health, welfare effects, and costs due to air pollution.

EPA Response—While the EPA agrees that these items would be beneficial to include in the SIP, we do not believe that the integrity of the ETR program is threatened by not including these items since the TNRCC ETR SIP fully meets the requirements of the CAA.

Comment 18—The environmental group argued that the SIP narrative should read, "failure to attain the appropriate target APO will be considered violations of [TNRCC] Regulation IV," rather than "may be."

EPA Response—Similar to our response to comment 15, we believe that section 114.21(j)(4) of the State's ETR regulation clearly establishes mandatory requirements for all employers to achieve final compliance with the target APO no later than two years after the applicable ETR plan submission deadline. It is therefore understood that not complying with this requirement would be considered to be a violation of the regulation. In considering whether to issue a notice of violation for not achieving the target, however, the State looks at all facts and evaluates any possible mitigating circumstances before committing State resources to take an enforcement action. Therefore, the language contained in the SIP narrative is consistent with the State's enforcement discretion over when it is appropriate for the State to commit resources to initiate an enforcement action.

Comment 19—This environmental group objected to the provision in the SIP narrative that ''[i]n formulating an enforcement policy, the [TNRCC] may consider any good faith effort made by the employer to achieve compliance.

EPA Response—An enforcement policy is developed to cover the implementation and enforcement of a rule, not just the enforcement of a particular case. The policy would discuss the appropriate enforcement response that the State would take at each level of violation and might also discuss what and how much penalty, if any, to assess. Any enforcement policy of this type may always consider the good faith efforts made to comply. In addition, as discussed above, in considering whether to issue a notice of violation for not achieving the target, the State looks at all facts and evaluates any possible mitigating circumstances before committing State resources to take an enforcement action. For these reasons, we believe the language contained in the SIP narrative, is consistent with the State's enforcement discretion over when it is appropriate

for the State to commit resources to initiate an enforcement action.

Comment 20-This environmental group commented that the methodology to estimate the emission reductions from the ETR program should be included in the SIP

EPA Response—The EPA disagrees that the emission reduction estimates must be included in this SIP submittal. The estimates need to be included only to the extent that the State takes credit for the reductions to meet a Reasonable Further Progress or attainment demonstration requirement. In that case, the emissions estimates would need to be included in that SIP submittal.

III. Final Action

In this action, the EPA is approving the ETR SIP revision adopted by the State of Texas on October 16, 1992, and submitted to the EPA on November 13, 1992. The State of Texas has submitted a SIP revision implementing each of the ETR program elements required by section 182(d)(1)(B) of the CAA.

On February 23, 1994, the TNRCC adopted revisions to the ETR regulation, revising the compliance deadlines for affected employers to submit the ETR plans and comply with the target APO. These revisions were submitted to the EPA on March 9, 1994.

In this FR document, the EPA is approving only the ETR SIP revision which was submitted by the State of Texas on November 13, 1992. The EPA will act upon the subsequent ETR SIP revision submitted by the State on March 9, 1994, in a separate rulemaking action in the near future.

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 the SIP shall be considered separately in light of specific technical, economical, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

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 (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. Small entities include small businesses, small not-forprofit 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 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, 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 CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the 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)). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the U.S. 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: December 23, 1994. Jane N. Saginaw,

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

Regional Administrator.

1. The authority citation for part 52 continues to read as follows:

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

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(91) to read as follows:

§ 52.2270 Identification of plan.

(c) * * *

(91) Revisions to the TNRCC Regulation IV, concerning the Employer Trip Reduction program, were submitted by the Governor on November 13, 1992.

(i) Incorporation by reference.