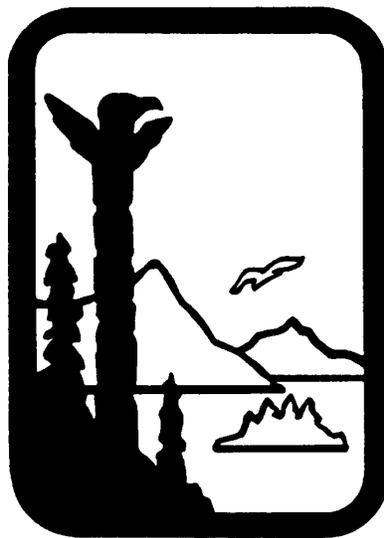


**DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**



18 AAC 50

Air Quality Control

As Amended through November 9, 2008

Article 7. Conformity.

Section

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18 AAC 50.700. Purpose of 18 AAC 50.700 – 18 AAC 50.735. The purpose of 18 AAC 50.700 - 18 AAC 50.735 is to ensure that a transportation plan, program project, or federal action within a nonattainment or maintenance area, will not hinder attainment of the national ambient air quality standards in that area if

(1) the plan, program, project, or action is federally-funded or federally-approved;

or

(2) the project is nonfederally funded but is a regionally significant project that is funded, adopted, or approved by a current or prior recipient of funds under 23 U.S.C. or 49 U.S.C. 53 (Federal Transit Act). (Eff. 1/4/95, Register 133; am 9/4/98, Register 147)

Authority: AS 46.03.020 AS 46.14.030

18 AAC 50.705. Coverage of 18 AAC 50.710 - 18 AAC 50.735: obligations of responsible agency. (a) The requirements of 18 AAC 50.710 – 18 AAC 50.720 apply to

(1) a transportation plan, program, or project within a nonattainment or maintenance area that is funded by, or requires approval under, 23 U.S.C. or 49 U.S.C. 5301 – 5338; or

(2) a project that is nonfederally funded, but that is a regionally significant project funded, adopted, or approved by a current or prior recipient of funds designated under 23 U.S.C. or 49 U.S.C. 53 (the Federal Transit Act)

(b) The requirements of 18 AAC 50.725 - 18 AAC 50.735 apply to all federally-funded or approved actions within a nonattainment or maintenance area not described in (a) of this section.

(c) It is the obligation of the responsible agency to meet the applicable requirements of 18 AAC 50.700 - 18 AAC 50.735. For purposes of

(1) transportation conformity under 18 AAC 50.710 – 18 AAC 50.720, “responsible agency” means the agency that

(A) receives or manages the federal money for the transportation plan, program, or project referred to in (a) of this section;

(B) develops the transportation plan, program, or project referred to in (a) of this section; or

(C) funds, adopts, or approves a nonfederal, regionally significant project and is a current or prior recipient of funds under 23 U.S.C. or 49 U.S.C. 53;

(2) general conformity under 18 AAC 50.725 – 18 AAC 50.735, “responsible agency” means the federal agency that is responsible for the funding or for approval of the action referred to in (b) of this section. (Eff. 1/4/95, Register 133; am 9/4/98, Register 147)

Authority: AS 46.03.020 AS 46.14.030

18 AAC 50.710. Transportation conformity: incorporation by reference of federal regulations. An agency subject to 40 C.F.R. 93 shall comply with the following federal regulations, as amended through August 15, 1997, adopted by reference:

- (1) 40 C.F.R. 93.100 (Purpose);
- (2) 40 C.F.R. 93.101 (Definitions);
- (3) 40 C.F.R. 93.102 (Applicability);
- (4) 40 C.F.R. 93.103 (Priority);
- (5) 40 C.F.R. 93.104 (Frequency of conformity determinations);
- (6) 40 C.F.R. 93.106 (Content of transportation plans);
- (7) 40 C.F.R. 93.107 (Relationship of transportation plan and TIP conformity with the NEPA process);
- (8) 40 C.F.R. 93.108 (Fiscal constraints for transportation plans and TIPs);
- (9) 40 C.F.R. 93.109 (Criteria and procedures for determining conformity of transportation plans, programs, and projects: General);
- (10) 40 C.F.R. 93.110 (Criteria and procedures: Latest planning assumptions);
- (11) 40 C.F.R. 93.111 (Criteria and procedures: Latest emission model);
- (12) 40 C.F.R. 93.112 (Criteria and procedures: Consultation);

- (13) 40 C.F.R. 93.113 (Criteria and procedures: Timely implementation of TCMs);
- (14) 40 C.F.R. 93.114 (Criteria and procedures: Currently conforming transportation plan and TIP);
- (15) 40 C.F.R. 93.115 (Criteria and procedures: Projects from a plan and TIP);
- (16) 40 C.F.R. 93.116 (Criteria and procedures: Localized CO and PM-10 violations (hot spots));
- (17) 40 C.F.R. 93.117 (Criteria and procedures: Compliance with PM-10 control measures);
- (18) 40 C.F.R. 93.118 (Criteria and procedures: Motor vehicle emissions budget);
- (19) 40 C.F.R. 93.119 (Criteria and procedures: Emission reductions in areas without motor vehicle emissions budgets);
- (20) 40 C.F.R. 93.120 (Consequences of control strategy implementation plan failures);
- (21) 40 C.F.R. 93.121 (Requirements for adoption or approval of projects by other recipients of funds designated under 23 U.S.C. or 49 U.S.C. 53 (the Federal Transit Act));
- (22) 40 C.F.R. 93.122 (Procedures for determining regional transportation-related emissions);
- (23) 40 C.F.R. 93.123 (Procedures for determining localized CO and PM-10 concentrations (hot-spot analysis));
- (24) 40 C.F.R. 93.124 (Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission));
- (25) 40 C.F.R. 93.125 (Enforceability of design concept and scope and project-level mitigation and control measures);
- (26) 40 C.F.R. 93.126 (Exempt projects);
- (27) 40 C.F.R. 93.127 (Projects exempt from regional emissions analyses); and
- (28) 40 C.F.R. 93.128 (Traffic signal synchronization projects). (Eff. 1/4/95, Register 133; am 9/4/98, Register 147)

Authority: AS 46.03.020 AS 46.14.030

Editor's note: The regulations of the Federal Highway Administration and the Federal Transit Authority concerning fiscal constraint referred to by paragraph (8) may be found at 23 C.F.R. 450.216(a)(5), 23 C.F.R. 450.322(b)(11), and 23 C.F.R. 450.324(e).

18 AAC 50.715. Transportation conformity: interagency consultation procedures.

(a) Before issuing a final conformity determination under 18 AAC 50.700 - 18 AAC 50.720, the responsible agency described in 18 AAC 50.705(c)(1), shall

(1) contact the office of the local governing body to determine if that office is aware of any plans for construction of a regionally significant project that is not funded under 23 U.S.C. (Highways) or 49 U.S.C. 5301 - 5338, including any project for which alternative locations, design concept and scope, or the no-build option are still being considered;

(2) prepare a preliminary interagency discussion draft, a public review draft, and a final draft of the conformity determination through the interagency consultation process described in (b) - (g) of this section with staff of

(A) the department;

(B) the local air quality planning agency;

(C) the Alaska Department of Transportation and Public Facilities;

(D) the local transportation agency;

(E) any agency created under state law that sponsors or approves transportation projects;

(F) the United States Environmental Protection Agency;

(G) the Federal Highway Administration;

(H) the Federal Transit Administration; and

(3) hold a public hearing or meeting in accordance with procedures established under 18 AAC 50.720 to provide the public with an opportunity to consider the public review draft of the conformity determination.

(b) A staff member of the responsible agency shall

(1) consult with staff of the agencies listed in (a)(2) of this section to prepare a preliminary interagency discussion draft of the conformity determination, including necessary supporting information;

(2) ensure that all documents and information relevant to the preliminary interagency discussion draft are available to staff from the participating agencies; and

(3) consider the comments of staff from participating agencies and respond in writing to those comments in a timely, substantive manner before making a final decision on the preliminary interagency discussion draft; written agency comments and written responses must be included in the record of any conformity decision or action.

(c) In preparing the preliminary interagency discussion draft, a staff member of the responsible agency shall consult with the staff of the agencies listed in (a)(2) of this section to

(1) evaluate and choose a traffic demand and regional emissions model, and associated methods and assumptions to be used in a hot-spot analysis or a regional emissions analysis;

(2) determine which minor arterials and other projects should be considered regionally significant for purposes of a regional emissions analysis, in addition to those regionally significant projects as defined in 40 CFR 93.101, adopted by reference in 18 AAC 50.710;

(3) discuss whether a project that is otherwise exempt from the requirements of 18 AAC 50.700 - 18 AAC 50.720 under 40 C.F.R. 93.126 and 40 C.F.R. 93.127, adopted by reference in 18 AAC 50.710, should be treated as nonexempt if potential regional emissions impacts or other adverse emissions impacts might exist for any reason;

(4) determine, as required by 40 C.F.R. 93.113(c)(1), adopted by reference in 18 AAC 50.710, whether past obstacles to implementation of a transportation control measure (TCM) defined in 40 C.F.R. 93.101, adopted by reference in 18 AAC 50.710, that is behind the schedule established in the state implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs; the interagency consultation process must also consider whether delays in TCM implementation necessitate a revision to the state implementation plan to remove or to substitute a TCM or other emission reduction measures;

(5) determine, as required by 40 C.F.R. 93.121, adopted by reference in 18 AAC 50.710,

(A) that a regionally significant project

(i) is included in a regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not included in the TIP for the purposes of project selection or endorsement; and

(ii) design concept and scope have not changed significantly from those included in the transportation plan, TIP, or regional emissions analysis; or

(B) that, based on the requirements for a project that is not from a conforming transportation plan and TIP, as specified in 40 C.F.R. 93.118 and 40 C.F.R. 93.119, adopted by reference in 18 AAC 50.710,

(i) there is a currently conforming transportation plan and TIP, and a new regional emissions analysis that includes the regionally significant project; and

(ii) the currently conforming transportation plan and TIP will still conform if the regionally significant project is implemented;

(6) identify, as required by 40 C.F.R. 93.123(b), adopted by reference in 18 AAC 50.710, projects located at sites within a PM-10 nonattainment area identified in 18 AAC 50.015(b)(2) that have vehicle and roadway emission and dispersion characteristics essentially identical to those at sites that have air quality violations verified by monitoring, and that, therefore, require a quantitative PM-10 hot-spot analysis; and

(7) notify staff of participating agencies of any revision or amendment to a transportation plan or TIP that merely adds or deletes an exempt project listed in 40 C.F.R. 93.126, adopted by reference in 18 AAC 50.710.

(d) In addition to the consultation described in (c) of this section, a staff member of the responsible agency shall consult with staff of the state and local agencies listed in (a)(2) of this section to

(1) evaluate events that will trigger new conformity determinations in addition to those triggering events established in 40 C.F.R. 93.104, adopted by reference in 18 AAC 50.710;

(2) consider an emissions analysis for transportation activities that extend beyond the boundaries of a local governing body, nonattainment area, or air basin; and

(3) determine the design, schedule, and funding of research and data collection efforts and regional transportation model development by the local governing body, such as household or travel transportation surveys.

(e) If the metropolitan planning area does not include the entire nonattainment or maintenance area, the interagency consultation must include staff of the local governing body and the Alaska Department of Transportation and Public Facilities to determine conformity of all projects outside the metropolitan planning area and within the nonattainment or maintenance area.

(f) After completing the interagency consultation process, the responsible agency shall prepare the public review draft of the conformity determination, based on changes made to the preliminary draft during the consultation process, and shall make the public review draft available for public review and comment as required in 18 AAC 50.720.

(g) After opportunity for public review and comment on the public review draft of the conformity determination, the responsible agency shall

(1) prepare a final draft of the conformity determination in consultation with staff of the participating agencies; and

(2) after the consultation described in (1) of this subsection, issue the final conformity determination to the agencies listed in (a)(2) of this section and provide the supporting information upon request.

(h) The department will refer to the governor for resolution any conflict between state agencies or between state and local agencies that cannot be resolved by the heads of the involved agencies. The department will make the referral to the governor within 14 calendar days after

notification or a determination that the conflict cannot be resolved. A conformity determination that is the subject of a conflict resolution under this subsection must have the governor's concurrence to be considered final. The department will provide the participating agencies with a copy of its referral to the governor. The governor may delegate the role of resolving a conflict under this subsection and deciding whether to concur in the conformity determination to a state official or agency other than the department, the Alaska Department of Transportation and Public Facilities, or a state transportation board or commission. (Eff. 1/4/95, Register 133; am 9/4/98, Register 147)

Authority: AS 46.03.020 AS 46.14.030

18 AAC 50.720. Transportation conformity: public involvement. (a) The responsible agency referred to in 18 AAC 50.705(c) shall establish a public involvement process to provide opportunity for public review and comment on the public review draft of the conformity determination before the agency issues a final conformity determination. The public involvement process must be consistent with the requirements of 23 C.F.R. 450.316(b)(1), 23 C.F.R. 450.322(c), and 23 C.F.R. 450.324(c), as amended through April 1, 1997.

(b) The responsible agency shall

(1) subject to (d) of this section, hold a public hearing or meeting to receive comments on the public review draft of the conformity determination;

(2) consider all comments received and prepare a written summary analysis of significant comments; and

(3) specifically address in the summary analysis all public comments concerning known plans for a regionally significant project that may not have been properly reflected in the emissions analysis used to support a proposed conformity finding for a transportation plan or TIP, regardless of whether the regionally significant project is receiving federal funding or approval.

(c) Opportunity for public involvement under this section must include access to information, emissions data, analyses, models, and modeling assumptions used to perform a conformity determination.

(d) If a project for which the provisions of (a) – (c) of this section apply is also subject to a public involvement process under 42 U.S.C. 4321 - 4370b (National Environmental Policy Act), compliance with the public involvement process under that law constitutes compliance with (a) – (c) of this section. (Eff. 1/4/95, Register 133; am 9/4/98, Register 147)

Authority: AS 46.03.020 AS 46.14.030

18 AAC 50.725. General conformity: incorporation by reference of federal regulations. In addition to the other requirements of 18 AAC 50.725 - 18 AAC 50.735, a federal agency described in 40 C.F.R. 51.853(b) - (j), as amended through December 1, 1994, shall

comply with the following federal regulations, as amended through December 1, 1994, which are incorporated by reference in this chapter:

- (1) 40 C.F.R. 51.850 (Prohibition);
- (2) 40 C.F.R. 51.852 (Definitions);
- (3) 40 C.F.R. 51.853(b) - (j) (Applicability);
- (4) 40 C.F.R. 51.854 (Conformity analysis);
- (5) 40 C.F.R. 51.855 (Reporting requirements);
- (6) 40 C.F.R. 51.856 (Public participation);
- (7) 40 C.F.R. 51.858 (Criteria for determining conformity of general federal actions); and
- (8) 40 C.F.R. 51.859 (Procedures for conformity determinations of general federal actions). (Eff. 1/4/95, Register 133)

Authority: AS 46.03.020 AS 46.14.030

18 AAC 50.730. General conformity: mitigation of air quality impacts. (a) The federal agency referred to in 18 AAC 50.725 shall identify in writing

- (1) any measure intended to mitigate or offset the air quality impact of the federal action;
- (2) the estimated emission reduction available from an identified mitigation measure; and
- (3) the process for implementing a mitigation measure including, as applicable,
 - (A) a description of the funding source for the mitigation measure;
 - (B) an implementation schedule with due dates for implementing the mitigation measure; and
 - (C) the process for tracking emission reductions from a mitigation measure.

(b) If a mitigation measure involves a separate person or agency, the federal agency making the conformity determination shall, before determining that the proposed federal action is in conformity, obtain a written commitment from the person or agency responsible for implementing the mitigation measure. The written commitment must identify the mitigation measure in a manner consistent with (a) of this section and describe the nature of the commitment. A

person or agency committing to a mitigation measure under this subsection shall comply with the written obligations stated in the commitment.

(c) If a mitigation measure is included as part of a license, permit, or similar authorization issued by the federal agency, the federal agency shall require the person or agency issued the license, permit, or authorization to fully implement the mitigation measure as a condition for continued approval of the license, permit, or authorization.

(d) A federal agency may modify a mitigation measure if that agency

(1) concludes that the proposed modification supports the conformity determination, using the procedures and criteria set out in 40 C.F.R. 51.858 and 40 C.F.R. 859, adopted by reference in 18 AAC 50.725;

(2) issues a public notice of the proposed modification, using the public participation procedures set out in 40 C.F.R. 51.856, adopted by reference in 18 AAC 50.725; and

(3) reports the modification in accordance with 40 C.F.R. 51.855, adopted by reference in 18 AAC 50.725. (Eff. 1/4/95, Register 133)

Authority: AS 46.03.020 AS 46.14.030

18 AAC 50.735. General conformity: frequency of conformity determinations. (a) The conformity status of a federal action lapses five years after the date that a final conformity determination is reported to the department unless

(1) the federal action is completed before five years has elapsed; or

(2) the federal agency has commenced a continuous program to implement the action within a reasonable time.

(b) An ongoing federal action showing continuous progress is not considered a new action and does not require a periodic redetermination required by this section if the emissions associated with the activity are within the scope of the final conformity determination reported in accordance with 40 C.F.R. 51.855, adopted by reference in 18 AAC 50.725.

(c) If, after the final conformity determination is made, the federal action is changed so that there is an increase in the total of direct or indirect emissions above the levels set in 40 C.F.R. 51.853(b), adopted by reference in 18 AAC 50.725, the federal agency shall make a new conformity determination in accordance with 40 C.F.R. 51.854, adopted by reference in 18 AAC 50.725. (Eff. 1/4/95, Register 133)

Authority: AS 46.03.020 AS 46.14.030