



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2024-0362; FRL-13404-01-R4]

Air Plan Approval; Alabama; Transportation Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM) on April 7, 2026. The SIP revision replaces the previously approved transportation conformity memorandum of agreement (MOA) with an updated MOA concerning transportation conformity criteria and procedures related to interagency consultation, conflict resolution, public participation, and enforceability of certain transportation-related control and mitigation measures. The SIP revision also makes a minor stylistic change to the Transportation Conformity and General Conformity rules in the Alabama SIP. EPA is proposing to determine that Alabama's April 7, 2026, SIP revision is consistent with the applicable provisions of the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2024-0362 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include

discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Weston Freund, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8773. Mr. Freund can also be reached via electronic mail at freund.weston@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. What Is Transportation Conformity?

Transportation conformity is required under section 176(c) of the CAA and is a process that ensures federally supported transportation activities are consistent with (“conform to”) the purposes of the SIP. Examples of transportation activities include federally supported highway projects, transit projects, transportation plans, and transportation improvement projects (TIPs). Transportation conformity applies to areas that are designated as nonattainment for transportation-related national ambient air quality standards (NAAQS) (*i.e.*, ozone, particulate matter (*e.g.*, PM_{2.5} and PM₁₀), carbon monoxide (CO), and nitrogen dioxide (NO₂)) and to certain areas that have been redesignated to attainment for a transportation-related NAAQS.¹

Pursuant to CAA section 176(c), conformity means conformity to a SIP’s purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Further, conformity also means that no federal or

¹ In general, transportation conformity does not apply for areas that have completed the entirety of the required maintenance period (*i.e.*, typically 20 years after redesignation). *See* 40 CFR 93.102(b)(4).

federally-supported activity under section 176(c)(1) will: (1) cause or contribute to any new violation of any NAAQS in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The requirements of section 176(c) of the CAA apply to all departments, agencies, and instrumentalities of the federal government.

Transportation conformity refers only to the conformity of transportation plans, programs, and projects that are funded or approved under title 23 of the United States Code (U.S.C.) or the Federal Transit Act (49 U.S.C. Chapter 53). Pursuant to section 176(c) of the CAA, EPA issues criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP. One of the requirements is that each state submit a revision to its SIP to include conformity criteria and procedures.

B. Why Are States Required to Submit a Transportation Conformity SIP?

EPA promulgated the first federal transportation conformity criteria and procedures (“Conformity Rule”) on November 24, 1993 (*see* 58 FR 62188), codified at 40 CFR part 51, subpart T and 40 CFR part 93. Among other things, the rule required states to address all provisions of the conformity rule in their SIPs, frequently referred to as “conformity SIPs.” Under 40 CFR 51.390, most sections of the Conformity Rule were required to be copied verbatim into the SIP. Since then, the rule has been revised several times.

On August 10, 2005, the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA-LU) was signed into law. SAFETEA-LU revised section 176(c) of the CAA transportation conformity provisions by streamlining the requirements for conformity SIPs. Under SAFETEA-LU, states are required to address and tailor only three sections of the rule in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and 40 CFR 93.125(c). In general, states are no longer required to submit conformity SIP revisions that

address the other sections of the conformity rule. These changes took effect on August 10, 2005, when SAFETEA-LU was signed into law.

A transportation conformity SIP can be developed as a state rule, a memorandum of understanding, or a MOA. MOAs must establish the roles and procedures for transportation conformity and include the detailed consultation procedures developed for that particular area. The MOAs are enforceable through the signature of all the transportation and air quality agencies, including EPA and the U.S. Department of Transportation (USDOT), which consists of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). States may use an MOA as long as: (1) it is fully enforceable under state law against all parties involved in interagency consultation and in approving, adopting and implementing transportation projects, TIPs, or transportation plans, (2) the state submits it to EPA for inclusion into the SIP, and (3) it has been signed by all agencies covered by the conformity rule.²

C. How Does Transportation Conformity Work?

The Conformity Rule applies to certain NAAQS nonattainment and maintenance areas in a state. The Metropolitan Planning Organization (MPO), the state department of transportation (DOT) (in absence of an MPO), state and local air quality agencies, EPA, and the USDOT are involved in the process of making conformity determinations. Conformity determinations are made on programs and plans such as a TIP, transportation plans, and transportation projects. The projected emissions that will result from implementation of the transportation plans and programs are calculated and compared to the motor vehicle emissions budget established in the SIP. The calculated emissions must be equal to or smaller than the federally approved motor vehicle emissions budget for the USDOT to make a positive conformity determination with respect to the SIP (40 CFR 93.118).

² See “Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)” U.S. Environmental Protection Agency, Office of Transportation and Air Quality, EPA-420-B-09-001 (January 2009), available at: <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1002W5B.PDF?Dockkey=P1002W5B.PDF>.

Pursuant to federal regulations, when an area is designated nonattainment for a transportation-related NAAQS, the state is required to submit a transportation conformity SIP within one year of the effective date of the nonattainment area designations. *See* 40 CFR 51.390(c). After EPA published the first transportation conformity rule, it required states to submit a transportation conformity SIP revision by November 25, 1994. Alabama initially submitted a transportation conformity SIP to EPA on November 15, 1994, to respond to this requirement; however, EPA did not act on this SIP because it was in the process of revising the transportation conformity requirements. EPA completed a series of revisions to the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780). EPA codified these revisions under 40 CFR Part 51, subpart T and 40 CFR Part 93, subpart A – Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws in the final revision of the series.

EPA has approved several revisions to the Alabama SIP to incorporate conformity requirements consistent with the federal regulations. EPA incorporated Alabama Administrative Code Rules 335-3-17-.01, *Transportation Conformity*, and 335-3-17-.02, *General Conformity*, into the regulatory portion of Alabama's SIP at 40 CFR 52.50(c) on May 11, 2000. *See* 65 FR 30358. EPA subsequently approved multiple revisions to these SIP-approved rules, with the most recent being an October 12, 2017, approval for 335-3-17-.01, *Transportation Conformity*, and a September 26, 2012, approval for 335-3-17-.02, *General Conformity*. *See* 82 FR 47383 and 77 FR 59100, respectively. EPA approved a transportation conformity SIP revision containing the initial MOA and incorporated that MOA into the non-regulatory portion of Alabama's SIP at 40 CFR 52.50(e) on May 11, 2000. *See* 65 FR 30358. On March 26, 2009, EPA approved a revised MOA, superseding the initial MOA, that contained changes for consistency with the SAFTEA-LU revisions to the CAA and addressed the transportation

conformity requirements in Alabama related to both the 8-hour ozone and PM_{2.5} NAAQS. *See* 74 FR 13118.

D. The South Coast II Decision

On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *South Coast Air Quality Mgmt. Dist. v. EPA*, 882 F.3d 1138 (“*South Coast II*”) that affected the process for making transportation conformity decisions in areas that were either nonattainment or maintenance for the 1997 ozone NAAQS. The case involved a challenge to EPA’s final rule establishing implementation requirements for the 2008 ozone NAAQS and revoking the 1997 8-hour ozone NAAQS, known as the 2008 ozone NAAQS SIP Requirements Rule. *See* 80 FR 12264 (March 6, 2015). As a result of this rule, areas that were nonattainment or maintenance for the 1997 ozone NAAQS were no longer required to implement transportation conformity requirements for the 1997 8-hour ozone NAAQS. In *South Coast II*, multiple environmental interest groups challenged EPA’s 2008 ozone NAAQS SIP Requirements Rule. The Court vacated portions of EPA’s 2008 ozone NAAQS SIP Requirements Rule, but upheld EPA’s revocation of the 1997 ozone NAAQS.

The court decision referred to the 1997 ozone NAAQS nonattainment or maintenance areas that were designated attainment for the 2008 ozone NAAQS as “orphan areas.” The decision stated that transportation conformity still applies for the revoked 1997 ozone NAAQS in these orphan areas. For areas that were nonattainment for the 1997 ozone NAAQS at the time it was revoked, the court stated that transportation conformity applies as an anti-backsliding measure. *See South Coast II*, 882 F.3d at 1149. For areas that were maintenance for the 1997 ozone NAAQS at the time it was revoked, the court stated that transportation conformity applies based on the court’s interpretation of CAA section 176(c)(5)(B). *See South Coast II*. at 1155.

Based on the Agency’s review of the court decision, EPA has concluded that the decision does not affect transportation conformity requirements for areas originally designated nonattainment for the more stringent 2008 ozone NAAQS (*see* 77 FR 30160 (May 21, 2012)), or

areas designated nonattainment for the more stringent 2015 ozone NAAQS (*see* 83 FR 25776 (June 4, 2018)). However, as a result of this court decision, the previous 1997 8-hour ozone NAAQS nonattainment areas are required to implement transportation conformity. In Alabama, this includes the Birmingham 1997 8-hour ozone area (Birmingham Ozone Area) comprised of Jefferson and Shelby Counties.

II. EPA's Analysis of Alabama's Submittal

CAA section 176(c)(4)(E) and 40 CFR 51.390(b) require states to develop conformity SIPs that address three specific provisions of federal regulations. First, EPA's transportation conformity rule requires states to develop their own processes and procedures which meet the criteria in 40 CFR 93.105 for interagency consultation and resolution of conflicts among the federal, state, and local agencies. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and the USDOT in consultation with the state and local air quality agencies and EPA before making conformity determinations. The conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and the USDOT. Second, 40 CFR 93.122(a)(4)(ii) states that conformity SIPs must require written commitments to control measures to be obtained prior to a conformity determination if those measures are not included in an MPO's transportation plan and TIP. This rule also requires that such commitments be fulfilled. Finally, 40 CFR 93.125(c) states that conformity SIPs must require that written commitments to mitigation measures are obtained prior to a project-level conformity determination, and that the project sponsors comply with these commitments.

The April 7, 2026 SIP revision seeks to replace the existing MOA with a revised MOA signed by the federal and state transportation and air quality partners and the Birmingham Metropolitan Planning Organization (Birmingham MPO), which is subject to the transportation conformity requirements. The MOA establishes procedures for interagency consultation, dispute resolution, public participation, and enforceability of certain transportation-related control

measures and mitigation measures. ADEM worked with the Alabama DOT, the Regional Planning Commission of Greater Birmingham, the Birmingham MPO, the FHWA, Alabama Division, the FTA, EPA Region 4, Jefferson County Department of Health, and the Birmingham-Jefferson County Transit Authority to develop and execute the MOA.

There are two applicable areas for this MOA: the Birmingham Ozone Area and the Birmingham 2006 24-hour PM_{2.5} area (Birmingham PM_{2.5} Area). The Birmingham Ozone Area was redesignated to attainment on May 12, 2006.³ *See* 71 FR 27631. The Birmingham PM_{2.5} Area is comprised of Jefferson County, Shelby County, and a portion of Walker County and was redesignated to attainment on January 25, 2013. *See* 78 FR 5306. The Birmingham MPO is the MPO for both areas.

Alabama's April 7, 2026, MOA supersedes the MOA incorporated into the SIP on March 26, 2009. *See* 74 FR 13118. The signatories of the updated MOA are: ADEM, the Alabama DOT, The Regional Planning Commission of Greater Birmingham, the Birmingham MPO, the FHWA - Alabama Division, the FTA, EPA Region 4, Jefferson County Department of Health, and the Birmingham-Jefferson County Transit Authority.

Alabama's revised MOA includes all the criteria and procedures for interagency consultation and transportation conformity required by 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c). Among other things, the new MOA updates the MPO's responsibilities by further explaining Transportation Control Measures requirements, adding the requirement that the Alabama DOT supply the MPO with the latest Vehicles Miles Traveled and Average Annual Daily Traffic data, corrects formatting errors, and, in Exhibit 3, removes Jackson County,

³ In this area, transportation conformity for the 1997 ozone NAAQS ceases to apply as of June 12, 2026, based on the transportation conformity regulation at 40 CFR 93.102(b)(4) and the effective date of the area's redesignation published in the Federal Register (May 12, 2006, 71 FR 27631). Additional information is found in EPA's Transportation Conformity Guidance for Areas Reaching the End of the Maintenance Period (October 1, 2014, EPA-420-B-14-093).

Alabama, from the list of parties to this MOA. A portion of Jackson County was originally designated nonattainment for the 1997 PM_{2.5} NAAQS. *See* 70 FR 944. On December 22, 2014, EPA redesignated that portion of Jackson County to attainment for the 1997 PM_{2.5} NAAQS. *See* 79 FR 76235. EPA subsequently revoked the 1997 primary annual PM_{2.5} standard in areas that were always designated as attainment and in areas that were redesignated from nonattainment to attainment. *See* 81 FR 58010, 58125 (August 24, 2016). As a result, transportation conformity requirements no longer apply to 1997 PM_{2.5} maintenance areas. *Id.* at 58125-26. Additionally, an insignificance determination as described in 40 CFR 93.109(f) was made for direct PM_{2.5} and nitrogen oxides (NO_x) for the Jackson County portion of the Chattanooga TN-GA Area. *See* 79 FR 76235. Therefore, Jackson County is not part of the revised MOA.

Alabama's April 7, 2026, SIP revision also contains a minor stylistic change to Rules 335-3-17-.01, *Transportation Conformity*, and 335-3-17-.02, *General Conformity*, which removes "(1) General" from the beginning of their respective paragraphs.⁴ The State made this stylistic change to be more consistent with Alabama's Legislative Agency Service Requirements.

EPA has reviewed the April 7, 2026, submittal, and has preliminarily determined that it is consistent with the CAA and the applicable requirements of the Conformity Rule.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Sections I and II of this preamble, EPA is proposing to incorporate by reference Rules 335-3-17-.01, *Transportation Conformity*, and 335-3-17-.02, *General Conformity*, state effective February 12, 2024, which removes "(1) General" from the beginning of their respective

⁴ The changes to Rules 335-3-17-.01 and 335-3-17-.02 were initially submitted to EPA on December 20, 2023, as part of a package that contained revisions to several other SIP-approved rules. The changes to Rules 335-3-17-.01 and 335-3-17-.02 were resubmitted to EPA along with the updated MOA and together they comprise the April 7, 2026, conformity submission. The only revisions addressed in this Notice of Proposed Rulemaking (NPRM) are the updated MOA and the changes to Rules 335-3-17-.01 and 335-3-17-.02. *See* clarification email from Lisa Edwards, ADEM, to Denisse Diaz, EPA Region 4, on May 18, 2026, available in the docket for this NPRM.

paragraphs. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “**For Further Information Contact**” section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve Alabama’s April 7, 2026, SIP revision. Specifically, EPA is proposing to approve the replacement of the Alabama Interagency Transportation Conformity MOA and approve the updates to Rules 335-3-17-.01 and 335-3-17-.02 in the Alabama SIP. EPA is proposing to find that the SIP revision is consistent with sections 110 and 176 of the CAA and the Conformity Rule.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 23, 2026.

Kevin McOmber,
Regional Administrator,
Region 4.

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