

SECTION 2D.2000- TRANSPORTATION CONFORMITY

.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 and listed in Paragraph (b) or (c) 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, in the areas identified in Paragraph (b) or (c) of this Rule for the pollutants identified in Paragraph (b) or (c) of this Rule, 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, 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 of 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.

History Note: Authority G.S. 143-215(a)(1); 143-215.107(a)(10);
Eff. April 1, 1999;

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.2002 DEFINITIONS

For the purpose 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.

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.2003 TRANSPORTATION CONFORMITY DETERMINATION

- (a) Conformity analysis, determinations, and redeterminations for transportation plans, transportation improvement programs, FHWA/FTA projects, and State and 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 93.124 and 93.125. 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 project projects subject to the Section for which the State Environmental Policy Act process and a conformity determination have been completed may process 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 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 40 CFR 93.105(c). 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 the general public for comments; at least 21 days shall be allowed for review and comment on the emissions analysis. The agency that performs the emissions analysis shall address all comments received 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 when the North Carolina Department of Transportation or the metropolitan planning organization has confirmed 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 in planning or analysis assumptions 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),

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) 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 there is a currently conforming transportation improvement program consistent with the requirements of 40 CFR 93.114 and the project conforms with the requirements of 40 CFR 93.121.
- (f) 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.
- (g) When assisting or approving any action with air quality-related consequences, 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.

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.2004 DETERMINING TRANSPORTATION RELATED EMISSIONS

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

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.2005 MEMORANDUM OF AGREEMENT

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) of (c) of this Section, and the Federal Highway Administration to describe the participation and responsibilities of each of these agencies in implementing the requirements of this Section and 40 CFR Part 93.

The memorandum of agreement shall include:

- (1) consultation procedures described under 40 CFR 93.105;
- (2) the time allowed 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.

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