

not relevant for purposes of this redesignation.

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

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

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

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

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

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

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

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

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

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

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

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