

SECTION .2000 - TRANSPORTATION CONFORMITY

15A NCAC 02D .2001 PURPOSE, SCOPE AND APPLICABILITY

(a) The purpose of this Section is to assure the conformity of transportation plans, programs, and projects that are developed, funded, or approved by the United States Department of Transportation and by metropolitan planning organizations or other recipients of funds under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.), or State or Local only sources of funds, with all plans required of areas designated as nonattainment or maintenance under 40 CFR 81.334 or listed in Paragraph (b), (c), or (d) of this Rule.

(b) This Section applies to the emissions of volatile organic compounds and nitrogen oxides in the following areas:

- (1) Davidson County,
- (2) Durham County,
- (3) Forsyth County,
- (4) Gaston County,
- (5) Guilford County,
- (6) Mecklenburg County,
- (7) Wake County,
- (8) Dutchville Township in Granville County, and
- (9) that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River.

(c) This Section applies to the emissions of carbon monoxide in the following areas:

- (1) Durham County,
- (2) Forsyth County,
- (3) Mecklenburg County, and
- (4) Wake County.

(d) This Section applies to the emissions of:

- (1) particulate matter in areas identified in 40 CFR 81.334 as nonattainment for fine particulate (PM_{2.5}),
or
- (2) volatile organic compounds or nitrogen oxides in areas identified in 40 CFR 81.334 as nonattainment for ozone.

(e) This Section applies to FHWA/FTA projects or regionally significant State or local projects. For FHWA/FTA projects or regionally significant State or local projects in the areas identified in Paragraph (b), (c), or (d) of this Rule and for the pollutants identified in Paragraph (b), (c), or (d) of this Rule, this Section applies to:

- (1) the adoption, acceptance, approval, or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a metropolitan planning organization or the United States Department of Transportation;
- (2) the adoption, acceptance, approval, or support of transportation improvement programs or amendments to transportation improvement programs pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a metropolitan planning organization or the United States Department of Transportation; or
- (3) the approval, funding, or implementation of FHWA/FTA projects.

Conformity determinations are not required under this Section for individual projects that are not FHWA/FTA projects. However, 40 CFR 93.121 shall apply to these projects if they are regionally significant projects.

(f) This Section applies to maintenance areas for 20 years from the date the Environment Protection Agency approves the area's request under Section 107(d) of the Clean Air Act for redesignation to attainment.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);
Eff. April 1, 1999;
Amended Eff. December 1, 2005.*

15A NCAC 02D .2002 DEFINITIONS

For the purposes of this Section, the definitions contained in 40 CFR 93.101 and the following definitions apply:

- (1) "Consultation" means that one party confers with another identified party, provides all information necessary to that party needed for meaningful input, and considers and responds to the views of that party in a timely, substantive written manner prior to any final decision.
- (2) "Regionally significant project" means a transportation project (other than an exempt project under 40 CFR 93.126) that is on a facility that serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls and sports complexes, or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guide way transit facilities that offer an alternative to regional highway travel.
- (3) "Regionally significant State or local project" means any highway or transit project that is a regionally significant project and that is proposed to receive only funding assistance (receives no federal funding) or approval through the State or any local program.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);
Eff. April 1, 1999.

15A NCAC 02D .2003 TRANSPORTATION CONFORMITY DETERMINATION

(a) Conformity analyses, determinations, and redeterminations for transportation plans, transportation improvement programs, FHWA/FTA projects, and State or local regionally significant projects shall be made according to the requirements of 40 CFR 93.104 and shall comply with the applicable requirements of 40 CFR 93.119, 93.120, 93.124, 93.125, and 93.126. For the purposes of this Rule, regionally significant State or local projects shall be subject to the same requirements under 40 CFR Part 93 as FHWA/FTA projects except that State Environmental Policy Act procedures and requirements shall be substituted for National Environmental Policy Act procedures and requirements. Regionally significant State or local projects subject to this Section for which the State Environmental Policy Act process and a conformity determination have been completed may proceed toward implementation without further conformity determination unless more than three years have elapsed since the most recent major step (State Environmental Policy Act process completion, start of final design, acquisition of a significant portion of the right-of-way, or approval of the plans, specifications, and estimates) occurred. All phases of these projects considered in the conformity determination are also included if these phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.

(b) Before making a conformity determination, the metropolitan planning organizations, local transportation departments, North Carolina Department of Transportation, United States Department of Transportation, the Division of Air Quality, local air pollution control agencies, and United States Environmental Protection Agency shall consult with each other on matters described in 15A NCAC 2D .2005. Consultation shall begin as early as possible in the development of the emissions analysis used to support a conformity determination. The agency that performs the emissions analysis shall make the analysis available to the Division of Air Quality and at least 21 days shall be allowed for review and comment on the emissions analysis. The 21-day review period shall begin upon receipt of the analysis by the Director of the Division of Air Quality. After review by the Division of Air Quality the approving agency shall seek public comments in accordance with its public participation policy. The agency making the conformity determination shall address all written comments received prior to close of the public comment period, and these comments and responses thereto shall be included in the final document. If the Division of Air Quality disagrees with the resolution of its comments, the conflict may be escalated to the Governor within 14 days and shall be resolved in accordance with 40 CFR 93.105(d). The 14-day appeal period shall begin upon receipt by the Director of the Division of Air Quality of the metropolitan planning organization's resolution that determines conformity.

(c) The agency that performs the conformity analysis shall notify the Division of Air Quality of:

- (1) any changes in planning or analysis assumptions [including land use and vehicle miles traveled (VMT) forecasts], and
- (2) any revisions to transportation plans or transportation improvement plans that add, delete, or change projects that require a new emissions analysis (including design scope and dates that change the transportation network existing in a horizon year).

Comments made by the Division of Air Quality and responses thereto made by the agency shall become part of the final planning document.

(d) Transportation plans shall satisfy the requirements of 40 CFR 93.106. Transportation plans and transportation improvement programs shall satisfy the fiscal constraints specified in 40 CFR 93.108. Transportation plans, programs, and FHWA/FTA projects shall satisfy the applicable requirements of 40 CFR 93.109 through 93.118.

(e) Written commitments to implement control measures that are not included in the transportation plan and transportation improvement program (TIP) shall be obtained before a conformity determination and these commitments shall be fulfilled. Written commitments to implement mitigation measures shall be obtained before a positive conformity determination, and project sponsors shall comply with these commitments.

(f) A recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Act shall not adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the requirements of 40 CFR Part 93 are fully complied with.

(g) The degree of specificity required in a transportation plan and the specific travel network assumed for air quality modeling shall not preclude the consideration of alternatives in the National Environmental Policy Act of 1969 process, in accordance with 40 CFR 93.107.

(h) When assisting or approving any action with air quality-related consequence, the Federal Highway Administration and the Federal Transit Administration of the Department of Transportation shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the national ambient air quality standards as provided under 40 CFR 93.103. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);
Eff. April 1, 1999.

15A NCAC 02D .2004 DETERMINING TRANSPORTATION-RELATED EMISSIONS

- (a) The procedures in 40 CFR 93.122 shall be used to determine regional transportation-related emissions.
- (b) The procedures in 40 CFR 93.123 shall be used to determine localized carbon monoxide concentrations (hot-spot analysis).

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);
Eff. April 1, 1999.

15A NCAC 02D .2005 MEMORANDUM OF AGREEMENT

(a) The Division of Air Quality shall develop and maintain a memorandum of agreement with the North Carolina Department of Transportation, the metropolitan planning organizations of the areas identified in Rule .2001(b), (c), or (d) of this Section, and the United States Department of Transportation to describe the participation and responsibilities of each of these agencies in implementing the requirements of this Section and 40 CFR Part 93. For those areas identified in Rule .2001(b), (c), or (d) of this Section for which there is no metropolitan planning organization, the North Carolina Department of Transportation shall represent those areas for the purposes of the memorandum of agreement. The memorandum of agreement shall include:

- (1) consultation procedures described under 40 CFR 93.105;
- (2) the projected time allotted for each agency to review and comment on or to respond to comments on transportation improvement programs, transportation plans, and transportation projects; and
- (3) consultation procedures for the development of State Implementation Plans that relate to transportation.

The contents of the Memorandum of Agreement shall comply with the criteria and procedures in the federal Clean Air Act Section 176(c) [42 U.S.C. 7401-7671q] and 40 CFR Part 51, Subpart T, 40 CFR Part 93, Subpart A, and Rules .2001 through .2004 of this Section.

(b) No recipient of federal funds (as defined at 40 CFR 93.101) designated under Title 23 U.S.C. or the Federal Transit Act shall adopt or approve or take any action to develop or implement a regionally significant highway or transit project unless such recipient has signed the Memorandum of Agreement established under this Rule. This Memorandum of Agreement shall bind the recipient to adhere to the conformity criteria and procedures of this Section.

(c) No agency shall adopt or approve or take any action to implement or develop any transportation plan, transportation improvement program, or federally funded or approved FHWA/FTA highway or transit project unless the agency has signed the Memorandum of Agreement established under this Rule. This Memorandum of Agreement shall bind the recipient to adhere to the conformity criteria and procedures of this Section.

(d) Each federal agency that participates in determinations of conformity to state and federal implementation plans shall sign the Memorandum of Agreement established under this Rule. This Memorandum of Agreement shall bind the recipient to adhere to the conformity criteria and procedures of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);
Eff. April 1, 1999.