

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 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 on the term “measures” used in section 175A does not include part D NSR permitting programs. In accordance with this interpretation, EPA believes that lowest achievable emission rate (LAER) and offsets, which are components of Missouri’s part D NSR permitting program, are not required to be retained following redesignation of the St. Louis area as an attainment area.

LAER and offsets are specified in part D and subpart 2 of the CAA applicable to nonattainment areas. Upon redesignation to attainment, these requirements are no longer applicable. Removing the LAER and offsets provision in the states’ permitting programs is not contrary to the above-mentioned policy. Upon redesignation to attainment, the LAER requirements included in stationary source permits and the 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, as a minimum, to the Prevention of Significant Deterioration (PSD) requirements of Part C of Title I of the CAA. (In Missouri, the LAER and offset requirements remain in effect, unless the NSR rules are revised by the state and the revision is approved by EPA.) Under the PSD requirements, the states must ensure that such new facility will

not cause a significant deterioration of air quality to the extent that it causes or contributes air pollution in excess of the NAAQS (Section 165). 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. Thus, maintenance of the NAAQS is an inherent feature of the PSD program, should Missouri choose not to retain its current program for new source permitting in the future.

As for NO<sub>x</sub> RACT, Missouri has an approved NO<sub>x</sub> RACT rule which will remain in effect following redesignation. Thus, there will be no relaxation of NO<sub>x</sub> RACT in Missouri following redesignation.

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.” As stated above, for Missouri, all control measures established prior to redesignation as a result of the LAER and offset requirements are being retained following redesignation and NO<sub>x</sub> RACT is being retained.

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

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

The requirements for maintenance plans and contingency measures are set forth in section 175A(d). Section 175A(d) states:

Each plan revision submitted under this section shall contain such contingency provisions as the Administrator EPA 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 was an applicable requirement that was contained in the SIP prior to

redesignation. The plan must contain contingency measures that the Administrator deems appropriate to 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, EPA believes that this requirement has been met. The statute does not require that all serious area requirements be included in the maintenance plan as contingency measures but rather that all measures included in the SIP prior to redesignation be included in the maintenance plan as contingency measures. As explained previously, certain serious area requirements need not be met in the case of St. Louis since they are not yet due. Since these provisions are not applicable in St. Louis, they do not need to be included in the maintenance plan as contingency measures.

The commenter’s assertion that “there is no implementation plan applicable to this ‘serious area’” is addressed in other responses in this rulemaking. See, e.g., 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 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.

EPA disagrees that Missouri’s 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 the maintenance plans delineated Missouri’s planned actions in the event of future 1-hour ozone standard violations, increasing ozone levels threatening a subsequent violation of the ozone standard, and unanticipated