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**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**MEMORANDUM**

**TO:** Gary Mendivil, AAC Contact  
Department of Environmental Conservation

**FROM:** Scott Meriwether  
Special Assistant  
907.465.4081

A blue ink signature of Scott Meriwether.

**DATE:** March 18, 2015

**RE:** Filed Permanent Regulations: Department of Environmental Conservation

Regulations re: air quality, the Mendenhall Valley limited maintenance area, transportation conformity, and the state implementation plan (18 AAC 50.010(1)(A); 18 AAC 50.015(b)(2),(e); 18 AAC 50.020(a); 18 AAC 50.030; 18 AAC 50.035(a)(8),(b); 18 AAC 50.040; 18 AAC 50.215(a)(3),(d); 18 AAC 50.220(c)(1)(E),(2); 18 AAC 50.700 - 18 AAC 50.750; 18 AAC 50.990(32),(90)(121),(130),(141)-(148))

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Attorney General File: JU2013200372 (Part 2)

Regulation Filed: March 18, 2015

Effective Date: April 17, 2015

Print: 214, July 2015

cc with enclosures:

Linda Miller, Department of Law  
Genevieve Wojtusik, Administrative Regulation Review Committee  
Judy Herndon, LexisNexis

# JU2013200372 (Part 2)

## ORDER ADOPTING CHANGES TO REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The attached thirty-one pages of regulations, dealing with transportation conformity and adoptions by reference are hereby adopted and certified to be a correct copy of the regulation changes that the Department of Environmental Conservation adopts under the authority of AS 46.03 and AS 46.14 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Environmental Conservation paid special attention to the cost to private persons of the regulatory action being taken. The Department of Environmental Conservation also gave special attention to alternate practical methods in this regulatory action, as required by AS 46.03.024.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor as provided in AS 44.62.180.

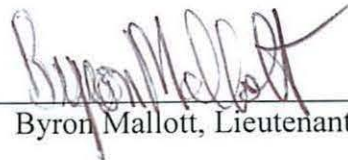
DATE: March 12, 2015  
Anchorage, Alaska



Larry Hartig, Commissioner  
Department of Environmental Conservation

## FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on March 18, 2015, at 8:05<sup>PM</sup>, I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.



Byron Mallott, Lieutenant Governor

Effective: April 17, 2015.

Register: 214, July 2015.

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18 AAC 50.010(1)(A) is amended to read:

(A) for PM-10: a 24-hour average of 150 micrograms per cubic meter, with this standard being attained when the expected number of days in a calendar year with a 24-hour average concentration above 150 micrograms per cubic meter, as determined in accordance with 40 C.F.R. Part 50, Appendix K, adopted by reference in 18 AAC 50.035(b), is less than or equal to one [DAY];

(Eff. 1/18/97, Register 141; am 6/21/98, Register 146; am 10/1/2004, Register 171; am 4/1/2010, Register 193; am 9/17/2011, Register 199; am 1/4/2013, Register 205; am 4/17/2015, Register 214)

**Authority:** AS 46.03.020 AS 46.14.030 Sec. 30, ch. 74, SLA 1993

AS 46.14.010

18 AAC 50.015(b)(2) is repealed:

(2) repealed 4/17/2015;

18 AAC 50.015(e) is amended to read:

(e) The following areas are [AREA IS] subject to maintenance plan requirements for PM-10, as required under 42 U.S.C. 7505a, and as adopted by reference in 18 AAC 50.030 as part of the state air quality control plan:

(1) Eagle River area of Anchorage;

(2) Mendenhall Valley area of Juneau.

(Eff. 1/18/97, Register 141; am 2/20/2004, Register 169; am 6/24/2004, Register 170; am

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10/10/2004, Register 171; am 12/9/2010, Register 196; am 10/6/2013, Register 208; am

4/17/2015, Register 214)

**Authority:** AS 46.03.020 AS 46.14.010 AS 46.14.030

18 AAC 50.020(a) is amended to read:

(a) In an area designated nonattainment in 18 AAC 50.015(b), the provisions of this section do not apply to the nonattainment air pollutant. However, this section does apply to all other air pollutants listed in Table 2 in this subsection.

**Table 2. Baseline Areas and Dates**

Baseline Area	Air Pollutant	Minor Source Baseline Date
Cook Inlet Intrastate Air Quality Control Region	Nitrogen dioxide	February 8, 1988
	Sulfur dioxide	October 12, 1979
	PM-10	March 20, 1982
	PM-2.5	September 14, 2012
	Nitrogen dioxide	February 8, 1988



Northern Alaska Intrastate Air Quality Control Region	Sulfur dioxide	June 1, 1979
	PM-10	November 13, 1978
	PM-2.5	<b><u>November 2, 2012</u></b> [TO BE ESTABLISHED UNDER 40 C.F.R. 52.21(b)(14)(ii), ADOPTED BY REFERENCE IN 18 AAC 50.040(h)]
	Nitrogen dioxide	February 8, 1988

South Central Alaska Intrastate Air Quality Control Region	Sulfur dioxide	October 26, 1979
	PM-10	October 26, 1979
	PM-2.5	To be established under 40 C.F.R. 52.21(b)(14)(ii), adopted by reference in 18 AAC 50.040(h)
Southeast Alaska Intrastate Air Quality Control Region	Nitrogen dioxide	February 8, 1988
	Sulfur dioxide	November 10, 1986
	PM-10	To be established under 40 C.F.R. 52.21(b)(14)(ii), adopted by reference in 18 AAC 50.040(h)
	PM-2.5	To be established under 40 C.F.R. 52.21(b)(14)(ii), adopted by reference in 18 AAC 50.040(h)

(Eff. 1/18/97, Register 141; am 6/21/98, Register 146; am 10/1/2004, Register 171; am 7/25/2008, Register 187; am 1/4/2013, Register 205; am 4/17/2015, Register 214)

**Authority:** AS 46.03.020 AS 46.14.010 AS 46.14.030

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The introductory language of 18 AAC 50.030 is amended to read:

**18 AAC 50.030. State air quality control plan.** Volumes II and III of the *State Air Quality Control Plan* for implementing and enforcing the provisions of AS 46.14 and this chapter, as amended through **March 12, 2015** [FEBRUARY 22, 2013], are adopted by reference.

The plan includes the following documents which are also adopted by reference:

...

(Eff. 1/18/97, Register 141; am 6/21/98, Register 146; am 9/4/98, Register 147; am ~~3131~~ Register 152; am 12/30/2000, Register 156; am 9/21/2001, Register 159; am 1/27/2002, Register 161; am 3/27/2002, Register 161; am 5/3/2002, Register 162; am 2/20/2004, Register 169; am 6/24/2004, Register 170; am 10/1/2004, Register 171; am 12/14/2006, Register 180; am 12/30/2007, Register 184; am 5/17/2008, Register 186; am 7/25/2008, Register 187; am 11/9/2008, Register 188; am 5/6/2009, Register 190; am 11/4/2009, Register 192; am 4/1/2010, Register 193; am 10/29/2010, Register 196; am 4/13/2011, Register 198; am 9/17/2011, Register 199; am 8/1/2012, Register 203; am 5/8/2013, Register 206; am 2/5/2015, Register 213; am 4/17/2015, Register 214.)

<b>Authority:</b>	AS 46.03.020	AS 46.14.030	Sec. 30, ch. 74, SLA 1993
	AS 46.14.020	AS 46.14.140	

18 AAC 50.035(a) is amended by adding a new paragraph to read:

(8) *Quality Assurance Handbook for Air Pollutant Measurement Systems; Volume IV: Meteorological Measurements Version 2.0* (EPA-454/B-08-002).

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The introductory language to 18 AAC 50.035(b) is amended to read:

(b) The following procedures and methods set out in 40 C.F.R., [AS] revised as of February 27, 2014 [JULY 1, 2011], are adopted by reference:

...

18 AAC 50.035(b)(1) is amended to read:

(1) 40 C.F.R. Part 50, Appendices A, C, D, F, G, J, K, L, N, P, Q, R, S, and T;

18 AAC 50.035(b)(3) is repealed:

(3) repealed 4/17/2015;

18 AAC 50.035(b) is amended by adding new paragraphs to read:

(5) 40 C.F.R. Part 60, Appendices A - F;

(6) 40 C.F.R. Part 63, Appendix A.

(Eff. 1/18/97, Register 141; am 6/21/98, Register 146; am 7/2/2000, Register 154; am 2/2/2002, Register 161; am 5/3/2002, Register 162; am 10/1/2004, Register 171; am 12/3/2005, Register 176; am 7/25/2008, Register 187; am 11/9/2008, Register 188; am 4/1/2010, Register 193; am 9/17/2011, Register 199; am 4/8/2012, Register 202; am 9/14/2012, Register 203; am 1/4/2013, Register 205; am 4/17/2015, Register 214)

**Authority:** AS 46.03.020 AS 46.14.020 AS 46.14.140

AS 46.14.010 AS 46.14.030 Sec. 30, ch. 74, SLA 1993



The introductory language of 18 AAC 50.040(a) is amended to read:

(a) The following provisions of 40 C.F.R. Part 60 (Standards of Performance for New Stationary Sources), [AS] revised as of March 19, 2014 [APRIL 24, 2013], are adopted by reference as they apply to a Title V source:

...

The introductory language of 18 AAC 50.040(b) is amended to read:

(b) The following provisions of 40 C.F.R. Part 61 (National Emission Standards for Hazardous Air Pollutants), [AS] revised as of February 27, 2014 [JULY 1, 2012], are adopted by reference as they apply to a Title V source:

...

The introductory language of 18 AAC 50.040(c) is amended to read:

(c) The following provisions of 40 C.F.R. Part 63 (National Emission Standards for Hazardous Air Pollutants), [AS] revised as of February 27, 2014 [APRIL 24, 2013], are adopted by reference as they apply to a Title V source:

...

18 AAC 50.040(d) is amended to read:

(d) The provisions of 40 C.F.R. Part 82, [AS] revised as of July 22, 2013 [JULY 1, 2012], are adopted by reference to the extent that they apply to a Title V source.

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18 AAC 50.040(e) is amended to read:

(e) The requirements of 40 C.F.R. 52.70 - 40 C.F.R. 52.98, [AS] revised as of **July 1, 2014** [MARCH 18, 2013], as they apply to a Title V source and for purposes of a Title V permit, are adopted by reference.

18 AAC 50.040(f) is amended to read:

(f) The provisions of 40 C.F.R. Part 51, Appendix W (Guideline on Air Quality Models), [AS] revised as of **July 1, 2013** [JULY 1, 2012], are adopted by reference.

The introductory language of 18 AAC 50.040(g) is amended to read:

(g) The following provisions of 40 C.F.R. Part 62 (Approval and Promulgation of State Plans for Designated Facilities and Pollutants), [AS] revised as of **September 6, 2013** [JULY 1, 2012], are adopted by reference as they apply to a Title V source:

...

The introductory language of 18 AAC 50.040(h) is amended to read:

(h) The following provisions of 40 C.F.R. 51.166 (Prevention of Significant Deterioration of Air Quality) and 40 C.F.R. Part 52 (Approval and Promulgation of Implementation Plans), [AS] revised as of **December 9, 2013** [APRIL 1, 2013], are adopted by reference:

...

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18 AAC 50.040(h)(21) is repealed:

(21) repealed 4/17/2015.

The introductory language of 18 AAC 50.040(i) is amended to read:

(i) From the following provisions of 40 C.F.R. 51.165 (Permit Requirements), [AS] revised as of **July 1, 2013** [JULY 1, 2012], text setting out provisions that a state implementation plan shall or may contain is adopted by reference as follows:

...

The introductory language of 18 AAC 50.040(j) is amended to read:

(j) The following provisions of 40 C.F.R. Part 71 (Operating Permits), [AS] revised as of **July 1, 2013** [JULY 1, 2012], are adopted by reference as they apply to a Title V source, except as provided in 18 AAC 50.326:

...

18 AAC 50.040(j)(9) is repealed:

(9) repealed 4/17/2015

18 AAC 50.040(k) is amended to read:

(k) The provisions of 40 C.F.R. Part 64, [AS] revised as of **July 1, 2013** [JULY 1, 2012], are adopted by reference to the extent that they apply to a Title V source.

(Eff. 1/18/97, Register 141; am 6/14/98, Register 146; am 6/21/98, Register 146; am 7/2/2000,

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Register 154; am 6/1/2002, Register 162; am 8/15/2002, Register 163; am 10/1/2004, Register 171; am 12/3/2005, Register 176; am 7/25/2008, Register 187; am 12/9/2010, Register 196; am 9/14/2012/ Register 203; am 1/4/2013, Register 205; am 10/6/2013, Register 208; am 11/9/2014, Register 212; am 4/17/2015, Register 214)

**Authority:** AS 46.03.020 AS 46.14.020 AS 46.14.030  
AS 46.14.010

18 AAC 50.215(a)(3) is amended to read:

(3) EPA's *Meteorological Monitoring Guidance for Regulatory Modeling Applications*, adopted by reference in 18 AAC 50.035(a), and the department's *Quality Assurance Project Plan for the State of Alaska Air Monitoring & Quality Assurance Program*, adopted by reference in 18 AAC 50.030, for meteorological data; or

The introductory language of 18 AAC 50.215(d) is amended to read:

(d) A [TABLE 5 ESTABLISHES THE SIGNIFICANT IMPACT LEVEL, EXPRESSED AS MICROGRAMS PER CUBIC METER, FOR EACH POLLUTANT AND AVERAGING PERIOD. IF THE AMBIENT IMPACTS FROM EMISSIONS FROM A] stationary source or modification [ARE LESS THAN THE CONCENTRATIONS IN TABLE 5, THE EMISSIONS ARE NOT] will be considered to cause or contribute to a violation of an ambient air quality standard or maximum allowable increase for a Class II area if the source or modification would, at a minimum, exceed a significant impact level listed in Table 5 of this subsection at any locality that does not or would not meet the applicable ambient air



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**quality standard or maximum allowable increase for a Class II area.** A person shall conduct the comparison of a modeled impact to the significant impact level as follows:

...

(Eff. 1/18/97, Register 141; am 6/21/98, Register 146; am 10/1/2004, Register 171; am 7/25/2008, Register 187; am 4/1/2010, Register 193; am 10/29/2010, Register 196; am 9/17/2011, Register 199; am 9/14/2012, Register 203; am 1/4/2013, Register 205; am 4/17/2015, Register 214)

**Authority:** AS 46.03.020                      AS 46.14.140                      Sec. 30, ch. 74, SLA 1993  
AS 46.14.030                      AS 46.14.180

18 AAC 50.220(c)(1)(E) is amended to read:

(E) source testing for emissions of total particulate matter, sulfur compounds, nitrogen compounds, carbon monoxide, lead, volatile organic compounds, fluorides, sulfuric acid mist, municipal waste combustor organics, metals, and acid gases must follow the procedures specified in Appendix A to 40 C.F.R. Part 60, adopted by reference in **18 AAC 50.035(b)** [18 AAC 50.040]; and

18 AAC 50.220(c)(2) is amended to read:

(2) emissions of any air pollutant may be determined using an alternative method approved by the department in accordance with Method 301 in Appendix A to 40 C.F.R. Part 63, adopted by reference in **18 AAC 50.035(b)** [18 AAC 50.040(c)]; and

(Eff. 1/18/97, Register 141; am 10/1/2004, Register 171; am 9/17/2011, Register 199; am

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9/14/2012, Register 203; am 4/17/2015, Register 214)

**Authority:** AS 46.03.020 AS 46.14.020 AS 46.14.140  
AS 46.14.010 AS 46.14.030 Sec. 30, ch. 74, SLA 1993

The heading of 18 AAC 50, Article 7 is changed to read:

**Article 7. Transportation Conformity.**

18 AAC 50.700 is repealed and readopted to read:

**18 AAC 50.700. Purpose.** (a) The purpose of 18 AAC 50.700 - 18 AAC 50.750 is to ensure that a transportation plan, transportation improvement program, revisions to the *State Air Quality Control Plan* adopted by reference in 18 AAC 50.030, including those portions in it that are federally approved and recognized as the state implementation plan, or other federal action that affects transportation within a carbon monoxide, nitrogen dioxide, ozone, PM-2.5, or PM-10 nonattainment or maintenance area located in the state will not hinder the attainment or maintenance 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 plan, program, project, or action is non-federally 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. (highways) or 49 U.S.C. 5301 - 5340 (public transportation).

(b) The provisions of 18 AAC 50.700 - 18 AAC 50.750 set out the policy, criteria, and consultation procedures for demonstrating and assuring conformity of transportation activities

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described under (a) of this section, for inclusion in the *State Air Quality Control Plan* adopted by reference in 18 AAC 50.030. (Eff. 1/4/95, Register 133; am 9/4/98, Register 147; am 4/17/2015, Register 214)

**Authority:** AS 46.03.020 AS 46.14.030

18 AAC 50.705 is repealed and readopted to read:

**18 AAC 50.705. Applicability.** (a) The provisions of 18 AAC 50.700 - 18 AAC 50.750 apply to

(1) a transportation plan, transportation improvement program, or other federal transportation project that is

(A) located within a carbon monoxide, nitrogen dioxide, ozone, PM-2.5, or PM-10 nonattainment or maintenance area in the state; and

(B) funded or requires approval under 23 U.S.C. or 49 U.S.C. 5301 - 5340;

(2) a transportation plan, transportation improvement program, or other federal transportation project that is non-federally 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. 5301 - 5340; or

(3) revisions to the *State Air Quality Control Plan* adopted by reference in 18 AAC 50.030, including the state implementation plan, that affect transportation.

(b) The sponsoring agency has the obligation to meet the applicable requirements of 18 AAC 50.700 - 18 AAC 50.750. For purposes of 18 AAC 50.700 - 18 AAC 50.750, the

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sponsoring agency is the agency that

(1) receives or manages federal money for the transportation plan, transportation improvement program, or other federal transportation project as described in (a) of this section;

(2) develops the transportation plan, transportation improvement program, or other federal transportation project as described in (a) of this section; or

(3) funds, adopts, or approves a non-federal, regionally significant project and is a current or prior recipient of funds under 23 U.S.C. or 49 U.S.C. 5301 - 5340. (Eff. 1/4/95,

Register 133; am 9/4/98, Register 147; am 4/17/2015, Register 214)

**Authority:** AS 46.03.020 AS 46.14.030

18 AAC 50.710 is repealed:

**18 AAC 50.710. Transportation conformity: incorporation by reference of federal regulations.** Repealed. (Eff. 1/4/95, Register 133; am 9/4/98, Register 147; am 4/1/2010, Register 193; repealed 4/17/2015, Register 214)

[EDITOR'S NOTE: THE REGULATIONS OF THE FEDERAL HIGHWAY ADMINISTRATION AND THE FEDERAL TRANSIT AUTHORITY CONCERNING FISCAL CONSTRAINT REFERRED TO IN 18 AAC 50.710(8) MAY BE FOUND AT 23 C.F.R. 450.216(m), 23 C.F.R. 450.322(f)(10), AND 23 C.F.R. 450.324(h).]

18 AAC 50 is amended by adding a new section to read:

**18 AAC 50.712. Agency responsibilities.** Representatives of the department, the



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Department of Transportation and Public Facilities, metropolitan planning organizations, and local and regional air quality and transportation agencies recognized by the state shall undertake an interagency consultation process with each other and with the local or regional offices of the United States Environmental Protection Agency and the United States Department of Transportation, Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) on the development of the state implementation plan, transportation plans, transportation improvement programs, and associated conformity determinations in accordance with the responsibilities and procedures of 18 AAC 50.700 - 18 AAC 50.750 and the *State Air Quality Control Plan*, Volume II, Section III.I.3. (Eff. 4/17/2015, Register 214)

**Authority:** AS 46.03.020 AS 46.14.030

18 AAC 50.715(a) is amended to read:

**18 AAC 50.715. Interagency [TRANSPORTATION CONFORMITY: INTERAGENCY] consultation procedures.** (a) Before issuing a final transportation conformity determination or transportation-related state implementation plan revision under 18 AAC 50.700 - 18 AAC 50.750 [18 AAC 50.700 - 18 AAC 50.720], the sponsoring [RESPONSIBLE] agency described in 18 AAC 50.705(b) [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 [HIGHWAYS]) or 49 U.S.C. 5301 - 5340 [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 or transportation-related state implementation plan revision 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 or government;

(C) the [ALASKA] Department of Transportation and Public Facilities;

(D) the local transportation committee, agency, or government;

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

(F) the United States Environmental Protection Agency;

(G) the United States Department of Transportation, Federal Highway Administration (FHWA);

(H) the United States Department of Transportation, Federal Transit Administration (FTA); [AND]

(I) the metropolitan planning organization and any other regional transportation planning organization; and

(J) any participant listed in the State Air Quality Control Plan, Volume II, Section III.I.3; and

(3) make the public review draft of the conformity determination or transportation-related state implementation plan revision available for public review and comment as required in 18 AAC 50.720.

18 AAC 50.715(b) is amended to read:

(b) A staff member of the **sponsoring** [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 **or transportation-related state implementation plan revision**, including necessary supporting information;

(2) ensure that all documents, **including transportation-related state implementation plan revisions**, 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 **or transportation-related state implementation plan revision**.

18 AAC 50.715(c) is amended to read:

(c) In preparing the preliminary interagency discussion draft, a staff member of the **sponsoring** [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



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regionally significant **projects** for purposes of a regional emissions analysis, in addition to those **functionally classified as principal arterial or higher or fixed guide-way systems or extensions that offer an alternative to regional highway travel;**

**(3) determine which projects should be considered to have a significant change in design concept and scope from the transportation plan or transportation improvement program** [REGIONALLY SIGNIFICANT PROJECTS AS DEFINED IN 40 CFR 93.101, ADOPTED BY REFERENCE IN 18 AAC 50.710];

**(4) [(3)]** discuss whether a project that is otherwise exempt from the requirements of **18 AAC 50.700 - 18 AAC 50.750** [18 AAC 50.700 - 18 AAC 50.720] under **40 C.F.R. 93.126 and 93.127, revised as of July 1, 2013, and** [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;

**(5) [(4)]** determine, as required **under** [BY] 40 C.F.R. 93.113(c)(1), **revised as of July 1, 2013, and** 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 **transportation control measures** [TCMs] are giving maximum priority to approval or funding for **transportation control measures to be initiated by the sponsoring agency in accordance with 18 AAC 50.700 - 18 AAC 50.750 and the State Air Quality Control Plan, Volume II, Section III.I.3** [TCMs]; the interagency consultation process must also consider whether delays in **transportation**



**control measure** [TCM] implementation necessitate a revision to the state implementation plan to remove or to substitute a **transportation control measure** [TCM] or other emission reduction measures;

(6) [(5)] determine, as required **under** [BY] 40 C.F.R. 93.121, **revised as of July 1, 2013, and** 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 **transportation improvement program's** [TIP's] conformity determination, even if the project is not included in the **transportation improvement program** [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, **transportation improvement program** [TIP], or regional emissions analysis; or

(B) that, based on the requirements for a project that is not from a conforming transportation plan and **transportation improvement program** [TIP], as specified in **40 C.F.R. 93.118 and 93.119, revised as of July 1, 2013, and** [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 **transportation improvement program** [TIP], and a new regional emissions analysis that includes the regionally significant project; and

(ii) the currently conforming transportation plan and

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transportation improvement program [TIP] will still conform if the regionally significant project is implemented;

(7) [(6)] identify, as required under [BY] 40 C.F.R. 93.123(b), revised as of July 1, 2013, and adopted by reference [IN 18 AAC 50.710], projects located at sites

(A) within a PM-10 or PM-2.5 nonattainment or maintenance area identified in 18 AAC 50.015(b)(3) or (e) [18 AAC 50.015(b)(2), OR WITHIN A PM-2.5 NONATTAINMENT AREA, IF ANY, IDENTIFIED IN 18 AAC 50.015(b)(2)]; and

(B) 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 or PM-2.5 hot-spot analysis;

(8) [AND (7)] notify staff of participating agencies of any revision or amendment to a transportation plan or transportation improvement program [TIP] that merely adds or deletes an exempt project listed in 40 C.F.R. 93.126, revised as of July 1, 2013, and adopted by reference; and

(9) develop a list of transportation control measures for inclusion in the state implementation plan and distribute that list to those agencies described in (a)(2) of this section [IN 18 AAC 50.710].

18 AAC 50.715(d) is amended to read:

(d) In addition to the consultation described in (c) of this section, a staff member of the sponsoring [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, **revised as of July 1, 2013, and** 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, **maintenance 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;

**(4) ensure that plans for construction of regionally significant projects that are not FHWA or FTA projects, including projects for which alternative locations, design concept and scope, or the no-build option are still being considered and including all those projects by recipients of funds designated under 23 U.S.C., are disclosed to the metropolitan planning organization on a regular basis and to ensure that any changes to those plans are disclosed within 10 business days;**

**(5) request that participants in the interagency consultation process identify all non-FHWA and non-FTA transportation projects and their design concept and scope, including those projects where detailed design features have not yet been decided, to determine which projects are regionally significant projects for regional emissions modeling; a person who is "a recipient of funds designated under title 23 U.S.C or the Federal Transit Laws" within the meaning given the term in 40 C.F.R. 93.101, revised as of July 1, 2013, and adopted by reference, shall disclose to the metropolitan planning**



organization information regarding all non-FHWA and non-FTA regionally significant projects; any changes to these plans shall be disclosed within 10 business days; and  
(6) choose conformity tests and methodologies for isolated rural nonattainment and maintenance areas.

18 AAC 50.715(f) is amended to read:

(f) After completing the interagency consultation process, the sponsoring [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.

The introductory language of 18 AAC 50.715(g) is amended to read:

(g) After opportunity for public review and comment on the public review draft of the conformity determination, the sponsoring [RESPONSIBLE] agency shall

...

18 AAC 50.715(h) is repealed:

(h) Repealed 4/17/2015.

18 AAC 50.715 is amended by adding a new subsection to read:

(i) In this section, "business day" means a day other than Saturday, Sunday, or a state or federal holiday. (Eff. 1/4/95, Register 133; am 9/4/98, Register 147; am 4/1/2010, Register 193;



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am 4/17/2015, Register 214)

**Authority:** AS 46.03.020 AS 46.14.030

18 AAC 50.720(a) is amended to read:

**18 AAC 50.720. Public [TRANSPORTATION CONFORMITY: PUBLIC]**  
**involvement.** (a) The **sponsoring** [RESPONSIBLE] agency **described** [REFERRED TO] in  
**18 AAC 50.705(b)** [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 **or transportation-related state implementation plan revision** before the agency  
issues a final conformity determination **or transportation-related state implementation plan**  
**revision**. As required under 40 C.F.R. 93.112, **revised as of July 1, 2013, and** adopted by  
reference [IN 18 AAC 50.710], the public involvement process must be consistent with the  
requirements of **40 C.F.R. 93.105(e), revised as of July 1, 2013, and adopted by reference,**  
**and** 23 C.F.R. 450.316(a), **revised as of July 1, 2014, and adopted by reference** [23 C.F.R.  
450.322(i), AND 23 C.F.R. 450.324(b), AS REVISED AS OF APRIL 1, 2009].

The introductory language of 18 AAC 50.720(b) is amended to read:

(b) The **sponsoring** [RESPONSIBLE] agency shall

...

18 AAC 50.720(b)(1) is amended to read:

(1) subject to (d) of this section,

(A) receive written comments on the public review draft of the conformity determination or transportation-related state implementation plan revision; and

(B) hold a public hearing or meeting

(i) for a transportation plan, [OR] transportation improvement program, or transportation-related state implementation plan revision;

(ii) for a project that is not included in a transportation plan, [OR] transportation improvement program, or transportation-related state implementation plan revision, but that is within a designated nonattainment area listed under 18 AAC 50.015(b) or designated maintenance area listed under 18 AAC 50.015(d); or

(iii) if a written comment received under (A) of this paragraph requests a public hearing or meeting for a regionally significant project;

18 AAC 50.720(c) is amended to read:

(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 or transportation-related state implementation plan revision.

(Eff. 1/4/95, Register 133; am 9/4/98, Register 147; am 4/1/2010, Register 193; am

4/17/2015, Register 214)

**Authority:** AS 46.03.020 AS 46.14.030

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18 AAC 50.725 is repealed:

**18 AAC 50.725. General conformity: incorporation by reference of federal regulations.** Repealed. (Eff. 1/4/95, Register 133; repealed 4/17/2015, Register 214)

18 AAC 50.730 is repealed:

**18 AAC 50.730. General conformity: mitigation of air quality impacts.** Repealed. (Eff. 1/4/95, Register 133; repealed 4/17/2015, Register 214)

18 AAC 50.735 is repealed and readopted to read:

**18 AAC 50.735. Frequency of transportation 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) Conformity determinations and conformity redeterminations for transportation plans, transportation improvement programs, and other FHWA or FTA projects must be made in accordance with the requirements of 40 C.F.R. 93.104, revised as of July 1, 2013, and adopted by reference. (Eff. 1/4/95, Register 133; am 4/17/2015, Register 214)

**Authority:** AS 46.03.020 AS 46.14.030



18 AAC 50 is amended by adding new sections to read:

**18 AAC 50.740. Written commitments.** (a) A conformity determination on the transportation plan or transportation improvement program may not include emission reduction credits from any control measures that are not included in the transportation plan or transportation improvement program and that do not require a regulatory action in the regional emissions analysis, unless the metropolitan planning organization, the Department of Transportation and Public Facilities, FHWA, or FTA obtains, for inclusion in the conformity determination, written commitments as defined in 40 C.F.R. 93.101, revised as of July 1, 2013, and adopted by reference, from the appropriate entities to implement those control measures. Before a conformity determination on the transportation plan or transportation improvement program may be approved, a metropolitan planning organization or the Department of Transportation and Public Facilities must ensure that any project-level mitigation or control measures included in project design concepts and scopes are appropriately identified in the regional emissions analysis. The written commitments to implement those mitigation or control measures must be fulfilled by the appropriate entities.

(b) Before a project-level conformity determination for a transportation project may be approved, the project sponsor must include written commitments as defined in 40 C.F.R. 93.101, adopted by reference in (a) of this section, to implement any project-level mitigation or control measures in the construction or operation of the project that are identified for that project as part of NEPA process completion as defined in 40 C.F.R. 93.101, revised as of July 1, 2013, and adopted by reference. Written commitments must be obtained before those project level mitigation or control measures are used in a project-level hot-spot analysis. The written



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commitments to implement those project-level mitigation or control measures must be fulfilled by the appropriate entities.

(c) In this section, "project sponsor" means any entity that owns an equity interest in the transportation project, or holds the permits that the department determines are essential to construct or operate the transportation project. (Eff. 4/17/2015, Register 214)

**Authority:** AS 46.03.020 AS 46.14.030

**18 AAC 50.745. Resolving conflicts.** (a) If during the interagency consultation process under 18 AAC 50.700 - 18 AAC 50.750 a conflict arises between state agencies or between state and local agencies, and the conflict cannot be resolved by the heads of the involved agencies, the department will refer the conflict to the governor for resolution. A conformity determination that is the subject of conflict resolution under this section must have the governor's concurrence to be final.

(b) The department will make the referral to the governor not later than 14 calendar days after notification or a determination that the conflict cannot be resolved. The 14-day period starts when the metropolitan planning organization or the Department of Transportation and Public Facilities confirms receipt of the comments of the department. The department will provide the participating agencies under 18 AAC 50.715(a)(2) with a copy of its referral to the governor.

(c) If the department does not make a referral to the governor during the 14-day period described in (b) of this section, the sponsoring agency described in 18 AAC 50.705(b), metropolitan planning organization, or Department of Transportation and Public Facilities may proceed with the final conformity determination.

(d) Not later than 14 days after the metropolitan planning organization notifies the department of the resolution of all comments on a proposed conformity determination or other policy decision during the interagency consultation process under 18 AAC 50.700 - 18 AAC 50.750, and if the Department of Transportation and Public Facilities disputes those comments, the Department of Transportation and Public Facilities shall refer the proposed conformity determination or other policy decision to the governor for resolution. The 14-day period starts when the metropolitan planning organization has confirmed receipt by the department of the resolution of the comments of the Department of Transportation and Public Facilities.

(e) If the Department of Transportation and Public Facilities makes a referral to the governor, the final conformity determination or other final policy decision must have the concurrence of the governor.

(f) The Department of Transportation and Public Facilities shall provide the metropolitan planning organization and the department with a copy of the referral to the governor under (d) of this section. If the Department of Transportation and Public Facilities does not make a referral to the governor during the 14-day period described in (d) of this section, the metropolitan planning organization may proceed with the final conformity determination or other final policy decision.

(g) The governor may delegate the role of resolving a conflict under this section and deciding whether to concur in the conformity determination to a state official or agency other than

- (1) the department;
- (2) the Department of Transportation and Public Facilities; or
- (3) a state transportation board or commission. (Eff. 4/17/2015, Register

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214)

**Authority:** AS 46.03.020 AS 46.14.030

**18 AAC 50.750. Exempt projects.** Notwithstanding the other requirements of 18 AAC 50.700 - 18 AAC 50.750, highway and transit projects of the types listed in Table 2 of 40 C.F.R. 93.126, revised as of July 1, 2013, and adopted by reference, are exempt from the requirement to determine conformity. Those projects may proceed toward implementation even in the absence of a conforming transportation plan and transportation improvement program. A particular action of the type listed in Table 2 of 40 C.F.R. 93.126 is not exempt if the agencies listed in 18 AAC 50.715(a)(2) concur that it has potentially adverse emissions impacts for any reason.

Metropolitan planning organizations must ensure that exempt projects do not interfere with transportation control measure implementation. (Eff. 4/17/2015, Register 214)

**Authority:** AS 46.03.020 AS 46.14.030

18 AAC 50.990(32) is amended to read:

(32) "**emissions** [EMISSION] unit" has the meaning given in AS 46.14.990;

18 AAC 50.990(90) is amended to read:

(90) "regionally significant project" has the meaning given in 40 C.F.R. 93.101, **revised as of July 1, 2013, and** adopted by reference [IN 18 AAC 50.710];



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18 AAC 50.990(121) is amended to read:

(121) "volatile organic compound" or "VOC" has the meaning given in 40 C.F.R. 51.100(s), as revised as of November 21, 2013 [APRIL 18, 2013], and adopted by reference;

18 AAC 50.990(130) is amended to read:

(130) "transportation improvement program" [OR "TIP"] has the meaning given in 40 C.F.R. 93.101, revised as of July 1, 2013, and adopted by reference [IN 18 AAC 50.710];

18 AAC 50.990 is amended by adding new paragraphs to read:

(141) "design concept" has the meaning given in 40 C.F.R. 93.101, revised as of July 1, 2013, and adopted by reference;

(142) "design scope" has the meaning given in 40 C.F.R. 93.101, revised as of July 1, 2013, and adopted by reference;

(143) "FHWA" means the United States Department of Transportation, Federal Highway Administration;

(144) "FTA" means the United States Department of Transportation, Federal Transit Administration;

(145) "hot-spot analysis" has the meaning given in 40 C.F.R. 93.101, revised as of July 1, 2013, and adopted by reference;

(146) "isolated rural nonattainment and maintenance areas" has the meaning given in 40 C.F.R. 93.101, revised as of July 1, 2013, and adopted by reference;

(147) "metropolitan planning organization" has the meaning given in 40 C.F.R.



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93.101, revised as of July 1, 2013, and adopted by reference;

(148) "transportation control measure" has the meaning given in 40 C.F.R.

93.101, revised as of July 1, 2013, and adopted by reference. (Eff. 1/18/97, Register 141; am 6/14/98, Register 146; am 6/21/98, Register 146; am 9/4/98, Register 147; am 11/4/99, Register 152; am 1/1/2000, Register 152; am 2/2/2002, Register 161; am 5/3/2002, Register 162; am 11/15/2002, Register 164; am 8/8/2003, Register 167; am 10/1/2004, Register 171; am 12/3/2005, Register 176; am 12/30/2007, Register 184; am 7/25/2008, Register 187; am 4/1/2010, Register 193; am 12/9/2010, Register 196; am 9/17/2011, Register 199; am 9/14/2012, Register 203; am 10/6/2013, Register 208; am 11/9/2014, Register 212; am 2/28/2015, Register 213; am 4/17/2015, Register 214)

<b>Authority:</b>	AS 44.46.025	AS 46.14.140	AS 46.14.250
	AS 46.03.020	AS 46.14.150	AS 46.14.255
	AS 46.03.710	AS 46.14.160	AS 46.14.280
	AS 46.14.010	AS 46.14.170	AS 46.14.285
	AS 46.14.020	AS 46.14.180	AS 46.14.290
	AS 46.14.030	AS 46.14.210	AS 46.14.300
	AS 46.14.120	AS 46.14.230	AS 46.14.560
	AS 46.14.130	AS 46.14.240	Sec. 30, ch. 74, SLA 1993