ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MO 061-0161a; IL 187-2; FRL-6955-4]

Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing its finding that the St. Louis ozone nonattainment area (hereinafter referred to as the St. Louis area) failed to attain the 1-hour ozone national ambient air quality standard (NAAQS or standard) by November 15, 1996, the attainment date for moderate nonattainment areas set forth in the Clean Air Act (CAA or Act). By operation of law, the St. Louis area is to be reclassified from a moderate to a serious nonattainment area on the effective date of this rule. In addition, EPA is requiring Missouri and Illinois to submit State Implementation Plan (SIP) revisions addressing the CAA’s pollution control requirements for serious ozone nonattainment areas within 12 months of the effective date of this rule and establishing November 15, 2004, as the date by which the St. Louis area must attain the ozone NAAQS. In a separate document entitled

"Proposed Effective Date Modification for Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois," published elsewhere in today's Federal Register, EPA is proposing to delay the effective date of this rule until June 29, 2001. In that document, EPA also sets forth its intent to propose to withdraw this final determination and reclassification, if EPA grants the states an attainment date extension before the effective date of the reclassification rule.

Missouri and Illinois are in the concluding stage of a process that could culminate in EPA final action on an attainment date extension. This extension, if granted, would allow the area to remain classified as a moderate nonattainment area. EPA is continuing to work to complete action on the extension request by June 29, 2001. If EPA takes final action to extend the attainment date during the pre-effective period of this rule, EPA intends to withdraw this determination and reclassification prior to the time that they become effective.

In an Order issued January 29, 2001, and amended on

February 14, 2001, the United States District Court for the District of Columbia directed EPA to determine, by March 12, 2001, whether the St. Louis area had attained the applicable ozone standard under the CAA, and ordered EPA to publish the required notice, if any, that results from its determination by March 20, 2001. Sierra Club v. Whitman, No. 98-2733. The rulemaking issued today is intended to comply with the Court's Order. EPA informed the Court, in a Motion filed on March 8, 2001, of its proposed course of action to comply with the Order, including EPA's proposal to postpone the effective date of the determination until June 29, 2001, and EPA's intent to withdraw the determination if it approves an attainment date extension within the pre-effective period. The Court, in a limited review to determine whether EPA's planned course of action would contravene the Court's Order, indicated that EPA, by signing its determination by March 12, and publishing notice by March 20, would comply with the Court's Order. The Court observed that it was without jurisdiction to assess the propriety of the remainder of EPA's planned course of action.

DATES: This rule is effective on [insert date 60 days

after publication in the Federal Register].

ADDRESSES: Copies of the St. Louis area monitored air quality data analyses and other relevant materials are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604 (please telephone Edward Doty at (312) 886-6057 before visiting the Region 5 office); United States Environmental Protection Agency, Region 7, Air, RCRA, and Toxics Division, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Royan W. Teter, EPA Region 7, (913) 551-7609; or Edward Doty, EPA Region 5, (312) 886-6057.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we, us, or our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What are the national ambient air quality standards?

What is the NAAQS for ozone?

What is a SIP?

What is the St. Louis ozone nonattainment area?

What does this action do?

What does the CAA say about determinations of nonattainment and reclassifications, and how does it apply to the St. Louis area?

Why did EPA defer making a determination regarding the St. Louis area's attainment status beyond the time frame prescribed by the CAA?

Why is this action necessary?

What progress have Missouri and Illinois made toward meeting the requirements of the attainment date extension policy?

What other actions have Illinois and Missouri taken to improve air quality in the St. Louis area?

What is the area's new classification?

What is the new attainment date for the St. Louis area?

When must Missouri and Illinois submit SIP revisions fulfilling the requirements for serious ozone nonattainment areas?

What comments were received on the proposed determination of nonattainment and reclassification, and how has EPA responded?

<u>Background</u>

What are the national ambient air quality standards?

Since the CAA's inception in 1970, EPA has set NAAQS for six common air pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The CAA requires that these standards be set at levels that protect public health and welfare with an adequate margin of safety. These standards present state and local governments with the air quality levels they must meet to achieve clean air. Also, these standards allow the American people to assess whether or not the air quality in their communities is healthful.

What is the NAAQS for ozone?

The NAAQS for ozone is expressed in two forms which are referred to as the 1-hour and 8-hour standards. Table 1 summarizes the ozone standards.

TABLE 1 - SUMMARY OF OZONE STANDARDS

Standard	Value	Type[a]	Method of Compliance
1-hour	0.12 ppm	Primary and Secondary	Must not be exceeded, on average, more than one day per year over any three-year period at any monitor within an area
8-hour	0.08 ppm	Primary and Secondary	The average of the annual fourth highest daily maximum 8-hour average ozone concentration measured at each monitor over any three-year period

[a] Primary standards are designed to protect public health and secondary standards are designed to protect public welfare and the environment.

The 1-hour ozone standard of 0.12 parts per million (ppm) was promulgated in 1979. The 1-hour ozone standard continues to apply to St. Louis and it is the classification of the St. Louis area with respect to the 1-hour ozone standard that is addressed in this document.

What is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive. They may contain state regulations or other enforceable documents and supporting information such as emission inventories,

monitoring networks, and modeling demonstrations.

What is the St. Louis ozone nonattainment area?

The St. Louis ozone nonattainment area is an interstate area which includes Madison, Monroe, and St. Clair Counties in Illinois; and Franklin, Jefferson, St. Charles, St. Louis Counties and the City of St. Louis in Missouri.

Under section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the 1-hour ozone standard prior to enactment of the 1990 CAA Amendments, such as the St. Louis area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. In addition, under section 181(a) of the Act, each area designated nonattainment under section 107(d) was classified as "marginal," "moderate," "serious," "severe," or "extreme," depending on the severity of the area's air quality problem. The design value for an area, i.e., the highest of the fourth highest 1-hour daily maximums in a given three-year period, characterizes the severity of the air quality problem. Table 2 provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.138 and 0.160 ppm,

such as the St. Louis area (which had a design value of 0.156 ppm in 1989), were classified as moderate. These nonattainment designations and classifications were initially codified in 40 CFR Part 81 (see 56 FR 56694, November 6, 1991).

TABLE 2 - OZONE NONATTAINMENT CLASSIFICATIONS		
AREA CLASS	DESIGN VALUE (ppm)	ATTAINMENT DATE
Marginal	0.121 up to 0.138	November 15, 1993
Moderate	0.138 up to 0.160	November 15, 1996
Serious	0.160 up to 0.180	November 15, 1999
Severe	0.180 up to 0.280	November 15, 2005
Extreme	0.280 and above	November 15, 2010

In addition, under section 182(b)(1)(A) of the CAA, states containing areas that were classified as moderate nonattainment were required to submit SIPs to provide for certain air pollution controls, to show progress toward attainment of the ozone standard through incremental emissions reductions, and to provide for attainment of the ozone standard as expeditiously as practicable, **but no later than November 15, 1996**. SIP requirements for moderate areas are listed primarily in section 182(b) of the CAA.

What does this action do?

On March 18, 1999, EPA proposed (64 FR 13384) its

finding that the St. Louis area did not attain the 1-hour ozone NAAQS by November 15, 1996, as required by the CAA. The proposed finding was based on 1994-1996 air quality data which indicated the area's air quality violated the standard and the area did not qualify for an attainment date extension under the provisions of section 181(a)(5).[1]

Although the area was not eligible for an attainment date extension under section 181(a)(5), our March 18, 1999, proposal included a notice of the St. Louis area's potential eligibility for an attainment date extension, pursuant to EPA's July 16, 1998, "Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas" (hereinafter referred to as the extension policy), signed by Richard D. Wilson, Acting Assistant Administrator for Air and Radiation. The extension policy, published in a March 25, 1999, Federal Register notice (64 FR 14441), applies where pollution from upwind areas interferes with the ability of a downwind area to

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[1] Section 181(a)(5) specifies that a state may request, and EPA may grant, up to two one-year attainment date extensions. EPA may grant an extension if: (1) the state has complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than one exceedance of the ozone standard at any monitoring site in the nonattainment area in the year in which attainment is required.

attain the 1-hour ozone standard by its attainment date. EPA proposed to finalize its action on the determination of nonattainment and reclassification of the St. Louis area only after the area had received an opportunity to qualify for an attainment date extension under the extension policy. On January 29, 2001, the U.S. District Court for the District of Columbia ordered EPA to make a determination, no later than March 12, 2001, whether the St. Louis nonattainment area attained the requisite ozone standards. (Sierra Club v. Whitman, No. 98-2733 (CKK)). Given the Court's Order and the current status of certain submissions from the states, EPA is unable to grant an attainment date extension under this policy at this time.

This action finalizes our finding that the St. Louis area failed to attain the 1-hour ozone NAAQS by November 15, 1996, as prescribed in section 181 of the CAA, and fulfills EPA's nondiscretionary duty pursuant to section 182(b)(2)(A) of the Act. In addition, this action sets the dates by which Missouri and Illinois must submit SIP revisions addressing the CAA's pollution control requirements for serious ozone nonattainment areas and attain the 1-hour NAAQS for ozone. EPA's rulemaking actions are to be effective 60 days from publication of

this notice, unless the effective date is extended as set forth below.

In a separate notice entitled "Proposed Effective Date Modification for the Determination of Nonattainment and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois," published elsewhere in today's Federal Register, EPA is proposing to delay the effective date of this rule until June 29, 2001. EPA believes that, if St. Louis is reclassified, the proposed additional extension is necessary to allow regulated entities in St. Louis time to prepare for the new requirements that would become applicable in the area upon the effective date of the nonattainment determination and reclassification. During the period prior to the extended effective date, EPA and the states would also continue to work towards completing a separate rulemaking on the issue of whether St. Louis should be granted an extension of its attainment date pursuant to EPA's Guidance on "Extension of Air Quality Attainment Dates for Downwind Transport Areas," published March 25, 1999 (64 FR 14441). In its proposed action to modify the effective date of the determination and reclassification, EPA also states its intent to withdraw this final

determination and reclassification, if EPA grants the states an attainment date extension before the effective date of the determination of nonattainment and notice of reclassification. On March 8, 2001, EPA informed the District Court in Sierra Club, supra., of the actions that EPA intends to take, in response to the Court's Order, which included reaching a final determination on whether the area had attained by November 15, 1996, as required by the Court's Order, but proposing to postpone the date on which the determination (and consequent reclassification) would take effect until June 29, 2001. EPA also advised the Court that, if it approved an attainment date extension within the pre-effective period, it would withdraw today's determination and notice of reclassification.

In an Order dated March 9, 2001, the Court, indicating that its review was limited to whether EPA's planned course of action would contravene the Court's January 29 Order, as amended, noted that "EPA is required to reach a final determination by March 12, 2001, and to publish notice, if necessary under the CAA, by March 20, 2001. Under its alternative proposal, EPA will comply with these two elements."

Thus, EPA is today fully complying with the Court's Order while continuing to work with Missouri and Illinois to make progress towards final rulemaking action on an attainment date extension request for the St. Louis area. The states and EPA are in the final stages of completing the actions necessary for a final rule, and EPA believes that it is in the public interest to move forward to complete that rulemaking. Completion of the rulemaking prior to the effective date of today's action would allow EPA to assess and take into consideration the role of transported pollution in St. Louis' nonattainment problems, and to provide for an equitable distribution of responsibility for achieving attainment of the ozone standard in the area. In addition, concluding a rulemaking on the attainment date extension would allow EPA to make available to the St. Louis area the attainment date extension policy that EPA has applied in other areas affected by transport. Recently EPA issued three final rulemakings granting requests for attainment date extensions based on its policy in three ozone nonattainment areas: Washington, D.C., Greater

Connecticut, and Springfield, Massachusetts. 66 FR 586 (January 3, 2001); 66 FR 634 (January 3 2001); 66 FR 666 (January 3, 2001). In addition, EPA has proposed granting attainment date extensions to Louisville, Kentucky, and Beaumont, Texas. 64 FR 27734 (May 21, 1999); 64 FR 12,854 (April 16, 1999); 65 FR 81,786 (December 27, 2000). Thus, EPA's rulemaking actions today should be viewed in the context of complying with the Court's Order in Sierra Club v. Whitman while continuing to conduct rulemaking on its nationwide program to address the role of transported air pollutants in ozone nonattainment areas.

What does the CAA say about determinations of nonattainment and reclassifications, and how does it apply to the St. Louis area?

Section 181(b)(2)(A) of the Act specifies that:

> Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds

has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of -

(i) the next higher classification for the area, or

(ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

Pursuant to section 181(a)(5) of the CAA, a state may request, and EPA may grant, up to two one-year attainment date extensions if: (1) the state has complied with the requirements and commitments pertaining to the applicable implementation plan for the area; and (2) the area has measured no more than one exceedance of the ozone standard at any monitoring site in the nonattainment area in the year in which attainment is required.

On October 2, 1996, Missouri submitted a request for a one-year extension of the attainment date. However, eight exceedances of the 1-hour ozone standard occurred in the St. Louis area in 1996 (refer to Table 4). Two of

these exceedances occurred at the Alton monitoring site in Illinois. Although this was the only monitoring site recording more than one exceedance in 1996, under section 181(a)(5) of the Act, the St. Louis area failed to qualify for an attainment date extension based on 1996 air quality data.

TABLE 3 - OZONE EXCEEDANCES IN THE ST. LOUIS AREA - 1996				
SITE ID[a]		SITE TYPE[b]	DATE	PPM
Missouri Sites				
Arnold	29-099-0012	SPM	June 20, 1996	0.133
West Alton	29-183-1002	NAMS	June 13, 1996	0.135
Orchard Farms	29-183-1004	SLAMS	June 28, 1996	0.147
S. Lindbergh	29-189-0001	SLAMS	June 20, 1996	0.130
S. Broadway	29-510-0007	SLAMS	June 20, 1996	0.131
Illinois Sites				
North Walcott	17-119-3007	SLAMS	June 13, 1996	0.135
Alton	17-119-0008	SLAMS	June 13, 1996	0.128
Alton	17-119-0008	SLAMS	June 14, 1996	0.127

[a] The sequence of numbers in this column denote the monitoring sites' identification numbers within the Aerometric Information Retrieval System (AIRS).

[b] SPM stands for Special Purpose Monitor. NAMS stands for National Air Monitoring Station. SLAMS stands for State and Local Air Monitoring Station.

Once EPA determines an area has failed to attain the NAAQS and is not eligible for an attainment date extension under the provisions of section 181(a)(5), section 181(b)(2)(B) of the Act stipulates:

> The Administrator shall publish a notice in the Federal Register, no later than 6 months following the attainment date, identifying each

area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

Table 4 lists the average number of days when ambient ozone concentrations exceeded the 1-hour ozone standard at each monitoring site in the St. Louis area for the period 1994-1996. The ozone design value for each monitor is also listed for the same period. A complete listing of the ozone exceedances for each monitoring site, as well as EPA's calculations of the design values, can be found in the docket file. The data in Table 3 show that for 1994-1996, seven monitoring sites in the St. Louis area averaged more than one exceedance day per year. Therefore, pursuant to section 181(b)(2)(A) of the CAA, EPA is here making a final determination that the St. Louis area did not attain the 1-hour standard by the November 15, 1996, deadline. Note the air quality data in Table 4 were available for comment in our March 18, 1999, proposed finding of the area's failure to attain the ozone NAAQS. We received no comments pertaining to the accuracy of these data.

TABLE 4 - AIR QUALITY MONITORING DATA FOR THE ST. LOUIS AREA (1994-1996)

SITE		NUMBER OF EXPECTED DAYS OVER STANDARD (1994-1996)	AVERAGE NUMBER OF EXPECTED EXCEEDANCE DAYS PER YEAR	SITE DESIGN VALUE (ppm)
Missouri Sites				
Arnold	29-099-0012	5.0	1.7[a]	0.126
West Alton	29-183-1002	9.9	3.3[a]	**0.136**[b]
Orchard Farms	29-183-1004	3.6	1.2[a]	0.133
South Lindbergh	29-189-0001	3.0	1.0	0.124
Queeny Park	29-189-0006	6.1	2.0[a]	0.129
55 Hunter	29-189-3001	3.0	1.0	0.123
3400 Pershall	29-189-5001	3.0	1.0	0.118
Rock Road	29-189-7002	5.0	1.7[a]	0.125
South Broadway	29-510-0007	1.0	0.3	0.108
River DesPeres[c]	29-510-0062	1.0	1.0	0.101
1122 Clark	29-510-0072	0.0	0.0	0.089
Newstead	29-510-0080	1.0	0.3	0.108
Illinois Sites				
Alton	17-119-0008	4.0	1.3[a]	0.127
West Division	17-119-1009	2.0	0.7	0.110
Poag Road	17-119-2007	3.1	1.0	0.124
North Walcott	17-119-3007	4.0	1.3[a]	0.125
East St. Louis	17-163-0010	1.0	0.3	0.108

[a] In accordance with 40 CFR part 50, appendix H, a violation occurs when the average number of expected exceedances is greater than 1.05.
[b] Represents the 1996 design value for the St. Louis area.
[c] Site discontinued at end of 1995 ozone season.

Why did EPA defer making a determination regarding the St. Louis area's attainment status beyond the time frame prescribed by the CAA?

For some time, EPA has recognized that pollutant transport can impair an area's ability to meet air quality standards. In March 1995 a collaborative,

Federal-state process to assess the ozone transport problem began. Through a two-year effort known as the Ozone Transport Assessment Group (OTAG), EPA worked in partnership with the 37 easternmost states and the District of Columbia, industry representatives, academia, and environmental groups to develop recommended strategies to address transport of ozone and ozone-forming pollutants across state boundaries.

On November 7, 1997, EPA acted on OTAG's recommendations and issued a proposal (the proposed oxides of nitrogen (NO_x) SIP call, 62 FR 60318) requiring 22 states and the District of Columbia to submit state plans addressing the regional transport of ozone. These state plans, or SIPs, will decrease the transport of ozone across state boundaries in the eastern half of the United States by reducing emissions of nitrogen oxides (a precursor to ozone formation known as NO_x). EPA took final action on the NO_x SIP call on October 27, 1998 (63 FR 57356). EPA expects the final NO_x SIP call will assist many areas in attaining the 1-hour ozone standard.

On July 16, 1998, in consideration of these factors and the realization that many areas are unable to meet the CAA-mandated attainment dates due to transport, EPA

issued an attainment date extension policy. Under this policy, the attainment date for an area may be extended provided that the following criteria are met: (1) the area is identified as a downwind area affected by transport from either an upwind area in the same state with a later attainment date, or an upwind area in another state that significantly contributes to downwind nonattainment (by "affected by transport," EPA means an area whose air quality is affected by transport from an upwind area to a degree that affects the area's ability to attain); (2) an approvable attainment demonstration is submitted along with any necessary, adopted local measures and with an attainment date that shows that the area will attain the 1-hour standard no later than the date that the reductions are expected from upwind areas under the final NO_x SIP call and/or the statutory attainment date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind reductions; (3) the area has adopted all applicable local measures required under the area's current classification and any additional measures necessary to demonstrate attainment, assuming the reductions occur as required in the upwind areas; and (4) the area provides it will

implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved (64 FR 14441, March 25, 1999).

EPA contemplated that when it acted to approve such an area's attainment demonstration, it would, as necessary, extend that area's attainment date to a date appropriate for that area in light of the schedule for achieving the necessary upwind reductions. As a result, the area would no longer be subject to reclassification or "bump-up" for failure to attain by its original attainment date under section 181(b)(2).

EPA's final NO_x SIP call specifically noted that St. Louis' ability to meet the 1-hour ozone standard is impaired by pollutants transported from upwind areas. Therefore, EPA believes that the first of the transport criteria has been satisfied. However, before the St. Louis area could qualify for an attainment date extension under the extension policy, the remainder of the criteria specified in the extension policy would have to be met.

In October 1998, EPA notified the Governors of Missouri and Illinois of the availability of the extension policy. EPA also requested that, if they wished to demonstrate their eligibility for the extension policy, the Governors respond to EPA with letters committing their respective states to meet the requirements necessary to qualify for an attainment date extension under the policy by November 15, 1999.

On November 23, 1998, Missouri submitted a letter to EPA providing a commitment to meet the requirements of the extension policy. Similarly, on December 15, 1998, Illinois submitted a letter to EPA providing a commitment to meet the requirements of the extension policy. (EPA's letters notifying the Missouri and Illinois Governors of

the extension policy, and the respective responses are included in the docket for this rulemaking.)

As previously noted, on March 18, 1999, EPA proposed (64 FR 13384) its finding that the St. Louis area failed to attain the 1-hour ozone NAAQS by its attainment date and announced the area’s potential eligibility for an attainment date extension under the extension policy. The area’s eligibility was dependent in part, on EPA’s approval of an attainment demonstration.

On April 17, 2000, EPA proposed two alternative actions (65 FR 20404) with respect to the Illinois and Missouri 1-hour ozone attainment demonstration SIPs for the St. Louis area. Our proposed actions described the conditions that EPA anticipated would lead to final action on both alternatives.

EPA proposed to approve the plans, with final approval contingent upon the states making certain additional submissions in accordance with a specified schedule. If these additional submissions were approved after further notice and comment, EPA would extend the St. Louis area’s attainment date to a date consistent with the approved attainment demonstration. Under these circumstances, the area would retain its moderate nonattainment status. In other words, EPA proposed to defer the attainment determination required under section

181(b)(2)(B) of the Act

until such time as the new, extended attainment date had passed.

Alternatively, EPA proposed to disapprove the attainment demonstration SIPs if Illinois and Missouri did not make certain additional submissions in accordance with the specified schedule or such submissions were deemed unapprovable after notice and comment.

Why is this action necessary?

In November 1998, the Sierra Club and the Missouri Coalition for the Environment filed a complaint in the United States District Court for the District of Columbia against EPA (Sierra Club v. Browner (now Sierra Club v. Whitman, No. 98-2733 (CKK)) alleging that EPA failed to publish notice of the reclassification of the St. Louis area to "serious" nonattainment, and alleging failure of EPA to act on a number of SIP revisions submitted by Missouri to control ozone precursors. The states of Missouri and Illinois and a group of Missouri industry associations intervened in the litigation.

With respect to the reclassification issue, EPA acknowledged that it had a duty to make a determination on the attainment status of the area by May 15, 1997, and that it had not made a determination. EPA asked the

Court for a schedule for a final resolution of the reclassification which would allow the states to make the necessary submissions, and for EPA to determine whether the area could qualify for an attainment date extension.

The Court dismissed all of the claims relating to failure of EPA to act on the Missouri SIP revisions. On the reclassification issue, the Court in an opinion and Order filed January 29, 2001, rejected the Sierra Club request that the Court order EPA to publish a particular determination (that the area failed to attain the standard) and rejected Sierra Club's request to make the determination retroactive to May 1997. However, the Court noted that the Act required that EPA make an attainment determination and that the determination was to have been made by May 15, 1997. The Court also noted that a "determination of nonattainment" would result in a higher classification by operation of law.

The Court stated that it would require EPA to "reach its statutorily required determination promptly," and ordered EPA to make its determination, no later than March 12, 2001, "whether the St. Louis NAA attained the requisite ozone standards." It also ordered EPA to publish notice of the determination, as required by the

Act, by March 12, 2001. EPA subsequently requested and the Court granted an extension to March 20, 2001, for publishing notice. Our final determination and this notice are in direct response to the Court's Order.

What progress have Missouri and Illinois made towards meeting the requirements of the attainment date extension policy?

Missouri and Illinois have met most of the requirements of the extension policy. Both states submitted and EPA has approved regulations or negative declarations fully addressing volatile organic compound (VOC) reasonably available control technology (RACT) controls for major VOC sources. Missouri submitted and EPA approved a regulation addressing NO_x RACT within the Missouri portion of the nonattainment area (65 FR 31482) and utility NO_x emissions across the state (65 FR 82285). Illinois has submitted a draft statewide NO_x regulation addressing utility emissions and is on schedule to submit it in final form in April of this year.[2] Finally, Missouri and Illinois submitted a joint attainment

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[2] In addition, Illinois is required to comply with the NO_x SIP call. Missouri is not currently subject to the SIP call. The D.C. Circuit remanded to EPA the issue of the extent to which Missouri should be covered, and EPA has not yet responded to that remand.

demonstration as required. However, an August 31, 2000, decision rendered by the United States Court of Appeals for the D.C. Circuit, discussed later in this notice, necessitated further revisions to the attainment demonstration. Missouri has submitted its final attainment demonstration and Illinois is expected to submit a final attainment demonstration by April 2001.

What other actions have Illinois and Missouri taken to improve air quality in the St. Louis area?

EPA has approved, and Illinois has implemented, VOC emission reductions as part of the state’s 15 percent Rate-of-Progress Plan (ROPP or 15 percent plan) (see 62 FR 66279). Illinois has implemented VOC controls including: (1) requiring the lowering of Reid Vapor Pressure of gasoline to 7.2 pounds per square inch (decreased volatility); (2) transportation control measures; (3) automobile refinishing emission control regulations; (4) marine vessel loading emission control regulations; (5) tightened RACT standards and emission cutoffs for various industrial source categories; (6) underground gasoline storage tank breathing emission controls; (7) organic chemical batch process RACT regulations; and (8) expansion of basic vehicle

inspection and maintenance (I/M) area coverage. Illinois has implemented an enhanced vehicle I/M program and cold-cleaner degreasing regulations, which should further reduce VOC emissions in the Illinois portion of the St. Louis area. Illinois has adopted and

implemented a contingency plan resulting in additional VOC control measures.

The state of Missouri has also taken a number of actions to improve air quality in the St. Louis area. As part of its approved 15 percent ROPP (65 FR 31485),[3] the state adopted many of the same VOC RACT regulations as Illinois. Missouri has also adopted and implemented a contingency plan which included additional VOC control measures. In July 1998, the Governor of Missouri chose to participate in the Federal reformulated gasoline (RFG) program. EPA established an implementation date for RFG based on the Governor's request in a Federal Register notice published on March 3, 1999 (64 FR 10366). In addition, the state of Missouri has implemented an upgraded I/M program for motor vehicles which EPA approved on May 18, 2000 (65 FR 31480). This program is a major part of the 15 percent ROPP and will result in a significant reduction in emissions when fully implemented in the coming years. EPA also notes that Missouri implemented a Stage II vapor recovery program in the 1980s to reduce emissions which occur during the

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[3] A petition for review of EPA's approval of the 15 percent ROPP is currently pending in the 8th Circuit Court of Appeals (Sierra Club, et al. v. USEPA, No. 00-2744).

refueling of gasoline-powered vehicles.

What is the area's new classification?

Section 181(b)(2)(A) of the Act requires that, when an area is reclassified for failure to attain, its reclassification be the higher of the next higher classification or the classification applicable to the area's ozone design value at the time the notice of reclassification is published in the Federal Register. The design value for the St. Louis area for 1994-1996, i.e., the period on which the Act prescribes the area's attainment status must be judged, was 0.136 ppm. The design value of the St. Louis area at the time of the proposed finding of failure to attain was based on air quality monitoring data from 1996 through 1998. The design value for the most recent compliance period, 1998-2000, is 0.127 ppm. This design value of 0.127 ppm falls within the range linked to classification of "marginal" nonattainment. By contrast, the next higher classification for the St. Louis area is "serious" nonattainment. Since "serious" is a higher nonattainment classification than "marginal," under the statutory scheme prescribed by the Act, the area is reclassified to serious nonattainment on the effective date of this rule. Refer to Tables 5 and 6 below.

TABLE 5 - AIR QUALITY MONITORING DATA FOR THE ST. LOUIS AREA (1996-1998)				
SITE		NUMBER OF EXPECTED DAYS OVER STANDARD (1996-1998)	AVERAGE NUMBER OF EXPECTED EXCEEDANCE DAYS PER YEAR	SITE DESIGN VALUE (ppm)
Missouri Sites				
Arnold	29-099-0012	3.0	1.0	0.118
West Alton	29-183-1002	4.0	1.3[a]	**0.131**[b]
Orchard Farms	29-183-1004	2.1	0.7	0.118
Bonne Terre[c]	29-186-0005	1.0	0.3	0.106
South Lindberg	29-189-0001	3.2	1.1[a]	0.119
Queeny Park	29-189-0006	1.0	0.3	0.110
55 Hunter	29-189-3001	1.0	0.3	0.109
3400 Pershall	29-189-5001	2.0	0.7	0.117
Rock Road	29-189-7002	1.0	0.3	0.116
South Broadway	29-510-0007	2.0	0.7	0.107
1122 Clark	29-510-0072	1.0	0.3	0.094
Newstead	29-510-0080	0.0	0.0	0.107
Illinois Sites				
Alton	17-119-0008	2.0	0.7	0.116
West Division	17-119-1009	0.0	0.0	0.110
Poag Road	17-119-2007	1.0	0.3	0.118
North Walcott	17-119-3007	2.0	0.7	0.117
East St. Louis	17-163-0010	1.0	0.3	0.101

[a] A violation occurs when the average number of expected exceedances is greater than 1.05.
[b] Represents the 1996-1998 design value for the St. Louis Area.
[c] Site initiated sampling at the beginning of ozone season (April 1) 1996.

TABLE 6 - AIR QUALITY MONITORING DATA
FOR THE ST. LOUIS AREA (1998-2000)

SITE		NUMBER OF EXPECTED DAYS OVER STANDARD (1998-2000)	AVERAGE NUMBER OF EXPECTED EXCEEDANCE DAYS PER YEAR	SITE DESIGN VALUE (ppm)
Missouri Sites				
Arnold	29-099-0012	2.0	0.7	0.122
West Alton	29-183-1002	6.2	2.1[a]	**0.127**[b]
Orchard Farms	29-183-1004	3.1	1.0	0.124
Bonne Terre	29-186-0005	0.0	0.0	0.114
South Lindberg	29-189-0001	1.2	0.4	0.116
Queeny Park	29-189-0006	2.0	0.7	0.116
55 Hunter	29-189-3001	2.0	0.7	0.110
3400 Pershall	29-189-5001	2.0	0.7	0.118
Rock Road	29-189-7002	2.0	0.7	0.122
South Broadway	29-510-0007	1.0	0.3	0.107
1122 Clark	29-510-0072	2.0	0.7	0.105
Newstead[c]	29-510-0080	0.0	0.0	0.112
Margaretta[d]	29-510-0086	0.0	0.0	0.107
Illinois Sites				
Alton	17-119-0008	1.0	0.3	0.112
West Division	17-119-1009	0.0	0.0	0.113
Poag Road	17-119-2007	0.0	0.0	0.114
North Walcott	17-119-3007	1.0	0.3	0.112
East St. Louis	17-163-0010	1.0	0.3	0.110

[a] A violation occurs when the average number of expected exceedances is greater than 1.05.
[b] Represents the 1998-2000 design value for the St. Louis Area.
[c] Site discontinued at end of 1999 ozone season
[d] Site initiated sampling at the beginning of ozone season (April 1) 2000.

What is the new attainment date for the St. Louis area?

Under section 181(a)(1) of the Act, the new attainment deadline for moderate ozone nonattainment areas reclassified to serious under section 181(b)(2) would generally be as expeditious as practicable but no later than the date applicable to the new classification, i.e., November 15, 1999. However, for the reasons given above, EPA did not finalize the determination and reclassification prior to November 15, 1999. As the Court acknowledged in its opinion, it is too late for the area to demonstrate attainment by that date. In our March 18, 1999, proposal, we recognized that November 1999, would not be a realistic attainment date and expressed our belief that we need to establish an appropriate attainment date (later than November 1999) for the area in the event of a reclassification. Thus, we discussed and invited comment regarding options for establishing a new attainment date. These options were based on our belief that the new attainment date should be as expeditious as practicable, taking into account any pertinent factors.

Section 182(i) states that the Administrator may adjust applicable deadlines (other than attainment dates)

to the extent such adjustment is necessary or appropriate to ensure consistency for submission of the new requirements[4] applicable to an area which has been reclassified. Where an attainment date has already passed and is therefore impossible to meet, EPA reasoned that the Administrator may establish an attainment date later than the date that has passed since it is impossible to achieve attainment by that date. EPA also noted another provision of the Act, section 110(k)(5), pertaining to findings of SIP inadequacy, which allows the Administrator to adjust attainment dates when such dates have passed. Although this latter provision is not directly applicable to a reclassification, EPA believes that the provision illustrates a recognition by Congress of limited instances in which it becomes necessary to adjust attainment dates, particularly where it is otherwise impossible to meet the statutory date. When making such adjustments, EPA believes that it must establish a new date in accordance with the principle that attainment must be achieved as expeditiously as

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[4] An area reclassified to serious is required to submit SIP revisions addressing the serious area requirements for the 1-hour ozone standard listed in section 182(c) of the CAA.

practicable.

One option, as discussed in the proposal, is to construct a schedule consistent with recent reclassifications of other areas. EPA reclassified other

moderate ozone nonattainment areas, including Phoenix, Arizona; Santa Barbara, California; and Dallas-Fort Worth, Texas; on November 6, 1997, December 10, 1997, and February 18, 1998, respectively (62 FR 60001, 62 FR 65025, and 63 FR 8128). In these cases, the new attainment date was November 15, 1999. The most recent reclassification was for the Dallas-Fort Worth area. EPA published the notice reclassifying this area on February 18, 1998, thereby providing approximately 21 months for the area to attain the standard. EPA thus proposed that an approach consistent with that of the Dallas-Fort Worth area might constitute an adequate period for a moderate nonattainment area to attain the standard where the new attainment date had not yet lapsed but where there was less time remaining than the Act had contemplated. EPA thus suggested, as one option, an attainment date in keeping with the time frame allowed for the Dallas-Fort Worth area, i.e., 21 months from publication of the final reclassification notice.

Another option discussed in the proposal allowed for the consideration of the impacts of pollutant transport. In other words, the new attainment date would coincide with the date set for upwind area reductions under the NO_x

SIP call, which at the time was 2003.[5] In proposing this option, EPA reasoned that Congress did not intend to impose on a nonattainment area the entire responsibility for the transported pollution the nonattainment area receives. This solution imposes more stringent controls on local sources, but allows upwind controls to come into place prior to attainment. In the NO_x SIP call rulemaking, EPA found that, overall, 17 percent of the ozone nonattainment in St. Louis comes from emissions in upwind states (Air Quality Modeling Technical Support Document (TSD) for the NO_x SIP Call, Docket Item VI-B-11, electronically available at www.epa.gov/ttn/oarpg/otag/aqtsd). In terms of individual upwind states, EPA found that emissions from Kentucky make a significant contribution to 1-hour ozone nonattainment in the St. Louis nonattainment area. The magnitude, frequency, and relative amount of

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[5] On August 30, 2000, the United States Court of Appeals for the D.C. Circuit issued an Order (Michigan v. EPA, No. 98-1497, August 30, 2000) extending the compliance date for the NO_x SIP call from May 1, 2003, to May 31, 2004. (The merits of the NO_x SIP call rule were addressed, and the rule generally upheld, in Michigan v. EPA, 213F.3d663 (D.C. Cir. 2000), cert. Den., 532 U.S.__(2001)). The effect of this ruling is that the regional NO_x emission reductions relied on in the attainment demonstration cannot be assumed to occur before the Court-ordered compliance date.

contributions from Kentucky to St. Louis are described in the TSD for each of the two modeling techniques relied on for the NO_x SIP call rulemaking. As an example, based on source apportionment modeling, Kentucky contributes 5 parts per billion (ppb), to 14 percent of the 1-hour exceedances predicted in St. Louis. Also, the highest daily average 1-hour contribution from Kentucky to St. Louis is 5 ppb which is 4 percent of the average 1-hour ozone concentration >=125 ppb in St. Louis on that day. Base on independent technique, Kentucky contributes at least 2 ppb to 36 percent of the 1-hour exceedances in St. Louis with a maximum contribution of 4 ppb. EPA received comments on the appropriate attainment date for the area. The comments and EPA's responses can be found in a separate section of this document.

Upon consideration of the comments, EPA has decided that an attainment date which is as expeditiously as practicable and accounts for the upwind reductions associated with the NO_x SIP call is the most appropriate. Therefore, we are establishing November 15, 2004, as the next applicable attainment date for the St. Louis area. Doing so ensures that the next determination with respect to the area's attainment status will be based on air

quality data that reflect improvements that result both from local control measures and implementation of the NO_x SIP call, which now has a compliance date of May 31, 2004.

When must Missouri and Illinois submit SIP revisions fulfilling the requirements for serious ozone nonattainment areas?

In addition to establishing a new attainment date, EPA must also address the schedule by which Illinois and Missouri are required to submit SIP revisions meeting the CAA's pollution control requirements for serious areas. An option on which EPA invited comments (64 FR 13384), is to require that the states submit SIP revisions fulfilling all of the serious area requirements, no later than one year after final action on the reclassification. The measures required by section 182(c) of the CAA include, but are not limited to, the following: (1) attainment and reasonable further progress demonstrations; (2) enhanced vehicle I/M programs; (3) clean-fuel vehicle programs; (4) the major source threshold being defined as 50 tons per year; (5) more stringent new source review requirements; (6) an enhanced air monitoring program; and (7) contingency provisions.

Illinois submitted a comment supporting a deadline of 12 months for submittal of the SIP revisions meeting the CAA's pollution control requirements for serious areas and EPA received no adverse comments on the

12-month option. EPA believes that a submittal deadline of 12 months after the effective date of the determination and reclassification will give the states adequate time to adopt and submit the additional serious area requirements. EPA also notes that the 12-month deadline is consistent with the time given to other areas (such as Dallas-Fort Worth, Phoenix, and Santa Barbara) which were reclassified from moderate to serious. Therefore, EPA is requiring Missouri and Illinois to submit SIP revisions addressing the Act’s pollution control requirements for serious ozone nonattainment areas within 12 months of the effective date of this rule.

What comments were received on the proposed determination of nonattainment and reclassification, and how has EPA responded?

EPA received comments on the proposed Clean Air Reclassification and Notice of Potential Eligibility for Attainment Date Extension, Missouri and Illinois, dated March 18, 1999 (64 FR 13384). Comments were submitted by Lewis C. Green and Douglas R. Williams on behalf of the Sierra Club and the Missouri Coalition for the Environment, by the Illinois Environmental Protection

Agency, and by the Missouri Department of Natural Resources. EPA also received comments on the proposed approval of the Illinois and Missouri attainment demonstration and request for attainment date extension dated April 17, 2000 (65 FR 20404). Comments on the latter notice were submitted by Lewis C. Green on behalf of the Sierra Club and the Missouri Coalition for the Environment (which also incorporated comments dated March 20, 2000, submitted in response to EPA's proposed rulemaking on Missouri's ROPP, 65 FR 8083, February 17, 2000), by the St. Louis Regional Chamber and Growth Association, and by the Illinois Environmental Protection Agency. Although the April 17, 2000, proposal includes some issues beyond the scope of the March 18, 1999, proposed reclassification (and EPA is not acting on that proposal in this action), some of the comments are relevant to the March 18, 1999, proposal. Therefore, in this action EPA is addressing the relevant comments on the March 18, 1999, proposal and the relevant comments on the April 17, 2000, proposal. A summary of the comments, and EPA's responses to the comments, is provided below.

Comments relating to necessity and scope of a reclassification

Comment 1: In a multistate area, EPA should consider severing the area for reclassification purposes if one state is attaining the standard. In addition, where one state has "complied with all statutory requirements," EPA should use the provisions of the Act "to address recalcitrance prior to imposing a reclassification that affects compliant states as well as recalcitrant states."

Response 1: As required by section 181(b)(2)(A) and consistent with the Court's Order (Memorandum Opinion, p. 20, discussing EPA's duty to determine whether the St. Louis nonattainment area failed to attain by November 15, 1996), EPA must determine the attainment status of the St. Louis nonattainment area as of the statutory attainment date, based on the air quality data for the area. The provisions of the Act relating to failure to attain refer to the "ozone nonattainment area" (section 181(b)(2)(A)) which, for St. Louis, includes geographic areas in Missouri and Illinois (see 40 CFR 81.326 and 81.314). The reclassification provision is silent with respect to treatment of multistate ozone nonattainment areas. As explained in the proposal (p.

13,386, Table 3), the 1994-1996 data (on which the attainment determination for 1996 is based) show violations at area monitors in both Missouri and Illinois. Therefore, the data do not support dividing the nonattainment area for reclassification, even if there were a policy and legal basis for doing so. At this time, EPA does not believe there is either a policy or legal basis which justifies dividing a nonattainment area for reclassification purposes.

The commenter did not specify any particular instance of “recalcitrance” or indicate how that factor could be considered in making a determination under section 181(b)(2)(A) of the Act. The Act does contain a mechanism, in section 182(j)(2), by which one state in a multistate area can be relieved of liability for sanctions under section 179 of the Act for failure to demonstrate attainment, if it can show that its failure is based on a failure of another state to adopt all controls required of the area under section 182. However, the Act does not contain any express link between section 182(j)(2) and section 181(b)(2)(A). Even if there were an implicit link, EPA does not believe that allegations of “recalcitrance” should influence its

attainment determination for the St. Louis area, and has not considered that factor in its final decision.

Comment 2: The "serious" area controls are unnecessary for attainment, unduly burdensome on business and economic growth in the area, and will not result in attainment any sooner in the St. Louis area.

Response 2: Under section 181(b)(2)(A), the attainment determination is made solely on the basis of air quality data, and any reclassification is by operation of law. If an area is reclassified to "serious," the requirements of 182(c) apply regardless of whether some of the requirements are not "necessary" for attainment. EPA notes that Illinois and Missouri are in the process of developing and finalizing their attainment demonstrations, and Illinois is finalizing regulations for the attainment demonstration control strategy for the area (see 65 FR 8083, April 17, 2000, for a description of the specific revisions to the attainment demonstration and control strategy which EPA has identified as necessary for a final decision on the attainment demonstration). No final determinations have been made by EPA concerning whether the currently planned and adopted control measures are adequate. Therefore, even

if the Act allowed EPA to assess the need, or lack thereof, for additional local measures (which it does not), it is premature to conclude that the additional "serious area" control measures are unnecessary for attainment.

With respect to the perceived burden imposed on industry by the serious area requirements, EPA notes that the serious area planning requirements are imposed by section 182(c) of the CAA and the economic impact of a reclassification is not a consideration in making the attainment determination under section 181(b)(2) of the Act. It is, however, appropriate for the states to consider specific economic impacts in meeting the planning requirements of section 182(c) and in developing specific regulatory requirements for specific sources.

Comment 3: EPA should grant an attainment date extension to the St. Louis area, based on EPA's transport-based attainment date extension guidance.

Response 3: EPA was in the process of working with the states of Missouri and Illinois to undertake the actions necessary for the area to qualify for the attainment date extension when the United States District Court for the District of Columbia issued its Order in Sierra Club v.

Whitman, requiring EPA to make a determination of attainment or nonattainment by March 12, 2001. EPA's request to the Court for additional time to allow the area an opportunity to qualify for the attainment date extension was pending when the Court ruled that EPA must make its determination of attainment.

EPA cannot finalize the attainment date extension by the time the Court has ordered EPA to act. Despite the efforts of the states and the substantial progress made to date, some submissions necessary for approval of the attainment date extension, including an approvable attainment demonstration, will not be submitted for final EPA approval prior to the time that EPA must act pursuant to the Court's Order. Because EPA is unable to authorize an attainment date extension that meets the criteria set forth in its guidance prior to the deadline set by the Court to make a determination of attainment or nonattainment, EPA must abide by the existing deadline for attainment in making the Court-ordered determination. EPA, in its Court filings, repeatedly sought to obtain additional time for the states to qualify for the attainment date extension, and regrets that this avenue is not open to the states and the Agency prior to the

time that EPA must make its determination. However, as explained above, in a separate Federal Register notice EPA is proposing to extend the effective date of today's determination of nonattainment and reclassification to June 29, 2001. EPA today announces its intent to propose to withdraw today's determination of nonattainment and reclassification if EPA approves an attainment date extension before the effective date of today's action.

Comment 4: A commenter argued that EPA had previously determined that St. Louis failed to attain the 1-hour ozone standard by its attainment date of 1996, and that the area has already been reclassified "by operation of law" to a serious ozone nonattainment area pursuant to section 181(b)(2)(a). The commenter also contended that EPA "has no authority to 'propose' findings conditional upon the happening of other events.'"

Response 4: Commenters presented these arguments in Sierra Club v. Whitman, where EPA addressed them in detail in memoranda filed with that Court. The Court in its Opinion of January 29, 2001, rejected these arguments. The Court ruled, contrary to commenters' contentions, that EPA had not previously made a determination of nonattainment, cognizable under the

statutory provisions regarding reclassification, that the area had not previously been reclassified, and that any determination made by EPA in the future should not apply retroactively. See Slip Opinion at 13-31. The Court further upheld EPA's view that the reclassification provisions of the CAA call for public notice and comment rulemaking. EPA believes that EPA's public filings and the ruling of the Court in Sierra Club v. Whitman address these comments and show that the arguments advanced by the commenters do not undermine EPA's actions in this rulemaking.

Comment 5: Sierra Club and the Missouri Coalition for the Environment submitted comments on EPA's transport-based attainment date extension policy, published March 25, 1999. Many of them were critical of the policy and its legal bases.

Response 5: Because EPA is not applying the attainment date extension policy here, EPA need not address those comments. However, responses to comments received on the policy can be found in the rulemakings approving attainment date extensions for Washington, D.C., Greater Connecticut, and Springfield, Massachusetts, published January 3, 2001 (66 FR 586, 66 FR 634, 66 FR 666,

respectively).

Comments relating to the attainment date upon reclassification

Summary of proposal: In the March 18, 1999, proposed reclassification, EPA took comment on what the attainment date should be if the area is reclassified. EPA noted that the statutory attainment date for serious areas was November 15, 1999, but explained that, since it would be impossible for the states to meet that date, EPA was proposing options for later dates (see 64 FR 13390 for a more detailed explanation of this issue). One option was to set an attainment date which was 21 months after the effective date of the reclassification, based on the amount of time provided for attainment in EPA's most recent reclassification of a moderate ozone nonattainment area. Another option was to set a date based on the recognition that the St. Louis area is affected by transport, and establish the attainment date consistent with the compliance date for EPA's NO_x SIP call rule (which, at the time of the March 18, 1999, proposal was 2003). No comments were submitted on the impossibility of attaining by 1999 or on the need to set an attainment date after 1999 for the reclassified area. Comments were

received regarding what date after 1999 would be appropriate.

Comment: Both states submitted comments supporting an attainment date which considers transport, stating that the attainment date for the reclassified area should be no sooner than the compliance date for the NO_x SIP call. Both states also commented that the alternative attainment date of 21 months was insufficient to allow adequate time to adopt and implement the required local measures, and also did not allow time for implementation of the controls needed to resolve the transport problem. Illinois also recommended an attainment date at least three years after implementation of all controls (including transport controls) needed for attainment, consistent with the three-year averaging period through the attainment year for determining attainment of the ozone standard.

Response: In response to the Illinois recommendation that the attainment date should be 2005, or three years after implementation of all controls needed for attainment, EPA has decided not to accept the recommendation. An attainment date three years after implementation of all control measures would not be

consistent with past practice of EPA in setting attainment dates. Most recently, in establishing

attainment dates for the Washington D.C., Greater Connecticut, and Springfield, Massachusetts, areas (in the January 3, 2001, rules cited above), EPA set attainment dates based on when the NO_x controls would be in place, rather than a later date along the lines recommended by Illinois. In addition, section 181(a)(5) provides a mechanism to obtain no more than two one-year extensions of the attainment date under certain conditions if the area does not have the requisite three years of air quality data showing attainment in the attainment year. An extension would be available under this provision upon a showing that all local SIP controls have been implemented and no more than one exceedance of the ozone standard has been recorded in the attainment year.

After considering the comments, EPA has determined that it is appropriate to establish an attainment date which takes into account the impact of transport on the area. As proposed, this date will coincide with the date by which sources will be required to comply with the NO_x SIP call. In the proposal, EPA indicated that this date is in 2003, consistent with the NO_x SIP call compliance date at the time of the March 1999 proposal. However,

subsequent to the proposal, the SIP call compliance date was extended by the Court of Appeals for the D. C. Circuit (Michigan v. EPA, No. 98-1497, D.C. Cir. August 30, 2000) to May 31, 2004. Consistent with the rationale in the proposal, EPA has determined that the attainment date for the St. Louis area should be as expeditious as practicable but no later than November 15, 2004.[6] This is also consistent with the District Court's Opinion in the Sierra Club case. In its Opinion, the Court noted that a retroactive reclassification, ". . . would carry with it a battery of new requirements, . . . including a new inflexible, and expired attainment date of November 15, 1999 [citation omitted]." By possibly imposing a new classification that carries with it a deadline that has already expired, the Court could potentially expose the state of Missouri to a variety of sanctions for failing to comply promptly and adequately [citation omitted]." (Opinion at page 29.)

Therefore, EPA is establishing an attainment date

[6] The latest date could extend to November 2004 to allow time for the NO_x emissions reductions mandated by the NO_x SIP call to produce their ozone-reducing effect during the 2004 summer ozone season before assessing whether attainment-level reductions have occurred. Those reductions are required to begin no later than May 31, 2004.

which must be as expeditious as practicable, but no later than November 15, 2004. If the submissions by Missouri and Illinois required as a result of the reclassification indicate that the area can practicably attain sooner than November 2004, EPA would adjust the date to reflect the earlier date, consistent with section 181(a)(1) of the Act.

Comments relating to the SIP submission date

Comment: One state commenter supported EPA's proposal to set a submission date 12 months after the effective date of the reclassification. No other comments were submitted regarding this issue.

Response: As previously explained, EPA is establishing a 12-month deadline for submission of the serious area requirements because it provides a reasonable amount of time for the submissions and is consistent with previous reclassifications.

Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic

analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities."

The Agency has determined that the determination of nonattainment would result in none of the effects identified in section 3(f) of the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn,

are triggered by air quality values, determinations of nonattainment and reclassification cannot be said to impose a materially adverse impact on state, local, or tribal governments or communities.

B. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

C. Executive Order 13175

On November 6, 2000, the President issued Executive

Order 13175 (65 FR 67249) entitled “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. EPA developed this final rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA’s prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084

requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's finding of failure to attain does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this finding of failure to attain.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. See 62 FR 60001, 60007-8, and 60010 (November 6, 1997) for additional analysis of the RFA implications of attainment determinations. Therefore, pursuant to 5 U.S.C. 605(b), I certify that today's final action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA believes, as discussed above, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, the finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

F. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR

43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This determination of nonattainment and the

resulting reclassification of a nonattainment area by operation of law will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because this action does not, in and of itself, impose any new requirements on any sectors of the economy, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to these actions.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or

adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Submission to Congress and Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days after publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect

the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

Dated: March 12, 2001 /s/ William Rice

William Rice,
Acting Regional
Administrator.
Region 7

PART 81- [AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Section 81.314 is amended by revising the ozone table entry for the St. Louis Area to read as follows:

§ 81.314 Illinois.

* * * * *

Illinois - Ozone (1-hour standard)

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	*	*	*
St. Louis Area				
Madison County	[**Insert date 60 days from publication**]	Nonattainment	[**Insert date 60 days from publication**]	Serious
Monroe County		Nonattainment		Serious
St. Clair County		Nonattainment		Serious
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

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3. Section 81.326 is amended by revising the ozone table entry for the St. Louis area to read as follows:

§ **81.326 Missouri.**

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Missouri - Ozone (1-hour standard)

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	*	*	*
St. Louis Area				
Franklin County	**[<u>Insert date 60 days from publication</u>]**	Nonattainment	**[<u>Insert date 60 days from publication</u>]**	Serious
Jefferson County		Nonattainment		Serious
St. Charles County		Nonattainment		Serious
St. Louis		Nonattainment		Serious
St. Louis County		Nonattainment		Serious
* * *	*	*	*	

[1] This date is November 15, 1990, unless otherwise noted.

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