

**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 July 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

#### List of Subjects 40 CFR Part 52

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

Dated: April 29, 2003.

**William W. Rice,**

*Acting Regional Administrator, Region 7.*

■ Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### EPA-APPROVED MISSOURI REGULATIONS

#### PART 52—[AMENDED]

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

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

#### Subpart AA—Missouri

■ 2. In § 52.1320 the table in paragraph (c) is amended by revising the entry for 10–5.380, under Chapter 5, to read as follows:

#### § 52.1320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

Missouri citation	Title	State effective date	EPA approval date	Explanation
<b>Missouri Department of Natural Resources</b>				
* * *	* * *	* * *	* * *	* * *
<b>Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area</b>				
* * *	* * *	* * *	* * *	* * *
10–5.380 .....	Motor vehicle emissions inspection.	12/30/02	5/12/03	
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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[MO 182–1182; FRL–7494–5]

#### Determination of Attainment of Ozone Standard, St. Louis Area; Approval and Promulgation of Implementation Plans, and Redesignation of Areas for Air Quality Planning Purposes, State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is determining that the St. Louis ozone nonattainment area (St. Louis area) has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). The St. Louis ozone nonattainment area includes the counties of Franklin, Jefferson, St. Charles, and St. Louis as well as St. Louis City in Missouri and the counties

of Madison, Monroe, and St. Clair in Illinois. This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2000 through 2002 ozone seasons that demonstrate that the 1-hour ozone NAAQS has been attained in the area. EPA is also determining that certain ozone attainment demonstration requirements, along with certain other related requirements of part D of title I of the Clean Air Act (CAA), are not applicable to the St. Louis area.

EPA is also approving a request from the state of Missouri, submitted on December 6, 2002, to redesignate the St. Louis area to attainment of the 1-hour ozone NAAQS. In approving this request EPA is also approving the state's plan for maintaining the 1-hour ozone NAAQS through 2014, as a revision to the Missouri State Implementation Plan (SIP). EPA is also finding adequate and approving the state's 2014 Motor Vehicle Emission Budgets (MVEBs) for volatile organic compounds (VOCs) and nitrogen oxide compounds (NO<sub>x</sub>) in the submitted maintenance plan for transportation conformity purposes. Refer also to a separate rule published

today regarding similar approvals for the state of Illinois.

**DATES:** This rule is effective May 12, 2003.

**ADDRESSES:** Relevant documents for this rule are available for inspection at the Environmental Protection Agency, Region 7, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours in advance.

#### FOR FURTHER INFORMATION CONTACT:

Tony Petruska, (913) 551–7637, ([petruska.anthony@epa.gov](mailto:petruska.anthony@epa.gov)).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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### **I. What Is the Background for This Action?**

On January 30, 2003, EPA published a final rule and two proposed rules related to the St. Louis ozone nonattainment area (68 FR 4836, 68 FR 4842 and 68 FR 4847). The final rule found at 68 FR 4836 reinstated and made effective a prior EPA finding that the St. Louis ozone nonattainment area did not attain the 1-hour ozone standard by November 15, 1996 (based on 1994–1996 ozone data) and reinstated a reclassification of the area to a serious nonattainment area. In addition, in the January 30, 2003, final rule, EPA established a schedule for submission of state implementation plan revisions and established November 15, 2004, as the date by which the St. Louis area must attain the ozone standard. A correction to this final rule was published on February 13, 2003, which corrected a table entry (68 FR 7410). In the proposed rule found at 68 FR 4847, EPA proposed to determine that the St. Louis ozone nonattainment area has attained the 1-hour ozone standard based on complete, quality-assured monitoring data for 2000 through 2002. In addition, the proposed rule proposed to approve requests from the states of Missouri and Illinois to redesignate the St. Louis area to attainment with the 1-hour ozone NAAQS, proposed to determine that certain requirements of the CAA are not applicable, proposed to approve the states' maintenance plans as revisions to the SIP, and proposed to find adequate and approve the 2014 motor vehicle emission budgets for volatile organic compounds and nitrogen oxide compounds for transportation conformity purposes. In the proposed rule found at 68 FR 4842, EPA proposed to approve a revision to the state implementation plan for the inspection and maintenance (I/M) program operating in the Missouri portion of the St. Louis area.

This rule is EPA's final action finding that the St. Louis ozone nonattainment area has attained the 1-hour ozone standard, as well as EPA's final action on the January 30, 2003, proposal found at 68 FR 4847 as it relates to the Missouri portion of the St. Louis nonattainment area. As noted in the January 30, 2003, proposed rule on page 4848, EPA received separate requests from Missouri and Illinois to redesignate the St. Louis area to attainment. In the January 30, 2003, proposed rule, EPA proposed actions related to both the Missouri and Illinois

portions of the nonattainment area. However, EPA stated that it was considering issuance of two separate rules when it took final action on the redesignation requests. We received no comments on this aspect of the proposal. With the exception of the determination of attainment, EPA is taking final action related to the Missouri portion of the nonattainment area and is taking final action on the Illinois portion of the St. Louis nonattainment area in separate rulemaking actions. Section 107(d)(3)(v) provides, as a prerequisite to redesignation, that: "the State containing such area has met all requirements applicable to the area under section 110 and part D." This section plainly shows that Congress meant for EPA to evaluate whether each state requesting redesignation of an area has met the applicable requirements. In addition, each state has authority only to adopt and submit for approval a maintenance plan and a revision of its SIP that are applicable to its territory. Since each state has the authority only to request redesignation for the portion of the area within its boundaries, and EPA evaluated each states' request for redesignation separately, the final rules redesignating each states' portion of the nonattainment area are being published separately. However, EPA has concluded that in determining whether or not a multistate area has attained the standard based upon complete, quality-assured ambient air quality monitoring data, EPA will consider the attainment status of the area as a whole. Therefore, EPA's finding that the area has attained the NAAQS applies to the entire nonattainment area, and we are publishing that finding in this rule. In another rule published today, EPA references this finding and takes separate action on a similar redesignation request and SIP submission by Illinois. See 67 FR 49600, July 31, 2002 (Reinstatement of Redesignation of Kentucky Portion of Cincinnati-Hamilton area) for additional discussion of these issues.

The history for this action has been set forth in detail in the proposed rulemaking published January 30, 2003 (68 FR 4847, 4848–4849), and is summarized below.

The Missouri portion of the St. Louis nonattainment area includes Franklin, Jefferson, St. Charles, and St. Louis Counties and St. Louis City. The Illinois portion of the St. Louis nonattainment area includes Madison, Monroe, and St. Clair Counties (collectively referred to as the Metro-East area).

The St. Louis area was designated as an ozone nonattainment area in March

1978 (43 FR 8962). On November 15, 1990, the CAA Amendments of 1990 were enacted. Under section 107(d)(4)(A) of the CAA, on November 6, 1991 (56 FR 56694), the St. Louis area was designated as a moderate ozone nonattainment area as a result of monitored violations of the 1-hour ozone NAAQS during the 1987–1989 period. On January 30, 2003, EPA reclassified the area to a serious nonattainment area, effective January 30, 2003.

The states adopted and implemented emission control programs required under the CAA to reduce emissions of VOC and NO<sub>x</sub>. These emission control programs include stationary source reasonably available control technology (RACT), vehicle I/M programs, transportation control measures (TCMs), and other measures (see the analysis and discussion of specific emission control measures at 68 FR 4847). As a result of the emission control programs, ozone monitors in the St. Louis area have recorded three years of ozone monitoring data for the 2000–2002 period showing that the area has attained the 1-hour ozone NAAQS.

On December 6, 2002, the Missouri Department of Natural Resources (MDNR) submitted a Redesignation Demonstration and Maintenance Plan for the Missouri Portion of the St. Louis ozone nonattainment area along with a request to redesignate the Missouri portion of the St. Louis nonattainment area to attainment of the 1-hour ozone NAAQS. Included in the Redesignation Demonstration and Maintenance Plan for the Missouri Portion of the St. Louis nonattainment area is a plan to maintain the 1-hour ozone NAAQS for at least the next 10 years, and the 2014 MVEBs for transportation conformity purposes.

### **II. What Actions Are We Taking and When Are They Effective?**

After consideration of the comments received in response to the January 30, 2003, proposal, as described in section V below, we are taking the following actions:

#### *A. Determination of Attainment*

EPA is determining that the St. Louis ozone nonattainment area, consisting of both the Missouri and the Illinois portions of the area, has attained the 1-hour ozone standard.

EPA is also determining that certain attainment demonstration requirements (section 172(c)(1) of the CAA), along with certain other related requirements, of part D of title I of the CAA, specifically the section 172(c)(9) contingency measure requirement (measures needed to mitigate a state's

failure to achieve reasonable further progress toward, and attainment of, a NAAQS), the section 182 attainment demonstration and rate of progress (ROP) requirements, and the section 182(j) multi-state attainment demonstration requirement, are not applicable to the St. Louis area.

On January 30, 2003 (68 FR 4847), EPA proposed that the St. Louis area had attained the standard based on 2000–2002 monitoring data. With this finding, EPA also proposed that certain requirements, including an attainment demonstration, were no longer applicable as the area had attained the standard. EPA has explained at length in other actions its rationale for the reasonableness of this interpretation of the CAA and incorporates those explanations by reference. *See* (67 FR 49600) (Cincinnati-Hamilton, Kentucky, July 31, 2002); (66 FR 53095) (Pittsburgh-Beaver Valley, Pennsylvania, October 19, 2001); (65 FR 37879) (Cincinnati-Hamilton, Ohio and Kentucky, June 19, 2000); (61 FR 20458) (Cleveland-Akron-Lorain, Ohio May 7, 1996); (60 FR 36723) (July 18, 1995) Salt Lake and Davis Counties, Utah); (60 FR 37366) (July 20, 1995), (61 FR 31832–31833) (June 21, 1996) (Grand Rapids, MI). The United States Court of Appeals for the Tenth Circuit has upheld EPA's interpretation. *Sierra Club v. EPA*, 99 F. 3d 1551 (10th Cir. 1996).

EPA reiterates the position set forth in its prior rulemaking actions and in the January 30, 2003 (68 FR 4847) proposed rulemaking for the St. Louis area. Subpart 2 of part D of title I of the CAA contains various air quality planning and SIP submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret the provisions regarding Reasonable Further Progress (RFP) and attainment demonstrations, along with other certain other related provisions, not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.*, attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA interprets the general provisions of subpart 1 of part D of title I (sections 171 and 172) not to require the submission of SIP revisions concerning RFP, attainment demonstrations or section 172(c)(9) contingency measures. As explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Area Meeting the Ozone National

Ambient Air Quality Standard," dated May 10, 1995, EPA believes it is appropriate to interpret the more specific attainment demonstration and related provisions of subpart 2 in the same manner. *See Sierra Club v. EPA*, 99 F. 3d 1551 (10th Cir. 1996).

The attainment demonstration requirements of section 182(b)(1) require that the plan provide for "such specific annual reductions in emissions \* \* \* as necessary to attain the national primary ambient air quality standard by the attainment date applicable under the CAA." If an area has, in fact, monitored attainment of the relevant NAAQS, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached" (57 FR 13564). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to other related provisions of subpart 2. The first of these are the contingency measure requirements of section 172(c)(9) of the CAA. EPA has previously interpreted the contingency measure requirements of section 172(c)(9) as no longer being applicable once an area has attained the standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date" (57 FR 13564).

The state must continue to operate an appropriate network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in EPA's AIRS) for the St. Louis ozone nonattainment area from the 2000 to 2002 ozone seasons. EPA has also reviewed the preliminary data collected to date for the 2003 ozone season (for St. Louis, the ozone season is April 1 through October 31 of each year). On the basis of this review, EPA has determined that the area has attained

the 1-hour ozone standard during the 2000–2002 period and continues to attain the standard, and therefore is not required to submit an attainment demonstration and a section 172(c)(9) contingency measure plan, nor does it need any other measures to attain the 1-hour ozone standard.

#### *B. Redesignation of Missouri Portion of the St. Louis Area to Attainment*

Although EPA is determining that the entire St. Louis nonattainment area has attained the 1-hour ozone standard, EPA has determined that it is appropriate to take final action related to Missouri's request to redesignate the Missouri portion of the St. Louis nonattainment area and take final action related to Illinois' request to redesignate the Illinois portion of the St. Louis nonattainment area in separate rulemaking actions being published today. In the January 30, 2003, proposal, EPA stated that it was considering publishing separate rulemakings for Missouri and Illinois (68 FR 4848). We received one comment in support of publishing separate rulemakings and no adverse comments. In this rulemaking, EPA is taking the following actions with respect to the Missouri portion of the St. Louis nonattainment area:

EPA is approving a request from the state of Missouri to redesignate the Missouri portion of the St. Louis nonattainment area to attainment of the 1-hour ozone NAAQS.

In addition, EPA is taking the following actions:

1. Approving Missouri's plan for maintaining the 1-hour ozone NAAQS through 2014, as a revision to the Missouri SIP;

2. Finding adequate and approving the 2014 MVEBs of 47.14 tons per ozone season weekday for VOC and 68.59 tons per ozone season weekday for NO<sub>x</sub> in the submitted maintenance plans for transportation conformity purposes; and,

3. Determining that the attainment demonstration (and related contingency measure requirements) and reasonably available control measure (RACM) requirements of the CAA are not applicable.

#### *C. Effective Date of These Actions*

EPA finds that there is good cause for this determination of attainment, redesignation to attainment and SIP revision to become effective immediately upon publication 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."

In addition, as indicated above, the January 30, 2003, final rule reclassified the St. Louis area to a "serious" nonattainment area and established a schedule for submission of SIP revisions fulfilling the requirements for serious ozone nonattainment areas. Upon the effective date of this rule, the state of Missouri will be relieved of the obligation to develop and submit these SIP revisions. In addition, the Missouri rules adopted to meet the requirements of title V of the CAA, provide that in a "serious" area, stationary sources with potential emissions of VOCs and NO<sub>x</sub> greater than 50 tons per year are major sources. As such, these major sources are subject to the title V permit program and are required to submit title V permit applications within twelve months of January 30, 2003. Upon the effective date of this rule, stationary sources which are newly subject to the title V permitting program as a result of the January 30, 2003, reclassification to a serious nonattainment area will be relieved of the requirement to submit title V permit applications. In a separate rulemaking, EPA is redesignating the Illinois portions of the St. Louis area to attainment. Additional requirements specific to the Illinois portion of the St. Louis area are described in that separate rulemaking and are also being lifted as a result of that portion's redesignation to attainment. EPA finds that good cause exists for this final rule being immediately effective since it relieves the state of Missouri as well as stationary sources of certain restrictions which would otherwise apply.

### III. Why Are We Taking These Actions To Redesignate the Area?

EPA has determined that the St. Louis area has attained the 1-hour ozone standard. In addition, EPA has determined that the state of Missouri has demonstrated that the criteria for redesignation of the Missouri portion of the area from nonattainment to attainment have been met.

In the January 30, 2003, proposed rule at 68 FR 4847, EPA described the applicable criteria for redesignation to attainment. Specifically, section 107(d)(3)(E) allows for redesignation

providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA has determined that the St. Louis area has attained the applicable NAAQS. EPA has fully approved the applicable implementation plan for the Missouri portion of the St. Louis area under section 110(k). EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions. EPA has fully approved a maintenance plan for the Missouri portion of the area as meeting the requirements of section 175A. Missouri has met all requirements applicable to the Missouri portion of the area under section 110 and part D.

By finding that the maintenance plan provides for maintenance of the NAAQS through 2014, EPA is hereby finding adequate and approving the 2014 MVEBs contained within the maintenance plan. The MVEB for NO<sub>x</sub> in the Missouri portion of the St. Louis area is 68.59 tons per ozone season weekday. The MVEB for VOCs in the Missouri portion of the St. Louis area is 47.14 tons per ozone season weekday.

The rationale for these findings is as stated in this rulemaking and the January 30, 2003, proposed rule found at 68 FR 4847.

### IV. What Are the Effects of Redesignation to Attainment of the 1-Hour NAAQS?

These actions determine that the area attained the 1-hour ozone standard and that certain other related requirements of part D of title I of the CAA, specifically the section 172(c)(9) contingency measure requirement (measures needed to mitigate a state's failure to achieve reasonable further progress toward, and attainment of, a

NAAQS), the section 182 attainment demonstration and rate of progress requirements, and the section 182(j) multi-state attainment demonstration requirement are not applicable to the St. Louis area. EPA's determination that the St. Louis area has met the 1-hour ozone standard relieves the states from the obligation to meet certain additional requirements, which apply to areas not attaining that standard.

EPA notes that the area is likely to be designated nonattainment for the 8-hour ozone standard and would be subject to any additional requirements as a result of such designation. EPA also notes that it is not revoking the 1-hour standard for the St. Louis area.

Approval of the Missouri redesignation request changes the official designation for the 1-hour ozone NAAQS found at 40 CFR part 81 for the Missouri portion of the St. Louis area, including the City of St. Louis, and the Counties of Franklin, Jefferson, St. Charles, and St. Louis from nonattainment to attainment. It also incorporates into the Missouri SIP a plan for maintaining the 1-hour ozone NAAQS through 2014. The plan includes contingency measures to remedy any future violations of the 1-hour ozone NAAQS, and includes VOC and NO<sub>x</sub> MVEBs for 2014 for the Missouri portion of the St. Louis area.

### V. What Comments Did We Receive and What Are Our Responses?

We received five letters regarding the January 30, 2003, proposed rule found at 68 FR 4847. Four of the letters generally supported the rulemaking action. Two of the four letters in support of the rulemaking action raised issues to which EPA is responding in this section. One of the five letters contained adverse comments. A summary of the comments and EPA's responses to them are provided below. This discussion addresses comments relating to the St. Louis area as a whole, and comments specifically relating to the Missouri portion of the area. Comments relating specifically to the Illinois portion of the area are addressed in the final rule for Illinois published elsewhere in this **Federal Register**.

#### A. Comment Related to Meeting the Criteria for Redesignation to Attainment

*Comment 1:* The St. Louis area has failed to meet any of the five criteria specified in section 107(d)(3)(E) of the CAA for redesignation to attainment.

*Response 1:* EPA's determination that the St. Louis area has attained the ozone standard is set forth in section II.A above. EPA has further found that the area has met all of the five criteria

specified in section 107(d)(3)(E) of the CAA for redesignation to attainment. Below are specific comments and responses raised by the commenter regarding each criterion.

*B. Comments Related to Criterion 1: The Area Must Be Attaining the 1-Hour Ozone NAAQS*

*Comment 2:* Monitoring data are not representative of air quality conditions. Monitoring data collected on Labor Day weekend in 2002 are “hopelessly contaminated” due to voluntary emission reductions undertaken by industry and others.

*Response 2:* Section 107(d)(3)(E)(i) of the CAA states that one criterion for redesignation to attainment is that EPA must determine that the NAAQS has been attained. The regulations at 40 CFR part 58 specify data collection and quality assurance procedures. For ozone, an area is attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and appendix H. The regulation at 40 CFR 50.9 states “the standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 part per million is equal to or less than 1 as determined by appendix H.” Appendix H states, “The basic principle in making this determination is relatively straightforward. . . . In its simplest form, the number of exceedances at a monitoring site would be recorded for each calendar year and then averaged over the past 3 calendar years to determine if this average is less than or equal to 1.” The monitoring data for the St. Louis nonattainment area demonstrate that the estimated number of exceedances per year averaged over three years (2000 through 2002) is 1.0 or less at all monitoring sites in the area. In the case of St. Louis, all of the data collected are reviewed, quality assured and submitted to EPA’s Air Quality System (AQS) database. EPA conducts a number of activities to determine that the data meet the data collection and quality assurance procedures of 40 CFR part 58 including the following:

- EPA ensures that the state (and local agencies) is performing quality assurance/quality control (QA/QC) checks properly through systems audits as required per 40 CFR part 58, appendix A. During these systems audits EPA ensures that states are properly calibrating instruments, properly performing precision and span checks on instruments, and properly conducting audits of the

instruments as required in 40 CFR part 58, appendix A.

- EPA chooses several hourly ozone values and tracks those data points from their collection at the monitor through their data handling procedures, including QA/QC procedures, to its final destination in the AQS database.
- To ensure quality data, as required by 40 CFR part 58, appendix A, prior to the start of ozone season each year, EPA certifies at least one primary standard ozone photometer for each of the state and local agencies. These primary ozone photometers stay in the state/local laboratories. Transfer standard photometers are verified against the primary photometer and are used to calibrate the ozone analyzers in the field. Thus, all of the data collected is traceable back to EPA’s primary photometer.
- EPA, as well as the quality assurance groups of the state and local agencies, conduct audits on the ozone instruments collecting the data. These audits are required to be performed quarterly as per 40 CFR part 58, appendix A. EPA audits each ozone instrument at least once per ozone season. This ensures that the instrument is operating properly and collecting accurate data, and it also acts as a check on the state and local quality assurance groups to make sure that the audits they have conducted are accurate.
- As required by 40 CFR part 58, appendix A, Precision and Span checks are performed every two weeks by the agency operating the instrument.

EPA believes that any voluntary measures which may have been taken by industry and others over a two- or three-day period in this three-year time period do not render the air quality monitoring data unrepresentative of the air quality. The data would only be “contaminated” if there had been an error with respect to collection and quality assurance of the data, which there was not. The commenter offers no information indicating data collection was improper. In addition, even if these activities by the community were relevant to whether the area had attained, there is no evidence that emissions were actually reduced to an extent which would have a significant effect on ozone levels. See response to comment 18 below regarding further discussion on the “voluntary reductions” during the Labor Day weekend in 2002. In fact, as explained in the January 30, 2003, proposal at 68 FR 4856–4858, and in section V.D.

below, the monitored improvements in air quality were due to permanent and enforceable emission reductions. For example, as explained further in response to comment 19, the Missouri centralized motor vehicle inspection and maintenance program began in April 2000, the first year of the 2000–2002 time period. The use of reformulated gasoline began in 1999 and achieved additional reductions during the 2000–2002 time period. The monitoring data accurately reflected actual air quality conditions. See response to comment 19 below regarding EPA’s conclusion that improvements in air quality are attributable to permanent and enforceable reductions in ozone precursor emissions.

*Comment 3:* EPA’s proposal ignores the second component discussed in a September 4, 1992, redesignation guidance document from John Calcagni entitled “Procedures for Processing Requests to Redesignate Areas to Attainment” (Calcagni memo) to EPA regional offices, that the determination of attainment should rely not only on monitored values, but on supplemental EPA-approved modeling. For St. Louis, monitored data runs directly counter to air quality modeling. The modeling supported the contention that the NAAQS could be attained only in 2004 after all control measures are adopted. Thus, the monitored attainment is a “fluke” explainable by factors other than the success of the pollution control measures. In addition, based on the Calcagni memo the commenter believes that supplemental ozone modeling may be necessary to determine the representativeness of the monitored data. Without such supplemental modeling, the commenter asserts that the January 30, 2003, proposed rule’s implicit conclusion that the St. Louis area ozone data are “representative” is baseless.

*Response 3:* The commenter cites a policy memorandum entitled “Procedures for Processing Requests to Redesignate Areas to Attainment” dated September 4, 1992 (Calcagni memo), which states that there are two components in determining that an area has met the section 107(d)(3)(E)(i) requirement. This policy states the following:

The state must show that the area is attaining the applicable NAAQS. There are two components involved in making this demonstration which should be considered interdependently. The first component relies upon ambient air quality data. \* \* \* The second component relies upon supplemental EPA-approved air quality modeling. No such supplemental modeling is required for O<sub>3</sub>

(ozone) nonattainment areas seeking redesignation \* \* \* (pages 2 and 3).

This document explains that supplemental modeling may be needed, for example, in sulfur dioxide and carbon monoxide areas, where emissions are localized and a small number of monitors may not be representative of air quality (page 3). In contrast, ozone is not a localized pollutant, and the St. Louis area has an extensive monitoring network consisting of nineteen monitors operating each year from 2000 through 2002 as described in EPA's proposal at 68 FR 4850. Therefore, consistent with the language in the policy and the rationale in calling for modeling in some cases for some pollutants and not in other cases, modeling is not required as part of this redesignation. Neither section 107(d)(3)(E) nor the policy referenced by the commenter requires modeling as a prerequisite to redesignation of an ozone nonattainment area. In addition, no modeling was conducted as part of the redesignation requests submitted by Missouri or Illinois. Therefore, EPA does not believe that the monitored data runs counter to air quality modeling. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), and the redesignations for Pittsburgh (66 FR 53094, October 19, 2001), and Cincinnati (65 FR 37879, June 19, 2000). See response to comments 10, 19, 21, 23, 24, 26, 37 below regarding further discussion of modeling issues.

Commenter's contention that attainment cannot be reached until at least 2004 is addressed below in response to comments 21 and 24.

In addition, the correlation between air quality improvements and permanent and enforceable emission reductions, demonstrating that monitored attainment is not a "fluke" is described in detail in the proposal and section V.D below.

The ozone modeling approaches used do not support any direct comparisons between ozone modeling results and monitored ozone concentrations for years other than a monitored and modeled base period. Although statistical comparisons are made between monitored ozone data and modeled base period ozone concentrations to validate ozone modeling results, ozone models are not designed to explicitly model ozone concentrations at specific locations or to exactly predict future ozone concentrations that can be compared to monitored ozone concentrations on a site-by-site basis. Ozone models are designed to primarily predict the

relative impacts of emission changes on future peak ozone levels assuming the same meteorological conditions that are modeled for the base period. Such modeling techniques produce results with considerable uncertainty (relative to time- and location-specific monitored ozone concentrations) when one actually compares future modeled results with monitored ozone concentrations for the same years. The commenter errs in trying to force comparisons not supported by the existing science.

What the modeling results do imply is that, as regional NO<sub>x</sub> emission controls are implemented through statewide rules in Illinois, Missouri, and other states, peak ozone levels in the St. Louis area are expected to decrease. This increases the likelihood of maintaining the ozone standard in the St. Louis area, thus supporting the approval of the state's ozone redesignation request. Illinois and Missouri are committed to implement statewide NO<sub>x</sub> emission controls regardless of the attainment status of the St. Louis area. Both states are currently implementing statewide NO<sub>x</sub> control rules.

*Comment 4:* The monitored data do not support a conclusion of continued attainment since the trend is toward increases in exceedances because the number of exceedances tripled from 2000 to 2001 and more than doubled from 2001 to 2002 showing an upward trend in peak ozone concentrations. The commenter notes that, if the same number of exceedances that occurred in 2002 occur in 2003 or 2004, the area will again violate the one-hour ozone standard.

*Response 4:* See response to comment 20 below for our detailed response to the comment relating to air quality trends. The determination of attainment, as explained in the January 30, 2003, proposal, in section II.A. above, and in response to comment 2, is based on the requirements of section 107(d)(3)(E)(i) and EPA's regulation which defines attainment of the ozone standard. The regulatory definition is based on design values over a 3-year period, not on year-to-year trends within the three-year period. It would be inconsistent with the regulation to adopt an additional criterion for determining attainment.

It should be noted that a "worsening" ozone trend for the St. Louis area can only be discerned for the 2000–2002 period by combining the annual number of exceedances for all monitoring sites in the area (by totaling the number of exceedances for each year for all monitoring sites combined). This approach is technically flawed. The ozone standard is based on assessing the

peak ozone data for each monitoring site individually not by cumulating the data for all sites. Review of the yearly exceedance data for each monitoring site, as given in Table 1 in the January 30, 2003, proposed rule (68 FR 4850) and in response to comment 20 below, shows that no consistent ozone exceedance rate trend can be established for the individual monitoring sites for this period. For example, the West Alton site experienced one ozone exceedance per year with no up or down trend. The Wood River monitor in Illinois increased from zero exceedances in 2000 to one exceedance in 2001 and back down to zero exceedances in 2002. Many monitors continued to record zero exceedances throughout the 2000–2002 period as noted above. Some monitors, which recorded zero exceedances in 2000 and 2001, recorded one or two exceedances in 2002, hardly a consistent, robust trend. Contrary to the commenter's assertion, on a monitor-by-monitor basis, which is the basis for assessing compliance with the 1-hour ozone standard, there is no consistent "worsening" trend in peak ozone concentrations.

*Comment 5:* EPA asserts that the data is "quality assured" but provided no explanation. EPA must demonstrate that the data is quality assured. EPA must document the adequacy of the states' quality assurance plan. Also, the commenter questions whether the data relied on for the attainment determination was quality-assured since it was entered in AIRS earlier than usual.

*Response 5:* As indicated in the response to comment 2 above, the regulations at 40 CFR part 58 specify data collection and quality assurance procedures. The Calcagni memo on page 2 specifies that the data should be collected and quality-assured in accordance with 40 CFR part 58 and recorded in AIRS in order for it to be available to the public for review. The monitoring data for the St. Louis area was quality assured and entered into AIRS in accordance with these requirements.

Appendix A to 40 CFR part 58 specifies the quality assurance requirements for state and local air monitoring stations. The regulation at 40 CFR 58.35(c) requires that the monitoring data be entered into AIRS within 90 days after the end of the calendar quarter in which it is collected. Thus, monitoring data collected through September 2002 must be quality assured and entered into AIRS by December 31, 2002. Monitoring data for October 2002 must be quality assured and entered into AIRS by March 31, 2003.

Monitoring data collected in a calendar quarter can be quality assured and entered into AIRS at any time prior to 90 days after the end of that quarter.

The monitoring data is quality assured and entered into AIRS by the state and local agencies in the St. Louis area. The regulation at 40 CFR 58.20 requires states to adopt and submit to EPA revisions to the SIP which provide for meeting the requirements of appendix A. On September 27, 1984 (49 FR 38103), EPA approved Missouri's Air Quality Monitoring Plan. EPA stated in this September 27, 1984, rulemaking that "the Missouri Air Quality Monitoring Plan satisfies the requirements of 40 CFR 58.20." On March 4, 1981 (46 FR 15136), EPA approved Illinois' Air Quality Surveillance Plan. EPA stated in this March 4, 1981, rulemaking that EPA has reviewed the plan and "it meets the requirements of \* \* \* EPA regulations in 40 CFR part 58." As part of the September 27, 1984, and March 4, 1981, rulemakings the public was provided the opportunity to review and comment on Missouri's and Illinois' quality assurance procedures. Pursuant to the Calcagni memo, page 3, and upheld in *Wall v. EPA* (265 F.3d 426, 437), an EPA action on a redesignation request does not mean that earlier issues with regard to the SIP will be reopened. Thus, there is no requirement to present quality assurance procedures in this rulemaking.

In addition to Missouri's Air Quality Monitoring Plan and Illinois' Air Quality Surveillance Plan, EPA reviewed and approved the States' Quality Management Plans (QMP). Under the states' QMP, the state and local agencies conducting the ambient monitoring develop Quality Assurance Project Plans (QAPP). It is through the QMP and QAPP that EPA reviewed and approved the states' and local agencies' quality assurance procedures. In order to verify that the state and local agencies followed these procedures and that the data meets the data collection and quality assurance procedures of 40 CFR part 58, EPA conducted the actions listed in the response to comment 2 above.

*C. Comments Related to Criterion 2: The Area Must Have a Fully Approved SIP Under Section 110(k)*

*Comment 6:* The serious area SIP requirements of the CAA are applicable to the St. Louis area. These requirements have not been promulgated by the states and there is no "claim" that they could not have been submitted with the redesignation request. Thus, the SIPs are not "fully

approved." In addition, the Calcagni memo includes procedures suggested by EPA for reducing the stringency of the control measures to become part of the contingency measure. The states have not done these procedures.

*Response 6:* The SIP which is required to be "fully approved" under criterion 2 is the "applicable" implementation plan (section 107(d)(3)(E)(ii)). This section requires that the SIP must be "fully approved" under section 110(k) rather than partial, conditional, or limited approval (Calcagni memo, page 3). Section 107(d)(3)(E)(v) requires the SIP to include "all requirements applicable to the area under Section 110 and Part D." This comment relates to the issue of which requirements are "applicable," rather than whether the SIP is fully approved. The commenter asserts, without explanation, that the statute requires EPA to determine that the "serious" area requirements are applicable to its consideration of the redesignation request for the area. However, the CAA is not as prescriptive as the commenter assumes. (*See, Wall v. EPA*, 265 F.3d 426, 438 (6th Cir. 2001) which states: "The statute, however, does not describe how the EPA is to decide which Part D requirements are 'applicable' in evaluating a redesignation request.")

EPA has established a policy to provide guidance in determining how to apply the statutory criterion with respect to which requirements are applicable in reviewing a redesignation request. As stated in the January 30, 2003, proposed rule (page 4851), the September 4, 1992, Calcagni memo (*see* "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of the section 107(d)(3)(E) requirement. Under this interpretation, states requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. Areas may be redesignated even though they have not adopted measures that come due after the submission of a complete redesignation request. A detailed discussion of EPA's rationale for this interpretation is contained in the rule redesignating Detroit-Ann Arbor, 60 FR 12459, 12465–12466 (March 7, 1995). Pursuant to the January 30, 2003, final rule reclassifying the St. Louis area to "serious" (68 FR 4836), the serious nonattainment area requirements are due on January 30, 2004. The final rule has not been timely challenged under

section 307(b)(1) of the CAA. Thus, the serious nonattainment area requirements due date is January 30, 2004. Since the serious area requirements are not yet due, the SIP is not deficient because the serious area requirements have not been included. EPA policy and a reasonable application of sections 107(d)(3)(E)(ii) and (v) allow for an area to be redesignated even though the area has not adopted measures which are not yet due. EPA has consistently applied this policy and interpretation in other redesignations including the Detroit-Ann Arbor redesignation cited above.

In addition, there is no requirement in section 107(d)(3)(E) that states must "claim" (or demonstrate) that they could not have submitted the serious area SIP revisions or any additional revisions at the time of the redesignation requests, if those requirements are not applicable to the area when the request is made. EPA's action to reclassify the area to a serious nonattainment area was published in the **Federal Register** after both states had submitted their redesignation requests to attainment, and it established a deadline for submission of the serious area requirements which had not yet passed, and still remains in the future. Thus, Missouri was not required to include in its request a "claim" that the state cannot complete the serious area requirements.

Finally, the Calcagni memo discusses the statutory requirement that the state must implement all measures included in the SIP prior to redesignation (pages 12–13). (In response to comment 32, EPA discusses how this requirement has been met.) This requirement does not expand the universe of requirements which are "applicable" for purposes of redesignation. Unless the serious area requirements are applicable to an area, and already contained in a SIP prior to redesignation, the discussion in the Calcagni memo does not relate to the issue raised by the commenter.

Because the serious area requirements are not applicable requirements for St. Louis, for the reasons discussed above, and are not included in the SIP for St. Louis, the guidance in the Calcagni memo and in a memorandum entitled "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992" dated September 17, 1993 (Shapiro memo), relating to mechanisms for converting part D measures into contingency measures is



not relevant for purposes of this redesignation.

*Comment 7:* The proposed rulemaking suggests that a SIP meeting the serious area requirements need not be fully approved because such a plan is not yet due. The CAA does not make an exception for SIP revisions that have or have not become due. In fact, the serious area requirements have, as a matter of law, become due. The plans were due by June 14, 1998, and no later than May 18, 2002, pursuant to previous EPA and Court actions. The commenter stated that the May 18, 2002, date was set by EPA in a March 19, 2001, rulemaking, and that the effect of a decision by the Court of Appeals for the Seventh Circuit was to reinstate this submission date.

*Response 7:* Section 107(d)(3)(E)(ii) requires that the applicable SIP for the area must be fully approved under section 110(k). As discussed in the response to comments 6 and 8, the applicable SIPs for the St. Louis area are fully approved, and the serious area requirements have not yet become due. In making this determination, EPA is not creating an "exception" to the statutory requirements for approved SIPs, but is determining that SIP revisions which are not yet due are not "applicable" for purposes of section 107(d)(3)(E)(ii) and (v). As stated in the January 30, 2003, final rule at 68 FR 4838, on November 25, 2002, the Seventh Circuit Court of Appeals vacated a June 26, 2001, rule extending the St. Louis area's attainment date, and remanded to EPA for "entry of a final rule that reclassifies St. Louis as a serious nonattainment area effective immediately \* \* \*" (*Sierra Club and Missouri Coalition for the Environment v. EPA*, 311 F. 3d 853 (7th Cir. 2002)). In response to the Court's order, and in accordance with section 181(b)(2) of the CAA, EPA reinstated the nonattainment determination and reclassification contained in the March 19, 2001, rulemaking (66 FR 15585). In the January 30 rule, EPA also established a deadline of 12 months after January 30, 2003, for the states to submit the serious area requirements. The rationale for the deadline is stated in the January 30, 2003, final rule (68 FR 4838). The January 30, 2003, final rule was not challenged and this redesignation rulemaking does not reopen the January 30 rulemaking. Comments on the appropriate deadline for the serious area requirements are beyond the scope of this rule.

With respect to the commenter's assertion that the serious area requirements should have been due by June 14, 1998, this is based on an

argument made by the commenter in the U.S. District Court and the Court of Appeals for the District of Columbia that the reclassification of the St. Louis area to serious should have been made retroactive to 1997, with the serious area measures due in 1998. This argument is not only outside the scope of this rulemaking as explained previously, but it was rejected by both Courts (*See, Sierra Club v. Whitman*, 285 F.3d, 63, 68 (D.C. Cir. 2002)). The Courts rejected the notion that retroactive SIP submission dates should be imposed because they would have passed before the area had notice and opportunity to meet the deadlines. *See also*, Metropolitan Washington, DC, Maryland and Virginia Determination of Nonattainment (68 FR 3410, January 24, 2003). As explained above, EPA's determination that the serious area requirements are not "applicable" with respect to this redesignation because they are not yet due is consistent with the CAA, with the January 30, 2003, final rule, with applicable EPA policy, with relevant judicial decisions, and with a long history of prior redesignation actions.

*Comment 8:* There is no "fully approved" or even a partially approved SIP because the June 26, 2001, rule was vacated by the Court of Appeals for the Seventh Circuit.

*Response 8:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

In the January 30, 2003, proposed rule at 68 FR 4850 through 4856, EPA described the actions taken by EPA in the June 26, 2001, rule which were vacated by the Court of Appeals for the Seventh Circuit. Also, in the January 30, 2003, proposed rule at 68 FR 4850 through 4856, EPA repropoed to approve some requirements, and explained that certain additional actions vacated by the Court were no longer applicable requirements since the area has attained the NAAQS. As discussed in the January 30, 2003, proposed rule, the additional actions vacated by the Court which are no longer applicable include the contingency measure requirements of section 172(c), additional RACM requirements of section 172(c)(1) and section 182(b), and the attainment demonstration requirements of section 182(b)(1). That discussion is incorporated herein. *See*

*also* the discussion in section II.A concerning the inapplicability of certain requirements. In the June 26, 2001, rule, EPA took the following relevant actions: approved Missouri's and Illinois' 1-hour ozone attainment demonstration; found that the St. Louis ozone nonattainment area met the RACM requirements of the CAA; found that the contingency measures identified by the states of Illinois and Missouri are adequate; approved the Illinois and Missouri MVEBs; approved an exemption from the oxides of nitrogen (NO<sub>x</sub>) emission control requirements for RACT and disapproved an exemption from the NO<sub>x</sub> new source review (NSR) and NO<sub>x</sub> conformity requirements for the Illinois portion of the St. Louis ozone nonattainment area. EPA has determined, for the reasons stated in this rule and in the proposed rule, that the attainment demonstration, and RACM requirements, are no longer applicable requirements since the area has attained the NAAQS. In this rulemaking, EPA is approving contingency measures as part of Missouri's maintenance plan, and approving MVEBs for 2014, for the Missouri portion of the area. In a separate rulemaking in today's **Federal Register**, EPA is approving revisions to Missouri's I/M rule.

To be considered fully approved pursuant to section 110(k), the SIP must not have partial approval, disapproval, or conditional approval of submittals. EPA is not partially approving, disapproving, nor conditionally approving any of the SIP actions contained in the June 26, 2001, rule vacated by the Court. EPA is fully approving the measures submitted by Missouri which are applicable for purposes of section 107(d)(3)(E)(v), and is determining that the other submittals are not applicable.

Therefore, the SIP is "fully approved" for all applicable requirements.

*Comment 9:* EPA attempted to assert that the Missouri and Illinois SIPs "can be considered to be approved." This is a "pseudo-approval" and an attempt by EPA to escape the simple straightforward statutory requirement to have a fully approved SIP. This effort by EPA fails because of the clear language of the CAA, and because EPA must do a rulemaking to approve the SIP. EPA is also avoiding the requirement for judicial review of its actions.

*Response 9:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the



Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

The use of the phrase "can be considered to be approved" (see the January 30, 2003, proposed rule at 68 FR 4851, 4852) was merely a statement the SIPs will meet the section 110 requirements and as such "can be considered to be approved" if EPA were to approve certain plan elements, described in the proposed rulemakings. On January 30, 2003, EPA published two proposed rules found at 68 FR 4842 and 68 FR 4847. As part of these proposals, EPA proposed to approve revisions to Missouri's I/M rule. In today's **Federal Register**, EPA is taking final action approving Missouri's I/M rule. By taking these actions, EPA now concludes that Missouri's SIP is approved. The use of the quoted phrase was not intended to escape a statutory requirement. In fact, it recognized EPA's obligation to complete rulemakings in order to approve SIPs, and it recognized that EPA could not determine that the SIP was fully approved until it took final action to approve the remaining SIP elements. All of the SIP elements which are applicable to the St. Louis area for purposes of redesignation have either been approved in previous rulemakings (see response to comments 6, 7, 8, 13, 14, 15, and 16 for a discussion of these prior rulemakings) or are approved in rulemakings published today.

The proposed rule at 68 FR 4851 states that on November 25, 2002, the U.S. Court of Appeals for the Seventh Circuit (Court) issued a decision in *Sierra Club and Missouri Coalition for the Environment v. EPA*, 311 F. 3d 853 (7th Cir. 2002). In this decision, the Court vacated the June 26, 2001, rule and remanded to EPA for entry of a final rule that reclassifies St. Louis as a serious nonattainment area for ozone. Although the Court's opinion addressed only EPA's action extending the attainment date for St. Louis, the Court's order vacated the other EPA actions in the rulemaking as well. EPA has approved all SIP elements that are applicable to the St. Louis area and is determining that certain others are not applicable. This is not a "pseudo-approval" of the SIP elements, but a determination that because certain requirements (e.g., the attainment demonstration and RACM) are not applicable, they need not be approved. (See response to comment 8 for more discussion of the requirement for a fully approved SIP.) The applicable requirements which were approved prior to the June 26, 2001, action (e.g.,

VOC RACT, NO<sub>x</sub> RACT, the ROP Plan) were subject to notice and comment rulemaking and judicial review. The measures approved today (the maintenance plan and contingency measures, MVEBs, I/M program revisions) have been subject to notice and comment rulemaking and EPA's action is subject to judicial review. EPA's determination that certain requirements are not applicable has been subject to notice and comment rulemaking and is subject to judicial review. The public has had full opportunity to comment on all of EPA's actions, as evidenced by the numerous comments submitted by the commenter. Therefore, EPA has not avoided any requirement for public comment or judicial review.

In acting upon a redesignation request, EPA may rely on any prior SIP approvals plus any additional approvals it may perform in conjunction with acting on the redesignation. EPA has already taken final action to approve all required SIP elements or is approving them in conjunction with this final action on the redesignation. Therefore, the St. Louis area has a fully approved SIP. See "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992, page 3 (Calcagni memo). The Calcagni memo allows for approval of SIP elements and redesignation to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions. See (66 FR 53096) (Pittsburgh-Beaver Valley, Pennsylvania, October 19, 2001); (65 FR 37879) (Cincinnati-Hamilton, Ohio, June 19, 2000); (61 FR 20458) (Cleveland-Akron-Lorain, Ohio May 7, 1996); (60 FR 37366) (July 20, 1995), (61 FR 31832-31833) (June 21, 1996) (Grand Rapids, MI).

**Comment 10:** The SIPs fail to meet the section 110 requirements because the "inapplicable "moderate" area" requirements contained in the SIPs do not provide for implementation, maintenance, and enforcement of the NAAQS because modeling shows that the plan does not provide for attainment until 2004. Furthermore, Missouri has failed to meet the section 110(a)(2)(D) requirements related to the NO<sub>x</sub> SIP call.

**Response 10:** EPA finds that the Missouri SIP meets the section 110 requirements. See the January 30, 2003, proposal and the responses to comments 8 and 9 for further discussion.

Submissions under the NO<sub>x</sub> SIP call are not applicable requirements for purposes of evaluating a redesignation request.

At this time, Missouri is not subject to the NO<sub>x</sub> SIP call. As explained in the proposal, EPA's determination that Missouri significantly contributes to downwind nonattainment was vacated by the Court of Appeals for the District of Columbia Circuit. EPA is not relying on a SIP to predict attainment but is relying on air quality monitoring data to show that the area has attained. With respect to the assertion that the area must have an approved attainment demonstration SIP in order to meet the requirements of section 110, EPA has addressed this issue in its response to comments on the lack of an approved attainment demonstration for the area. Section 110(a)(1) does not add any additional requirements for compliance with the NAAQS other than those included in section 172(c) and 182, and the commenter does not identify any specific additional requirements. See the responses to comments 3, 21, and 24 with respect to the assertion that the modeling for the area shows that it cannot attain until 2004.

The SIP call budget for Missouri was proposed on February 22, 2002 (67 FR 8396), but has not yet been finalized. For this reason alone, it is not an applicable requirement. In addition, the NO<sub>x</sub> SIP call requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The NO<sub>x</sub> SIP call submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not agree that the NO<sub>x</sub> SIP call submission should be construed to be an applicable requirement for purposes of redesignation. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, 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 at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR 37890, June 19, 2000), and in the

Pittsburgh redesignation (66 FR 50399, October 19, 2001).

*Comment 11:* The state SIPs fail to meet the part D requirements of the CAA. EPA asserts that certain requirements of part D are not applicable because monitoring data shows the area has attained. EPA relies on the case of *Sierra Club v. EPA* for this conclusion. However, this case has no application here because it was not a "redesignation case." Given the attainment demonstration modeling, it would be impossible to conclude that any of the "part D requirements are not necessary." All part D requirements are applicable unless, prior to redesignation, EPA formally exempts the St. Louis area from the part D requirements.

*Response 11:* Section II.A of this document, discussing the rationale for EPA's determination of attainment and suspension of certain requirements, addresses the applicability of the part D requirements. The part D requirements specifically include the requirements of sections 172(c) and 176 as well as the applicable requirements of subpart 2. The section 172(c) requirements include General Plan Requirements which to the extent applicable, must provide for the implementation of all RACM as expeditiously as practicable (at a minimum this requires RACT for stationary source), RFP, emissions inventory, identification and quantification of allowable emissions for major new or modified stationary sources, permits for new and modified major stationary sources, other emission control measures needed to assure attainment of the NAAQS, section 110(a)(2) requirements, and contingency measures. Section 110(a)(2) requirements include submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate apparatus, methods, systems, and procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)); provisions for the implementation of part D requirements (nonattainment area NSR permit programs); provisions for stationary source emission control measures, source monitoring, and source reporting; provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development. Subpart 2 requirements include attainment demonstration, 1990 base year inventory and periodic emissions

inventories updates, emission statements, rate-of-progress plans, VOC RACT, RACM, stage II vapor recovery, I/M, and NO<sub>x</sub> emission controls.

As stated in the response to comment 8 above, the Missouri SIP meets all applicable requirements including section 110 and part D requirements. As stated in the January 30, 2003, proposed rule at 68 FR 4852 and 4853, EPA has approved each state's RFP, permitting programs, and VOC RACT rules as meeting the requirements of part D. Missouri's SIP has regulations requiring annual emission statements from major sources. Missouri has submitted complete emission inventories. Missouri has approved general conformity rules pursuant to section 176. In addition, Missouri has approved transportation conformity rules. EPA is approving in this action Missouri's maintenance plan which includes adequate contingency measures. Thus, Missouri has met the applicable part D requirements of the CAA. Note that also as stated in the response to comment 8, by finding that the St. Louis area has attained the standard, the attainment demonstration and RACM requirements are no longer applicable requirements. See also the final rule for Illinois describing how the Metro-East St. Louis area has met the applicable requirements.

As indicated in comment 3 above, neither section 107(d)(3)(E) nor EPA policy referenced by the commenter requires modeling as a prerequisite to redesignation of an ozone nonattainment area. In addition, no modeling was conducted as part of the redesignation requests submitted by Missouri or Illinois. Thus, there is no modeling basis for EPA to make any conclusions regarding the necessity for the part D requirements. (Modeling is not a required element of a redesignation request. See, 65 FR 37879—Cincinnati redesignation for additional discussion of this issue. See, *Wall v. EPA*, 265 F.3d 426 upholding this interpretation.) However, as explained in detail in comment 3, the monitoring data collected over the 2000 through 2002 period show that the area has in fact attained the ozone standard. EPA finds no need for further controls to bring about attainment.

With respect to the commenter's assertion that the Tenth Circuit *Sierra Club* case is not applicable because it is not a "redesignation" case, the commenter misses the point of the case as it relates to St. Louis. The Tenth Circuit's endorsement of the interpretation of the CAA in the Seitz memo (that certain "statutory" requirements relating to attainment are not applicable to an area which has

attained the standard) was not dependent on the fact that the area was not being redesignated. The case involved a determination by EPA that Salt Lake and Davies Counties, Utah, had attained the standard, and that, therefore, certain additional requirements relating to attainment (such as an attainment demonstration) would not apply so long as the area continued to attain. The Court expressly recognized that the area could be redesignated without having met those requirements, even though the action at issue there was an attainment determination and not a redesignation. The Court stated: "Recall that the Environmental Protection Agency's determination to exempt the Counties from limited ozone requirements is really no more than a suspension of those requirements for so long as the area continues to attain the standard or until the area is formally redesignated to attainment." (*Sierra Club v. EPA*, 99 F.3d 1551, 1558 (10th Cir. 1996)). (See also, 66 FR 53095 for EPA's redesignation of the Pittsburgh area.) The Court did not say, as the commenter would have it, that the area would have to adopt those measures which had been determined to be unnecessary in order to be redesignated. As it did for the Utah counties, in which EPA redesignated those counties without requiring that they meet the suspended requirements, EPA is here determining that the St. Louis area is attaining the standard and that certain requirements are suspended and do not apply because the area is being redesignated. The basis for this determination and the suspension of certain requirements for the area was explained in detail in the proposal found at 68 FR 4850–4858 and further explained in this response to various comments on the issue. The determination is based on monitored data, not modeling, for reasons explained in this document. Nothing in the Tenth Circuit case prohibits EPA from simultaneously suspending the requirements and redesignating an area, which is what this rulemaking accomplishes. EPA has taken this dual action in a number of areas including Louisville (66 FR 53665), Cincinnati (65 FR 37879), Grand Rapids (61 FR 31831), and Pittsburgh (66 FR 53094). Upon redesignation to attainment, the suspended nonattainment area requirements will no longer apply at all since the area is no longer a designated nonattainment area.

*Comment 12:* EPA asserts that the RACM requirements of section 172(c)(1) need not be adopted because the area has attained the NAAQS, thus, these

measures would not accelerate attainment. This is confoundingly circular reasoning which erases the "fully approved" requirements of the CAA. EPA's assertion is not relevant here.

**Response 12:** The April 16, 1992, General Preamble (57 FR 13560) states that EPA interprets section 172(c)(1) such that the RACM requirements are a "component" of an area's attainment demonstration. Thus, since the attainment demonstration is not an applicable requirement, RACM is also no longer an applicable requirement. See response to comment 8 for further discussion. Also, EPA has been consistent in this interpretation. See the final rulemaking for Pittsburgh, 66 FR 53096 (October 19, 2001) for additional discussion of this interpretation.

EPA believes that its policy is not "confoundingly circular reasoning" but rather straightforward reasoning. It is reasonable to conclude that states need not develop an attainment demonstration showing how they will attain a NAAQS that they have already attained. Similarly, states need not adopt additional reasonably available control measures as necessary to accelerate attainment when attainment has already been achieved.

As stated in the response to comments 8 and 9, SIPs must be "fully approved" as required by section 107(d)(3)(E)(ii), only with respect to the "applicable" requirements of section 110 and part D, as addressed in section 107(d)(3)(E)(v). If requirements are not "applicable" with respect to those sections, they need not be fully approved.

**Comment 13:** The RACM and RACT requirements of the CAA are not tied to reasonable further progress but are required by the CAA to be implemented as expeditiously as practicable. This is supported by H.R. Rep. No. 101-490, Part 2, 101st Cong., 2d Sess. at p. 223; *Sierra Club v. EPA*, 99 F.3d 1551, 1557 (10th Cir. 1996); *Wall v. EPA*, 265 F.3d 426, 441 (6th Cir. 2001); and, EPA's Seitz memo, page 4. EPA's contention that any additional RACM and RACT measures need not be adopted directly repudiates the plain language of the CAA.

**Response 13:** This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA has previously addressed the rationale for its determination that additional RACM is not required for an area attaining the standard. (See, e.g., section II and response to comment 12.) The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. Section 182(b)(1)(A) sets forth the specific requirements for RFP for a moderate nonattainment area which includes a reduction in VOC emissions of at least 15 percent from baseline emissions. As stated in the January 30, 2003, proposed rule at 68 FR 4854, 4855, EPA approved Missouri's 15 percent ROP plan.

RACM is a general requirement of section 172(c)(1) which calls for SIPs to contain "all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology and shall provide for attainment of the national primary ambient air quality standards." EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable progress or attainment. (See General Preamble 57 FR 13498, April 16, 1992.) Thus, where an area has already met all applicable requirements for progress and has attained the relevant standard, no additional RACM measures are required.

Section 182(b)(2) specifies the SIP requirements for RACT in moderate nonattainment areas. These requirements include implementation of RACT at each source of VOCs covered by Control Technology Guidelines (CTGs) and all other major sources of VOCs. EPA has never indicated that the area could avoid implementing VOC RACT requirements because the area has attained the standard.

As stated in the January 30, 2003, proposed rule at 68 FR 4855, Missouri has adopted and implemented all required VOC RACT rules. In addition, section 182(f) establishes NO<sub>x</sub> RACT requirements for major stationary sources. EPA approved Missouri's NO<sub>x</sub> RACT rule into the SIP on May 18, 2000 (65 FR 31482).

The commenter states that H.R. Rep. No. 101-490, Part 2, 101st Cong., 2d Sess. at p. 223 does not tie RACM and RACT measures to RFP. This document is a recitation of the statute, but does not address tying RACM and RACT to RFP.

With respect to the commenter's contention that EPA's position regarding additional RACM and RACT measures was rejected in the Tenth Circuit *Sierra*

*Club* case and in *Wall*, the commenter is incorrect. The *Wall* case involved VOC RACT, which is not an issue here, because, as discussed previously, and in response to comment 14 below, Missouri has adopted all applicable VOC RACT measures. Missouri has also adopted NO<sub>x</sub> RACT measures. The Tenth Circuit *Sierra Club* case upheld EPA's determination that RACT was not tied to reasonable further progress, and that case did not address EPA's interpretation of RACM at all. The commenter's Seventh Circuit brief, which it relies on to support its position that RACM requirements must be met for an area to be redesignated, argued that EPA's interpretation of the RACM requirement (that section 172(c)(1) requires only implementation of all RACM which would expedite attainment) is an improper reading of the CAA. That issue was not addressed or decided by the Seventh Circuit. However, the issue of EPA's interpretation of the RACM requirement was raised and upheld in the 5th Circuit (*Sierra Club v. EPA*, 314 F.3d 735, 743-745 (5th Cir. 2002)) and the District of Columbia Circuit (*Sierra Club v. EPA*, 294 F.3d 155, 162-163 (D.C. Cir. 2002)). Both circuits found that EPA's interpretation that the statute only required implementation of RACM measures that would advance attainment was reasonable.

**Comment 14:** The rulemaking should identify each VOC RACT rule implemented by the states and identify whether the states have met the VOC RACT requirements.

**Response 14:** This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

The January 30, 2003, proposed rule states at 68 FR 4855 that both states have adopted and implemented all required VOC RACT rules. In addition, the proposed rule provided the following web sites which contain the content of these rules, and references to EPA's rulemakings approving these rules. The Web site for Missouri is: <http://www.epa.gov/region07/programs/artd/air/rules/missouri/chap5.htm>.

The VOC RACT rules listed on this Web site and EPA's rulemakings approving these rules include the following:

10 CSR 10-5.070 Open Burning Restrictions, 37 FR 10842 (5/31/72)

- 10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer, 37 FR 10842 (5/31/72)
- 10 CSR 10–5.295 Control of Emissions From Aerospace Manufacturing and Rework Facilities, 65 FR 31489 (5/18/2000)
- 10 CSR 10–5.300 Control of Emissions from Solvent Metal Cleaning, 45 FR 24140 (4/9/80) and 45 FR 56806 (7/11/80) (correction)
- 10 CSR 10–5.310 Liquefied Cutback Asphalt Paving Restricted, 45 FR 24140 (4/9/80) and 45 FR 46806 (7/11/80) (correction)
- 10 CSR 10–5.320 Control of Emissions from Perchloroethylene Dry Cleaning Installations, 46 FR 20172 (4/3/81)
- 10 CSR 10–5.330 Control of Emissions from Industrial Surface Coating Operations, 45 FR 24140 (4/9/80) and 45 FR 46806 (7/11/80) (correction)
- 10 CSR 10–5.340 Control of Emissions from Rotogravure and Flexographic Printing Facilities, 46 FR 20172 (4/3/81)
- 10 CSR 10–5.350 Control of Emissions from Manufacture of Synthesized Pharmaceutical Products, 46 FR 20172 (4/3/81)
- 10 CSR 10–5.360 Control of Emissions from Polyethylene Bag Sealing Operations, 49 FR 40164 (10/15/84)
- 10 CSR 10–5.370 Control of Emissions from the Application of Deadeners and Adhesives, 55 FR 7712 (3/5/90)
- 10 CSR 10–5.390 Control of Emissions from Manufacture of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products, 50 FR 14925 (4/16/85)
- 10 CSR 10–5.410 Control of Emissions from the Manufacture of Polystyrene Resin, 55 FR 7712 (3/5/90)
- 10 CSR 10–5.420 Control of Equipment Leaks from Synthetic Organic Chemical and Polymer Manufacturing Plants, 53 FR 12417 (4/14/88)
- 10 CSR 10–5.440 Control of Emissions from Bakery Ovens, 65 FR 8060 (2/17/2000)
- 10 CSR 10–5.442 Control of Emissions From Offset Lithographic Printing Operations, 65 FR 8060 (2/17/00)
- 10 CSR 10–5.450 Control of VOC Emissions from Traffic Coatings, 65 FR 8060 (2/17/00)
- 10 CSR 10–5.451 Control of Emissions from Aluminum Foil Rolling, 65 FR 8060 (2/17/00)
- 10 CSR 10–5.455 Control of Emissions from Solvent Cleanup Operations, 65 FR 8060 (2/17/00)
- 10 CSR 10–5.490 Municipal Solid Waste Landfills, 63 FR 20320 (4/24/98)
- 10 CSR 10–5.500 Control of Emissions From Volatile Organic Liquid Storage, 65 FR 31489 (5/18/00)
- 10 CSR 10–5.520 Control of Volatile Organic Compound Emissions From

Existing Major Sources, 65 FR 31489 (5/18/2000)

- 10 CSR 10–5.530 Control of Volatile Organic Compound Emissions From Wood Furniture Manufacturing Operations, 65 FR 31489 (5/18/00)
- 10 CSR 10–5.540 Control of Emissions From Batch Process Operations, 65 FR 31489 (5/18/00)

- 10 CSR 10–5.550 Control of Volatile Organic Compound Emissions From Reactor Processes and Distillations Operations Processes in the Synthetic Organic Chemical Manufacturing Industry, 65 FR 31489 (5/18/00)

The rationale for approval of each of these rules is described in the respective **Federal Register** document approving each rule. As stated previously, in the response to comment 5, this redesignation rulemaking does not reopen rulemakings regarding prior SIP approvals.

*Comment 15:* Missouri has not adopted all appropriate NO<sub>x</sub> and NO<sub>x</sub> RACT rules. Thus, the SIP is not approvable.

*Response 15:* Missouri has adopted and EPA has approved into Missouri's SIP a NO<sub>x</sub> RACT rule meeting the requirements of section 182(f). The Missouri NO<sub>x</sub> RACT rule can be found at 10 CSR 10–5.510. *See* comment 13 for further discussion on Missouri's NO<sub>x</sub> RACT rule. As described in response to previous comments, pursuant to the Calcagni Memo page 3, and upheld in the *Wall* case cited previously, an EPA action on a redesignation request does not mean that earlier issues with regard to the SIP will be reopened. *See also, Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984 (6th Cir. 1998). Thus, EPA is not reopening Missouri's NO<sub>x</sub> RACT rule as part of this redesignation.

Missouri has adopted and EPA has approved into the SIP a state-wide NO<sub>x</sub> rule (10 CSR 10–6.350 Emissions Limitations and Emissions Trading of Oxides of Nitrogen, 65 FR 82285 (12/28/00)).

As stated in comment 10 above, EPA believes that submissions under the NO<sub>x</sub> SIP call are not applicable requirements for purposes of evaluating Missouri's redesignation request.

EPA has determined that Missouri has adopted all applicable NO<sub>x</sub> and NO<sub>x</sub> RACT rules.

*Comment 16:* The Missouri I/M rule being approved in a separate rulemaking does not meet the requirements for an I/M program. EPA needs to explain how it can approve an I/M rule since it does not meet the I/M requirements for a serious area.

*Response 16:* EPA is responding to comments regarding Missouri's I/M

program in a separate rulemaking published in today's **Federal Register**. EPA's response to comments included in that rulemaking are incorporated here.

The Federal rule at 40 CFR 51.372(c) states that "Any nonattainment area that EPA determines would otherwise qualify for redesignation from nonattainment to attainment shall receive full approval of a SIP submittal under Sections 182(a)(2)(B) or 182(b)(4) if the submittal contains the following elements: (1) Legal authority to implement a basic I/M program (or enhanced if the State chooses to opt up) as required by this subpart. The legislative authority for an I/M program shall allow the adoption of implementing regulations without requiring further legislation. (2) A request to place the I/M plan (if no I/M program is currently in place or if an I/M program has been terminated) or the I/M upgrade (if the existing I/M program is to continue without being upgraded) into the contingency measures portion of the maintenance plan upon redesignation. (3) A contingency measure consisting of a commitment by the Governor or the Governor's designee to adopt or consider adopting regulations to implement the required I/M program to correct a violation of the ozone or CO standard or other air quality problem, in accordance with the provisions of the maintenance plan. (4) A contingency commitment that includes an enforceable schedule for adoption and implementation of the I/M program, and appropriate milestones. The schedule shall include the date for submission of a SIP meeting all of the requirements of this subpart. Schedule milestones shall be listed in months from the date EPA notifies the State that it is in violation of the ozone or CO standard or any earlier date specified in the State plan. Unless the State, in accordance with the provisions of the maintenance plan, chooses not to implement I/M, it must submit a SIP revision containing an I/M program no more than 18 months after notification by EPA."

Regarding item (1) above, as indicated in the response to comment 35, Missouri has the authority to implement an I/M program. Regarding item (2) above, the maintenance plan contains "High Enhanced I/M" as a contingency measure. The plan was accompanied by a request from an authorized Missouri official for EPA to approve the maintenance plan. Regarding item (3) above, section 7.1 of the maintenance plan contains a commitment to adopt or consider adopting the I/M program listed as a contingency measure.

Regarding item (4) above, the SIP contains an enforceable schedule for adoption and implementation of the I/M program. Section 7.1 of the maintenance plan sets for a schedule with milestones for promulgation and implementation of a program meeting the requirements.

This meets the condition imposed by the Federal rule at 40 CFR 51.372(c). Thus, EPA is approving the I/M program in a separate rulemaking. This satisfies the basic I/M requirements for moderate ozone areas. Since EPA is taking final action to approve the redesignation of the St. Louis area prior to the date that the serious area requirement for enhanced I/M would be due, EPA can approve the I/M program as meeting the moderate rather than the serious area I/M requirement, as fully explained in this final rule and in the separate I/M approval action taken elsewhere in today's **Federal Register**.

*D. Comments Related to Criterion 3: The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions*

*Comment 17:* The area cannot meet this requirement since there is not an approved SIP meeting the "serious" area requirements, and there is no applicable implementation plan.

*Response 17:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

As described in the response to comments for Criterion 2 above, the SIPs meet the applicable CAA requirements. The applicable SIP requirements are described in the January 30, 2003, proposed rulemaking (68 FR 4850–4856). EPA's approval of previous SIP submittals, this rulemaking and today's rulemaking approving Missouri's I/M rule render Missouri's SIP "fully approved" for all applicable SIP requirements. As stated in response to comments relating to Criterion 2, above, since the serious area requirements are not yet due, the SIP is not deficient because the serious area requirements have not been included.

In any event, this criterion is not dependent on which requirements are applicable or have been approved or implemented. The requirement is that air quality improvements be attributable to permanent and enforceable reductions in emissions which is a

separate inquiry from the question of the requirements applicable to the area. Missouri's submission contains a detailed analysis of the air quality improvements in St. Louis and their relation to the permanent and enforceable control measures which are in place in the area. (See response to comment 19 for further discussion.) These measures are listed in the proposal at 68 FR 4856–4858. These measures are all part of the applicable SIP. Thus, the commenter is incorrect in its assertion that there is no applicable SIP.

*Comment 18:* It is impossible to demonstrate that monitored concentrations on the 2002 Labor Day weekend resulted from permanent and enforceable reductions. The reductions were due to voluntary curtailment of operations by large industrial operations.

*Response 18:* The monitoring data for the St. Louis nonattainment area demonstrate that the estimated number of exceedances per year averaged over three years is 1.0 or less at all monitoring sites in the area. EPA believes that any voluntary measures taken by industry and others over a two- or three-day period in this three-year time period does not render the air quality monitoring data unrepresentative of the air quality. As explained in more detail in response to comment 19 below, ozone levels monitored during 2000–2002 are due to permanent and enforceable measures which are in place (e.g., I/M programs, RACT on VOC and NO<sub>x</sub> stationary sources).

In the event that some sources did voluntarily reduce emissions over this two- or three-day period, EPA has no basis to conclude that these voluntary reductions had an effect on the monitored air quality. As the commenter points out, ozone formation occurs through "complex chemistry and meteorology." Voluntary reductions over a short time period may or may not have had an impact on the monitored air quality. (We note that "voluntary" reductions are always a factor, since total emissions at a given point in time depend, for example, on how many people decide to drive on a given day or weekend.) However, the state's demonstration that air quality improvements are due to permanent and enforceable emission reductions is based on its analysis of emission reductions over a ten-year period (see response to comment 19), consistent with the CAA requirements and EPA policy including the Calcagni memo at page 4. Also, see the response to comment 2 above for further discussion

on this issue. Note that in general, EPA encourages voluntary reductions to reduce emissions. EPA supports programs such as the Air Quality Index which encourages people to voluntarily reduce ozone forming activities such as filling gas tanks, painting, mowing, etc. at times when ozone formation is expected to be high. Although these measures are not enforceable nor measurable, they are encouraged.

*Comment 19:* EPA cannot demonstrate that permanent and enforceable reductions are responsible for any alleged improvement of air quality. The only way to demonstrate this point is through photochemical grid modeling. No such modeling has been presented. Without modeling, EPA's claim is pure speculation. Emission reductions attributable to the emission controls "could just as easily lead to increases in ozone concentrations." The attainment demonstration modeling shows that attainment was "impossible" in 2003.

*Response 19:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA's response to this and other comments on the attainment demonstration modeling is included in the response to comments 21 and 24. In addition, see the response to comment 23 for further discussion regarding the use of modeling in demonstrating maintenance of the NAAQS.

Neither Section 107(d)(3)(E)(iii) nor the Calcagni memo referenced by the commenter require modeling as a prerequisite to redesignation of an ozone nonattainment area. Thus, modeling is not required to demonstrate that the improvement in air quality is due to permanent and enforceable reductions. See General Preamble for the Interpretation of Title I of the CAA Amendments of 1990 at 57 FR 13496 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992); "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992; "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H.

Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993; and "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993. Our guidance provides that an area may meet this requirement by showing how its ozone precursor emissions changed due to permanent and enforceable emissions reductions from when the area was not monitoring attainment of the 1-hour ozone NAAQS to when it reached attainment. See the rationale set forth in the Cincinnati redesignation (65 FR 37879, 37886–37889, June 19, 2000) and the Pittsburgh redesignation (66 FR 53094, October 19, 2001). The Sixth Circuit has recently upheld EPA's interpretation in *Wall v. EPA* (265 F.3d 426, 435).

In the January 30, 2003, proposed rule at 68 FR 4856–4858, EPA explained the basis for concluding that the observed air quality improvements are due to the implementation of permanent and enforceable emission reductions. The reasons include, analysis of the emission controls which have resulted in emission reductions, an analysis of meteorological conditions showing a trend toward the reduction of ozone concentrations while the number of days conducive to forming ozone showed no significant trend, and an assessment of emissions in 1990 and 2000 which have shown a substantial decrease in emissions of VOCs and NO<sub>x</sub>.

Annual days conducive to ozone formation (those days with relatively clear skies, low wind speeds and southerly wind directions, high peak temperatures exceeding 85 degrees Fahrenheit, and little or no precipitation) have shown no noticeable trend up or down, only yearly variations. The number of conducive days have stayed between approximately 20 and 50 days per year with no increasing or decreasing trend. Meanwhile, exceedances have decreased from over 120 in 1978, over 100 in 1983, over 60 in 1988, to a total of 11 in the three-year period of 2000 to 2002. In addition, year-to-year fluctuation of conducive days cannot be correlated with higher or lower exceedance levels over the last few years. Since 1989, as the number of conducive days fluctuated from year to year, the number of exceedances demonstrated no similar trend. This indicates a disassociation between monitored exceedances and meteorological effects.

During the 1990–2000 period, as the area-wide ozone design values in the St.

Louis area were decreasing, the VOC and NO<sub>x</sub> emissions in the St. Louis area were also significantly decreasing (see response to comment 20 for further discussion on the area's design values). The following tables list VOC and NO<sub>x</sub> emissions in 1990 and 2000 for the Missouri and Illinois portions of the St. Louis ozone nonattainment area. These tables show that the entire nonattainment area experienced a downward trend in VOC and NO<sub>x</sub> emissions. This downward trend in emissions and ozone design values, along with no significant trend in the number of days conducive to ozone formation shows that the observed improvements in air quality are due to the implementation of permanent and enforceable emission control measures.

#### 1990 AND 2000 MISSOURI PORTION OF THE ST. LOUIS NONATTAINMENT AREA VOC AND NO<sub>x</sub> EMISSIONS

[Emissions in tons per ozone season weekday]

Source category	VOC	NO <sub>x</sub>
<b>1990</b>		
Point Sources	81.97	347.61
Area Sources	87.74	29.47
On-Road Mobile Sources	135.42	135.00
Off-Road Mobile Sources	64.30	114.32
<b>1990 Totals</b>	<b>369.43</b>	<b>626.40</b>
<b>2000</b>		
Point Sources	46.59	165.96
Area Sources	57.38	32.27
On-Road Mobile Sources	103.79	181.75
Off-Road Mobile Sources	40.59	73.16
<b>2000 Totals</b>	<b>248.35</b>	<b>453.14</b>

#### 1990 AND 2000 METRO-EAST AREA VOC AND NO<sub>x</sub> EMISSIONS

[Emissions in tons per ozone season weekday]

Source category	VOC	NO <sub>x</sub>
<b>1990</b>		
Point Sources	74.05	95.85
Area Sources	33.84	1.66
On-Road Mobile Sources	43.27	45.13
Off-Road Mobile Sources	23.49	23.99
<b>1990 Totals</b>	<b>174.65</b>	<b>166.63</b>
<b>2000</b>		
Point Sources	17.91	61.91
Area Sources	28.32	1.18
On-Road Mobile Sources	26.57	54.71
Off-Road Mobile Sources	21.31	23.85
<b>2000 Totals</b>	<b>94.11</b>	<b>141.64</b>

Reductions in ozone precursor (VOC and NO<sub>x</sub>) emissions have brought many areas across the country into attainment. EPA has approved many ozone redesignations showing decreases in ozone precursor emissions resulting in attainment of the ozone standard. See redesignations for Pittsburgh (66 FR 53094, October 19, 2001), Cincinnati (65 FR 37879, June 19, 2000), Charleston (59 FR 30326, June 13, 1994; 59 FR 45985, September 6, 1994), Greenbrier County (60 FR 39857, August 4, 1995), Parkersburg (59 FR 29977, June 10, 1994); (59 FR 45978, September 6, 1994), Jacksonville/Duval County (60 FR 41, January 3, 1995), Miami/Southeast Florida (60 FR 10325, February 24, 1995), Tampa (60 FR 62748, December 7, 1995), Lexington (60 FR 47089, September 11, 1995), Owensboro (58 FR 47391, September 9, 1993), Indianapolis (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), South Bend-Elkhart (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), Evansville (62 FR 12137, March 14, 1997; 62 FR 64725, December 9, 1997), Canton (61 FR 3319, January 31, 1996), Youngstown-Warren (61 FR 3319, January 31, 1996), Cleveland-Akron-Lorain (60 FR 31433, June 15, 1995; 61 FR 20458, May 7, 1996), Clinton County (60 FR 22337, May 5, 1995; 61 FR 11560, March 21, 1996), Columbus (61 FR 3591, February 1, 1996), Kewaunee County (61 FR 29508, June 11, 1996; 61 FR 43668, August 26, 1996), Walworth County (61 FR 28541, June 5, 1996; 61 FR 43668, August 26, 1996), Point Coupee Parish (61 FR 37833, July 22, 1996; 62 FR 648, January 6, 1997), and Monterey Bay (62 FR 2597, January 7, 1997). Most of the areas that have been redesignated to attainment for the 1-hour ozone standard have continued to attain it. Areas that are not maintaining the 1-hour ozone standard have a maintenance plan to bring them back into attainment.

Between 1990 and 2000, area-wide VOC and NO<sub>x</sub> emissions in the St. Louis area decreased by 37 percent and 25 percent, respectively. In Missouri, the VOC and NO<sub>x</sub> emissions during this time period decreased by 33 percent and 28 percent, respectively. (See the rulemaking redesignating the Illinois portion of the St. Louis area published in today's **Federal Register** for NO<sub>x</sub> and VOC reductions for the Metro-East area.) These emissions reductions were due to the implementation of Missouri's 15 percent rate-of-progress plan, including its implementation of a centralized motor vehicle inspection and maintenance program and stationary source controls. Additional reductions

were due to tighter Federal standards for new vehicles, and some were due to requirements for reformulated and low Reid Vapor Pressure (RVP) gasoline for motor vehicles. In addition, Title IV of the CAA resulted in reduced NO<sub>x</sub> emissions from utility sources.

The commenter claims that the combination of NO<sub>x</sub> and VOC emissions reductions could just as easily have led to increases in ozone. However, the actual monitoring data collected in the area shows that ambient ozone concentrations have dropped when this combination of ozone precursor reductions occurred. In other metropolitan areas, other levels of VOC and NO<sub>x</sub> reductions have also resulted in attainment. *See* the areas listed above in first part of this response. The St. Louis area's decrease in ozone levels is consistent with what other areas have experienced. The commenter has not provided data showing that decreases in ozone precursor emissions have led to higher levels of ozone.

EPA's conclusion that improvements in air quality are attributable to

permanent and enforceable reductions in precursors is not "speculation" but is based on a careful review of the various technical analyses conducted by the states and described above. EPA believes it is reasonable not to require photochemical grid modeling. Three-year averaging addresses variations in meteorological conditions, an analysis of meteorological conditions showed no significant trend in the number of days conducive to ozone formation, and the commenter has presented no evidence that the three-year attainment period was unusually favorable. It is important to note that redesignation is not intended as an absolute guarantee that the area will never monitor future violations. This is what maintenance plan contingency measures are designed to address and correct. *See* the Cincinnati redesignation (65 FR 37879, 37886–37889, June 19, 2000) and the Pittsburgh redesignation (66 FR 53094, October 19, 2001) for additional discussion of this issue.

*Comment 20:* If improvements in St. Louis air quality were due to permanent

and enforceable reductions, the trend in monitored concentrations would be to go down. However, exceedances tripled from 2000 to 2001 and more than doubled from 2001 to 2002.

*Response 20:* As stated in response to comment 2 above, a violation of the 1-hour ozone NAAQS occurs when the estimated number of exceedances per year averaged over three years is greater than 1.0 at any monitoring site in the area or its downwind environs, using conventional rounding techniques. Although there was an increase in the number of exceedances between 2000 and 2001 as well as between 2001 and 2002, year-to-year trends in exceedances are not used to determine attainment, but rather an average over three years is used. For reasons stated previously, EPA has determined that the St. Louis area is in attainment with the NAAQS.

As indicated in the January 30, 2003, proposal at 68 FR 4850, Table 1 Summarizes the number of expected exceedances at each monitor in the area.

TABLE 1.—1-HOUR OZONE NAAQS EXCEEDANCES IN THE ST. LOUIS, ILLINOIS-MISSOURI AREA FROM 2000 TO 2002

Site name	County or city and state	Estimated exceedances			Average number of estimated exceedances 2000–2002
		2000	2001	2002	
Jerseyville .....	Jersey, IL .....	0.0	1.0	1.0	0.7
Alton .....	Madison, IL .....	0.0	0.0	0.0	0.0
Maryville .....	Madison, IL .....	0.0	0.0	1.0	0.3
Edwardsville .....	Madison, IL .....	0.0	0.0	0.0	0.0
Wood River .....	Madison, IL .....	0.0	1.0	0.0	0.3
Houston .....	Randolph, IL .....	0.0	0.0	0.0	0.0
East St. Louis .....	St. Clair, IL .....	0.0	0.0	0.0	0.0
Arnold .....	Jefferson, MO .....	0.0	0.0	0.0	0.0
West Alton .....	St. Charles, MO .....	1.0	1.0	1.0	1.0
Orchard Farm .....	St. Charles, MO .....	0.0	0.0	2.0	0.7
Bonne Terre .....	St. Genevieve, MO .....	0.0	0.0	0.0	0.0
South Lindbergh .....	St. Louis, MO .....	0.0	0.0	2.0	0.7
Queeny .....	St. Louis, MO .....	0.0	0.0	0.0	0.0
Hunter .....	St. Louis, MO .....	0.0	0.0	0.0	0.0
Flo Valley .....	St. Louis, MO .....	0.0	0.0	0.0	0.0
St. Ann (old) .....	St. Louis, MO .....	0.0	n/a	n/a	<sup>1</sup> 0.0
St. Ann (new) .....	St. Louis, MO .....	n/a	0.0	0.0	<sup>1</sup> n/a
Broadway .....	St. Louis City, MO .....	0.0	0.0	0.0	0.0
Clark .....	St. Louis City, MO .....	0.0	0.0	0.0	0.0
Margaretta .....	St. Louis City, MO .....	0.0	0.0	0.0	0.0

<sup>1</sup> The owner of the property on which the old St. Ann monitor was located terminated the lease agreement with the Missouri Department of Natural Resources. The new site is 0.7 miles east of the old site. In general, ambient monitors should remain at the same location for the duration of the monitoring period required for demonstrating attainment. However, when three complete, consecutive calendar years of data is not available for a monitoring site, adjustments are made consistent with EPA monitoring criteria, in determining the average number of estimated exceedances per year. The average number of estimated exceedances for 2000–2002 for the old St. Ann monitor is the estimated exceedances for 2000, or 0.0. In addition, where a monitor has been in operation less than three years, the average estimated number of exceedances cannot be determined. Since the new St. Ann monitor has been in operation less than three years, the average number of estimated exceedances for 2000–2002 was not determined.

The area has monitored attainment for the three-year period from 2000–2002. This demonstrates that the current level of emissions is adequate to keep the area in attainment during weather conditions as in past years associated with higher

levels of ozone. In addition, the CAA does not presume that the area will always be in attainment. The CAA provides that if the area were to violate the 1-hour ozone standard, then the contingency measures in the

maintenance plan would be triggered. This would reduce the ozone precursor emissions and bring the area back into attainment.

One exceedance in the area was monitored in 2000, three in 2001, and



seven in 2002. EPA notes that when dealing with numbers as small as one exceedance in 2000, any subsequent increase in the number of exceedances will result in the number of exceedances being at least doubled. In other words, when dealing with a number as small as one, any increase will be at least double that value. Thus, citing a doubling or tripling of exceedances is not necessarily an indicator of significant changes in air quality.

The one-hour ozone NAAQS is based upon a three-year average. For a violation, the estimated number of exceedances per year must exceed 1.0 at any monitoring site. Under this standard, a monitor may record up to three exceedances over a three-year period without causing a violation of the standard. The fourth highest monitored level at a monitor over a three-year period can be used as an indicator of potential violations of the NAAQS. (Note that since other factors, such as missing data, can affect the calculation of the estimated number of exceedances, the fourth highest monitored value is not solely used to determine a violation. See the discussion in the January 30, 2003, proposed rule at 68 FR 4849 and 4850 for an example of how the number of estimated exceedances is determined.) The term "design value" is used to refer to the fourth highest monitored value in a three-year period. For an individual monitor, the design value is the fourth highest monitored value in a three-year period. For an area such as the St. Louis area, the highest of the individual monitor design values over a three-year period is referred to as the "area's design value." The lower an area's design value the more likely the area will meet the standard. Also, an area's design value which decreases over time indicates that the monitored ozone concentrations are generally lowering and the air quality is improving.

The St. Louis area's design value reduced as follows: 0.156 parts per million (ppm) in 1987–1989 (*see* 52 FR 13385–13386 dated March 18, 1999); 0.136 ppm in 1994–1996 (*see* 53 FR 15581 dated March 19, 2001); 0.131 ppm in 1996–1998 (*see* 53 FR 15583 dated March 19, 2001); 0.127 ppm in 1998–2000 (*see* 53 FR 15584 dated March 19, 2001); and, 0.123 ppm in 2000–2002.

This indicates that the monitored air quality improved over this time period.

In the January 30, 2003, proposed rule at 68 FR 4856–4858, and in the response to comment 19, EPA explains the basis for concluding that the observed air quality improvements are due to the implementation of permanent and

enforceable emission reductions. The reasons cited include emission controls which have resulted in emission reductions, an analysis of meteorological conditions which has shown a trend in the reduction of ozone from 1989 to the present while the number of days conducive to forming ozone showed no significant trend, and an assessment of emissions in 1990 and 2000 which have shown substantial decreases in emissions of VOCs and NO<sub>x</sub>.

Finally, it is noted that the commenter errs in combining the exceedance data from many monitors and concluding, on the basis of the exceedance totals that a worsening ozone trend has occurred. Referring to Table 1 in the January 30, 2003, proposed rule (68 FR 4850) (repeated above), one can see that many monitors, including the worst-case monitor at West Alton, show no consistent trend in exceedance numbers in the 2000–2002 period. The "sudden" increase in exceedances from zero to two at the Orchard Farm and South Lindbergh monitoring sites, although implying a worsening ozone trend, simply point to the instability of considering year-to-year changes within a small time period.

*Comment 21:* The only modeling which the commenter is aware of was relied upon in the June 26, 2001, rulemaking. This modeling shows that it is impossible to attain the NAAQS in St. Louis in 2002. The significant factor is long-range transport. This suggests that variations in out-of-state transport may account for the monitored improvements in air quality.

*Response 21:* Previous modeling referred to by the commenter was conducted as part of the attainment demonstration approved by EPA in the June 26, 2001, rulemaking (66 FR 33995). (This approval was vacated by the U.S. Court of Appeals for the Seventh Circuit, as explained previously.) This modeling demonstrated that utilizing planned controls and measures the area will attain the standard by no later than November 15, 2004. EPA disagrees with the commenter's assertion that the modeling demonstrated it was impossible to attain the standard in 2002. The purpose of the modeling was to determine the likelihood of attainment. EPA's approval of the states' attainment demonstrations did not include a determination that attainment or maintenance of the standard prior to 2004 was impossible.

The assumptions used in the modeling for the attainment demonstration approved in the June 26, 2001, rulemaking are described in an

April 3, 2001, proposal (66 FR 17649–17652). In this discussion, EPA noted that the states incorporated corrections to the 1996 base year emissions inventory, an assessment of the model's performance by applying statistical tests, and assumptions regarding which states are affected by the NO<sub>x</sub> SIP call including NO<sub>x</sub> limits on facilities.

As discussed in the April 2001 document, the states had taken measures to revise the emissions inventory to reflect the most current data inputs available. In addition, an evaluation of the model was performed as a measure of the "likelihood" that the standard will be achieved. The June 26, 2001, rulemaking at 66 FR 17652 states:

The states conclude, and EPA concurs, that the revised modeling system performs at an acceptable level because it satisfactorily reproduces peak ozone concentrations relative to the monitored peak ozone concentrations. The modeling system adequately simulates the observed magnitude and spatial and temporal patterns of monitored ozone concentrations. Furthermore, the modeling results accurately differentiate between days with marginal ozone levels and days with elevated ozone concentrations. Therefore, based on the revised modeling and WOE results presented by the states which confirm the adequacy of the adopted emission control strategy, EPA is approving the states' attainment demonstrations.

The conclusions made regarding the likelihood of attainment based upon the attainment demonstration modeling were the best that could be drawn from the available information. And, it is likely that different conclusions regarding attainment would be drawn if the states were required to conduct modeling as part of the maintenance demonstration. For example, if a prospective maintenance demonstration were performed with an ozone photochemical model following EPA guidance, the modeling would be allowed to use episode days from the 2000–2002 period, not 1991 and 1995 as was used in the attainment demonstration modeling. In addition, the modeling would use a more current base-year inventory (1999 or 2000) rather than the 1996 base-year inventory used in the attainment demonstration modeling. It is highly likely, if not certain, that the outcome would be a conclusion that attainment will be preserved through the required 10-year period.

Ozone models are designed to primarily predict the relative impacts of emission changes on future ozone levels. Thus, it is not uncommon to observe that actual monitored ozone concentrations are different from

modeled values at certain locations. The commenter's assertion that attaining the standard in 2002 is impossible is not supported by the existing science.

The commenter does not provide data to support its hypothesis that variations in out-of-state transport may account for the improvement in air quality. The commenter only speculates that out-of-state transport may account for the improvement in air quality. As described in the response to comments 19 and 20 above, the states demonstrated that improvements in air quality are due to permanent and enforceable emission controls which have resulted in emission reductions, an analysis of meteorological conditions which has shown no significant decrease in the annual number of days conducive to ozone formation, while there has been a significant reduction in monitored ozone concentrations, and an assessment of emissions in 1990 and 2000 which has shown decreased emissions of VOCs and NO<sub>x</sub>. Thus, the states have demonstrated the improvements in the St. Louis area are due to permanent enforceable reductions in the St. Louis area.

*E. Comments Related to Criterion 4: The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A*

*Comment 22:* Section 175A(a) of the CAA requires that state maintenance plans must be SIP revisions. Section 110(a)(2)(A) of the CAA requires a SIP to contain enforceable emission limitations. The maintenance plans for each state do not include any enforceable emission limitations. For example, Missouri NO<sub>x</sub> controls have not yet been promulgated.

*Response 22:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

In this rulemaking, EPA is approving Missouri's maintenance plan as a SIP revision.

The CAA requires the area to have a fully approved SIP and to have met all of the applicable requirements of the CAA. The area's SIP satisfies these requirements as described in this final rule and in EPA's proposed rulemaking published on January 30, 2003 (68 FR 4847). The measures that the states are relying on to maintain the 1-hour ozone standard have been approved into the

SIPs and are state and Federally enforceable. This includes Missouri's NO<sub>x</sub> RACT rule found at 10 CSR 10–5.510 and the statewide NO<sub>x</sub> rule found at 10 CSR 10–6.350. (See response to comment 10 above regarding the NO<sub>x</sub> SIP Call.) The states must continue to implement these measures as provided for in the Federally-approved SIPs.

The CAA does not require a separate level of enforcement for a maintenance plan as a prerequisite to redesignation. The enforcement program approved for and applicable to the SIPs as a whole also applies to the maintenance plan. See discussion in the Cincinnati redesignation (65 FR 37879, 37881–37882), and the Sixth Circuit decision in *Wall v. EPA*, 265 F. 3d at 438, upholding EPA's interpretation of the requirement. As explained below in the response to comment 26, Missouri has committed to continue to implement the measures included in the approved SIP and relied on for maintenance of the standard.

All of the control measures which the states relied upon are SIP-approved measures. EPA cannot withhold its approval of the maintenance plan submitted by the states because of concerns that the states may, at some future time, either submit a SIP revision to amend or remove a program, or that the states may fail to implement these programs in the St. Louis area. The Federally-approved SIP requirements remain in place and enforceable until such time as EPA takes action to approve SIP revisions to amend or remove them. This can only be done via Federal rulemaking, which includes procedures for public comment and review.

*Comment 23:* Section 182(j), 40 CFR 51.112(b), the Calcagni memo, and the General Preamble require the use of photochemical modeling to demonstrate maintenance. EPA is overruling Congress, EPA regulations and common sense by proposing to predict maintenance for ten years without any modeling. Monitoring is more accurate to show past concentrations, but modeling is required to predict future concentrations. The commenter cites *Ober v. U.S.E.P.A.*, 84 F.3d 304 (9th Cir. 1996) in support of its assertion.

*Response 23:* EPA disagrees with the commenter's assertion that the use of photochemical modeling to demonstrate maintenance is required by the CAA, EPA policy or EPA regulations. The EPA is not overruling Congress, or EPA regulations.

Section 175A requires states to develop and submit, as a SIP revision, a plan for maintaining the NAAQS for at least 10 years after redesignation. The

plan shall contain such additional measures, if any, as the Administrator deems necessary to ensure such maintenance. Section 175A does not require modeling.

Section 182(j) contains no reference to maintenance plans. Section 182(j)(1) requires that each state in a multi-state ozone nonattainment area shall “\* \* \* (A) take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned; and (B) use photochemical grid modeling or any other analytical method determined by the Administrator, in his discretion, to be at least as effective.” The language in this section clearly refers to “nonattainment” areas. Thus, EPA believes that Section 182(j) is applicable to attainment demonstrations, not maintenance plans.

Even if the commenter is correct in its assertion that section 182(j) applies to maintenance plans, this section does not necessarily require modeling. EPA has the discretion to use other analytical methods determined to be at least as effective. In the Calcagni memo on page 9 EPA stated “A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.” By this policy, EPA has, in effect, expressed how its discretion will be utilized regarding the use of emissions in lieu of modeling in demonstrating maintenance. In addition, the Sixth Circuit in *Wall v. EPA* (265 F.3d 426, 435) determined that “EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place.” See also EPA's discussion in its brief in the *Wall* case. The *Ober* case cited by the commenter deals with modeling requirements for approval of a SIP revision in a nonattainment area for particulate matter, and has no relevance to the ozone maintenance plan at issue here.

The regulation at 40 CFR 51.112(a) requires the SIP to demonstrate that the measures, rules and regulations contained in the plan are adequate to provide for the timely attainment and maintenance of the NAAQS. The regulation at 40 CFR 51.112(b) specify

what the demonstration required in 40 CFR 51.112(a) must include. The Sixth Circuit in *Wall v. EPA* (265 F.3d 426, 435) determined that EPA's position that the regulation at 40 CFR 51.112(a) applies only to attainment demonstrations and not maintenance plans is "neither impermissible nor in conflict with a statutory mandate \* \* \*". Moreover, EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place."

Lastly, the proposed rule at 68 FR 4858 states that projected emissions of NO<sub>x</sub> in Illinois will be reduced from 141.64 to 96.67 tons per ozone season weekday from 2000 to 2014 and in Missouri, they will be reduced from 453.14 to 317.58 tons per ozone season weekday from 2000 to 2014. Projected emissions of VOCs in Illinois will be reduced from 94.11 to 75.98 tons per ozone season weekday from 2000 to 2014 and in Missouri, they will be reduced from 248.35 to 182.57 tons per ozone season weekday from 2000 to 2014. A "common sense" conclusion is that further emission reductions are projected to occur through 2014. Based on past trends of emissions decreases, reduced peak ozone levels will continue from 2000 to 2014. Further modeling would continue to demonstrate attainment. The commenter has not provided any data to indicate that these reductions in ozone precursors would lead to modeled increases in ozone concentrations.

*Comment 24:* EPA and the states have stated in testimony provided to courts and the public that maintenance of the NAAQS in 2003 is not possible. EPA and the states have stated that, due to upwind emissions, attainment of the NAAQS cannot be achieved until 2004. EPA's modeling demonstrates that it is not possible to assure that the NAAQS would be maintained in 2003.

*Response 24:* The Commenter uses the same arguments in this comment to state that the attainment of the NAAQS cannot be maintained as were used in comment 21 above to claim that the area cannot attain the NAAQS. See the response to comment 21 for further discussion.

EPA disagrees with the commenter's assertion that the modeling demonstrated it was impossible to maintain the standard in 2003. The purpose of the modeling is to predict the likelihood of attainment. EPA's approval of the states' attainment

demonstrations did not include a determination that attainment or maintenance of the standard prior to 2004 was impossible.

The commenter refers to documents submitted by EPA and the states, as well as to language used in various rulemakings stating, in effect, that reductions in upwind emissions are necessary for attainment of the standard and that the earliest attainment date is projected to be November 15, 2004. At the time these documents were developed, EPA and the states were basing their conclusions on the attainment demonstration and the accompanying modeling. The statements made were the best conclusions that could be drawn from the available information.

The conclusion that the maintenance plan will provide for maintenance of the NAAQS for the next ten years as required by section 175A is based, in part, on more recent information than what was relied upon in the attainment demonstration which included the modeling referred to by the commenter. The maintenance plan includes an emission inventory which is more recent than the inventory used in the attainment demonstration. See the response to comment 36 for further discussion.

EPA has no data to support the commenter's hypothesis that variations in out-of-state transport may account for the improvement in air quality. The commenter only speculates that out-of-state transport solely account for the improvement in air quality. EPA concludes that the plan demonstrates maintenance through 2014.

*Comment 25:* The SIP must provide assurance that the states have adequate personnel, funding and authority to carry out the SIP. The record for this action must provide real evidence of this assurance.

*Response 25:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA disagrees with the commenter that this action must include in the record further evidence of resource commitments. The analysis has already been performed in prior rulemakings and need not be reopened here. See the redesignation of Cincinnati (65 FR 37881-37882), Pittsburgh (66 FR 53102), and Cleveland (65 FR 77308, 77315) for

additional examples in which EPA has taken this position. *See also, Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984 (6th Cir. 1998).

In a final rulemaking action published on April 9, 1980 (45 FR 24146), EPA approve Missouri's SIP as meeting the financial and manpower resource commitments of the CAA.

The Sixth Circuit in *Wall v. EPA* (265 F.3d 426, 437) determined regarding resource and authority commitments for enforcement that "there is no language in the CAA or in the EPA's regulations that specifically requires that a separate commitment be made within the maintenance plans themselves \* \* \*". Moreover, this decision is in accord with the interpretation given to the CAA under the Calcagni Memorandum, advising that "an EPA action on a redesignation request does not mean that earlier issues with regard to the SIP will be reopened," an interpretation that has been upheld by this court."

EPA also notes that more recent resource commitment reviews have been performed. For example, in the February 17, 2000, proposed rule at 65 FR 8099 EPA noted that in proposing to approve Missouri's I/M program, the "the SIP includes a detailed budget plan that describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. \* \* \* The SIP meets the Federal requirements for evidence of adequate tools and resources under 40 CFR.51.372 and 51.354."

*Comment 26:* EPA policy states that a state may not relax existing controls upon redesignation. However, the states are moving LAER, offsets and NO<sub>x</sub> RACT to the contingency plan without a modeling demonstration showing that these control measures are not needed for attainment, contrary to EPA policy.

*Response 26:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. *See the rulemaking in today's Federal Register* regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

Missouri has a commitment on page 29 of the maintenance plan which states "The department provides assurance that all of the control measures adopted by state rules and listed in the ROP plan or this document will be enforced to ensure maintenance of the one-hour ozone NAAQS."

The commenter refers to the Calcagni memo at page 10 which states that "the

State will be expected to maintain its implemented control strategy despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance or are replaced with measures that achieve equivalent reductions.”

Section 175A requires that maintenance plans shall contain contingency provisions deemed necessary to assure that the states will promptly correct any violation of the standard which occurs after redesignation of the area as an attainment area. These provisions shall include a requirement that the state will implement “all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area.” On page 6 of an October 14, 1994, memorandum entitled, “Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment” from Mary D. Nichols, Assistant Administrator for Air and Radiation, EPA stated its interpretation on the term “measures” used in section 175A does not include part D NSR permitting programs. In accordance with this interpretation, EPA believes that lowest achievable emission rate (LAER) and offsets, which are components of Missouri’s part D NSR permitting program, are not required to be retained following redesignation of the St. Louis area as an attainment area.

LAER and offsets are specified in part D and subpart 2 of the CAA applicable to nonattainment areas. Upon redesignation to attainment, these requirements are no longer applicable. Removing the LAER and offsets provision in the states’ permitting programs is not contrary to the above-mentioned policy. Upon redesignation to attainment, the LAER requirements included in stationary source permits and the offsets which were obtained by stationary sources at the time when the LAER and offset provisions were in effect, will remain in effect for those facilities. Thus, the LAER and offset measures which were relied upon to attain the NAAQS will remain in effect following redesignation.

Following redesignation, any new facilities subject to the state’s permitting requirements will be subject, as a minimum, to the Prevention of Significant Deterioration (PSD) requirements of Part C of Title I of the CAA. (In Missouri, the LAER and offset requirements remain in effect, unless the NSR rules are revised by the state and the revision is approved by EPA.) Under the PSD requirements, the states must ensure that such new facility will

not cause a significant deterioration of air quality to the extent that it causes or contributes air pollution in excess of the NAAQS (Section 165). As part of the PSD program sources are required to perform a source-specific air quality demonstration to show no adverse impact on the NAAQS. Thus, maintenance of the NAAQS is an inherent feature of the PSD program, should Missouri choose not to retain its current program for new source permitting in the future.

As for NO<sub>x</sub> RACT, Missouri has an approved NO<sub>x</sub> RACT rule which will remain in effect following redesignation. Thus, there will be no relaxation of NO<sub>x</sub> RACT in Missouri following redesignation.

Regarding modeling, the Shapiro Memo at page 6 states that “States may be able to move SIP measures to the contingency plan upon redesignation if the State can adequately demonstrate that such action will not interfere with maintenance of the standard.” As stated above, for Missouri, all control measures established prior to redesignation as a result of the LAER and offset requirements are being retained following redesignation and NO<sub>x</sub> RACT is being retained.

*Comment 27:* The contingency provision of the maintenance plan fall short of those required. All serious area requirements of Section 182(c) of the CAA must be included in the contingency plan and implemented promptly in case of a violation. Virtually none of these provisions are included in the contingency plan and thus cannot be approved.

*Response 27:* EPA disagrees with the commenter’s assertion that all the serious area requirements of section 182(c) are required to be included in the contingency plan and implemented in case of a violation.

The requirements for maintenance plans and contingency measures are set forth in section 175A(d). Section 175A(d) states:

Each plan revision submitted under this section shall contain such contingency provisions as the Administrator EPA 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. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area.

None of the serious area requirements was an applicable requirement that was contained in the SIP prior to

redesignation. The plan must contain contingency measures that the Administrator deems appropriate to assure that the states “will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.” As described in response to comment 28 below, EPA believes that this requirement has been met. The statute does not require that all serious area requirements be included in the maintenance plan as contingency measures but rather that all measures included in the SIP prior to redesignation be included in the maintenance plan as contingency measures. As explained previously, certain serious area requirements need not be met in the case of St. Louis since they are not yet due. Since these provisions are not applicable in St. Louis, they do not need to be included in the maintenance plan as contingency measures.

The commenter’s assertion that “there is no implementation plan applicable to this ‘serious area’” is addressed in other responses in this rulemaking. *See, e.g.,* response to comment 17.

*Comment 28:* 42 U.S.C. 7505a(d) requires that the states will promptly correct any violation of the standard which occurs after redesignation. However, there is nothing in either contingency plan which assures prompt correction of future violations. The plans contain no adopted measures, and no schedule to adopt specific measures. The plans offer to adopt an unspecified measure within eighteen months of notification of a violation. This is an unreasonably long period. The plans should require adoption in much less than eighteen months and immediate implementation.

*Response 28:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today’s **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA’s response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA disagrees that Missouri’s maintenance plan lacks adequate contingency provisions should the area violate the standard. As stated in the January 30, 2003, proposed rule at 68 FR 4859, the contingency plan portion of the maintenance plans delineated Missouri’s planned actions in the event of future 1-hour ozone standard violations, increasing ozone levels threatening a subsequent violation of the ozone standard, and unanticipated

increases in ozone precursor emissions threatening a subsequent violation of the ozone standard. Missouri has developed a contingency plan with several levels of triggered actions depending on whether the ozone standard has actually been violated after the redesignation of the area to attainment or whether a subsequent violation of the ozone standard is threatened on the basis of increased ozone concentrations approaching the standard or unanticipated significant increases in ozone precursor emissions. Missouri has also committed to continue to implement all control measures included in the SIP prior to redesignation consistent with section 175A(d) of the CAA.

The action trigger levels and planned corrective actions in the contingency plan are the following:

A Level I Trigger will be exceeded if: (1) The monitored ambient ozone levels exceed 124 parts per billion, one-hour averaged, more than once per year at any monitoring site in the St. Louis maintenance area (the current St. Louis ozone nonattainment area), or more than two exceedances in any two- or three-year period; or (2) the St. Louis maintenance area's VOC or NO<sub>x</sub> emissions for 2005 or 2008 increase more than 5 percent above the 2000 attainment levels. In the event one of these action trigger levels are exceeded, Illinois and Missouri will work together to evaluate the situation and determine if adverse emissions trends are likely to continue. If so, the states will determine what and where emission controls may be required to avoid a violation of the 1-hour ozone NAAQS. A study shall be completed within nine months of the determination of the action trigger exceedance.

A Level II Trigger will be exceeded if a violation of the 1-hour ozone NAAQS at any monitoring site in the St. Louis ozone maintenance area is recorded after the area is redesignated to attainment of the standard. If this trigger is exceeded, Illinois and Missouri will work together to conduct a thorough analysis to determine appropriate measures, from those listed below, to address the cause of the ozone standard violation.

The contingency plan for Missouri lists a number of possible contingency measures. The plan calls for the appropriate contingency measures to be adopted and implemented within 18 months of a Level I or Level II trigger being exceeded. The list of possible contingency measures in Missouri's contingency plan include the following:

#### Point Source Measures

- NO<sub>x</sub> SIP Call Phase II (non-utility)
- Apply RACT to smaller existing sources
- Tighten RACT for existing sources covered by EPA Control Techniques Guidelines
- Expanded geographic coverage of current point source measures
- MACT for industrial sources
- New source offsets and Lowest Achievable Emission Rates
- Other measures to be identified

#### Mobile Source Measures

- Transportation Control Measures, including, but not limited to, area-wide rideshare programs, telecommuting, transit improvements, and traffic flow improvements.
- High Enhanced I/M (OBDII)
- California Engine Standards
- Other measures to be identified

#### Area Source Measures

- California Architectural/Industrial Maintenance (AIM)
- California Commercial and Consumer Products
- Broader geographic applicability of existing measures
- California Off-road Engine Standards
- Other measures to be identified

As stated in the September 4, 1992, Calcagni memo, page 12, "For purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered." Thus, EPA has long interpreted section 175A not to require that contingency measures have already been adopted.

On July 21, 1983 (48 FR 33265), EPA approved Missouri rule 10 CSR 10-1.010, General Organization which set forth the organization, powers and duties of the Missouri Air Conservation Commission. The rule contained a new section (3) which described procedures to be followed by the Air Pollution Control Program for providing public notice and public participation in the rulemaking process.

In order to comply with 10 CSR 10-1.010, and the underlying statute by which Missouri is authorized by the legislature to adopt regulations, Missouri requires time to evaluate potential controls and provide public notice and public participation in the rulemaking process when adopting

contingency measures. In addition, selected controls would require a period of time for sources to install the controls (e.g., RACT on smaller sources) or for an implementing agency to fund and establish the new program (e.g., transportation control measures). The commenter provided no rationale for its assertion that an outside date of 18 months for adoption of measures is unreasonable. The statute affords EPA discretion to determine whether the timeframe for implementation of contingency measures is reasonable. EPA finds that 18 months as described in the maintenance plan to adopt and implement contingency measures is a reasonable time period for Missouri to meet its regulatory obligations while meeting the requirement under section 175A to promptly correct any violation of the standard. In addition, this 18-month period to adopt and implement contingency measures is consistent with other redesignations such as Pittsburgh (66 FR 53102) in which a 12- to 24-month time period was specified to adopt and implement contingency measures. See also the Louisville redesignation (66 FR 53665, October 23, 2001) approving an 18-month schedule for implementation of contingency measures, and Northern Kentucky (Cincinnati-Hamilton) (65 FR 37879, June 19, 2000) and (67 FR 49600, July 31, 2002).

*Comment 29:* Neither maintenance plan provides any procedure for quantifying the reductions needed to correct violations.

*Response 29:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

As indicated in the response to comment 28 above, the maintenance plan refers to a violation of the NAAQS as a level II trigger. In the event of a violation, Illinois and Missouri have committed to work together to conduct a thorough analysis to determine appropriate measures to address the cause of the ozone standard violation. It is impossible for a state to determine, before a violation, what reductions are necessary to correct a violation. For example, if Missouri would select tightening RACT for existing sources as a contingency measure, the amount of reductions by implementing this measure is dependent upon the number of sources subject to RACT rules in the

area at the time of the violation. Since the state has no control over when a source ceases operating, it is impossible to determine, at this time, how many sources will be affected by a tightening of RACT which may be implemented at some unspecified time in the future. Thus it is impossible to determine beforehand how much of a reduction will be achieved by implementing this measure. See the discussion in the Cuyahoga and Jefferson Counties, Ohio, redesignation for particulate matter (65 FR 77308, December 11, 2000).

The approach taken in the maintenance plan is to conduct a thorough analysis to determine the magnitude of the reductions needed to correct the violation, the types of sources from which reductions must be made (e.g., point, area, or mobile sources), and the mechanisms for achieving the reductions. The list of contingency measures includes a reasonable mix of measures from which to select the measures most suited to address a future violation (a level II trigger), if one occurs, or to alleviate an unanticipated decline in air quality (a level I trigger). EPA finds that this is a reasonable approach which will assure prompt correction of the violation. In addition, consistent with the Calcagni memo, the maintenance plan includes a Level I trigger in which Missouri will evaluate and determine if adverse emissions trends are likely to continue. If so, Missouri will determine what and where emission controls may be required to avoid a violation of the 1-hour ozone NAAQS.

*Comment 30:* The contingency measures in the maintenance plans are vague and open ended. Neither plan identifies any measures to be adopted. No firm schedule for adoption and implementation is included.

*Response 30:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA disagrees with the commenter's assertion that the contingency measures are vague and open ended. In response to comments 28 and 29 above, EPA addressed the procedures contained in the maintenance plan for evaluating which measures are necessary to promptly correct a violation.

In addition, in response to comment 28 above, EPA identified the list of potential contingency measures

contained in Missouri's maintenance plan along with a schedule of 18 months to adopt and implement selected contingency measures in the event of a violation (a level II trigger) or a decline in air quality (a level I trigger). EPA has concluded that the maintenance plan satisfies statutory requirements and EPA guidance regarding adoption and implementation of contingency measures consistent with EPA guidance and the CAA. The commenter acknowledges this 18-month time period to adopt and implement contingency measures in the comments.

*Comment 31:* Each maintenance plan contains inadequate provisions to respond to anticipated violations of the NAAQS. Anticipated violations are based upon inventories exceeding the 2000 inventory or two exceedances at any monitoring site. There is no commitment to adopt any additional controls to address anticipated violations.

*Response 31:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

As indicated above, a Level I Trigger will be exceeded if: (1) The monitored ambient ozone levels exceed 124 parts per billion, one-hour average, more than once per year at any monitoring site in the St. Louis maintenance area (the current St. Louis ozone nonattainment area), or more than two exceedances in any two-or three-year period; or (2) the St. Louis maintenance area's VOC or NO<sub>x</sub> emissions for 2005 or 2008 increase more than 5 percent above the 2000 attainment levels. In the event one of these action trigger levels is exceeded, Illinois and Missouri will work together to evaluate the situation and determine if adverse emissions trends are likely to continue. If so, the states will determine what and where emission controls may be required to avoid a violation of the 1-hour ozone NAAQS. The emission controls will be selected from a list of measures included in the contingency plan. A study shall be completed within nine months of the determination of the action trigger exceedance, and Missouri's maintenance plan contains a commitment to adopt and implement the necessary contingency measures within 18 months of a Level I trigger consistent with the discretion afforded EPA by the statute. The contingency

plan meets the requirement of section 175A(d) and the applicable guidance in the Calcagni memo.

*Comment 32:* The maintenance plans contain no commitment to implement measures in the SIP. EPA cannot approve the maintenance plan without this commitment.

*Response 32:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

The commenter is incorrect in its statement that the maintenance plan does not contain a commitment to implement measures in the SIP. Such a commitment was included in Missouri's maintenance plan. Section 5.4 of Missouri's maintenance plan states the following: "The department provides assurance that all of the control measures adopted by state rules and listed in the ROP plan or this document will be enforced to ensure maintenance of the one-hour ozone NAAQS. Any revisions to the control measures included as part of the maintenance plan will be submitted as a SIP revision to EPA for approval." As described in response to comment 28, Missouri is retaining all of the measures contained in its SIP prior to redesignation.

*Comment 33:* The maintenance plans do not address expected growth in areas adjacent to the nonattainment area such as Ste. Genevieve County. An assessment of this growth should be included. Also, the plan is based on the "irrational assumption" that "if there is no increase in emissions, and no decrease in controls, the standard will be maintained."

*Response 33:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

The commenter's characterization of the "basic premise" of the maintenance plan is incorrect. The plan does not simplistically assume that there will be no increase in emissions. The plan carefully projects the growth in emissions which will occur in various source sectors, and the reductions which will occur based on emission

control programs which are in place, in order to determine the net change in emissions from 2000–2014. The states are required to and have applied the appropriate techniques to estimate and account for potential emissions changes in the area. These techniques are necessarily based on sector-based growth indicators (positive and negative), *i.e.*, sector-specific economic factors, because the states have no way of predicting specific changes which take place within the emissions inventory.

Specific projects, such as those cited by the commenter, are addressed through mechanisms other than maintenance plans. Missouri implements Prevention of Significant Deterioration and NSR permitting regulations. These regulations address the air quality impacts of new sources and modifications of existing sources both inside and outside the boundaries of the nonattainment area. They are designed to prevent new source construction or existing source expansion which would adversely affect an area's ability to attain or maintain a national standard. The anticipated plant referenced by the commenter is a potential source in Missouri and the state is currently in the process of reviewing construction permit applications under state permitting requirements. This plant has not received the preconstruction permit necessary for construction and operation. Before any such project can be permitted, a permit applicant would be required, among other requirements, to identify specific emission increases and decreases associated with a particular project and demonstrate that the project would not have a significant adverse impact on an ambient air quality standard. Missouri regulation 10 CSR 10–6.060, Missouri's construction permitting rule, is part of the Federally-approved SIP.

EPA believes that it is the function of the state's air permitting rules, rather than the maintenance plan, to ensure that specific potential new sources do not create emissions which would interfere with the maintenance of the ozone standard.

*Comment 34:* The emission estimates are unreliable. A recent study of flares throws doubt into the St. Louis emission inventory. EPA must consider the significant underestimation of flare emissions in the emission inventory.

*Response 34:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal**

**Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA believes that the states used the appropriate emission estimates in developing the emission inventory. The commenter cites a study of emissions from flares reported by the Bay Area Management District which the commenter alleges shows that the states greatly underestimated emissions from flares. EPA does not agree that the study cited by the commenter renders the emission estimates unreliable.

The Bay Area Management Study referenced by the commenter is a draft document and specifically states on the first page "Do not cite or quote." This document is currently undergoing scientific review. Therefore, no conclusions or comparisons should be drawn from this study until it becomes final. This study specifically addresses refinery flare emissions. However, no refineries are located in the Missouri side of the non-attainment area. Further review of the document has shown that methane was included in the emission factor that was used to derive emissions for this study. Methane is not an ozone precursor, and the inclusion of this pollutant could significantly alter the preliminary findings. The study targets the control efficiencies of the flares and states that "efficiency drops approximately by the cube of the speed (wind)". This would suggest that on high wind event days the control efficiencies would be at their lowest. However, in the St. Louis area, high ozone days have been characterized by low wind conditions, which would produce minimal impact on flare control efficiencies during the periods of concern. Lastly, NO<sub>x</sub> and VOC emissions from all flares constitute less than one-tenth of one percent of the total inventory for the Missouri side of the St. Louis area. Therefore, any potential changes in calculation methodology from this source category, even if changes were warranted based on this draft study, would still likely produce an insignificant change to the total inventory.

*Comment 35:* Missouri states that it operates an enhanced I/M program but this has never been authorized by the Missouri legislature.

*Response 35:* The Missouri Legislature authorized MDNR to develop an I/M program, including a centralized test only program, as necessary to provide for attainment and maintenance of the national ambient air quality standard. That authority is codified in the Missouri Revised

Statutes, Sections 643.300–643.355. Missouri's I/M program has incorporated most of the features of an enhanced program, described in our 2000 rulemakings (65 FR 8097, February 17, 2000 and 65 FR 31480, May 18, 2000).

The I/M program operated in the St. Louis, Missouri, area is known as the Gateway Clean Air Program. The Gateway Clean Air Program utilizes transient emission testing, the IM240 test, at centralized testing stations. These features are commonly thought of as being associated with an "enhanced" I/M program, as compared with decentralized, idle test programs. The IM240 test measures the vehicle under various operating conditions, measures NO<sub>x</sub>, and makes these measurements in terms of grams per mile, all of which the idle test cannot. Additionally, the Gateway Clean Air Program includes gas cap testing, which addresses evaporative hydrocarbon emissions that a tailpipe test cannot. Thus, Missouri often refers to the Gateway Clean Air Program as an Enhanced I/M program. As seen in Missouri's December 2002 program evaluation, this program is achieving emission reductions beyond those which would be achieved through a decentralized, idle test program. The descriptive terminology is irrelevant in any event. Missouri has assumed emissions reductions for the program it has in place (whatever label is used to describe the program), and the commenter does not provide any information indicating that the assumed reductions are not appropriate.

*Comment 36:* The emission inventory submitted by Missouri is not an inventory of emissions during the attainment period but is projected emissions drawn from Missouri's old attainment demonstration. EPA cannot conclude that keeping emissions no higher than these projected inventory amounts will ensure maintenance of the NAAQS.

*Response 36:* Missouri did not use the same inventories in the attainment demonstration as was used in the maintenance plan. Missouri used a 1995/1996 inventory for the attainment demonstration and a 1999 inventory for the maintenance plan.

In the maintenance plan, Missouri selected 2000 as "the attainment year" for purposes of demonstrating attainment of the 1-hour ozone NAAQS. Both point and area source inventories were grown from 1999 emission inventories. To demonstrate maintenance of the ozone standard through a ten-year maintenance period, Missouri projected VOC and NO<sub>x</sub> emissions for the St. Louis area to 2007



and 2014 and compared these projected emissions to the 2000 attainment year emissions. The 2007 emission estimates were generated to test a midpoint in the ten-year maintenance period.

In the April 17, 2000, proposed rule at 65 FR 20411 for the attainment demonstration, EPA noted that "The state submittals describe in detail the procedures used to develop, and then project, the base year emission inventories to the 1995/1996 period and to project emission to account for growth and control through 2003." The maintenance plan does not rely on these inventories.

As stated in response to comment 23 above, keeping emissions no higher than those projected in the inventory will ensure maintenance of the NAAQS. The Sixth Circuit in *Wall v. EPA* (265 F.3d 426, 435) determined that "EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place."

*Comment 37:* Neither maintenance plan provides a technical analysis demonstrating that maintenance of the 2000 emission levels will assure maintenance of the NAAQS. Such a demonstration requires photochemical grid modeling.

*Response 37:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA disagrees that modeling is required to demonstrate maintenance of the NAAQS. EPA reiterates its response to other comments including comments 23 and 36 in that the Court of Appeals for the Sixth Circuit in *Wall v. EPA* (265 F.3d 426, 435) determined that "EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place."

Missouri's maintenance plan includes a technical analysis as described in the response to comment 28 above that demonstrates maintenance of the NAAQS, based on a comparison of base year (attainment year) and projected

VOC and NO<sub>x</sub> emissions. This analysis meets the requirements of the CAA, is consistent with EPA guidance, and demonstrates maintenance of the NAAQS.

*Comment 38:* The maintenance plan must include RACM and RACT, for the reasons stated in comment 13 above.

*Response 38:* EPA incorporates its response to comment 13 in response to this comment.

#### *F. Comments Related to Criterion 5: The Area Must Have Met All Applicable Requirements Under Section 110 and Part D*

*Comment 39:* Neither state has met all the requirements applicable to the area. The serious area requirements of section 182(c) are applicable but none of these requirements have been met. Some of the requirements are applicable and enforceable now, such as the 50 ton per year threshold for permitting and enforcement and paragraphs 7, 8, and 10 of section 182(c).

*Response 39:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

As stated in the response to comments 6 through 11 above, the SIPs meet the applicable requirements and the serious area requirements are not applicable for purposes of this redesignation. States requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. Areas may be redesignated even though they have not adopted measures that come due after the submission of a complete redesignation request. Upon completion of today's actions, the SIP is fully approved for all applicable regulations. SIP revisions addressing the serious area requirements were required to be submitted by January 30, 2004.

Section 182(c) paragraphs 7 and 8 refer to special rules for modifications of major sources while paragraph 10 refers to 1.2 to 1 offset requirements for serious nonattainment areas. Missouri rule 10 CSR 10-6.020 defines the Missouri portion of the St. Louis area as a moderate ozone nonattainment area. A SIP revision would be required to redefine the Missouri portion of the St. Louis area to a serious nonattainment area. As stated in response to comment 7, EPA established a future date for submission of the serious area

requirements, including section 182(c)(7),(8), and (10), and the requirements are not now applicable for purposes of this redesignation.

#### *G. Comments Related to Implementation of Contingency Measures*

*Comment 40:* One commenter requested that in the final rule, EPA expressly state that in the event of a future violation of the NAAQS, Illinois and Missouri will not necessarily be required to evaluate any particular contingency measure nor be required to submit further attainment demonstrations.

*Response 40:* As stated above, the contingency plan portion of each state's maintenance plans delineate the states' planned actions in the event of future 1-hour ozone standard violations, increasing ozone levels threatening a subsequent violation of the ozone standard, and unanticipated increases in ozone precursor emissions threatening a subsequent violation of the ozone standard. In the event of a level I trigger, Illinois and Missouri will work together to evaluate the situation and determine if adverse emissions trends are likely to continue. If so, the states will determine what and where emission controls may be required to avoid a violation of the 1-hour ozone NAAQS. A study shall be completed within nine months of the determination of the action trigger exceedance. In the event of a Level II trigger, Illinois and Missouri will work together to conduct a thorough analysis to determine appropriate contingency measures. EPA expects that through this process, the states will identify the appropriate measures to implement to maintain the NAAQS. Redesignated areas are not subject to an obligation to meet additional nonattainment area requirements such as attainment demonstrations since they are no longer designated nonattainment areas. Instead, they must implement the contingency measures, which is what Congress provided for in the CAA.

#### *H. Comments Related to Redesignation of a Portion of the St. Louis Area*

*Comment 41:* One commenter requested that in the event the EPA is unable to finalize Missouri's I/M program, as proposed in a separate rulemaking on January 30, 2003, EPA should proceed with the redesignation for the Illinois portion of the St. Louis area.

*Response 41:* In today's **Federal Register**, EPA is approving Missouri's revised I/M rule. In addition, as explained above, EPA is finalizing its actions on the Missouri and Illinois

redesignation requests in separate rulemakings.

#### *I. Comments Related to Interstate Transport*

*Comment 42:* EPA must ensure that the CAA requirements of Section 110(a)(2)(D) pertaining to interstate transport impacts are actively and adequately met through the states' SIPs and through federal control programs such as the NO<sub>x</sub> SIP call.

*Response 42:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

As stated above, EPA believes that submissions under the NO<sub>x</sub> SIP call should not be considered applicable requirements for purposes of evaluating a redesignation request. The NO<sub>x</sub> SIP call requirements are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the requirements that are the relevant measures to evaluate in reviewing a redesignation request. The NO<sub>x</sub> SIP call submittal requirements continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that the NO<sub>x</sub> SIP call submission should be construed to be an applicable requirement for purposes of redesignation. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, 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 redesignation (65 FR 37890, June 19, 2000).

Missouri has adopted and EPA has approved into the SIP a state-wide NO<sub>x</sub> rule (10 CSR 10–6.350 Emissions Limitations and Emissions Trading of Oxides of Nitrogen (65 FR 82285,

December 28, 2000). This rule will remain as a SIP requirement following redesignation of the area to attainment. EPA is also determining in a separate rulemaking (proposed at 67 FR 8396) whether or not the eastern part of Missouri is to be subject to the NO<sub>x</sub> SIP call in response to a court remand.

*Comment 43:* The expected NO<sub>x</sub> emission control programs and emission reductions for the St. Louis area should not be jeopardized due to the absence of continued federal enforceability of the SIPs.

*Response 43:* The SIPs will remain Federally enforceable following redesignation of the St. Louis area to attainment. In addition, all of the NO<sub>x</sub> emission controls measures which are currently in place will remain as SIP requirements following redesignation to attainment. These emission control measures include NO<sub>x</sub> RACT, and the state-wide NO<sub>x</sub> rule in Missouri. Any revisions to SIP requirements would have to meet the applicable provisions of the CAA and be approved by EPA.

*Comment 44:* The redesignation of the St. Louis area to attainment should not weaken the impetus to rapidly address NO<sub>x</sub> transport to downwind areas. These efforts are critical to addressing the 8-hour and 1-hour ozone NAAQS in the St. Louis and downwind areas.

*Response 44:* The St. Louis redesignation to attainment will not delay EPA's decision as to whether or not the eastern portion of Missouri is to be included in the NO<sub>x</sub> SIP call. EPA will closely review any proposed changes to the NO<sub>x</sub> emission control programs which are currently in place in the St. Louis area to ensure that the proposed changes will not adversely affect the maintenance of the NAAQS.

#### **VI. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements

under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 July 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial

review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

##### 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Ozone, Wilderness areas.

Dated: April 29, 2003.

**William W. Rice,**

*Acting Regional Administrator, Region 7.*

■ 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 *et seq.*

#### Subpart AA—Missouri

■ 2. In § 52.1320(e) the table is amended by adding an entry at the end of the table to read as follows:

##### § 52.1320 Identification of Plan.

\* \* \* \* \*

(e) \* \* \*

#### EPA APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
Maintenance Plan for the Missouri Portion of the St. Louis Ozone Nonattainment Area including 2014 On-Road Motor Vehicle Emission Budgets.	St. Louis .....	12/06/02	5/12/03	

#### PART 81—[AMENDED]

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

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

■ 2. In § 81.326 the table entitled "Missouri—Ozone (1-Hour Standard)"

is amended by revising the entry for St. Louis Area to read as follows:

##### § 81.326 Missouri.

\* \* \* \* \*

#### MISSOURI—OZONE [1-Hour Standard]

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * *	* * *	* * *	* * *	* * *
St. Louis Area:				
Franklin County .....	5/12/03	Attainment.		
Jefferson County .....	5/12/03	Attainment.		
St. Charles County .....	5/12/03	Attainment.		
St. Louis .....	5/12/03	Attainment.		
St. Louis County .....	5/12/03	Attainment.		

<sup>1</sup> This date is October 18, 2000, unless otherwise noted.

\* \* \* \* \*

[FR Doc. 03-11187 Filed 5-9-03; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Parts 52 and 81

[IL 216-2; FRL-7496-4]

#### Approval and Promulgation of Implementation Plans, and Designation of Areas for Air Quality Planning Purposes; State of Illinois

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA has determined, in a separate rule published in today's **Federal Register**, that the St. Louis ozone nonattainment area (St. Louis area) has attained the one-hour ozone National Ambient Air Quality Standard (NAAQS). The St. Louis ozone nonattainment area includes the Counties of Madison, Monroe, and St. Clair in Illinois and the Counties of Franklin, Jefferson, St. Charles, and St.