

11.3.1
MEMORANDUM OF AGREEMENT
IMPLEMENTING THE CONFORMITY CRITERIA AND CONSULTATION
PROCEDURES
REVISION TO THE ALABAMA STATE IMPLEMENTATION PLAN PURSUANT TO
THE CLEAN AIR ACT AMENDMENTS OF 1990

This is a Memorandum of Agreement (MOA) concerning the criteria and procedures for interagency consultation and enforceable commitments for conformity of transportation plans, programs and projects of the Metropolitan Planning Organizations and State Department of Transportation in the Alabama-affiliated airshed(s) designated as nonattainment or maintenance pursuant to the Clean Air Act Amendments (CAA), as amended (42 U.S.C. 7401 et seq.). This MOA also pertains to areas that were subsequently redesignated to attainment (i.e., with a CAA Section 175A maintenance plan). The airshed(s) subject to this MOA are those that have been formally designated nonattainment or maintenance by the United States Environmental Protection Agency (USEPA) pursuant to the CAA, as amended (42 U.S.C. 7401 et seq.) for one or more transportation-related criteria air pollutant(s) and its precursors, if applicable.

The PARTIES to this MOA shall be: the applicable regional planning commissions, the applicable metropolitan planning organizations, the local transit authority (if applicable), the local air quality program (if applicable), the Alabama Department of Transportation, other applicable adjacent state(s)' Departments of Transportation, the Federal Highway Administration's applicable division(s), the Federal Transit Administration – Region 4, the U.S. Environmental Protection Agency – Region 4, the Alabama Department of Environmental Management, and other affected adjacent state(s)' applicable environmental agencies. The specific interagency consultation partners subject to this agreement for the Birmingham 1997 8-hour ozone and the 2006 24-hour PM_{2.5} National Ambient Air Quality Standard (NAAQS) are provided in Exhibit 3.

WHEREAS, the CAA, as amended (42 U.S.C. 7401 et seq.) requires states to submit a revision to their State Implementation Plans (hereinafter the SIP) containing the criteria and procedures for interagency consultation and enforceable commitments for conformity of the plans, programs and projects in areas designated as air quality nonattainment or maintenance in order to conform to the purpose of the SIP to meet National Ambient Air Quality Standards; and

WHEREAS, the CAA as amended (42 U.S.C. 7401 et seq.) (specifically Sections 121, 174, and 176), 40 Code of Federal Regulations (CFR) Part 93, Subpart A, Title 23 United States Code (U.S.C.) 134, and 23 CFR Part 450, Subpart C requires intergovernmental consultation before finding of conformity for the plans, programs, and projects of metropolitan planning organizations are made, and for the development and submittal of applicable state implementation plan revisions; and

WHEREAS, the CAA, as amended (42 U.S.C. 7401 et seq.) in §§110 (a)(2)(A) and (E) requires SIP revisions to be enforceable under state law, and 40 CFR, § 51.390(d) requires that “in order for EPA to approve the state implementation revision submitted to EPA and DOT under this

Subpart, the plan must address all requirements of Part 93, Subpart A of this Chapter in a manner which gives them full legal effect”; and

WHEREAS, the applicable regional planning commission has been formed through interlocal agreements and designated by the governor(s) of the applicable states(s) as the forum for cooperative decision making to carry out the continuing, cooperative and comprehensive metropolitan transportation planning process required by Title 23 U.S.C. 134; and

WHEREAS, the applicable transit authority has been established under Act No. 993 to render public transportation service in the nonattainment or maintenance area; and

WHEREAS, the applicable state(s)’ Department of Transportation has/have been designated as the state planning transportation agency under state law(s) to carry out the statewide transportation planning process(es) required by Title 23 U.S.C. 135; and

WHEREAS, the applicable state(s)’ environmental agency(ies) has/have been designated under state law and by U.S. EPA as the certified state air quality planning organization for the applicable state(s); and

WHEREAS, the applicable local air quality agency(ies) has/have been designated pursuant to state law and interlocal agreements as the state-approved local air quality agency for the applicable county; and

WHEREAS, the Federal Highway Administration and Federal Transit Administration are agencies of the U.S. Department of Transportation and are responsible for review of the conformity determinations prepared by the applicable states’ Department of Transportation for compliance with 23 U.S.C. and 49 U.S.C., respectively; and

WHEREAS, the U.S. EPA has the authority to find adequate or approve motor vehicle emissions budgets that are to be used to demonstrate transportation conformity.

NOW THEREFORE, it is hereby agreed by the Parties referenced in the above whereas clauses as follows:

The Parties to this MOA shall cooperatively support and implement the conformity criteria and procedures contained herein in order to ensure that the plans, programs, and projects adopted by the MPOs that are Parties hereto conform to the purpose of the applicable states’ SIP to meet National Ambient Air Quality Standards for the applicable criteria pollutant.

It is further agreed and understood by each Party to the MOA that:

1. The conformity of plans, programs, and projects funded under title 23 United States Code and the Federal Transit Act shall be determined pursuant to the CAA, as amended (42 U.S.C. 7401 et seq.) and as provided in 40 CFR Part 93, Subpart A, and pursuant to the “Alabama Criteria and Interagency Consultation Procedures for the Determination of the Conformity of Metropolitan Planning Organization Plans, Programs and Projects,” a copy

of which is attached hereto as Exhibit 1. Exhibits 1, 2, and 3 of the MOA are hereby adopted by the Parties to the MOA.

2. The criteria and procedures for determining such conformity as contained in this MOA shall be legally enforceable under the laws of the applicable state(s). The Parties further agree that if any Party hereto fails to comply with any provision(s) of this MOA and the conformity criteria and procedures contained in Exhibit 1 applicable to such party, any other Party to this MOA may compel compliance with such provision(s) by initiating an action in circuit court for injunctive relief only.
3. This MOA, including Exhibit 1, Exhibit 2, ADEM Admin. Code Chapter 335-3-17, and Exhibit 3 will constitute the revision to the Alabama SIP required by Section 176 (c) CAA, as amended (42 U.S.C. 7401 et seq.) and will govern conformity determinations in the state of Alabama upon approval by U.S. EPA.

This MOA addresses and gives full legal effect to the following three requirements of the Federal Transportation Conformity Rule, 40 CFR part 93 subpart A: (1) 40 CFR 93.105, which addresses consultation procedures (See Exhibit 1, 11.3.2); (2) 40 CFR 93.122(a)(4)(ii) (See Exhibit 1, 11.3.2), which states that conformity SIPs must require written commitments to control measures to be obtained prior to a conformity determination if the control measures are not included in a Metropolitan Planning Organization's transportation plan and transportation improvement program, and that such commitments be fulfilled; and (3) 40 CFR 93.125(c) (See Exhibit 1, 11.3.2), which states that conformity SIPs must require written commitments to mitigation measures to be obtained prior to a project-level conformity determination, and that project sponsors comply with such commitments.

4. Execution of this MOA by each Party shall be by signature. This MOA shall be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
5. The provisions of this MOA shall be implemented through appropriate procedures, resolution, or any other means in order to comply with the requirements of all Federal and state laws and regulations relating to the determination of conformity and the development of applicable state implementation plan revisions. This MOA defines and delineates the roles, processes, and responsibilities of each signatory as provided in Exhibits 1, 2, and 3 made part of this MOA.
6. This MOA shall supersede the MOA executed on April 9th, 2007.

IN WITNESS WHEREOF, the Parties hereto have executed this amended MOA.

Approved for legal form:

ADEM Office of General Counsel

Agreed to this _____ day of _____, 20__.

The State of Alabama Department of Transportation

Director

Agreed to this _____ day of _____, 20____.

Jefferson County Department of Health

Health Officer

Agreed to this _____ day of _____, 20____.

Alabama Department of Environmental Management

Director

Agreed to this 13th day of December, 2023.

The Regional Planning Commission of Greater Birmingham



Chairman

Agreed to this _____ day of _____, 20__.

Birmingham-Jefferson County Transit Authority

Chairman

Agreed to this 14th day of February, 2024.

Birmingham Metropolitan Planning Organization

A handwritten signature in cursive script, appearing to read "Paul Henderson", written over a horizontal line.

Chairman

Agreed to this _____ day of _____, 20____.

The United States Environmental Protection Agency

Regional Administrator
EPA Region 4

Agreed to this _____ day of _____, 20____.

The Federal Highway Administration

Division Administrator
Alabama Division

Agreed to this _____ day of _____, 2024.

The Federal Transit Administration

Regional Administrator
FTA Region 4

11.3.2

Exhibit 1

Alabama Criteria and Interagency Consultation Procedures For the Determination of the Conformity of Metropolitan Planning Organization Plans, Programs, and Projects

(a) General. This document provides procedures for interagency consultation (federal, state, and local) and resolution of conflicts to implement the conformity provisions outlined in 40 CFR Parts 51 and 93. Such consultation procedures shall be undertaken by the applicable Metropolitan Planning Organization(s) (**MPO**), the applicable Regional Planning Commission(s) (**RPC**), the applicable local Transit Authority(ies) (**TA**), the State Department(s) of Transportation (**STDOT**), the Federal Highway Administration – Region 4 (**FTA**) with the applicable State(s) Environmental Agency (**STEA**), the local Air Quality Program(s) (if applicable) (**AQP**), and the Environmental Protection Agency – Region 4 (**EPA**) before making conformity determinations, and by the **STEA**, the applicable **AQP**, and **EPA** with the applicable **MPO**, the applicable **RPC**, the applicable **TA**, the **STDOT**, and the **FHWA** in developing applicable state implementation plans relative to the applicable nonattainment or maintenance area. The specific interagency consultation partners subject to this agreement for the Birmingham 1997 8-hour ozone and the 2006 24-hour PM_{2.5} National Ambient Air Quality Standard (NAAQS) are provided in Exhibit 3.

This document is divided into separate paragraphs and subparagraphs designated as follows:

- (a), (b), etc. (main paragraphs)
- 1., 2., etc. (subparagraphs under main paragraphs) (i),
- (ii), etc. (subparagraphs under main paragraphs) (I),
- (II), etc. (subparagraphs under main paragraphs) A., B.,
- etc. (subparagraphs under main paragraphs)

For ease of reference, the term ‘paragraph’ or ‘subparagraph’ will be used throughout this document, except in the specific **MPO** public involvement procedures portion of this document.

[Before this state implementation plan revision is approved by **EPA**, the **STEA** shall provide reasonable opportunity for consultation with the **MPO**, the **AQP**, the applicable **STDOT**, the **FHWA**, and **EPA**, including consultation on the issues described in subparagraph (c)1.]

- (b) Interagency consultation procedures
 - 1. General factors.

(i) Representatives of the **RPC**, if applicable, the **MPO**, if applicable, the **TA**, if applicable, the applicable **STE**A, the **AQP**, if applicable, and the applicable **STDOT**, as parties to this MOA, shall undertake an interagency consultation process in accordance with this paragraph, with each other and with local or regional offices of **EPA**, **FHWA**, and **FTA** on the development of the state implementation plan, the list of Transportation Conformity Measures (TCMs) in the applicable state implementation plan, the transportation plan, the TIP, any revisions to the proceeding documents, and all conformity determinations required by 40 CFR and ADEM Admin. Code Chapter 335-3-17.

(ii) The applicable state air quality agency shall be the lead agency responsible for preparing the final document or decision and for assuring that interagency consultation is consistent with the requirements of 40 CFR part 93.105 with respect to the development of applicable state implementation plans and control strategy state implementation plan revisions and the list of TCMs in the applicable state implementation plan. The **MPO** shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the transportation plan, the TIP, and any amendments or revisions thereto. In the case of non-metropolitan areas, the applicable **STDOT** shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the Statewide Transportation Plan (STP), the Statewide Transportation Improvement Program (STIP), and any amendments or revisions thereto. The **MPO** shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to any determinations of conformity under ADEM Admin. Code Chapter 335-3-17 for which the **MPO** is responsible. The specific interagency consultation partners subject to this agreement for the Birmingham 1997 8-hour ozone and the 2006 24-hour PM2.5 NAAQS are provided in Exhibit 3.

(iii) In addition to the lead agencies identified in subparagraph (ii), other agencies entitled to participate in any interagency consultation process under ADEM Admin. Code Chapter 335-3-17 include any other organization within the state responsible under state law for developing, submitting or implementing transportation-related provisions of a state implementation plan, and any local transportation agency or local government.

(iv) It shall be the role and responsibility of each lead agency in an interagency consultation process, as specified in subparagraph (ii), to confer with all other agencies identified under subparagraph (iii) with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, conduct the consultation process described in the applicable paragraphs of 40 CFR § 93.105(b), where required, assure policy-level contact with those agencies, and, prior to taking any action, consider the views of each such agency and respond to those views in a timely, substantive written manner prior to any final decision on such document, and assure that such views and written response are made part of the record of any decision or action. It shall be the role and responsibility of each agency specified in subparagraph (iii), when not fulfilling the role and responsibilities of a lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing or submitted via email) on all proposed and final documents and decisions in a timely manner, attend

consultation and decision meetings, assure policy-level contact with other participants, provide input on any area of substantive expertise or responsibility (including planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or other requirements), and provide technical assistance to the lead agency or consultation process in accordance with this paragraph when requested.

(v) Specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

- (I) The applicable **STE A** [or **AQP**] shall be responsible for developing and/or managing:
 - A. emission inventories,
 - B. emissions budgets,
 - C. air quality modeling,
 - D. attainment demonstrations,
 - E. control strategy state implementation plan revisions, and
 - F. regulatory TCMs.
- (II) The **MPO** shall be responsible for:
 - A. developing transportation plans and TIPs, and associated transportation conformity determinations,
 - B. making a determination, as required by § 93.113(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable 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. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures,
 - C. developing transportation and socioeconomic data and planning assumptions and providing such data and planning assumptions to the interagency consultation group for review and comment on the use of this information in air quality analysis to determine conformity of transportation plans, TIPs, and projects,

- D. determination and monitoring of regionally significant projects,
 - E. developing system or facility-based or other programmatic (non-regulatory) TCMs,
 - F. providing technical and policy input on emissions budgets,
 - G. performing transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs needed for conformity assessments,
 - H. obtaining written commitments to control measures that are not included in the transportation plan and TIP prior to a conformity determination and ensuring that such commitments are fulfilled in support of the regional conformity determination,
 - I. obtaining written commitments to mitigation measures for projects (i.e., for which these agencies serve as the project sponsor for) prior to a positive project-level conformity determination being made, and for complying with such commitments, and
 - J. developing the draft and final conformity determination documents for all transportation plans, programs, and projects subject to 40 CFR 93 and ADEM Admin. Code chapter 335-3-17.
- (III) The **RPC** shall be responsible for providing the financial support and staffing necessary for implementation of the **MPO's** responsibilities under this agreement.
- (IV) The **TA** shall be responsible for:
- A. supporting and conducting, as necessary, the transportation planning activities for public transportation service including transit operations,
 - B. providing the **MPO** with the information necessary for programs, and
 - C. obtaining written commitments to mitigation measures for projects (i.e., for which these agencies serve as the project sponsor for) prior to a positive project-level conformity determination being made, and for complying with such commitments.
- (V) The applicable **STDOT** shall be responsible for:
- A. developing transportation plans and STIPs,

- B. providing technical input to **EPA** on proposed revisions to motor vehicle emissions factors,
- C. distributing draft and final project environmental documents to other agencies,
- D. convening air quality technical review meetings on specific projects when requested by other agencies, or as needed,
- E. developing updated motor vehicle emissions estimates and projections in support of conformity determinations,
- F. consulting with the interagency consultation group on the transportation models and associated methods and assumptions to be used in hot-spot and regional emissions analyses,
- G. obtaining written commitments to mitigation measures for projects (i.e., for which these agencies serve as the project sponsor for) prior to a positive project-level conformity determination being made, and for complying with such commitments,
- H. supporting the development of draft and final conformity determination documents for all transportation plans, programs, and projects subject to 40 CFR 93 and ADEM Admin. Code Chapter 335-3-17, and
- I. providing on an annual basis the latest Vehicle Miles Traveled (VMT) data and Average Annual Daily Traffic (AADT) available for all roadways within the conformity area boundaries to the **MPO**.

(VI) **FHWA** and **FTA** shall be responsible for:

- A. assuring timely action on final findings of conformity, after consultation with other agencies as provided in this paragraph and 40 CFR § 93.105,
- B. providing guidance on conformity and the transportation planning process to agencies in interagency consultation,
- C. obtaining written commitments to mitigation measures for projects (i.e., for which these agencies serve as the project sponsor for) prior to a positive project-level conformity determination being made, and for complying with such commitments, and
- D. ensuring that written commitments to mitigation measures for projects are obtained prior to a positive project-level conformity

determination is made, and further ensuring that the project sponsors comply with such commitments.

(VII) **EPA** shall be responsible for:

- A. reviewing and approving updated Motor Vehicle Emissions Simulator (MOVES) models,
- B. providing guidance on conformity criteria and procedures to agencies in interagency consultation,
- C. approving emission budgets and state implementation revisions (including TCMs),
- D. providing modeling and emission inventory development assistance to the **STDOT**, the **MPO**, the applicable **STE A** and **AQP**,
- E. providing comments on the regional emissions analyses and conformity determinations of transportation plans and Transportation Improvement Programs (TIPs), and
- F. providing input and comments on the project-level conformity determinations for individual projects that require hot-spot analysis.

2. Generalized interagency consultation procedures.

(i) It shall be the affirmative responsibility of the agency with the responsibility for preparing the final document or decision subject to the interagency consultation process to initiate the process by notifying other participants, convene consultation meetings early in the process of decision on the final document, appoint the conveners of technical meetings, and assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(ii) Regular consultation on major activities, such as the development of a state implementation plan or any control strategy state implementation plan revision, the development of a transportation plan, the development of a TIP, the adoption of regionally significant projects and transportation control measures into the TIP, or any determination of conformity on transportation plans or TIPs, shall include meetings at regular, scheduled intervals no less frequently than quarterly and shall be attended by representatives at the policy level of each agency. In addition, technical meetings shall be convened as necessary.

(iii) Each lead agency in the consultation process required under this paragraph (that is, the agency with the responsibility for preparing the final document subject to the interagency consultation process) shall confer with all other agencies identified under paragraph (b)1. The lead agency shall provide all appropriate information to those agencies needed for meaningful input and provide a period of 30 days to all other agencies for comment. Prior to taking any action, the

lead agency shall consider the views of each such agency and respond to those views in a timely, substantive written manner (including via email) prior to any final decision on such document. Such views and written response shall be made part of the record of any decision or action.

3. Generalized interagency working group procedures.

(i) The agency with the responsibility for preparing the final document subject to the interagency consultation process shall notify and convene a working group made up of representatives of the signatories to this MOA. Such working group shall be chaired by a representative of the convening agency, unless the group by consensus selects another chair. Such working group shall begin consultation meetings early in the process of decision on the final document, and shall prepare all drafts of the final document and major supporting documents, or appoint the representatives or agencies that will prepare such drafts. Such working group shall be made up of policy level representatives or their designees, and shall be assisted by such technical committees or technical engineering, planning, public works, air quality, and administrative staff from the member agencies as the working group deems appropriate. The chair of such working group shall appoint the conveners of technical meetings. The agency with the responsibility for preparing the final document subject to the interagency consultation process shall assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(ii) Regular consultation on major activities, such as the development of a state implementation plan or any control strategy state implementation plan revision, the development of a transportation plan, the development of a TIP, the adoption of regionally significant projects and transportation control measures into the TIP, or any determination of conformity on transportation plans or TIPs, shall include meetings of the working group at regular scheduled intervals no less frequently than quarterly. Other matters of shorter duration shall be considered in at least two meetings of the working group or evaluated through exchange of email. In addition, technical meetings shall be convened as necessary.

(iii) Each lead agency with the responsibility for preparing the final document subject to the interagency consultation process shall confer through the working group process with all other agencies identified under subparagraph (b)1. with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, and prior to taking any action, consider the views of each such agency and respond to those views in a timely, substantive written manner (including email) prior to any final decision on such document. Such views and written response shall be made part of the record of any decision or action.

4. Each agency subject to an interagency consultation process under this paragraph (including any federal agency) shall provide each final document that is the product of such consultation process (including applicable state implementation plans or state implementation plan revisions, transportation plans, TIPs, and determinations of conformity), together with all supporting information, to each other agency that has participated in the consultation process within 10 business days of adopting or approving such document or making such determination. Any such agency may supply a checklist of available supporting information, which such other

participating agencies may use to request all or part of such supporting information, in lieu of generally distributing all supporting information.

5. A meeting that is scheduled or required for another purpose may be used to fulfill the interagency consultation requirement, if prior notice is given to the interagency group.

(c) Interagency consultation procedures: Specific processes.

1. An interagency consultation process involving the agencies listed in subparagraph (b)1. shall be undertaken for the following:

(i) Evaluating and choosing each model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses, including Vehicle Miles Traveled (VMT) forecasting, to be initiated by the applicable **STDOT** and conducted in accordance with subparagraph (b)3.;

(ii) Determining which minor arterials and other transportation projects should be considered “regionally significant” for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP, to be initiated by the **MPO** or **STDOT** (i.e., whichever is applicable) and conducted in accordance with subparagraph (b)3.;

(iii) Evaluating whether projects otherwise exempted from meeting the requirements of ADEM Admin. Code Chapter 335-3-17 (see 40 CFR § 93.126 and 93.127) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason, to be initiated by the **MPO** or **STDOT** (i.e., whichever is applicable) and conducted in accordance with subparagraph (b)3.;

(iv) Making a determination, as required by 40 CFR § 93.113(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable 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, to be initiated by the **MPO** and the applicable **STDOT** and conducted in accordance with subparagraph (b)3. This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable state implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Making a determination, as required by 40 CFR § 93.121(a), whether the project was included in the most recent conforming transportation plan and TIP, even if conformity status is currently lapsed; and the project’s design concept and scope have not changed from those analyses; or there is a currently conforming transportation plan and TIP, and a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the plan and TIP would still conform if the project were implemented, to be initiated by the **MPO** and conducted in accordance with subparagraph (b)3.;

(vi) Identifying, as required by 40 CFR § 93.123(b), projects located at sites in PM₁₀ or PM_{2.5} nonattainment or maintenance areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM₁₀ or PM_{2.5} hot-spot analysis, to be initiated by the applicable **STDOT** and conducted in accordance with subparagraph (b)3.;

(vii) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in 40 CFR § 93.126 or 93.127, to be initiated by the **MPO** and conducted in accordance with subparagraph (b)3., other than the requirement that such notice be provided prior to final action;

(viii) Determining what forecast of Vehicle Miles Traveled (VMT) to use in establishing or tracking emissions budgets, developing transportation plans, TIPs, or applicable state implementation plans, or making conformity determinations, to be initiated by the applicable **MPO** or **STDOT** and conducted in accordance with subparagraph (b)3.;

(ix) Determining the definition of “reasonable professional practice” for the purposes of 40 CFR §§ 93.122 and 93.123(a)(2), to be initiated by the applicable **MPO** or **STDOT** and conducted in accordance with subparagraph (b)3.;

(x) Determining whether the project sponsor or **STDOT** has demonstrated that the requirements of 40 CFR §§ 93.116 and 93.118 are satisfied without a particular mitigation or control measure, as provided in 40 CFR § 93.125(d), to be initiated by the applicable **STDOT** and conducted in accordance with subparagraph (b)3.;

(xi) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in 40 CFR § 93.104, to be initiated by the applicable **MPO** or **STDOT** and conducted in accordance with subparagraph (b)3.; and

(xii) Consulting on emissions analysis for transportation activities which cross the borders of **MPOs** or nonattainment areas, maintenance areas, or air basins; to be initiated by the applicable **STDOT** and conducted in accordance with subparagraph (b)3.

2. Where the metropolitan planning area does not include the entire nonattainment or maintenance area, an interagency consultation process in accordance with paragraph (b) involving the **MPO** and the applicable **STDOT** shall be undertaken for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and without the nonattainment or maintenance area, to be initiated by the applicable **STDOT** and conducted in accordance with subparagraph (b)3.

3.(i) An interagency consultation process involving the agencies listed in subparagraph (b)1. and recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act shall be undertaken to assure that plans for construction of regionally significant projects which are not **FHWA/FTA** projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds

designated under Title 23 U.S.C. or the Federal Transit Act, are disclosed to the **MPO** or **STDOT** on a regular basis, and to assure that any changes to those plans are immediately disclosed.

(ii) The sponsor of any such regionally significant project, and any agency that becomes aware of any such project through applications for approval, permitting or funding or otherwise shall disclose such project to the **MPO** or **STDOT** (i.e., whichever is applicable) in a timely manner. Such disclosure shall be made no later than the first occasion on which any of the following actions is sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of the regionally significant project. To help assure timely disclosure, the sponsor of any potential regionally significant project shall disclose to the **MPO** or **STDOT** (i.e., whichever is applicable) annually, each project for which alternatives have been identified through the National Environmental Policy Act (NEPA) process, and in particular, any preferred alternative that may be a regionally significant project.

(iii) In the case of any such regionally significant project that has not been disclosed to the **MPO** or **STDOT**, and other interested agencies participating in the consultation process in a timely manner, such regionally significant project shall be deemed not to be included in the regional emissions analysis supporting the currently conforming plan and TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable state implementation plan, for the purposes of 40 CFR § 93.121.

(iv) For the purposes of this paragraph and 40 CFR § 93.121, the phrase "adopt or approve of a regionally significant project" means the first time any action necessary to authorizing a project occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of the board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the **MPO** or **STDOT** that the project may be adopted or approved.

4. An interagency consultation process in accordance with paragraph (b) involving the **MPO** and other recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act shall be undertaken for assuming the location and design concept and scope of projects which are disclosed to the **MPO** as required by subparagraph (c)3.(i) but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of 40 CFR § 93.112, to be initiated by the **MPO** and conducted in accordance with subparagraph (b)3.

5. An interagency consultation process involving the agencies listed in subparagraph (b)1. shall be undertaken for the design, schedule, and funding of research and data collection efforts and regional transportation model development by the **MPO** (e.g., household/travel

transportation surveys), to be initiated by the **MPO** and conducted in accordance with subparagraph (b)3.

(d) Resolving conflicts.

1. Any conflict among state agencies or between state agencies and the **MPO** shall be escalated to the governor if the conflict cannot be resolved by the heads of the involved agencies. In the first instance, such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible. The appeal process described herein shall apply only to **MPO** approved conformity determinations on the transportation plan, TIP, or projects, including any documents directly related to findings of conformity and conflicts between state agencies or between one or more state agency(ies) and the **MPO**. The appeal of a conformity determination of the **MPO** shall be based on an alleged failure to adequately perform duties required by § 176 (c) of the Clean Air Act Amendments of 1990, the conformity criteria adopted under ADEM Admin. Code Chapter 335-3-17, and/or the consultation procedures as adopted through this MOA.

2. The governor may delegate the role of hearing any such appeal under this paragraph and of deciding whether to concur in the conformity determination to another official or agency within the state(s), but not to the head or staff of the **STE A** or **AQP**, the **STDOT**, any agency that has responsibility for only one of these functions, or an **MPO**.

3. Method and Timeframe for Appeal.

The **STE A** may appeal any conformity finding for just cause within 14 calendar days from the documented date of receipt from the **MPO** by filing a decision memorandum with the applicable governor's office. If an appeal is filed subsequent to the 14-day deadline, it shall not be processed further, but the parties should continue to attempt to reach agreement in resolving the conflict as processing of the transportation plan, TIP or project conformity continues. If the conflict is resolved following the valid submittal of the decision memorandum to the applicable governor's office, the applicable governors and all affected parties, including the applicable **FHWA** division office, **FTA**, and **EPA**, shall be immediately notified of the alternative decided upon.

4. Conflicts Involving Transportation Plans, TIPs and Projects.

(i) Conflict resolution by the Technical Advisory Committee (TAC).

Any conflicts involving state agencies or a state agency and the **MPO** regarding the conformity of a transportation plan, TIP, or project should be resolved at the last TAC meeting before action is scheduled to be taken by the **MPO**.

(ii) If the conflict on the conformity determination cannot be resolved by the TAC, the **MPO** Chair may convene a meeting of representatives of the applicable **STDOT** and **STE A**, the **AQP**, and any other affected party, to attempt to resolve the conflict prior to action by the **MPO**, if time allows. If the issue is not resolved at this meeting, the **MPO** staff should document the nature of the conflict, efforts to resolve the issue and inform the **MPO** board before the **MPO** acts on the conformity determination.

(iii) If the conflict is not resolved prior to action by the **MPO**, and the **MPO** proceeds to adopt the disputed conformity determination, the applicable **STE**A air chief in consultation with the applicable **STE**A and the applicable **STDOT** offices of general counsel, shall immediately advise the applicable **STE**A director(s) if a sufficient legal and technical basis exists to warrant an appeal of the **MPO**'s conformity finding. If so, the applicable **STE**A director(s) shall direct that a decision memorandum be prepared by the applicable **STE**A office of general counsel for action by the applicable governor(s), and shall concurrently convene a meeting with the director of the applicable **STDOT** and affected parties in an effort to resolve the conflict. The applicable **FHWA** division office, **FTA**, and **EPA**-Region 4 shall be advised of the statutes of the conflict resolution and shall be invited to attend or otherwise participate. If resolution of the conflict cannot be achieved, the applicable **STE**A director(s) shall document results of the meeting in writing and shall transmit the decision memorandum to the governor's office no later than midnight of the 14th day after the conformity determination report has been received by the applicable **STE**A. The applicable **STE**A director(s) shall provide copies of the decision memorandum to all affected parties, including the applicable **STDOT**, **FHWA**, **FTA**, and **EPA**. No party may proceed with any further action until the applicable governor(s) has taken action. The decision memorandum shall be prepared and processed pursuant to guidance from the applicable governor's office. The decision memorandum shall delineate each unresolved conflict to be appealed and shall, at a minimum, include:

- (I) Issue/Problem Description: Describe the factual and legal basis for the conflict which clearly states its significance. Document the steps taken to date to resolve the issue through the interagency consultation process and indicate why resolution has not been realized.
- (II) Background Information: Provide such relevant reference materials, as appropriate to facilitate review and mediation of the conflict, including applicable portions of state and federal law and regulations, the conformity requirements of this SIP revision, and any other relevant documents.
- (III) Alternatives: List and describe each reasonable alternative. Present supporting data and justification for each alternative. Quantify and document the need for the recommended alternative consistent with the Clean Air Act of 1990, and the applicable state and federal laws and regulations to facilitate the evaluation of each alternative.
- (IV) **STE**A Recommendation: The applicable **STE**A director(s) shall recommend one of the proposed alternatives as the preferred action and shall briefly explain the rationale. The applicable **STE**A director(s) shall include in the decision memorandum a recommendation regarding the need for a further conformity analysis, the anticipated time frame for completing the new regional emissions analysis, public involvement process, and

conformity finding by the **MPO**, after consultation with the applicable **STDOT** and the **MPO**.

- (V) Decision by the Governor: The governor's office shall notify all parties, including the applicable **FHWA** division office and the Region 4 offices of **EPA** and **FTA**, of the alternative chosen, establish a deadline for completion of any further conformity analysis that may be required, and make other comments as necessary.

5. Concurrence of the Governor(s):

The signature of the governor approving the decision on conformity shall constitute concurrence by the governor. The governor shall promptly notify all parties of the concurrence by the governor, including **FHWA**, **FTA**, **EPA**, the directors of the applicable **STEPA** and the applicable **STDOT**, the Chair of the **MPO**, and other affected parties. The concurrence by the governor shall be final, and no judicial or administrative appeal of the governor's action shall be undertaken by any parties to this MOA, except as otherwise explicitly provided by state law.

6. Conformity Requirements after Conflict Resolution by the Applicable Governor(s):

- (i) No further analysis needed, conformity may proceed:

If the governor's approval of the conformity determination does not significantly change the finding of conformity as approved by the **MPO**, the applicable **STDOT** shall immediately proceed with review and transmittal of the transportation plan or TIP companion conformity determination to the applicable **FHWA** division office.

- (ii) Further analysis needed, conformity must be redetermined:

If the approval of the governor indicates a significant change, or would otherwise trigger the need for a redetermination of conformity on the transportation plan, TIP, or project the **MPO** shall revise the transportation plan, TIP, or project to conform with the gubernatorial approval and the conformity criteria and procedures of this SIP revision, and shall perform such regional emissions analyses as necessary to redetermine conformity. The revised conformity determination shall be documented in a revised Conformity Determination Report (CDR) and must be distributed for public comment and reviewed by the TAC prior to action by the **MPO**. The consultation procedures in this SIP revision shall apply, except that the revised CDR and accompanying documents shall be transmitted directly to the applicable **FHWA** division office with copies of the revised CDR sent to all parties who normally receive copies of the report. **FHWA** and **FTA** (after consideration of **EPA**'s comments) may proceed with the conformity determination finding.

- (e) Public consultation procedures.

The **MPO** in making conformity determinations on transportation plans, programs, and projects shall establish and continuously implement a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access

to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking any formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of § 450.316(b), as amended.

In addition, the **MPO** must specifically address in writing all public comments that known plans for a regionally significant project, which is not receiving **FHWA** or **FTA** funding or approval, have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for projects to the extent otherwise required by law (e.g. NEPA). The opportunity for public involvement provided under this paragraph shall include access to information, emissions data, analyses, models and modeling assumptions used to perform a conformity determination, and the obligation of the **MPO** to consider and respond to significant comments. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.95. This MOA does not require any party hereto to charge fees for the inspection or copying of public records unless it is the normal practice of an agency to do so. No transportation plan, TIP, or project may be found to conform unless the determination of conformity has been subject to a public involvement process in accordance with this paragraph, without regard to whether the applicable **STDOT** has certified any process under 23 CFR Part 450.

11.3.2

Exhibit 2

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Air Division

Chapter 335-3-17

Conformity of Federal Actions to State Implementation Plans

Table of Contents

335-3-17-.01 Transportation Conformity

335-3-17-.02 General Conformity

335-3-17-.01 Transportation Conformity. The Environmental Protection Agency Regulations and the Appendices applicable thereto, governing Conformity to State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 U.S.C. or the Federal Transit Act address (July 1, 2012) 40 CFR §§ 93.105, 93.122(a)(4)(ii), and 93.125(c) in the Alabama State Implementation Plan as required by the Clean Air Act.

Author: Richard E. Grusnick.

Statutory Authority: Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-9.

History: Effective Date: April 27, 1995.

Amended: November 21, 1996; March 27, 1998; April 3, 2003; April 3, 2007; January 19, 2009; May 23, 2011; May 28, 2013.; XXXXXXXX, 2024

335-3-17-.02 General Conformity. The Environmental Protection Agency Regulations and the Appendices applicable thereto, governing Determining Conformity of General Federal Actions to State Implementation Plans, are incorporated by reference as they exist in 40 CFR 93 Subpart B (July 1, 2010). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

Author: Richard E. Grusnick.

Statutory Authority: Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-9.

History: Effective Date: April 27, 1995.

Amended: November 21, 1996; March 27, 1998; April 3, 2007; May 23, 2011.; XXXXXXXX, 2024

11.3.2

Exhibit 3

Parties to the Transportation Conformity MOA.

The PARTIES to this MOA shall be: the applicable regional planning commissions, the applicable metropolitan planning organizations, the local transit authority (if applicable), the local air quality program (if applicable), the Alabama Department of Transportation, other applicable adjacent State(s)' Departments of Transportation, the Federal Highway Administration's applicable division(s), the Federal Transit Administration – Region 4, the U.S. Environmental Protection Agency – Region 4, the Alabama Department of Environmental Management, and other affected adjacent state(s)' applicable environmental agencies.

For the Birmingham 1997 8-hour ozone and 2006 24-hour PM_{2.5} maintenance areas, the specific parties to this MOA are:

- Metropolitan Planning Organizations: Birmingham Metropolitan Planning Organization
- Local Transit Authority: Birmingham-Jefferson County Transit Authority
- Local Air Quality Program: Jefferson County Department of Health
- Regional Planning organization: The Regional Planning Commission of Greater Birmingham
- Alabama Department of Transportation
- Alabama Department of Environmental Management
- Alabama Division of the Federal Highway Administration
- Federal Transit Administration – Region 4
- U.S. Environmental Protection Agency – Region 4

Each of these agencies are signatories to this MOA and their signature pages are attached.