Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This interim final determination regarding the Commonwealth of Virginia I/M SIP is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 1997.

Filing a petition for reconsideration by the Administrator of this interim final determination of Virginia's enhanced I/M SIP 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) of the Administrative Procedures Act).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 12, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

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 VV—Virginia

2. Section 52.2450 is amended by revising the first sentence of paragraphs (b)(1), paragraph (b)(2), and the first sentence of paragraph (b)(3) to read as follows:

§ 52.2450 Conditional Approval.

* * * * *

(b) * * *

(1) The Commonwealth must perform and submit the new modeling demonstration that illustrates how its program will meet the relevant enhanced performance standard by June 16, 1998. * * *

(2) The Commonwealth must submit to EPA as a SIP amendment, by June 16, 1998, the final Virginia I/M regulation which requires a METT-based evaluation be performed on 0.1% of the subject fleet each year as per 40 CFR 51.353(c)(3) and which meets all other program evaluation elements specified in 40 CFR 51.353(c), including a program evaluation schedule, a protocol for the testing, and a system for collection and analysis of program evaluation data.

(3) By June 16, 1998, Virginia must adopt and submit a final Virginia I/M regulation which requires and which specifies detailed, approvable test procedures and equipment specifications for all of the evaporative and exhaust tests to be used in the enhanced I/M program. * * *

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[FR Doc. 97–24945 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–21–1–7345a; FRL–5894–4]

Approval and Promulgation of State Implementation Plan: Employee Commute Options (Employer Trip Reduction) Program for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA is removing the Texas Employee Commute Options (ECO) rule from the State Implementation Plan (SIP) revision submitted by the State of Texas for the purpose of establishing an ECO program (also known as the Employer Trip Reduction (ETR) program). This action relieves the State from mandatory implementation of the ECO program in the Houston-Galveston ozone nonattainment area. The authority for this removal action is based on Public Law 104–70 and the subsequent EPA policy issued on April 23, 1996. This legislation allows the states to remove such provisions from the SIP, or withdraw their submission, if the state notifies the Administrator, in writing, that the state has undertaken, or will undertake, one or more alternative methods that will achieve emission reductions equivalent to those to be achieved by the removed or withdrawn provisions.

DATES: This action is effective on November 18, 1997, unless adverse or critical comments concerning this action are submitted and postmarked by October 20, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments must be submitted to Mr. J. Behnam, P.E., Air Planning Section (6PDL), Environmental Protection Agency,Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Copies of the State ECO withdrawal request are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone: (214) 665–7214.

Air and Radiation Docket and Information Center, Environmental

Protection Agency, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E., Air Planning Section (6PDL), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the 1990 Clean Air Act (the Act) required employers with 100 or more employees in the Houston-Galveston ozone nonattainment area to participate in a trip reduction program. Section 182(d)(1)(B) required that employers submit ETR compliance plans to the State two years after the SIP is submitted to the EPA. These compliance plans were intended to ''convincingly demonstrate'' that within four years after the SIP is submitted, the employer will achieve an increase in the average passenger occupancy of its employees who commute to work during the peak period by not less than 25 percent above the average vehicle occupancy of the nonattainment area.

On November 13, 1992, the Governor of Texas submitted a SIP revision for approval of the ECO regulation which was adopted by the State on October 16, 1992. On October 18, 1993, EPA proposed approval of the Texas ECO SIP in the **Federal Register** (FR) because it met the requirements of section 182(d)(1)(B) of the Act. The EPA issued its final approval of the original Texas ECO SIP revision in a **Federal Register** action on March 7, 1995.

Public Law 104–70 allows states to remove provisions for ECO programs from their SIPs. The state must notify the appropriate EPA Regional Administrator, in writing, that it will exercise this option and will use alternative methods to achieve emission reductions equivalent to those which would be achieved in the ECO program. The April 23, 1996, EPA policy memorandum specifies that the state's letter requesting removal of its ECO program from an approved SIP must include an estimate of the emission reductions to have been provided by the ECO program and explain the basis for this estimate. Also, the state is required to give the estimated emission reduction from the state's substitute measures to be used in place of its ECO program.

II. State Submission and EPA Evaluation

Pursuant to section 182(d)(1)(B) of the Act, the SIP was submitted by Texas to satisfy the statutory mandate that an ECO Program be established for employers with 100 or more employees, such that compliance plans developed by such employers are designed to convincingly demonstrate an increase in the average passenger occupancy of their employees who commute to work during the peak period, by no less than 25 percent above the average vehicle occupancy of the nonattainment area. In a letter dated September 23, 1996, Governor George W. Bush requested removal of the ECO provisions from the SIP. This request was based on Public Law 104–70, signed by President Clinton on December 23, 1995, which amended the 1990 Clean Air Act so that previously mandated ECO programs are now at the option of the states. The removal of the ECO SIP revision and the associated ECO plan submission date depends on identifying equivalent emissions reductions.

The State's request for removal of the ECO program indicated that the State would use the emission reductions from its motor vehicle inspection/maintenance (I/M) program, called Texas Motorist's Choice (TMC), as the emission offset. The reductions produced by the I/M program were to offset the volatile organic compound (VOC) emission reductions attributed to the ECO program in the 15 percent and 9 percent rate-of-progress (ROP) SIP revisions for the Houston/Galveston ozone nonattainment area. According to the State's modeling, the TMC program would have produced excess emission reductions of 8.30 tons per day in 1996 for the 15 percent ROP SIP and 10.52 tons per day in 1999 for the 9 percent ROP SIP. These reductions were intended to offset the 1.81 tons per day and 1.02 tons per day, respectively, which were claimed in the original ROP SIPs for the ECO program. However, the I/M rule (60 FR 48029) allows the State flexibility to design an I/M program that would meet the EPA's mandated low enhanced performance standards. The TMC I/M program meets the I/M flexible rule and is the federally mandated program for the State of Texas. Use of the excess emissions credits from the TMC I/M program is not consistent with EPA's interpretation of the I/M rule. The I/M rule at 40 CFR 51.351(g) entitled ''Alternate Low Enhanced I/M Performance Standard'' (60 FR 48035) specifies as a requirement that in order to be eligible for the low enhanced program, this program must provide sufficient reduction to allow for approval of the State's 15 and 9 percent SIPs. The Texas' 15 and 9 percent SIPs take emissions credits for the TMC I/M program, and therefore, there is no excess emissions from the TMC I/M program to offset the emissions reductions claimed for the ECO program in the original 15 and 9 percent ROP SIPs.

Subsequently, EPA conferred with the State to clarify the Texas emission offset approach. The State submitted a letter (received on March 28, 1997) which clarified the State emissions offset approach in the ROP SIPs. Based on this clarification, the State's offset for emissions reductions from the ECO program will come from the total excess emissions reductions identified from all control measures in the 15 percent and 9 percent ROP SIPs (23.73 tons per day and 10.69 tons per day, respectively). These reductions offset the ECO emissions reductions of 1.81 tons per day and 1.02 tons per day claimed in the original 15 percent and 9 percent ROP SIPs, respectively.

The EPA believes that it was necessary to offset the ECO emissions by non-federally-mandated control measures, and emissions reductions from the TMC I/M program, which is a federally mandated program as discussed above, cannot be used to offset the emissions reductions claimed in the original ROP SIPs. The EPA has determined that Texas' approach has adequately offset the ECO emissions reductions and meets the intended purpose of the EPA ECO Policy memorandum. Therefore, EPA is removing the Texas ECO rule, incorporated by reference, from Code of Federal Regulations and relieves the State of Texas from implementation of Texas ECO program, approved on March 7, 1995.

III. Final Action

In this action, EPA is removing the Texas ECO rule, which was submitted by the Governor to EPA on November 13, 1992, and approved by EPA on March 7, 1995, from the Code of Federal Regulations. The EPA has determined that the State of Texas has satisfied the requirements of the EPA ECO policy by offsetting the ECO emissions reductions claimed in the original 15 and 9 percent ROP SIPs by the excess emissions reductions form non-federally-mandated control measures.

The EPA is publishing this final approval action without advanced notice of proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this

Federal Register publication, EPA is simultaneously proposing to approve this SIP revision should adverse or critical comments be filed. This action will be effective November 18, 1997, unless adverse or critical comments concerning this action are submitted and postmarked by October 20, 1997.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received concerning this action will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective November 18, 1997.

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

IV. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. See 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.

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. 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 from basing 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).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petition for Judicial Review

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 November 18, 1997. Filing a petition for reconsideration of this final rule by the Regional 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).

List of Subjects in 40 CFR Part 52

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

Dated: August 12, 1997.

Jerry Clifford,

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

§ 52.2270 [Amended]

2. Section 52.2270 is amended by removing and reserving paragraph (c)(91).

[FR Doc. 97–24843 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AL–40–7142; FRL–5895–5]

Approval and Promulgation of Implementation Plans for the State of Alabama

Approval and Promulgation of Implementation Plans for the State of Alabama—Proposed Disapproval of the Request to Redesignate the Birmingham, Alabama (Jefferson and Shelby Counties) Marginal Ozone Nonattainment Area to Attainment and the Associated Maintenance Plan.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is disapproving the State of Alabama's request submitted through the Alabama Department of Environmental Management's (ADEM) to redesignate the Birmingham marginal ozone nonattainment area (Jefferson and Shelby Counties) to attainment and the associated maintenance plan as a revision to the state implementation plan (SIP). Prior to the close of the administrative record, EPA determined that the area registered a violation of the ozone national ambient air quality standard (NAAQS). As a result, the Birmingham area no longer meets the