

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management  
Rule No. 335-3-8-.14  
Rule Title: TR NOx Annual 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         

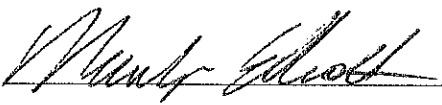
Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule?               NO         

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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: 

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:** 335-3-8-.14 TR NO<sub>x</sub> Annual Allowance Allocations (Amend)  
335-3-8-.46 TR NO<sub>x</sub> Ozone Season Group 2 Allowance Allocations (Amend)

**INTENDED ACTION:** Revise Division 3 of the ADEM Administrative Code with the amendment of Rules 335-3-8-.14 (TR NO<sub>x</sub> Annual Allowance Allocations) and 335-3-8-.46 (TR NO<sub>x</sub> Ozone Season Group 2 Allowance Allocations).

**SUBSTANCE OF PROPOSED ACTION:**

Revisions to the Division 3 Code are being proposed to amend Rules 335-3-8-.14 and 335-3-8-.46 in Chapter 335-3-8 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. Additional language was also added to the Department's NO<sub>x</sub> Ozone Season rule to address the 13 allocations that are to be set aside for any new NO<sub>x</sub> Ozone Season units in Indian country within the state of Alabama. Minor non-technical errors are also being corrected.

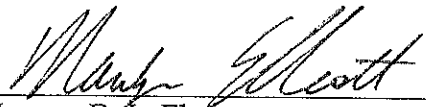
Chapter 335-3-8 is considered as a part of the federally enforceable State Implementation Plan (SIP). As such, any revisions to this Chapter/Rule are proposed to be incorporated into Alabama's SIP.

**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

**335-3-8-.14 TR NO<sub>x</sub> Annual Allowance Allocations.**

(1) State Annual Trading Program Budget. The State trading budget for annual allocations of Transport Rule (TR) NO<sub>x</sub> Annual allowances for the control periods 2017 and thereafter is 71,962 tons.

(2) Timing Requirements for NO<sub>x</sub> Allowance Allocations.

(a) By June 1, 2016, the Department will submit to the Administrator, in a format prescribed by the Administrator, the annual NO<sub>x</sub> 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 annual NO<sub>x</sub> 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 annual NO<sub>x</sub> 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 annual NO<sub>x</sub> allowance 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) NO<sub>x</sub> Allowance Allocations.

apply:

Definitions. For the purpose of this rule, the following definitions

1. Baseline TR NO<sub>x</sub> Unit. A TR NO<sub>x</sub> 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 NO<sub>x</sub> Unit. A TR NO<sub>x</sub> unit that does not meet the definition of a Baseline TR NO<sub>x</sub> 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 NO<sub>x</sub> 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 TR NO<sub>x</sub> 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 NO<sub>x</sub> 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 TR NO<sub>x</sub> unit, the expected actual annual heat input based on actual utilization data of similar sources.

2. The heat input (in mmBtu) used for calculating TR NO<sub>x</sub> 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 NO<sub>x</sub> 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 NO<sub>x</sub> 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 NO<sub>x</sub> 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 NO<sub>x</sub> unit that did not commence operation on or before January 1, 2015, the expected actual annual heat input based on actual utilization data of similar sources.

3. The heat input (in mmBtu) used for calculating TR NO<sub>x</sub> 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 NO<sub>x</sub> 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 2012, 2013, 2014, 2015, and 2016.

(ii) For a New TR NO<sub>x</sub> 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, in which the unit operated in 2014, 2015, and 2016.

(iii) For a New TR NO<sub>x</sub> 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 NO<sub>x</sub> 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 NO<sub>x</sub> unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input, in which the unit operated for the five most recent control periods available prior to the deadline submission year.

(ii) For a New TR NO<sub>x</sub> 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, in which the unit operated, for the five most recent control periods available prior to the submission year; or

(iii) For a New TR NO<sub>x</sub> 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 NO<sub>x</sub> 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) annual NO<sub>x</sub> allowances are initially allocated to baseline TR NO<sub>x</sub> 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 annual NO<sub>x</sub> allowances are allocated under paragraph (2) of this rule and shall equal the State Annual Trading Program Budget minus the total of the Baseline Allowances for all baseline TR NO<sub>x</sub> units that have retired in accordance with Rule 335-3-8-.09.

2. Retired Unit Allowance Pool. The Retired Unit Allowance Pool shall be calculated each time TR NO<sub>x</sub> allowances are allocated under paragraph (2) of this rule and shall equal the sum of the Baseline Allowances for all TR NO<sub>x</sub> units that have retired in accordance with Rule 335-3-8-.09.

(d) Maximum Historic Emission Cap. The maximum historic emission cap is identified by using an 8 year historic emission period for each TR NOx 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 NOx 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 NOx 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 NOx Allowances for Baseline TR NOx Units.

1. For each control period under paragraph (2) of this rule, the Department will allocate TR NOx allowances from the Baseline Allowance Pool to all baseline TR NOx units in accordance with the following procedures:

(i) The Department will allocate TR NOx allowances to each TR NOx unit under Rule 335-3-8-.08(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 NOx unit has an initial historic heat input based allocation that exceeds its maximum historic emission cap as defined in subparagraph (3)(e) of this paragraph, then its allocation will equal the maximum historic emission cap for that TR NOx unit.

(ii) Allocations remaining after the application of the maximum historic emission cap are reapportioned on the same basis to baseline TR NOx 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 NOx allocation value is rounded to the nearest whole ton.

(f) Calculation of NOx Allowances for New TR NOx Units. For each control period under paragraph (2) of this rule, after calculating NOx allowances for all baseline TR NOx units that have not retired in accordance with Rule 335-3-8-.9 , the Department will allocate NOx allowances in the Retired Unit Allowance Pool to all new TR NOx units, in accordance with the following procedures:

1. For each new TR NOx unit under Rule 335-3-8-.08(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 NOx 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 NOx units, determined in accordance with subparagraph (b) of this paragraph multiplied by the Retired Unit Allowance Pool. If a new TR NOx unit has an initial historic heat input based allocation that exceeds its

maximum historic emission cap as defined in subparagraph (3)(c) of this paragraph, then its allocation equals the maximum historic emission cap for that TR NOx unit .

2. Allocations remaining after application of the maximum historic emission cap are reapportioned on the same basis to new TR NOx 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 NOx allocation value is rounded to the nearest whole ton.

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

(h) NOx allowances allocated to baseline TR NOx 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 NOx allowances were allocated. If the unit does not commence operations, the NOx allowances will be transferred by the Department pro rata to Baseline TR NOx units that were allocated NOx allowances in accordance with subparagraph (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 NOx allowance transfers.

1. NOx allowances allocated to new TR NOx 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 NOx allowances were allocated. If the unit does not commence operation, the NOx allowances will be transferred by the Department pro rata to Baseline TR NOx units that were allocated NOx 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 NOx allowance transfers.

2. NOx allowances will not be allocated to TR NOx units that retire under Rule 335-3-8-.09 prior to the date NOx allowance allocations are submitted to the Administrator under subparagraphs (2)(a), (b), (c), or (d) of this rule.

3.     The total NOx allowances allocated for any control period in

accordance with subparagraphs (3)(f), and (g) of this paragraph shall not exceed the State NO<sub>x</sub> Annual Trading Program Budget as determined by the applicable, approved State Implementation Plan.

(i) Distribution of remaining TR NO<sub>x</sub> Annual Allowances. If any TR NO<sub>x</sub> Annual 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.

(i)(j) Units Incorrectly Allocated TR NO<sub>x</sub> Annual Allowances. The procedures for addressing units that were incorrectly allocated TR NO<sub>x</sub> Annual allowances are incorporated by reference as they exist in 40 CFR §97.411(c), Subpart AAAAA 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.