

report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial

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

**List of Subjects**

40 CFR Part 52

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

40 CFR Part 81

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

Dated: April 29, 2003.

**William W. Rice,**

*Acting Regional Administrator, Region 7.*

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

**PART 52—[AMENDED]**

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

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

**Subpart AA—Missouri**

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

**§ 52.1320 Identification of Plan.**

\* \* \* \* \*  
(e) \* \* \*

**EPA APPROVED MISSOURI NONREGULATORY SIP PROVISIONS**

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

**PART 81—[AMENDED]**

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

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

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

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

**§ 81.326 Missouri.**

\* \* \* \* \*

**MISSOURI—OZONE**  
[1-Hour Standard]

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

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

\* \* \* \* \*  
[FR Doc. 03-11187 Filed 5-9-03; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

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

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

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

**ACTION:** Final rule.

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

Louis and St. Louis City in Missouri. Based on the determination of attainment, EPA has also determined, in today's separate rule, that certain ozone attainment demonstration requirements along with certain other ozone planning requirements of part D of title I of the Clean Air Act (CAA or Act) are not applicable for the St. Louis ozone nonattainment area.

The EPA is approving a request from the State of Illinois, submitted on December 26, 2002, to redesignate the Metro-East St. Louis area (Madison, Monroe, and St. Clair Counties, Illinois) (the Illinois portion of the St. Louis ozone nonattainment area) to attainment of the one-hour ozone NAAQS. In approving this request, the EPA is also approving the State's plan for maintaining the one-hour ozone NAAQS through 2014 as a revision to the Illinois State Implementation Plan (SIP); and finding as adequate and approving the State's 2014 Motor Vehicle Emission Budgets (MVEBs) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO<sub>x</sub>), as contained in the maintenance plan, for transportation conformity purposes. Refer also to a separate rule published today (the attainment determination rule) regarding similar approvals for the State of Missouri.

The EPA is approving an exemption from certain NO<sub>x</sub> emission control requirements, as provided for in section 182(f) of the Clean Air Act, for the Metro-East St. Louis area. Because the St. Louis area is currently attaining the one-hour ozone NAAQS, the EPA is granting the Metro-East St. Louis area an exemption from NO<sub>x</sub> Reasonably Available Control Technology (NO<sub>x</sub> RACT) requirements. However, all NO<sub>x</sub> emission controls previously adopted by the State must continue to be implemented.

**DATES:** For good cause as explained below, this rule is effective May 12, 2003.

**ADDRESSES:** Copies of the documents relevant to this rule are available for inspection at the offices of the Environmental Protection Agency, Region 5, Regulation Development Section, Air Programs Branch (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604. Interested persons wanting to examine these documents should make an appointment with the appropriate EPA office at least 24 hours in advance before visiting the office. The reference file number is IL 216.

**FOR FURTHER INFORMATION CONTACT:** Edward Doty, Environmental Scientist, U.S. Environmental Protection Agency, Region 5, Air and Radiation Division

(AR-18J), Air Programs Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6057, (doty.edward@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the following, whenever "we," "us," or "our" are used, we mean the U.S. Environmental Protection Agency.

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#### I. What Is the Background for This Rule?

On January 30, 2003, EPA published a final rule and two proposed rules related to the St. Louis ozone nonattainment area (68 FR 4836, 68 FR 4842, and 68 FR 4847). The final rule (the January 30, 2003 final rule), 68 FR 4836, reinstated and made effective EPA's prior finding that the St. Louis nonattainment area failed to attain the one-hour ozone NAAQS (one-hour ozone standard) by November 15, 1996 (based on 1994-1996 ozone data) and reinstated a reclassification of the area to a serious nonattainment area. In addition, in the January 30, 2003 final rule, EPA established a schedule for submission of SIP revisions for Illinois and Missouri to meet the CAA requirements for a serious ozone nonattainment area and established November 15, 2004 as the date by which the St. Louis area must attain the ozone standard. A correction to this final rule was published on February 13, 2003 (68 FR 7410) which corrected a table entry.

In a January 30, 2003 proposed rule, 68 FR 4847 (the January 30, 2003 proposed rule), EPA proposed to determine that the St. Louis area has attained the one-hour ozone standard (clean air determination) based on complete, quality-assured ozone monitoring data for the period of 2000 through 2002. In addition, in the same proposed rule, EPA proposed to: (a) approve the requests from the States of Missouri and Illinois to redesignate the St. Louis area to attainment of the one-hour ozone NAAQS; (b) determine that certain planning requirements of the CAA are not applicable to the St. Louis area based on the clean air determination; (c) approve an exemption from NO<sub>x</sub> RACT requirements in the Metro-East St. Louis area; and (d) find adequate and approve Missouri's and Illinois' 2014 MVEBs for

VOC and NO<sub>x</sub>, as contained in the States' maintenance plans, for transportation conformity purposes.

In the proposed rule found at 68 FR 4842, EPA proposed to approve a revision to the Missouri SIP for the vehicle inspection and maintenance (I/M) program operating in the Missouri portion of the St. Louis nonattainment area.

This rule is EPA's final action on the January 30, 2003 proposed rule as it relates to the Illinois portion of the St. Louis nonattainment area. A separate rule in today's **Federal Register** is EPA's final action finding that the St. Louis area has attained the 1-hour ozone standard along with EPA's final action on the January 30, 2003 proposed rule as it relates to the Missouri portion of the St. Louis nonattainment area. As noted in the January 30, 2003 proposed rule on page 4848, EPA received separate requests from Missouri and Illinois to redesignate the St. Louis area to attainment. In the January 30, 2003 proposed rule, EPA proposed actions related to both the Missouri and Illinois portions of the nonattainment area. However, EPA stated that it was considering issuance of two separate rules when it took final action on the redesignation requests. We received no comments on this aspect of the proposal. With the exception of the determination of attainment, EPA is taking final action related to the Missouri portion of the nonattainment area, and is taking final action on the Illinois portion of the St. Louis nonattainment area in separate rulemaking actions. Section 107(d)(3)(v) provides, as a prerequisite to redesignation, that: "the State containing such area has met all requirements applicable to the area under section 110 and part D." This section plainly shows that Congress meant for EPA to evaluate whether each State requesting redesignation of an area has met the applicable requirements. In addition, each state has authority only to adopt and submit for approval a maintenance plan and a revision of its SIP that are applicable to its territory. Since each state has the authority only to request redesignation for the portion of the area within its boundaries, and EPA evaluated each states' request for redesignation separately, the final rules redesignating each states' portion of the nonattainment area are being published separately. However, EPA has concluded that in determining whether or not a multistate area has attained the standard based upon complete, quality-assured ambient air quality monitoring data, EPA will consider the attainment status of the area as a whole. Therefore,

EPA's finding that the area has attained the NAAQS applies to the entire nonattainment area, and we are publishing that finding in a separate rule today. See 67 FR 49600, July 31, 2002 (Reinstatement of Redesignation of Kentucky Portion of Cincinnati-Hamilton area) for additional discussion of these issues.

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

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

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

On December 26, 2002, the Illinois Environmental Protection Agency (IEPA) submitted an ozone redesignation request and ozone maintenance plan for the Metro-East St. Louis area along with a request for an exemption from NO<sub>x</sub> RACT requirements for the Metro-East St. Louis area. Included in this State submittal is a plan to maintain the one-hour ozone NAAQS through 2014 and 2014 VOC and NO<sub>x</sub> MVEBs for transportation conformity purposes. The January 30, 2003 proposed rule, in part, addressed this State submittal.

## II. What Actions Are We Taking?

Considering the comments on the January 30, 2003 proposed rule, as discussed below and in the separate determination of attainment rule published in today's **Federal Register**,

we conclude that it is appropriate to finalize the actions proposed in the January 30, 2003 proposed rule with regard to the Metro-East St. Louis area.

### A. Determination of Attainment

In a separate rule in today's **Federal Register**, EPA has determined that the St. Louis ozone nonattainment area, consisting of both the Missouri and the Illinois portions of the area, has attained the one-hour ozone standard. See section II.A of today's determination of attainment rule for further discussion regarding EPA's attainment determination.

Also, in the separate rule in today's **Federal Register**, EPA has determined that certain attainment demonstration requirements (section 172(c)(1) of the Act) along with certain other related requirements of part D of title I of the Act, specifically the section 172(c)(9) contingency measure requirement (measures needed to mitigate a state's failure to achieve reasonable further progress toward, and attainment of, a NAAQS), the section 182 attainment demonstration and Rate-Of-Progress (ROP) requirements, and the section 182(j) multi-state attainment demonstration requirement, are not applicable to the St. Louis area. The discussion contained in the separate rule pertaining to the CAA requirements which are no longer applicable to the St. Louis area is hereby incorporated into this rule.

### B. Redesignation of the Metro-East St. Louis Area to Attainment

Although EPA is determining that the entire St. Louis ozone nonattainment area has attained the one-hour ozone standard, EPA has concluded that it is appropriate to take final action related to Illinois' request to redesignate the Metro-East St. Louis area and to Missouri's request to redesignate the Missouri portion of the St. Louis nonattainment area in separate rulemaking actions published today. In this rule, EPA is taking the following actions with respect to the Metro-East St. Louis area:

1. EPA is approving a request from the State of Illinois to redesignate the Metro-East St. Louis area to attainment of the one-hour ozone NAAQS;

2. EPA is approving Illinois' plan for maintaining the one-hour ozone NAAQS through 2014, as a revision to the Illinois SIP;

3. EPA is finding as adequate and approving the 2014 MVEBs for VOC and NO<sub>x</sub> in Illinois' ozone maintenance plan for the purposes of transportation conformity; and

4. EPA is approving an exemption (waiver) from NO<sub>x</sub> RACT requirements for the Metro-East St. Louis area.

### C. Effective Date of These Actions

EPA finds that there is good cause for this redesignation to attainment, SIP revision, and exemption from NO<sub>x</sub> RACT requirements to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment which relieves the area from certain Clean Air Act requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 553(d)(3) which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule". As indicated above, in the January 30, 2003 final rule, EPA reclassified the St. Louis area to a "serious" nonattainment area and established a schedule for submission of SIP revisions fulfilling the requirements for serious ozone nonattainment areas. Upon the effective date of this rule, the State of Illinois will be relieved of the obligation to develop and submit these SIP revisions. In addition, the Illinois rules adopted to meet the requirements of title V of the CAA, provide that in a "serious" area, stationary sources with potential emissions of VOC and NO<sub>x</sub> greater than 50 tons per year are major sources. As such, these major sources are subject to the title V permit program and are required to submit title V permit applications within twelve months of January 30, 2003. Upon the effective date of this rule, stationary sources which are newly subject to the title V permitting program as a result of the January 30, 2003 reclassification of the St. Louis area to a serious nonattainment area will be relieved of the requirement to submit title V permit applications to the State of Illinois. EPA finds that good cause exists for this final rule being immediately effective since it relieves the State of Illinois as well as stationary sources of certain requirements established as a result of the January 30, 2003 reclassification to a serious nonattainment area.

## III. Why Are We Taking These Actions?

EPA has determined, in a separate rule published in today's **Federal Register**, that the St. Louis area has attained the 1-hour ozone standard. In

this rule, we have concluded that Illinois has fully met the requirements for redesignation found at sections 107(d)(3)(E) and 175A of the CAA for redesignation of an area from nonattainment to attainment for ozone. In addition, EPA believes that the State of Illinois has demonstrated that the area has attained, and that the criteria for redesignation have been met.

In the January 30, 2003 proposed rule at 68 FR 4847, EPA described the applicable criteria for redesignation to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) the Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of the Act.

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

By finding that the maintenance plan provides for maintenance of the NAAQS through 2014, EPA is hereby finding adequate and approving the 2014 VOC and NO<sub>x</sub> MVEBs contained within the maintenance plan. The MVEB for NO<sub>x</sub> in the Metro-East St. Louis area is 18.72 tons per ozone season weekday. The MVEB for VOC in the Metro-East St. Louis area is 10.13 tons per ozone season weekday.

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

#### IV. What Are the Effects of These Actions?

In a separate rule published in today's **Federal Register**, EPA has determined that the St. Louis area attained the 1-hour ozone standard and that certain attainment demonstration requirements (section 172(c)(1) of the Act) along with certain other related requirements of part D of title I of the Act, specifically the section 172(c)(9) contingency measure requirement (measures needed to mitigate a state's failure to achieve reasonable further progress toward, and attainment of, a NAAQS), the section 182 attainment demonstration and ROP requirements, and the section 182(j) multi-state attainment demonstration requirement, are not applicable to the St. Louis area. EPA's determination that the St. Louis area has met the one-hour ozone standard relieves Illinois and Missouri from the obligation to meet certain additional Clean Air Act requirements, which apply to areas not attaining that standard.

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

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

Approval of an exemption from NO<sub>x</sub> RACT requirements for the Metro-East St. Louis area means that Illinois is no longer obligated by the Clean Air Act to adopt and submit NO<sub>x</sub> RACT regulations for applicable NO<sub>x</sub> stationary sources. This also means that the Illinois SIP can be judged to be complete despite the lack of such regulations in the Metro-East St. Louis area.

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

We received 5 letters containing comments regarding the January 30,

2003 proposed rule. Four of the letters supported the proposed rulemaking action. Two of the four letters in support of the proposed rulemaking action raised issues to which we are responding in this section. One of the five letters contained adverse comments and opposed the proposed rulemaking actions. A summary of the comments and EPA's responses to them are provided below. This discussion addresses comments relating to the St. Louis area as a whole and comments specifically relating to the Illinois portion of the area. Comments relating specifically to the Missouri portion of the area are addressed in a separate final rule for Missouri also published today.

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

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

*Response 1:* EPA's determination that the St. Louis area has attained the one-hour ozone standard is contained in a separate rule published in today's **Federal Register**. Further, EPA has found that the area has met all five of the criteria specified in section 107(d)(3)(E) of the CAA for redesignation to attainment. Below are specific comments and responses raised by the commenter regarding each criterion. It should be noted that, although the commenter generally directed comments at issues for both States, Illinois and Missouri, this final rulemaking focuses on the Illinois portion of St. Louis ozone nonattainment area. To that extent, most responses given here focus on that portion of the nonattainment area. For our responses relative to the Missouri portion of the area, please refer to the separate final rulemakings for the State of Missouri also published in today's **Federal Register**.

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

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

*Response 2:* See the response to comment 2 in the separate rule in today's **Federal Register** regarding the determination of attainment for the St. Louis area. See also the responses to comments 18 and 19 below.

*Comment 3:* Monitored data run directly counter to air quality modeling.

The modeling supported the contention that the NAAQS could be attained only in 2004 after all control measures are adopted. Thus, the monitored ozone standard attainment during the 2000–2002 period is a “fluke” explainable by factors other than the success of the pollution control measures. In addition, based on a September 4, 1992 EPA policy memorandum (“Procedures for Processing Requests to Redesignate Areas to Attainment,” from John Calcagni) (the Calcagni Memo), the commenter believes that supplemental ozone modeling may be necessary to determine the representativeness of the monitored data. Without such supplemental modeling, the commenter asserts that the January 30, 2003 proposed rule’s implicit conclusion that the St. Louis area ozone data are “representative” is baseless.

*Response 3:* See the response to comment 3 in the separate rule in today’s **Federal Register** regarding the determination of attainment for the St. Louis area. See also the responses to comments 19, 21, 23, and 24 below.

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

*Response 4:* See the response to comment 4 in the separate rule in today’s **Federal Register** regarding the determination of attainment for the St. Louis area. See also the response to comment 20 below.

*Comment 5:* EPA asserts that the data are “quality assured” but provided no explanation. EPA must demonstrate that the data are quality-assured. EPA must document the adequacy of the states’ quality-assurance plans. In addition, the commenter questions whether the ozone data relied on for the attainment determination were quality-assured since they were entered into AIRS faster than usual.

*Response 5:* See the response to comment 5 in the separate rule in today’s **Federal Register** regarding the determination of attainment for the St. Louis area. See also the response to comment 2 in the separate rule concerning EPA’s actions taken to insure the proper monitoring and quality-assurance of ozone data.

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

*Comment 6:* The serious area SIP requirements of the CAA are applicable to the St. Louis area. These requirements have not been met by the States, and there is no “claim” that they could not have been submitted with the redesignation request. Thus, the SIPs are not “fully approved”. In addition, the Calcagni Memo includes procedures suggested by EPA for reducing the stringency of the control measures by requiring them to become part of the contingency plan. The states have not done these procedures.

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

EPA has established a policy to provide guidance in determining how to apply the statutory criterion with respect to this issue. As stated in the January 30, 2003 proposed rule (68 FR 4851), the Calcagni Memo describes EPA’s interpretation of the section 107(d)(3)(E) requirement. Under this interpretation, states requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. Areas may be redesignated even though they have not adopted measures that come due after the submission of a complete redesignation request. Pursuant to the January 30, 2003 final rule (68 FR 4836), the emission control measures and plans resulting from serious nonattainment area requirements for the St. Louis area are due on January 30, 2004. Since these emission control measures and plans are not yet due, the Illinois SIP is not deficient. EPA policy

and a reasonable application of sections 107(d)(3)(E)(ii) and (v) allow for an area to be redesignated without the area adopting measures which are not yet due. EPA has consistently applied this policy and interpretation in other redesignations, including the Detroit-Ann Arbor redesignation discussed at 60 FR 12465–12466.

In addition, there is no requirement in section 107(d)(3)(E) that indicates that States must “claim” that they could not have submitted the serious area SIP revisions or any additional revisions at the time of the redesignation requests if those requirements are not applicable to the area when the requests are made. EPA’s action to reclassify the St. Louis area to a serious nonattainment area was published in the **Federal Register** after Illinois had submitted its redesignation request, and it established a deadline for submission of the serious area requirements which has not yet passed. Thus, Illinois is not required to include in its request a “claim” that the State cannot complete the serious area requirements.

Finally, the Calcagni Memo (pages 12–13) discusses the statutory requirement that the State must implement all measures included in its SIP prior to redesignation. (In our response to comment 26 below, we discuss how this requirement has been met.) This requirement does not expand the universe of requirements which are “applicable” for purposes of redesignation. Unless the serious area requirements are applicable, and already contained in the SIP prior to redesignation, the discussion in the Calcagni Memo does not relate to the issue raised by the commenter. Because the serious area requirements are not applicable requirements for the Metro-East St. Louis area and Illinois, the guidance in the Calcagni Memo relating to mechanisms for converting part D measures into contingency measures is not applicable for the purposes of this redesignation and assessment of Illinois’ ozone maintenance plan.

*Comment 7:* The January 30, 2003 proposed rule suggests that a SIP meeting the serious area requirements need not be fully approved because such a plan is not yet due. The commenter believes that the CAA does not make an exception for SIP revisions that have or have not become due. In fact, the serious area requirements have, as a matter of law, become due. The plans were due by June 14, 1998, and no later than May 18, 2002 pursuant to previous EPA and Court actions. The commenter stated that the May 18, 2002 date was set by EPA in a March 19, 2001 rulemaking, and that the effect of a

decision by the Court of Appeals for the Seventh Circuit was to reinstate this submission due date.

*Response 7:* Section 107(d)(3)(E)(ii) of the Act requires that the applicable SIP for the area must be fully approved under section 110(k) of the Act as one of the criteria for redesignation to attainment. As discussed in comments 6 above and 8 below, the applicable SIP for the Illinois portion of the St. Louis area is fully approved, and the serious area emission control measure and plan requirements are not yet due. In making this determination, EPA is not creating an "exception" to the statutory requirements for approved SIPs, but is determining that SIP revisions which are not yet due are not "applicable" for purposes of sections 107(d)(3)(E)(ii) and (v) of the Act (for purposes of assessing the State's ozone redesignation request). As noted in the January 30, 2003 proposed rule at 68 FR 4838, on November 25, 2002, the Court of Appeals for the Seventh Circuit vacated a June 26, 2001 final rule extending the St. Louis area's attainment date to November 15, 2004, and remanded to EPA for "entry of a final rule that reclassifies St. Louis as a serious nonattainment area effective immediately \* \* \*" (*Sierra Club and Missouri Coalition for the Environment v. EPA*, 311 F. 3d 853 (7th Cir. 2002)). In response to the Court's order, and in accordance with section 181(b)(2) of the Act, EPA reinstated the nonattainment determination and reclassification contained in the March 19, 2001 rulemaking (66 FR 15585), but did not reinstate the state plan revision and regulation due date established in that rulemaking. In the January 30, 2003 final rule, EPA established a deadline of 12 months after January 30, 2003 for the States to submit the serious area requirements. The rationale for the deadline is stated in the January 30, 2003 final rule (68 FR 4838). Today's final redesignation rule does not reopen the January 30, 2003 final rule, and comments on the appropriate deadline for the serious area requirements are beyond the scope of this rule.

With respect to the commenter's assertion that the serious area requirements should have been due by June 14, 1998, this is based on an argument made by the commenter in the U.S. District Court and in the Court of Appeals for the District of Columbia that the reclassification of the St. Louis area to serious should have been made retroactive to 1997, with the serious area measures due in 1998. This argument is not only outside of the scope of this rulemaking as explained previously, but it was also rejected by the Court. (*See*,

*Sierra Club v. Whitman*, 285 F.3d, 68 (D.C. Cir. 2002)). As explained above, EPA's determination that the serious area requirements are not "applicable" with respect to this redesignation is consistent with the Act, with the January 30, 2003 final rule, with applicable EPA policy, and with relevant judicial decisions. Additionally, note that the decision made by the Court on November 25, 2002 required the EPA to rulemake to reclassify the St. Louis area to serious nonattainment effective immediately on the date of the rulemaking. The Court did not order the EPA to reinstate the reclassification with an effective date contained in the March 19, 2001 rulemaking, and the Court did not order the EPA to reinstate the May 18, 2002 State plan due date set forth in the March 19, 2001 rulemaking.

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

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

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

In the June 26, 2001 rule, EPA took the following applicable actions: approved Missouri's and Illinois' 1-hour

ozone attainment demonstration; found that the St. Louis ozone nonattainment area met the reasonably available control measures (RACM) requirements of the Act; found that the contingency measures identified by the States are adequate; approved the Illinois and Missouri motor vehicle emissions budgets (MVEBs); and approved an exemption from the NO<sub>x</sub> RACT requirements for and disapproved an exemption from the NO<sub>x</sub> new source review (NSR) and NO<sub>x</sub> conformity requirements for the Illinois portion of the St. Louis ozone nonattainment area. EPA has determined, for the reasons stated in the proposed rule, that the attainment demonstration, and RACM requirements, are no longer applicable requirements since the area has attained the NAAQS. In this final rule, EPA is approving contingency measures as part of Illinois' maintenance plan, granting an exemption from the NO<sub>x</sub> RACT emission control requirements, and approving MVEBs for 2014, for the Illinois portion of the area.

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

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

*Response 9:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. In this rule, EPA is providing a response regarding only the Illinois portion of the St. Louis area. See the separate rule in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

The use of the phrase "can be considered to be approved" (See the

January 30, 2003 proposed rule at 68 FR 4851–4852) was merely a statement that the SIP will meet the section 110 requirements and, as such, “can be considered to be approved” if EPA approves certain plan elements, described in the proposed rulemakings. In the January 30, 2003 proposed rule, EPA proposed to grant an exemption to the State of Illinois from the NO<sub>x</sub> RACT requirements in the Illinois portion of the St. Louis area under section 182(f) of the Act. In today’s final rule, EPA is taking final action exempting the State of Illinois from the NO<sub>x</sub> RACT requirements in the Metro-East St. Louis area. By taking this action, EPA now concludes that the Illinois SIP is fully approved. The use of the quoted phrase was not intended to escape a statutory requirement. In fact, it recognized EPA’s obligation to complete rulemaking in order to approve the SIP, and it recognized that EPA could not determine that the SIP was fully approved and complete the redesignation of the Illinois portion of the St. Louis area to attainment of the one-hour ozone NAAQS until it took final action to approve the remaining SIP element (an exemption from a RACT requirement, as approved today, eliminates the CAA requirement for NO<sub>x</sub> RACT and moots this SIP element). All of the SIP elements which are applicable to the Metro-East St. Louis area for purposes of redesignation have either been approved in previous rulemakings or are approved in today’s rule.

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

discussion.) The applicable requirements which were approved prior to the vacated June 26, 2001 action (e.g., VOC RACT and the 15 percent ROP plan) were subject to notice and comment rulemaking and judicial review. The measures approved today (the ozone maintenance plan and contingency measures, MVEBs, and NO<sub>x</sub> RACT exemption) have been subject to notice and comment rulemaking and this action is subject to judicial review. Our determination that certain requirements are not applicable has been subject to notice and comment rulemaking and is subject to judicial review. The public has had full opportunity to comment on all of our actions, as evidenced by the numerous comments submitted by the commenter. Therefore, EPA has not avoided any requirement for public comment or judicial review.

In acting on a redesignation request, EPA can rely on any prior SIP approvals plus any additional approvals it may perform in conjunction with acting on the redesignation. EPA has already taken final action to approve all required SIP elements or is approving them in conjunction with this final action on the redesignation. Therefore, the Metro-East St. Louis area has a fully approved SIP. See the Calcagni Memo, page 3. The Calcagni Memo allows for approval of SIP elements and redesignation to attainment to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions. See (66 FR 53096) (Pittsburgh-Beaver Valley, Pennsylvania, October 19, 2001); (65 FR 37879) (Cincinnati-Hamilton, Ohio, June 19, 2000); (61 FR 20458) (Cleveland-Akron-Lorain, Ohio, May 7, 1996); (60 FR 37366) (July 20, 1995); and (61 FR 31832–31833) (Grand Rapids, Michigan, June 21, 1996).

*Comment 10:* The SIP fails to meet the section 110 requirements because the inapplicable “moderate” area requirements contained in the SIP do not provide for implementation, maintenance, and enforcement of the NAAQS; modeling shows that the plan does not provide for attainment until 2004.

*Response 10:* EPA finds that the Illinois SIP meets the section 110 requirements. See the January 30, 2003 proposed rule and responses to comments 8 and 9 for further discussion. See the responses to comments 19, 21, 23, and 24 below. See also the response to comment 3 in the separate rule published in today’s **Federal Register** with regard to the redesignation of the Missouri portion of the St. Louis area.

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

*Response 11:* See section II.A of the separate rule published in today’s **Federal Register** with regard to the redesignation of the Missouri portion of the St. Louis area for a discussion of the rationale for EPA’s determination of attainment and suspension of certain CAA requirements.

The part D requirements applicable to the Metro-East St. Louis area specifically include the requirements of sections 172(c) and 176 as well as the applicable requirements of subpart 2. The section 172(c) requirements include General Plan Requirements which, to the extent applicable, must provide for the implementation of all RACM as expeditiously as practicable (at a minimum, this requires RACT for stationary sources), Reasonable Further Progress (RFP), emissions inventories, identification and quantification of allowable emissions for major new or modified stationary sources, permits for new and modified major stationary source, other emission control measures needed to assure attainment of the NAAQS, section 110(a)(2) requirements, and contingency measures. Section 110(a)(2) requirements include: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate apparatus, methods, systems, and procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)); provisions for the implementation of part D requirements (nonattainment area New Source Review (NSR)) permit programs); provisions for stationary source emission control measures, source monitoring, and source reporting; provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Subpart 2 requirements include: attainment demonstrations; 1990 base year inventory and periodic emissions inventories updates; emission statements; 15 percent rate-of-progress plans; VOC RACT; RACM; stage II vapor recovery; I/M; and NO<sub>x</sub> emission controls.

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

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

With respect to the commenter's assertion that the Tenth Circuit Court of Appeals *Sierra Club v. USEPA* case is not applicable because it is not a "redesignation" case, the commenter misses the point of the case as it relates to St. Louis. The Tenth Circuit's endorsement of the interpretation of the

Act in "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995 (Seitz Memo), that certain "statutory" requirements relating to attainment are not applicable to an area which has attained the standard, was not dependent on the fact that the area was not being redesignated. The case involved a determination by EPA that Salt Lake and Davies Counties, Utah, had attained the ozone standard, and that, therefore, certain additional requirements relating to attainment (such as an attainment demonstration) would not apply so long as the area continued to attain. The Court expressly recognized that the area could be redesignated without having met those requirements, even though the action at issue there was an attainment determination and not a redesignation. The Court stated: "Recall that the Environmental Protection Agency's determination to exempt the Counties from limited ozone requirements is really no more than a suspension of those requirements for so long as the area continues to attain the standard or until the area is formally redesignated to attainment." (*Sierra Club v. USEPA*, 99 F.3d. 1551, 1558 (10th Cir.1996)) (See also, 66 FR 53095 for EPA's redesignation of the Pittsburgh area.) The Court did not say, as the commenter would have it, that the area would have to adopt those measures which had been determined to be unnecessary in order to be redesignated. As it did in the Utah Counties, in which EPA redesignated those Counties without requiring that they meet the suspended requirements, EPA is here determining that the St. Louis area is attaining the standard and that certain CAA requirements do not apply. The basis for this determination and the suspension of certain requirements for the area was explained in detail in the January 30, 2003 proposed rule at 68 FR 4850–4858 and further explained in this response to various comments on the issue. The determination is based on monitored data, not modeling, for reasons explained in this notice. Nothing in the Tenth Circuit case prohibits EPA from simultaneously suspending the requirements and redesignating an area, which is what this rulemaking accomplishes. EPA has taken this dual action in a number of areas, including Louisville (66 FR 53665), Cincinnati (65 FR 37879), Grand Rapids (61 FR 31831), and Pittsburgh (66 FR 53094). Upon

redesignation to attainment, the suspended nonattainment requirements will no longer apply at all since the area is no longer designated as a nonattainment area.

*Comment 12:* EPA asserts that the RACM requirements of section 172(c)(1) need not be adopted because the area has attained the NAAQS, thus, these measures would not accelerate attainment. This is confoundingly circular reasoning which erases the "fully approved" requirements of the CAA. EPA's assertion is not relevant here.

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

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

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

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

*Response 13:* This comment refers to both the Missouri and the Illinois

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

The RFP requirement under section 172(c)(2) of the Act is defined via section 171(1) of the Act as an annual incremental reduction in emissions of the relevant air pollutant (VOC and NO<sub>x</sub> in this case) that is required to ensure attainment of the applicable standard (here the one-hour ozone standard) by the applicable date. Section 182(b)(1)(A) sets forth the specific requirements for RFP for a moderate nonattainment area which includes a reduction in VOC emissions of at least 15 percent from baseline emissions. As stated in the January 30, 2003 proposed rule at 68 FR 4854, EPA approved Illinois' 15 percent ROP plan on July 14, 1997 (62 FR 37494).

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

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

As stated in the January 30, 2003 proposed rule at 68 FR 4855, Illinois has adopted and implemented all required VOC RACT rules. In addition, section 182(f) establishes NO<sub>x</sub> RACT requirements for major stationary sources. Under the provisions of section 182(f), the EPA is exempting the Illinois portion of the St. Louis ozone

nonattainment area from the requirements for NO<sub>x</sub> RACT in this rulemaking. With the granting of this exemption, Illinois has met all applicable RACT requirements.

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

With respect to the commenter's contention that EPA's position regarding additional RACM and RACT measures being rejected in the Tenth Circuit Sierra Club case and in *Wall v. EPA*, the commenter is incorrect. The *Wall* case involved VOC RACT, which is not an issue here, because, as discussed previously, and in response to comment 14 below, Illinois has adopted all applicable VOC RACT measures. The Tenth Circuit Sierra Club case upheld EPA's determination that RACT was not tied to reasonable further progress, and that case did not address EPA's interpretation of RACM at all. The commenter's Seventh Circuit brief, which it relies on to support its position that RACM requirements must be met for an area to be redesignated, argued that EPA's interpretation of the RACM requirement (that section 172(c)(1) requires only implementation of all RACM which would expedite attainment) is an improper reading of the CAA. That issue was not addressed or decided by the Seventh Circuit. However, the issue of EPA's interpretation of the RACM requirement was raised and upheld in the 5th Circuit (*Sierra Club v. EPA*, 314 F.3d 735, 743-45 (5th Cir. 2002)) and in the District of Columbia Circuit (*Sierra Club v. EPA* 294 F.3d 155, 162-63 (D.C. Cir. 2002)). Both circuits found that EPA's interpretation that the statute only required implementation of RACM measures that would advance attainment was reasonable.

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

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

The January 30, 2003 proposed rule states at 68 FR 4855 that both States have adopted and implemented all

required VOC RACT rules. In addition, the proposed rule provided the following Web site which contains the content of Illinois rules: <http://www.epa.gov/region5/air/sips/sips.htm>.

The Illinois VOC RACT rules for the Metro-East St. Louis area listed on this Web site include the following:

Part 219—A General Provisions  
 Part 219—B Organic Emissions From Storage And Loading Operations  
 Part 219—C Organic Emissions From Miscellaneous Equipment  
 Part 219—E Solvent Cleaning  
 Part 219—F Coating Operations  
 Part 219—G Use Of Organic Material  
 Part 219—H Printing And Publishing  
 Part 219—Q Synthetic Organic Chemical And Polymer Manufacturing Plant  
 Part 219—R Petroleum Refining And Related Industries; Asphalt Materials  
 Part 219—S Rubber And Miscellaneous Plastic Products  
 Part 219—T Pharmaceutical Manufacturing  
 Part 219—V Socmi: Batch And Air Oxidation Processes  
 Part 219—W Agriculture  
 Part 219—X Construction  
 Part 219—Y Gasoline Distribution  
 Part 219—Z Dry Cleaners  
 Part 219—Aa Paint And Ink Manufacturing  
 Part 219—Bb Polystyrene Plants  
 Part 219—Gg Marine Terminals  
 Part 219—Hh Motor Vehicle Refinishing  
 Part 219—Pp Miscellaneous Manufacturing  
 Part 219—Qq Misc. Formulation Mfg.  
 Part 219—Rr Misc. Organic Chemical Mfg.  
 Part 219—Tt Other Emission Units  
 Part 219—Appendices.

These VOC control rules have been incorporated into the Illinois SIP by reference at 40 CFR 52.720. As part of the December 26, 2002 redesignation request submittal, the IEPA has confirmed that the State has implemented all RACT rules contained in the SIP.

*Comment 15:* The January 30, 2003 proposed rule concedes that EPA's waiver of the NO<sub>x</sub> RACT requirements for the Illinois portion of the nonattainment area was vacated by the Court of Appeals for the Seventh Circuit. Therefore, the Illinois SIP is not approvable because it fails to meet the NO<sub>x</sub> RACT requirements of the Act.

*Response 15:* As proposed in the January 30, 2003 proposed rule at 68 FR 4847 and as finalized in this rulemaking, the EPA is exempting the Metro-East St. Louis area from the NO<sub>x</sub> RACT requirements under section 182(f) of the Act. This NO<sub>x</sub> RACT exemption

is based on the St. Louis area attaining the one-hour ozone NAAQS without the implementation of these NO<sub>x</sub> RACT emission controls. Section 182(f), and in particular section 182(f)(2)(B)(i), of the Act, provides for such an exemption since NO<sub>x</sub> RACT emission reductions in this area would be in excess of those emission reductions needed to attain the standard, as evidenced by EPA's determination of attainment finalized in a separate rulemaking for Missouri also published in today's **Federal Register**. The rationale for the exemption is not the same as that stated in the June 26, 2001 final rule vacated by the Court of Appeals for the Seventh Circuit. The vacated NO<sub>x</sub> RACT exemption was based on a modeled attainment demonstration indicating that additional NO<sub>x</sub> emission reductions in this area would not be needed to attain the one-hour ozone standard. The EPA is not relying on the exemption basis expressed in that earlier, vacated final rule, but rather on a new determination, based on monitored air quality. Attainment of the one-hour standard without the implementation of NO<sub>x</sub> RACT rules demonstrates that such rules are not needed to attain the one-hour ozone standard in the St. Louis area. Therefore, the Metro-East St. Louis area qualifies for a NO<sub>x</sub> RACT exemption under section 182(f)(2)(B)(i) of the Act.

*Comment 16:* As the EPA concedes in the January 30, 2003 proposed rule, the Illinois SIP does not include transportation conformity procedures as required by the Act. EPA has no authority to waive this mandatory requirement for SIPs. Therefore, Illinois' SIP is incomplete.

*Response 16:* Section 176(c) of the Act provides that state conformity provisions must be consistent with Federal transportation conformity regulations that the CAA requires EPA to promulgate. The Federal transportation conformity regulations were finalized on November 24, 1993, amended on August 7, 1995, and amended again on August 15, 1997 (40 CFR parts 51 and 93 Transportation Conformity Rule Amendment: Flexibility and Streamlining). On March 2, 1999, a court decision (*Environmental Defense Fund v. EPA*, 167 F.3d 641 (D.C. Cir. 1999)) rescinded several sections of the Federal transportation conformity rule, requiring EPA to revise those sections of the Federal rule. Illinois submitted transportation conformity rules on September 23, 1998. The SIP revision was submitted by Illinois in response to the August 1997 changes to the Federal regulations. EPA has not acted on the Illinois

transportation conformity rules submittal as it does not address later Federal transportation conformity regulation amendments. Once EPA has completed the revisions to the Federal rule to reflect the 1999 court decision, Illinois will need to revise the State's rule to address the changes.

EPA believes that it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating Illinois' ozone redesignation request under section 107(d) of the Act. The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to a nonattainment area after redesignation to attainment, since such an area would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. EPA has explained its rationale and has applied this interpretation in a number of redesignation actions. See redesignations for: Tampa, Florida (60 FR 52748, December 7, 1995); Jacksonville, Florida (60 FR 41, January 3, 1995); Miami, Florida (60 FR 10325, February 24, 1995); Grand Rapids, Michigan (61 FR 31835, June 21, 1996); and Cleveland-Akron-Lorain, Ohio (61 FR 20458, May 7, 1996). The U.S. Court of Appeals for the Sixth Circuit recently upheld this interpretation in *Wall v. EPA*, No. 00-4010, Slip Op. at 21-24 (6th Cir. September 11, 2001). The Court upheld EPA's view that failure to submit a revision that meets the part D transportation conformity requirements is not a basis to deny an ozone redesignation request. Therefore, the EPA can redesignate the Illinois portion of the St. Louis ozone nonattainment area to attainment of the one-hour ozone standard notwithstanding the lack of fully approved transportation conformity rules in Illinois' SIP.

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

*Comment 17:* The St. Louis area cannot meet this requirement since there is not an approved SIP meeting the

"serious" area requirements, and there is no applicable implementation plan.

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

As described in the response to comments for Criterion (2) above, the Illinois SIP meets the applicable CAA requirements. The applicable SIP requirements are described in the January 30, 2003 proposed rule (68 FR 4850-4856). EPA's approval of previous SIP submittals and this rulemaking, which grants Illinois an exemption from the NO<sub>x</sub> RACT requirements, render Illinois' SIP "fully approved" for all applicable SIP requirements. As stated in response to comments 7 and 8 above, since the serious area requirements are not yet due, the SIP is not deficient even though the serious area requirements have not been included.

In any event, this criterion is not dependent on which requirements are applicable or have been approved or implemented. The requirement is that air quality improvements be attributable to permanent and enforceable emissions reductions, which is a separable inquiry from the question of the requirements applicable to the area. Illinois' December 26, 2002 submission contains a detailed analysis of the air quality improvements in the St. Louis area and their relation to the emission reductions resulting from the permanent and enforceable emission control measures which are in place in the St. Louis area. (See response to comment 19 below for further discussion.) These measures and resulting emissions changes are listed in the January 30, 2003 proposed rule at 68 FR 4856-4858. These measures are all part of the applicable SIP. Thus, the commenter is incorrect in its assertion that there is no applicable SIP.

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

*Response 18:* The monitoring data for the St. Louis nonattainment area demonstrate that the estimated number of exceedances per year averaged over three years is 1.0 or less at all monitoring sites in the area. EPA

believes that any voluntary measures taken by industry and others over a two or three day period in this three year time period does not render the air quality monitoring data unrepresentative of the air quality. As explained in more detail in response to comment 19 below, ozone levels monitored during 2000–2002 are due to permanent and enforceable emission control measures which are in place (e.g. I/M programs, RACT on VOC stationary sources).

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

Note that in general, EPA encourages voluntary reductions to reduce emissions. EPA supports programs such as the Air Quality Index which encourages people to voluntarily reduce ozone forming activities such as filling gas tanks, painting, mowing, etc. at times when ozone formation is expected to be high. Although these measures are not enforceable nor measurable, they are encouraged. In addition, EPA does not believe that Congress intended, in enacting section 107(d)(3)(E)(iii) of the Act, that communities and states, acting to protect the health of their residents, should be ineligible for redesignation merely because they encourage voluntary ozone precursor emission reductions during periods when ozone concentrations may be high.

*Comment 19:* EPA cannot demonstrate that permanent and enforceable emission reductions are responsible for any alleged improvement of air quality. The only way to demonstrate this point is through photochemical grid modeling. No such modeling has been presented. Without modeling, EPA’s claim is pure speculation. Emission reductions attributable to the emission controls

“could just as easily lead to increases in ozone concentrations.” The attainment demonstration modeling shows that attainment was “impossible” in 2003.

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

EPA’s response to this and other comments on the attainment demonstration modeling is included in the response to comments 21 and 24 below. In addition, see Wall v. EPA (265 F.3d 426, 435) and our response to comment 23 for further discussion regarding the use of modeling in demonstrating maintenance of the NAAQS.

Neither section 107(d)(3)(E)(iii) of the Act nor the Calcagni Memo referenced by the commenter require modeling as a prerequisite to redesignation of an ozone nonattainment area. Thus, modeling is not a necessary prerequisite for demonstrating that the improvement in air quality is due to permanent and enforceable reductions. See the General Preamble for the Interpretation of Title I of the CAA Amendments of 1990, (57 FR 13496) (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992); “Procedures for Processing Requests to Redesignate Areas to Attainment,” John Calcagni, Director, Air Quality Management Division, September 4, 1992; “State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,” Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993 (Shapiro Memo); and “Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,” D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993. Our policies provide that an area may meet this requirement by showing how its ozone precursor emissions changed due to permanent and enforceable emissions reductions from when the area was not monitoring attainment of the 1-hour ozone NAAQS to when it reached attainment. See the rationale set forth in the Cincinnati redesignation (65 FR 37879, 37886–37889) (June 19, 2000) and the

Pittsburgh redesignation (66 FR 53094) (October 19, 2001). The Court of Appeals for the Sixth Circuit has recently upheld EPA’s interpretation in *Wall v. EPA* (265 F.3d 426, 435).

In the January 30, 2003 proposed rule at 68 FR 4856–4858, EPA explains the basis for concluding that the observed air quality improvements are due to the implementation of permanent and enforceable emission reductions. The reasons cited include: emission controls which have resulted in emission reductions; an analysis of meteorological conditions which has shown a downward trend in ozone design values while the annual number of days conducive to forming high ozone concentrations showed no significant trend between 1989 and 2002; and an assessment of emissions in 1990 and 2000 which has shown a substantial decrease in emissions of VOC and NO<sub>x</sub>.

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

During the 1990–2000 period, as the area-wide worst-case three year ozone design values (see our response to comment 20 for further discussion of the area’s ozone design values) in the St. Louis area were decreasing, the VOC and NO<sub>x</sub> emissions in the St. Louis area were also significantly decreasing in a downward trend. The following tables list VOC and NO<sub>x</sub> emissions in 1990 and 2000 for the Missouri and Illinois portions of the St. Louis ozone nonattainment area. Both sections of the nonattainment area have experienced a

downward trend in VOC and NO<sub>x</sub> emissions. The downward trend in emissions and ozone design values with no significant trends in days conducive to ozone formation implies that observed improvements in air quality are due to the implementation of permanent and enforceable emission control measures.

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

[Emissions in Tons Per Ozone Season Weekday]

Source category	VOC	NO <sub>x</sub>
1990:		
Point Sources .....	81.97	347.61
Area Sources .....	87.74	29.47
On-Road Mobile Sources .....	135.421	135.00
Off-Road Mobile Sources .....	64.30	114.32
1990 Totals .....	369.43	626.40
2000:		
Point Sources .....	46.59	165.96
Area Sources .....	57.38	32.27
On-Road Mobile Sources .....	103.79	181.75
Off-Road Mobile Sources .....	40.59	73.16
2000 Totals .....	248.35	453.14

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

[Emissions in tons per ozone season weekday]

Source category	VOC	NO <sub>x</sub>
1990:		
Point Sources .....	74.05	95.85
Area Sources .....	33.84	1.66
On-Road Mobile Sources .....	43.27	45.13
Off-Road Mobile Sources .....	23.49	23.99
1990 Totals .....	174.651	166.63
2000:		
Point Sources .....	17.91	61.91
Area Sources .....	28.32	1.18
On-Road Mobile Sources .....	26.57	54.71
Off-Road Mobile Sources .....	21.31	23.85
2000 Totals .....	94.11	141.64

Reductions in VOC and NO<sub>x</sub> emissions have brought many areas across the Country into attainment. EPA has approved many ozone redesignations showing decreases in ozone precursor emissions resulting in attainment of the ozone standard. See redesignations for Charleston (59 FR 30326, June 13, 1994; 59 FR 45985, September 6, 1994), Greenbrier County (60 FR 39857, August 4, 1995), Parkersburg (59 FR 29977, June 10, 1994); (59 FR 45978, September 6, 1994), Jacksonville/Duval County (60 FR 41, January 3, 1995), Miami/Southeast Florida (60 FR 10325, February 24, 1995), Tampa (60 FR 62748, December 7, 1995), Lexington (60 FR 47089, September 11, 1995), Owensboro (58 FR 47391, September 9, 1993), Indianapolis (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), South Bend-Elkhart (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), Evansville (62 FR 12137, March 14, 1997; 62 FR 64725,

December 9, 1997), Canton (61 FR 3319, January 31, 1996), Youngstown-Warren (61 FR 3319, January 31, 1996), Cleveland-Akron-Lorain (60 FR 31433, June 15, 1995; 61 FR 20458, May 7, 1996), Clinton County (60 FR 22337, May 5, 1995; 61 FR 11560, March 21, 1996), Columbus (61 FR 3591, February 1, 1996), Kewaunee County (61 FR 29508, June 11, 1996; 61 FR 43668, August 26, 1996), Walworth County (61 FR 28541, June 5, 1996; 61 FR 43668, August 26, 1996), Point Coupee Parish (61 FR 37833, July 22, 1996; 62 FR 648, January 6, 1997), and Monterey Bay (62 FR 2597, January 7, 1997). Most of the areas that have been redesignated to attainment of the one-hour ozone standard have continued to attain it. Areas that are not maintaining the one-hour ozone standard have maintenance plans to bring them back into attainment.

Between 1990 and 2000, area-wide VOC and NO<sub>x</sub> emissions in the St. Louis

area decreased by 37 percent and 25 percent, respectively (46 percent and 25 percent, respectively, in Metro-East St. Louis). These emissions reductions are due to the use of low volatility gasoline, more stringent Tier I motor vehicle emission standards, implementation of a more stringent vehicle inspection and maintenance (I/M) program, controls on area sources, adoption of tighter emissions limits on existing stationary sources, and requirements for the use of reformulated and low RVP gasoline in motor vehicles. Some of the specific emission control measures implemented in the Metro-East St. Louis area include:

- Basic and Enhanced I/M for Motor Vehicles
- Transportation Control Measures (TCMs)
- Low-Volatility (low Reid Vapor Pressure (RVP)) Gasoline
- Tightened Reasonably Available Control Technology (RACT) Standards for Some Source Categories

- RACT for Sources Covered By New Control Techniques Guidelines (CTGs)
- Architectural Surface Coating Standards
- Volatile Organic Liquids Storage Facility Controls
- Automobile Refinishing Operation Controls
- Marine Vessel Loading Emission Controls.

The commenter claims that the combination of NO<sub>x</sub> and VOC emissions reductions could just as easily have led to increases in ozone. However, the actual monitoring data collected in the area show that ambient ozone concentrations have dropped when this combination of ozone precursor emission reductions occurred. In other metropolitan areas, other levels of VOC and NO<sub>x</sub> reductions have also resulted in attainment. See the redesignation rules listed above in the first part of this response. The St Louis area's decrease in ozone levels is consistent with what other areas have experienced when ozone precursor emissions have been reduced. The commenter has not provided data showing that decreases in ozone precursor emissions have led to higher levels of ozone. In fact, the available data (as discussed in the January 30, 2003 proposed rule) for the St. Louis area prove just the opposite.

Decreases in VOC and NO<sub>x</sub> emissions in the St. Louis area are associated with a decrease in peak ozone levels. There is no reason to assume that future reductions in VOC and NO<sub>x</sub> emissions will cause just the opposite effect. Therefore, it is appropriate for the EPA to assume that future reductions in VOC and NO<sub>x</sub> emissions will lead to lower peak ozone concentrations.

EPA's conclusion that improvements in air quality are attributable to permanent and enforceable reductions in precursors is not "speculation" but is based on a careful review of the various technical analyses conducted by the States and described above. EPA believes it is reasonable not to require photochemical grid modeling. Three-year averaging of annual exceedance rates addresses variations in meteorological conditions. Analysis of meteorological conditions showed no significant trend in the number of days conducive to ozone formation, and the commenter has presented no evidence that the three year attainment period was unusually favorable. It is important to note that, redesignation is not intended as an absolute guarantee that the area will never monitor future standard violations. This is what maintenance plan contingency measures are designed to address and correct. See

Cincinnati redesignation (65 FR 37879, 37886–37889) (June 19, 2000) and the Pittsburgh redesignation (66 FR 53094) (October 19, 2001).

*Comment 20:* If improvements in St. Louis air quality were due to permanent and enforceable emission reductions, the trend in monitored concentrations would be to go down. However, exceedances tripled from 2000 to 2001 and more than doubled from 2001 to 2002.

*Response 20:* A violation of the 1-hour ozone NAAQS occurs when the estimated number of exceedances per year averaged over three years is greater than 1.0 at any monitoring site in the area or its downwind environs, using conventional rounding techniques. Although there was an increase in the number of exceedances between 2000 and 2001 as well as between 2001 and 2002, year-to-year trends in exceedances are not used to determine attainment, but rather an average over three years at each monitoring site is used. As noted in a separate rulemaking published in today's **Federal Register**, EPA has determined that the St. Louis area is in attainment with the NAAQS.

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

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

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

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

The area has monitored attainment for the three year period from 2000–2002. This indicates that the current level of emissions is adequate to keep the St. Louis area in attainment. In addition, the Act does not presume that the area will always be in attainment. The Act provides that, if the area were to violate the 1-hour ozone standard, then the contingency measures in the maintenance plan would be triggered. This would reduce the ozone precursor emissions and bring the area back into attainment.

One exceedance was monitored in the area in 2000, three in 2001, and seven in 2002. EPA notes that when dealing with numbers as small as one exceedance in 2000, any subsequent increase in the number of exceedances will result in the number of exceedances being at least doubled. Thus, citing a doubling or tripling of exceedances is not necessarily an indicator of significant changes in air quality.

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

The St. Louis area’s design value decreased as follows:

0.156 parts per million (ppm) in 1987–1989 (see 52 FR 13385–13386 dated March 18, 1999); 0.136 ppm in 1994–1996 (see 53 FR 15581 dated

March 19, 2001); 0.131 ppm in 1996–1998 (see 53 FR 15583 dated March 19, 2001); 0.127 ppm in 1998–2000 (see 53 FR 15584 dated March 19, 2001), and, 0.123 ppm in 2000–2002. This indicates that the monitored air quality improved over this time period.

In the January 30, 2003 proposed rule at 68 FR 4856–4858, and in the response to comment 19, EPA explains the basis for concluding that the observed air quality improvements are due to the implementation of permanent and enforceable emission reductions. The reasons cited include emission controls which have resulted in emission reductions, an analysis of meteorological conditions which has shown a trend in the reduction of ozone from 1989 to the present while the number of days conducive to forming ozone showed no significant trend, and an assessment of emissions in 1990 and 2000 which have shown substantial decreases in emissions of VOCs and NO<sub>x</sub>.

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

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

*Response 21:* Previous modeling referenced by the commenter was conducted as part of the attainment demonstration approved by EPA in the June 26, 2001 rulemaking (66 FR 33995). (This approval was vacated by the U.S. Court of Appeals for the Seventh Circuit, as explained previously.) This modeling demonstrated that utilizing planned controls and measures, the area will attain the standard by no later than November 15, 2004. EPA disagrees with the Commenter’s assertion that the

modeling demonstrated it was impossible to attain the standard in 2002. The purpose of the modeling was to determine the likelihood of attainment. EPA’s approval of the States’ attainment demonstrations did not include a determination that attainment or maintenance of the standard prior to 2004 was impossible.

The assumptions used in the modeling for the attainment demonstration approved in the June 26, 2001 rulemaking are described in an April 3, 2001 proposed rule (66 FR 17649–52). In this discussion, EPA noted that the States incorporated corrections to the 1996 base year emissions inventory, documented an assessment of the model’s performance by applying statistical tests, and discussed assumptions regarding which states are affected by the NO<sub>x</sub> SIP call including NO<sub>x</sub> limits on facilities.

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

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

The conclusions made regarding the likelihood of attainment based upon the attainment demonstration modeling were the best that could be drawn from the available information. It is likely that different conclusions regarding attainment would be drawn if the State’s were required to conduct modeling as part of the maintenance demonstration. For example, if a prospective maintenance demonstration were performed with an ozone photochemical model following EPA guidance, the modeling would be allowed to use episode days from the 2000–2002 period, not 1991 and 1995 as was used in the attainment demonstration modeling. It is highly likely, if not certain, that the outcome would be a conclusion that attainment will be

preserved through the required 10-year period.

Ozone models are designed to primarily predict the relative impacts of emission changes on future ozone levels. Thus, it is not uncommon to observe that actual monitored ozone concentrations are different than modeled values at certain locations. The commenter's assertion that attaining the standard in 2002 is impossible is not supported by the existing science.

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

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

*Comment 22:* Under section 175A(a) of the Act, the state maintenance plans must be a SIP revision. Section 110(a)(2)(A) of the Act requires a SIP to contain enforceable emission limitations. The maintenance plan for each State does not include any enforceable emission limitations.

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

The Act requires the area to have a fully approved SIP and to have met all of the applicable requirements of the Act. The Illinois SIP satisfies this requirement as described in EPA's proposed rulemaking published on

January 30, 2003 (68 FR 4847). The measures that the State relies on to maintain the one-hour ozone standard (the emission controls which have been previously implemented plus the statewide NO<sub>x</sub> emission control rules now being implemented) have been approved into the SIP and are State and Federally enforceable. This includes Illinois' statewide NO<sub>x</sub> rules, approved by the EPA on November 8, 2001 (66 FR 56449 and 66 FR 56454). The State must continue to implement these measures as provided for in the Federally approved SIP.

The Act does not require a separate level of enforcement for a maintenance plan as a prerequisite to redesignation. The enforcement program approved for and applicable to the SIP as a whole also applies to the maintenance plan. See discussion in the Cincinnati redesignation (65 FR 37879, 37881–37882), and Sixth Circuit decision in *Wall v. EPA*, supra, at 20–21, upholding EPA's interpretation of the requirement.

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

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

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

Section 175A requires States to develop and submit, as a SIP revision, a plan for maintaining the NAAQS for

at least 10 years after redesignation. The plan shall contain such additional measures, if any, as the Administrator deems necessary to ensure such maintenance. Section 175A does not require modeling.

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

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

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

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

Lastly, the January 30, 2003 proposed rule at 68 FR 4858 states that emissions of NO<sub>x</sub> in the Metro-East St. Louis area will be reduced from 141.64 to 96.67 tons per ozone season weekday from 2000 to 2014 and in Missouri, they will be reduced from 453.14 to 317.58 tons per ozone season weekday from 2000 to 2014. Emissions of VOCs in the Metro-East St. Louis area will be reduced from 94.11 to 75.98 tons per ozone season weekday from 2000 to 2014 and in Missouri, they will be reduced from 248.35 to 182.57 tons per ozone season weekday from 2000 to 2014. A "common sense" conclusion is that further emission reductions are projected to occur through 2014. Based on past trends of emissions decreases, peak ozone levels will continue to be reduced from 2000 to 2014. Further modeling would continue to demonstrate attainment. The commenter has not provided any data to indicate that these emission reductions would lead to modeled increases in ozone concentrations.

*Comment 24:* EPA and the States have stated in testimony provided to courts and the public that maintenance of the NAAQS in 2003 is not possible. EPA and the states have stated that, due to upwind emissions, attainment with the NAAQS cannot be achieved until 2004.

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

EPA disagrees with the commenter's assertion that the modeling demonstrated it was impossible to maintain the standard in 2003. The evaluation of the modeling is to determine the likelihood of attainment by a future attainment deadline (2004 in this case). EPA's approval of the States' attainment demonstrations did not

include a determination that attainment or maintenance of the standard prior to 2004 was impossible.

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

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

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

*Comment 25:* The SIPs must provide assurance that the States have adequate personnel, funding and authority to carry out the SIP. The record for this action must provide real evidence of this assurance. The commenter raises the following specific concerns with regard to Illinois:

a. The Illinois I/M funding expires on June 30, 2003. Illinois has no funding mechanism to replace this funding. Based on this observation, the EPA cannot lawfully find that Illinois has adequate funding to fully implement its SIP;

b. EPA cannot lawfully find that the Illinois motor vehicle emissions budgets are adequate because they presume full funding for the Illinois I/M program;

c. Illinois is failing to adequately administer and enforce the title V source operating permits program due mainly to a lack of funding. Illinois failed to issue all source permits within three years of receiving interim approval of its title V permits program by the EPA on March 7, 1995 (60 FR 12478). At

least 24 of the unpermitted sources are located in Madison and St. Clair Counties, Illinois. Illinois has announced that it will be very difficult to meet a commitment to issue all required source permits by the December 2003 deadline. Illinois is also violating the requirement to act on all source permit applications within 18 months of receipt, violating the requirements of 40 CFR 70.7(a)(2). This is due to a lack of adequate funding; and d. Illinois is failing to adequately enforce its title V program through regular source inspections.

The commenter expresses the general concern that Illinois lacks the funds to adequately enforce any of the Clean Air Act requirements and to implement its SIP, including NSR, PSD, and RACT rules. Therefore, the commenter believes that EPA should reject Illinois' statement in the maintenance plan that Illinois has the necessary resources to enforce any violations of its rules or source permit provisions.

*Response 25:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding the redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area, and as it relates to the general assertion that the Illinois maintenance plan lacks a showing of adequate resources.

With regard to the commenter's Illinois-specific comments, we have the following responses:

a. The Illinois I/M program, in the Metro-East St. Louis area, is currently funded through a combination of fuel taxes and Congestion Mitigation and Air Quality (CMAQ) funds. It is EPA's understanding that Illinois currently has sufficient funding from CMAQ previously appropriated and obligated and from fuel taxes to run this program through December 2003. Meanwhile, Illinois officials are seeking alternative funding sources to replace the expired CMAQ funding, including continuance of CMAQ funding through Congressional reauthorization. The EPA believes at this time that it is reasonable to assume that Illinois will continue to implement this program, for several reasons. First, Illinois is committed to continuing implementation of this program, which it has been operating since 1986. Second, if Illinois fails to maintain this program other than termination through approvable means (for example, by substituting an emissions control measure to achieve

equal or greater emissions reductions), the program remains an enforceable component of the approved SIP. Finally, it is noted that this program is contractor operated, with the contractor operating under a binding contract extending through 2005. This contract, which is on file at EPA as part of the documentation for this portion of the SIP, contains penalty clauses insuring that the State will continue funding the I/M program through the lifetime of the contract (in the event that the State prematurely terminates the contract, the State would still be obligated to reimburse the contractor through 2005 for the estimated value of the contract). Illinois has no financial incentive to discontinue the I/M program;

b. Since, for the reasons described above, EPA can assume that the Illinois I/M program will continue to operate in the Metro-East St. Louis area and since this program is an ozone maintenance measure assumed in Illinois' ozone maintenance demonstration, it is correct to conclude that Illinois' mobile source emissions budgets are acceptable and are not in jeopardy due to a pending termination of the I/M program; and

c-d. As evidenced in the December 23, 2003 maintenance plan, Illinois remains committed to implementing the SIP after redesignation of the area. The Illinois ozone SIP for the Metro-East St. Louis area has been fully approved, and there are no criteria requiring EPA to evaluate and assess title V programs prior to redesignation of the area to attainment. The SIP approval and redesignation criteria do not include evaluating permitting programs to ascertain whether any deficiencies exist in these programs. The maintenance plan is designed to assure that attainment of the one-hour ozone standard is preserved. Whatever deficiencies are confirmed to exist in the source permitting program may be addressed and corrected in other contexts, including a finding of failure to implement under section 173(b) of the Act. Therefore, this comment is not a basis for disapproving Illinois' ozone maintenance plan and the EPA disagrees with the commenter on this issue.

In addition, it should be noted that section 107(d)(3) and section 175A ozone redesignation and ozone maintenance plan requirements require compliance with section 110 and part D requirements under title I of the Act. Title I of the Act itself does not require compliance with title V of the Act for purposes of considering redesignations to attainment of the NAAQS. Therefore, even if the commenter were correct in its assertion that Illinois is not properly

implementing its title V permit program, this would not be a basis for disapproval of the redesignation request and concerns with title V compliance and implementation are moot.

The ozone SIP for the Metro-East St. Louis area has been fully approved, and there are no criteria requiring EPA to evaluate and assess title V programs prior to redesignation of the area to attainment. The SIP approval and redesignation criteria do not include evaluating permitting programs to ascertain whether any deficiencies exist in these programs. The maintenance plan is designed to assure that attainment of the one-hour ozone standard is preserved. Whatever deficiencies are confirmed to exist in the source permitting program may be addressed and corrected in other contexts, including a finding of failure to implement under section 173(b) of the Act.

EPA disagrees with the commenter that this action must include in the record further evidence of Illinois resource commitments. Neither this commenter nor any other person has submitted substantive comments that would lead EPA to separately analyze whether it should call on the State to revise its section 110(a)(2) SIP regarding enforcement and funding.

*Comment 26:* EPA policy indicates that a state may not relax existing controls upon redesignation. However, the States are moving requirements for Lowest Achievable Emissions Rates (LAER), new source emission offsets, and NO<sub>x</sub> RACT to the contingency plans without a modeling demonstration showing that these control measures are not needed for attainment, contrary to EPA policy.

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

Illinois has a commitment on page 26 of the maintenance plan to maintain all of the emission control measures implemented in the Metro-East St. Louis area to ensure maintenance of the one-hour ozone NAAQS.

The commenter refers to the Calcagni Memo at page 10 which states that "the State will be expected to maintain its implemented control strategy despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance or are replaced with

measures that achieve equivalent reductions".

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

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

Following redesignation, any new facilities subject to the State's permitting requirements will be subject to the PSD requirements of part C of title I of the Act. Under these requirements, the State must ensure that such new facilities will not cause significant deterioration of air quality to the extent that they cause or contribute to peak ozone levels in excess of the NAAQS (see section 165 of the Act). As part of the PSD program, sources are required to perform a source-specific air quality demonstration to show no adverse impact on the NAAQS. This is a more accurate way of predicting impacts than

to do generalized modeling which does not consider emissions growth at specific sources.

Illinois' new source rules are structured such that new source requirements, for new sources seeking permits after the area is redesignated to attainment, automatically revert to PSD requirements after an area is redesignated to attainment. This rule is part of Illinois' approved SIP.

For Illinois, it is noted that the State has not relied on NO<sub>x</sub> RACT to attain the ozone standard and the Illinois SIP does not contain NO<sub>x</sub> RACT rules. Therefore, moving NO<sub>x</sub> RACT to the contingency plan is not a relaxation of the Illinois SIP.

Regarding modeling, the Shapiro Memo at page 6 states that "States may be able to move SIP measures to the contingency plan upon redesignation if the State can adequately demonstrate that such action will not interfere with maintenance of the standard \* \* \* for ozone, the State would need to submit an attainment modeling demonstration consistent with EPA's current "Guideline on Air Quality Models." showing that the control measure is not needed to maintain the standard". As stated above, all emission control measures in place as a result of the LAER and Offsets rules are being retained by sources already implementing them following redesignation. For the Illinois portion of the St. Louis area, as noted above, NO<sub>x</sub> RACT is not part of Illinois' existing SIP. Thus, no modeling is needed to demonstrate that these measures are not needed since all are being retained or are not parts of existing SIPs.

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

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

The requirements of section 175A(d) are the applicable requirements for contingency measures in maintenance plans. Section 175A(d) states:

Each plan revision submitted under this section shall contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the

standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area.

None of the serious area requirements were contained in the SIPs prior to redesignation. The plans must contain contingency measures which assure that the States "will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area". As described in response to comment 28 below and in the January 30, 2003 proposed rule, EPA believes that this requirement has been met. The statute does not require that all serious area requirements be included in the maintenance plans as contingency measures, but rather that all measures included in the SIP prior to redesignation be included in the maintenance plans as contingency measures. As explained previously, certain serious area requirements need not be met in the case of the St. Louis area since the area has attained the standard prior to the date that these requirements are due. Since these provisions are not applicable in the St. Louis area, they do not need to be included in the maintenance plans as contingency measures.

The commenter's assertion that there is no implementation plan applicable to this "serious area" is addressed above. See, for example, our response to comment 17.

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

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

EPA disagrees that Illinois' maintenance plan lacks adequate contingency provisions should the area violate the standard. As stated in the January 30, 2003 proposed rule at 68 FR 4859, the contingency plan portion of each State's maintenance plan delineates the State's planned actions in the event of future one-hour ozone standard violations, increasing ozone levels threatening a subsequent violation of the ozone standard, and unanticipated increases in ozone precursor emissions threatening a subsequent violation of the ozone standard. Illinois has developed a contingency plan with several levels of triggered actions depending on whether the ozone standard has actually been violated after the redesignation of the area to attainment or whether a subsequent violation of the ozone standard is threatened on the basis of increased ozone concentrations approaching the standard or unanticipated significant increases in ozone precursor emissions. Illinois has also committed to continue to implement all control measures included in the SIP prior to redesignation consistent with section 175A(d) of the Act.

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

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

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

listed below, to address the cause of the ozone standard violation.

The contingency plan for Illinois lists a number of possible contingency measures. The plan calls for the appropriate contingency measures to be adopted no later than 18 months of a Level I or Level II trigger being exceeded. The December 23, 2002 maintenance plan for the Metro-East St. Louis area stated that the adopted contingency measures would be implemented as expeditiously as practicable, but generally within 24 months of adoption. However, in a letter dated April 15, 2003 from the IEPA, the State noted that the final maintenance plan was erroneously modified based on a prior comment letter from the EPA addressing the State's October 1, 2002 draft maintenance plan. The State has corrected its contingency implementation deadline commitment to reflect the contingency implementation deadline language contained in the October 1, 2002 draft maintenance plan, which commits the State to implement adopted contingency measures within 18 months of a determination of a violation of the one-hour ozone standard based on quality-assured data. The October 1, 2002 draft maintenance plan was the version of the maintenance plan reviewed by the public in the State's public hearing and during its public review period. The State notes that, in amending its October 1, 2002 draft maintenance plan to the final December 23, 2002 version, the State did not intend to extend the implementation deadline for contingency measures, but to merely address EPA's comment on the October 1, 2002 draft version. With the April 15, 2003 letter, the State of Illinois officially clarifies its commitment to implement contingency measures within 18 months of a determination that a one-hour ozone standard violation has occurred. The April 15, 2003 letter includes a revised contingency measures section, section 6.1, to replace the same section of the December 23, 2002 version of the State's maintenance plan, consistent with its clarification.

The list of possible contingency measures in Illinois' contingency plan include the following:

#### Point Source Measures

- NO<sub>x</sub> SIP call Phase II (non-utility measures)
- Reinstatement of requirements for new source offsets and/or Lowest Achievable Emission Rates
- Apply RACT to smaller existing sources

- Tighten RACT for existing sources covered by Control Techniques Guidelines
- NO<sub>x</sub> RACT
- Expand geographic coverage of current point source emission control measures
- Apply Maximum Available Control Technology for industrial sources
- Other point source measures to be identified Mobile Source Measures—
- Transportation Control Measures, including, but not limited to, area-wide rideshare programs, telecommuting, transit improvements, and traffic flow improvements
- High-enhanced vehicle inspection/maintenance (OBDII)
- California engine standards
- Other mobile source measures to be identified

#### Area Source Measures

- California architectural/industrial maintenance coating emission controls
- California commercial and consumer products coating emission controls
- Broader geographic applicability of existing emission control measures
- California off-road engine standards
- Other area source measures to be identified

As stated in the Calcagni Memo, page 12, "For purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered." Thus, according to this policy, the plans need not contain adopted measures.

In order to properly deal with future ozone standard violations and to comply with its own internal rulemaking procedure requirements, Illinois requires time to evaluate potential controls and provide public notice and public participation in the rulemaking process when adopting contingency measures. The commenter provided no rationale for why a time period shorter than 18 months to adopt and implement contingency measures is warranted. EPA finds that 18 months, as described in Illinois' maintenance plan, as amended by the IEPA's April 15, 2003 letter, to adopt and implement contingency measures is a reasonable time period for Illinois to meet its regulatory obligations while meeting the requirement under section 175A to promptly correct any violation of the one-ozone standard after the

redesignation of the St. Louis area to attainment. In addition, this 18 month period to adopt and implement contingency measures is consistent with other redesignations, such as that approved for Pittsburgh, Pennsylvania (66 FR 53102), in which a 12 to 24 month time period was specified to adopt and implement contingency measures.

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

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

As indicated above, the maintenance plans refer to a violation of the NAAQS as a level II trigger. In the event of a violation, Illinois and Missouri have committed to work together to conduct a thorough analysis to determine appropriate measures to address the cause of the ozone standard violation. It is impossible for a State to determine, before a violation, what emission reductions are necessary to correct a violation. For example, if Illinois would select tightening RACT for existing sources as a contingency measure, the amount of emissions reductions resulting from implementation of this measure is dependent upon the number of sources subject to RACT rules in the area at the time of the violation. Since the State has no control over when a source ceases operating, it is impossible to determine, at this time, how many sources will be affected by a tightening of RACT which may be implemented at some unspecified time in the future. Thus, it is impossible to determine beforehand how much of an emission reduction will be achieved by implementing this measure.

The approach taken in the Illinois maintenance plan is to conduct a thorough analysis to determine the magnitude of the emissions reductions needed to correct an ozone standard violation, the types of sources for which emission reductions must be made, and the mechanisms for achieving the emissions reductions. The list of contingency measures includes a reasonable mix of emission control measures from which to select the emission control measures most suited to address a future ozone standard violation (a level II trigger), if one

occurs, or to alleviate an unanticipated worsening of air quality or emissions (a level I trigger). EPA finds that this is a reasonable approach which will assure prompt correction of the air quality problem. In addition, this approach is consistent with EPA guidance contained in the Calcagni Memo.

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

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

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

In addition, in response to comment 28 above, EPA identified the list of potential contingency measures contained in Illinois' maintenance plan along with a schedule of 18 months to adopt and implement selected contingency measures in the event of a violation (a level II trigger) or worsening air quality (a level I trigger). EPA has concluded that the maintenance plan satisfies EPA guidance regarding adoption and implementation of contingency measures consistent with EPA guidance and the Act.

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

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

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

It is true that Illinois has not specified implementation deadlines for implementing new emissions controls in the event of exceedance of a Level I trigger. Illinois has only committed to conduct studies to determine if new emission controls are needed to avert possible future ozone standard violations. These studies could conclude that no additional emission controls are needed to avoid a future ozone standard violation. For example, such a study during 2004 could conclude that statewide NO<sub>x</sub> emission controls to be implemented to meet the State's NO<sub>x</sub> control SIP will be adequate to prevent a future ozone standard violation. In this case, Illinois may conclude that no additional emission controls are necessary. Given that the study could reach such a conclusion, Illinois is not committing to implement additional emission controls at this time.

In addition, note that section 175A(d) of the Act only requires a state to implement additional emission controls in the event of a standard violation after an area is redesignated to attainment. Under this section of the Act, States are not obligated to implement additional emission controls if an area is "threatened" with a future ozone standard violation. Similarly, EPA does not require such action on the part of the States. EPA does encourage the States to take preventative measures to prevent future ozone standard violations if at all possible, but does not definitively require the States to

implement additional emission controls unless a violation of the standard has actually occurred. The commitments of Illinois to respond to Level I triggers go beyond the minimum requirements of section 175A(d) and the EPA.

The contingency plan meets the requirements of section 175A(d) of the Act and applicable guidance in the Calcagni Memo. The Administrator has exercised discretion regarding adoption and implementation of contingency measures consistent with EPA guidance and the Act.

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

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

The commenter is incorrect in its statement that the maintenance plan does not contain a commitment to implement emission control measures in the SIP. Such a commitment was included in Illinois' maintenance plan. Section 6.1 of Illinois' maintenance plan states the following: "Consistent with this plan, Illinois agrees to adopt and implement the necessary corrective actions in the event that violations of the one-hour ozone NAAQS occur anywhere within the St. Louis maintenance area after redesignation to attainment." In addition, as described in response to comment 28, Illinois is retaining and is continuing to implement all of the emission control measures contained in its SIP prior to redesignation.

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

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

pertains to the Missouri portion of the St. Louis area.

The commenter's characterization of the "basic premise" of the maintenance plans is incorrect. The plans do not simplistically assume that there will be no increase in emissions. The plans carefully project the growth in emissions that will occur in various source sectors (source categories or types), and the emission reductions which will occur based on emission control programs which are in place, in order to determine the net change in emissions from 2000 through 2014. The States are required to and have applied the appropriate techniques to estimate and account for potential emissions changes in the area. These techniques are necessarily based on source sector-specific growth indicators (positive and negative), *i.e.*, sector-specific economic factors, because the States have no way of predicting specific changes which will take place on a source-by-source basis in the emissions inventory.

Specific new source projects, such as those cited by the commenter, are addressed through mechanisms other than maintenance plans. To implement new source projects, Illinois implements PSD and NSR permitting regulations depending on the attainment status and classification of an area. These regulations address the air quality impacts of new sources and expansion of existing sources both inside and outside the boundaries of nonattainment areas. 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.

EPA believes that it is the function of the State's air permitting rules, rather than the maintenance plan, to ensure that specific potential new sources do not create emissions which would interfere with the maintenance of the ozone standard. The new source rules in Illinois' address potential new sources both inside and outside of the St. Louis area.

The anticipated plant referenced by the commenter is a potential source in Missouri. See the response to comment 33 in a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for a discussion regarding this facility.

*Comment 34:* The emission estimates in the maintenance plans are unreliable. A recent study of flares throws doubt into the St. Louis emission inventory. Flares area used extensively in the Metro-East St. Louis area, including at the Conoco Wood River Refinery, two barge loading facilities, Granite City

Steel, and three bulk gasoline storage facilities. EPA must consider the significant underestimation of flare emissions in the emission inventory.

*Response 34:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

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

The Bay Area Air Quality Management District (AQMD) study referenced by the commenter is a "Draft" document, which has the stipulation "Do Not Cite or Quote." In addition, the study was specific to refinery flares and not all flare systems in general. The submitted comment inappropriately extends the applicability of this draft study document to flares at barge loading facilities, steel making operations, and bulk gasoline storage facilities.

EPA staff reviewed the flare operations at the Conoco Phillips Wood River Refinery, which is the only facility in the Metro-East St. Louis area that the AQMD study findings would possibly apply to, and found a well-designed emissions recovery and control system. The flares at the Wood River refinery function primarily as safety devices and are provided to avoid discharge of raw hydrocarbons to the atmosphere both during upsets and during planned intermittent maintenance activities. Process units' hydrocarbon emissions to flares are kept to a minimum to prevent product loss. Whenever possible, vent gasses are recovered, compressed, and used for firing heaters and boilers rather than being sent to flares. Seal vessels and pressure control systems allow nearly all vent gasses to be recovered by managing the pressure levels during normal operations and upsets.

The Conoco Phillips Wood River Refinery has four refinery flares that the findings of the AQMD study would apply to—the distilling flare, the alkylation flare, the aromatics low-pressure flare, and the aromatics high-pressure flare. The AQMD technical

assessment document presented that the primary concern for the 28 flares studied was that refinery flares were being used more often and more routinely than historic emissions data indicated. For the Conoco Phillips Wood River Refinery, this finding is not valid. The Conoco Phillips refinery flares are used only as safety devices and as minimally as possible because loss of product occurs when these devices must be used. When it became necessary to use these safety devices, all upset emissions were reported in the annual emissions reports. Such reports for 2000 were used in the development of the emission inventories developed by the IEPA for the redesignation request and the maintenance plan. Therefore, the Illinois redesignation request and maintenance plan accurately includes these emissions.

Another issue identified in the AQMD refinery flare study was in regards to emissions control efficiency (CE) since its impact has a significant effect on reported emissions. All field studies regarding flare CE, which were referenced in the AQMD technical analysis document, indicate that CEs of greater than 98 percent could be expected for flares. The emissions for the Conoco Phillips flares, as included in Illinois' emissions inventories, uses EPA's recommended CE of 98 percent for all flares except in the lube area, which has a 99 percent CE. Therefore, any impact of inventory emissions from overestimation of CE is considered to be insignificant for the Conoco Phillips Wood River Refinery.

In regards to the impacts of crosswinds, the AQMD technical analysis document references one laboratory scale Canadian study that indicates that CEs may be impacted by crosswinds. The Canadian researchers, however, indicate that applying their laboratory findings after scaling up to the actual sizes of flares that refineries normally use could prove difficult. A referenced study in the AQMD technical analysis document shows that crosswinds with a speed of 18 miles per hour (8 meters per second) are needed before any impact is seen on CEs for flares. In the years of 1999 and 2000, no hourly wind speeds greater than 11 miles per hour was recorded at the Edwardsville monitor, which is located less than 10 miles from Wood River, during high ozone days in the St. Louis area. Therefore, crosswinds are not considered to be an issue that might impact emission estimates for the Metro-East St. Louis area refinery flares.

Further review of the document has shown that methane was included in the emission factor that was used to

derive emissions for this study. Methane is not an ozone precursor, and the inclusion of this pollutant could significantly alter the preliminary findings. The study targets the control efficiencies of the flares and states that "efficiency drops approximately by the cube of the speed (wind)". This would suggest that on high wind event days that the control efficiencies would be at their lowest. However, in the St. Louis area, high ozone days have been characterized by low wind conditions, which would produce minimal impact on flare control efficiencies during the periods of concern.

Lastly, NO<sub>x</sub> and VOC emissions from all flares constitute less than one-tenth of one percent of the total emissions inventory for the St. Louis ozone nonattainment area. Therefore, any potential changes in calculation methodology from this source category, even if changes were warranted based on this draft study, would still likely produce an insignificant change to the St. Louis area total VOC and NO<sub>x</sub> emissions.

*Comment 35:* The Illinois request for approval of its maintenance plan and revised motor vehicle emissions budgets was submitted under the signature of David Kolaz, Chief, Bureau of Air, Illinois Environmental Protection Agency (IEPA). This submission included the commitment to adopt contingency measures in the event of ozone standard exceedances and/or violations. The IEPA is without authority to make this commitment on behalf of the State of Illinois. During the Illinois public hearing (November 7, 2002), the IEPA stated that it did not have the authority to impose emission control requirements. The IEPA explained that such authority rests with the Illinois Pollution Control Board, a separate and independent State agency. The EPA cannot lawfully approve the maintenance plan submitted by the IEPA if the State is not legally bound to implement the commitments in the plan, including contingency measures.

*Response 35:* Under the Illinois Environmental Protection Act, the IEPA has authority to develop and submit for EPA approval air quality control plans. Section 4(j) of the Illinois Environmental Protection Act states: "The Agency shall have the duty to represent the State of Illinois in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts or other governmental arrangements relating to environmental protection." In addition, section 4(l) of the Illinois Environmental Protection Act states that "The Agency is hereby designated as \* \* \* air pollution

agency for the state for all purposes of the Clean Air Act \* \* \*". These provisions give the IEPA the authority to develop and submit air quality plans to the EPA. Therefore, EPA disagrees with the commenter that the IEPA lacks the authority to submit an ozone maintenance plan that commits the State to certain actions if triggered under the contingency plan.

With regard to adoption of specific emission control measures or rules, the IEPA has the authority and responsibility of developing source emission control regulations, which are subsequently adopted by the Illinois Pollution Control Board. Establishment of a separate rulemaking body is consistent with the process established by many states.

The Calcagni Memo suggests that a procedure for adoption of contingency measures should be in place. However, there is no suggestion that a state must alter or suspend its rulemaking process in order to commit to implementation of contingency measures. If the State is unable to adopt a particular contingency measure as a result of its rulemaking process, it will be required to adopt and implement another equally effective measure (or group of measures) within the same 18-month time frame. The IEPA will continue to be responsible for ensuring that its commitment is met, and the commitment remains enforceable.

*Comment 36:* EPA cannot conclude that keeping emissions no higher than the projected inventory amounts will ensure maintenance of the ozone NAAQS.

*Response 36:* As stated in response to comment 23 above, keeping emissions no higher than those that occurred in the attainment period (2000 through 2002) will ensure maintenance of the NAAQS. The Court of Appeals for the Sixth Circuit in *Wall v. EPA* (265 F.3d 426, 435) determined that "EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place."

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

*Response 37:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the

Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

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

Illinois' maintenance plan includes a technical analysis, as described in the response to comment 28 above, that demonstrates maintenance of the NAAQS based on a comparison of base year (attainment year) and projected VOC and NO<sub>x</sub> emissions. This analysis meets the maintenance requirements of the Act and of EPA guidelines.

*Comment 38:* EPA announced substantial changes in its PSD program on December 21, 2002. Illinois is required to administer these changes in attainment areas effective March 3, 2003, and three years later for nonattainment areas. 67 FR 80185. Therefore, the new NSR rules will not go into effect in the Metro-East St. Louis area for three years unless EPA redesignates the area to attainment. On February 27, 2003, Illinois announced that it is filing a lawsuit challenging the NSR changes due, in part, to the fact that the State lacks the resources to administer the new NSR rules. On the basis of this admission, EPA cannot lawfully make the finding that Illinois has adequate resources to administer the new NSR program that will only be necessary if EPA redesignates the area to attainment.

*Response 38:* The Federal revisions to the PSD regulations promulgated on December 31, 2002 became effective on March 3, 2003. States like Illinois, to which EPA had delegated the authority to administer the PSD program, are required to implement the revisions as of their effective date. The commenter does not provide any specific information that the IEPA lacks the resources to administer the revised program in the Metro-East St. Louis area upon redesignation. In addition, the IEPA has not formally notified EPA that it does not have sufficient resources to

administer the PSD program under the revised regulations.

Even if the State is unable to administer the PSD program in the Metro-East St. Louis area, the only consequences would be that EPA would, under this hypothetical situation, withdraw the delegation of the PSD program and administer the program itself. In addition, sources would still be required to obtain a source permits (and demonstrate that they will not adversely impact air quality) prior to construction, regardless of which agency (the IEPA or EPA) is responsible for permit issuance. Therefore, the perceived defect would not result in an inability to maintain the one-hour ozone standard in the area.

*Comment 39:* The maintenance plan must include RACM and RACT, for the reasons stated in comment 13 above.

*Response 39:* EPA incorporates its response to comment 13 in response to this comment.

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

*Comment 40:* Neither State has met all the requirements applicable to the area. The serious area requirements of section 182(c) are applicable, but none of these requirements have been met. Some of the requirements are applicable and enforceable now, such as the 50 ton per year threshold for permitting and enforcement and paragraphs 7, 8, and 10 of section 182(c).

*Response 40:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

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

to be submitted by January 30, 2004, after the submittal of Illinois' complete redesignation request and maintenance plan.

The commenter errs in the conclusion that the 50 ton per year emissions threshold for permitting and enforcement is not in effect in Illinois. As of January 30, 2003, the St. Louis area was classified as a serious nonattainment area (68 FR 4836). At that time, the 50 ton per year emissions threshold for permitting and enforcement immediately became effective in Illinois. However, by redesignating the Metro-East area to attainment in this rulemaking, the 50 ton per year emissions threshold for permitting and enforcement is no longer applicable.

Section 182(c) paragraphs 7 and 8 refer to special rules for modifications of major sources while paragraph 10 refers to a 1.2 to 1 offset requirements for serious nonattainment areas. As stated in response to comment 7, EPA established a future date for submission of the serious area requirements, including section 182(c)(7), (8), and (10), and the requirements are not now applicable for purposes of this redesignation.

*G. Comments Related to Implementation of Contingency Measures*

*Comment 41:* A commenter requested that in the final rule, EPA expressly state that, in the event of a future violation of the NAAQS, Illinois and Missouri will not necessarily be required to evaluate any particular contingency measure nor be required to submit further attainment demonstrations.

*Response 41:* As stated above, the contingency plans delineate the States' planned actions in the event of future one-hour ozone standard violations (Level II trigger in the Illinois and Missouri ozone maintenance plans), multiple ozone standard exceedances at any monitor in a single or two year period (not a violation based on three years of data) (Level I trigger in the Illinois and Missouri ozone maintenance plans), or unanticipated emissions increases threatening a subsequent violation of the one-hour ozone standard (Level I trigger in the Illinois and Missouri ozone maintenance plans). In the event of an exceedance of a Level I trigger, Illinois will work with Missouri to evaluate the situation and to determine if adverse emissions or air quality trends are likely to continue and to threatened maintenance of the one-hour standard. If so, Illinois will determine to what

extent, what type, and where (local or regional) emission controls may be required to avoid a violation of the one-hour ozone standard. A study will be completed within nine months of the determination of the action trigger exceedance. If needed to avoid future ozone standard violations, emission control measures and regulations will be adopted within 18 months of the completion of the study and implemented as expeditiously as practicable.

In the event of a Level II trigger (a determination of a violation of the one-hour ozone standard in the St. Louis area), the States will complete an analysis of the air quality issue within six months of the ozone standard violation determination, and Illinois will adopt and implement necessary emission control measures and rules within 18 months of the ozone standard violation determination.

EPA expects that, through this process, the States will identify the appropriate emission control measures to implement in the near term to maintain the ozone NAAQS. The States are not obligated to select any particular emission control measure for study and/or implementation. The States must, however, select those emission control measures that their analyses show are adequate for maintenance of the NAAQS and which can be implemented within the time constraints contained within the maintenance plans.

With regard to the need for new ozone attainment demonstrations, as indicated in the January 30, 2003 proposed rule (68 FR 4847), a final determination of attainment leads to the conclusion by the EPA that Illinois is not obligated to produce new ozone attainment demonstrations for the St. Louis area for purposes of attaining the one-hour ozone standard. The available quality-assured ozone data for the most recent three years demonstrate that the St. Louis area has attained the one-hour ozone standard. This conclusion leads to the conclusion that additional emission reduction in the Metro-East St. Louis area may only be needed for the purposes of maintaining the ozone standard in the St. Louis area and for reducing ozone and ozone precursor transport into downwind areas. Therefore, additional ozone modeling to support a new ozone attainment demonstration is not needed at this time.

Following the redesignation of the St. Louis area to attainment of the one-hour ozone standard (the subject of this final rule and that for the Missouri portion of the St. Louis area also published today), a violation of the one-hour ozone

standard will not necessarily trigger the need for Illinois to conduct additional photochemical dispersion modeling for the St. Louis area. In this situation, the maintenance plan requirements place no specific ozone modeling requirements on the State. Illinois is free to choose the types of analyses it deems necessary to determine the levels and types of additional emission controls needed to rectify the ozone attainment problem. Redesignated areas are not subject to an obligation to meet additional nonattainment area requirements, such as attainment demonstrations, since they are no longer as nonattainment areas. Instead, they must implement contingency measures, which is what Congress provided in the Act.

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

*Comment 42:* One commenter requested that in the event the EPA is unable to finalize Missouri's I/M program, as proposed in a separate rulemaking on January 30, 2003, EPA should proceed with the redesignation for the Illinois portion of the St. Louis area.

*Response 42:* In a separate rule published in today's **Federal Register**, EPA is approving Missouri's revised I/M rule. In addition, as explained above, EPA is finalizing its actions on the Missouri and Illinois redesignation requests in separate rulemakings.

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

*Comment 43:* EPA must ensure that the CAA requirements of section 110(a)(2)(D) pertaining to interstate transport impacts are actively and adequately met through the States' SIP's and through Federal control programs such as the NO<sub>x</sub> SIP call.

*Response 43:* This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

As stated above, EPA believes that state obligations under the NO<sub>x</sub> SIP call are not applicable requirements for purposes of evaluating a redesignation request. The NO<sub>x</sub> SIP call requirements are not linked with a particular area's ozone designation and classification. EPA believes that the requirements linked with a particular nonattainment area's classification are the requirements

that are the relevant measures to evaluate in reviewing a redesignation request. The NO<sub>x</sub> SIP call submittal requirements continue to apply to a State regardless of the designation of any one particular area in the State.

Thus, we do not believe that the NO<sub>x</sub> SIP call submission should be construed to be an applicable requirement for purposes of redesignation. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176) (October 10, 1996), (62 FR 24826) (May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458) (May 7, 1996); and Tampa, Florida final rulemaking at (60 FR 62748, 62741) (December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR 37890) (June 19, 2000).

Illinois has adopted and EPA has approved statewide NO<sub>x</sub> rules into the SIP on November 8, 2001 (66 FR 56449 and 66 FR 56454). These rules will remain in effect and will remain Federally enforceable following the redesignation of the Metro-East St. Louis area to attainment of the one-hour ozone standard.

*Comment 44:* A commenter notes that the expected NO<sub>x</sub> emission control programs and emission reductions for the St. Louis area should not be jeopardized due to the absence of continued Federal enforceability of the SIPs.

*Response 44:* The SIPs will remain Federally enforceable following redesignation of the St. Louis area to attainment. In addition, NO<sub>x</sub> emission control measures (with the exception of NSR, which will be replaced by PSD) which are currently in place will remain as SIP requirements following redesignation to attainment. Illinois will continue to implement and enforce its statewide NO<sub>x</sub> emission control regulations adopted to comply with the NO<sub>x</sub> SIP call. This rulemaking, however, finalizes a NO<sub>x</sub> RACT waiver for the Metro-East St. Louis area. NO<sub>x</sub> RACT has never been part of the Illinois SIP. This redesignation does not jeopardize any NO<sub>x</sub> emission control regulations expected and part of the SIP for the Metro-East St. Louis area or for the State of Illinois.

*Comment 45:* The redesignation of the St. Louis area to attainment should not

weaken the impetus to rapidly address NO<sub>x</sub> transport to downwind areas. These efforts are critical to addressing the 8-hour and 1-hour ozone NAAQS in the St. Louis and downwind areas. Any revisions to SIP requirements would have to meet the applicable provisions of the Act and be approved by the EPA.

*Response 45:* As noted above, the redesignation of the St. Louis area to attainment of the one-hour ozone standard will have no effect on the implementation of the statewide NO<sub>x</sub> control rules in Illinois. In addition, regardless of the attainment status of the St. Louis area for the one-hour ozone standard, EPA will proceed with making its decision as to whether the eastern portion of Missouri must meet specific NO<sub>x</sub> SIP call requirements. EPA will closely review any proposed changes in the NO<sub>x</sub> emission control programs which are currently in place in the Metro-East St. Louis area and in Illinois to ensure that the proposed changes will not adversely affect the attainment of the NAAQS in the St. Louis area and in downwind ozone nonattainment areas.

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

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

*40 CFR Part 81*

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

ILLINOIS—OZONE (1-HOUR STANDARD)

Dated: April 30, 2003.

**Thomas V. Skinner,**  
*Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, 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:* U.S.C. 7401 *et seq.*

**Subpart O—Illinois**

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

**§ 52.726 Control strategy: Ozone.**

\* \* \* \* \*

(ee) Approval of the Maintenance Plan for the Illinois Portion of the St. Louis Area—On December 30, 2002 Illinois submitted Maintenance Plan for the Illinois portion of the St. Louis Nonattainment Area. The plan includes 2014 On-Road Motor Vehicle Emission Budget of 10.13 tons per ozone season weekday of VOCs and 18.72 tons per ozone season weekday NO<sub>x</sub> to be used in transportation conformity.

**PART 81—[AMENDED]**

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

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

■ 2. In § 81.314 the table entitled "Illinois—Ozone (1-Hour Standard)" is amended by revising the entry for St. Louis Area to read as follows:

**§ 81.314 Illinois.**

\* \* \* \* \*

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * *	* * *	* * *	* * *	* * *
St. Louis Area:				
Madison County .....	May 12, 2003 .....	Attainment		
Monroe County .....	May 12, 2003 .....	Attainment		
St. Clair County .....	May 12, 2003 .....	Attainment		
* * *	* * *	* * *	* * *	* * *

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

\* \* \* \* \*