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 employerselected 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.