

relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 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.

Conditional approvals of SIP submittals under sections 110 and 301 and subchapter I, Part D of the CAA 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, 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. The CAA 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 (S.Ct. 1976); 42 U.S.C. 7410(a)(2). This discussion applies in the case where EPA finalizes a limited approval/limited disapproval action as well.

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the submitted commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing state requirements nor does it impose any new federal requirements.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds, Nitrogen dioxide.

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

Dated: February 15, 1995.

Felicia Marcus,

Regional Administrator.

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BILLING CODE 6560-50-P

40 CFR PART 52

[IL97-1-6575; FRL-5158-6]

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

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve the State Implementation Plan (SIP) revision request submitted by the State of Illinois on July 8, 1994, for the purpose of establishing an Employee Commute Options Program (ECO Program) in the Chicago area, including the counties of Cook, Lake, DuPage, McHenry, Kane and Will and the townships of Aux Sable and Gooselake in Grundy County and Oswego in Kendall County. The rationale for the proposed approval is set forth below; additional information is available at the address indicated below.

DATES: Comments on this proposed rule must be received on or before March 30, 1995.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch, (AR-18J) USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

Copies of the ECO Program SIP revision request and USEPA's analysis are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

(It is recommended that you telephone Jessica Radolf at (312) 886-3198 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Jessica Radolf, Regulation Development Section, Regulation Development Branch, (AR-18J) USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, (312) 886-3198.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the section 182(d)(1)(B) of the Clean Air Act, as amended in 1990 (amended Act), requires employers with 100 or more

employees in the counties of Cook, Lake, Dupage, McHenry, Kane, and Will and the townships of Aux Sable and Gooselake in Grundy County and Oswego in Kendall County to participate in a trip reduction program. The concerns that lead to the inclusion of this Employee Commute Options (ECO) provision in the amended Act are that more people 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 fact that each new vehicle pollutes less, resulting in an overall increase in emissions from mobile sources. The ECO provision outlines the requirements for a program designed to minimize the use of single occupancy vehicles in commuting trips in order to gain emissions reductions beyond what can be and will be obtained through stricter tailpipe and fuel standards.

Section 182(d)(1)(B) of the amended Act requires that employers in severe and extreme ozone and carbon monoxide (CO) nonattainment areas submit their compliance plans to the State two years after the SIP is submitted to USEPA. These compliance plans developed by employers must be designed to convincingly demonstrate an increase in the average passenger occupancy (APO) of vehicles used by their 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. Where there are important differences in terms of commute patterns, land use, or AVO, the States may establish different zones within the nonattainment area for purposes of calculation of the AVO.

Section 110(k) of the amended Act contains provisions governing USEPA's action on SIP submittals. The USEPA can take one of three actions on ECO Program SIP submittals. If the submittal satisfactorily addresses all of the required ECO Program elements, the USEPA shall grant full approval. If the submittal contains approvable commitments to implement all required ECO Program elements, but the State does not yet have all of the necessary

regulatory authority to do so, the USEPA may grant conditional approval. Finally, if the submittal fails to adequately address one or more of the mandatory ECO Program elements, the USEPA shall issue a disapproval.

On July 8, 1994, the State of Illinois submitted a SIP revision request including Title 92 of the Illinois Administrative Code Part 600: Employee Commute Options to USEPA in order to satisfy the requirements of section 182(d)(1)(B) of the amended Act in the counties of Cook, Lake, DuPage, McHenry, Kane and Will and the townships of Aux Sable and Gooselake in Grundy County and Oswego in Kendall County, Illinois. The USEPA issued a finding of completeness on this submittal on July 14, 1994.

In order to gain approval, the State submittal must contain each of the following ECO Program elements: (1) The AVO for each nonattainment area or for each zone if the area is divided into zones; (2) the target APO which is no less than 25 percent above the AVO(s); (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. The USEPA 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) of the amended Act 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 establishing an AVO for the entire Chicago severe ozone nonattainment area. The AVO was determined to be 1.092 based on the most recent census data and was included as part of the Illinois SIP on July 8, 1994. Illinois has affirmed that this AVO is representative of the AVO at the time of submittal as required by section 182(d)(1)(B).

The Chicago area AVO was calculated using a methodology that did not include transit ridership in the numerator of the AVO calculation, resulting in a lower AVO than if transit riders had been included. Transit ridership is, however, included in the APO calculation. USEPA staff had

informed Illinois on November 19, 1992, that USEPA could approve a definition of AVO that did not include transit. Final ECO guidance was issued on December 17, 1992, that would not allow for this type of AVO calculation.

Illinois' position is that including transit ridership in the AVO calculation would require a 25 percent increase above the average vehicle occupancy over existing conditions, which already relies very heavily on transit ridership, and this would penalize the Chicago area for having invested heavily in an extensive public transit infrastructure.

The State points out that the Illinois program has the support of affected employers that feel that the Illinois AVO target is attainable. It is the State's position that adoption of a transit oriented definition, with a much higher target, would be perceived by employers as unattainable and would erode their support.

In a June 10, 1994, letter from Administrator Carol M. Browner to Senator Frank R. Lautenberg, USEPA affirmed that "our continuing effort here at EPA is to make the ECO Program work in ways that make sense at the local level." USEPA believes that Illinois' calculation of the AVO baseline without transit ridership reflects local concerns, recognizes the already significant investment in local and Federal dollars to develop and operate an existing major public transit infrastructure, and is approvable because it is consistent with Clean Air Act section 182 (d)(1)(B) language that allows for average vehicle occupancy rates, "* * * reflecting existing occupancy rates and the availability of high occupancy modes." Illinois correctly points out that if transit ridership is included in the AVO baseline then cities like Chicago will have a much higher target AVO than some other cities simply because there is an efficient rail system already in place.

In light of USEPA's prior indication to Illinois that it could approve the AVO calculation, and the agency expressed desire to allow flexibility in implementing the ECO program, USEPA proposes to approve the AVO calculation.

2. The Target APO

Section 182(d)(1)(B) indicates that the target APO must be not less than 25 percent above the AVO for the nonattainment area. An approvable SIP revision for this program must include the target APO. Illinois has met this requirement by setting the target APO at 1.36 which is 25 percent above the AVO of 1.092.

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 and serious carbon monoxide areas. In the ECO Program Guidance issued December 1992, USEPA 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.

State 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's requirement that initial compliance plans convincingly demonstrate compliance will be met. This demonstration can have any of four forms or any combination of these.

One option is for the State to include in the SIP 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 that plans that are not convincing will be rejected.

A second option is for the regulations in the SIP to contain a convincing minimum set of measures that all employers must implement. These measures will be subject to review and approval by USEPA as adequate when the SIP is processed.

A third option is for the regulations in the SIP to provide that failure by the employer to meet the target APO will result in implementation of a regulation-specified, multi-measure contingency plan. This plan will be reviewed by USEPA for adequacy when the SIP is processed.

A fourth option is for the regulations in the SIP to include financial penalties for employers who fail to meet the target APO, and/or compliance incentives that are large enough to result in a significant prospective incentive for the employer to design and implement an effective initial compliance plan of its own.

Illinois has met these requirements by providing evidence in the SIP that Illinois Department of Transportation resources are available to implement the first option. Illinois has contracted with several consulting firms to administer and monitor the program, to develop a training program for employers, and to prepare informational and educational materials.

Illinois will begin to notify the approximately 5,400 employers in the Chicago area with 100 or more employees in three staggered groups. Beginning in January 1995, registration packages were to be sent to the largest 250 employers representing approximately one third of all affected employees. Registration packages will be mailed to the second and third groups of employers in April 1995, and July 1995, respectively. Registration packages will include a complete guidance document, all necessary forms, information regarding training and information regarding how to withdraw from the program if the number of employees at the worksite falls below 100. Registration, APO surveys, and compliance or maintenance plans will be required from employers 30, 90, and 240 days, respectively, following receipt of the registration packet.

Each affected employer will receive program guidance that explains the requirements of the program and provides guidelines for developing approvable compliance plans for two phases of the program. In Phase 1—Start-Up (1994 to 1996) employers have the option of developing initial compliance plans using one of 14 start-up packages or the option of utilizing the value-added system. In Phase 2—Compliance (1996 to 1998) employers that have implemented their initial compliance plan for two years, must develop a renewal compliance plan using the value-added approach.

Phase 1—Start-Up (1994 to 1996)

Option A, ECO Start-up packages, allows employers to choose one of 14 start-up packages, each of which contains a fixed set of support measures that must be implemented. The required measures are minimum requirements and employers may supplement these packages by implementing additional strategies.

The start-up packages include: (1) Rideshare with Support; (2) Ride-share with Guaranteed Ride Home; (3) Rideshare with On-Site Amenities; (4) Rideshare with Vanpool Support; (5) Transit with Guaranteed Ride Home; (6) Transit with On-Site Transit Pass/Token Sales; (7) Transit with Transit Check Participation; (8) Transit with Shuttle Service; (9) Bicycle/Walk Program; (10) Telecommuting; (11) Compressed Work Week; (12) Parking Cash Out; (13) Transportation Allowance; and, (14) Episodic Program. Each of these packages requires that a trained employee transportation coordinator be hired by the employer to develop and implement the package. USEPA believes that initial employer compliance plans

that include any of these start-up packages could convincingly demonstrate compliance during the first four years of the program.

Option B, the Value-Added System, would allow employers to develop an initial compliance plan that is customized to the worksite. Employers would work through a series of steps for building up the value of a compliance plan to a level that will ensure compliance by selecting from a menu of trip reduction strategies that each has a designated vehicle reduction value. These steps include: (1) Work hour programs (telecommuting and compressed work week); (2) trip reduction support functions for carpool, vanpool, transit, bicycle, and walk programs; and (3) use of financial incentives and disincentives. Vehicle reduction estimates were developed for each support function and financial incentive and disincentive for three APO ranges and three transportation environments. These values are applied using a series of worksheets to estimate both the singular and additive effects of the proposed trip reduction strategies.

Phase 2—Compliance (1996–1998)

After employers have implemented their initial compliance plan for two years, they must develop and implement a renewal compliance plan based on the value-added approach that is designed to attain the target APO.

The Illinois Department of Transportation shall within 90 days of a plan submittal evaluate the compliance plan. An employer whose compliance plan is not approved will be required to submit a revised plan within 60 days of notification.

USEPA proposes to accept the Illinois program as a viable ECO Program that will reduce vehicle miles traveled (VMT) in the Chicago severe ozone nonattainment area. The June 10, 1994, letter from Administrator Carol Browner to Senator Frank R. Lautenberg stresses USEPA's commitment to policies that demonstrate ongoing flexibility in the ECO Program. USEPA will allow "states to grant employers credit for any measure that reduces employee commute vehicle trips in gasoline-fueled vehicles." Further, the letter provides that States may approve employer plans that include seasonal components if the plans will achieve the trip reduction goal as determined by the State.

USEPA believes approval of the Illinois' episodic Start-up package provides full flexibility in establishing a viable, longterm ECO Program in Illinois. The Illinois Episodic Start-up package is a temporary, seasonal option

in a program that phases-in increasingly stringent requirements in which employers must achieve the State's trip reduction goals four years after the SIP submittal. Employer's may implement the episodic start-up package only during the first two years of the ECO Program. After which, all employers must switch to the value-added approach and be in compliance by July 8, 1998. For these reasons the episodic start-up package is being proposed for approval as part of Phase 1 of the Illinois ECO Program. During the Phase 1 period USEPA expects the episodic start-up package to serve as a demonstration project and for the purpose of collecting information on its effectiveness. The episodic strategy is not being proposed for approval for the period after the first two years of the ECO Program and all employers must meet the requirements associated with the value-added approach.

4. Enforcement Procedures

States and local jurisdictions need to 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 no less than the expected cost of compliance.

Illinois' ECO SIP has met this requirement by including in its ECO legislation substantial penalties for failure to comply with any provision of the regulation. A violator may be subject to a fine of up to \$10,000 and up to \$1000 per day for each violation. Violations include: (1) Knowingly failing to register or to submit a survey, or a compliance plan for an affected worksite; (2) knowingly falsifying or misrepresenting information provided in an employer survey or compliance plan; (3) failing to make a good faith effort to implement a compliance plan. Affected employers who make a good faith effort to implement their approved compliance plans, but fail to achieve the target APO will not be subject to penalties.

III. Proposed Rulemaking Action and Solicitation of Comments

The USEPA proposes to approve the ECO SIP revision submitted by the State of Illinois. The State of Illinois has submitted a SIP revision that includes each of the ECO Program elements required by section 182(d)(1)(B) of the amended 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. Employer notification was scheduled to begin in January 1995. Registration forms, APO surveys, and compliance or maintenance plans will be required from employers 30, 90, and 240 days, respectively, following receipt of the registration packet. Mailing of renewal notices will begin in January 1997.

Substantial penalties that will provide an adequate incentive for employers to comply and are no less than the expected cost of compliance are included in the regulation. USEPA is, therefore, proposing to approve this submittal. Public comments are solicited on the requested SIP revision and on USEPA's proposed rulemaking action. Comments received by March 30, 1995 will be considered in the development of USEPA's final rule.

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 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.*, 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 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 USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

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

Dated: February 10, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95-4789 Filed 2-27-95; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95-27, RM-8582]

Radio Broadcasting Services; Yazoo City, Mississippi

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mississippi College, licensee of Station WHJT(FM), Channel 228A, Clinton, Mississippi, proposing the deletion of vacant Channel 229A at Yazoo City, Mississippi. Any party wishing to express an interest in Channel 229A Yazoo City, Mississippi, should file their expression of interest by the initial comment deadline specified herein.

DATES: Comments must be filed on or before April 17, 1995, and reply comments on or before May 2, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Shaun A. Maher, Smithwick & Belediuik, P.C., 1990 M Street, NW, Suite 510, Washington, D.C. 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-27, adopted February 9, 1995, and released February 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95-4846 Filed 2-27-95; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

48 CFR Part 5416

DLA Acquisition Regulation; Type of Contracts

AGENCY: Defense Logistics Agency, DoD.
ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Logistics Agency proposes to add coverage by adding a new part to 48 CFR Chapter 54, the Defense Logistics Acquisition Regulation (DLAR) Part 5416. The proposed coverage affects regulations on the use of solicitation provisions and contract clauses for Economic Price Adjustments (EPA). Comments are hereby requested on the proposed rule. The proposed DLAR coverage expands