

SIP in a way that affects the adequacy of a budget, the adequacy review process would start over: EPA would announce that we have a submitted SIP under adequacy review and reopen the comment period through notification on the adequacy website.

4. Can EPA Change an Adequacy Finding?

Yes, EPA can change an adequacy finding from adequate to inadequate or from inadequate to adequate. EPA would do so for a specific reason such as receiving new information that affects our previous adequacy finding. For example, EPA might change a finding if a State submits more information after we've found a budget in a SIP submission to be inadequate. If the State submits additional materials to clarify or support the adequacy of the budget, we will treat this additional information as a supplement to the SIP submission. In this situation, we would post a notice that we have received new information on the adequacy website and begin a new 30-day public comment period. After reviewing any comments received, we would make a new finding, as appropriate.

In the case where we find the budgets in a submitted SIP adequate but later discover based on additional information or further review that they do not meet the criteria for adequacy, we could change our finding to inadequate. In these cases where EPA reverses its finding of adequate to inadequate, EPA is proposing for the reasons explained below to make our subsequent inadequacy finding apply immediately upon EPA's written notification to the State and other relevant agencies, such as the MPO and State DOT. In EPA's letter to the State we would indicate that the finding of inadequacy applies as of the date of our letter and we would explain why our finding has changed. We would also begin another 30-day comment period to allow the public to consider the new information that has caused EPA to reverse its finding to inadequate. If, after consideration of any comments received, EPA still believes that the submitted SIP is inadequate we would issue a second **Federal Register** notice and update the adequacy website as appropriate.

EPA is seeking comment on whether the public should be provided an opportunity to comment on any new information before EPA can reverse an adequacy determination to a finding of inadequacy, or after. In cases where we change a finding from adequate to inadequate, we do not believe that it is in the best interest of public health to

delay our inadequacy finding until after the public comment period has ended. Rather, we believe that having our inadequacy finding apply immediately is necessary to ensure that no further conformity determinations are made using budgets that may not be protective of the air quality standards. We should note, however, that if conformity of a transportation plan or TIP had already been determined by DOT using a budget during the time that it was adequate, the conformity determination remains valid as provided by § 93.118(e)(3) of the current rule.

Finally, EPA notes that in certain circumstances it could be so obvious that a budget has become inadequate that it would be unnecessary to provide for the subsequent public comment at all. For instance, if a state has submitted a new SIP indicating that the prior SIP submission no longer provided for attainment, it would be clear that the prior submission is inadequate. Under such circumstances, EPA could proceed on a case by case basis to make a final inadequacy determination explaining these facts and publish a **Federal Register** notice of that determination.

E. Why Is EPA Using the Website Instead of the Federal Register To Notify the Public in the Adequacy Process?

Today's proposal would codify our adequacy process that has been in effect since May 14, 1999, when we published guidance in response to the court decision on this matter. In that guidance, one of the key components of our process for reviewing the adequacy of a submitted SIP budget is to notify the public when EPA regional offices receive a SIP, and provide the public with an opportunity to comment on the submitted SIP's budgets. In the guidance and in today's proposal we rely on our website, rather than the **Federal Register**, as the primary means for requesting public comment and updating the public on the status of our adequacy review of submitted SIP budgets.

EPA previously concluded that the notification and comment procedures of the Administrative Procedures Act (APA) do not apply to the adequacy review process because adequacy determinations are carried out on an informal case-by-case basis rather than through rulemaking.⁵ The March 1999 court decision did not address this aspect of the adequacy process. Therefore, EPA is not reopening this legal conclusion in today's proposal. However, we believe that providing some opportunity for public

involvement adds value to our adequacy review. Specifically, we believe public comment can assist us in making more informed decisions regarding submitted budgets and their ability to ensure that new transportation activities will not cause or contribute to new violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. Our existing conformity regulations, at § 93.118(e)(5) of the current rule, already require us to review and consider all comments received by a State during its development of the SIP. The adequacy process provides additional opportunity for comment directly to EPA through the web process that focuses specifically on the question of whether the SIP submission meets our adequacy criteria.

The website gives EPA the ability to notify the public and solicit comment without undue delay. The intent of the adequacy process is to allow areas to use a budget from a SIP even before it is approved. Since an emissions budget is a more appropriate measure for achieving the air quality standards, we believe using it for a conformity determination is preferable to using the emission reduction test(s). Using the website allows EPA to meet the dual goals of offering the opportunity for public comment and completing the adequacy review in a timely way.

We are proposing to publish notice of our finding of adequacy or inadequacy in the **Federal Register**, as well as on the adequacy Web site, so that we can be sure the public is fully informed of our finding. We are also proposing to make an adequacy finding effective 15 days after it is announced in the **Federal Register** so that the public would be aware that a SIP budget has been found adequate before it is used in a conformity determination.

F. What Typical SIP Submissions Will We Review for Adequacy?

In general, EPA adequacy reviews are conducted for SIPs that contain motor vehicle emissions budgets, which include control strategy SIPs (e.g., reasonable further progress SIPs, attainment demonstrations) and maintenance plans. If there is no approved SIP that contains a budget for the same Clean Air Act requirement, pollutant, and year, a budget from a newly submitted SIP can be used for conformity as of the effective date of EPA's adequacy finding. Therefore, EPA will review the adequacy of a motor vehicle emissions budget from an initial submission of a control strategy SIP or maintenance plan. In addition, EPA will review the adequacy of a budget from a

⁵ August 15, 1997, 62 FR 43782-43783.