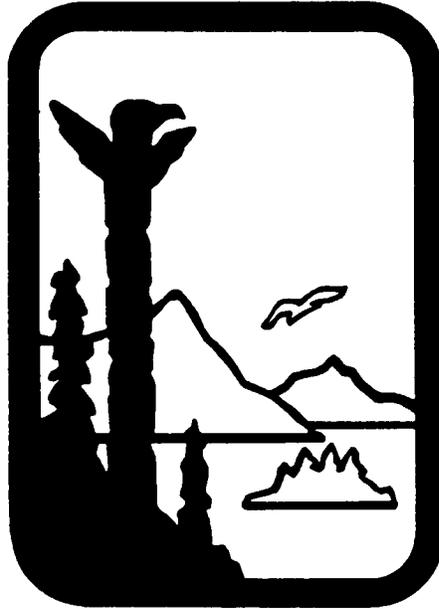


Alaska Department of Environmental Conservation



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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This page serves as a placeholder for two-sided copying.

The underlined language within this version is new.

Volume II, Section III.I. Transportation Conformity

III.I.1 Introduction

Transportation conformity is required under Clean Air Act (CAA) section 176(c) (42 U.S.C. 7506(c)) to ensure that federally funded highway and transit projects are consistent with the purpose of Alaska's State Air Quality Control Plan. The portions of the State Air Quality Control Plan that are approved by the U.S. Environmental Protection Agency (EPA) under the CAA are also known as the state implementation plan (SIP). Transportation conformity regulations are implemented by the Alaska Department of Environmental Conservation (DEC) through this section of the SIP and related state regulations found in Article 7 of the Alaska Administrative Code (AAC), Title 18, Chapter 50 (18 AAC 50). Alaska's SIP is a legally enforceable document demonstrating how the state will attain and maintain the national ambient air quality standards (NAAQS) in nonattainment and maintenance areas. Transportation conformity applies to areas that are designated nonattainment (a geographical area where the air quality exceeds the NAAQS) and to those areas re-designated to attainment after 1990 or "maintenance areas" (a geographical area that has implemented measures to improve air quality so that the pollution levels are within the NAAQS) for the following transportation-related criteria pollutants: ozone, fine and coarse particulate matter (PM-2.5 & PM-10), carbon monoxide (CO), and nitrogen dioxide (NO₂). 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 NAAQS.

This chapter 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 or maintenance area. Alaska's SIP is adopted by reference in Title 18, Chapter 50, Article 1 of the Alaska Administrative Code (18 AAC 50.030).

III.I.2 Regulatory Background

EPA's 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 Laws" (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 Article 7 to implement the requirements of 40 CFR, Part 51, Subparts T and W. Both subparts acted in concert with 40 CFR Part 93 "Determining conformity of Federal actions to State or Federal implementation plans", and were 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) were amended, these regulations then became adopted by reference into 18 AAC 50.710.

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, Part 51, Subpart T and Part 93, Subpart A [73 FR 4420, January 24, 2008]. The SAFETEA-LU Act eliminated the requirement for states to adopt and submit General Conformity SIPs. Under SAFTEA-LU, states are required to submit a transportation conformity SIP that addresses only the following provisions of the federal transportation conformity rule: 40 CFR 93.105; 40 CFR 93.122(a)(4)(ii); and 40 CFR 93.125(c). The requirements of SAFETEA-LU reduces the administrative burden for state and local agencies significantly because they minimize the possibility of having to revise the conformity SIP each time the federal rule is revised. Any future changes to the federal conformity rules that do not affect these three provisions apply immediately in any state that has only the three provisions in its approved conformity SIP, and such changes do not need to be adopted into the state's SIP to be applicable.

In response to the passage of the SAFETEA-LU Act, the Federal Highway Administration (FHA) made changes to regulations in Title 23 CFR, Part 450, Subpart C: Metropolitan Transportation Planning and Programming [72 FR 7224, February 14, 2007]. In February 2010, DEC adopted new conformity regulations, in 18 AAC Article 7, to be consistent with some of the new requirements of Title 23 CFR, Part 450 and SAFETEA-LU. Specifically, 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. Also, during this same regulatory change, DEC adopted EPA's new transportation conformity regulations to include criteria and procedures for conducting PM2.5 and PM10 hot-spot analyses during project level transportation conformity determinations [71 FR 12468, March 10, 2006].

In March 2010, EPA again amended the transportation conformity regulations (40 CFR, Part 93, Subpart T) in light of an October 17, 2006 final rule that strengthened the 24-hour PM2.5 NAAQS [75 FR 14260, March 24, 2010]. During this regulation amendment, EPA also clarified the regulations concerning hot-spot analyses to address a December 2007 remand from the Court of Appeals. In April 2010, EPA amended its general conformity regulations (40 CFR, Part 51, Subpart W) to conform to the requirements of the SAFETEA-LU Act by eliminating the requirement for States to adopt and submit General Conformity SIPs [75 FR 17254, April 5, 2010]. The current SIP revision streamlines Alaska's Transportation Conformity regulations by removing the general conformity regulations and incorporating the three required provisions of the federal transportation conformity rule as required by the SAFETEA-LU Act. DEC's current transportation conformity regulations (18 AAC 50, Article 7), adopted on **Insert Date**, are included with this SIP submittal and can also be found at the State of Alaska's Department of Law website: <http://www.legis.state.ak.us/basis/folio.asp> .

III.I.3 Agency Designations and Responsibilities

Title 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 transportation project, transportation improvement program (TIP), or metropolitan transportation 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. Alaska Statutes Chapter 46.14 requires DEC to develop a SIP providing for the attainment of the NAAQS. The state regulatory procedures followed for SIP development are located in the state’s “Drafting Manual for Administrative Regulations”¹.

Alaska’s agency designations and responsibilities for metropolitan planning areas and non-metropolitan planning areas, as required by 40 CFR 51.240, are presented in the following sections. As mentioned, Alaska’s transportation conformity regulations are found at 18 AAC 50, in Article 7. These regulations require federal agencies to conform to the attainment measures and emissions budgets contained in Alaska’s 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.3-1 (as of July 2011). Alaska’s air quality designations, classifications and control regions are found at 18 AAC 50.015.

Table III.I.3-1 Attainment Plan Location in the SIP

Nonattainment/Maintenance Areas and Pollutant	Location of the Attainment Plan and Emission Budget within the SIP
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-10	Vol. II, Section III, Part D, Subpart 2
CBJ’s Mendenhall Valley area: PM-10	Vol. II, Section III, Part D, Subpart 3
Fairbanks North Star Borough: PM-2.5	Under Development

1: “Drafting Manual for Administrative Regulations”, 20th Edition, August 2013, AK Department of Law.

III.I.3.1 Alaska's Metropolitan Planning Organizations and Areas

Sections 104(f) and 134 of the United States Code Title 23- Highways and the Urban Mass Transportation Act of 1964, as amended, provide funding for and require designation of a metropolitan planning organization (MPO)² for urbanized areas of at least 50,000 population to carry out a transportation planning process.³ These statutes require municipalities in Alaska with at least 50,000 people to coordinate with the State of Alaska on the planning and construction of all urban transportation facilities with a comprehensive transportation planning process. Currently, there are two MPOs in Alaska as described below.

On April 8, 1976 the Governor of the State of Alaska designated the Municipality of Anchorage (MOA) as an MPO and identified the Anchorage Metropolitan Area Transportation Solutions ("AMATS") Policy Committee as the existing policy body providing the direction of transportation planning for the MPO.³ MOA has been designated by the Governor as an air quality planning agency and has adopted an Air Quality Plan, which is the local component of the SIP. AMATS is the planning agency that coordinates transportation related air quality planning within the Municipality and consists of the AMATS Policy Committee, a Technical Advisory Committee (TAC), the Municipality's Planning and Zoning Commission; an Air Quality Advisory Committee; the Municipal Assembly; the Freight Advisory Committee and the Bicycle and Pedestrian Advisory Committee. Additional details describing AMATS is provided in Volume II, Section III.B.1 of the SIP.

The roles and responsibilities of each entity within AMATS are written in the "Intergovernmental Operating Agreement for Transportation and Air Quality Planning"³ originally approved and adopted on April 23rd, 2002 by Anchorage Municipal Assembly Resolution No. ("AR") 2002 – 119. The parties to this Agreement are the State of Alaska and the Municipality of Anchorage which entered into this Agreement effective as of the 1st day of October, 2002.

MOA is responsible for developing Air Quality Plans within the MOA Metropolitan Planning Area (MPA)⁴. The AMATS Policy Committee is responsible for the development of Long Range Transportation Plans (LRTP) or Metropolitan Transportation Plans (MTP), a Transportation Improvement Program (TIP) and the Unified Planning Work Program

2: Metropolitan Planning Organization ("MPO") means the policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d).

3: AMATS Inter-Governmental Operating Agreement for Transportation and Air Quality Planning, dated June 28, 2012.

4: Metropolitan Planning Area ("MPA") means the geographic area determined pursuant to 23 USC §134(d) in which the MPO carries out the development and implementation of transportation and air quality plans and programs under 23 USC §134 and the Federal Transit Act §8.

(UPWP). All four plans and programs, (Air Quality Plans, LRTPs/MTPs, TIPs and UPWPs) are developed with full assistance from the State of Alaska and all other cooperating agencies. These plans and programs and the AMATS public involvement process help to ensure transportation conformity within the MPA. The AMATS Policy Committee has the primary responsibility for convening meetings, determining the meeting frequency and developing agendas with respect to the development and adoption of, LRTPs/MTPs, TIPs and the UPWP within the MOA MPA. The AMATS Policy Committee also has the responsibility for administering the public involvement process concerning the development of Air Quality Plans and provides a formal recommendation to the Anchorage Assembly for their approval. Unlike all the other plans, where final approval rests with the AMATS Policy Committee, Air Quality Plans are ultimately approved through resolution by the Anchorage Assembly.

On April 14, 2003, the Governor of the State of Alaska designated the Fairbanks Metropolitan Area Transportation System (FMATS) Policy Committee as the policy body providing the direction of transportation planning in the Fairbanks North Star Borough (FNSB).⁵ FMATS is comprised of the Policy Committee and a Technical Committee. The Policy Committee is comprised of the following representatives: Northern Region Director of the State of Alaska Department of Transportation & Public Facilities (ADOT&PF), a representative from DEC's Air Quality Division, the Mayor of the FNSB, the Mayor of the City of Fairbanks, the Mayor of the City of North Pole, a designated representative from the FNSB assembly and a designated representative of the Fairbanks City Council.⁴ 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.⁴ Additional detail concerning FMATS is provided in Volume II, Section III.C.1 of the SIP.

The roles and responsibilities of the each entity within FMATS are written in the "Intergovernmental Operating Agreement and Memorandum of Understanding for Transportation and Air Quality Planning in the Metropolitan Area of the Fairbanks Metropolitan Planning Organization"⁴ dated March 28, 2003. Parties to this agreement include the State of Alaska, the City of Fairbanks, the City of North Pole and the Fairbanks North Star Borough.

Within the FNSB MPA, the FNSB is responsible for developing Air Quality Plans with full assistance from the State of Alaska and all other cooperating agencies. The FMATS Policy Committee has the primary responsibility for developing a LRTP/MTP, TIP, UPWP and for

5: FMATS Inter-Governmental Operating Agreement and Memorandum of Understanding for Transportation and Air Quality Planning, dated March 28, 2003.

convening meetings, determining the meeting frequency and developing agendas with respect to the development and adoption of these plans and programs. The FMATS Policy Committee also has the primary responsibility for ensuring that LRTPs/MTPs and TIPs meet conformity and they are responsible for convening meetings, determining the meeting frequency and developing agendas with respect conformity for the LRTP/MTP and TIP. The FNSB, with assistance from DEC, is responsible for convening meetings, determining the meeting frequency and developing agendas with respect to the development and adoption of the SIP within the FNSB MPA.

In addition, the Unified Planning Work Program includes the annual preparation of a Reasonable Further Progress Report on Air Quality and review of the goals of the Air Quality Plan. These plans and programs comprise a major portion of the transportation conformity process within the Anchorage and FNSB MPAs.

Within Alaska's MPAs, the sponsoring agency is responsible for the following:

(A) developing transportation plans and TIPs, preparing the final document or decision, and assuring the adequacy of the interagency consultation process with respect to the transportation plan, TIP, any amendments or revisions thereto, and any conformity determinations;

(B) making conformity determinations for the entire nonattainment or maintenance area including areas located beyond the boundaries of the metropolitan planning area where no agreement is in effect as required by 23 C.F.R. 450.310(f);

(C) assuring project level conformity including, where required by this rule, localized air quality analysis;

(D) distributing draft and final project environmental documents prepared by the project sponsor to other agencies; and

(E) assuring the conformity of FHWA/FTA projects and regionally significant projects approved or adopted by a recipient of funds under Title 23 U.S.C. or 49 U.S.C. 53 (Federal Transit Act).

Within Alaska's MPAs, the MPO is responsible for the following:

(A) developing attainment and maintenance demonstrations;

(B) preparing control strategy implementation plan revisions;

(C) preparing updated motor vehicle emissions factors;

(D) monitoring regionally significant projects;

(E) developing and evaluating Transportation Control Measures (TCMs) in nonattainment and maintenance areas;

(F) performing transportation modeling, regional emissions analyses and documenting timely implementation of TCMs as required for determining

conformity;

- (G) providing technical and policy input on emission budgets; and
- (H) distributing draft and final project documents to other agencies.

Within Alaska's MPA's, DEC is responsible for: developing emissions inventories and budgets; preparing a list of the TCMs in the approved SIP and for providing this list to the agencies described in this subsection and in 18 AAC 50.715(a)(2); preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to Alaska's SIP and the list of TCMs in the approved SIP.

Within Alaska's MPAs, any federal, state or local transportation or transit agency must disclose regionally significant projects to the MPO in a timely manner. Such disclosure must be made no later than the first occasion on which any of the following actions is sought:

- (A) adoption or amendment of a local jurisdiction's transportation system plan to include a proposed project;
- (B) the issuance of administrative permits for the facility or for construction of the facility;
- (C) the execution of a contract for final design or construction of the facility;
- (D) the execution of any indebtedness for the facility; or
- (E) any final action of a board, commission or administrator authorizing or directing employees to proceed with final design, permitting or construction of the project, or any approval needed for any facility that is dependent on the completion of the regionally significant project.

To help assure timely disclosure, the sponsor of any potentially regionally significant project must disclose the details of such project to the MPO annually on or before July 1. In the case of any regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant project shall be deemed not to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in Alaska's SIP or other applicable implementation plan, for the purposes of 40 CFR 93.121.

III.I.3.2 Non-Metropolitan Planning Areas in Alaska

For those municipalities and boroughs in Alaska with a population of less than 50,000 (i.e., non-metropolitan areas) the transportation conformity process is coordinated between the municipality and/or borough, ADOT&PF and DEC. If federal money is supporting the transportation project then the Federal Highway Administration (FHA) and/or the Federal Transit Authority (FTA) are consulted.

ADOT&PF is Alaska's statewide, including non-metropolitan planning area, transportation planning organization. ADOT&PF is the agency responsible for developing transportation plans, TIPs, making conformity determinations, preparing the final document or decision, and for assuring the adequacy of the interagency consultation process with respect to the development of any conformity determinations in non-metropolitan planning areas. ADOT&PF has the responsibility for convening meetings, determining the meeting frequency and developing agendas with respect to the development and adoption of any documents related to transportation conformity in non-metropolitan areas. The responsibilities of ADOT&PF are further described in Volume II, Section III.A.3 of the SIP.

In non-metropolitan planning areas, the local or regional transportation or transit agency must disclose regionally significant projects to ADOT&PF in a timely manner. Such disclosure must be made no later than the first occasion on which any of the following actions is sought:

- (A) adoption or amendment of a local jurisdiction's transportation system plan to include a proposed project;
 - (B) the issuance of administrative permits for the facility or for construction of the facility;
 - (C) the execution of a contract for final design or construction of the facility;
- or
- (D) the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with final design, permitting or construction of the project, or any approval needed for any facility that is dependent on the completion of the regionally significant project.

To help assure timely disclosure, the sponsor of any potentially regionally significant project in non-metropolitan areas must disclose the details of such project to ADOT&PF as requested. Requests for disclosure must be made in writing to any affected local or regional transportation or transit agency.

In non-metropolitan planning areas, 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 transportation conformity regulations. ADOT&PF would still have the lead on making sure transportation conformity is completed for transportation projects in non-metropolitan non-attainment/maintenance areas and would consult with DEC on these analyses. DEC is responsible for implementing the SIP and coordinating with ADOT&PF to ensure conformity.

FHA is the federal agency responsible for transportation planning and construction in Alaska. FTA is the federal agency responsible for public transit systems. Both agencies are responsible for ensuring that transportation 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).

III.I.3.3 General Roles and Responsibilities

Any other organization within the State of Alaska responsible under state law for developing, submitting or implementing transportation-related provisions of an implementation plan, and any local transportation agency or local government is entitled to participate in any interagency consultation process.

It is the role and responsibility of the sponsoring agency in an interagency consultation process to confer with all other agencies (as identified under this section and 18 AAC 50.715) with an interest in the document to be developed; provide all appropriate information to those agencies needed for meaningful input; solicit early and continuing input from those agencies; conduct the consultation process described in the applicable paragraphs of this article; where required, assure policy-level contact with those agencies; prior to taking any action, consider the views of each such agency; respond to those views in a timely, substantive, written manner prior to any final decision on such document and assure that such views and written response are made part of the record of any decision or action.

It is the role and responsibility of each agency specified in this section and 18 AAC 50.715, when not fulfilling the role and responsibilities of a sponsoring agency, to confer with the sponsoring agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings, assure policy-level contact with other participants, provide input on any area of substantive expertise or responsibility (including planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or other requirements), and provide technical assistance to the sponsoring agency or consultation process in accordance with this article when requested. Any agency, by mutual agreement with another agency, may take on a role or responsibility assigned to that other agency under this rule.