

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management  
Rule No. 335-3-8-.40  
Rule Title: TR NOx Ozone Season Trading Program - Applicability  
       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?        NO       

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        *Marilyn Elliott*       

Date        **June 20, 2018**

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-.40 TR NO<sub>x</sub> Ozone Season Trading Program – Applicability (Amend)

**INTENDED ACTION:** Revise Division 3 of the ADEM Administrative Code with the amendment of Rule 335-3-8-.40 (TR NO<sub>x</sub> Ozone Season Trading Program – Applicability).

**SUBSTANCE OF PROPOSED ACTION:**

Revisions to the Division 3 Code are being proposed to amend Rule 335-3-8-.40 in Chapter 335-3-8 in order to include the term Group 2 to be consistent with EPA regulations. Group 2 is being added to language in order to clarify that Alabama is included in the CSAPR Group 2 Ozone Season Trading Program, and will only be required to comply with CSAPR NO<sub>x</sub> ozone season Group 2 requirements. 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 by 5:00p.m. to ADEM, Permits and Services Chief, Attn: Russell Kelly, located at 1400 Coliseum Blvd., Montgomery, Alabama 36110.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:** August 03, 2018

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

  
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Lance R. LeFleur  
Director

**335-3-8-.40 TR NO<sub>x</sub> Ozone Season Group 2 Trading Program – Applicability.**

(1) Applicability.

(a) Except as provided in subparagraph (b) of this paragraph:

1. The following units in the State of Alabama shall be TR NO<sub>x</sub> Ozone Season Group 2 units, and any source that includes one or more such units shall be a TR NO<sub>x</sub> Ozone Season Group 2 source, subject to the requirements of rules 335-3-8-.39 through 335-3-8-.70: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

2. If a stationary boiler or stationary combustion turbine that, under subparagraph (a)1. of this paragraph, is not a TR NO<sub>x</sub> Ozone Season Group 2 unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a TR NO<sub>x</sub> Ozone Season Group 2 unit as provided in subparagraph (a)1. of this paragraph on the first date on which it both combusts fossil fuel and serves such generator.

(b) Any unit in the State that otherwise is a TR NO<sub>x</sub> Ozone Season Group 2 unit under subparagraph (a) of this paragraph and that meets the requirements set forth in subparagraphs (b)1.(i) and (ii) or 2.(i) and (ii) of this paragraph shall not be a TR NO<sub>x</sub> Ozone Season Group 2 unit:

1. Any unit:

(i) Qualifying as a cogeneration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(ii) Not supplying in 2005 or any calendar year thereafter more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(iii) If, after qualifying under subparagraphs (b)1.(i) and (ii) of this paragraph as not being a TR NO<sub>x</sub> Ozone Season Group 2 unit, a unit subsequently no longer meets all the requirements of subparagraphs (b)1.(i) and (ii) of this paragraph, the unit shall become a TR NO<sub>x</sub> Ozone Season Group 2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of subparagraph (b)1.(ii) of this paragraph. The unit shall thereafter continue to be a TR NO<sub>x</sub> Ozone Season Group 2 unit.

2. Any unit:

(i) Qualifying as a solid waste incineration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing

to qualify as a solid waste incineration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(ii) With an average annual fuel consumption of fossil fuel for the first 3 consecutive calendar years of operation starting no earlier than 2005 of less than 20 percent (on a Btu basis) and an average annual fuel consumption of fossil fuel for any 3 consecutive calendar years thereafter of less than 20 percent (on a Btu basis).

(iii) If, after qualifying under subparagraphs (b)2.(i) and (ii) of this paragraph as not being a TR NO<sub>x</sub> Ozone Season Group 2 unit, a unit subsequently no longer meets all the requirements of subparagraphs (b)2.(i) and (ii) of this paragraph, the unit shall become a TR NO<sub>x</sub> Ozone Season Group 2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 2005 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more. The unit shall thereafter continue to be a TR NO<sub>x</sub> Ozone Season Group 2 unit.

(c) A certifying official of an owner or operator of any unit or other equipment may submit a petition (including any supporting documents) to the Administrator at any time for a determination concerning the applicability, under subparagraphs (a) and (b) of this paragraph, to the unit or other equipment. The certifying official of an owner or operator of any unit or other equipment shall submit a copy of the petition (including any supporting documents) to the Department.

1. Petition content. The petition shall be in writing and include the identification of the unit or other equipment and the relevant facts about the unit or other equipment. The petition and any other documents provided to the Department and the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: "I am authorized to make this submission on behalf of the owners and operators of the unit or other equipment for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

2. Response. The Administrator will issue a written response to the petition and may request supplemental information determined by the Administrator to be relevant to such petition. The Administrator's determination concerning the applicability, under subparagraphs (1)(a) and (b) of this rule, of the TR NO<sub>x</sub> Ozone Season Group 2 Trading Program to the unit or other equipment shall be binding on Alabama, the Department, and any other State or permitting authority unless the Administrator determines that the petition contained significant, relevant errors or omissions.

**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. Proposed: June 20, 2018.