

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 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 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 permanent and enforceable 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 has shown decreased emissions of VOCs and NO<sub>x</sub>. Thus, the states have demonstrated the improvements in the St. Louis area are due to permanent enforceable 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:* Section 175A(a) of the CAA requires that state maintenance plans must be SIP revisions. Section 110(a)(2)(A) of the CAA requires a SIP to contain enforceable emission limitations. The maintenance plans for each state do not include any enforceable emission limitations. For example, Missouri NO<sub>x</sub> controls have not yet been promulgated.

*Response 22:* 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 this rulemaking, EPA is approving Missouri's maintenance plan as a SIP revision.

The CAA requires the area to have a fully approved SIP and to have met all of the applicable requirements of the CAA. The area's SIP satisfies these requirements as described in this final rule and in EPA's proposed rulemaking published on January 30, 2003 (68 FR 4847). The measures that the states are relying on to maintain the 1-hour ozone standard have been approved into the

SIPs and are state and Federally enforceable. This includes Missouri's NO<sub>x</sub> RACT rule found at 10 CSR 10–5.510 and the statewide NO<sub>x</sub> rule found at 10 CSR 10–6.350. (See response to comment 10 above regarding the NO<sub>x</sub> SIP Call.) The states must continue to implement these measures as provided for in the Federally-approved SIPs.

The CAA 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 SIPs as a whole also applies to the maintenance plan. See discussion in the Cincinnati redesignation (65 FR 37879, 37881–37882), and the Sixth Circuit decision in *Wall v. EPA*, 265 F. 3d at 438, upholding EPA's interpretation of the requirement. As explained below in the response to comment 26, Missouri has committed to continue to implement the measures included in the approved SIP and relied on for maintenance of the standard.

All of the control measures which the states relied upon are SIP-approved measures. EPA cannot withhold its approval of the maintenance plan submitted by the states because of concerns that the states may, at some future time, either submit a SIP revision to amend or remove a program, or that the states may fail to implement these programs in the St. Louis area. The Federally-approved SIP requirements remain in place and 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 its assertion.

*Response 23:* EPA disagrees with the commenter's assertion that the use of photochemical modeling to demonstrate maintenance is required by the CAA, 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 its assertion that section 182(j) applies to maintenance plans, this section does not necessarily require modeling. EPA has the discretion to use 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 in 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.” See also EPA's discussion in its brief in the *Wall* case. The *Ober* 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 the plan are adequate to provide for the timely attainment and maintenance of the NAAQS. The regulation at 40 CFR 51.112(b) specify