ppm. However, the sites in Lake and Porter Counties were not the highest sites in the CMSA. The monitoring site with the highest recorded ozone levels in the CMSA is located in Kenosha County, Wisconsin. This site recorded 18 days during 1988 that exceeded the ozone NAAQS with

the highest concentrations being 0.222, 0.193, 0.190 and 0.187 ppm. Thus, this site was used as the "design value" site and determined the classification of the entire CMSA, as required by the Act.

Therefore, the entire Chicago CMSA is, by operation of law, classified as a severe ozone nonattainment area and the Act requires that all counties in the area must be included in the ECO program.

#### *Comment*

Several commenters are concerned that employer monitoring of the success of ECO plans cannot be determined with any degree of accuracy. The commenters note that employer monitoring is unreasonable and requires resources unavailable to most employers.

#### *USEPA Response*

Employers in Northwest Indiana will be required to evaluate the success of their ECO program 1 year after the initial plan submittal and annually thereafter. Employers will be required to resurvey their employees to calculate the APO attained. The survey and survey methods will be the same as the initial survey conducted, insuring consistency between surveys. Employers will receive computer software developed by Purdue University—Calumet to electronically calculate the APO and do cross-tabulations.

During the year, employers can monitor participation in their programs to determine participation levels and whether there is a need to make program modifications. A variety of methods that are not beyond the means of Northwest Indiana employers can be used to monitor employee participation, including but not limited to: registering program participants; monitoring preferential parking; having supervisors complete weekly reporting forms; having employees complete weekly self-reporting forms; and conducting periodic surveys. The degree of accuracy in monitoring will be determined by the honesty of employees reporting how they are commuting. Since employees are not facing any penalties for not participating in an employer's program, there should be little incentive to be untruthful.

#### *Comment*

Several commenters are concerned that Northwest Indiana does not have a regional public transportation system in place. As such, most area employers do not have the option of encouraging or providing financial incentives to their employees to use transit. In addition, commenters note their concern over

potential safety problems from their employees using transit in high crime areas or walking several blocks along dark roads from bus stops.

#### *USEPA Response*

ECO provides an opportunity for employers to get involved in regional transportation planning issues. The Northwest Indiana Regional Planning Commission has proposed extensive improvements in the transportation network in Lake and Porter Counties. The Indiana Transportation Association, the statewide organization of public and private transit providers, is working with local transit agencies and state representatives to develop a legislative initiative for funding transit improvements statewide, including Lake and Porter Counties.

There are full-scale public transit systems in place in the cities of Hammond and Gary and a small transit system in the city of East Chicago that can provide alternatives for employees. Hammond Transit has recently extended its bus service on Calumet Avenue into the town of Munster. There are also a number of private transit companies willing to work with employers subject to ECO to provide subscription bus services.

The Congestion Mitigation and Air Quality (CMAQ) provision of the Intermodal Surface Transportation and Efficiency Act (ISTEA) is providing money that is enabling the transit agencies in Northwest Indiana to provide expanded service. These funds have enabled the region to launch a tri-city link-up pilot project which involves the interconnection of bus services between the central business districts of Gary, East Chicago, and Hammond. This pilot project has proven extremely successful and will most likely be continued. The city of Gary has been doing a study of expanding transit service into the cities of Griffin, Highland, and Munster and linking up with the Hammond transit service in Munster. Gary Transit has recently submitted a proposal for CMAQ funds to run a pilot of the actual service. In addition, several new park-and-ride facilities, which will be staging areas for mass transit, vanpools, carpools, and subscription bus services, are being designed and will be paid for with CMAQ funds.

Concern over the lack of safety due to poor walking or safety conditions can be addressed by working with the appropriate entities to have lighting and walking facilities improved; relocating transit stops so they are closer to the worksite; or providing shuttle service from transit stops to the worksite.

Where transit is not an option, there are several measures discussed above that can be used to encourage employees to drive to work in a means other than a single occupied vehicle.

The funding available through ISTEA as well as the requirements of the ECO program should be seen as an opportunity to improve the provision of public transportation in Lake and Porter Counties and other similar areas.

#### *Comment*

One commenter opposes the mandate that public schools participate in the ECO program. The commenter noted that several characteristics of public schools will make them unable to comply successfully with the ECO program and will divert needed resources from the primary goal of educating students. The commenter explained that public school work schedules are inflexible prohibiting adjustment of work hours to accommodate flexible hours or compressed work weeks; and providing monetary incentives to staff is prohibited since funds can only be dispersed for educational expenses. The commenter noted the ECO program discriminates against employees of larger schools and favors employees of smaller schools; students account for the majority of drivers and are not included in the program; and the school district does not get credit in the average passenger occupancy calculation for the 6000 students that are transported by school bus.

#### *USEPA Response*

The USEPA is committed to finding ways for States to implement the ECO program so that the burden on affected employers is minimized. However, USEPA cannot categorically exempt any employers from any of the requirements of the ECO program. It is clear that public schools must be subject to the program and so long as they demonstrate a good faith effort to meet the target average passenger occupancy, they will not be penalized.

There are ways for public schools to encourage employees to commute differently that do not involve large expenditures or manipulation of work schedules. Because the school work schedule is fixed, there are a large number of employees arriving at the worksite at the same time making it possible to encourage ridesharing. Several of the measures listed above which would support ridesharing are inexpensive such as preferential parking for vehicles with more than one passenger; guaranteed ride home programs; comprehensive rideshare

matching services; and educational programs that promote ridesharing.

The ECO program does not discriminate against employees of larger schools in favor of employees of smaller schools. Congress selected a threshold of 100 employees because it is Congress' intent to target employers who have enough employees arriving in the peak period to establish a viable ECO program. The USEPA recognizes there are situations in which the majority of an employer's workforce follows a non-standard schedule, and the number of employees arriving in the peak period is small enough to make ridesharing and special employer-provided services difficult. Therefore, under the December 17, 1994, USEPA ECO Guidance, a de minimis exemption may be made at the State's option whereby employers with worksites at which fewer than 33 employees report to work during the peak travel period are not subject to the requirements. The Indiana ECO rule has adopted this de minimis exemption. While the Indiana ECO rule applies to those employers which employ 100 or more employees at a single worksite, the worksite must have 33 or more employees reporting between 6 a. m. and 10 a.m. on any single day, Monday through Friday.

The Act does not require the inclusion of students in the State ECO program even though students may account for the majority of drivers in some schools. However, the Act does not preclude the State from developing a separate trip reduction regulation that would specifically address the commuting habits of students. In addition, students riding school buses are not included in the APO calculations because they are not employees commuting to the worksite. Other types of businesses and worksites, such as hospitals and shopping centers for example, have large numbers of nonemployees coming to the worksite as well.

#### *Comment*

Several commenters claim that ECO precludes the use of motorcycles as a commuting option without consideration of convenience, contributions to reduced congestion, economic hardship imposed by such prohibitions, or environmental benefits such as fuel efficiency and less manufacturing pollution. Commenters believe the Indiana ECO rule does not address the rights of those Indiana citizens who choose to commute to work using a motorcycle and recommend that motorcycles be exempted from the program. The commenters fear that ECO could lead to

a ban of motorcycle operation between the hours of 6 a.m. and 10 a.m. Commenters believe that the methodologies used to calculate the average vehicle occupancy (AVO) and APO diminish the value of motorcycles.

#### *USEPA Response*

The ECO program requires employers with 100 or more employees to implement programs that will encourage their employees that arrive at their worksite between 6 a.m. and 10 a.m. to commute to work by a means other than a single occupied vehicle. Affected employers will conduct surveys to determine the APO of the vehicles arriving at their worksites between 6 a.m. and 10 a.m. and then develop a program to encourage their employees that arrive in single occupied vehicles to use an alternative means of commuting.

Motorcycles used to commute to an affected worksite will be counted as vehicles since they have internal combustion engines. While USEPA recognizes the need for additional information on motorcycle emissions and commute patterns, current data show that motorcycles emit significantly more pollutants that help to form ozone than do light-duty vehicles (e.g., passenger cars) on a grams/mile basis.

Individuals who ride a motorcycle to an affected worksite between 6 a.m. and 10 a.m. will be encouraged to find an alternative means of commuting to that worksite. However, as discussed above, there is nothing in the Act that would force motorcyclists to change commuting habits. Motorcyclists, like all employees, may accept or reject an employer's incentives to stop driving. Many motorcyclists could benefit by participating in carpools and vanpools, or using public transit programs that reduce stress and save money.

Consequently, it is not necessary to exempt motorcycles from the ECO program since motorcycles have the same rights under the program as all other vehicles. ECO does not preclude the use of motorcycles as a commuting option; and does not eliminate the rights of Indiana citizens who choose to commute by motorcycle. In addition, the methodologies used to determine the AVO and APO do not need to be modified since they appropriately identify the number of vehicles with internal combustion engines on the road during the 6 a.m. to 10 a.m. peak period and the number of people traveling in those vehicles.

### **III. Final Rulemaking Action**

The State of Indiana has met the requirements of the Act by revising the Indiana ozone SIP to include an ECO

program. Therefore, USEPA approves the ECO program for Lake and Porter Counties.

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. The Office of Management and Budget (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 SIP. Each request for revision to any SIP 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., USEPA 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, USEPA may certify that the rule will not have a significant economic 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.

The 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 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 USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (1976).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be

challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Ozone.

Dated: February 10, 1995.

**David A. Ullrich**,  
*Acting Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 P—Indiana**

2. Section 52.770 is amended by adding paragraph (c)(92) to read as follows:

**§ 52.770 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(92) On February 25, 1994, Indiana submitted an employee commute option rule intended to satisfy the requirements of section 182(d)(1)(B) of the Clean Air Act Amendments of 1990.

(i) *Incorporation by reference.* (A) Title 326 of the Indiana Administrative Code, Article 19 MOBILE SOURCE RULES, Rule 1, Employee Commute Options. Filed with the Secretary of State, October 28, 1993, effective November 29, 1993. Published at Indiana Register, Volume 17, Number 3, December 1, 1993.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[SC19-1-5031a; FRL-5166-7]

**Approval and Promulgation of Implementation Plans State: Disapproval of Revisions to the South Carolina State Implementation Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is disapproving South Carolina's generic bubble regulation submitted for approval into the State Implementation Plan (SIP) by the State of South Carolina through the South

Carolina Department of Health and Environmental Control (DHEC) on June 5, 1985, because it does not comply with EPA's Emissions Trading Policy Statement (ETPS) of December 4, 1986, or the Economic Incentive Program Rules (EIP). The policy states that existing state generic bubble rules should be reviewed and that a notice be published identifying any deficiencies found in the review and giving a means and a schedule to correct them. However, since revision of their federally approved generic rule or withdrawal of the 1985 submittal will require legislative action by the State, South Carolina requested in a letter to John Hankinson, Regional Administrator, that EPA disapprove the submittal. Therefore, EPA is rescinding the previous approval of the generic bubble regulations and disapproving the June 5, 1985 submittal.

**DATES:** This final rule will be effective May 8, 1995 unless adverse or critical comments are received by April 7, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments on this action should be addressed to Kay T. Prince, at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

- Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
- Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.
- South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

**FOR FURTHER INFORMATION CONTACT:** Kay T. Prince, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347-3555 x4221. Reference file SC19-1-5031.

**SUPPLEMENTARY INFORMATION:** On June 7, 1982 (47 FR 38887), EPA approved into the SIP the South Carolina generic bubble regulation as meeting all EPA