

is based on the St. Louis area attaining the one-hour ozone NAAQS without the implementation of these NO_x RACT emission controls. Section 182(f), and in particular section 182(f)(2)(B)(i), of the Act, provides for such an exemption since NO_x RACT emission reductions in this area would be in excess of those emission reductions needed to attain the standard, as evidenced by EPA's determination of attainment finalized in a separate rulemaking for Missouri also published in today's **Federal Register**. The rationale for the exemption is not the same as that stated in the June 26, 2001 final rule vacated by the Court of Appeals for the Seventh Circuit. The vacated NO_x RACT exemption was based on a modeled attainment demonstration indicating that additional NO_x emission reductions in this area would not be needed to attain the one-hour ozone standard. The EPA is not relying on the exemption basis expressed in that earlier, vacated final rule, but rather on a new determination, based on monitored air quality. Attainment of the one-hour standard without the implementation of NO_x RACT rules demonstrates that such rules are not needed to attain the one-hour ozone standard in the St. Louis area. Therefore, the Metro-East St. Louis area qualifies for a NO_x RACT exemption under section 182(f)(2)(B)(i) of the Act.

Comment 16: As the EPA concedes in the January 30, 2003 proposed rule, the Illinois SIP does not include transportation conformity procedures as required by the Act. EPA has no authority to waive this mandatory requirement for SIPs. Therefore, Illinois' SIP is incomplete.

Response 16: Section 176(c) of the Act provides that state conformity provisions must be consistent with Federal transportation conformity regulations that the CAA requires EPA to promulgate. The Federal transportation conformity regulations were finalized on November 24, 1993, amended on August 7, 1995, and amended again on August 15, 1997 (40 CFR parts 51 and 93 Transportation Conformity Rule Amendment: Flexibility and Streamlining). On March 2, 1999, a court decision (*Environmental Defense Fund v. EPA*, 167 F.3d 641 (D.C. Cir. 1999)) rescinded several sections of the Federal transportation conformity rule, requiring EPA to revise those sections of the Federal rule. Illinois submitted transportation conformity rules on September 23, 1998. The SIP revision was submitted by Illinois in response to the August 1997 changes to the Federal regulations. EPA has not acted on the Illinois

transportation conformity rules submittal as it does not address later Federal transportation conformity regulation amendments. Once EPA has completed the revisions to the Federal rule to reflect the 1999 court decision, Illinois will need to revise the State's rule to address the changes.

EPA believes that it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating Illinois' ozone redesignation request under section 107(d) of the Act. The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to a nonattainment area after redesignation to attainment, since such an area would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. EPA has explained its rationale and has applied this interpretation in a number of redesignation actions. See redesignations for: Tampa, Florida (60 FR 52748, December 7, 1995); Jacksonville, Florida (60 FR 41, January 3, 1995); Miami, Florida (60 FR 10325, February 24, 1995); Grand Rapids, Michigan (61 FR 31835, June 21, 1996); and Cleveland-Akron-Lorain, Ohio (61 FR 20458, May 7, 1996). The U.S. Court of Appeals for the Sixth Circuit recently upheld this interpretation in *Wall v. EPA*, No. 00-4010, Slip Op. at 21-24 (6th Cir. September 11, 2001). The Court upheld EPA's view that failure to submit a revision that meets the part D transportation conformity requirements is not a basis to deny an ozone redesignation request. Therefore, the EPA can redesignate the Illinois portion of the St. Louis ozone nonattainment area to attainment of the one-hour ozone standard notwithstanding the lack of fully approved transportation conformity rules in Illinois' SIP.

D. Comments Related to Criterion 3: The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

Comment 17: The St. Louis area cannot meet this requirement since there is not an approved SIP meeting the

"serious" area requirements, and there is no applicable implementation plan.

Response 17: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking 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.

As described in the response to comments for Criterion (2) above, the Illinois SIP meets the applicable CAA requirements. The applicable SIP requirements are described in the January 30, 2003 proposed rule (68 FR 4850-4856). EPA's approval of previous SIP submittals and this rulemaking, which grants Illinois an exemption from the NO_x RACT requirements, render Illinois' SIP "fully approved" for all applicable SIP requirements. As stated in response to comments 7 and 8 above, since the serious area requirements are not yet due, the SIP is not deficient even though the serious area requirements have not been included.

In any event, this criterion is not dependent on which requirements are applicable or have been approved or implemented. The requirement is that air quality improvements be attributable to permanent and enforceable emissions reductions, which is a separable inquiry from the question of the requirements applicable to the area. Illinois' December 26, 2002 submission contains a detailed analysis of the air quality improvements in the St. Louis area and their relation to the emission reductions resulting from the permanent and enforceable emission control measures which are in place in the St. Louis area. (See response to comment 19 below for further discussion.) These measures and resulting emissions changes are listed in the January 30, 2003 proposed rule at 68 FR 4856-4858. These measures are all part of the applicable SIP. Thus, the commenter is incorrect in its assertion that there is no applicable SIP.

Comment 18: It is impossible to demonstrate that monitored concentrations during and after the 2002 Labor Day weekend resulted from permanent and enforceable emissions reductions. The emissions reductions were due to voluntary curtailment of operations by large industrial operations.

Response 18: The monitoring data for the St. Louis nonattainment area demonstrate that the estimated number of exceedances per year averaged over three years is 1.0 or less at all monitoring sites in the area. EPA