Where transit is not an option, there are several measures discussed above that can be used to encourage employees to drive to work in a means other than a single occupied vehicle.

The funding available through ISTEA as well as the requirements of the ECO program should be seen as an opportunity to improve the provision of public transportation in Lake and Porter Counties and other similar areas.

#### Comment

One commenter opposes the mandate that public schools participate in the ECO program. The commenter noted that several characteristics of public schools will make them unable to comply successfully with the ECO program and will divert needed resources from the primary goal of educating students. The commenter explained that public school work schedules are inflexible prohibiting adjustment of work hours to accommodate flexible hours or compressed work weeks; and providing monetary incentives to staff is prohibited since funds can only be dispersed for educational expenses. The commenter noted the ECO program discriminates against employees of larger schools and favors employees of smaller schools; students account for the majority of drivers and are not included in the program; and the school district does not get credit in the average passenger occupancy calculation for the 6000 students that are transported by school bus.

## USEPA Response

The USEPA is committed to finding ways for States to implement the ECO program so that the burden on affected employers is minimized. However, USEPA cannot categorically exempt any employers from any of the requirements of the ECO program. It is clear that public schools must be subject to the program and so long as they demonstrate a good faith effort to meet the target average passenger occupancy, they will not be penalized.

There are ways for public schools to encourage employees to commute differently that do not involve large expenditures or manipulation of work schedules. Because the school work schedule is fixed, there are a large number of employees arriving at the worksite at the same time making it possible to encourage ridesharing. Several of the measures listed above which would support ridesharing are inexpensive such as preferential parking for vehicles with more than one passenger; guaranteed ride home programs; comprehensive rideshare

matching services; and educational programs that promote ridesharing.

The ECO program does not discriminate against employees of larger schools in favor of employees of smaller schools. Congress selected a threshold of 100 employees because it is Congress' intent to target employers who have enough employees arriving in the peak period to establish a viable ECO program. The USEPA recognizes there are situations in which the majority of an employer's workforce follows a nonstandard schedule, and the number of employees arriving in the peak period is small enough to make ridesharing and special employer-provided services difficult. Therefore, under the December 17, 1994, USEPA ECO Guidance, a de minimis exemption may be made at the State's option whereby employers with worksites at which fewer than 33 employees report to work during the peak travel period are not subject to the requirements. The Indiana ECO rule has adopted this de minimis exemption. While the Indiana ECO rule applies to those employers which employ 100 or more employees at a single worksite, the worksite must have 33 or more employees reporting between 6 a.m. and 10 a.m. on any single day, Monday through Friday.

The Act does not require the inclusion of students in the State ECO program even though students may account for the majority of drivers in some schools. However, the Act does not preclude the State from developing a separate trip reduction regulation that would specifically address the commuting habits of students. In addition, students riding school buses are not included in the APO calculations because they are not employees commuting to the worksite. Other types of businesses and worksites, such as hospitals and shopping centers for example, have large numbers of nonemployees coming to the worksite as well.

### Comment

Several commenters claim that ECO precludes the use of motorcycles as a commuting option without consideration of convenience, contributions to reduced congestion, economic hardship imposed by such prohibitions, or environmental benefits such as fuel efficiency and less manufacturing pollution. Commenters believe the Indiana ECO rule does not address the rights of those Indiana citizens who choose to commute to work using a motorcycle and recommend that motorcycles be exempted from the program. The commenters fear that ECO could lead to a ban of motorcycle operation between the hours of 6 a.m. and 10 a.m. Commenters believe that the methodologies used to calculate the average vehicle occupancy (AVO) and APO diminish the value of motorcycles.

#### USEPA Response

The ECO program requires employers with 100 or more employees to implement programs that will encourage their employees that arrive at their worksite between 6 a.m. and 10 a.m. to commute to work by a means other than a single occupied vehicle. Affected employers will conduct surveys to determine the APO of the vehicles arriving at their worksites between 6 a.m. and 10 a.m. and then develop a program to encourage their employees that arrive in single occupied vehicles to use an alternative means of commuting.

Motorcycles used to commute to an affected worksite will be counted as vehicles since they have internal combustion engines. While USEPA recognizes the need for additional information on motorcycle emissions and commute patterns, current data show that motorcycles emit significantly more pollutants that help to form ozone than do light-duty vehicles (e.g., passenger cars) on a grams/mile basis.

Individuals who ride a motorcycle to an affected worksite between 6 a.m. and 10 a.m. will be encouraged to find an alternative means of commuting to that worksite. However, as discussed above, there is nothing in the Act that would force motorcyclists to change commuting habits. Motorcyclists, like all employees, may accept or reject an employer's incentives to stop driving. Many motorcyclists could benefit by participating in carpools and vanpools, or using public transit programs that reduce stress and save money.

Consequently, it is not necessary to exempt motorcycles from the ECO program since motorcycles have the same rights under the program as all other vehicles. ECO does not preclude the use of motorcycles as a commuting option; and does not eliminate the rights of Indiana citizens who choose to commute by motorcycle. In addition, the methodologies used to determine the AVO and APO do not need to be modified since they appropriately identify the number of vehicles with internal combustion engines on the road during the 6 a.m. to 10 a.m. peak period and the number of people traveling in those vehicles.

# III. Final Rulemaking Action

The State of Indiana has met the requirements of the Act by revising the Indiana ozone SIP to include an ECO