

and TIPs that conform to a submitted budget are consistent with the Clean Air Act requirements, and reinforces EPA's position which has been endorsed by a court that using an adequate budget for conformity prior to full approval of a SIP is consistent with the Clean Air Act. See *1000 Friends of Maryland v. Carol Browner, et al.*, 265 F.3d 216 (4th Cir. 2001).

Though today's proposal amends the rule language in § 93.118(e)(3) to remove the reference that a budget must be used after 45 days if EPA has not made a finding, the main point of § 93.118(e)(3) is retained. That is, a conformity determination based on budgets that were found adequate remains valid even if EPA later, upon further analysis, finds the budgets inadequate. The fact that new information subsequently became available that changed the finding of adequacy for the future does not affect the validity of a prior conformity determination; a subsequent conformity determination would have to take the new information into account in that only new, adequate budgets could be used.

C. Why Are We Proposing These Changes?

In its ruling, the court remanded 40 CFR 93.118(e)(1) to EPA for further rulemaking consistent with the opinion. This section of the conformity rule, among other things, had allowed submitted budgets to be used in conformity determinations after 45 days even if EPA had not made an adequacy finding on the submitted budgets. However, the court stated that a budget could only be used for conformity purposes if EPA had found it adequate.

The court stated specifically that "where EPA fails to determine the adequacy of motor vehicle emissions budgets in a SIP revision within 45 days of submission, * * * there is no reason to believe that transportation plans and programs conforming to the submitted budgets "will not—(i) cause or contribute to any new violation of any standard in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard * * * 42 U.S.C. 7506(c)(1)(B)." Therefore, the court remanded section 93.118(e)(1) to EPA so we could harmonize it with these Clean Air Act requirements.

In response to the court decision, EPA established the current process for determining the adequacy of submitted SIPs in its May 14, 1999, guidance. This guidance has been fully operational since it was issued and serves as the basis for this proposal. Under the

current guidance and proposed rule (§ 93.118(e)(1)), budgets from submitted SIPs cannot be used in a conformity determination until EPA has found them adequate.

We believe that the court's direction on the use of submitted budgets was strictly confined to a need to make an affirmative finding on the adequacy of a submitted SIP's budgets before they can be used for conformity purposes. The court remanded only the aspect of EPA's regulations that allows the use of a budget from a submitted SIP which EPA has not yet found adequate. The court did not remand EPA's regulations at 40 CFR 93.118(e)(4) establishing criteria for finding a budget adequate, 93.118(e)(6) requiring additional findings by Federal agencies and MPOs where a conformity determination is made using a budget from a submitted SIP, or any other parts of § 93.118(e).

Therefore, EPA believes that conformity determinations consistent with the proposed provisions and the adequacy process are consistent with the Act's requirements in 42 U.S.C. 7506(c)(1)(B) and the court's opinion. Further, as noted above, a second court of appeals recently concluded that showing conformity to submitted SIPs in these circumstances was not in violation of the Clean Air Act (*1000 Friends of Maryland v. Browner, supra*). EPA continues to believe the adequacy criteria in the conformity rule provide a sound basis for preliminarily reviewing submitted motor vehicle emissions budgets for conformity purposes prior to EPA's full approval action.

EPA's adequacy review of budgets from submitted SIPs is separate from EPA's completeness review for purposes of SIP processing, and EPA uses different criteria for each of these reviews. Similarly, EPA's SIP approval process requires a more detailed examination of the SIP's control measures and technical analyses than the conformity adequacy process. Although the adequacy criteria allow EPA to review submitted budgets for conformity purposes, EPA recognizes that other elements must also be in the SIP for it ultimately to be approved. EPA's adequacy review should not be used to prejudge EPA's approval or disapproval of the SIP, since additional information may be submitted and more extensive review may change some conclusions. As we have stated previously (62 FR 43782), EPA cannot fully ensure that a submitted SIP is consistent with reasonable further progress, attainment or maintenance until EPA has completed its formal review process and the SIP has been approved or disapproved through

notice-and-comment rulemaking. Therefore, a budget that is found adequate in our adequacy review could later be disapproved based on further analysis when reviewed with the entire SIP submission.

D. EPA's Adequacy Process

1. What Is the General Process EPA Would Use To Examine Adequacy of Budgets in a SIP?

Today's proposal is based on EPA's existing adequacy process described in the May 14, 1999, guidance, and consists of three basic steps: Public notification of SIP submission, a public comment period, and EPA's adequacy finding. These three steps are described below. EPA generally intends to review the adequacy of a newly submitted budget through this process within 90 days of EPA's receipt of a full SIP submission, however the adequacy review could take longer particularly when EPA receives significant public comments.

Notification of SIP submissions: After a State officially submits a control strategy SIP or maintenance plan to EPA, we would notify the public by posting a notice on EPA's adequacy Web site and would attempt to do so within 10 days of submission. EPA's adequacy Web site is the central location for adequacy information for the entire U.S. Currently, the Web site is found at <http://www.epa.gov/otaq/traq/traqconf/adequacy.htm>. We would consider a SIP submission to be formally submitted on the date that the EPA regional office receives it in full. If a member of the public would like to be notified when we receive a relevant SIP submission for a particular State or area, he or she should contact the EPA regional employee listed on the Web site for that particular State. EPA's Web site provides EPA regional contact information so that interested parties can arrange or discuss notification processes. For example, EPA could use postcards, letters, email or phone calls to notify requesters, as agreed on by the interested party and EPA. The adequacy Web site also includes information on how to obtain a copy of a SIP submission under adequacy review.

Public comment: A 30-day public comment period would start immediately upon the posting of the notice on the EPA adequacy Web site in either of the following cases: (1) If the State has made the entire SIP submission electronically available to the public via a Web site, electronic bulletin board, etc.; or (2) if no one has requested copies of the SIP within 15 days after the date of EPA posting