

decision by the Court of Appeals for the Seventh Circuit was to reinstate this submission due date.

*Response 7:* Section 107(d)(3)(E)(ii) of the Act requires that the applicable SIP for the area must be fully approved under section 110(k) of the Act as one of the criteria for redesignation to attainment. As discussed in comments 6 above and 8 below, the applicable SIP for the Illinois portion of the St. Louis area is fully approved, and the serious area emission control measure and plan requirements are not yet 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 sections 107(d)(3)(E)(ii) and (v) of the Act (for purposes of assessing the State's ozone redesignation request). As noted in the January 30, 2003 proposed rule at 68 FR 4838, on November 25, 2002, the Court of Appeals for the Seventh Circuit vacated a June 26, 2001 final rule extending the St. Louis area's attainment date to November 15, 2004, 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), but did not reinstate the state plan revision and regulation due date established in that rulemaking. In the January 30, 2003 final rule, EPA 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). Today's final redesignation rule does not reopen the January 30, 2003 final rule, and 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 in 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 of the scope of this rulemaking as explained previously, but it was also rejected by the Court. (See,

*Sierra Club v. Whitman*, 285 F.3d, 68 (D.C. Cir. 2002)). As explained above, EPA's determination that the serious area requirements are not "applicable" with respect to this redesignation is consistent with the Act, with the January 30, 2003 final rule, with applicable EPA policy, and with relevant judicial decisions. Additionally, note that the decision made by the Court on November 25, 2002 required the EPA to rulemake to reclassify the St. Louis area to serious nonattainment effective immediately on the date of the rulemaking. The Court did not order the EPA to reinstate the reclassification with an effective date contained in the March 19, 2001 rulemaking, and the Court did not order the EPA to reinstate the May 18, 2002 State plan due date set forth in the March 19, 2001 rulemaking.

*Comment 8:* There is no "fully approved" or even 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. In this rule, EPA is providing a response regarding only the Illinois portion of the St. Louis area. See the separate rule in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri 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 repropose 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 by reference herein. See also the discussion in section II.A of the separate rulemaking in today's **Federal Register** concerning the inapplicability of certain requirements.

In the June 26, 2001 rule, EPA took the following applicable actions: approved Missouri's and Illinois' 1-hour

ozone attainment demonstration; found that the St. Louis ozone nonattainment area met the reasonably available control measures (RACM) requirements of the Act; found that the contingency measures identified by the States are adequate; approved the Illinois and Missouri motor vehicle emissions budgets (MVEBs); and approved an exemption from the NO<sub>x</sub> RACT requirements for and disapproved an exemption from the NO<sub>x</sub> new source review (NSR) and NO<sub>x</sub> conformity requirements for the Illinois portion of the St. Louis ozone nonattainment area. EPA has determined, for the reasons stated 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 final rule, EPA is approving contingency measures as part of Illinois' maintenance plan, granting an exemption from the NO<sub>x</sub> RACT emission control requirements, and approving MVEBs for 2014, for the Illinois portion of the area.

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 Illinois which are applicable for purposes of section 107(d)(3)(E)(v), and is determining that the other submissions are not applicable. Therefore, the Illinois SIP is "fully approved" for all applicable requirements.

*Comment 9:* EPA attempted to assert that the Illinois and Missouri SIPs "can be considered to be approved". This is a "pseudo-approval" and an attempt by EPA to escape the simple straightforward statutory requirement for 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 SIPs. 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. In this rule, EPA is providing a response regarding only the Illinois portion of the St. Louis area. See the separate rule in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

The use of the phrase "can be considered to be approved" (See the