

Comment 2: EPA suggests that because Missouri's SIP revisions to conform to the serious requirement are not yet due, the applicable criteria for approval are those pertaining to "moderate" ozone nonattainment areas. This determination is erroneous because the "serious" SIP submissions have, "as a matter of law", become due. EPA's later rulemakings withdrawing these rules was vacated by the Seventh Circuit, effectively reinstating the withdrawn rules, including the May 18, 2002, SIP submission deadline. In addition, if EPA "had obeyed the law", the revisions would have been due by June 14, 1998.

Response 2: As explained in response to comment 1, on January 30, 2003, EPA reinstated a rule reclassifying the St. Louis area to "serious" nonattainment and established a deadline of January 30, 2004, for the state to submit the serious area requirements. The rationale for the deadline is stated in the January 30, 2003, final rule (68 FR 4838). This redesignation rulemaking does not reopen the January 30 rulemaking, and comments on the appropriate deadline for the serious area requirements are thus beyond the scope of this rule.

With respect to the commenter's assertion that the serious area requirements should have been due by June 14, 1998, this is based on an argument made by the commenter in the U.S. District Court and the Court of Appeals for the District of Columbia that the reclassification of the St. Louis area to serious should have been made retroactive to 1997, with the serious area measures due in 1998. This argument pertaining to the timing of reclassification is not only outside the scope of this rulemaking as explained previously, but it was rejected by both Courts (*See, Sierra Club v. Whitman*, 285 F.3d 63, 68 (D.C. Cir.2002)). A detailed discussion of the inapplicability of the serious area requirements to the St. Louis area is also included in the response to comments on the final rule determining the area has attained the ozone national ambient air quality standard (NAAQS) and redesignating the area to attainment, published in today's **Federal Register**.

Comment 3: The proposed revisions, as EPA itself concedes, do not even meet the requirement for a basic I/M program that moderate ozone nonattainment areas must promulgate and implement. Nonetheless, EPA says that "additional flexibility" may be extended to the state under 40 CFR 51.372. This is an arbitrary conclusion. First, the cited regulation does not provide for approval of I/M programs that do not meet federal requirements; it

merely permits states to treat otherwise approval programs as contingency measures in their maintenance plans. Second, the regulation's flexibility is contingent upon the following: "A contingency commitment that includes an enforceable schedule for adoption and implementation of the I/M program, and appropriate milestones. The schedule shall include the date for submission of a SIP meeting all of the requirements of this subpart. Schedule milestones shall be listed in months from the date EPA notifies the state that it is in violation of the ozone or CO standard or any earlier date specified in the state plan. Unless the state, in accordance with the provisions of the maintenance plan, chooses not to implement I/M, it must submit a SIP revision containing an I/M program no more than 18 months after notification by EPA." Missouri's maintenance plan does not include a contingency commitment that meets these requirements.

Response 3: The commenter is incorrect in the assertion that 40 CFR 51.372 does not authorize EPA to approve I/M SIPs that do not meet all EPA requirements. Section 51.372(c) states as follows: "Any nonattainment area that EPA determines would otherwise qualify for redesignation from nonattainment to attainment *shall receive full approval of a SIP submittal* under sections 182(a)(2)(B) or 182(b)(4)" if the submittal meets the requirements of section 51.372(c)(1) through (4). (Emphasis added.) As explained in detail in the proposal (68 FR 4842, 4844 January 30, 2003), the revision to the I/M program submitted by Missouri meets all of the applicable Federal I/M requirements, with the exception that Missouri does not require the exclusive use of an OBD test for the retest of vehicles which fail the initial OBD emissions test (during the 2003–2004 phase-in of the Missouri OBD rule). (After the 2003–2004 phase-in period, the Missouri rule requires the appropriate OBD test for both the initial test and the retest, which is consistent with EPA's rule.) Because, as explained below, Missouri has included a commitment to consider adoption of the OBD test for the retest as a contingency measure and has met all other requirements of § 51.372(c), that section authorizes EPA to fully approve the Missouri I/M SIP submittal under section 182(b)(4) of the CAA. This conclusion is consistent with the language of the regulation and with the application of the regulation to other I/M program approvals in conjunction

with redesignations (*see* 60 FR 12459; March 7, 1995).

The commenter is also incorrect in its assertion that Missouri's submission does not meet the requirements of 40 CFR 51.372(c)(4), which the commenter quotes in its comment. Section 51.372(c)(4) provides that the state must make the following commitments: (1) An enforceable schedule for adoption, submission to EPA, and implementation of the I/M program element; (2) appropriate milestones in months from EPA notification of the violation (or any earlier trigger date provided in the plan); and (3) a commitment to submit the program to EPA within 18 months of the notification of the violation, unless the state elects not to implement the I/M element of its contingency measures. The commenter does not identify any specific elements of this requirement which it believes are not met, but Missouri's maintenance plan contains provisions meeting all of these elements. The plan commits that the state will adhere to the following schedule (pp. 40–43 of the maintenance plan), if the state selects this contingency measure:

1. Three months from notification by EPA of a violation—the state will propose necessary regulatory changes for adoption by the Missouri Air Conservation Commission.

2. Five months from notification—the state will present proposed revisions for public hearing.

3. Six months from notification—the state will request adoption by the Commission.

4. Ten to eighteen months after notification—the state will submit the adopted regulations to EPA as a SIP revision.

5. Eighteen months after notification—the state will implement the contingency measure.

The commenter has not provided any information indicating that these commitments in Missouri's maintenance plan do not meet the requirements of 40 CFR 51.372(c)(4), and EPA finds that the state has met these requirements.

In the January 30, 2003, proposal on the I/M revisions, EPA discussed how Missouri had met the requirements of section 51.372(c)(1)–(3) (68 FR 4842, 4844–4845). EPA did not receive any comments on its proposal with respect to these other requirements. For the reasons stated in the proposal, EPA finds that the requirements of section 51.372(c)(1)–(3) are met.

What Action Is EPA Taking?

EPA's review of the material submitted indicates that the state has