

Environmental Protection Agency, No. 97-1637, that we must make an affirmative determination that the submitted motor vehicle emission budgets contained in State Implementation Plans (SIPs) are adequate before they are used to determine the conformity of Transportation Plans or Transportation Improvement Programs. In response to the court decision, we make any submitted SIP revision containing an emission budget available for public comment and respond to these comments before announcing our adequacy determination. The criteria and process by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4) and in the guidance "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision," dated May 14, 1999.

In the Aspen maintenance plan, Colorado established a new mobile source emissions budget of 16,244 lbs./day for the year 2015 and beyond. This budget is the total of the 2015 mobile source PM<sub>10</sub> emissions and includes emissions from vehicle exhaust, highways, paved arterial and local roads, and gravel roads. EPA's approval of 16,244 lbs./day as the budget means that this value must be used for conformity determinations for 2015 and beyond.

EPA sent a letter to the Colorado Air Pollution Control Division (APCD) on May 16, 2002 stating that the motor vehicle emissions budget in the submitted Aspen PM<sub>10</sub> maintenance plan is adequate. This finding has also been announced on EPA's conformity Web site: <http://www.epa.gov/oms/transp/conform/adequacy.htm>. We documented our adequacy determination for Aspen in the **Federal Register** on August 20, 2002 (67 FR 53925). The budgets took effect on September 4, 2002 (15 days after our announcement in the **Federal Register**).

*d. Did Colorado Follow the Proper Procedures for Adopting This Action?*

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State

after reasonable notice and public hearing.

Colorado held a public hearing for the proposed rule changes on January 11, 2001. The rulemaking was adopted by the Air Pollution Control Division (APCD) directly after the January 11, 2001, hearing and was formally submitted to EPA by the Governor on November 9, 2001. We have evaluated the Governor's submittal and have determined that Colorado met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

### III. Background

To implement our 1987 revisions to the PM<sub>10</sub> NAAQS, on August 7, 1987 (52 FR 29383), we categorized areas of the nation into three groups based on the likelihood that protection of the PM<sub>10</sub> NAAQS would require revisions of the existing SIP. We identified Aspen as a PM<sub>10</sub> "Group I" area of concern, *i.e.*, areas with a strong likelihood of violating the PM<sub>10</sub> NAAQS and requiring a substantial SIP revision. The Aspen area was among several Group I PM<sub>10</sub> areas, all of which were designated and classified as moderate PM<sub>10</sub> nonattainment areas by operation of law upon enactment of the Clean Air Act Amendments of 1990 (November 15, 1990). See 56 FR 56694 at 56705-706 (November 6, 1991).

By November 15, 1991, States containing initial moderate PM<sub>10</sub> nonattainment areas were required to submit most elements of their PM<sub>10</sub> SIPs. (See sections 172(c), 188, and 189 of the CAA.) Some provisions, such as PM<sub>10</sub> contingency measures required by section 172(c)(9) of the CAA and nonattainment new source review (NSR) provisions, were due at later dates. In order for a nonattainment area to be redesignated to attainment, the above mentioned conditions in section 107(d)(3)(E) of the CAA must be met. We fully approved the PM<sub>10</sub> SIP for Aspen on September 14, 1994 (59 FR 47088).

EPA promulgated new standards for PM<sub>10</sub> on September 18, 1997. Areas were to be designated under the new PM<sub>10</sub> standard by July 2000. On May 14, 1999, the United States Court of Appeals for the DC Circuit in *American Trucking Associations, Inc., et al. v. United States Environmental Protection Agency* vacated the 1997 PM<sub>10</sub> standard. Because of the Court ruling, we are continuing to implement the pre-existing PM<sub>10</sub> standard, and are therefore approving redesignations to qualified PM<sub>10</sub> nonattainment areas. On November 9, 2001, the Governor of Colorado submitted a request to

redesignate the Aspen moderate PM<sub>10</sub> nonattainment area to attainment (for the 1987 PM<sub>10</sub> NAAQS) and submitted a maintenance plan for the area.

### IV. Consideration of CAA Section 110(l)

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. As stated above, the Aspen area has shown continuous attainment of the PM<sub>10</sub> NAAQS and has met the applicable Federal requirements for redesignation to attainment. The maintenance plan and associated SIP revisions will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national