the EPA to satisfy the requirements of section 182(d)(1)(B) of the Act. In order to receive approval, the State submittal must contain each of the following ECO Program elements: (1) The AVO for each nonattainment area; (2) the target APO which is no less than 25 percent above the AVO; (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. Pursuant to section 108(f) of the Act, the EPA 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) 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 determining that the AVO for the Milwaukee area, at the time of SIP submittal, was 1.14, based on a home interview survey conducted by the Southeast Wisconsin Regional Planning Commission. The EPA concludes that this survey accurately represents the Milwaukee ozone nonattainment area AVO.

# 2. The Target APO

Section 182(d)(1)(B) indicates that the target APO must be at least 25 percent above the AVO for the nonattainment area. An approvable SIP revision for this program must include the target APO. The State has met this requirement by setting the target APO at 1.40 which is 25 percent above the AVO of 1.14.

### 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. In the ECO Program Guidance issued in December 1992 the EPA 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.

States 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 requirement that initial compliance plans "convincingly demonstrate" compliance will be met. This demonstration can take on any of four forms or any combination of these.

One option is for the State to provide evidence that State agency resources are available for the effective plan-by-plan review of employer-selected measures to ensure the high quality of compliance plans, and demonstrate that plans that are not convincing will be rejected.

As explained more fully in the EPA's Technical Support Document, the State of Wisconsin has met this requirement by providing evidence in the SIP that agency resources are available to implement the ECO program in an effective manner. Section 144.3712 of the Wisconsin Statutes authorizes the WDNR to administer the ECO program in the Milwaukee area. Administrative and training costs for the program will be provided by the State, as well as through monies received through Congestion Mitigation and Air Quality (CMAQ) provisions of the Intermodal Surface Transportation Efficiency Act (ISTEA). To ensure compliance, State regulations establish requirements for the WDNR to notify employers of the ECO program requirements, as well as prescribing schedules for the submittal of compliance plans by employers. Also contained in Wisconsin's ECO rule is a requirement that employers designate and register at least one employee transportation coordinator for purposes of administering the ECO program at individual worksites. Wisconsin's ECO rule requires that employers submit compliance plans by November 15, 1994 with full compliance with the program requirements by November 15, 1996. The EPA believes that the State's demonstration that adequate resources are available to implement the program is acceptable and sufficient to achieve the effective plan-by-plan review of employer-selected measures to ensure the high quality of compliance plans.

# 4. Enforcement Procedures

States and local jurisdictions must include in their ECO regulations penalties and/or compliance incentives for an employer who fails to submit a compliance plan or an employer who fails to implement an approved compliance plan according to the compliance plan's implementation schedule. Penalties should be sufficient to provide an adequate incentive for employers to comply and be no less than the expected cost of compliance. Wisconsin's ECO SIP has met this

requirement by including in its ECO regulations severe penalties for failure to comply with provisions of the regulation. A violator may be subject to fines of up to \$25,000 per day per violation.

#### **III. Final Rulemaking Action**

The State of Wisconsin has submitted a SIP revision that includes each of the ECO Program elements required by section 182(d)(1)(B) of the Act and EPA guidance issued pursuant to section 108(f) of the Act. The SIP includes a verifiable estimate of the areawide AVO at the time that the SIP was submitted and a target APO that is at least 25 percent above the areawide AVO. Employers with more than 100 employees are required to submit compliance plans to the State that convincingly demonstrate that the plan will increase the APO per vehicle in commuting trips between home and the worksite during peak travel periods to a level not less than 25 percent above the areawide AVO for all such trips. EPA is, therefore, approving this submittal.

#### IV. Procedural Background

Because EPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on April 3, 1995. However, if the EPA receives adverse comments by March 2, 1995, then the EPA will publish a document that withdraws this action, and will address the comments received in response to the requested SIP revision which has been proposed for approval in the proposed rules section of this Federal Register. Comments will be addressed in the final rule on the proposal. The EPA will not initiate a second comment period on this action.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on