

violation for not achieving the target APO. The SIP clearly provides for sufficient penalties to deter non-compliance. In addition to this "penalty-based" approach, the State regulation also requires employers to sufficiently plan to ensure that they meet their target APO. Employers are required to register with the State, submit ETR compliance plans, implement their plan, and monitor their progress towards meeting their target APO.

The EPA disagrees that it would be illegal to also emphasize reductions in VMT. Section 182(d)(1)(B) of the CAA states that States "shall submit a revision requiring employers in such area to implement programs to reduce work-related vehicle trips and miles traveled by employees." It is clear that the intent of this provision is to accomplish a reduction in both trips and VMT associated with commuting. Therefore, we do not believe it would be illegal to incorporate reductions in VMT as part of the ETR program, as long as other provisions of section 182(d)(1)(B) are met. While Texas currently does not include VMT considerations in its ETR program, the EPA believes that the State is not precluded from subsequently revising its ETR rule to allow for VMT considerations.

*Comment 3*—One local citizen and the environmental group objected to ETR trading or banking.

*EPA Response*—The current State ETR regulation does not allow for ETR trading although the EPA's Employee Commute Options Guidance, issued in December 1992, does allow employers in the same nonattainment area to aggregate APO credits through averaging, banking and trading (see page 16 of that guidance). We understand that the State may consider establishing a trading program, which would require a subsequent SIP revision.

The current State ETR rule does allow companies to bank ETR credits for only one year. As explained in the EPA's ECO Guidance (see page 19), the EPA believes that in terms of public health benefits, early reductions achieved through banking of APO credits offset later application of banked credits because as the fleet turns over and cleaner fuels are employed, each vehicle trip generates less emissions. The TNRCC restricts the use of banked credits to one year. The EPA believes that the use of the banked APO credits complies with the intent of the statute and will not materially affect attainment by the required date of 2007.

*Comment 4*—The environmental group commented that the term "regular basis" must be defined in the definition

of "carpool," otherwise a loophole will be created.

*EPA Response*—The EPA disagrees with this comment. The term "carpool" is defined in the SIP narrative to help clarify what types of trip reduction measures may be effective in achieving compliance with the target APO. The ETR regulation, however, does not define the term "carpool." The EPA does not believe that a loophole will be created by not defining "regular basis" in the definition of "carpool" in the SIP. Compliance with the target APO is not determined by the use of carpools, but rather through specific calculations of actual occupancy based on travel commute data collected through the employee surveys.

*Comment 5*—The environmental group commented that it is their understanding that the definition of employer would not allow different companies located at one common location to submit one ETR plan. Instead, each company would have to submit its own ETR plan.

*EPA Response*—The EPA agrees with this comment, and believes that the State regulation is unambiguous in requiring different companies that occupy a common worksite to submit individual company plans.

*Comment 6*—The environmental group commented that they believe motorcycles should be included in the definition of "single occupancy vehicle" (SOV).

*EPA Response*—The EPA agrees but believes that the SIP narrative is unambiguous in including motorcycles as part of the definition for a SOV.

*Comment 7*—The environmental group commented that the amount of credit given for alternative trip reduction strategies (e.g., alternative fuels) must be included in the ETR SIP. Currently, the SIP states that such credit will be calculated in accordance with procedures and formulas provided by the TNRCC.

*EPA Response*—It is our understanding that the State will not grant credit for alternative trip reduction strategies unless and until the protocols for granting such credit are adopted into the regulation. In addition, the EPA will need to approve any credit for alternative trip reduction strategies as part of the SIP. We understand that the State plans to revise the ETR SIP through the full rulemaking process, to incorporate appropriate credit for various alternative trip reduction strategies.

*Comment 8*—The environmental group asked for clarification of the term "common control" as used in the definition for "worksite."

*EPA Response*—In the definition of "worksite," the State makes clear that the term "common control" is further defined under the definition of "employer." We believe that the definition found under "employer," is consistent with the EPA's guidance and is sufficiently clear as to what types of organizations are intended.

*Comment 9*—The environmental group objected to the use of two target APOs for the rural and urbanized areas. The group argued that all employers in the nonattainment area should be required to meet a 1.46 target APO, rather than giving those in outlying areas "a break."

*EPA Response*—Section 182(d)(1)(B) of the CAA states that, "The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes." The EPA believes that Congress intended to provide States with the flexibility to set different target APOs in a nonattainment area based on varying existing occupancy rates and the availability of alternative transportation modes.

In addition, as articulated in the EPA's ECO guidance (see page 16), the statutory phrase "commuting trips between home and the workplace" can be interpreted to refer to the trips by any employees in the area rather than only the employees of a specific employer. Although the rural areas are required to meet a target that is less than 25 percent above the AVO, the urbanized areas are required to meet a target greater than 25 percent above the AVO. Therefore, across the entire nonattainment area, the State of Texas is complying with the 25 percent increase requirement. The EPA's guidance explicitly allows for averaging and trading between employers such that an employer who did not achieve the target APO may still be in compliance if it obtains sufficient credit from another employer who exceeded the target. The TNRCC's two target area program is an institutionalized form of averaging between employers.

*Comment 10*—The environmental group argued that there was not adequate public participation in the development of the ETR regulation.

*EPA Response*—Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable