

Subpart 2 requirements include: attainment demonstrations; 1990 base year inventory and periodic emissions inventories updates; emission statements; 15 percent rate-of-progress plans; VOC RACT; RACM; stage II vapor recovery; I/M; and NO_x emission controls.

As stated in the response to comment 8 above, Illinois' SIP meets all applicable requirements, including section 110 and part D requirements. As stated in the January 30, 2003 proposed rule at 68 FR 4852 and 4853, EPA has approved Illinois' RFP plan, permitting programs, and VOC RACT rules as meeting the requirements of part D. Illinois' SIP has regulations requiring annual emission statements from major sources. Illinois has submitted complete emission inventories, which have been approved by the EPA. Illinois has approved general conformity rules pursuant to section 176. In this action, EPA has approved Illinois' maintenance plan, which includes adequate contingency measures. Thus, Illinois has met the applicable part D requirements of the Act. Note also that, as stated in our response to comment 8 above, by finding that the St. Louis area has attained the one-hour ozone standard, the attainment demonstration and RACM requirements are no longer applicable requirements. See also the final rule for Missouri published in today's **Federal Register** describing how the Missouri portion of the area has met the applicable requirements.

Neither Section 107(d)(3)(E) of the Act nor EPA policy referenced by the commenter require modeling as a prerequisite to redesignation of an ozone nonattainment area. In addition, no modeling was conducted as part of the redesignation requests submitted by Missouri or Illinois. Thus, there is no modeling basis for EPA to make any conclusions regarding the necessity for the Part D requirements. (Modeling is not a required element of a redesignation request. See, 65 FR 37879—Cincinnati redesignation for additional discussion of this issue. (See, *Wall v. EPA*, 265 F.3d. 426 upholding this interpretation.) However, the monitoring data collected over the 2000 through 2002 period show that the area has in fact attained the ozone standard. EPA finds no need for further controls to bring about attainment.

With respect to the commenter's assertion that the Tenth Circuit Court of Appeals *Sierra Club v. USEPA* case is not applicable because it is not a "redesignation" case, the commenter misses the point of the case as it relates to St. Louis. The Tenth Circuit's endorsement of the interpretation of the

Act in "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995 (Seitz Memo), that certain "statutory" requirements relating to attainment are not applicable to an area which has attained the standard, was not dependent on the fact that the area was not being redesignated. The case involved a determination by EPA that Salt Lake and Davies Counties, Utah, had attained the ozone standard, and that, therefore, certain additional requirements relating to attainment (such as an attainment demonstration) would not apply so long as the area continued to attain. The Court expressly recognized that the area could be redesignated without having met those requirements, even though the action at issue there was an attainment determination and not a redesignation. The Court stated: "Recall that the Environmental Protection Agency's determination to exempt the Counties from limited ozone requirements is really no more than a suspension of those requirements for so long as the area continues to attain the standard or until the area is formally redesignated to attainment." (*Sierra Club v. USEPA*, 99 F.3d. 1551, 1558 (10th Cir.1996)) (See also, 66 FR 53095 for EPA's redesignation of the Pittsburgh area.) The Court did not say, as the commenter would have it, that the area would have to adopt those measures which had been determined to be unnecessary in order to be redesignated. As it did in the Utah Counties, in which EPA redesignated those Counties without requiring that they meet the suspended requirements, EPA is here determining that the St. Louis area is attaining the standard and that certain CAA requirements do not apply. The basis for this determination and the suspension of certain requirements for the area was explained in detail in the January 30, 2003 proposed rule at 68 FR 4850–4858 and further explained in this response to various comments on the issue. The determination is based on monitored data, not modeling, for reasons explained in this notice. Nothing in the Tenth Circuit case prohibits EPA from simultaneously suspending the requirements and redesignating an area, which is what this rulemaking accomplishes. EPA has taken this dual action in a number of areas, including Louisville (66 FR 53665), Cincinnati (65 FR 37879), Grand Rapids (61 FR 31831), and Pittsburgh (66 FR 53094). Upon

redesignation to attainment, the suspended nonattainment requirements will no longer apply at all since the area is no longer designated as a nonattainment area.

Comment 12: EPA asserts that the RACM requirements of section 172(c)(1) need not be adopted because the area has attained the NAAQS, thus, these measures would not accelerate attainment. This is confoundingly circular reasoning which erases the "fully approved" requirements of the CAA. EPA's assertion is not relevant here.

Response 12: The April 16, 1992 General Preamble (57 FR 13560) states that EPA interprets section 172(c)(1) such that the RACM requirements are a "component" of an area's attainment demonstration. Thus, since the attainment demonstration is not an applicable requirement, RACM is also no longer an applicable requirement. See our response to comment 8 above for further discussion. EPA has also been consistent in this interpretation. See the final rulemaking for Pittsburgh, 66 FR 53096 (October 19, 2001) for additional discussion of this interpretation.

EPA believes that its policy is not "confoundingly circular reasoning" but rather straightforward reasoning. It is reasonable to conclude that states need not develop an attainment demonstration showing how they will attain a NAAQS that they have already attained. Similarly, states need not adopt additional RACM as necessary to accelerate attainment when attainment has already been achieved.

As stated in the response to comments 8 and 9 above, SIPs must be "fully approved," as required by section 107(d)(3)(E)(ii), only with respect to the "applicable" requirements of section 110 and part D, as addressed in section 107(d)(3)(E)(v) of the Act. If requirements are not "applicable" with respect to those sections, they need not be fully approved.

Comment 13: The RACM and RACT requirements of the CAA are not tied to reasonable further progress but are required by the CAA to be implemented as expeditiously as practicable. This is supported by H.R. Rep. No. 101–490, Part 2, 101st Cong., 2d Sess. at p. 223; *Sierra Club v. USEPA*, 99 F.3d 1551, 1557 (10th Cir. 1996); *Wall v. EPA*, 265 F.3d 426, 441 (6th Cir. 2001); and, EPA's Seitz Memo, page 4. EPA's contention that any additional RACM and RACT measures need not be adopted directly repudiates the plain language of the CAA.

Response 13: This comment refers to both the Missouri and the Illinois