2. Scarbrough, F. Edward, CFSAN, FDA, Letter to Douglas C. Marshall, Darigold, Inc., October 30, 1995 [PAV1].

II. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impact

FDA has examined the economic implications of the final rule amending 21 CFR part 101 as required by Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches which maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses. This rule provides added flexibility to existing rules governing nutrient content claims. FDA finds that this final rule is not a significant rule as defined by Executive Order 12866. In addition, in accordance with the Regulatory Flexibility Act, the agency certifies that the final rule will not have a significant impact on a substantial number of small businesses.

IV. Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq.).

V. Public Comment

FDA, for good cause, finds that this final rule is announcing an agency decision reached in accordance with a procedure established by statute, and that notice and public procedure thereon are unnecessary. However, in accordance with 21 CFR 10.40(e)(1), FDA is providing 30 days for comment on whether the announced action should be modified or revoked.

Interested persons may, on or before April 22, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

§ 101.13 [Amended]

2. Section 101.13 *Nutrient content claims—general principles* is amended in paragraph (j)(1)(i)(B) by adding the word ''extra,'' before the word ''fortified''.

§ 101.54 [Amended]

3. Section 101.54 *Nutrient content claims for ''good source,'' ''high,'' and ''more,''* is amended in the first sentence of the introductory text of paragraphs (e)(1) and (e)(2) by removing the words '''enriched,' and 'added'''', and adding in their place the words '''enriched,' 'added,' and 'extra'''.

Dated: March 14, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–6942 Filed 3–21–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH86

Travel Time; Removal of Obsolete Provisions From the CFR

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendments.

SUMMARY: In a document published in the Federal Register on June 29, 1976 (41 FR 26681), we deleted the material currently included in paragraphs (i), (ii), and (iii) of 38 CFR 3.6(b)(7). These paragraphs concerned travel-time provisions for determining whether a person was on ''active duty'' for purposes of VA-benefit eligibility. They were deleted because they were obsolete and no longer served any purpose. Inadvertently, the deletions were never reflected in the Code of Federal Regulations. Accordingly, this document makes a correction in the Code of Federal Regulations by deleting said paragraphs (b)(7) (i), (ii), and (iii).

EFFECTIVE DATE: March 22, 1996.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Veterans.

Accordingly, 38 CFR part 3 is corrected as follows:

PART 3—ADJUDICATION

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.6 [Corrected]

2. Section 3.6 is amended by removing paragraphs (b)(7) (i), (ii), and (iii).

Dated: March 15, 1996.

Thomas O. Gessel,

Director, Office of Regulations Management, Office of General Counsel.

[FR Doc. 96–6800 Filed 3–21–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–18–01–7262a; A–1–FRL–5427–8]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island: Emissions Caps

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision approves Air Pollution Control Act (APC) 29.3 entitled ''Emissions Caps,'' into the Rhode Island SIP. The intended effect of this action is to approve a SIP revision by the State of Rhode Island to incorporate regulations for the issuance of federally enforceable operating permits which restrict sources' potential to emit criteria

pollutants such that sources can avoid reasonably available control technology (RACT), title V operating permit requirements, or otherwise applicable requirements. This action also extends federal enforceability to limits on hazardous air pollutants (HAPs). This action is being taken in accordance with sections 110 and 112(l) of the Clean Air Act.

DATES: This action is effective May 21, 1996, unless notice is received April 22, 1996, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Dave Fierra Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203–2211. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE–131), Washington, D.C. 20460; and Division of Air and Hazardous Materials Division of Rhode Island Department of Environmental Management, 291 Promenade Street, Providence, Rhode Island 02908.

FOR FURTHER INFORMATION CONTACT: Ida Gagnon (617) 565–3500.

SUPPLEMENTARY INFORMATION: On May 22, 1995, the State of Rhode Island submitted a formal revision to its State Implementation Plan (SIP) to incorporate regulations for the issuance of federally enforceable operating permits. The revision consists of the addition of APC 23.9 entitled ''Emissions Caps.'' The State of Rhode Island adopted these regulations in order to have the authority to issue federally enforceable operating permits under its SIP. In order to extend the federal enforceability of state operating permits to hazardous air pollutants (HAPs), EPA is also approving this regulation pursuant to section 112(l) of the Act.

Summary of SIP Revision

The State of Rhode Island's principal purpose for adopting the operating permit regulations of APC 29.3 is to have a federally enforceable means of expeditiously restricting potential emissions such that sources can avoid RACT, title V operating permit requirements, or otherwise applicable requirements, as well as reduce annual compliance fees. The operating permit provisions in title V of the Clean Air Act Amendments of 1990 have created additional interest in mechanisms for limiting sources' potential to emit, thereby allowing the sources to avoid being defined as ''major'' with respect to title V operating permit programs. A key mechanism for such limitations is the use of federally enforceable state operating permits (FESOPs). The EPA issued general guidance on FESOPs in the Federal Register on June 28, 1989 (54 FR 27274). This rule making evaluates whether Rhode Island has satisfied the requirements for this type of federally enforceable limitation on potential to emit. Each of the five criteria, as specified in the Federal Register of June 28, 1989, for approval of a state's program for the issuance of FESOPs under its SIP and how the state's submittal satisfies those criteria are presented below:

Criterion 1. The state's operating permit program (i.e. the regulations or other administrative framework describing how such permits are issued) must be submitted to and approved by EPA as a SIP revision: On May 22, 1995, the State of Rhode Island submitted an administratively and technically complete SIP revision request to EPA consisting of Air Pollution Control Regulation No. 29.3 ''Emissions Caps.'' That SIP revision is the subject of this rule making action.

Criterion 2. The SIP revision must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provide that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not ''federally enforceable'' by EPA: APC 29.3.5(b) requires sources to obtain permits to operate and authorizes Rhode Island to establish terms and conditions in these permits that are federally enforceable to ''ensure that emissions are limited by quantifiable and enforceable means.'' Additionally, 29.3.9 requires that no source may operate after the time it is required to submit a timely and complete application for an operating permit under APC 29, except in compliance with an emissions cap or an operating permit.

Criterion 3. The state operating permit program must require that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any applicable limitations and requirements contained in the SIP, or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise ''federally enforceable'' (e.g. standards established under Section 111 and 112 of the Clean Air Act): APC 29.3.5 contains regulatory provisions which state the emissions cap issued by the Division will be at least as stringent as any applicable requirement and the emissions cap will not waive or make less stringent any applicable requirement. Applicable requirement is defined in APC 29 to include all SIP requirements.

Criterion 4. The limitations, controls, and requirements of the state's operating permits must be permanent, quantifiable, and otherwise enforceable as a practical matter: APC 29.3.5 and 29.3.7 contain regulatory provisions which satisfy this criterion. Emission cap permits must be renewed every five years, but remain enforceable pending DEM's action and timely renewal application. In addition, subparagraphs 29.3.5(b) and (c) require that permit restrictions contain combinations of production and/or operational limitations to ensure emissions are limited by quantifiable and enforceable means, including keeping sufficient records to show limitations are followed.

Criterion 5. The state operating permits must be issued subject to public participation. This means that the state agrees, as part of its program, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be ''federally enforceable.'' This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permits: APC 29.3.6 contains provisions that the Division will either deny the emissions cap or give public notice of its intention to issue an emissions cap. The general public will be notified of DEM's intention to issue an emissions cap by publishing a notice in a newspaper. The applicant, EPA, city or town executives where a source is located, and persons who request to be on a mailing list will be sent a copy of the notice.

The State of Rhode Island has also requested approval of its Emissions Caps program under section 112(l) of the Act for the purpose of creating federally enforceable limitations on the potential to emit of HAPs. Approval under section 112(l) is necessary

because the SIP approval discussed above only extends to criteria pollutants for which EPA has established national ambient air quality standards under section 109 of the Act. Federally enforceable limits on criteria pollutants or their precursors (i.e., VOCs or PM–10) may have the incidental effect of limiting certain HAPs listed pursuant to section 112(b).[1] As a legal matter, no additional program approval by the EPA is required beyond SIP approval under section 110 in order for these criteria pollutant limits to be recognized as federally enforceable. However, section 112 of the Act provides the underlying authority for controlling *all* HAP emissions, regardless of their relationship to criteria pollutant controls.

The EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 Federal Register notice, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989 notice does not address HAPs because it was written prior to the 1990 amendments to section 112. The June 28, 1989 criteria are basic principles which are not unique to criteria pollutants. Therefore, the five criteria discussed above are applicable to FESOP approvals under section 112(l) as well as under section 110.

In addition to meeting the criteria in the June 28, 1989 notice, a FESOP program for HAPs must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows the EPA to approve a program only if the program: (1) Contains adequate authority to assure compliance with any section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

The EPA plans to codify the approval criteria for programs limiting potential to emit HAPs, in Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) The EPA currently anticipates that these regulatory criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989 notice. FESOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will be approved as meeting the criteria in EPA's June, 1989 notice. Therefore, further approval actions for those programs will not be necessary.

The EPA believes it has authority under section 112(l) to approve programs to limit potential to emit HAPs directly under section 112(l) prior to this revision to Subpart E. EPA is therefore approving Rhode Island's Emissions Caps program now so that Rhode Island may begin to issue federally enforceable synthetic minor permits as soon as possible.

Regarding the statutory criteria of section 112(l)(5) referred to above, the EPA believes Rhode Island's Emissions Caps program contains adequate authority to assure compliance with section 112 requirements since the third criterion of the June 28, 1989 notice is met, that is, the program in APC 29.3.5 states that all requirements in the Emissions Caps program must be at least as stringent as all other applicable federally enforceable requirements. In connection with EPA's review of Rhode Island's title V operating permit program, EPA has also conducted an extensive analysis of Rhode Island's underlying authority to enforce HAP limits. Please note that a source which receives an Emissions Caps permit may still need a title V operating permit under APC 29 if EPA promulgates a MACT standard which requires non-major sources to obtain title V permits.

Regarding the requirement for adequate resources, the EPA believes Rhode Island has demonstrated that it can provide for adequate resources to support the Emissions Caps program through an annual compliance/assurance fee and a permit fee. EPA believes this mechanism will be sufficient to provide for adequate resources to implement this program. For more information regarding the fees program, refer to the Technical Support Document.

The EPA also believes that Rhode Island's Emissions Cap program provides for an expeditious schedule which assures compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in Rhode Island's program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate federally enforceable limit by the relevant deadline. Finally, the EPA believes it is consistent with the intent of section 112 and the Act for States to provide a mechanism through which sources may avoid classification as a major source by obtaining a federally enforceable limit on potential to emit. EPA has long recognized federally-enforceable emissions or operational limits as a means to stay below major source thresholds under the Act. This approval merely applies the same principles to another set of pollutants and regulatory requirements under the Act.

The EPA's review of this SIP revision indicates the criteria for approval as provided in the June 28, 1989 Federal Register notice (54 FR 27282) and in section 112(l)(5) of the Act have been satisfied.

During the development of this rule, EPA and Rhode Island have been asked whether permits the State has issued pursuant to these regulations prior to today's action approving this program into the SIP are nevertheless federally enforceable. In the preamble to the regulations that EPA promulgated on June 28, 1989 (54 FR 27274), which set forth the five criteria outlined above for a federally enforceable operating permit program, EPA indicated that it would ''consult with States on methods by which existing operating permits could be made federally enforceable under a subsequently approved State operating permits program.'' 54 FR at 27284. The preamble went on to discuss options for securing EPA approval of previously issued permits. As EPA concluded in its approval of the Illinois FESOP program (57 FR at 59931 (Dec. 17, 1992)), these options were not intended to be a complete list of alternatives. To avoid burdensome requirements to reprocess each previously issued permit, EPA will use the same approach announced in that Illinois approval for determining whether such permits are federally enforceable and for ratifying their status as enforceable under the approved SIP.

EPA today finds the existing Rhode Island regulations to be consistent with federal requirements. If the State followed its own procedures, each permit issued under this regulation was subject to public notice and comment, with notice to EPA. Moreover, the regulation requires each permit to be enforceable as a practical matter. Therefore, EPA will consider all previously issued operating permits which were processed in a manner consistent with the State regulations federally enforceable with the promulgation of this rule, provided that any permits the State wishes to make federally enforceable are submitted to EPA and are accompanied by documentation that the procedures approved today were followed in issuing the permit.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse

[1] The EPA issued guidance on January 25, 1995 addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 21, 1996, unless adverse or critical comments are received by April 22, 1996.

If EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 21, 1996.

Final Action

EPA is approving APC 29.3 ''Emissions Caps'' effective in the State of Rhode Island on May 18, 1995 under sections 110 and 112(l) of the CAAA.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., 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, 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-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110, section 112(l), 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 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).

This action has been classified as a Table 3 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.

The OMB has exempted this action from review under Executive Order 12866.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 21, 1996. 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).)

Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Rhode Island was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 30, 1996.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart OO—Rhode Island

2. Section 52.2070 is amended by adding paragraph (c)(45) to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

(45) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on May 15, 1995

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Protection dated May 15, 1995 submitting a revision to the Rhode Island State Implementation Plan.

(B) Air Pollution Control Regulation 29.3 ''Emissions Caps''; effective in the State of Rhode Island on May 18, 1995.

(ii) Additional materials.

(A) Non-regulatory portions of the submittal.

3. In § 52.2081 Table 52.2081 is amended by adding new entry for state citation APC 29.3 to read as follows:

§ 52.2081 EPA-Approved Rhode Island State regulations.

* * * * *

State citation	Title/subject	Date adopted by State	Date approved by EPA	**Federal Register** citation	52.2070 (45) Comments/unapproved sections
*	*	*	*	*	* *
No. 29.3 ...	EMISSIONS	4/28/95	March 22, 1996	[Insert FR citation from published date].	This rule limits a source's potential to emit, therefore avoiding RACT, title V operating permits.
*	*	*	*	*	* *

[FR Doc. 96–6601 Filed 3–21–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[WI64–01–7169a; FRL–5437–3]

Approval and Promulgation of State Implementation Plan; Wisconsin; Rate-of-Progress and Contingency Plans

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: In this action, USEPA is approving a revision to the Wisconsin State Implementation Plan (SIP) for the purpose of satisfying the rate-of-progress and contingency plan requirements of the Clean Air Act (Act) which will aid in ensuring the attainment of the national ambient air quality (NAAQS) for ozone.

DATES: This ''direct final'' rule will be effective May 21, 1996, unless USEPA receives adverse or critical comments by April 22, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to: Carlton T. Nash, United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the documents relevant to this action are available at the above address for public inspection during normal business hours.

FOR FURTHER INFORMATION CONTACT: Brad J. Beeson at (312) 353–4779.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, Congress enacted amendments to the 1977 Clean Air Act (CAA); Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Section 182(b)(1) of the CAA requires all ozone nonattainment areas classified as moderate and above to submit a SIP revision by November 15, 1993, which describes, in part, how these areas will achieve an actual emissions reduction of at least 15 percent during the first 6 years after enactment of the CAA (November 15, 1996). Emissions and emissions reductions shall be calculated on a typical weekday basis for the ''peak'' 3-month ozone period (generally June through August).

The 15 percent VOC emissions reduction required by November 15, 1996 is defined within this document as ''rate-of-progress.'' Furthermore, the portion of the SIP revision that illustrates the plan for the achievement of the emissions reduction is subsequently defined in this document as the ''rate-of-progress plan.''

In addition, section 172(c)(9) requires moderate and above areas to adopt contingency measures by November 15, 1993. The General Preamble states that the contingency measures generally must provide reductions of 3 percent of the emissions from the adjusted base year inventory. While all contingency measures must be fully adopted rules or measures, the State can use these measures in 2 different ways. The State can use its discretion to implement any contingency measures it wants before 1996. Alternatively, the State may decide not to implement a measure until the area has failed to either make rate-of-progress or attain the national ambient air quality standards (NAAQS). In that situation, the reductions must be achieved in the year following that in which the failure has been identified.

II. Wisconsin's SIP Submittal

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The State of Wisconsin held a public hearing on October 14, 1993, to receive public comment on the implementation plan for their moderate and above ozone nonattainment areas. Following the public hearing the plan was adopted by the State Natural Resources Board and signed by the Governor's designee, George Meyer on September 9, 1993, and submitted to USEPA on November 15, 1993 as a proposed revision to the SIP.

The SIP revision was reviewed by USEPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). Because neither plan included fully adopted rules for all the measures listed in the plans, these submittals were deemed incomplete.

On July 13, 1995, the State made a supplemental submittal which included fully adopted rules for both the rate-of-progress and contingency plan. On July 18, the State's SIP submittal was deemed complete.

III. The USEPA's Analysis of Wisconsin's Rate-of-Progress and Contingency Plans

The USEPA has reviewed the State's submittal for consistency with the requirements of USEPA regulations. A summary of USEPA's analysis is provided below. More detailed support for approval of the State's submittal is contained in a Technical Support Document (TSD), dated January 10, 1996, which is available from the Region 5 Office, listed above.

A. Accurate Emission Inventory

Sections 172(c)(3) and 182(b)(1) of the Act require that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because the approval of such inventories is necessary to an area's rate-of-progress plan and attainment demonstration, the emission inventory must be approved prior to or with the rate-of-progress plan submission.

On June 15, 1994, USEPA approved Wisconsin's base year inventory. Therefore, Wisconsin has a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area.