

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management  
Rule No. 335-3-5-.13  
Rule Title: TR SO<sub>2</sub> Allowance Allocations

       New   X   Amend        Repeal        Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?       YES      

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?       YES      

Is there another, less restrictive method of regulation available that could adequately protect the public?       NO      

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?       YES      

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?       NO      

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?       YES      

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule?       NO      

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Does the proposed rule have an economic impact?       NO      

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of section 41-22-23, Code of Alabama 1975.

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Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: *Mandy Elliott*

Date: June 20, 2018

(DATE FILED)  
(STAMP)

APA-2

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
AIR DIVISION**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-3-5-.13 TR SO<sub>2</sub> Allowance Allocations (Amend)

**INTENDED ACTION:** Revise Division 3 of the ADEM Administrative Code with the amendment of Rule 335-3-5-.13 (TR SO<sub>2</sub> Allowance Allocations).

**SUBSTANCE OF PROPOSED ACTION:**

Revisions to the Division 3 Code are being proposed to amend Rule 335-3-5-.13 in order to address the distribution of any excess allocations that remain after an existing unit has reached its historic emissions cap. This will allow the Department to distribute Alabama's total budget that was given by EPA for each trading program. Minor non-technical errors are also being corrected.

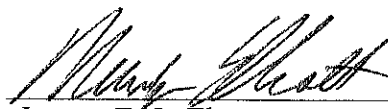
Chapter 335-3-5 is considered as a part of the federally enforceable State Implementation Plan (SIP). As such, any revisions to this Chapter/Rule are proposed to be incorporated into Alabama's SIP.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:**

Comments may be submitted in writing or orally at a public hearing to be held 10:00 a.m., August 10, 2018, in the ADEM Hearing Room, 1400 Coliseum Blvd., Montgomery, Alabama 36110.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:** August 10, 2018

**CONTACT PERSON AT AGENCY:** Larry Brown (334) 271-7878

  
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Lance R. LeFleur  
Director

**335-3-5-.13 TR SO<sub>2</sub> Allowance Allocations.**

(1) State SO<sub>2</sub> Group 2 Trading Program Budget. The State trading budget for annual allocations of Transport Rule (TR) SO<sub>2</sub> Group 2 allowances for the control periods 2017 and thereafter is 213,258 tons.

(2) Timing Requirements for SO<sub>2</sub> Group 2 Season-~~Season~~ Allowance Allocations.

(a) By June 1, 2016, the Department will submit to the Administrator, in a format prescribed by the Administrator, the SO<sub>2</sub> Group 2 allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2017 and 2018.

(b) By June 1, 2017, the Department will submit to the Administrator, in a format prescribed by the Administrator, the SO<sub>2</sub> Group 2 allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2019 and 2020.

(c) By June 1, 2018, the Department will submit to the Administrator, in a format prescribed by the Administrator, the SO<sub>2</sub> Group 2 allowance

allocations, in accordance with paragraph (3) of this rule, for the control periods in 2021 and 2022.

(d) By June 1, 2019, and every other year thereafter, the Department shall submit to the Administrator, in a format prescribed by the Administrator, the SO<sub>2</sub> Group 2 allocations, in accordance with paragraph (3) of this rule, for the control periods in the two years that are four and five years after the year of the applicable deadline for submission under this paragraph.

(3) SO<sub>2</sub> Group 2 Allowance Allocations.

apply:

(a) Definitions. For the purpose of this rule, the following definitions

1. Baseline TR SO<sub>2</sub> Group 2 Unit. A TR SO<sub>2</sub> Group 2 unit that either:

(i) Commenced operation on or before January 1, 2014; or

(ii) Submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before January 1, 2014.

2. New TR SO<sub>2</sub> Group 2 Unit. A TR SO<sub>2</sub> Group 2 unit that does not meet the definition of a Baseline SO<sub>2</sub> Group 2 unit as defined in subparagraph (3)(a)1. of this paragraph.

(b) Determination of Heat Input.

1. The heat input (in mmBtu) used for calculating TR SO<sub>2</sub> Group 2 allowance allocations under subparagraph (2)(a) of this rule that are to be submitted to the Administrator by June 1, 2016 will be:

(i) For a Baseline SO<sub>2</sub> Group 2 unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated, in 2010, 2011, 2012, 2013, and 2014; or

(ii) For a Baseline TR SO<sub>2</sub> Group 2 unit that did not commence operation on or before January 1, 2014 but had submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before January 1, 2014, the expected actual annual heat input based on actual utilization data of similar sources.

(iii) For a New SO<sub>2</sub> Group 2 unit, the expected actual SO<sub>2</sub> heat input based on actual utilization data of similar sources.

2. The heat input (in mmBtu) used for calculating TR SO<sub>2</sub> Group 2 allowance allocations under subparagraph (2)(b) of this rule that are to be submitted to the Administrator by June 1, 2017 will be:

(i) For a Baseline TR SO<sub>2</sub> Group 2 unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated, in 2011, 2012, 2013, 2014, and 2015; or

(ii) For a Baseline TR SO<sub>2</sub> Group 2 unit that did not commence operation on or before January 1, 2015 but had submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before January 1, 2014, the expected actual annual heat input based on actual utilization data of similar sources.

(iii) For a New TR SO<sub>2</sub> Group 2 unit that commenced operation on or before January 1, 2015, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated in 2014 and 2015.

(iv) For a New TR SO<sub>2</sub> Group 2 unit that did not commence operation on or before January 1, 2015, the expected actual SO<sub>2</sub> heat input based on actual utilization data of similar sources.

3. The heat input (in mmBtu) used for calculating TR SO<sub>2</sub> Group 2 allowance allocations under subparagraph (2)(c) of this rule that are to be submitted to the Administrator by June 1, 2018 will be:

(i) For a Baseline TR SO<sub>2</sub> Group 2 unit, the average of the three (or less, if

applicable) highest amounts of the unit's heat input, in which the unit operated in 2012, 2013, 2014, 2015, and 2016.

(ii) For a New TR SO<sub>2</sub> Group 2 unit that commenced operation on or before January 1 2016, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control period in which the unit operated in 2014, 2015, and 2016.

(iii) For a New TR SO<sub>2</sub> Group 2 unit that did not commence operation on or before January 1, 2016, the expected actual annual heat input based on actual utilization data of similar sources.

4. The heat input (in mmBtu) used for calculating TR SO<sub>2</sub> Group 2 allowance allocations under subparagraph (2)(d) of this rule that are to be submitted to the Administrator by June 1, 2019, and all subsequent allocation years will be:

(i) For a Baseline TR SO<sub>2</sub> Group 2 unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input, for the control periods in which the unit operated for the five most recent control periods available prior to the deadline submission year.

(ii) For a New TR SO<sub>2</sub> Group 2 unit that commenced operation prior to January 1 of the most recent control period available prior to the submission year, the average of the three (or less, if applicable) highest amounts of the

unit's heat input, for the control periods in which the unit operated, for the five most recent control periods available prior to the submission year; or

(iii) For a New SO<sub>2</sub> Group 2 unit that did not commence operation prior to January 1 of the most recent control period available prior to the submission year, the expected actual annual heat input based on actual utilization data of similar sources.

5. The unit's total heat input for the control period in each year specified under subparagraph (b) of this paragraph will be determined in accordance with 40 CFR 75 if the TR SO<sub>2</sub> Group 2 unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Administrator and the Department for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75 for the year.

(c) Establishment of Baseline and Retired Unit Allowance Pools. At the time Transport Rule (TR) SO<sub>2</sub> Group 2 allowances are initially allocated to baseline TR SO<sub>2</sub> Group 2 units under subparagraph (2)(a) of this rule, each unit's allocation will be permanently recorded as that unit's "Baseline Allowance". This value will be used to calculate the following:

1. Baseline Allowance Pool. The Baseline Allowance Pool shall be calculated each time TR SO<sub>2</sub> Group 2 allowances are allocated under paragraph (2) of this rule and shall equal the State SO<sub>2</sub> Group 2 Trading Program Budget minus the total of the Baseline Allowances for all baseline TR SO<sub>2</sub> Group 2 units that have retired in accordance with 335-3-5-.08.

2. Retired Unit Allowance Pool. The Retired Unit Allowance Pool shall be calculated each time TR SO<sub>2</sub> Group 2 allowances are allocated under paragraph (2) of this rule and shall equal the sum of the Baseline Allowances for all TR SO<sub>2</sub> Group 2 units that have retired in accordance with 335-3-5-.08.

(d) Maximum Historic Emission Cap.

The maximum historic emission cap is identified by using an 8 year historic emission period for each TR SO<sub>2</sub> Group 2 unit. The last year of the 8 year period will be the same year as the last year used for determination of heat input under paragraph (3)(b) of this rule. The maximum historic emission cap is the maximum SO<sub>2</sub> emissions (in tons) that occurred during any control period during the 8 year historic emission period. Data used for this purpose shall be obtained from the EPA Clean Air Markets Division (CAMD). An additional emission cap may be applied if a TR SO<sub>2</sub> Group 2 unit has an enforcement action or permit limit in place. The 8 year historic emission values will update every two years to coincide with the allocation control period.

(e) Calculation of TR SO<sub>2</sub> Group 2 Allowances for Baseline TR SO<sub>2</sub> Group 2 Units.

1. For each control period under subparagraph (2) of this rule, the Department will allocate TR SO<sub>2</sub> Group 2 allowances from the Baseline Allowance Pool to all baseline TR SO<sub>2</sub> Group 2 units in accordance with the following procedures:

(i) The Department will allocate TR SO<sub>2</sub> Group 2 allowances to each TR SO<sub>2</sub> Group 2 unit under 335-3-5-.07(1)(a) in an amount equaling the unit's share of the State's total 3 year average of heat input determined in accordance with subparagraph (b) of this paragraph, multiplied by the baseline allowance pool. If a TR SO<sub>2</sub> Group 2 unit has an initial historic heat input based allocation that exceeds its maximum historic emission cap as defined in subparagraph (3)(e) of this rule, then its allocation will equal the maximum historic emission cap for that TR SO<sub>2</sub> Group 2 unit.

(ii) Allocations remaining after the application of the maximum historic emission cap are reapportioned on the same basis to baseline TR SO<sub>2</sub> Group 2 units whose historic heat input based allocation does not exceed its maximum historic emission cap, if applicable. These steps are repeated until the entire Baseline Allocation Pool is allocated. The resulting TR SO<sub>2</sub> Group 2 allocation value is rounded to the nearest whole ton.

(f) Calculation of SO<sub>2</sub> Allowances for New TR SO<sub>2</sub> Group 2 Units. For each control period under paragraph (2) of this rule, after calculating SO<sub>2</sub> allowances for all baseline TR SO<sub>2</sub> Group 2 units that have not retired in accordance with 335-3-5-.08, the Department will allocate SO<sub>2</sub> allowances in the Retired Unit Allowance Pool to all new SO<sub>2</sub> Group 2 season units, in accordance with the following procedures:

1. For each new TR SO<sub>2</sub> Group 2 unit under 335-3-5-.07(1)(a), that commenced operation or submitted a permit application affirmatively deemed complete by the Department in writing on or before March 1 of the year allocations are to be submitted to the Administrator under paragraph (2) of this rule, the number of TR SO<sub>2</sub> Group 2 allowances allocated for each applicable control period will be equal to the unit's share of the State's total 3 year average of heat input for all new TR SO<sub>2</sub> Group 2 units, determined in accordance with subparagraph (b) of this paragraph multiplied by the Retired Unit Allowance Pool. If a new TR SO<sub>2</sub> Group 2 unit has an initial historic heat input based allocation that exceeds its maximum historic emission cap as defined in subparagraph (3)(e) of this rule, then its allocation equals the maximum historic emission cap for that TR SO<sub>2</sub> Group 2 unit .

2. Allocations remaining after application of the maximum historic emission cap are reapportioned on the same basis to new TR SO<sub>2</sub> Group 2 units whose historic heat input based allocation does not exceed its maximum historic emission cap, if applicable. These steps are repeated until the entire Retired Unit Allowance Pool is allocated or until all new units receive allocations equal to its maximum historic emission cap. The resulting TR SO<sub>2</sub> Group 2 allocation value is rounded to the nearest whole ton.

(g) Adjustment of Baseline SO<sub>2</sub> Allowance Allocations. If TR SO<sub>2</sub> Group 2 allowances remain in the Retired Unit Allowance Pool after allocations are made to all new TR SO<sub>2</sub> Group 2 units in accordance with subparagraph (gf) of this paragraph, these SO<sub>2</sub> allowances will be allocated on a pro rata basis to the baseline TR SO<sub>2</sub> Group 2 units where historic heat input based allocation does not exceed its maximum historic emission cap, for the applicable control periods.

(h) SO<sub>2</sub> allowances allocated to baseline TR SO<sub>2</sub> Group 2 units based on heat inputs determined in accordance with subparagraph (b)1.(ii) or (b)2.(ii) of this paragraph will be held in the State's general account until the unit commences operation, prior to or during the control period for which SO<sub>2</sub> allowances were allocated. If the unit does not commence operations, the SO<sub>2</sub> allowances will be transferred by the Department pro rata to Baseline TR SO<sub>2</sub> Group 2 units that were allocated SO<sub>2</sub> allowances in accordance with subparagraphs (b)1.(i) or (b)2.(i) of this paragraph, and whose historic heat input based allocation does not exceed its maximum historic emission cap if applicable. By January 30 of the following year, the Department shall notify the Administrator of the appropriate SO<sub>2</sub> allowance transfers.

1. SO<sub>2</sub> allowances allocated to new TR SO<sub>2</sub> Group 2 units based on heat inputs determined in accordance with subparagraphs (b)1.(iii), (b)2.(iv), (b)3.(iii), or (b)4.(iii) of this paragraph will be held in the State's general account until the unit commences operation, prior to or during the control period for which SO<sub>2</sub> allowances were allocated. If the unit does not commence operations, the SO<sub>2</sub> allowances will be transferred by the Department pro rata to Baseline TR SO<sub>2</sub> Group 2 units that were allocated SO<sub>2</sub> allowances in accordance with subparagraphs (b)1.(i) and (ii), (b)2.(i) and (ii), (b)3.(i), or (b)4.(i) of this paragraph, and whose historic heat input based allocation does not exceed its maximum historic emission cap if applicable. By January 30 of the following year, the Department shall notify the Administrator of the appropriate SO<sub>2</sub> allowance transfers.

2. SO<sub>2</sub> allowances will not be allocated to TR SO<sub>2</sub> Group 2 units that retire under 335-3-5-.08 prior to the date SO<sub>2</sub> allowance allocations are submitted to the Administrator under subparagraphs (2)(a), (b), (c), or (d) of this Rule.

3. The total SO<sub>2</sub> Group 2 allowances allocated for any control period in accordance with subparagraphs (3)(f), and (g) of this paragraph shall not exceed the State SO<sub>2</sub> Group 2 Trading Program Budget as determined by the applicable, approved State Implementation Plan.

(i) Distribution of remaining TR SO<sub>2</sub> Group 2 Allowances. If any TR SO<sub>2</sub> Group 2 allowances remain after allocations are completed in subparagraphs (e) through (h) of this paragraph, the remaining allowances shall be distributed proportional to the allocations made in subparagraphs (e) through (h) of this paragraph beyond the unit's historical emissions cap. However, no unit may receive additional allocations that exceed any enforcement cap or permit limitation.

(j) Units Incorrectly Allocated TR SO<sub>2</sub> Group 2 Allowances. The procedures for addressing units that were incorrectly allocated TR SO<sub>2</sub> Group 2 allowances are incorporated by reference as they exist in 40 CFR §97.711(c), Subpart DDDDD as of July 1, 2015. (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

**History:** Effective Date: November 24, 2015. **Amended:** Proposed: June 20, 2018.