

# Alaska Department of Environmental Conservation



**Amendments to:**

## **State Air Quality Control Plan**

Vol. II: Analysis of Problems, Control Actions

Section III.I: Transportation Conformity

Public Review Draft

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## Volume II, Section III.I. Transportation Conformity

### I.1 Transportation Conformity in Alaska

#### I.1.1 Introduction

Transportation conformity is required under Clean Air Act (CAA) section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with the purpose of state implementation plans. These transportation conformity regulations are implemented by the Alaska Department of Environmental Conservation (DEC) through this section of the State Air Quality Control Plan, also known as the State Implementation Plan (SIP). Conformity currently applies to areas that are designated nonattainment and to those re-designated to attainment after 1990 (“maintenance areas”) for the following transportation-related criteria pollutants: ozone, fine & coarse particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>), carbon monoxide (CO), and nitrogen dioxide (NO<sub>2</sub>). Conformity for the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS).

This portion of Alaska’s SIP describes the regulations, criteria and procedures for assuring that transportation plans, programs, and projects in Alaska conform to the SIP’s purpose of eliminating violations of the NAAQS, and achieving expeditious attainment of these standards. These criteria and procedures apply to activities approved, adopted or funded under 23 U.S.C. (Highways) or 49 U.S.C. Chapter 53 (Federal Transit Laws) that contribute to regulated emissions within either a nonattainment area (a geographical area where the air quality exceeds the NAAQS), or a maintenance area (a geographical area that has implemented measures to improve air quality so that the pollution levels are within the NAAQS). Alaska’s SIP is adopted by reference in Title 18, Chapter 50, Article 1 of the Alaska Administrative Code [18 AAC 50.030].

#### I.1.2 Regulatory Background

The U.S. Environmental Protection Agency’s (EPA) conformity procedures have been developed in accordance with section 176(c) of the Clean Air Act (CAA) ‘*Limitations on Certain Federal Assistance*’ which states the following:

*"No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan after it has been approved or promulgated under section 110."*

Section 176(c) also requires states to include the procedures for making conformity determinations in their SIP.

In 1993, EPA promulgated two regulations which established the criteria and procedures for determining whether federally funded transportation activities conform to the CAA section 176(c). The first regulation was promulgated on November 24, 1993 [58 FR 62188] and is entitled, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act" (Title 40, Code of Federal Regulations (CFR), Part 51, Subpart T). These regulations are known as the transportation conformity regulations. The second regulation was promulgated on November 30, 1993 [58 FR 63247] at 40 CFR Part 51, Subpart W, and is entitled "Determining Conformity of General Federal Actions to State or Federal Implementation Plans". These regulations are also known as the general conformity regulations. In 1994, DEC adopted regulations at 18 AAC 50.700-735 to implement the requirements of 40 CFR, Part 51, Subparts T and W. Both subparts act in concert with 40 CFR Part 93 "Determining conformity of Federal actions to State or Federal implementation plans", and are collectively known as the federal conformity regulations.

These same federal conformity regulations, 40 CFR Parts 51 and 93, were amended August 15, 1997 [62 FR 43801]. These amendments required that states incorporate selected sections of 40 CFR Part 93, Subpart A "in verbatim form." In 1998, the state met this requirement by incorporating these sections by reference at 18 AAC 50.710. The state decided that incorporating the federal requirements, as written in Subpart A, was the best approach for most of these regulatory amendments. Therefore, anytime the federal conformity regulations (40 CFR Part 93, Subpart A, or Part 51, Subparts T or W) are amended, these regulations can become adopted by reference into 18 AAC 50.710. DEC's existing conformity regulations (18 AAC 50.700-735) can be obtained at the Department's website.

### **I.1.3 SAFETEA-LU & CAA Amendments**

On August 10, 2005, the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was signed into law (Pub. L. 109-59). Section 6011 of SAFETEA-LU amended CAA section 176(c), and required EPA to promulgate changes to 40 CFR Parts 51 and 93 [73 FR 4420, January 24, 2008]. In 2009, DEC adopted by reference into 18 AAC 50.710 most of EPA's final rule changes as described below. Regulatory changes were also incorporated into Article 7, such as **18 AAC 50.720 Transportation conformity; public involvement process**, that are specific to Alaska's conformity rules. Amendments to Alaska's conformity regulations (18 AAC 50.700-735) include the following:

- **40 CFR 93.101**- EPA revised the definition of a Transportation Control Measure (TCM) in § 93.101 to clarify that TCMs as defined for conformity purposes also include any TCMs that are incorporated into the SIP through EPA's new TCM substitution and addition process. This definition is adopted by reference in 18 AAC 50.710(2);

- **40 CFR 93.104(b)&(c)**- EPA changed § 93.104(b)(3) to require that Metropolitan Planning Organizations (MPO) and the federal department of transportation (DOT) determine conformity of a transportation plan at least every four years; and is changing

§ 93.104(c) (3) to require that the MPO and DOT determine conformity of a transportation improvement program (TIP) at least every four years. The pre-existing regulations required these determinations to be made at least every three years. These changes are adopted by reference in 18 AAC 50.710(5);

- **40 CFR 93.104(e)**- EPA provided two years to determine conformity after new SIP motor vehicle emissions budgets are either found adequate, approved or promulgated. The previous timeframe was 18 months. This change is adopted by reference in 18 AAC 50.710(5);

- **40 CFR 93.104(f)**- EPA added a new provision to the regulations at § 93.104(f) which adds a one-year grace period before a conformity lapse occurs when an area misses an applicable deadline under §93.104 (b)(3) & (c)(3). In addition, EPA revised §§ 93.114, 93.115, and 93.121 by including a reference to § 93.104(f) to account for the lapse grace period. These changes are adopted by reference in 18 AAC 50.710(5);

- **40 CFR 93.106(d)**- Through SAFETEA–LU, Congress added a new paragraph (7) to CAA section 176(c) to allow areas to elect to shorten the period of time addressed by their transportation plan/TIP conformity determinations or “timeframe.” EPA made several changes in the regulatory language to provide the rules for shortening the conformity timeframe and most of these changes are found in § 93.106(d). These changes are adopted by reference in 18 AAC 50.710(6);

- **40 CFR 93.120**- EPA revised § 93.120(a)(2) to allow projects in the first four years of the conforming transportation plan and TIP, rather than the first three years of the conforming transportation plan and TIP, to proceed after final EPA disapproval of a control strategy SIP without a protective finding, e.g. when a conformity freeze occurs. These changes are adopted by reference in 18 AAC 50.710(20);

- **40 CFR 93.123 “Hot Spot Analysis”**- EPA extended the categorical hotspot finding provision that applies in particulate matter (PM) areas to carbon monoxide (CO) nonattainment and maintenance areas in this final rule. This provision allows DOT, in consultation with EPA, to make categorical hot-spot findings for appropriate cases in CO nonattainment and maintenance areas if appropriate modeling shows that a type of highway or transit project does not cause or contribute to a new or worsened local air quality violation of the CO standards, as required under 40 CFR 93.116(a). The regulatory text for this provision is found in § 93.123(a)(3). These changes are adopted by reference in 18 AAC 50.710(16) & 50.710(23).

- **40 CFR 50.105 Interagency Consultation**- EPA allows the states flexibility in developing the other sections of their transportation conformity program. 40 CFR 93.105 requires that states develop interagency consultation procedures to be undertaken by federal, state, and local agencies in making transportation conformity determinations and for developing SIPs. DEC’s interagency conformity consultation procedures are found at 18 AAC.715. DEC amended 18 AAC 50.715(c)(6) to require both coarse particulate matter (PM10) and fine particulate matter (PM2.5) nonattainment areas to conduct regional hot-spot analyses as required under 40 CFR 123(b).

• **40 CFR 51.390**- EPA changed 40 CFR 51.390(b) to streamline the requirements for state conformity SIPs. A conformity SIP is different from a control strategy SIP or maintenance plan, as a conformity SIP only includes state conformity procedures and not motor vehicle demonstrations. EPA finalized requirements for states to submit conformity SIPs that address only the following sections of the pre-existing federal rule: 40 CFR 93.105; 40 CFR 93.122(a)(4)(ii); and 40 CFR 93.125(c). Therefore, states are now required to address and tailor only these three sections of the conformity rule in their conformity SIPs.

A state may elect to include any other provisions of part 93, subpart A. If the provisions of part 93, subpart A, of this chapter are included, such provisions must be included in verbatim form [62 FR 43801, August 15, 1997]. In 1998, the state met this requirement by incorporating these sections by reference at 18 AAC 50.710. The state decided that incorporating the federal requirements, as written in Subpart A, was the best approach for most of these remaining sections. Therefore, anytime 40 CFR 93 is amended in the future, these regulations can become adopted by reference into 18 AAC 50.710; and

• **23 CFR 450**- In 2009, DEC amended **18 AAC 50.720 Transportation conformity; public involvement** to be consistent with the public involvement process requirements of 23 C.F.R. 450.316(a), 23 C.F.R. 450.322(i) and 23 C.F.R. 450.324(b). DEC revised 18 AAC 50.720(b) (2) with the intent that a public hearing or meeting for a conformity determination be required for the following: 1) transportation plans and transportation improvement programs; 2) for projects within a designated nonattainment or maintenance area listed under 18 AAC 50.015(b) or (d), but not included within a transportation plan or transportation improvement program; and 3) if the written comments received under 18 AAC 720(b) (1) request a public hearing or meeting for a regionally significant project.

## **I.2 Agency Designations**

40 CFR 51.240 states the following:

*“Each State implementation plan must identify organizations, by official title that will participate in developing, implementing, and enforcing the plan and the responsibilities of such organizations. The plan shall include any related agreements or memoranda of understanding among organizations.”*

As required under 40 CFR 51, Subpart T, and Part 93, Subpart A, whenever a local or state transportation planning organization receives federal funds under Title 23 U.S.C. (Highways) or Title 49 U.S.C. Chapter 53 (Federal Transit Laws) for transportation activities that contribute to emissions in a nonattainment area or maintenance area, it is responsible for determining whether the federally-funded project, program, or plan conforms to the SIP. In Alaska, DEC is responsible for implementing this requirement by regulation, therefore, no memoranda of understanding are needed to implement the transportation conformity requirements. The state regulatory procedures to be followed for SIP development are located in the state’s *“Drafting Manual for Administrative Regulations”*<sup>1</sup>

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1: *“Drafting Manual for Administrative Regulations”*, 17<sup>th</sup> Edition, August 2007, Department of Law, State of Alaska.

Alaska's agency designations, as required by 40 CFR 51.240, are presented in the following sub-sections. Alaska's conformity regulations found at 18 AAC 50.700-18 AAC 50.735 require federal agencies to conform to the attainment measures and emissions budgets contained in the SIP. Alaska's attainment measures and emission budgets are located in Volume II, Section III of the SIP, as adopted by reference in 18 AAC 50.030, and as presented in Table III.I.2-1 (as of July 2009). Alaska's air quality designations, classifications and control regions are found at 18 AAC 50.015.

**Table III.I.2-1 Attainment Plan Location in the SIP**

<b>Nonattainment/Maintenance Areas and Pollutant</b>	<b>Location of the Attainment Plan and Emission Budget within the SIP</b>
Municipality of Anchorage: Carbon Monoxide	Vol. II, Section III, Part B
Fairbanks North Star Borough: Carbon Monoxide	Vol. II, Section III, Part C
Eagle River area: PM <sub>10</sub>	Vol. II, Section III, Part D, Subpart 2
CBJ's Mendenhall Valley area: PM <sub>10</sub>	Vol. II, Section III, Part D, Subpart 3

### **I.2.1 Local Transportation Planning Organizations**

Most of the transportation planning for the City and Borough of Juneau (CBJ) is conducted by the Community Development Department in conjunction with the Alaska Department of Transportation and Public Facilities (ADOT&PF) through the Statewide Transportation Improvement Program (STIP) process. CBJ's public transportation system is operated by the Capitol Transit Department.

The Fairbanks Metropolitan Area Transportation System (FMATS) is the transportation planning group for the Fairbanks North Star Borough (FNSB). Participants in this interagency organization include ADOT&PF, DEC, the FNSB, the City of Fairbanks and the City of North Pole. FMATS uses a two-tiered committee system to review all transportation planning efforts within its boundaries. The FMATS Policy Committee provides guidance and control over studies and recommendations developed by support staff. The FMATS Technical Committee and member support staff analyze transportation and land use issues, and develop draft recommendations for the Policy Committee. Additional details concerning FMATS is provided in Volume II, Section III.C.1 of the SIP.

The Anchorage Metropolitan Area Transportation Study (AMATS) is the transportation planning group for the Municipality of Anchorage (MOA). AMATS is comprised of representatives from the following groups: MOA, ADOT&PF, DEC, municipal assembly and Citizens' Advisory Groups on air quality. AMATS is divided into three main levels: staff to AMATS, the AMATS Technical Advisory Committee, and the AMATS Policy Committee. Additional details describing AMATS is provided in Volume II, Section III.B.1 of the SIP.

## **I.2.2 State Transportation Planning Organizations**

ADOT&PF is Alaska's statewide transportation planning organization. The responsibilities of ADOT&PF are described in Volume II, Section III.A.3 of the SIP. DEC is responsible for implementing the SIP, and coordinating with local, state and federal agencies to ensure that federally funded transportation projects meet the intent of the state's conformity regulations found at 18 AAC 50.700-735.

## **I.2.3 Federal Transportation Organizations**

The Federal Highways Administration (FHwA) is the federal agency responsible for transportation planning and construction in Alaska. The Federal Transit Authority (FTA) is the federal agency responsible for public transit systems. Both agencies are responsible for ensuring that conformity determinations are conducted, as required, prior to providing funds for transportation related projects funded under Title 23 U.S.C. or Title 49 U.S.C. Chapter 53 (Federal Transit Laws).