reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: May 30, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 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 *et seq.*

Subpart V—Maryland

■ 2. Section 52.1076 is amended by adding paragraph (y) to read as follows.

§ 52.1076 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(y) Determination—EPA has determined that, as of July 12, 2012, the Baltimore 1-hour ozone nonattainment area has attained the 1-hour ozone standard and that this determination obviates the requirement for Maryland to submit for the Baltimore area the 1-hour ozone contingency measure requirements of section 172(c)(9) of the Clean Air Act.

■ 3. Section 52.1082 is amended by adding paragraphs (f) and (g) to read as follows.

§ 52.1082 Determinations of attainment.

* * * * *

(f) Based upon EPA's review of the air quality data for the 3-year period 2003 to 2005, EPA determined, as of July 12, 2012, that the Baltimore 1-hour ozone nonattainment area did not attain the 1-hour ozone standard as of its applicable 1-hour ozone attainment date of November 15, 2005.

(g) Based on 2009–2011 complete, quality-assured ozone monitoring data at all monitoring sites in the Baltimore 1-hour ozone nonattainment area, EPA determined, as of July 12, 2012, that the Baltimore 1-hour ozone nonattainment area has attained the 1-hour ozone standard.

[FR Doc. 2012–14141 Filed 6–11–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2010–0523; FRL–9683–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Illinois; Redesignation of the Illinois Portion of the St. Louis, MO–IL Area to Attainment for the 1997 8-hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a request from the State of Illinois to redesignate the Illinois portion of the St. Louis, MO–IL area to attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard). The St. Louis area includes Jersey, Madison, Monroe, and St. Clair Counties in Illinois and St. Louis City and Franklin, Jefferson, St. Charles, and St. Louis Counties in Missouri. The Illinois Environmental Protection Agency (IEPA) submitted this request on May 26, 2010, and supplemented its request on September 16, 2011. EPA proposed to approve this submission on December 22, 2011, and provided a 30-day review and comment period. On January 20, 2012, EPA extended the public comment period for an additional 30 days. The comment period closed on February 22, 2012. EPA received comments submitted on behalf of Sierra Club. In addition to approving the redesignation request EPA is taking several other related actions. EPA is approving, as a revision to the Illinois State Implementation Plan (SIP), the State's plan for maintaining the 1997 8-hour ozone standard through 2025 in the area. EPA is approving the 2002 emissions inventory, submitted by IEPA on June 21, 2006, and supplemented on September 16, 2011, as meeting the comprehensive emissions inventory requirement of the Clean Air Act (CAA) for the Illinois portion of the St. Louis area. Finally, EPA finds adequate and is approving the State's 2008 and 2025 Motor Vehicle Emission Budgets (MVEBs) for the Illinois portion of the St. Louis area.

DATES: *Effective Date:* This rule is effective on June 12, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2010–0523. All documents in the docket are listed on the *www.regulations.gov* Website. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this rule?
II. What comments did we receive on the proposed rule?
III. What actions is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background for this rule?

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million (ppm). EPA published a final rule designating and classifying areas under the 1997 8-hour ozone NAAQS on April 30, 2004 (69 FR 23857). In that rulemaking, the St. Louis area was designated as nonattainment for the 1997 8-hour ozone standard and classified as a moderate nonattainment area under subpart 2 of the CAA.

On May 26, 2010, IEPA requested redesignation of the Illinois portion of the St. Louis area to attainment of the 1997 8-hour ozone standard based on ozone data for the period of 2007–2009. On September 16, 2011, IEPA supplemented the original ozone redesignation request, revising the mobile source emission estimates using EPA's on-road mobile source emissions model, MOVES, and extending the demonstration of maintenance of the ozone standard through 2025, with new MVEBs, but without relying on emission reductions resulting from

implementation of EPA's Clean Air Interstate Rule (CAIR) or Cross-State Air Pollution Rule (CSAPR).

On June 9, 2011 (76 FR 33647), EPA issued a final rulemaking determining that the entire St. Louis, MO–IL area has attained the 1997 8-hour ozone NAAQS based on three years of complete, quality-assured ozone data for the period of 2008–2010.[1]

On December 22, 2011 (76 FR 79579), EPA issued a rulemaking action proposing to approve Illinois' request to redesignate the Illinois portion of the St. Louis area to attainment of the 1997 8-hour ozone standard, as well as proposing to approve Illinois' maintenance plan for the area, Volatile Organic Compound (VOC) and nitrogen oxides (NO_X) MVEBs, and VOC and NO_X emissions inventories. This proposed rulemaking sets forth the basis for determining that Illinois' redesignation request meets the CAA requirements for redesignation to attainment for the 1997 8-hour ozone NAAQS. Air quality monitoring data in the St. Louis area for 2007–2009, 2008–2010, and 2009–2011 show that this area is currently attaining the 1997 8-hour ozone NAAQS.

The primary background for today's action is contained in EPA's December 22, 2011, proposal to approve Illinois' redesignation request, and in EPA's June 9, 2011, final rulemaking determining that the area has attained the 1997 8-hour ozone NAAQS, based on complete, quality-assured monitoring data for 2008–2010, and continuing through 2011. In these rulemakings, we noted that under EPA regulations at 40 CFR 50.10 and 40 CFR part 50, appendix I, the 1997 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm at all ozone monitoring sites in the area. See 69 FR 23857 (April 30, 2004) for further information. To support the redesignation of the area to attainment of the NAAQS, the ozone data must be complete for the three attainment years. The data completeness requirement is met when the 3-year average of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness, as determined in accordance with appendix I of 40 CFR part 50. Under the CAA, EPA may redesignate a nonattainment area to attainment if sufficient, complete, quality-assured data are available demonstrating that the area has attained the standard and if the state meets the other CAA redesignation requirements specified in section 107(d)(E) and section 175A.

The December 22, 2011, proposed redesignation rulemaking provides a detailed discussion of how Illinois' ozone redesignation request meets the CAA requirements for redesignation of the Illinois portion of the St. Louis area. With the final approval of its VOC and NO_X emissions inventories, Illinois has met all applicable CAA requirements for redesignation to attainment for the 1997 8-hour ozone NAAQS. Air quality monitoring in the St. Louis area for 2009–2011 shows that this area continues to attain the 1997 8-hour ozone NAAQS. Illinois has demonstrated that attainment of the 1997 8-hour ozone NAAQS will be maintained through 2025 with or without the implementation of CAIR or CSAPR. In addition, modeling conducted by EPA during the CSAPR rulemaking demonstrates that in both 2012 and 2014, even without taking into account reductions associated solely with CAIR or CSAPR, the counties in the St. Louis MO–IL nonattainment area will have air quality that attains the 1997 ozone NAAQS. Finally, Illinois has adopted 2008 and 2025 MVEBs that are supported by Illinois' ozone maintenance demonstration and adopted ozone maintenance plan.

II. What comments did we receive on the proposed rule?

EPA initially provided a 30-day comment period for the December 22, 2011, proposed rule. On January 20, 2012, EPA extended the comment period for an additional 30 days. During the comment period, we received comments from one individual representing the Sierra Club. These comments are summarized and addressed below.

Comment 1: The commenter contends that it is inappropriate to redesignate the Illinois portion of the St. Louis nonattainment area to attainment of the 1997 8-hour ozone standard when EPA intends to designate the St. Louis area as nonattainment under the 2008 8-hour ozone standard, yet the EPA is illegally delaying the implementation of the 2008 8-hour ozone standard.

Response 1: On May 21, 2012 EPA published its designations for the 2008 standard. 77 FR 30088, 30116. EPA designated the St. Louis-St. Charles-Farmington, MO–IL area as nonattainment, with a classification of marginal. The area's status with respect to the 2008 standard, however, does not affect or prevent redesignation of the area to attainment for the 1997 standard. The 1997 standard currently remains in effect, and thus EPA continues to evaluate the area's designation status with respect to that standard. Until the 1997 8-hour ozone standard is revoked, it remains in effect and independent of the 2008 8-hour ozone standard, and EPA continues to evaluate and act upon states' requests for redesignation with respect to the 1997 standard.

EPA has in the past continued to redesignate areas under existing standards even after the adoption of new standards for the same pollutant. After adopting the 1997 8-hour ozone standard, EPA continued to redesignate areas for the 1-hour ozone standard until that standard was revoked. See, for example, Cincinnati, Ohio redesignation, 70 FR 35946 (June 21, 2005). Subsequent to the adoption of the 2008 8-hour ozone standard, EPA has continued to redesignate for the 1997 8-hour ozone standard those areas attaining that ozone standard and otherwise meeting redesignation requirements. See, for example, Detroit, Michigan redesignation, 74 FR 30950 (June 29, 2009); Clearfield and Indiana Counties, Pennsylvania redesignation, 74 FR 11674 (March 19, 2009); Kewaunee County, Wisconsin redesignation 73 FR 29436 (May 21, 2008), and Door and Manitowoc Counties, Wisconsin redesignation, 75 FR 39635 (July 12, 2010).

Comment 2: The commenter states that the Jerseyville, Nilwood, Maryville, Wood River, and East St. Louis ozone monitors all show upward trends in the annual fourth highest daily maximum 8-hour ozone concentrations over the 2009–2011 three year period.

Response 2: The CAA sets forth the criteria for redesignating a nonattainment area to attainment. Section 107(d)(3)(E) provides for approval of a redesignation request if, among other things, the Administrator determines that the area has attained the applicable NAAQS. A determination that an area has attained the standard is based on a review of monitored air quality data that meet regulatory quality-assurance requirements for the specific purpose of comparison to the NAAQS. See 40 CFR part 50.10 and appendix I and 40 CFR part 58. A determination of attainment for ozone is

[1] Certified ozone data for 2011 demonstrates that the area continued to attain the 1997 8-hour ozone standard in 2011. EPA recognizes that the ozone data for 2007–2009 as well as 2010 and 2011 data are impacted by the Clean Air Interstate Rule (CAIR) which was promulgated in 2005, but remanded to EPA in 2008. The fact that the data reflect some reductions associated with the remanded and therefore not permanent CAIR, however, is not an impediment to redesignation in the circumstances presented here where IEPA's demonstration and EPA's own modeling demonstrates that the area does not need reductions associated with the CAIR to attain the 1997 ozone NAAQS.

based on a 3-year average of data, and does not consider monitoring data trends or statistical analyses as criteria for determining attainment in evaluating a redesignation request. As discussed in detail in the proposed rule, the St. Louis area has monitored attainment of the 1997 8-hour ozone standard. See 76 FR 79582–79583 (December 22, 2011).

Furthermore, EPA considers data collected over a 3-year period for determining attainment, but not for statistically determining a ''trend.'' It is expected that there will be year-to-year variations in ozone concentrations due to meteorological influences. A review of annual fourth highest daily maximum 8-hour ozone concentrations and design values over a longer time period, from 2001 (designations under the 1997 8-hour ozone standard was based on air quality monitoring data from 2001–2003) through 2011, shows an overall downward trend at each of the monitors. Moreover, in its maintenance demonstration the State has shown that the 1997 8-hour ozone standard can be maintained in the area through 2025.

Comment 3 General: The commenter contends that, to demonstrate that the observed improvement in ozone air quality is due to the implementation of permanent air quality controls, EPA has relied on several emission control programs that are not permanent and enforceable. The commenter sets out several specific points to support this contention, which are discussed below in 3a–3d.

Response 3 General: It is not necessary for every change in emissions between the nonattainment year and the attainment year to be permanent and enforceable. Rather, the improvement in air quality necessary for the area to attain the relevant NAAQS must be reasonably attributable to permanent and enforceable reductions in emissions. As discussed in the proposed rule at 76 FR 79586–79588 (December 22, 2011), Illinois and upwind areas have implemented a number of permanent and enforceable regulatory control measures which have reduced emissions and resulted in a corresponding improvement in air quality.

Comment 3a: The commenter contends that EPA cannot rely on the implementation of CSAPR, which has been stayed by court order. The commenter objects to EPA claims that IEPA has met its obligation under section 110(a)(2)(D), in part, via emission control programs established through CSAPR, and also objects to inclusion of CSAPR as a potential contingency measure in Illinois' ozone maintenance plan. In addition, EPA credits Illinois with NO_X emission reduction in upwind areas that are projected to result from the implementation of CSAPR. Since CSAPR was stayed by the United States Court of Appeals for the District of Columbia Circuit on December 30, 2011, CSAPR is not enforceable. In addition, CSAPR cannot be assumed to be permanent because EPA cannot conclude that CSAPR will survive the litigation challenge to be subsequently decided by the court. Further, any attempt by EPA to claim it will replace CSAPR is of no moment because courts have repeatedly told EPA that it cannot use the promise of future action to meet current emission control requirements. See, e.g., *Sierra Club* v. *EPA,* 356 F.3d 296, 298 (DC Cir. 2004).

Response 3a: Illinois has not relied on CSAPR to demonstrate that attainment was due to permanent and enforceable emissions reductions or to demonstrate that it will maintain the standard. While we did note in the proposal that emissions reductions resulting from the implementation of CSAPR would aid in maintenance of the standard, that statement did not provide the basis for our action. Further, contrary to the commenter's assertion, EPA did not credit Illinois with NO_X emissions reductions from the implementation of CSAPR, nor did the State take credit for any such emissions reductions when demonstrating maintenance.

In addition, modeling performed by EPA during the CSAPR rulemaking process also demonstrates that the counties in the St. Louis MO–IL ozone nonattainment area will have ozone levels below the 1997 8-hour standard in both 2012 and 2014 without emission reductions from CSAPR or CAIR, with the highest average value for any monitor in the area projected to be 79.6 ppb. See ''Air Quality Modeling Final Rule Technical Support Document,'' App. B, B–10, B–11, and B–18, which can be found at *http://www.epa.gov/crossstaterule/pdfs/AQModeling.pdf.* Ozone modeling performed by the Lake Michigan Air Directors Consortium also concludes that the St. Louis area will be able to maintain the ozone standard throughout the maintenance period without considering emission reductions from implementation of the CAIR or CSAPR.[2]

Although Illinois did list the ''Clean Air Transport Rule, after promulgation by USEPA'' as a possible contingency measure in the maintenance plan, this measure is only one of many that may be selected should the contingency plan be triggered. EPA has concluded, in its consideration of the maintenance plan contingency measures, that there are other contingency measures sufficient to satisfy the requirements of 175A, without consideration of CSAPR.

The commenter also claims that EPA relies, in part, on emission control programs established through CSAPR to determine that IEPA has met its obligation under section 110(a)(2)(D). Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. While EPA noted in the proposed rule that programs such as the NO_X SIP Call, CAIR, and CSAPR were established to address transport of air pollutants, we also clearly stated that the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification. Further, EPA concludes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. Therefore, because the section 110(a)(2)(D) requirements apply to a state regardless of the designation of any one particular area in the state, EPA further concludes that these requirements should not be construed to be applicable requirements for purposes of redesignation. EPA is not taking any action, in this rulemaking, to determine whether the State of Illinois has satisfied the requirements of 110(a)(2)(D) with respect to the 1997 ozone NAAQS.

Comment 3b: The commenter asserts that EPA erred in concluding that emission reductions resulting from regulations developed in response to the NO_X SIP Call are permanent and enforceable. The commenter asserts that the NO_X SIP Call cannot satisfy a requirement that requires reductions to be permanent and enforceable because this program has been replaced and therefore effectively no longer exists. The commenter also asserts that because the NO_X SIP Call is a cap-and-trade program no actual reductions are required from the emission sources in the St. Louis nonattainment area. The commenter argues that to the extent any reductions were once required, they could have happened only in areas downwind that have little to no impact on the St. Louis area nonattainment.

[2] The Lake Michigan Air Directors Consortium modeling was conducted prior to EPA's promulgation of CSAPR. The subsequent modeling conducted by EPA during the CSAPR rulemaking provides a more detailed analysis of the impact upwind state emissions would, in the absence of CAIR, have on downwind areas projected to have difficulty attaining or maintaining the standard.

Finally the commenter asserts that the DC Circuit Court of Appeals recently held that EPA cannot use cap-and-trade programs to satisfy an area-specific statutory mandate. See *NRDC* v. *EPA,* 571 F.3d 1245, 1257 (DC Cir. 2009).

Response 3b: EPA disagrees with the commenter's position that emission reductions associated with the NO_X SIP Call cannot be considered to be permanent and enforceable. The commenter's first argument—that the reductions are not permanent and enforceable because the NO_X SIP Call has been replaced—is based on a misunderstanding of the relationship between CAIR and the NO_X SIP Call. While the CAIR ozone-season trading program replaced the ozone-season NO_X trading program developed in the NO_X SIP Call (70 FR 25290), nothing in CAIR relieved states of their NO_X SIP Call obligations. In fact, in the preamble to CAIR, EPA emphasized that the states and certain units covered by the NO_X SIP Call but not CAIR must still satisfy the requirements of the NO_X SIP Call. EPA provided guidance regarding how such states could meet these obligations.[3] In no way did EPA suggest states could disregard their NO_X SIP Call obligations. (70 FR 25290). For NO_X SIP Call states, the CAIR NO_X ozone season program provides a way to continue to meet the NO_X SIP Call obligations for electric generating units (EGUs) and large non-electric generating units (nonEGUs). In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP Call, including the statewide NO_X emission budgets, continue to apply. In sum, the requirements of the NO_X SIP Call remain in force. They are permanent and enforceable as are state regulations developed to implement the requirements of the NO_X SIP Call.

EPA also disagrees with the commenter's second argument—that the reductions associated with the NO_X SIP Call cannot be considered permanent and enforceable because the NO_X SIP Call is a trading program. There is no support for the commenter's argument that EPA must ignore all reductions achieved by the NO_X SIP Call simply because the mechanism used to achieve the reductions is an emissions trading program. As a general matter, trading programs establish mandatory caps on emissions and permanently reduce the total emissions allowed by sources subject to the programs. The emission caps and associated controls are enforced through the associated SIP rules or Federal Implementation Plans (FIPs). Any purchase of allowances and increase in emissions by a utility necessitates a corresponding sale of allowances and reduction in emissions by another utility. Given the regional nature of ozone, the emission reductions will have an air quality benefit that will compensate, at least in part, for the impact of any emission increase.

In addition, the case cited by the commenter, *NRDC* v. *EPA,* 571 F.3d 1245 (DC Cir. 2009), does not support the commenter's position. That case addressed EPA's determination that the nonattainment Reasonably Available Control Technology (RACT) requirement was satisfied by the NO_X SIP Call trading program. The court held that because EPA had not demonstrated that the trading program would result in sufficient reductions within a nonattainment area, its determination that the program satisfied RACT (a nonattainment area requirement) was not supported. *Id.* 1256–58. The court explicitly noted that EPA might be able to reinstate the provision providing that compliance with the NO_X SIP Call satisfies NO_X RACT for EGUs for particular nonattainment areas if, upon conducting a technical analysis, it could demonstrate that the NO_X SIP Call results in greater emissions reductions in a nonattainment area than would be achieved if RACT-level controls were installed in that area. *Id.* at 1258. In this case, EPA's comparison of emissions in 2002 and 2008 in this rulemaking necessarily looked only at changes in emissions ''in the nonattainment area.'' As such, the commenter's reliance on *NRDC* v. *EPA* is misplaced.

Comment 3c: The commenter contends that the Illinois State rules are not permanent and enforceable. The commenter asserts that Illinois' consumer products and Architectural and Industrial Maintenance Coatings (AIM) rules are not permanent and enforceable components of the Illinois SIP. The commenter contends that these rules have only been adopted by the State, and that EPA has not yet approved them into the Illinois SIP. The commenter claims that, until they are approved by EPA and incorporated into the SIP, they cannot be relied upon for the purposes of redesignation to attainment of the standard. The commenter claims that for EPA to rely on these rules for the redesignation, it must approve them into the SIP in conjunction with the redesignation.

Response 3c: It is not necessary for every change in emissions between the nonattainment year and the attainment year to be permanent and enforceable. Rather, the improvement in air quality necessary for the area to attain must be reasonably attributable to permanent and enforceable reductions in emissions. As discussed in the proposed rule at 76 FR 79586–79588 (December 22, 2011), Illinois and upwind areas have implemented a number of permanent and enforceable regulatory control measures which have reduced emissions and resulted in a corresponding improvement in air quality sufficient to demonstrate attainment and maintenance. Even if EPA does not finalize action on the Illinois consumer products and AIM rules before completing action on the redesignation, these emissions reductions are not necessary to demonstrate that the improvement in air quality is reasonably attributable to permanent and enforceable reductions in emissions. It should be noted, however, that EPA proposed to approve the Illinois consumer products and AIM rules on October 27, 2011, at 76 FR 66663. EPA received no comments on the proposal and we are currently in the process of finalizing action on the rules.

Comment 3d: The commenter asserts that the use of 2008 air quality data is inappropriate to demonstrate that the attainment of the 1997 8-hour ozone standard is due to the implementation of permanent and enforceable emission reductions. EPA documented the changes in emissions between 2002 and 2008 to demonstrate that the observed ozone air quality improvement is due to permanent and enforceable emissions reduction during this period. The commenter claims that this is unacceptable for a number of reasons.

First, the commenter asserts that EPA has done nothing to connect the emissions and air quality impacts, and EPA has not conducted analyses to prove that emission reductions between 2002 and 2008 have led to reduced ozone concentrations and attainment of the 1997 8-hour ozone standard.

Second, the commenter argues that using a single attainment year, 2008, is arbitrary because the impact of cap-and-trade emission control programs, such as the NO_X SIP Call and CSAPR, can cause emissions to vary over time as sources buy, sell, and trade emission allowances.

Third, the commenter claims that the choice of 2008 is further problematic because 2008 was the beginning of a large economic recession. The commenter contends that this resulted in decreased electricity demand, decreased automobile, truck and shipping traffic, and decreased factory

[3] EPA guidance regarding the NO_X SIP Call transition to CAIR can be found at *http://www.epa.gov/airmarkets/progsregs/cair/faq-10.html.* EPA guidance regarding the NO_X SIP Call transition for CSAPR can be found at *http://www.epa.gov/crossstaterule/faqs.html.*

production. The commenter objects to EPA's conclusion that monitored changes in ozone levels between 2002 and 2008 were due to the implementation of permanent and enforceable emission controls rather than to changes in meteorology, economic conditions, or temporary or voluntary (not enforceable) emissions reductions. The commenter contends that EPA has not provided an analysis showing that the recession was not the cause of the 2002–2008 emission reduction and observed air quality improvement.

Finally, the commenter claims that EPA has not shown that the 2008 emissions inventory reflects permanent and enforceable emission reductions occurring between 2002 and 2008, and states that the 2008 emissions inventory appears to be the ''actual'' or the ''projected'' emissions from an unidentified group of sources. The commenter argues that there is a significant difference between what sources actually emit and what sources are allowed to emit, and that the IEPA and EPA have incorrectly assumed allowable emissions are equal to actual emissions.

Response 3d: EPA's conclusion here is fully supported by the facts and applicable legal criteria. EPA's longstanding practice and policy [4] provides for states to demonstrate permanent and enforceable emissions reductions by comparing nonattainment area emissions occurring during the nonattainment period (represented by emissions during one of the years during the 3-year nonattainment period on which the area's nonattainment designated was based,[5] in this case 2002) with emissions in the area during the attainment period (represented by emissions during one of the 3 attainment years, in this case 2008, which is included in the 3-year period, 2007–2009, that the State used to show attainment with 1997 8-hour ozone standard). A determination that an area has attained the 1997 8-hour ozone standard is based on an objective review of air quality data in accordance with 40 CFR 50.10 and part 50, appendix I, based on 3 complete, consecutive calendar years of quality-assured air quality monitoring data. In the State's redesignation request, Illinois considered data for the 2007–2009 time period to demonstrate attainment. In EPA's determination of attainment and proposed approval of the redesignation request, EPA considered data for the 2008–2010 time period, which was the most recent quality-assured, certified data available. See 76 FR 33647 (June 9, 2011), 76 FR 79582–79583 (December 22, 2011). In this final rulemaking, EPA is also considering continued attainment based on complete, quality-assured certified data for 2009–2011. Therefore, selecting 2008 as a representative attainment year, and comparing emissions for this year to those for a representative year during the nonattainment period, 2002, is an appropriate and long-established approach that demonstrates the occurrence of emission reductions in the area between the years of nonattainment and attainment. These reductions therefore, can be seen to account for the observed air quality improvement.

With respect to the commenter's assertion that EPA has conducted no analyses to prove that emission reductions between 2002 and 2008 led to reduced ozone concentrations, as noted above, comparing emissions for a representative nonattainment year to emissions for a representative attainment year is consistent with longstanding practice and EPA policy for making such a demonstration. The CAA does not specifically require the use of modeling in making any such demonstration and it has not been the general practice to do so.

EPA disagrees with the commenter's contention that using a single attainment year is arbitrary due to year-to-year variations in emissions levels resulting from cap-and-trade programs. As a general matter, trading programs establish mandatory caps on emissions and permanently reduce the total emissions allowed by sources subject to the programs. The emission caps and associated controls are enforced through the associated SIP rules or FIPs. Any purchase of allowances and increase in emissions by a utility necessitates a corresponding sale of allowances and reduction in emissions by another utility. Given the regional nature of ozone, the emission reduction will have an air quality benefit that will compensate, at least in part, for the impact of any emission increase.

With respect to NO_X SIP Call reductions within the St. Louis area, there is no evidence of significant temporal variation in emissions levels. In fact, actual emissions from NO_X SIP Call sources in the St. Louis area have not varied much from year-to-year over the 2003–2011 time period. The largest emitters in the St. Louis area that are covered by the NO_X SIP Call are operating near full capacity. Even if all of the large EGUs and large nonEGUs begin emitting at full capacity, emissions would not increase significantly. Further, these sources do not have the type of emissions controls that can simply be ''shut off.''

While the commenter expressed concerns that an economic downturn was responsible for the improvement in air quality, the commenter has made no demonstration that the reduction in emissions and observed improvement in air quality is due to an economic recession, changes in meteorology, or temporary or voluntary emissions reductions. Also, as noted previously, the CAA does not require modeling to make any such demonstration.

Finally, longstanding practice and EPA policy support the use of actual emissions when demonstrating permanent and enforceable emissions reductions. Actual emissions are more reflective of emissions that in reality contribute to monitored ozone concentrations. Sources seldom, if ever, emit at maximum allowable levels and assuming that all sources operate at maximum capacity at the same time would grossly overestimate emissions levels. For this reason EPA believes actual emissions are the appropriate emissions to consider when comparing nonattainment year emissions with attainment year emissions.

Comment 4: The commenter claims that EPA has not conducted an adequate analysis of the effect that redesignation to attainment will have on attainment and maintenance of other NAAQS under section 110(l) of the CAA. The commenter asserts that EPA has failed to conduct an adequate analysis of the ozone redesignation impacts with respect to the 1997 annual fine particulate ($PM_{2.5}$) NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, the 1-hour NO_X (NO_2) NAAQS, the 1-hour sulfur dioxide (SO_2) NAAQS, and the 2008 8-hour ozone NAAQS.

Response 4: Section 110(l) provides in part: ''The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter.'' As a general matter, EPA must and does consider section 110(l) requirements for every SIP revision, including whether the revision would ''interfere with'' any applicable requirement. *See, e.g.,* 70 FR 53, 57 (January 3, 2005); 70 FR 17029, 17033 (April 4, 2005); 70 FR 28429, 28431 (May 18, 2005); and 70 FR 58119, 58134 (October 5, 2005). The Illinois

[4] See September 4, 1992 memorandom from John Calcagni entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' pp. 4 and 8–9.

[5] The nonattainment designation of the St. Louis area for the 1997 8-hour ozone standard was based on 2001–2003 ozone data.

redesignation request and maintenance plan for the 1997 8-hour ozone standard neither revises nor removes any existing emissions limit for any NAAQS, nor does it alter any existing control requirements. On that basis, EPA concludes that the redesignation will not interfere with attainment or maintenance of any of these air quality standards. The commenter does not provide any information in its comment to indicate that approval of this redesignation would have any impact on the area's ability to comply with the 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, the 1-hour NO_2 NAAQS, the 1-hour SO_2 NAAQS, or the 2008 8-hour ozone NAAQS. In fact, the maintenance plan provided with the State's submission demonstrates a decline in ozone precursor emissions over the timeframe of the initial maintenance period. As a result, the redesignation does not relax any existing rules or limits, nor will the redesignation alter the status quo air quality.[6] The commenter has not explained why the redesignation might interfere with attainment of any standard or with satisfaction of any other requirement, and EPA finds no basis under section 110(l) for EPA to disapprove the SIP revision at issue or to disapprove the requested redesignation.

Comment 5a: The commenter asserts that the 2002 emissions inventory that EPA is proposing to approve as meeting the emission inventory requirement of section 182(a)(1) of the CAA is inadequate and EPA cannot approve this emissions inventory. The commenter notes that the emissions inventory is 10 years old. In addition, the commenter states that portions of the emissions inventory were estimated, as opposed to being actual emissions, and claims that EPA has not included a ''comprehensive'' emissions inventory in the docket, EPA has only included a summary of the emissions inventory. The commenter asserts that EPA must place a comprehensive emissions inventory, which includes information for each point source, in the docket to allow the public to review the inventory and comment on it.

Response 5a: Illinois developed a 2002 comprehensive inventory to meet the requirement of section 182(a)(1) of the CAA in accordance with EPA's November 18, 2002, policy memorandum from Lydia N. Wegman entitled ''2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, $PM_{2.5}$ and Regional Haze Programs,'' and EPA's policy Phase 2 ozone implementation rule published on November 29, 2005 (70 FR 71612, 71664). EPA notes that Illinois submitted the 2002 inventory on June 21, 2006, and at that time, 2002 was the most current emissions inventory available for the nonattainment area.

The commenter observes that portions of the emissions inventory were estimated. This is entirely consistent with accepted EPA procedures for emissions inventory development procedures. It is common practice, and consistent with EPA emissions inventory guidance, for states to estimate emissions for any given year using related activity factors or to project emissions based on information from prior years and associated activity growth factors. See ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' dated August 2005. For mobile sources, it is standard and accepted practice for states to estimate emissions using an EPA- approved emissions model coupled with the output of a transportation model, which provides traffic levels by roadway and activity type. The commenter provided no information or specific details that show that the 2002 inventory was inaccurate.

With respect to the commenter's concern regarding the availability of the emissions inventory submittal in the docket, we acknowledge that the inventory was unintentionally omitted from the electronic docket at *www.regulations.gov*. However, the document was available to the public in hard copy at the EPA Region 5 office, and had the commenter contacted the Region, the inventory could have been provided. The inventory has since been added to the electronic docket.

While we believe the 2002 inventory submitted by the State meets the inventory requirements of both section 182(a)(1) and section 172(c)(3) of the CAA, EPA notes that the State also submitted a comprehensive 2008 emissions inventory to serve as the attainment year inventory as part of the maintenance plan. EPA's longstanding view, as set forth in the September 4, 1992 memorandom from John Calcagni entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (Calcagni memorandum) is that the ''requirements for an emission inventory [under section 172(c) or 182(a)(1)] will be satisfied by the inventory requirements of the maintenance plan.'' See Calcagni memorandum at 6.

When preparing the comprehensive 2008 emissions inventory, Illinois compiled point source information from the 2008 annual emissions reports submitted to IEPA by sources and EPA's Clean Air Markets Division database for electric utilities. Area source emissions were calculated using the most recently available methodologies and emissions factors from EPA along with activity data (population, employment, fuel use, etc.) specific to 2008. Non-road mobile source emissions were calculated using EPA's NONROAD emissions model. In addition, emissions estimates were calculated for commercial marine vessels, aircraft, and railroads, three non-road categories not included in the NONROAD model. On-road mobile source emissions were calculated using EPA's MOVES emissions model with 2008 Vehicle Miles Traveled (VMT) data provided by Illinois Department of Transportation (IDOT).

Therefore, in actuality, the State has more than satisfied the CAA inventory requirements by its submittal of two inventories that meet the applicable emissions inventory requirement.

Comment 5b: The commenter asserts that emissions calculations for on-road mobile sources fail to consider the use of gasoline containing up to 15 volume percent ethanol (E15).

Response 5b: In 2010 and 2011, EPA granted partial waivers for use of E15 in model year (MY) 2001 and newer light-duty motor vehicles (75 FR 68094 and 76 FR 4662). As discussed in the waiver decisions, there may be some small emission impacts from the use of E15. E15 is expected to cause a small immediate emissions increase in NO_X emissions. However, due to its lower volatility than the E10 currently in-use, its use is also expected to result in lower evaporative emissions. Other possible emissions impacts may be from the misfueling of E15 in vehicles or engines for which its use is not approved, i.e., MY2000 and older motor vehicles, heavy-duty engines and vehicles, motorcycles and all nonroad engines, vehicles, and equipment. EPA has promulgated a separate rule dealing specifically with the mitigation of misfueling to reduce the potential emissions impacts from misfueling (76 FR 44406).

However, the E15 partial waivers do not require that E15 be made or sold and it is unclear if and to what extent E15 may even be used in Illinois. Even if E15 is introduced into commerce in Illinois, considering the likely small and

[6] EPA notes that the St. Louis area does not have violating monitors for the 1997 annual $PM_{2.5}$ NAAQS, 2006 24-hour $PM_{2.5}$ NAAQS, or the 1-hour NO_X NAAQS, and that this area has not been designated nonattainment for 2006 24-hour $PM_{2.5}$ NAAQS, the 1-hour NO_X NAAQS, or the 1-hour SO_2 NAAQS.

offsetting direction of the emission impacts, the limited set of motor vehicles approved for its use, and the measures required to mitigate misfueling, EPA believes that any potential emission impacts of E15 will be less than the maintenance plan safety margin by which Illinois shows maintenance.

Comment 6: The commenter contends that EPA cannot approve the ozone redesignation because Illinois' VOC RACT rules have not been approved in conjunction with the approval of the ozone redesignation. The commenter pointed to EPA's statement in the proposed approval of the redesignation that it would take action on Illinois' VOC RACT rules in a separate rulemaking. The commenter states that approval ''in a separate rule'' is not approval ''in conjunction'' with rulemaking on a redesignation, and that this would be a departure from EPA's previous practice of approving needed SIP revisions in the same final rule as a redesignation. The commenter also points to the Sixth Circuit Court of Appeals decision in *Wall* v. *EPA,* in which the Court stated that ''the EPA abused its discretion when it determined that it could redesignate the Cincinnati metropolitan area as achieving attainment before Ohio had fully adopted all RACT rules of Part D, Subpart 2 of the CAA.'' *Wall* v. *EPA,* 265 F.3d 426,442 (6th Cir. 2001). The commenter claims that RACT measures must be contained in SIPs submitted with respect to redesignation requests.

Response 6: EPA disagrees with the commenter's position that VOC RACT rules must be approved in the same final rule as the redesignation. The commenter's contention is without basis in either the law or common sense. EPA acknowledged in its proposed redesignation at 76 FR 79585, that approval of IEPA's VOC RACT submittal is a prerequisite for approval of the redesignation of the Illinois portion of the St. Louis area to attainment of the 1997 8-hour ozone standard. This simply requires that EPA approve the VOC RACT rules on or before finalizing approval of the redesignation. EPA approved the Illinois VOC RACT submittal on March 23, 2012 (77 FR 16940). Therefore, this prerequisite to redesignation has been met.

Comment 7: The commenter contends that EPA cannot approve the State's ozone redesignation request because the State and EPA have not satisfied all part D requirements. The specific points of contention raised by the commenter are discussed separately below.

Comment 7a: The commenter disagrees with EPA's conclusion that an area can be redesignated to attainment of a NAAQS regardless of the status of the State's SIP relative to the requirements of section 110(a)(2) of the CAA. The commenter argues that EPA's position does not make sense given that the State's infrastructure SIP will apply to the ''former'' nonattainment area once it is redesignated to attainment. To the commenter, it is clear that Congress wanted to ensure that there is a valid infrastructure SIP in place to protect areas that are being redesignated to attainment.

Response 7a: EPA stands by its position that section 110 elements that are not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001), and in the St. Louis 1-hour ozone redesignation 68 FR 25418, 25426–27 (May 12, 2003). Both the 6th and 7th Circuits have agreed that the CAA provides EPA with leeway to determine what is an ''applicable requirement'' for purposes of redesignation. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding EPA's interpretation of ''applicable requirements'' with respect to conformity.

In any event, on July 13, 2011, EPA approved elements of the Illinois submittal to meet the infrastructure requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone standard. See 76 FR 41075. Specifically, EPA approved the following infrastructure elements: emission limits and other control measures, ambient air quality monitoring and data system, enforcement of SIP measures, interstate and international pollution abatement, adequate resources, stationary source monitoring system, emergency power, future SIP revisions, consultation with government officials, public notification, air quality modeling and data, permitting fees, and consultation and participation by affected local entities. Also note that Federally promulgated Prevention of Significant Deterioration (PSD) rules are in place in Illinois. For all these reasons, EPA concludes that the SIP elements applicable for purposes of redesignation have been approved by EPA.

Comment 7b: The commenter contends that EPA cannot redesignate the Illinois portion of the St. Louis nonattainment area to attainment of the 1997 8-hour ozone standard because section 172(c) of the CAA requires SIPs to include a Reasonable Further Progress (RFP) plan, an ozone attainment demonstration, contingency measures, nonattainment New Source Review (NSR) rules, and Reasonably Available Control Measures (RACM)/ RACT rules and EPA has not approved these items into the SIP for the Illinois portion of the St. Louis ozone nonattainment area. The commenter disagrees with EPA's conclusions that these CAA requirements are no longer applicable to an area after it has achieved attainment of the NAAQS. In addition, the commenter disagrees with EPA's conclusion that, for an ozone nonattainment area, the CAA section 172(c)(3) SIP requirement for a comprehensive, accurate, and current emissions inventory is superseded by the section 182(a)(1) emission inventory requirement. Therefore, the commenter believes that the EPA has not adequately addressed this SIP requirement when it concludes that Illinois has met all SIP requirements applicable to the Illinois portion of the St. Louis ozone nonattainment area for purposes of redesignation to attainment of the 1997 8-hour ozone standard.

Response 7b: Under EPA's Clean Data regulation, 40 CFR 51.918 (1997 8-hour ozone), an EPA rulemaking determination that an area is attaining the relevant standard suspends the area's obligations to submit an attainment demonstration, RACM, RFP, contingency measures, and other planning requirements related to attainment for as long as the area continues to attain. See 70 FR 71702 (November 29, 2005). This regulation, which embodies EPA's interpretation under its ''Clean Data Policy,'' has been

upheld by the DC Circuit. *NRDC* v. *EPA,* 571 F.3d 1245 (DC Cir. 2009).[7]

Because EPA determined that the St. Louis area has attained the 1997 8-hour ozone standard (see 76 FR 33647, June 9, 2011) and because the area continues to meet that standard, the State is not currently obligated to submit an attainment demonstration, RACM, RFP, contingency measures, and other planning requirements related to attainment.

In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble for implementation of Title 1 of the CAA 1990 amendments EPA stated that:

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans * * * provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. ''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990,'' (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

See also Calcagni memorandum at 6 (''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.'').

With respect to the RACT requirement, EPA approved the Illinois VOC RACT submittal on March 23, 2012 (77 FR 16940), and granted Illinois a waiver from the requirement to submit RACT rules under section 182(f) of the CAA on February 22, 2011 (76 FR 9655).

With respect to emissions inventories, by meeting the section 182(a)(1) emission inventory requirement, the State has also met the section 172(c)(3) requirement for a comprehensive, accurate, and current emissions inventory. Further, redesignation policy states that emissions inventory requirements of section 172(c) of the CAA are satisfied by the inventory requirements of the maintenance plan. See the Calcagni memorandum at 6.

With respect to the nonattainment NSR requirement, the issue is moot because EPA has approved the Illinois nonattainment NSR SIP. Nonetheless, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a part D NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without a part D NSR program. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment'' (Nichols memorandum). Illinois has demonstrated that the St. Louis area will be able to maintain the 1997 8-hour ozone standard without a part D NSR program in effect; therefore, the State need not have a fully approved part D NSR program prior to approval of the redesignation request. This issue is discussed in greater detail below in response to Comment 7d. Upon redesignation, the PSD program will apply. See *Greenbaum* v. *EPA,* 370 F.3d 527, 536 (6th Cir. 2004) (''It would make little sense for [part D NSR] to be included in the post-attainment SIP, as the Clean Air Act * * * explicitly states that attainment area SIPs must include a PSD program.'')

Comment 7c: With further regard to contingency measure requirements of the CAA, the commenter contends that EPA is incorrect to conclude that contingency measures are inapplicable once an area reaches attainment of the NAAQS. The commenter asserts that contingency measures must be in place so that, if an area monitor shows a violation of the NAAQS in the future, that violation of the NAAQS is quickly addressed, minimizing the number of people that will be harmed by air quality levels above the NAAQS.

Response 7c: As set forth in detail in Response 7b, the nonattainment area contingency measure requirements of section 172(c)(9) are directed at ensuring RFP and attainment by the applicable date. These nonattainment area requirements no longer apply after an area has attained the standard and the area has been redesignated to attainment. Under section 175A of the CAA, maintenance plans must contain contingency provisions, ''as deemed necessary by the Administrator,'' and it is these contingency measures that apply to the area after redesignation to attainment. Illinois included such provisions in its maintenance plan which EPA is approving in this action.

Comment 7d: The commenter, although acknowledging that EPA has certified that it has approved Illinois' nonattainment NSR rules, takes issue with EPA's related conclusion that an area being redesignated to attainment of a NAAQS need not have fully approved part D NSR rules, since PSD requirements of the CAA would apply after redesignation to attainment. The commenter contends that this EPA conclusion was explicitly rejected by the Court in *Greenbaum* v. *EPA,* 370 F.3d 527, 534 (6th Cir. 2004). The commenter asserts that without an approved NSR program, there can be no redesignation to attainment of the NAAQS. The commenter believes that this is true, because if a redesignated area violates the NAAQS in the future, all provisions that are contained in the state's nonattainment SIP, including NSR rules, would need to become applicable again.

Response 7d: Part D NSR would not be retained in the SIP as a section 175A(d) contingency measure. As clearly stated in the Nichols memorandum, ''EPA believes it is reasonable to interpret 'measure,' as used in section 175A(d), not to include part D NSR.'' Congress used the undefined term ''measure'' differently in different provisions of the CAA, which indicates that the term is susceptible to more than one interpretation and that EPA has the discretion to interpret it in a reasonable manner in the context of section 175A. See *Greenbaum* v. *United States EPA,* 370 F. 3d 527, 535–38 (6th Cir. 2004). (Court ''find[s] persuasive the EPA's argument that the very nature of the NSR permit program supports its interpretation that it is not intended to be a contingency measure pursuant to section 175A(d).'') It is reasonable to interpret ''measure'' to exclude part D NSR in this context because PSD, a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR upon redesignation. PSD requires that new sources demonstrate that emissions from their construction and operation will not cause or contribute to a violation of any NAAQS or PSD increment. The State has demonstrated that the area will be able to maintain the standard without part D NSR in effect, and the State's PSD program will become effective in the area upon redesignation to attainment. See the rationale set forth at length in the Nichols Memorandum. See also the discussions of why full approval and retention of NSR is not required in redesignation actions in the following redesignation rulemakings: 60 FR 12459, 12467–12468 (March 7, 1995) (Redesignation of Detroit, MI); 61 FR 20458, 20469–20470 (May 7, 1996) (Cleveland-Akron-Lorrain, OH); 66 FR 53665, 53669 (October 23, 2001)

[7] See also *Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004); and *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion).

(Louisville, KY); 61 FR 31831, 31836–31837 (June 21, 1996) (Grand Rapids, MI). Contrary to the commenter's assertion, the *Greenbaum* court declined to reach the issue of whether full approval of a part D NSR program is required prior to redesignation. See *Greenbaum,* 370 F. 3d at 534–35.

Comment 8: The commenter generally asserts that Illinois lacks a fully approved maintenance plan complying with the requirements of section 175A of the CAA. The commenter's specific arguments supporting this assertion follow.

Comment 8a(1): The commenter asserts that the contingency measures contained in Illinois' maintenance plan do not provide for prompt correction of violations of the 1997 8-hour ozone standard. The commenter believes that neither the ''Level I'' nor the ''Level II'' response occurs on a prompt schedule as required by section 175A of the CAA, and that several of the potential contingency measures are inappropriate, inadequate, or unacceptably vague. The commenter notes that after the determination of a Level I trigger [8] event, Illinois has committed to adopt needed emission control measures within 18 months and has committed to implement the adopted emission control measures within 24 months after adoption. The commenter also notes that after the determination of a Level II trigger [9] event, the maintenance plan contains no specific emission control commitments, but that Illinois will work with Missouri to conduct a study to determine the causes of the ozone standard violation and the emission control measures necessary to mitigate the air quality problem, with implementation of adopted emission controls to occur within 18 months of the determination of the Level II event. The commenter contends that the implementation schedules for the Level I and II triggers are unacceptably long and not in keeping with the prompt response timing required by section 175A of the CAA.

Response 8a(1): The commenter overlooks the provisions of the CAA applicable to contingency measures. Section 175(A(d) provides that ''[e]ach plan revision submitted under this section shall contain such contingency provisions as *the Administrator deems necessary* to assure that the state will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.'' (emphasis added). Thus Congress gave EPA discretion to evaluate and determine the contingency measures EPA ''deems necessary'' to assure that the state will promptly correct any subsequent violation. EPA has long exercised this discretion in its rulemakings on section 175A contingency measures in redesignation maintenance plans, allowing as contingency measures commitments to adopt and implement in lieu of fully adopted contingency measures, and finding that implementation within 18 months of a violation complies with the requirements of section 175A. See recent redesignations, e.g. Indianapolis, IN $PM_{2.5}$ annual standard (76 FR 59512), Lake and Porter Counties, IN 8-hour ozone standard (75 FR 12090), and Northwest Indiana $PM_{2.5}$ annual standard (76 FR 59600). Section 175A does not establish any deadlines for implementation of contingency measures after redesignation to attainment. It also provides far more latitude than does section 172(c)(9), which applies to a different set of contingency measures applicable to nonattainment areas. Section 172(c)(9) contingency measures must ''take effect * * * without further action by the State or [EPA].'' By contrast, section 175A confers upon EPA the discretion to determine what constitutes adequate assurance, and thus permits EPA to take into account the need of a state to assess, adopt and implement contingency measures if and when a violation occurs after an area's redesignation to attainment. Therefore, in accordance with the discretion accorded it by statute, EPA may allow reasonable time for states to analyze data and address the causes and appropriate means of remedying a violation. In assessing what ''promptly'' means in this context, EPA also may take into account time for adopting and implementation of the appropriate measure. In the case of the St. Louis area, EPA reasonably concluded that, 18 months constitutes a timeline consistent with prompt correction of a potential monitored violation. This timeframe also conforms with EPA's many prior rulemakings on acceptable schedules for implementing section 175A contingency measures as noted above.

Comment 8a(2): The commenter contends that several of Illinois' contingency measures, ''NO_X RACT'' and ''Broader geographic applicability of existing measures,'' are too vague. The commenter asserts that the vagueness of these contingency measures provides no evidence that the maintenance plan will provide enough emission controls to correct ozone standard violations.

Response 8a(2): As discussed above in response to Comment 8a (1), the CAA does not specify the requisite nature, scope, specificity, or number of contingency measures to be included in a maintenance plan under section 175A. It is for EPA to determine whether the State has given adequate assurance that it can promptly correct a violation. Illinois has submitted contingency measures that EPA deems adequate. They have committed to remedy a future violation, and have included measures to address potential violations from a range of sources and a timeline for promptly completing adoption and implementation. The State has identified measures that are sufficiently specific but which allow for latitude in potential scope. This will enable the State to address a range of potential sources and differing degrees and types of violations. EPA believes that the contingency measures set forth in the submittal, combined with the State's commitment to an expeditious timeline and process for implementation, provide assurance that the State will promptly correct a future potential violation. Given the uncertainty as to timing, degree and nature of any future violation, EPA believes that the contingency measures set forth adequately balance the need for flexibility in the scope and type of measure to be implemented with the need for expeditious state action.

Comment 8a(3): The commenter contends that several of the potential contingency emission control measures are inappropriate or inadequate. The commenter states that several of the contingency emission control measures, including the Tier 2 vehicle emission standards, low sulfur fuel standards, heavy duty diesel standards, and low sulfur diesel standards are Federal emission control measures that EPA is already implementing. The commenter contends that EPA cannot both credit these emission control measures with existing emission reductions and allow IEPA to include them as potential contingency measures in the ozone maintenance plan. The commenter states that this approach would amount to double counting the effects of these emission control measures.

Response 8a(3): As discussed above in response to Comment 8a(2), the CAA

[8] A Level I response is triggered in the event that: (1) The annual fourth highest daily maximum 8-hour ozone concentration at any monitoring site in the St. Louis area exceeds 84 parts per billion (ppb) in any year; or, (2) VOC or NO_X emissions increase more than 5 percent above the levels contained in the attainment year (2008) emissions inventory for the Illinois portion of the St. Louis ozone nonattainment area.

[9] A Level II response is triggered in the event that a violation of the 1997 8-hour ozone standard is monitored at any monitoring site in the St. Louis area.

does not specify the requisite nature, scope, specificity, or number of contingency measures to be included in a maintenance plan under section 175A. EPA has considered that the maintenance plan includes adequate state contingency measures, and that these are sufficient for the purpose of maintenance. EPA considers that the state measures themselves constitute adequate contingency measures, and that the Federal measures included also bolster maintenance to the extent that they provide reductions that were not counted in the maintenance plan's demonstration as explained below.

EPA also disagrees with the commenter's contention that EPA is double counting emissions reductions. The fact that some emissions reductions may have already been realized by a control measure does not prevent the control measure from resulting in greater reductions in future years. Further, as stated in the proposed rule (76 FR 79591), ''[t]o qualify as a contingency measure, emissions reductions from that measure must not be factored into the emissions projections used in the maintenance plan.'' This prevents possible double counting of emissions reductions during the maintenance period. Should the contingency plan be triggered, the state would be required to choose a contingency measure that meets this criterion. Any control measure listed in the contingency plan that fails to meet this criterion would not be considered to be an eligible contingency measure at that time and the state would be required to choose one that does.

Comment 8b: The commenter asserts that EPA, in assessing the adequacy of Illinois' ozone maintenance demonstration, has credited the state with NO_X emission reductions in upwind areas that are the products of the NO_X SIP call and CSAPR. These rules develop cap-and-trade programs that the commenter argues cannot satisfy the maintenance plan requirement. In addition, CSAPR has been stayed by the Court and may not be relied upon to provide NO_X emission reductions.

Response 8b: As discussed in Response 3b, EPA disagrees with the commenter's position that emission reductions associated with the NO_X SIP Call cannot be considered to be permanent and enforceable simply because they result from an emissions trading program. In addition, as discussed in Response 3a, Illinois has not relied on CSAPR to demonstrate attainment or maintenance of the standard.

Comment 8c: The commenter contends that Illinois' maintenance plan fails to consider additional emissions expected to occur from the Prairie State electrical power plant, which is currently under construction. This power plant is expected to commence operation during the ozone maintenance period. This power plant is expected to be a major source of NO_X emissions. The commenter asserts that EPA cannot presume that, because the Prairie State power plant has obtained a PSD source permit, it will not cause or contribute to a violation of the 1997 8-hour ozone standard. EPA must review the PSD record and include the relevant portions in the administrative record for this ozone redesignation rulemaking.

Response 8c: Neither the CAA nor EPA redesignation policy requires that EPA review and take into consideration construction permits as a criterion for redesignation. Consistent with EPA's redesignation policy as articulated in the September 4, 1992, Calcagni memorandum, the State demonstrated maintenance of the standard by showing that future emissions in the area will not exceed the level of emissions in the attainment inventory for the area. The Prairie State power plant under construction is located in Washington County, which is not part of the St. Louis area. Thus emissions from this facility do not factor into the attainment or maintenance inventories for the area. EPA, in its proposed redesignation and elsewhere in our responses to comments in this final rule, has addressed and considered issues pertaining to the potential impact of emissions from outside the St. Louis area on the area's maintenance of the 1997 ozone standard.

Finally, under title I, part C of the CAA, the PSD preconstruction permit program requires an air quality analysis to demonstrate that emissions from construction or operation of a proposed major stationary source or major modification will not cause or contribute to a violation of any applicable NAAQS or PSD increment. CAA section 165(a)(3); see also 40 CFR 51.166(k) (providing that the owner or operator of a proposed source or modification ''shall demonstrate that allowable emissions increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reduction * * * would not cause or contribute to air pollution in violation of'' any NAAQS or PSD increment). Therefore, the effect of the emissions from a proposed source on the maintenance of the NAAQS is addressed through the PSD permitting program before the facility is authorized to build and operate. Neither the CAA nor EPA policy require EPA to include the record from an independent PSD proceeding in the record for a redesignation action or to reopen permitting issues as part of a redesignation action. In addition, the commenter has not provided data indicating that the Prairie State plant will cause or contribute to a NAAQS or increment violation in the St. Louis area.

Comment 9: The commenter asserts that EPA has not accounted for the effects of weather in its modeling. The commenter notes that EPA's analysis of Illinois' ozone redesignation request is devoid of weather-adjusted considerations of ambient ozone levels. For this reason, this commenter believes that EPA cannot approve Illinois' ozone redesignation request. In addition, the commenter believes that EPA has erred in not considering the impacts that climate change will have on future ozone formation during the maintenance period.

Response 9: A determination that an area has attained the 1997 8-hour ozone standard is based on a review of monitored air quality data that meets regulatory requirements for purposes of comparison to the NAAQS, and it is not derived from modeling. An area is considered to be in attainment of the 1997 8-hour ozone standard if the 3-year average of the fourth highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year does not exceed 0.084 ppm. Three years of air quality data are used to allow for year-to-year variations in meteorology. As discussed in detail in the proposed rule, the St. Louis area is monitoring attainment of the 1997 8-hour ozone standard. See 76 FR 79582–79583 (December 22, 2011).

In addition, a maintenance demonstration need not be based on modeling. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), and 68 FR 25413, 25430–25432 (May 12, 2003). EPA policy and longstanding practice allows states to demonstrate maintenance by preparing an attainment emissions inventory corresponding to the period during which the area monitored attainment and to project maintenance by showing that future emissions are projected to remain below this level for the next ten years. See Calcagni memorandum. Holding emissions at or below the level of attainment is adequate to reasonably assure continued maintenance of the standard. See 65 FR 37879, 37888 (June

19, 2000). Since the St. Louis action is not based on modeling, EPA concludes that weather related impacts, including climate change, on modeling are not relevant. Impacts of weather on monitored data are accounted for by the three years of data used for the attainment determination.

III. What actions is EPA taking?

EPA is approving a request from the State of Illinois to redesignate the Illinois portion of the St. Louis, MO–IL area to attainment of the 1997 8-hour ozone standard. EPA is also taking several other related actions. EPA is approving, as a revision to the Illinois SIP, the State's plan for maintaining the 1997 8-hour ozone standard through 2025 in the area. EPA is approving the 2002 emissions inventory as meeting the comprehensive emissions inventory requirement of the CAA for the Illinois portion of the St. Louis area. Finally, EPA finds adequate and is approving the State's 2008 and 2025 MVEBs for the Illinois portion of the St. Louis area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3) which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30 day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the state of planning requirements for this 8-hour ozone nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions do not impose additional requirements beyond those imposed by state law and the CAA. For that reason, these actions:

- Are not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 13, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: May 30, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 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 *et seq.*

■ 2. Section 52.726 is amended by adding paragraphs (ll) and (mm) to read as follows:

§ 52.726 Control strategy: Ozone.

* * * * *

(ll) *Approval*—On May 26, 2010, and September 16, 2011, Illinois submitted a request to redesignate the Illinois portion of the St. Louis, MO–IL area to attainment of the 1997 8-hour ozone standard. The St. Louis area includes Jersey, Madison, Monroe, and St. Clair Counties in Illinois and St. Louis City and Franklin, Jefferson, St. Charles and St. Louis Counties in Missouri. As part of the redesignation request, the State submitted a plan for maintaining the 1997 8-hour ozone standard through 2025 in the area as required by section 175A of the Clean Air Act. Part of the section 175A maintenance plan includes a contingency plan. The ozone maintenance plan establishes 2008 motor vehicle emissions budgets for the Illinois portion of the St. Louis area of 17.27 tpd for volatile organic compounds (VOC) and 52.57 tpd for nitrogen oxides (NO_X). In addition the maintenance plan establishes 2025 motor vehicle emissions budgets for the Illinois portion of the St. Louis area of 5.68 tpd for VOC and 15.22 tpd for NO_X.

(mm) *Emissions inventories for the 1997 8-hour ozone standard*—

(1) *Approval*—Illinois' 2002 emissions inventory satisfies the emissions inventory requirements of section 182(a)(1) of the Clean Air Act for the Illinois portion of the St. Louis, MO–IL area under the 1997 8-hour ozone standard.

(2) [Reserved]

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 4. Section 81.314 is amended by revising the entry for St. Louis, MO–IL in the table entitled ''Illinois-Ozone (8–Hour Standard)'' to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
St. Louis, MO-IL:				
Jersey County	6/12/2012	Attainment.		
Madison County	6/12/2012	Attainment.		
Monroe County	6/12/2012	Attainment.		
St. Clair County	6/12/2012	Attainment.		
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. 2012–14102 Filed 6–11–12; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 97

[EPA–HQ–OAR–2009–0491; FRL–9672–4]

RIN 2060–AR35

Revisions to Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action on revisions to the final Transport Rule (Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, published August 8, 2011). EPA is revising the 2012 and 2014 state budgets for Arkansas, Georgia, Indiana, Kansas, Louisiana, Mississippi, Missouri, New York, Nebraska, Ohio, Oklahoma, South Carolina, and Texas, and revising the new unit set-asides for Arkansas, Louisiana, and Missouri. These revisions are in addition to the revisions to the final Transport Rule published on February 21, 2012.

DATES: This final rule is effective on August 13, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–EPA–HQ–OAR–2009–0491. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed on the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. This Docket Facility is open from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (929)566–1742, fax (202) 566–1741.

FOR FURTHER INFORMATION CONTACT: Jeremy Mark, U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9087, email at *mark.jeremy@epa.gov.* Electronic copies of this document can be accessed through the EPA Web site at: *http://epa.gov/airmarkets.*

SUPPLEMENTARY INFORMATION:

I. Glossary of Terms and Abbreviations

The following are abbreviations of terms used in final rule:

CFR Code of Federal Regulations
EGU Electric Generating Unit
FIP Federal Implementation Plan
FR Federal Register
EPA U.S. Environmental Protection Agency
ICR Information Collection Request
NAAQS National Ambient Air Quality Standards
NODA Notice of Data Availability
NO_X Nitrogen Oxides
SIP State Implementation Plan
OMB Office of Management and Budget
$PM_{2.5}$ Fine Particulate Matter, Less Than 2.5 Micrometers
PM Particulate Matter
RIA Regulatory Impact Analysis
SO_2 Sulfur Dioxide