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Part II

Environmental Protection Agency

40 CFR Parts 52 and 81

**Approval and Promulgation of
Implementation Plans; States of Illinois
and Missouri; 1-Hour Ozone Attainment
Demonstrations, Motor Vehicle Emissions
Budgets, Reasonably Available Control
Measures, Contingency Measures,
Attainment Date Extension, and
Withdrawal of Nonattainment
Determination and Reclassification; Final
Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Tracking No. MO-0132-1132, IL 196-3; FRL-7001-7]

Approval and Promulgation of Implementation Plans; States of Illinois and Missouri; 1-Hour Ozone Attainment Demonstrations, Motor Vehicle Emissions Budgets, Reasonably Available Control Measures, Contingency Measures, Attainment Date Extension, and Withdrawal of Nonattainment Determination and Reclassification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Clean Air Act (Act), EPA is approving the Illinois and Missouri 1-hour ozone attainment demonstration State Implementation Plans (SIP) for the St. Louis moderate ozone nonattainment area. In conjunction with its approval of the attainment demonstration, EPA is: extending the ozone attainment date for the St. Louis ozone nonattainment area to November 15, 2004, while retaining the area's current classification as a moderate ozone nonattainment area; withdrawing EPA's March 19, 2001, rulemaking determining nonattainment and reclassification of the St. Louis ozone nonattainment area; finding that the St. Louis ozone nonattainment area meets the reasonably available control measures (RACM) requirements of the Act; finding that the contingency measures identified by the states of Illinois and Missouri are adequate; approving the Illinois and Missouri motor vehicle emissions budgets (MVEB); and approving an exemption from the oxides of nitrogen (NO_x) emission control requirements for reasonably available control technology (RACT) and disapproving an exemption from the NO_x new source review (NSR) and NO_x conformity requirements for the Illinois portion of the St. Louis ozone nonattainment area.

DATES: This rule is effective immediately June 26, 2001.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following addresses: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604; or U.S. Environmental Protection Agency, Region 7, Air, RCRA, and Toxics Division, 901 North 5th Street, Kansas

City, Kansas 66101. Please make arrangements prior to visiting the Regional Offices.

FOR FURTHER INFORMATION CONTACT:

Edward Doty, EPA Region 5, (312) 886-6057; or Lynn M. Slugantz, EPA Region 7, (913) 551-7883.

SUPPLEMENTARY INFORMATION:

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

Background

A notice of proposed rulemaking was published on this action on April 17, 2000 (65 FR 20404), and notices of supplemental proposed rulemakings were published on April 3, 2001 (66 FR 17647), and April 19, 2001 (66 FR 20122). In a related **Federal Register** in March 1999 (64 FR 13384), EPA has also published a notice regarding the St. Louis area's potential eligibility for an attainment date extension. EPA received comments on these proposals. EPA has also received comments on a related notice: the "Extension of Attainment Dates for Downwind Transport Areas," 64 FR 12221 (March 25, 1999). In this final rule, EPA responds to adverse comments on these proposed rulemakings and notices. For details on the SIP submittals and the EPA analysis of the submittals, refer to the notices of proposed rules referenced above in this paragraph, and the technical support document for the April 17, 2000, proposal.

EPA is making this final rulemaking effective immediately. Section 553(d) of the Administrative Procedure Act generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, if an Agency identifies a good cause, section 553(d)(3) allows a rule to take effect earlier, provided that the Agency publishes its reasoning in the final rule. EPA is making this action effective immediately because the effective date of the nonattainment determination and reclassification (which is being withdrawn as a result of this final rule) is imminent. In addition, EPA finds good cause for making this action effective immediately because, in part, it relieves a restriction that would otherwise go into effect.

Information

This section provides additional information by addressing the following questions:

- I. What Illinois and Missouri SIP revisions are the topic of this action?
- II. What previous actions have been taken regarding the St. Louis area attainment demonstrations and attainment dates?
- III. What MVEBs are we approving?

IV. How did Illinois fulfill the requirements for an exemption from NO_x emission control requirements for RACT for the Illinois portion of the St. Louis ozone nonattainment area?

V. What Contingency Measures are we approving for the St. Louis area?

VI. Implementation of RACM.

VII. What are the requirements for full approval of the attainment demonstration?

VIII. Did Illinois and Missouri fulfill these requirements for full approval?

IX. What are the requirements for an attainment date extension?

X. How did Illinois and Missouri satisfy the criteria for an extension?

XI. What action is EPA taking regarding the Determination of Nonattainment as of November 15, 1996, and Reclassification published on March 19, 2001?

XII. What comments were received on the proposals covered by this final action, and on the March 25, 1999, publication of the attainment date extension policy, and how has EPA responded to those?

XIII. What action is EPA taking regarding the state submittals addressed by this final rule?

I. What Illinois and Missouri SIP Revisions Are the Topic of This Action?

The St. Louis ozone nonattainment area encompasses the interstate area of Madison, Monroe, and St. Clair Counties in Illinois; and Franklin, Jefferson, St. Charles, St. Louis Counties, and the City of St. Louis in Missouri. The states of Illinois and Missouri made several submittals to us relating to the ozone attainment demonstration and their request for an extension of the attainment date for the St. Louis ozone nonattainment area. The submittals listed below relate directly to EPA's final action described in this document.

1. In November 1994, the Illinois Environmental Protection Agency (IEPA) submitted a 15% Rate-Of-Progress Plan (ROPP) for the control of volatile organic compound (VOC) emissions in the Illinois portion of the St. Louis area. This 15% ROPP, as supplemented on January 31, 1995, was approved by EPA in a final rulemaking on July 14, 1997 (62 FR 37494);

2. In October 1997, the Missouri Department of Natural Resources (MDNR) submitted to EPA the contingency measures rules for the Missouri portion of the St. Louis ozone nonattainment area. This contingency measures SIP, as supplemented on April 5, 2001, is being approved as a part of this final rulemaking;

3. In a submission dated November 10, 1999, MDNR submitted an ozone attainment demonstration along with several additional SIP revisions. The attainment demonstration, as supplemented on November 2, 2000, is

being approved today. Those additional SIP revisions submitted on November 10, 1999, include:

- i. Regulations and associated documentation for the control of VOC emissions from various industries and existing major sources. These VOC RACT rules were approved by EPA in a final rulemaking on May 18, 2000 (65 FR 31489);
- ii. Regulations and associated documentation for the control of NO_x emissions intended to meet NO_x RACT requirements of the Act in the Missouri portion of the St. Louis nonattainment area. This NO_x RACT rule was approved by EPA in a final rulemaking on May 18, 2000 (65 FR 31482);
- iii. A 15% ROPP for the control of VOC emissions in the Missouri portion of the St. Louis nonattainment area. EPA approved Missouri's 15% ROPP on May 18, 2000 (65 FR 31485); and
- iv. An improved vehicle inspection and maintenance (I/M) program. EPA approved Missouri's vehicle I/M program on May 18, 2000 (65 FR 31480).

4. On November 15, 1999, IEPA submitted a letter outlining the ozone attainment strategy for the St. Louis area and the state's emission control commitments. As explained in the March 18, 1999, notice, Illinois had previously submitted a number of control measures for its portion of the St. Louis area (64 FR 13384, 13388–13389).

5. On February 10, 2000, IEPA submitted its adopted ozone attainment demonstration SIP. This SIP revision includes a petition for an exemption from NO_x RACT, NO_x NSR, and certain conformity NO_x requirements for the Illinois portion of the St. Louis ozone nonattainment area. This SIP revision also reflects the emission modifications and attainment demonstration revisions resulting from the emission controls contained in a January 19, 2000, submittal from MDNR. EPA is taking final action on this SIP revision in today's rulemaking;

6. On November 2, 2000, MDNR submitted an adopted attainment demonstration revision. EPA is taking final action on this SIP revision in today's rulemaking;

7. On November 15, 2000, MDNR submitted adopted regulations for NO_x emission controls for electricity generating units (EGU) within the state. EPA approved those regulations in a final rulemaking on December 28, 2000 (65 FR 82285);

8. On February 28, 2001, and April 13, 2001, respectively, Missouri and Illinois submitted comparisons of estimated 2004 VOC and NO_x emissions for the St. Louis area with their

previously submitted 2003 emission estimates for all source sectors. The states also accounted for expected changes in the 2003 and 2004 EGU NO_x emissions inventories for the states of Illinois, Indiana, Kentucky, Ohio, and Tennessee. In addition, Missouri's 2004 EGU NO_x emissions were analyzed with respect to both the current statewide NO_x control regulations and the anticipated impacts of compliance with EPA's NO_x SIP call. The current Missouri NO_x rules and anticipated potential revisions to the Missouri NO_x rules are explained in our April 3, 2001, supplemental proposed rulemaking (66 FR 17653). The February 28, 2001, and April 13, 2001, attainment demonstration SIPs are being approved as a part of today's rulemaking;

9. On February 28, 2001, and April 13, 2001, respectively, Missouri and Illinois submitted emissions inventory and transportation conformity budgets in final form, revised to reflect an attainment date of 2004. EPA is approving these emission budgets in today's rulemaking;

10. On March 7, 2001, and April 30, 2001, respectively, Missouri and Illinois committed to revise and resubmit their MVEBs within two years of the release of MOBILE6. EPA is approving these supplemental commitments as a part of the states' SIPs in today's rulemaking; and

11. On May 8, 2001, IEPA submitted a final NO_x rule for EGUs needed to support the ozone attainment demonstration for the St. Louis area. On June 8, 2001, EPA signed a final rule approving the Illinois NO_x EGU regulations.

II. What Previous Actions Have Been Taken Regarding the St. Louis Area Attainment Demonstrations and Attainment Dates?

On March 18, 1999 (64 FR 13384), EPA proposed in the **Federal Register** to find that the St. Louis ozone nonattainment area had not attained the 1-hour ozone national ambient air quality standard (NAAQS) by the attainment date (November 15, 1996) for moderate nonattainment areas. Also in that notice, EPA issued a notice of the St. Louis area's potential eligibility for an attainment date extension, pursuant to EPA's, "Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas" (hereinafter referred to as the attainment date extension policy) (Richard D. Wilson, Acting Assistant Administrator for Air and Radiation) issued on July 16, 1998. In the March 18, 1999, **Federal Register**, EPA proposed to finalize the reclassification of the St. Louis nonattainment area only

after the area had an opportunity to qualify for an attainment date extension under the attainment date extension policy.

On April 17, 2000 (65 FR 20404), EPA proposed to approve, or in the alternative, disapprove, Illinois' and Missouri's 1-hour ozone attainment demonstration SIPs for the St. Louis ozone nonattainment area. In that notice, we stated that we would disapprove the attainment demonstration if the states did not submit specific revisions to the attainment demonstration and other associated documents. These revisions and documents were necessary to provide or support fully approvable ozone attainment demonstrations SIPs and to meet the criteria of EPA's attainment date extension policy. Also, in that notice we proposed to approve an extension of the ozone attainment date for the St. Louis area to November 15, 2003, while retaining the area's classification as a moderate ozone nonattainment area, if EPA took final action to approve the states' ozone attainment demonstrations. EPA also proposed other related actions in the April 17, 2000, proposal.

Subsequent to the April 17, 2000, proposed rulemaking, relevant court decisions affecting the proposed extended attainment date for the St. Louis area were issued. First, on August 30, 2000, the United States Court of Appeals for the District of Columbia Circuit issued an Order (*Michigan v. EPA*, No. 98–1497, August 30, 2000), extending the source compliance date for the state rules resulting from the NO_x SIP call from May 1, 2003, to May 31, 2004. The effect of this ruling is that the regional NO_x emission reductions relied on in the attainment demonstration cannot be assumed to occur before the Court-ordered compliance date. As such, EPA requested that Illinois and Missouri consider the impacts of this ruling on the St. Louis area ozone attainment demonstrations.

Second, on January 29, 2001, the United States District Court for the District of Columbia ordered EPA to make a determination, no later than March 12, 2001, to be published not later than March 20, 2001, as to whether the St. Louis area attained the requisite 1-hour ozone standard. (*Sierra Club v. Browner*, 130 F. Supp. 2d 78 (D.D.C. 2001)). In compliance with the Court's Order, on March 19, 2001 (66 FR 15578), we published in the **Federal Register** our determination that the St. Louis ozone nonattainment area did not attain the 1-hour ozone standard by November 15, 1996. By operation of

law, that determination would result in the St. Louis ozone nonattainment area being reclassified from a moderate to a serious nonattainment area on the effective date of that rule, which was originally May 18, 2001, but which was subsequently modified to June 29, 2001, 66 FR 27036 (May 16, 2001). In the March 19, 2001, rulemaking, EPA also set forth its intent to withdraw the final determination and reclassification, if EPA granted the states an attainment date extension before the effective date of the determination and reclassification rule.

The Sierra Club and Missouri Coalition for the Environment filed a Petition for a Writ of Prohibition in the United States Court of Appeals for the D.C. Circuit (No. 01-1141) to prevent EPA from granting an attainment date extension to the St. Louis area and from withdrawing EPA's determination of nonattainment. EPA filed an opposition to this petition, and the Court, in an Order filed June 8, 2001, denied the petition. In addition, three separate appeals by the Sierra Club and Missouri Coalition for the Environment, the state of Illinois, and the state of Missouri, of the Court's Order issued January 29, 2001, as modified on February 15, 2001 (130 F. Supp. 2d 78 (D.D.C. 2001)) have been consolidated in the U.S. Court of Appeals for the D.C. Circuit *Sierra Club v. Whitman* (D.C. Cir. No. 01-5123, 01-5061, 01-5063).

Finally, Illinois and Missouri petitioned for review of EPA's final agency action published March 19, 2001 (66 FR 15578). Missouri filed its petition in the 8th Circuit (No. 01-2162) and Illinois filed in the 7th Circuit *Illinois v. EPA*, No. 01-2257. EPA has moved to transfer the Illinois petition to the 8th Circuit. EPA and the states have also filed a joint motion to stay proceedings in the 8th Circuit pending EPA's rulemaking with respect to withdrawal of the nonattainment determination and reclassification.

On April 3, 2001 (66 FR 17647), EPA published in the **Federal Register** a supplement to our April 17, 2000, proposed rule. In that supplemental notice, EPA addressed supplemental state submittals relating to corrections to the 1996 emissions inventory and the Missouri transportation conformity budget called for in the April 17, 2000, proposed rule, and additional submissions by the states relevant to the modeled attainment demonstration and MVEBs. Also, in our April 3, 2001, supplemental notice, we proposed to extend the attainment date for the St. Louis area to November 15, 2004, and to withdraw the March 19, 2001, Determination of Nonattainment and

Reclassification if EPA approved an attainment date extension prior to the effective date of the Determination of Nonattainment. At the time the initial attainment demonstrations were prepared and submitted for the St. Louis area, the states were using an attainment date of 2003 based on the October 1998 NO_x SIP call (62 FR 60318), consistent with the attainment date extension policy. As noted above, a subsequent August 30, 2000, decision in *Michigan v. EPA*, delayed the NO_x SIP call source compliance date to May 31, 2004. Because the attainment demonstration for the St. Louis area relies on the upwind, NO_x emission reductions resulting from the NO_x SIP call, the attainment deadline cannot be earlier than the date by which upwind states must have controls in place to address NO_x emissions. (See, 66 FR 17647, 17649, April 3, 2001.)

On April 19, 2001 (66 FR 20122), EPA published a supplemental notice in which we proposed to find that Missouri and Illinois have met the RACM requirements of the Act and that the contingency measures identified by the states are adequate to meet the requirements of the Act. Finally, on May 16, 2001, EPA published a final rule delaying the effective date of the nonattainment determination and reclassification (66 FR 27036).

EPA has received comments on portions of our March 18, 1999; April 17, 2000; April 3, 2001; and April 19, 2001, proposed rules. The Sierra Club and the Missouri Coalition for the Environment jointly submitted adverse comments on portions of the March 18, 1999; April 17, 2000; and April 3, 2001, proposed rules. EPA received no adverse comments on the April 19, 2001, proposal. EPA also received no adverse comments on its April 3, 2001, proposed withdrawal of the March 19 rulemaking if it granted an extension of the attainment date. All other comments on the proposals supported EPA's proposed actions. In this final rule, EPA responds to the adverse comments received in response to the relevant proposals. EPA also responds to the relevant adverse comments on its March 25, 1999, notice of interpretation regarding the attainment date extension policy (64 FR 12221).

III. What MVEBs Are We Approving?

Illinois and Missouri have submitted MVEBs for the 2004 attainment year for their respective portions of the St. Louis ozone nonattainment area. The emissions budgets are shown in Table 1.

TABLE 1.—ST. LOUIS AREA 2004 ATTAINMENT MVEB

State	Pollutant	2004 tons/day
Missouri	VOC	43.74
	NO _x	91.90
Illinois	VOC	26.62
	NO _x	35.52

EPA did not receive any adverse comments on the proposal to approve the emissions budgets. EPA is approving these MVEBs because they are consistent with the control measures in the SIPs, and the SIPs as a whole demonstrate attainment of the 1-hour ozone standard. The rationale for our approval is detailed in the April 3, 2001, supplemental proposal (66 FR 17647, 17652) and in the April 17, 2000, proposal (65 FR 20404, 20416). Missouri has committed to revise its 2004 MVEBs within two years after the release of MOBILE6. Missouri has committed that if it does not revise its budgets within the first year after release of MOBILE6, no conformity determinations will be made during the second year unless adequate MOBILE6 derived budgets are in place. Illinois has committed to revise its 2004 MVEBs within two years of the release of MOBILE6. No conformity determinations may be made in either Missouri or Illinois during the second year unless adequate MOBILE6 derived budgets are in place.

All states whose attainment demonstrations include the effects of the Tier 2/sulfur program must commit to revise and resubmit their MVEBs after EPA releases MOBILE6. If a state fails to meet its commitment to submit revised budgets using MOBILE6, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

The final approval action we are taking today will be effective for conformity purposes only until revised MVEBs are submitted and we have found them adequate. In other words, the budgets we are approving today will apply for conformity purposes only until there are new, adequate budgets consistent with the states' commitments to revise the budgets. The new budgets will apply for conformity purposes after we find them adequate.

We are limiting the duration of our approval in this manner because we are only approving the attainment demonstrations and their budgets because the states have committed to revise them. Therefore, once we have confirmed that the revised budgets are adequate, they will be more appropriate

than the budgets we are approving for conformity purposes now.

If the revised budgets raise issues about the sufficiency of the attainment demonstration, EPA will work with states on a case-by-case basis. If the revised budgets show that motor vehicle emissions are lower than the budgets we are approving today, a reassessment of the attainment demonstration's analysis will be necessary before reallocating the emission reductions or assigning them to the MVEB as a safety margin. In other words, the states must assess how their original attainment demonstration is impacted by using MOBILE6 vs. MOBILE5 before they reallocate any apparent motor vehicle emission reductions resulting from the use of MOBILE6.

IV. How Did Illinois Fulfill the Requirements for an Exemption From NO_x Emission Control Requirements for RACT for the Illinois Portion of the St. Louis Ozone Nonattainment Area?

On February 10, 2000, IEPA submitted its adopted ozone attainment demonstration SIP. This SIP revision submittal included a petition for an exemption from NO_x RACT, NO_x NSR, and certain conformity NO_x requirements for the Illinois portion of the St. Louis ozone nonattainment area. This petition is based on Illinois' conclusion that it has demonstrated attainment of the 1-hour ozone standard without the need to implement these additional NO_x emission controls. Accordingly, under section 182(f)(2), these additional NO_x emission reductions may be considered "in excess" of reductions needed to attain the 1-hour ozone standard. The NO_x emission reductions in the attainment demonstration and control strategy submitted by Illinois are limited to NO_x emission reductions from EGUs needed to support the ozone attainment demonstration or other Act-required emission controls not included in their exemption petition. The ozone impacts in the St. Louis area resulting from NO_x emissions are dominated by the impacts of regional NO_x emissions from EGUs, and further controlling local NO_x emissions for other source categories in the Illinois portion of the nonattainment area would not significantly impact ozone levels or advance the attainment date.

The ozone attainment demonstration shows that application of the specific section 182(f)(1) NO_x control requirements in the Illinois portion of the nonattainment area would not be required to attain the 1-hour ozone standard by May 31, 2004. (See 65 FR 20402, 20419, April 17, 2000.) In

addition, as explained in EPA's proposed rule relating to RACM and contingency measures (66 FR 20122, 20124–20125), sensitivity analyses performed by both states show that substantial local NO_x reductions would not accelerate attainment. In our April 17, 2000, document, EPA proposed to approve Illinois' petition with regard to an exemption from NO_x RACT, but to deny their petition for an exemption from NO_x NSR and NO_x conformity. The attainment demonstration indicated that additional NO_x emission reductions that could be expected to result from the implementation of RACT were not needed to achieve the ozone standard. The attainment demonstration, however, failed to demonstrate that attainment would also occur even if NO_x emissions significantly increased (the type of demonstration needed to support a waiver for NO_x NSR and NO_x conformity requirements). Our reasons for denying parts of Illinois' petition are explained in more detail in the April 17, 2000, proposed rule (see, 65 FR 20404, 20409–20410). We received no adverse comments with regard to this particular part of our proposal.

We are granting Illinois' request for an exemption from the NO_x RACT requirements, pursuant to section 182(f)(2) of the Act, for Madison, Monroe, and St. Clair Counties. We are denying Illinois' request for an exemption from the NO_x NSR and certain NO_x conformity requirements. Illinois has an approved NSR program covering, in part, NO_x, and has, as noted elsewhere in this rulemaking, submitted a motor vehicle NO_x emissions budget for the Illinois portion of the St. Louis ozone nonattainment area. Therefore, our denial of the Illinois request with respect to NO_x NSR and conformity does not result in any SIP deficiencies.

V. What Contingency Measures Are We Approving for the St. Louis Area?

Section 172(c)(9) of the Act requires that SIPs contain additional measures that will take effect without further action by the state or EPA if an area fails to attain the standard by the applicable date. In our April 19, 2001, **Federal Register**, we provide our interpretation of this requirement of the Act (66 FR 20122, 20125). According to EPA guidance referenced in that **Federal Register**, we indicate that states with moderate and above ozone nonattainment areas should include sufficient contingency measures so that, upon implementation of such measures, additional emissions reductions of up to 3 percent of the emissions in the

adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been identified. As explained in the April 19, 2001, proposal, EPA has also determined that Federal measures can be used to analyze whether the contingency measure requirements of section 172(c)(9) have been met. While these Federal measures are not SIP-approved contingency measures which would apply if an area fails to attain, EPA believes that existing Federally enforceable measures can be used to provide the necessary substantive relief. Therefore, Federal measures may be used in the analysis, to the extent that the attainment demonstration does not rely on them or take credit for them.

Missouri's 1990 adjusted base year inventory of VOC emissions is 315.70 tons per day (TPD). Per EPA's guidance, Missouri's contingency measures must achieve VOC reductions equivalent to 3 percent of the adjusted base year inventory, or 9.47 TPD. Implementation of Missouri's solvent cleaning rule, 10 CSR 10–5.300, will provide for VOC emissions reductions of 8.36 TPD, and implementation of the Federal Tier 2/Low Sulfur Gasoline rule will provide for VOC emissions reductions of 1.59 TPD, for a combined emissions reduction of 9.95 TPD, which exceeds the required reductions of 9.47 TPD.

The total amount of reduction needed for Illinois to meet the contingency measure requirement in the Metro-East St. Louis nonattainment area is 3 percent of the adjusted base year emissions inventory or 4.96 TPD. Illinois has identified emissions reductions of 6.54 TPD from the Federal rules regarding On-Board Diagnostics, Tier 2/Low Sulfur Gasoline, Non-Road Engine Standards, and other mobile source measures which exceed the required reductions of 4.96 TPD. EPA did not receive any adverse comments on our proposal to approve the states' contingency measures. EPA finds that the measures identified in Table 2 below meet the requirements in section 172(c)(9). EPA is also hereby approving the contingency measures element of Missouri's SIP, as submitted in October 1997 and supplemented by a letter dated April 5, 2001.

TABLE 2.—ST. LOUIS AREA APPROVED CONTINGENCY MEASURES

State	Control measures
Missouri	Solvent Metal Cleaning Rule 10 CSR 10–5.300. Tier 2/Low Sulfur Fuel Program.
Illinois	Mobile Source Measures.

TABLE 2.—ST. LOUIS AREA APPROVED CONTINGENCY MEASURES—Continued

State	Control measures
	Tier 2/Low Sulfur Fuel Program. On-Board Diagnostics. Non-Road Engine Standards.

VI. Implementation of RACM

Section 172(c)(1) of the Act requires that SIPs provide for the implementation of all RACM as expeditiously as practicable. EPA has previously provided guidance interpreting the RACM requirements of 172(c)(1). (See 57 FR 13498, 13560.) We also discussed the RACM requirements in our April 19, 2001, **Federal Register** proposal. EPA has reviewed the states' submitted sensitivity analyses, the process used by the metropolitan planning organization (MPO) to review and select transportation control measures, the states' evaluation of potential stationary source control measures, and the attainment year emissions inventories for the St. Louis area. While the Act requires nonattainment areas to implement available RACM measures, EPA does not believe that section 172(c)(1) requires implementation of potential RACM measures that either require costly implementation efforts or that produce relatively small emissions reductions that will not accelerate attainment of the ozone standard.

Sensitivity modeling for the St. Louis area indicates that the ozone benefits expected to be achieved from regional NO_x reductions (such as the NO_x SIP call) are far greater than the ozone benefit that could be achieved by local implementation of the measures which have been rejected as possible RACM. Therefore, EPA believes that the reductions from such measures would not accelerate attainment of the ozone NAAQS.

EPA did not receive any adverse comments on our proposed finding that the states had satisfied the RACM requirements of the Act. Based upon the above, and upon the explanation provided in our April 19, 2001, proposed rule (66 FR 20122, 20123–20125), EPA is finding that the St. Louis nonattainment area SIPs adequately provide for RACM.

VII. What Are the Requirements for Full Approval of the Attainment Demonstration?

The attainment demonstration SIP must meet applicable criteria as detailed in the Act. The specific requirements of the Act for moderate ozone nonattainment areas are found in

section 182(b)(1), and requirements for attainment demonstrations in multistate areas are found in section 182(j)(1)(B). Section 172 provides the general requirements for nonattainment plans. Refer to 65 FR 20404, 20406 in our April 17, 2000, proposal for further details of requirements for attainment demonstrations.

VIII. Did Illinois and Missouri Fulfill These Requirements for Full Approval?

EPA guidance published in 1996 suggests that states may rely on a modeled attainment demonstration supplemented with additional weight of evidence (WOE) to demonstrate attainment ("Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS," EPA-454/B-95-007, June 1996). In our April 17, 2000, **Federal Register** we listed documents containing EPA's guidelines affecting the content and review of ozone attainment demonstration submittals. (65 FR at 20406–20407.) In that notice, we also described in detail the modeling requirements for an attainment demonstration as well as the additional analyses that may be considered when the deterministic approach, as described in EPA guidance, does not show attainment. (65 FR at 20407–20408.) In our April 3, 2001, **Federal Register** document, EPA details the statistical and modeling data presented in the states' attainment demonstration, as well as additional graphical and statistical data the states have provided to support the validity of the ozone modeling results and the adequacy of the adopted ozone attainment strategies. See, 66 FR at 17649–17652.¹ 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. EPA also finds that the appropriate

¹ On page 17651, the narrative incorrectly cites the ozone standard at 124 parts per million and predicted ozone design values at or below 124 parts per million. The correct values are 124 parts per billion.

attainment date is November 15, 2004, based on the attainment demonstrations. EPA received adverse comments regarding the states' modeled attainment demonstrations, but no comments were received on the WOE analysis by the states and EPA. These comments and our responses are summarized elsewhere in this notice.

IX. What Are the Criteria for an Attainment Date Extension?

EPA's policy regarding an extension of the ozone attainment date for the St. Louis area was set forth in EPA's initial notice of proposed rulemaking dated March 18, 1999 (64 FR 13384, 13387–13388). On July 16, 1998, a guidance memorandum entitled "Extension of Attainment Dates for Downwind Transport Areas" was issued by EPA and was published in a notice of interpretation on March 25, 1999 (64 FR 12221). In it, EPA set forth its interpretation of the Act regarding the extension of attainment dates for ozone nonattainment areas that have been classified as moderate or serious for the 1-hour ozone standard, and which are downwind of areas that have interfered with the moderate and serious nonattainment areas's attainment of the ozone standard by dates prescribed in the Act. EPA stated that it will consider extending the attainment date for an area or a state that:

1. Has been identified as a downwind area affected by transport from either an upwind area in the same state with a later attainment date or an upwind area in another state that significantly contributes to downwind ozone nonattainment;

2. Has submitted an approvable attainment demonstration with any necessary, adopted local measures, and with an attainment date that shows it will attain the 1-hour standard no later than the date that the emission reductions are expected from upwind areas in the final NO_x SIP call and/or the statutory attainment date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind emission reductions;

3. Has adopted all applicable local measures required under the area's current ozone classification and any additional emission control measures demonstrated to be necessary to achieve attainment, assuming the emission reductions occur as required in the upwind areas; and

4. Has provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

X. How Did Illinois and Missouri Satisfy the Criteria for an Extension?

The states of Illinois and Missouri satisfied the criteria for an attainment date extension as follows:

1. The states have cited EPA's NO_x SIP call modeling and analyses documented in the Ozone Transport Assessment Group (OTAG) process to demonstrate that the St. Louis area is affected by an upwind area in another state that significantly contributes to ozone nonattainment in the St. Louis area. In our April 17, 2000, notice (65 FR 20404), we explained how the OTAG modeling and the attainment demonstration for the St. Louis area submitted by Missouri and Illinois show the impacts of transport, specifically noting that the sources in Kentucky make significant contributions to the St. Louis nonattainment area. On this basis, EPA finds that this criterion of the attainment date extension policy has been met;

2. As explained elsewhere in this notice, the states of Illinois and Missouri have submitted approvable attainment demonstrations. Furthermore, all of the control measures needed for attainment have been adopted. These measures include all moderate area requirements under section 182(b) and the statewide NO_x controls for EGUs discussed in this final rule and the April 3, 2001, proposal (66 FR 17647, 17653–17655).

3. Both Missouri and Illinois have adopted local measures required by the Act for the area's current classification as a moderate nonattainment area. (See, 66 FR 17647, 17654 (April 3, 2001) and references cited therein for a discussion of the local measures adopted by the states.) Elsewhere in today's notice, EPA explains why we are approving an exemption from the NO_x RACT requirements for the state of Illinois which exempts Illinois from the obligation to adopt the NO_x RACT requirements for the metro-East portion of the St. Louis area; and

4. With respect to implementation of all adopted measures as expeditiously as practicable but no later than the time upwind controls are expected, Missouri and Illinois have demonstrated that all control measures would be in place by the start of the ozone season in 2003, which at the time of our April 17, 2000, proposal was the compliance date for the NO_x SIP call. The attainment demonstration also relies on reductions from the NO_x SIP call to reduce transported ozone precursors, and the source compliance date for the NO_x SIP call has been extended to May 31,

2004.² Since the local measures adopted by Illinois and Missouri necessary for attainment will be implemented no later than 2003, the states have shown that this element of the attainment date extension policy has been met.

Therefore, EPA concludes that, consistent with the attainment date extension policy, the states have met the criteria for an attainment date extension. EPA received comments regarding the basis for and application of the extension policy in granting the St. Louis ozone nonattainment area an attainment date extension. Those comments and our responses to those comments are summarized elsewhere in this document.

XI. What Action Is EPA Taking Regarding the Determination of Nonattainment as of November 15, 1996, and Reclassification Published on March 19, 2001?

On January 29, 2001, the United States District Court for the District of Columbia ordered EPA to make a determination, no later than March 12, 2001, as to whether the St. Louis nonattainment area attained the requisite 1-hour ozone standard. (*Sierra Club v. Browner*, cited previously.) On March 8, 2001, EPA informed the Court of the actions that EPA intended to take in response to its Order. The Court, in a limited review to determine whether EPA's planned course of action would contravene the Court's Order, indicated that EPA, by signing a determination by March 12, 2001, and publishing the required document by March 20, would comply with the Court's Order. The Court noted that it lacked jurisdiction to assess the propriety of the remainder of EPA's planned course of action. (Memorandum Opinion and Order, March 9, 2001.)

On March 19, 2001, EPA published its "Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois; Final Rule" (66 FR 15578). The effective date of that Determination and Reclassification was initially set at May 18, 2001. However, in a separate notice the same day (66 FR 15591), EPA proposed to delay the effective date of the Determination and Reclassification until June 29, 2001. On May 16, 2001 (66 FR 27036), EPA finalized the modification of the effective date of the Determination of Nonattainment as of

² EPA is extending the attainment date for the St. Louis area to November 15, 2004, to allow the reductions in transport to occur before attainment is required. This does not affect the states' obligations to implement the remaining local measures as expeditiously as practicable.

November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area, extending it until June 29, 2001.

In our April 3, 2001, **Federal Register** document (66 FR 17647), EPA proposed to withdraw the Notice of Determination of Nonattainment and Reclassification if we approved an attainment date extension prior to the effective date of the Determination of Nonattainment. EPA did not receive any adverse comments relating to our proposal to withdraw the nonattainment determination and consequent reclassification in the event we granted an attainment date extension. Since we are today granting an extension until November 15, 2004, for attainment of the 1-hour ozone standard, EPA's obligation to determine attainment is thereby shifted into the future. As a result, we are hereby withdrawing the published nonattainment determination and the consequent reclassification, which have not yet gone into effect.

Therefore, the St. Louis area retains its classification as a moderate ozone nonattainment area. (As stated previously, comments on our proposal to extend the attainment date are addressed below.) In today's action, we are withdrawing the Notice of Nonattainment Determination and Reclassification, prior to their becoming effective.

XII. What Comments Were Received on the Proposals Covered by This Final Action, and on the March 25, 1999, Publication of the Attainment Date Extension Policy, and How Has EPA Responded to Those?

EPA received comments from the public on the Notices and Supplemental Notices of Proposed Rulemaking published on March 19, 1999; April 17, 2000; April 3, 2001; and April 19, 2001, for the proposed approval of the St. Louis area's ozone attainment demonstration and attainment date extension. EPA received adverse comments from the Sierra Club and the Missouri Coalition for the Environment (on the March 18, 1999; April 17, 2000; and April 3, 2001, proposals). EPA also received comments in support of the proposals from IEPA and MDNR, and from various industries and industrial associations.

EPA sets forth below in this section our responses to adverse comments received on these notices which are relevant to this rulemaking. EPA also received comments relating to the proposal to determine that the St. Louis area did not attain the ozone standard by November 15, 1996. These comments relate primarily to the necessity of making the nonattainment

determinations, the appropriate attainment date if the area were reclassified, and the SIP submission date for the area. In EPA's March 19, 2001, final rule, EPA responded to adverse comments on the proposed determination that the area did not attain the standard by November 15, 1996, and proposed reclassification to serious nonattainment. (66 FR 15578, 15585–15588.)

Finally, some of the comments received in Docket A–98–47 on EPA's notice regarding "Extension of Attainment Dates for Downwind Transport Areas" 64 FR 12221 (March 25, 1999), are relevant to this rulemaking. EPA incorporates its responses to those comments, set forth in 66 FR 586, 66 FR 634, 66 FR 666 (January 3, 2001), and 66 FR 26913 (May 15, 2001), insofar as herein relevant.

The following discussion summarizes and responds to all adverse comments:

I. Comments Received in Response to the March 18, 1999 (64 FR 13384), Proposal

Comment 1. The commenter argued that, although EPA's March 18, 1999, notice of proposed rulemaking proposed to find that the St. Louis area has failed to attain the 1-hour ozone standard by November 15, 1996, EPA had already made this "determination" in various correspondence with the state of Missouri, in public, and in various rulemakings. The commenter contends that, pursuant to section 181(b) of the Act, the St. Louis area had thus already been reclassified by operation of law to a serious ozone nonattainment area, and that EPA's notice should report that this reclassification has already occurred. The commenter alleges that EPA's duty under section 181(b), as EPA acknowledged in reclassifying the Phoenix area, "involves little more than a rote review of available ambient air quality data," and the commenter argues that EPA has no flexibility to deviate from its duty.

In addition, the commenter argued that EPA's proposal was procedurally flawed because EPA lacked authority to propose a finding (of nonattainment as of November 15, 1996) based on the occurrence of subsequent events (additional state submissions to qualify for an attainment date extension).

Response to Comment 1. EPA has already addressed these arguments raised in this comment in EPA's Cross Motion for Summary Judgment on Remedy Under Count I, filed in *Sierra Club v. Browner*, cited previously, filed April 28, 1999 (see, e.g., pages 13–20), and EPA's reply brief in support of its Cross Motion, filed June 16, 1999.

Copies of these documents have been placed in the docket and EPA incorporates them herein by reference. For the reasons stated therein, EPA disagrees with the commenter's contention that EPA had previously issued a determination of failure to attain within the meaning of section 182(b) of the Act. In addition, the Court in that case agreed with EPA, and concluded in its opinion that EPA had not already made the determination of failure to attain, and as a consequence that the area had not, as Sierra Club contended, been reclassified by operation of law. See Court Opinion dated January 29, 2001, *Sierra Club v. Browner* 130 F. Supp. 2d 78, 89–94. A copy of the Court's opinion has been placed in the docket, and EPA incorporates it herein by reference. In its order of January 29, 2001, as modified on February 15, 2001, the Court thus ordered EPA to issue a determination as part of a final notice-and-comment rulemaking process. On March 19, 2001, EPA published its final determination and notice, with a delayed effective date (66 FR 15578). That notice is being withdrawn before it becomes effective, and thus EPA has not issued any final, effective determination of nonattainment requiring the area to be reclassified as a matter of law.

With respect to the contention that EPA's actions are at odds with its observations in the Phoenix rulemaking, EPA addressed this issue in its Cross-Motion for Summary Judgment, which explained the complexity of the finding required for evaluating attainment, as well as the need for notice-and-comment rulemaking. The comment made in the Phoenix rulemaking, when put in context, indicates that the statement was aimed at distinguishing between air quality findings and efforts to adopt controls. The Phoenix rulemaking itself, which, unlike the St. Louis area, did not involve issues of transported pollution, reveals that the determination was controversial, and involved issues of whether data from special purpose monitors should be included in the data considered in making the determination. EPA believes that its position in the St. Louis area is consistent with the requirements of the statute and its notice-and-comment rulemakings in other areas where EPA's attainment date extension policy has applied.

With respect to the comment that EPA's proposal was procedurally flawed, EPA notes that the only proposed action set forth by EPA in the March 18, 1999, notice was its proposal to find that the St. Louis area had not attained the standard by November 15,

1996, and to determine that if the finding was finalized, the area would be reclassified from a moderate to a serious ozone nonattainment area by operation of law (64 FR 13384). In terms of the timing of the final action on the proposed determination, EPA also proposed to take final action only after the states had an opportunity to qualify for an attainment date extension.

However, EPA was not proposing to modify a finding based on subsequent events, but merely providing notice that if Missouri and Illinois made certain additional submissions and EPA determined, through subsequent rulemaking, to grant an attainment date extension, the nonattainment determination would not be finalized and the area would not be reclassified (64 FR 13384–13385). EPA explained that this result follows because once an attainment date is extended for an area, the area is no longer subject to reclassification under section 181(b)(2) for failure to attain by the original attainment date (64 FR at 13388). A more detailed discussion of EPA's proposals and final action relating to the attainment date extension and its interplay with the requirements of section 181(b) is contained elsewhere in this final rule, and in EPA's response to comments on the relevant proposals.

Comment 2. The commenter alleges that EPA has no authority to grant an attainment date extension, but even assuming it does have such authority, EPA's exercise here is improper and unlawful. The commenter contends that in order to grant an extension, the states must have applied for and obtained an extension prior to May 15, 1997. EPA is relying on the mere possibility of an extension to relieve it of its statutory duty pursuant to section 181(b)(2). Once EPA has made a finding, EPA has no authority to refuse to "finalize" it.

Response to Comment 2. EPA has now acted, pursuant to Court Order, to make a determination under section 181(b), but this determination is not yet effective, and thus EPA still has an opportunity to grant an attainment date extension for reasons discussed at length elsewhere in these responses to comments. Moreover, EPA is not relying on the mere possibility of an attainment date extension in order to withdraw the determination of nonattainment before it becomes effective. Rather, EPA is now granting the extension based on actual, complete submissions from Missouri and Illinois demonstrating that the St. Louis area fully qualifies for the attainment date extension, a conclusion EPA has reached in a final rulemaking action after conducting notice and comment rulemaking. Once this

extension is granted, the area's attainment date shifts to the future, and EPA no longer has an extant obligation to make a determination of attainment. For reasons set forth elsewhere in these responses to comments, EPA believes that it is not too late to grant an attainment date extension, and that EPA has ample authority and basis on which to do so.

Comment 3. The commenter argues that EPA has no authority to extend attainment deadlines, except in circumstances set forth in section 181(a)(5). EPA is prohibited from granting attainment date extensions by sections 172(a)(2)(D) and 182(i). Sections 184, 110, and 126, although they address interstate pollution transport, do not provide for attainment date extensions.

Response to Comment 3. EPA has authority to grant a transport-based attainment date extension. The basis for this policy is set forth in EPA's Guidance, and EPA has responded to the issues raised by this comment in its rulemaking actions on Washington D.C., 66 FR 586, 591–600, January 3, 2001; Greater Connecticut, 66 FR 6314, January 3, 2001; Springfield, Massachusetts, 66 FR 666, January 3, 2001; and Beaumont, Texas, 66 FR 26913, 26916–26927, May 15, 2001. EPA incorporates these responses by reference.

Comment 4. The commenter asserts that EPA does not explain how a policy adopted in 1998 has relevance to events that occurred in 1996 and 1997. EPA's duty to determine whether the area had attained the standard was to have been made no later than May 15, 1997. There is no authority for EPA's "retroactive" application of EPA's extension policy" (citing *Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988)) and no statutory basis for that policy.

Response to Comment 4. The statutory basis for EPA's attainment date extension policy has been explained elsewhere in responses to comments in this notice and in EPA's other rulemaking actions on Washington D.C., 66 FR 586, January 3, 2001; Greater Connecticut, 66 FR 6314, January 3, 2001; Springfield, Massachusetts, 66 FR 666, January 3, 2001; and Beaumont, Texas, 66 FR 26913, 26924–26 May 15, 2001.

EPA disagrees with the commenter's contention that EPA's application of the attainment date extension policy constitutes unauthorized retroactive rulemaking. As EPA has explained in the Beaumont, Texas, rulemaking, the information and analyses necessary to formulate EPA's attainment date extension policy did not become

available until 1998. At that time, EPA had not yet acted to make a determination that would trigger a reclassification of the St. Louis area. EPA, before taking action on the determination, found itself in a position to consider whether the area qualified for an attainment date extension based on being affected by transport. In contexts such as these, EPA, in taking rulemaking action, is entitled to take into account the best possible information at the time it takes action to implement Congressional intent. Consistent with its interpretation of the Act, EPA also proposed to apply its policy to other moderate nonattainment areas with 1996 attainment dates, including Louisville, Kentucky, and Beaumont, Texas. The final attainment date extension for Beaumont was issued on May 15, 2001 (66 FR 26913). EPA's actions with respect to these moderate areas should not be deemed "retroactive," but rather as the application of a current policy contemporaneous with taking action to perform its duties under the Act. The fact that EPA's actions occurred after the statutory deadline does not render them "retroactive." EPA is not precluded from considering the best available information and existing legal interpretations when it acts after a statutory deadline has passed. To conclude otherwise would frustrate Congressional intent and deny the St. Louis area and its citizens the benefit of EPA's and the states' improved understanding of the role of transport in causing nonattainment problems, on the grounds that they must remain in the state of ignorance that existed at the time of the original deadline. As EPA has noted, its attainment date extension policy and an adequate understanding of ozone transport were not developed until after the attainment date for moderate areas had passed. Nevertheless, EPA believes that to deny eligibility for the attainment date extension to moderate areas affected by transport because the policy was not available earlier would thwart Congressional intent and cause an injustice. Moreover, EPA believes that applying the policy to these areas is consistent with the Congressional approach of applying other types of attainment date extensions after an area has been unable to reach attainment. See, for example, Section 181(a)(5).

Under Section 181(a)(5), EPA may determine that an area has qualified for an extension after it has failed to attain in its attainment year. Section 181(a)(5) provides that EPA may grant an extension of one year ["the Extension

Year"] if in relevant part, "no more than 1 exceedance of the [ozone standard] has occurred in the area in the year preceding the Extension Year." This procedure presumes that the area did not attain in its attainment year, and requires a review of data to determine the number of exceedances in the original attainment year prior to the granting of the extension. Thus, Congress knew and approved of a system for granting extensions *after* an area had already failed to attain according to its original schedule. EPA's granting of an extension to the St. Louis area after its original date for attainment has lapsed is therefore consistent with Congressional intent and the statutory scheme that Congress established in the Act.

In addition, while the deadline in section 181(b)(2) sets a deadline for EPA to make a determination, failure to observe the deadline does not preclude EPA from extending the attainment date prior to making the determination. The six-month deadline, though intended to spur the Agency to act, does not place a limit on the Agency's authority to consider information and developments critical to a sound decision. See *Brock v. Pierce County*, 476 U.S. 253, 260 (1986) ("We would be most reluctant to conclude that every failure of an agency to observe a procedural requirement voids subsequent agency action, especially when important public rights are at stake. When, as here, there are less drastic remedies available for failure to meet a statutory deadline, courts should not assume that Congress intended the agency to lose its power to act." (Footnote omitted.) Indeed, to take the contrary view, as the commenter advocates, and require EPA to disregard relevant data about the impact of transport, data that reveal the causes of an area's nonattainment problems and affect the equitable allocation of the burden of controls, would be an absurd result. It would be contrary to the public interest to require EPA to take final action in a matter that affects the public interest while compelling it to disregard the best available information. EPA is engaged in applying its attainment date extension policy in areas throughout the country. It would be contrary to Congressional intent and a disservice to the citizens of St. Louis to deny them the benefits of a policy that became available after EPA missed a procedural deadline, but before EPA performs its statutory duty under the Act. The *Bowen* case cited by commenters is inapposite. It involved a retroactive application of cost limitations to hospital expenditures that had occurred

in the past. By contrast, EPA's action is remedial and curative, and affects future controls.

Comment 5. The commenter stated that the notice indicated that documents relevant to the nonattainment determination and reclassification proposal were available for public inspection at the EPA regional offices for Region V in Chicago and Region VII in Kansas City. The commenter stated that EPA did not indicate whether the documents supported its belief that the area might qualify for an attainment date extension. The commenter further stated that EPA was "concealing the documents" in areas "at great distances" from the St. Louis area, in violation of its "duty to encourage public participation in the administration of" the Act.

Response to Comment 5. As indicated above in the response to Comment 1, the March 18, 1999, notice did not propose to extend the attainment date for the St. Louis area, so EPA did not include a detailed discussion of documents showing how the area qualified for an attainment date extension. In fact, EPA stated its belief that Missouri and Illinois would make subsequent submissions in an effort to qualify for an attainment date extension, and EPA would conduct subsequent rulemaking on those submissions. (The subsequent proposals published April 17, 2000, and April 3, 2001, which are described elsewhere in this action, and the final action which is the subject of today's action, contain detailed discussion of the states' submissions and the documents on which EPA is relying to determine that the area qualifies for an attainment date extension.)

With respect to the comment that EPA violated a "duty" to provide adequate opportunity for public participation by stating in its notice that the documents would be available for public inspection at the EPA regional offices, the proposal specified the locations of the documents comprising the record for the rulemaking and names, addresses, and telephone numbers of individuals to be contacted for additional information. This procedure is consistent with the process which EPA ordinarily uses to make information available concerning a proposed rulemaking of this kind. EPA clearly did not "conceal" any of the documents relevant to the rulemaking. The commenter and any other group or individual had the opportunity to inspect the record or to contact EPA to request copies of documents comprising the record, and to request other information relating to the proposed determination and reclassification. The commenter did not inspect the record or

request additional information or documents during the comment period.

In the March 18, 1999, proposal, EPA set out the factual basis for its proposed finding that the St. Louis area did not attain the ozone standard, including tables summarizing the data on which the proposal was based (64 FR 13386-13387). As discussed previously, EPA also stated that subsequent state submissions relating to the attainment date extension (which were not the subject of the March 18, 1999, proposal) would be, and in fact were, subject to future notice-and-comment rulemaking. The commenter did not raise issues concerning the locations of the docket for EPA's initial proposal (and supplemental proposal) of the attainment date extension (the April 17, 2000, and April 3, 2001 proposals). EPA met its obligation to make the basis for its proposed determination and supporting documentation available for public comment during the comment period.

Comment 6. The commenter stated that EPA had not shown how the St. Louis area qualifies for an attainment date extension. Specifically, the commenter stated that the proposal did not show how the area is affected by transport, that Missouri had not submitted an approvable attainment demonstration, and that Missouri had not adopted all local measures required under the area's current moderate classification. The commenter also stated that EPA had failed to explain the basis for the statement in its notice that Illinois and Missouri would be able to meet the local measure requirement for NO_x controls ("NO_x RACT") by meeting EPA's NO_x SIP call.

Response to Comment 6. As discussed in response to Comments 1 and 5 above, the March 18, 1999, proposal did not include a proposal to extend the attainment date, and therefore did not include a detailed analysis of how the St. Louis area qualifies for an attainment date extension. EPA stated that the analysis would be the subject of future rulemaking after the states made additional submissions to support their requests for an attainment date extension. The March 18, 1999, proposal listed the submissions which the states had to make for EPA to determine whether the area qualified for an attainment date extension (64 FR at 13388). The analysis of the subsequent submissions addressing these elements is contained in the April 17, 2000, proposal on the attainment demonstration and attainment date extension (65 FR 20404) and in the April 3, 2001, supplemental proposal (66 FR 17647). EPA's conclusions with

respect to the state submissions and how they meet all of the elements of the attainment date extension policy are detailed in the proposals and in this final rulemaking.

With respect to the comment concerning the local NO_x RACT requirements, EPA did not propose to find, in the March 18, 1999, proposal on the attainment determination, that the states had met the local NO_x control requirements, and therefore was not obligated to analyze whether the states' anticipated NO_x SIP call rules would meet the local control requirements. In the March 1999 notice, EPA merely stated its belief that the Missouri and Illinois NO_x SIP call rules, when adopted, could also be used to satisfy the NO_x RACT requirements. (As a result of the Court's ruling in *Michigan v. EPA*, 215 F. 3d 663 (D. C. Cir. 2000), Missouri is not currently subject to the NO_x SIP call.) This issue was the subject of subsequent rulemaking after the states made their submissions for the attainment demonstration and attainment date extension. As noted in the April 17, 2000, proposal, Missouri subsequently adopted and EPA approved specific local NO_x RACT measures for the Missouri portion of the St. Louis area, and Illinois requested a waiver of the requirement to impose additional local NO_x controls in the Illinois portion of the St. Louis area (65 FR at 20417). EPA is taking final action to approve a portion of the Illinois waiver request in connection with today's final rulemaking. Therefore, neither state is relying on regional NO_x SIP call controls to meet the local NO_x RACT requirements for the St. Louis area.

Comment 7. The commenter stated that EPA's proposal was "an attempt to extend the submittal deadlines" for the required local measures.

Response to Comment 7. The commenter did not explain how EPA's proposal would have the effect of extending the statutory deadlines for submittal of local measures. However, EPA's proposal to determine that the area did not attain the standard and its notice that the area might be able to qualify for an attainment date extension had no relationship to the independent obligations of the states to make submissions required for the St. Louis area by the specified statutory deadlines. Nor did the proposal affect the consequences, if any applied, to the states (sanctions for failure to submit under section 179 of the Act) and to EPA (obligation to promulgate Federal plans under section 110(c) of the Act). Section 179 provides certain sanctions for state planning failures in connection

with SIP submissions required under the Act, including sanctions for failure to make a required submission. Section 110(c) requires EPA to promulgate a plan, under specified circumstances, where a state has failed to make a required submission or EPA has disapproved a required submission. If, for example, a state fails to make a required submittal by a statutory deadline and EPA issues a finding of failure to submit, then, after 18 months, the state would be subject to mandatory sanctions until the state makes the required submittal and EPA finds the submittal complete. In this example, within two years of the finding, EPA is obligated to promulgate a Federal plan and that obligation can only be lifted by the state submitting and EPA approving the plan. EPA has made various findings of planning failures relating to the St. Louis area, based on state failures to submit by the applicable statutory deadlines SIP revisions required by section 182(b). EPA imposed section 179(b)(2) offset sanctions in the Missouri portion of the St. Louis area for failure of the state to submit NO_x RACT controls by the statutory deadline. (The sanction was subsequently lifted when the state corrected the deficiency.) These actions have not been dependent on the attainment date for the area.

The proposal did not purport to establish plan submission deadlines, but merely noted that the states might be able to qualify for an extension of their attainment date and needed to make certain plan submissions in order to do so. No other statutory dates were implicated by the notice. The extension of an attainment date does not impact an area's obligation to meet other applicable statutory deadlines. In any event, had EPA's determination of nonattainment and reclassification become effective, the attainment date for the area would have been November 15, 2004 (see, 66 FR 15578, 15584–15585, March 19, 2001) which is the same date as established in this rulemaking for attainment of the ozone standard. Also, as noted previously, an attainment date extension cannot be given unless the area has submitted, and EPA has approved, all local measures applicable to the area under its current classification.

Comment 8. The commenter asserts that EPA's application of its attainment date extension policy rewards Missouri for its recalcitrance. EPA has no authority to allow Missouri to delay implementation of its local measures.

Response to Comment 8. EPA is not rewarding Missouri for its recalcitrance, nor has it "invented a policy" that "gets [Missouri] off the hook." The goal of the

attainment date extension policy is to give effect to Congressional intent and to equitably distribute the burdens of controlling pollution according to the source of that pollution. The responsibility for controlling local pollution remains firmly with the states where that pollution originates; but EPA's policy seeks to implement Congressional intent to redress the unfairness of requiring a local area to pay the costs of curing problems created by pollution transported from outside the state. EPA's policy still requires Missouri and Illinois to implement local measures as expeditiously as practicable. As EPA and the states have demonstrated in qualifying for the policy, implementing those local measures sooner would not bring about attainment. The basis for the timing of the requirement for implementation of local measures is further set forth in EPA's responses to comments in the Washington, D.C., Greater Connecticut, Springfield, Massachusetts, and Beaumont, Texas, rulemakings.

II. Comments Received in Response to the April 17, 2000 (65 FR 20404), proposal

Comment 1. The commenter contends that EPA lacks statutory authority to approve the request for an attainment date extension based on EPA's attainment date extension policy. The commenter asserts that the current classification for the St. Louis area is "serious" and not "moderate." The commenter contends that EPA has already determined that the area failed to attain the ozone standard within the meaning of section 181(b)(2)(A) of the Act, and that, therefore, the St. Louis area was reclassified by operation of law, despite EPA's refusal to acknowledge this. The commenter incorporates by reference its arguments as to the legality of the attainment date extension policy contained in its briefs in *Sierra Club v. Whitman*, No. 98–02733, as well as those submitted in response to EPA's March 18, 1999, notice (64 FR 13384) and in response to EPA's proposal to approve Missouri's 15% ROPP, set forth at 65 FR 8083 (February 17, 2000).

The commenter also argued that EPA's proposal to extend the attainment date for the St. Louis area is "contingent" on approval of the Missouri 15% ROPP, and stated that it was also incorporating by reference its comments on the February 17, 2000, proposed approval of the 15% Plan (65 FR 8083). In summary, Sierra Club's comments on the proposed approval of the 15% ROPP were: (1) That EPA should review the ROPP plan against

the serious area requirements of section 182(c) of the Act; (2) that EPA failed to give notice of its statutory authority to approve a plan which relies on reductions occurring after November 15, 1996; (3) that EPA lacks authority to approve a plan relying on reductions after 1996; (4) that EPA lacks authority to approve a plan which does not contain contingency measures; (5) that EPA was engaging in unauthorized retroactive rulemaking in approving a plan relying on 15% ROPP reductions after 1996; (6) that the Missouri 15% ROPP improperly fails to account for growth in emissions after 1996; and (7) that EPA should have used actual rather than projected 1996 emissions in determining the required reductions.

Response to Comment 1. EPA has responded to the contentions regarding the legality of EPA's attainment date extension policy in its responses to comments on the March 18, 1999, proposed rulemaking. As to the assertion that the classification of the St. Louis area is "serious" and not "moderate," EPA also has responded to the attainment date in its response to Comment 1 on the March 18, 1999, proposal. EPA and the Court agree that EPA, prior to the Court-ordered rulemaking published March 19, 2001, had issued no final rulemaking determining that the St. Louis area had not attained the standard by November 1996. Therefore, the St. Louis area was not reclassified to "serious." Moreover, since EPA is today issuing a final attainment date extension and in a separate final rulemaking withdrawing its March 19, 2001, determination prior to that determination taking effect, the St. Louis area remains classified as a moderate area. EPA incorporates by reference its responses to the comments submitted on the March 18, 1999, rulemaking, and those contained in its briefs in *Sierra Club v. Browner*. EPA also incorporates its Response to Comments on the February 17, 2000, proposal on the Missouri 15% ROPP, published in its final rule of May 18, 2000 (65 FR 31485, 31485–31487). With respect to the contention that EPA's action is inconsistent with earlier reclassifications of Dallas-Fort Worth, Texas, and Santa Barbara, California, these rulemakings occurred prior to the issuance of EPA's attainment date extension policy, and therefore do not undermine EPA's application of its policy to the St. Louis area.

With respect to its incorporation by reference of the comments on the 15% ROPP, EPA fully responded to all of the Sierra Club comments on the proposed approval when it took final action to approve the 15% ROPP, and

incorporates those responses here (65 FR 31485, May 18, 2000). Sierra Club petitioned for review of EPA's approval, primarily arguing that the Plan improperly failed to consider growth after 1996, and that it improperly failed to use actual 1996 emissions to calculate the required 15% reduction. EPA responded to the issues raised by Sierra Club in its brief. (Copies of the briefs are included in the docket for this rulemaking.) EPA also identified the issues which Sierra Club had waived in the petition for review. Sierra Club's petition for review was denied by the Court of Appeals for the 8th Circuit (*Sierra Club v. Environmental Protection Agency* (No. 00-2744), decided June 8, 2001). The issues raised by the commenter regarding the 15% Plan approval are not reopened for consideration by virtue of the commenter's incorporation of them in connection with the current rulemaking. Moreover, the comment that the Missouri 15% Plan was deficient because it lacked contingency measures (which Sierra Club waived in its 8th Circuit brief) is also no longer relevant because, as explained elsewhere, EPA is approving Missouri's contingency measures SIP in this final rulemaking.

Comment 2. The commenter argued that the St. Louis area has already been reclassified to serious nonattainment by operation of law, so that the "required components" of the attainment demonstration are those in section 182(c) of the Act, rather than the section 182(b) requirements suggested in EPA's proposal. The commenter stated that, because Missouri's Plan does not address the serious area requirements, the attainment demonstration must be disapproved.

Response to Comment 2. The argument that the St. Louis area has already been reclassified by operation of law was cited previously in our response to Comment 1 on the March 18, 1999, proposal and Comment 1 on the April 17, 2000, proposal. In *Sierra Club v. Browner*, *Sierra Club* requested that the Court find that a determination of nonattainment had already been made, and order EPA to publish the determination *nunc pro tunc* as of May 15, 1997. (See also EPA's Cross Motion on Summary Judgement and Reply, and EPA's Opposition to Plaintiff's Motion for Summary Judgement on Count I.) In its January 29, 2001, decision, the Court held that "EPA has not yet issued the formal determination that section 7511(b)(2)(A) requires." (130 F. Supp. 2d at 92.) In addition, in rejecting Sierra Club's request for retroactive relief, the Court determined that granting Sierra Club's request "would effectively create

an injustice with regard to the state" and the St. Louis nonattainment area, in part because it would carry with it the potential to "expose the State of Missouri to a variety of sanctions for failing to comply promptly and adequately." (130 F. Supp. 2d at 94.) Therefore, EPA properly used the applicable requirements in section 182(b) to evaluate the states' attainment demonstration.

In addition, although EPA issued a determination and reclassification notice published March 19, 2001, which, if it had become effective, would have resulted in reclassification of the area to serious nonattainment, that determination did not and will not become effective, and is being withdrawn in today's action. For reasons explained in detail elsewhere in this final rule, the St. Louis area retains its current moderate classification, and the requirements of section 182(b) of the Act apply.

In any event, with respect to the Act requirements for the modeling to be used in an attainment demonstration, there is no significant difference between the requirements of section 182(b) and 182(c) as applied to the St. Louis area. Section 182(c)(2)(A) states that an attainment demonstration for serious areas must be based on photochemical grid modeling or other modeling determined by EPA to be equivalent. Although this modeling is not generally required for moderate area attainment demonstrations, it is required for "multi-State ozone nonattainment areas" (i.e., any single nonattainment area comprising more than one state) under section 182(j)(1)(B). Therefore, the St. Louis area was subject to the same modeling requirement as serious areas. In any event, the attainment demonstration for the area, as described elsewhere, used photochemical grid modeling, or the equivalent.

Comment 3. The commenter questioned EPA's authority to propose approval of "Missouri's attainment demonstration" contingent on submission of corrections to the attainment demonstration submitted initially in November 1999, which was the subject of the April 2000 proposal. The commenter argues that EPA's "failure" to identify a legal basis for its authority "violates" section 307(d)(3)(C) of the Act and section 553 of the Administrative Procedure Act. The commenter states that the only authority for this "unusual procedure" would be the conditional approval procedure in section 110(k)(4) of the Act, which would not, according to its argument, be

available as an appropriate action on an attainment demonstration.

Response to Comment 3. As a preliminary matter, EPA notes that this rulemaking is not subject to the provisions of section 307(d), because it does not involve any of the categories of actions described in section 307(d)(1) to which the requirements of section 307(d) are applicable. See generally, *Missouri Limestone Producers Association v. EPA*, 165 F.3d 619, 621 (8th Cir. 1999). In addition, contrary to the commenter's assertion, there is nothing unusual about EPA's contingent proposal, and EPA routinely proposes action with final action contingent on additional state submissions. (See, e.g., the discussion of additional measures which had been necessary for approval of the Washington, D.C., attainment demonstration in 66 FR 586, 587-88 (January 3, 2001) for a recent example of EPA's use of the same procedure.) EPA also routinely undertakes rulemaking on SIP submittals through "parallel processing," in which it proposes action based on draft or proposed state submissions, and takes final action after the state has adopted, in final form, plan elements which are substantially similar to the draft on which EPA's proposal is based. (See generally, *Connecticut Fund for the Environment, Inc. v. EPA*, 672 F.2d 998, 1005 (2d Cir. 1982) for a discussion of EPA's parallel processing policy, which is now codified in 40 CFR part 51, appendix V, paragraph 2.3.1.) EPA stated in the proposal that it would not take final action to approve the attainment demonstration until the states made the submissions called for in the proposal (and in fact would disapprove the attainment demonstration if the submissions were not made). (65 FR 20404). After the states made the necessary submissions, EPA published a supplemental proposal to allow additional public comment on the subsequent submissions (66 FR 17647, April 3, 2001) to satisfy the public participation requirements of section 553 of the Administrative Procedure Act. Therefore, the commenter's premise that this was an "unusual procedure" requiring some express statutory authorization is incorrect. EPA's rulemaking on the attainment demonstration is fully consistent with the requirements of section 553 of the APA, and Sierra Club has not shown any inconsistencies with those requirements.

With respect to the commenter's statement that the conditional approval provision in section 110(k)(4) of the Act does not apply to actions on attainment demonstrations, EPA disagrees with the

comment. However, the comment is not relevant to this action, because EPA is fully approving the attainment demonstration under section 110(k)(3), and is not relying on its authority in section 110(k)(4).

Comment 4. The commenter argues that EPA “lacks the authority to engage in retroactive rulemaking.” The commenter states that the attainment date extension policy was not proposed until 1998, two years after the St. Louis area’s attainment date, and that even if the attainment date extension policy were legal, EPA “could only extend a deadline that had not yet passed.” The commenter characterizes EPA’s extension of the attainment deadline for the St. Louis area as “retroactive rulemaking.” Citing *Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988), the commenter contends that the Act does not authorize retroactive rulemaking, and that absent an express grant of such authority, none will be implied.

Response to Comment 4. EPA has responded to this argument in its response to Comment 4 on the March 18, 1999, notice of proposed rulemaking.

Comment 5. The commenter argues that EPA’s April 2000 proposal “unlawfully extends” the date by which the measures called for by section 182(b) are required to be adopted and implemented “by the state of Missouri.” The commenter states that transported pollution does not affect the ability of states to adopt necessary local measures, and that “an extension of these implementation requirements is not justified.”

Response to Comment 5. With respect to the extension of other statutory deadlines for submittal of required measures, EPA addressed this issue generally in response to Comment 7 on the March 18, 1999, proposal. EPA explained in that response that an extension of an attainment date does not extend other statutory deadlines. Although the commenter does not identify the “implementation requirements” to which it refers, EPA notes that, as explained in the April 17, 2000, proposal, one of the criteria for granting an extension of the attainment date under the attainment date extension policy is that states must show that they will implement all adopted local measures as expeditiously as practicable, “but no later than” the date by which the upwind reductions are expected to be achieved (65 FR at 20409). As EPA further explained in the April 3, 2001, supplemental proposal, all of the local measures relied on by Missouri and Illinois for the attainment

demonstration are to be implemented no later than 2003 (66 FR at 17654). EPA catalogued the various moderate area control measures which the states had already adopted and implemented in the March 18, 1999, proposal (64 FR at 13389). The remainder of the local controls relied on in the attainment demonstration (for example, the regional NO_x controls for Missouri and Illinois sources) are to be implemented by 2003. The new attainment date for the St. Louis area is November 15, 2004, which, as explained in more detail elsewhere in this final rulemaking and in the April 3, 2001, proposal (66 FR 17647), is based on the implementation date for the upwind controls necessary for attainment in the area. The implementation date for the local controls is not dependent on the implementation date for upwind controls (except that, as stated above, it cannot be any later than the upwind controls implementation date). Therefore, the extension of the attainment date does not, as argued by the commenter, extend the date for submission and implementation of local controls. (See also EPA’s responses to comments in the Washington D.C., Greater Connecticut, Springfield, Massachusetts, and Beaumont, Texas, rulemakings.)

III. Comments Received in Response to the April 3, 2001 (66 FR 17647), Proposal

Comment 1. The commenter reiterates its belief that the proposal to extend the attainment date would violate the Act, as pointed out in the briefs filed in *Sierra Club v. Browner*, supra.

Response to Comment 1. EPA has responded to this comment elsewhere in its Responses to Comments in this notice, and incorporates by reference those responses.

Comment 2. The commenter argues that, if EPA had the authority to extend attainment dates by eight years, this proposal would violate the Act, because it constitutes unlawful retroactive rulemaking.

Response to Comment 2. EPA has responded to the commenter’s allegation of illegal retroactive rulemaking elsewhere in its Responses to Comments. (Response 4 to March 18, 1999, proposal and Response 4 to April 17, 2000, proposal.)

Comment 3. The commenter stated that since final action on the proposal is dependent on submission by the states of additional documents, this deprives the public of the opportunity to comment on documents relevant to the final rulemaking.

Response to Comment 3. In the April 3, 2001, proposal, EPA stated that Missouri had made all final submissions necessary for EPA to take final action on the matters proposed in the April 3 notice. EPA also stated that Illinois had submitted proposed revisions to the attainment demonstration and MVEB, and was expected to submit its final revisions in the near future (66 FR 17647). The Illinois submissions were processed through the “parallel processing” procedure described in response to Comment 3 on the April 17, 2000, proposal. The draft Illinois submissions were made available to the public for review during the public comment period, and the public had an opportunity to comment on the adequacy of those documents and on the adequacy of EPA’s review of those documents (66 FR 17647). The documents were also made available to the public by IEPA during its adoption process. The final documents submitted by the state were substantially similar to the draft documents on which EPA based its proposal. Therefore, the public had an adequate opportunity to comment on the documents relevant to EPA’s proposal and relevant to this final rulemaking.

Comment 4. A commenter asserts that testing an elaborate airshed model on only three brief episodes cannot demonstrate that the model is of general validity. The commenter asserts that a valid model must predict ambient concentrations accurately in a much greater variety of weather conditions.

Response to Comment 4. The commenter challenges the validity of the conclusion drawn from the modeling analyses on grounds that they are premised on an application that is too limited. At the outset, it should be noted that the model, the Urban Airshed Model, used by Illinois and Missouri has been successfully applied in many urban areas for many high ozone days and over a wide range of meteorological conditions. The model has undergone continual development for nearly 30 years. EPA and its peer reviewers have judged the modeling approach feasible, practical, and technically sound. As described in the “User’s Guide to the Variable-Grid Urban Airshed Model (UAM-V),” Systems Applications International, Inc., SYSAPP-96-95/27r, October 1996, numerous evaluations have been performed and documented in scientific literature. The version applied for the St. Louis attainment demonstration includes further enhancements that allow for more refined analyses.

With respect to the number of episodes modeled, EPA issued, and

Missouri and Illinois correctly applied, the "Guideline For Regulatory Application Of The Urban Airshed Model." EPA-450/4-91-013, July 1991. The July 1991 guidance specifically addresses the selection of high ozone episodes for the purposes of ozone modeling and the ozone attainment demonstration. This guidance does not require the states to model *all* high ozone episode days. In it, EPA recommends that states model a minimum of three episode days covering multiple meteorological conditions/regimes. This can be achieved by modeling three meteorological regimes with each scenario consisting of one "primary" episode day, or modeling two meteorological regimes with one scenario consisting of two "primary" episode days and a second consisting of one primary episode day. States were given the flexibility to consider other episode selection techniques considering a host of factors including the availability of air quality, emissions, and meteorological data bases, the availability of supporting regional modeling analyses, the number of monitors recording daily maximums greater than the NAAQS, the number of hours for which ozone in excess of the NAAQS is observed, the frequency with which the observed meteorological conditions correspond with observed exceedances, and model performance. In a recent instance, EPA has approved other states' reliance on modeling two episodes in performing the attainment demonstrations. "Proposed Rule: Approval and Promulgation of Air Quality Implementation Plans," 64 FR 70460, 70470 (December 16, 1999) (Washington, DC).

The states' final attainment demonstrations were based on two episodes consisting of six "primary" episode days covering two meteorological regimes, *i.e.*, stagnant conditions and transport conditions. As such, the states have met and in some aspects exceeded our minimum recommendations.

Comment 5. A commenter notes that the model did not work in one of the three episodes modeled, and that the states and EPA simply discarded the episode in which they admitted the model was inadequate. The commenter believes that a process that simply discards and ignores the tests that prove that the model does not work is not a scientific process.

Response to Comment 5. As noted in our April 17, 2000, proposed rule (65 FR 20412), the states originally selected a third high ozone episode, June 27-29, 1996, for ozone modeling. Subsequent

modeling and monitoring data analyses showed that the modeling results for this episode failed to comply with the model's statistical validation criteria specified in our July 1991 guidelines (see "Guideline For Regulatory Application Of the Urban Airshed Model," July 1991, page 57). Illinois and Missouri conducted many analyses to determine the causes of the poor model performance for the June 1996 episode in an attempt to correct possible problems with model input data. No acceptable input data changes could be found which would allow the modeling system to perform within acceptable parameters (consistent with model performance parameters specified in EPA's July 1991 guidance, EPA-450/4-91-013).

The July 1991 guidance clearly anticipates that the modeling results for some episodes will not ultimately pass recommended statistical tests and should be rejected or replaced by an alternate episode. This was the basis for the rejection of the July 1996 episode. Since the states were already modeling an acceptable number of high ozone days and since the modeled days represented the highest ozone days available for consideration under several meteorological regimes,³ the states did not replace the rejected July 1996 episode with an alternate episode. As noted in the April 17, 2000, proposed rule, EPA accepted this approach.

Contrary to the assertion of the commenter, rejection of modeling for episodes with "poor" modeling results is not poor science. As explained in the response to the previous comment, episode selection is based upon many factors. The goal of the modeling process is to identify and focus on those episodes for which the most robust data bases exist and for which the model appropriately simulates historical observed ozone concentrations and patterns with emphasis on the meteorological conditions that most commonly result in elevated levels of ozone. This ensures that the final control strategies will be effective for the most frequently occurring ozone episodic conditions.

Comment 6. A commenter notes that for the two nondiscarded episodes modeled, the model altogether failed to predict realistic concentrations. For the July 1995 episode, the model very

substantially underpredicted the recorded ozone concentrations on three of the five days selected. Therefore, the results summarized in our proposed rulemaking demonstrate the inadequacy of the model as a predictive tool.

Response to Comment 6. As noted in Table 3 of the April 17, 2000, proposed rule (65 FR 20404, 20413), for two days (July 13 and 14, 1995), the 1996 base case modeled peak ozone concentrations (131 and 125 parts per billion (ppb), respectively) were lower than the peak monitored ozone concentrations (154 and 139 ppb, respectively) for the ozone modeling domain. The modeling system did underestimate the peak ozone concentrations for these days. Nonetheless, the modeling statistics for these days and for the modeled ozone episodes as a whole met our minimum ozone model performance statistical criteria. (See 66 FR 17647, 17650, April 3, 2001.) Therefore, the results for these days are acceptable for purposes of the ozone attainment demonstration. The modeling system performed acceptably in reproducing the spatial and temporal patterns observed in the monitored ozone concentrations.

In addition, it is noted that, as discussed in our April 17, 2000, proposed rule (65 FR 20404, 20414), the states also relied on WOE determinations to further support the attainment demonstration. The states considered the relative impacts of emission changes on the predicted peak ozone concentrations (referred to as a relative reduction factor approach) to show that future, post-2003 ozone design values should be below the 1-hour ozone standard. Considering the ozone modeling results and ozone design values for the 1995 through 1997 period, the states determined that the projected ozone design values for the attainment year (2003 in the analyses addressed in the April 17, 2000, proposed rule) should be substantially lower than the 1-hour ozone standard. See Table 4 of the April 17, 2000, proposed rule. The states and EPA have concluded that the use of a relative reduction factor approach is less sensitive to problems caused by modeling uncertainty than are the deterministic and statistical approaches. The WOE determinations support the adequacy of the ozone attainment demonstration.

As also discussed in the April 17, 2000, proposal, trends analyses also support the results of the modeled ozone attainment demonstration (65 FR 20404, 20415). The trends data and the anticipated reduction in regional NO_x emissions resulting from EPA's NO_x SIP

³The July 16-19 and June 27-29, 1996, episodes occurred under conditions controlled by a high pressure system centered over Pennsylvania, with similar wind directions in the St. Louis area. The July 10-14, 1995, episode was more influenced by stagnation conditions with relatively low wind speeds and variable wind directions.

call both support the conclusion of the adequacy of the states' ozone attainment demonstration as modified in the April 3, 2001, supplement (66 FR 17647) to that proposed rule.

Comment 7. A commenter contends that, even if the model had predicted reasonably accurate ozone concentrations for the 1991 and 1995 episodes selected and had not failed altogether with respect to the 1996 episode, and even if reasonable accuracy in two episodes could demonstrate the validity of the model, these results would not be persuasive in this instance. The commenter believes that emissions have significantly changed inside and outside of the nonattainment area since 1995 and weather patterns have changed, in part because of global warming. As such, the commenter asserts that weather patterns of six and ten years ago have little, if any, relevance to what is experienced today or will be experienced in 2004. The commenter suggests that more recent episodes should have been analyzed and believes that such work could easily be developed, but has not been publicized. The commenter contends that approval of the modeled attainment demonstration on the basis of older evidence is irrational.

Response to Comment 7. The commenter has provided no emission or meteorological data to support the contention that the area's emissions have increased since 1995, that emissions will increase in the future, or that new, unmodeled meteorological conditions are (or will be) responsible for ozone standard exceedances inadequately addressed by the states' ozone attainment demonstration. However, the states have provided specific evidence to the contrary in their attainment demonstrations.

With respect to emissions increases, the states are required to and have correctly applied acceptable techniques to account for changes in emissions that are expected to occur between the dates of the modeled episodes and the attainment date. These expected changes include both emissions increases and decreases. Emissions data provided by both states show in their respective attainment demonstrations a significant downward trend in the nonattainment area NO_x emissions from approximately 600 TPD in 1998 to a projected level of approximately 480 TPD in 2003. The data also show a significant downward trend in the nonattainment area VOC emissions from approximately 440 TPD in 1995 to a projected level of approximately 360 TPD in 2003. In addition, as addressed in the April 3, 2001, proposed rule

supplement, the nonattainment area VOC and NO_x emissions will continue to decline between 2003 and 2004. On the other hand, statewide NO_x emissions in Illinois, Indiana, Kentucky, Missouri, Ohio, and Tennessee have, in total, trended significantly upward between 1990 and 1998. Therefore, local emissions are trending downward while regional NO_x emissions (emissions from outside the nonattainment area) have trended upward (at least through 1998). However, EPA's NO_x SIP call and other upwind control measures are designed to reverse the regional NO_x emissions trend.

In any case, the objective of the attainment demonstration is to identify and implement a control strategy that demonstrates through air quality modeling and other analyses that the ozone NAAQS will be attained. The states have applied acceptable methods to estimate what future emissions would be in the absence of a control strategy, performed numerous sensitivity analyses to determine the most effective ozone precursor reduction strategies, and ultimately identified and adopted a set of control measures which demonstrates attainment for the meteorological conditions that most frequently result in elevated ozone levels in the St. Louis area.

With respect to meteorology, the commenter implies that attainment may not have been demonstrated had the states considered more recent episodes or accounted for alleged changes in weather patterns. The actual data provided by both states indicate otherwise.

The states analyzed the meteorological conditions associated with ozone over a 21-year period of time (1977–1998) and compared the number of ozone conducive days in the St. Louis area to the number of days on which the NAAQS was exceeded. During that time, the number of ozone conducive days has oscillated, but remained between 21 and 47 per year. During the same time frame, the number of exceedance days has been trending steadily downward. The number of days exceeding the standard has gone from a peak of over 50 days in 1978 to less than 5 in 1998. While no two ozone episodes are identical, the data strongly suggest that weather patterns that result in elevated ozone in the St. Louis area are cyclical but consistent over time. This evidence, in combination with the states' evaluation of the recurrence intervals of the episodes relied upon for the attainment demonstration, contradicts the commenter's assertions. In short, the historical data indicate that elevated ozone levels in the St. Louis

area occur under a limited set of weather patterns. As noted elsewhere, they include elements of stagnant and transport conditions. The episodes relied upon for the attainment demonstration encompass these patterns. There is no indication that weather patterns will change significantly in the near future, and the commenter has not provided any such information. Therefore, the attainment demonstration modeling has utilized the meteorological conditions which most frequently occur in the St. Louis area.

Comment 8. The commenter contends that the emissions data put into the model do not adequately reflect the conditions the St. Louis area will experience in 2004. For example, they do not include the "huge" increase in NO_x emissions, and significant increases in VOC emissions, which are expected to be brought about by three new or expanded cement plants on the southern boundary of the nonattainment area. Further, the input data do not include the substantial "vehicle miles travelled" increase anticipated to result from the development of a regional shopping mall in St. Louis County. The commenter contends that none of these increases were included in the estimates furnished by the East-West Gateway Coordinating Council for the purpose of this modeling.

Response to Comment 8. As alluded to in an earlier response, the states are required to and have applied the appropriate techniques to estimate and account for potential emissions changes in an 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 the attainment demonstration. Both the states of Illinois and Missouri implement Prevention of Significant Deterioration and NSR permitting regulations. These regulations address the air quality impacts of new sources and existing expanding 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 cement plants referenced by the commenters are potential sources in Missouri which are currently in the process of completing construction permit applications under

state permitting requirements. None of the cement plant construction and modification projects have received the preconstruction permits necessary for construction and operation. Before any such projects 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 “[i]nterfere with the attainment or maintenance of ambient air quality standards” (10 CSR 10–6.010(6)(A)). (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 attainment demonstration, to ensure that specific potential new sources do not create emissions which would interfere with attainment of the ozone standard.

In addition, the states, in partnership with the local MPO, are required to implement the states’ transportation conformity regulations to ensure that transportation-related ozone precursor emissions “conform” to levels consistent with their respective SIPs. Specific increases and decreases associated with transportation-related projects are evaluated through the process. The fact that an attainment demonstration does not specifically account for possible new sources of ozone precursors does not render the attainment demonstration deficient.

Comment 9. The commenter incorporates by reference the comments made with respect to the rulemaking of January 3, 2001, reported at 66 FR 585.

Response to Comment 9. EPA incorporates by reference the responses made with respect to the January 3, 2001, rulemaking cited by commenters, as well as the Beaumont, Texas, rulemaking (66 FR 26193, May 15, 2001).

XIII. What Action Is EPA Taking Regarding the State Submittals Addressed by This Final Rule?

EPA is taking the following actions on the state submittals address by this final rule:

1. EPA is approving the ground-level 1-hour ozone attainment demonstration SIPs for the St. Louis, Missouri, and Illinois ozone nonattainment area.
2. EPA is granting the states’ requests for extension, and extending the date for attaining the 1-hour ozone standard to November 15, 2004, while retaining the area’s current classification as a moderate ozone nonattainment area.
3. EPA is approving the 2004 on-road MVEBs for both Illinois and Missouri.

Both Illinois and Missouri have committed to revise their 2004 MVEBs based on MOBILE6 within two years of its release. No conformity determinations will be made during the second year following the release of MOBILE6 unless and until the MVEBs have been recalculated using MOBILE6 and approved by EPA.

4. EPA is finding that the Contingency Measures identified by both Illinois and Missouri are adequate to meet the requirements of the Act. We are also approving the contingency measures SIP submitted by Missouri in October 1997, as supplemented by a letter dated April 5, 2001.

5. EPA finds that the St. Louis area meets the requirements pertaining to RACM under the Act.

6. EPA is granting an exemption to the state of Illinois from the NO_x RACT requirements of the Act and disapproving the request for an exemption from the NO_x NSR and certain NO_x conformity requirements for Madison, Monroe, and St. Clair Counties.

7. EPA is withdrawing our March 19, 2001, rulemaking action entitled “Determination of Nonattainment as of November 15, 1996, and Reclassification.”

For the reasons stated above in the “Background” portion of this notice, EPA is making this final action immediately effective.

Administrative Requirements

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. This action, in relevant part, 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 preexisting 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). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will 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), because, in relevant part, it 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 Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have 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 Act. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the Executive Order. 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. We will submit a report containing this rule and other required information to the United States Senate, the United States 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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 27, 2001. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

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

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

Dated: June 14, 2001.

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 O—Illinois

2. Section 52.726 is amended by adding paragraph (bb) to read as follows:

§ 52.726 Control strategy: Ozone.

* * * * *

(bb) Approval—Revisions to the SIP submitted by Illinois on November 15, 1999; February 10, 2000; April 13, 2001; and April 30, 2001. The revisions are for the purpose of satisfying the attainment demonstration requirements of section 182(c)(2)(A) of the Act for the Metro-East St. Louis area. The revision establishes an attainment date of November 15, 2004, for the St. Louis moderate ozone nonattainment area. This revision establishes MVEBs for 2004 of 26.62 TPD of VOC and 35.52 TPD of NO_x to be used in transportation conformity in the Metro-East St. Louis

area until revised budgets pursuant to MOBILE6 are submitted and found adequate. In the revision, Illinois commits to revise its VOC and NO_x transportation conformity budgets within two years of the release of MOBILE6. No conformity determinations will be made during the second year following the release of MOBILE6 unless and until the MVEBs have been recalculated using MOBILE6 and found adequate by EPA. EPA is granting a waiver for the Metro East St. Louis area to the state of Illinois from the NO_x RACT requirements of the Act and disapproving the request for a waiver from the NO_x NSR and NO_x general conformity requirements. EPA is finding that the Contingency Measures identified by Illinois are adequate to meet the requirements of the Act. EPA finds that the Illinois SIP meets the requirements pertaining to RACM under the Act for the Metro-East St. Louis area.

Subpart AA—Missouri

4. In § 52.1320(e) the table is amended under Chapter 6 by adding two entries at the end of the table as follows:

§ 52.1320 Identification of Plan.

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EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* Contingency Plan including letter of April 5, 2001.	* St. Louis	* 10/6/97, 4/5/01	* June 26, 2001.	*
Ozone 1-Hour Standard Attainment Demonstration Plan for November 2004 including 2004 On-Road Motor Vehicle Emissions Budgets.	St. Louis	11/10/99, 11/2/00, 2/28/01, 3/7/01.	June 26, 2001.	

PART 81—[AMENDED]

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

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

Subpart C—Section 107 Attainment Status Designations

2. The amendments to §§ 81.314 and 81.326 which published on March 19, 2001 (66 FR 15578) and were revised on

May 16, 2001 (66 FR 27036) to become effective on June 29, 2001, are withdrawn.

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