

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control 335 Department or Agency Environmental Management

Rule No. 335-3-8-.46

Rule Title: TR NOx Ozone Season Group 2 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

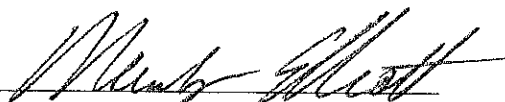
Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? NO

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.

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_x Annual Allowance Allocations (Amend)
335-3-8-.46 TR NO_x 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_x Annual Allowance Allocations) and 335-3-8-.46 (TR NO_x 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_x Ozone Season rule to address the 13 allocations that are to be set aside for any new NO_x Ozone Season units in Indian country within the state of Alabama. Minor non-technical errors are also being corrected.

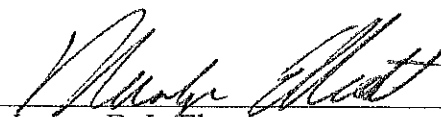
Chapter 335-3-8 is considered as a part of the federally enforceable State Implementation Plan (SIP). As such, any revisions to this Chapter/Rule are proposed to be incorporated into Alabama's SIP.

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



Lance R. LeFleur
Director

335-3-8-.46 TR NO_x Ozone Season Group 2 Allowance Allocations.

(1) State NO_x Ozone Season Group 2 Trading Program Budget. The State trading budget for annual allocations of Transport Rule (TR) NO_x Ozone Season Group 2 allowances for the control periods 2017 and thereafter is 13,211 tons.

(2) Timing Requirements for TR NO_x Ozone Season Group 2 Allowance Allocations.

(a) By June 1, 2017, the Department will submit to the Administrator, in a format prescribed by the Administrator, the TR NO_x Ozone Season Group 2 allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2019 and 2020.

(b) By June 1, 2018, the Department will submit to the Administrator, in a format prescribed by the Administrator, the TR NO_x Ozone Season Group 2

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

(c) By June 1, 2019, and every other year thereafter, the Department shall submit to the Administrator, in a format prescribed by the Administrator, the TR NO_x Ozone Season Group 2 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) TR NO_x Ozone Season Group 2 Allowance Allocations.

apply:

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

1. Baseline TR NO_x Ozone Season Unit. A TR NO_x Ozone Season Group 2 unit that either:

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

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

2. New TR NO_x Ozone Season Unit. A TR NO_x Ozone Season Group 2 unit that does not meet the definition of a Baseline TR NO_x Ozone Season 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_x Ozone Season Group 2 allowance allocations under subparagraph (2)(a) of this rule that are to be submitted to the Administrator by June 1, 2017, will be:

(i) For a Baseline TR NO_x Ozone Season 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_x Ozone Season unit that did not commence operation on or before May 1, 2014, but had submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before May 1, 2014, the expected actual ozone season heat input based on actual utilization data of similar sources.

(iii) For a New TR NO_x Ozone Season unit, the expected actual ozone season heat input based on actual utilization data of similar sources.

2. The heat input (in mmBtu) used for calculating TR NO_x Ozone Season Group 2 allowance allocations under subparagraph (2)(b) of this rule that are to be submitted to the Administrator by June 1, 2018, will be:

(i) For a Baseline TR NO_x Ozone Season 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; or

(ii) For a Baseline TR NO_x Ozone Season unit that did not commence operation on or before May 1, 2015, but had submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before May 1, 2014, the expected actual ozone season heat input based on actual utilization data of similar sources.

(iii) For a New TR NO_x Ozone Season unit that commenced operation on or before May 1, 2016, 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 2015 and 2016.

(iv) For a New TR NO_x Ozone Season unit that did not commence operation on or before May 1, 2016, the expected actual ozone season heat input based on actual utilization data of similar sources.

3. The heat input (in mmBtu) used for calculating TR NO_x Ozone Season Group 2 allowance allocations under subparagraph (2)(c) 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_x Ozone Season 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 NO_x Ozone Season unit that commenced operation prior to May 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 TR NO_x Ozone Season unit that did not commence operation prior to May 1 of the most recent control period available prior to the submission year, the expected actual ozone season heat input based on actual utilization data of similar sources.

4. 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_x Ozone Season 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) NO_x Ozone Season Group 2 allowances are initially allocated to Baseline TR NO_x Ozone Season 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 NO_x Ozone Season Group 2 allowances are allocated under paragraph (2) of this rule and shall equal the State Ozone Season Group 2 trading program budget minus the total of the Baseline Allowances for all Baseline TR NO_x Ozone Season units that have retired in accordance with 335-3-8-.41 and minus 13 allowances set aside for any new TR NO_x Ozone Season Group 2 units located in Indian country.

2. Retired Unit Allowance Pool. The Retired Unit Allowance Pool shall be calculated each time TR NO_x Ozone Season Group 2 allowances are allocated under paragraph (2) of this rule and shall equal the sum of the Baseline Allowances for all TR NO_x Ozone Season Group 2 units that have retired in accordance with 335-3-8-.41.

2.3. Indian Country New Unit Allowance Pool. A total of 13 TR NO_x Ozone Season Group 2 allowances will be initially set aside for any new TR NO_x Ozone Season Group 2 units in Indian country. If the Indian country allowances are not allocated by the Administrator and are made available to the Department for allocation, the allowances will be proportionally distributed, to existing units in the state in accordance with subparagraphs (g) and (i) of this paragraph.

(d) Maximum Historic Emission Cap. The Maximum

Historic Emission Cap is identified by using an 8 year historic emission period for each TR NO_x Ozone Season 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 subparagraph (3)(b) of this paragraph. The Maximum Historic Emission Cap is the maximum NO_x 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 NO_x Ozone Season 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 NO_x Ozone Season Group 2 Allowances for Baseline TR NO_x Ozone Season Units.

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

(i) The Department will allocate TR NO_x Ozone Season Group 2 allowances to each TR NO_x Ozone Season Group 2 unit under 335-3-8-.40(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 NO_x Ozone Season 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 paragraph, then its allocation will equal the maximum historic emission cap for that TR NO_x Ozone Season Group 2 unit.

(ii) Allocations remaining after the application of the maximum historic emission cap are reapportioned on the same basis to Baseline TR NO_x Ozone Season 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 NO_x Ozone Season Group 2 allocation value is rounded to the nearest whole ton.

(f) Calculation of NO_x Allowances for New TR NO_x Ozone Season Units. For each control period under paragraph (2) of this rule, after calculating NO_x allowances for all Baseline TR NO_x Ozone Season units that have not retired in accordance with 335-3-8-.41, the Department will allocate NO_x allowances in the Retired Unit Allowance Pool to all New TR NO_x Ozone Season units, in accordance with the following procedures:

1. For each New TR NO_x Ozone Season unit under 335-3-8-.40(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 NO_x Ozone Season 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 NO_x Ozone Season units, determined in accordance with subparagraph (b) of this paragraph multiplied by the Retired Unit Allowance Pool. If a New TR NO_x Ozone Season 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 equals the maximum historic emission cap for that TR NO_x Ozone Season Group 2 unit

2. Allocations remaining after application of the maximum historic emission cap are reapportioned on the same basis to New TR NO_x Ozone Season 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 NO_x Ozone Season Group 2 allocation value is rounded to the nearest whole ton.

(g) Adjustment of Baseline NO_x Allowance Allocations. If TR NO_x Ozone Season Group 2 allowances remain in the Retired Unit Allowance Pool after allocations are made to all New TR NO_x Ozone Season units in accordance with subparagraph (gf) of this paragraph, or if the TR NO_x Ozone Season Group 2 allowances from the Indian Country New Unit Allowance Pool become available for allocation by the Department in accordance with subparagraph (c)3 of this paragraph, these NO_x allowances will be allocated on a pro rata basis to the Baseline TR NO_x Ozone Season units where historic heat input based allocation does not exceed its maximum historic emission cap, for the applicable control periods.

(h) NO_x allowances allocated to Baseline TR NO_x Ozone Season 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 NO_x allowances were allocated. If the unit does not commence operations, the NO_x

allowances will be transferred by the Department pro rata to Baseline TR NO_x Ozone Season units that were allocated NO_x 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 NO_x allowance transfers.

1. NO_x allowances allocated to New TR NO_x Ozone Season 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 NO_x allowances were allocated. If the unit does not commence operations,

the NO_x allowances will be transferred by the Department pro rata to Baseline TR NO_x Ozone Season units that were allocated NO_x 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 NO_x allowance transfers.

2. NO_x allowances will not be allocated to TR NO_x Ozone Season Group 2 units that retire under 335-3-8-.41 prior to the date NO_x allowance allocations are submitted to the Administrator under subparagraphs (2)(a), (b), (c), or (d) of this rule.

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

(i) Distribution of remaining TR NO_x Ozone Season Group 2 Allowances. If any TR NO_x Ozone Season 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 NO_x Ozone Season Group 2 Allowances. The procedures for addressing units that were incorrectly allocated TR NO_x Ozone Season Group 2 allowances are incorporated by reference as they exist in 40 CFR §97.811(c), Subpart EEEEE as of October 26, 2016 (81 FR 74504) except for the provisions found in 40 CFR §§97.811(c)(5)(iii). (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:** Effective: June 2, 2017.

Amended: Proposed: June 20, 2018.