

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 shall also be 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, 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 02D .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) changes in planning or analysis assumptions, including land use and vehicle miles traveled (VMT) forecasts; and
- (2) 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 93.119.

(e) Written commitments to implement control measures that are not included in the transportation plan or 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 met.

(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;
Readopted Eff. January 1, 2018.*