

in the area (section 1); clarify existing definitions and include new definitions (section 2); clarify fleet vehicle testing requirements and requirements for Federal facilities, set fee payment methods, station and clean screening testing procedures, emission test standards and waiver requirements (section 3); clarify the vehicle test report requirement for vehicles that fail the OBD test, the clean screening test report requirements and the fleet vehicle reporting requirements (section 4); clarify the test methods for the OBD and the visual test methods; exempt hybrid electric vehicles from tailpipe test methods; include clean screening test methods as valid test methods (section 5), and delete the transition period.

As discussed in the proposed rulemaking (68 FR 4842; January 30, 2003), the state's requirement that the I/M240 test be the deciding test for the retest during the phase-in period for the OBD test is inconsistent with our April 5, 2001, rule which requires only the OBD test be used for the retest. Although the Missouri regulation is not consistent with our requirements for the OBD test during the 2003–2004 phase-in period, the Federal I/M rule (*see* 40 CFR 51.372) provides additional flexibility with regard to as-of-yet unimplemented I/M program elements for basic I/M areas that qualify for redesignation to attainment. Under this additional flexibility, an as-of-yet unimplemented I/M program element may be converted into a contingency measure as part of the area's approved maintenance plan (which, in turn, forms a part of the area's approved redesignation request). We believe that the St. Louis ozone nonattainment area is eligible for redesignation and, in a separate rulemaking today, we are taking final action to find that the area has attained the 1-hour ozone standard and to redesignate the area from nonattainment to attainment for that standard. Thus, the Missouri I/M regulation meets the requirements of 40 CFR 51.372, and we are taking final action to approve the program pursuant to that section.

MDNR's letter of January 17, 2003, informed us that a printing error occurred when the revised rule was first published on November 30, 2002, in the state's official administrative rules publication, the Missouri Code of State Regulations (CSR). Inadvertently, the table containing the final transient emission test standards for Light Duty Vehicles was omitted in subparagraph (3)(G)4.A of the Missouri rule. The table was part of the rule revision which had been adopted by the Missouri Air Conservation Commission (MACC) after

notice and public comment. The post-adoption publication of the rule omitted the table, and the December 31, 2002, publication of the Missouri CSR corrected the printing error by reinserting the table. The December 31, 2002, publication was an administrative correction only and did not change the rule as adopted by the MACC nor the effective date of the rule.

Even though MDNR's initial submission did contain an error, which was corrected between our signature of the proposed rule and this final action, we view it as inadvertent and nonsubstantive. In addition, the corrected version of the state rule is the version which was available to the public for comment at the state level and has been included in EPA's docket for this rule since the January 30 publication of the proposal. Therefore, we do not believe that any additional public comment on the corrected rule is necessary and, in this **Federal Register** document, we are taking final action to approve the revisions to the I/M SIP as described in the January 30, 2003, proposed rule.

Elsewhere in today's **Federal Register** publication, we are also taking final action to find that the St. Louis area has attained the 1-hour ozone standard, redesignate the area to attainment, and approve the state's plan for maintaining the 1-hour ozone standard. This final rulemaking on this I/M SIP revision is being done in conjunction with the above rulemaking to fulfill the applicable CAA requirements.

#### **What Comments Were Received on the Proposed Approval of the I/M SIP Revision and What Is Our Response?**

Comments were submitted by the Great Rivers Environmental Law Center on behalf of the Sierra Club and the Missouri Coalition for the Environment. Its conclusion was that EPA should disapprove the proposed SIP revision. A summary of the comments and our responses to the comments are provided below.

*Comment 1:* St. Louis is now a "serious" ozone nonattainment area and, as a result, its I/M program must meet the requirements of section 182(c)(3). EPA acknowledges that the I/M program does not meet these requirements. It should, accordingly, be disapproved, or at most partially approved.

*Response 1:* On November 25, 2002, the Seventh Circuit Court of Appeals vacated a June 26, 2001, rule extending the St. Louis area's attainment date, and remanded to EPA for "entry of a final rule that reclassifies St. Louis as a serious nonattainment area effective

immediately \* \* \*" (*Sierra Club and Missouri Coalition for the Environment v. EPA*, 311 F. 3d 853 (7th Cir. 2002)). In response to the Court's order, and in accordance with section 181(b)(2) of the Act, EPA reinstated the nonattainment determination and reclassification contained in the March 19, 2001, rulemaking (66 FR 15585) in the January 30, 2003, final rule at 68 FR 4838. In addition, the January 30, 2003, final rule established a deadline of January 30, 2004, for submission of SIP revisions to meet the serious nonattainment area requirements. The final rule also explained that EPA was concurrently proposing to redesignate the area to attainment, and that such a redesignation, if done prior to the deadline for submission of the serious area requirements, would eliminate the need for Missouri and Illinois to submit SIP revisions to meet the serious area requirements (68 FR 4836). The final rule, including the serious area submittal deadline, was not challenged within the 60-day period provided in section 307(d) of the CAA. This subsequent rulemaking does not reopen the issue of the submittal deadline or the determination that SIP submissions would not be due should the area be redesignated prior to the due date.

Section 110(k)(3) of the CAA requires EPA to approve a plan submission in full if it meets "all of the applicable requirements" of the Act. Under that section a partial approval is appropriate where only a portion of the plan submission meets all of the applicable requirements of the Act. The commenter asserts that the I/M revision cannot be fully approved because it does not meet the I/M program requirements for serious areas under section 182(c)(3). However, under our interpretation of the statute, these requirements are not applicable, because they are not yet due. (*See also* the response to comment 2 concerning the due date for the serious area requirements.) In addition, because the area is today being redesignated to attainment, it is no longer obligated to meet the I/M requirements of section 182(c)(3). (*See* the September 4, 1992, memorandum from John Calcagni, "Procedures for Processing Requests to Redesignate Areas to Attainment," p. 4, n. 3.) Therefore, the fact that the submittal does not include all of the requirements for an I/M program for a serious area does not require EPA to disapprove or partially approve it. Since, as discussed elsewhere in this notice, the submittal meets all of the applicable requirements of the Act, EPA is fully approving the revisions to the Missouri I/M program.