



APA-2  
11/96

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
AIR DIVISION**

**NOTICE OF INTENDED ACTION**

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

**RULE NO. & TITLE:** 335-3-14-.01 General Provisions (Amend)  
335-3-14-.04 Air Permits Authorizing Construction in  
Clean Air Areas [Prevention of Significant Deterioration  
Permitting (PSD)] (Amend)  
335-3-14-.05 Air Permits Authorizing Construction In or  
Near Non-Attainment Areas (Amend)  
335-3-14-.06 Requirements for Control Technology  
[Determinations for Major Sources in Accordance with  
Clean Air Act Section 112(g)] (Amend)

**INTENDED ACTION:** Revise Division 3 of the ADEM Administrative Code with the amendment of Rules 335-3-14-.01 (General Provisions), 335-3-14-.04 (Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)]), 335-3-14-.05 (Air Permits Authorizing Construction In or Near Non-Attainment Areas), and 335-3-14-.06 (Requirements for Control Technology [Determinations for Major Sources in Accordance with Clean Air Act Section 112(g)]).

**SUBSTANCE OF PROPOSED ACTION:**

Revisions to the Division 3 Code are being proposed to amend Rules 335-3-14-.01, 335-3-14-.04, 335-3-14-.05, and 335-3-14-.06 in Chapter 335-3-14 in order to incorporate amendments to EPA public notice regulations that removed the mandatory requirement to provide public notice for draft permits (and certain other program actions) by newspaper publication and instead provides for electronic-notice (e-notice) of these actions.

**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., March 8, 2017, in ADEM Hearing Room, 1400 Coliseum Blvd., Montgomery, Alabama 36110.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:** March 10, 2017

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

*Mandy Elliott*

---

Lance R. Lefleur  
Director

**335-3-14-.06 Requirements for Control Technology [Determinations for Major Sources in Accordance with Clean Air Act Section 112(g)].**

(1) Applicability.

(a) The requirements of paragraphs (1) through (4) of this rule carry out Section 112(g)(2)(B) of the 1990 Clean Air Act Amendments (hereinafter, referred to as 'the Act' in this rule).

(b) Overall requirements. The requirements of paragraphs (1) through (4) of this rule apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after the effective date of this rule unless the major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to Section 112(d), Section 112(h), or Section 112(j) and incorporated in another Subpart of Part 63 of the 40 Code of Federal Regulations or chapter 335-3-11 of this Division, or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before the effective date of this rule.

(c) Exclusion for electric utility steam generating units. The requirements of this rule do not apply to electric utility steam generating units unless and until such time as these units are added to the source category list pursuant to Section 112(c)(5) of the Act.

(d) Exclusion for stationary sources in deleted source categories. The requirements of this rule do not apply to stationary sources that are within a source category that has been deleted from the source category list pursuant to Section 112(c)(9) of the Act.

(e) Exclusion for research and development activities. The requirements of this rule do not apply to research and development activities, as defined in paragraph (2) below.

(f) Prohibition. After the effective date of this rule, no person may begin actual construction or reconstruction of a major source of HAP unless:

1. The major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to Section 112(d), Section 112(h) or Section 112(j) in Part 63 [40 CFR 63, Subpart B, as incorporated by reference in rule 335-3-11-.06(1)], and the owner and operator has fully complied with all procedures and requirements for preconstruction review established by that standard, including any applicable requirements set forth in Subpart A of Part 63; or

2. The Department has made a final and effective case-by-case determination pursuant to the provisions of this rule such that emissions from the constructed or reconstructed major source will be controlled to a level no less stringent than the maximum achievable control technology emission limitation for new sources.

(2) Definitions.

Terms used in this rule that are not defined below have the meaning given to them in the Act and in 40 CFR Subpart A.

(a) "Affected Source" means the stationary source or group of stationary sources which, when fabricated (on site), erected, or installed meets the definition of "construct a major source" or the definition of "reconstruct a major source" contained in this paragraph.

(b) "Affected States" are all States:

1. Whose air quality may be affected and that are contiguous to the State in which a MACT determination is made in accordance with this rule; or

2. Whose air quality may be affected and that are within 50 miles of the major source for which a MACT determination is made in accordance with this rule.

(c) "Available Information" means, for purposes of identifying control technology options for the affected source, information contained in the following information sources as of the date of approval of the MACT determination by the Department:

1. A relevant proposed regulation, including all supporting information;

2. Background information documents for a draft or proposed regulation;

3. Data and information available from the Control Technology Center developed pursuant to Section 113 of the Act;

4. Data and information contained in the Aerometric Informational Retrieval System including information in the MACT data base;

5. Any additional information that can be expeditiously provided by the Director; and

6. For the purpose of determinations by the Department, any additional information provided by the applicant or others, and any additional information considered available by the Department.

(d) "Construct a Major Source" means:

1. To fabricate, erect, or install at any greenfield site a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAPs, or

2. To fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit 10 tons

per year of any HAP or 25 tons per year of any combination of HAPs, unless the process or production unit satisfies criteria (i) through (vi) below:

(i) All HAP emitted by the process or production unit that would otherwise be controlled under the requirements of this rule will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

(ii) The Department has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT), or lowest achievable emission rate (LAER) under chapter 335-3-14; or the Department determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT or LAER determination);

(iii) The Department determines that the percent control efficiency for emissions of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(iv) The Department has provided notice and an opportunity for public comment concerning its determination that criteria in subparagraphs 2.(i), 2.(ii), and 2.(iii) of this definition apply and concerning the continued adequacy of any prior LAER or BACT determination;

(v) If any commenter has asserted that a prior LAER or BACT determination is no longer adequate, the Department has determined that the level of control required by that prior determination remains adequate; and

(vi) Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the Department are predicated will be construed by the Department as applicable requirements under Section 504(a) and either have been incorporated into any existing Major Source Operating Permit for the affected facility or will be incorporated into such permit upon issuance.

(e) "Control Technology" means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants through process changes, substitution of materials or other modifications including, but not limited to, measures that:

1. Reduce the quantity of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;

2. Enclose systems or processes to eliminate emissions;

3. Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point;

4. Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in 42 U.S.C. 7412(h); or

5. Are a combination of subparagraphs 1. - 4. of this definition.

(f) "Department" means the Department as defined in this Division.

(g) "Effective Date of Section 112(g)(2)(B)" means the effective date of this rule adopted by the Department.

(h) "Electric Utility Steam Generating Unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

(i) "Greenfield Site" means a contiguous area under common control that is an undeveloped site.

(j) "Hazardous Air Pollutant or HAP" means any of the substances listed in Appendix G of this Division.

(k) "List of Source Categories" means the Source Category List required by Section 112(c) of the Act.

(l) "Maximum Achievable Control Technology (MACT) Emission Limitation for New Sources" means the emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions that the Department, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

(m) "Process or Production Unit" means any collection of structures and/or equipment, that processes, assembles, applies, or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

(n) "Reconstruct a Major Source" means the replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAPs, whenever:

1. The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and

2. It is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under this rule.

(o) "Research and Development Activities" means activities conducted at a research or laboratory facility whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a de minimis manner.

(p) "Similar Source" means a stationary source or process that has comparable emissions and is structurally similar in design and capacity to a constructed or reconstructed major source such that the source could be controlled using the same control technology.

(3) Maximum Achievable Control Technology (MACT) Determinations for Constructed and Reconstructed Major Sources.

(a) Applicability. The requirements of this paragraph apply to an owner or operator who constructs or reconstructs a major source of HAP subject to a case-by-case determination of maximum achievable control technology pursuant to this rule.

(b) Principles of MACT determinations. The following general principles shall govern preparation by the owner or operator of each permit application or other application requiring a case-by-case MACT determination concerning construction or reconstruction of a major source, and all subsequent review of and actions taken concerning such an application by the Department:

1. The MACT emission limitation or MACT requirements recommended by the applicant and approved by the Department shall not be less stringent than the emission control which is achieved in practice by the best controlled similar source, as determined by the Department.

2. Based upon available information, as defined in this rule, the MACT emission limitation and control technology (including any requirements under subparagraph (b)3. below) recommended by the applicant and approved by the Department shall achieve the maximum degree of reduction in emissions of HAP which can be achieved by utilizing those control technologies that can be identified from the available information, taking into consideration the costs of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements associated with the emission reduction.

3. The applicant may recommend a specific design, equipment, work practice, or operational standard, or a combination thereof, and the Department may approve such a standard if the Department specifically determines that it is not feasible to prescribe or enforce an emission limitation under the criteria set forth in Section 112(h)(2) of the Act.



4. If the Administrator has either proposed a relevant emission standard pursuant to Section 112(d) or Section 112(h) of the Act or adopted a presumptive MACT determination for the source category which includes the constructed or reconstructed major source, then the MACT requirements applied to the constructed or reconstructed major source shall have considered those MACT emission limitations and requirements of the proposed standard or presumptive MACT determination.

(c) Application requirements for a case-by-case MACT determination.

1. An application for a MACT determination (whether a permit application under chapter 335-3-16, or other permit specified by the Department under subparagraph (d) of this paragraph) shall specify a control technology selected by the owner or operator that, if properly operated and maintained, will meet the MACT emission limitation or standard as determined according to the principles set forth in subparagraph (b) of this paragraph.

2. In each instance where a constructed or reconstructed major source would require additional control technology or a change in control technology, the application for a MACT determination shall contain the following information:

(i) The name and address (physical location) of the major source to be constructed or reconstructed;

(ii) A brief description of the major source to be constructed or reconstructed and identification of any listed source category or categories in which it is included;

(iii) The expected commencement date for the construction or reconstruction of the major source;

(iv) The expected completion date for construction or reconstruction of the major source;

(v) the anticipated date of start-up for the constructed or reconstructed major source;

(vi) The HAP emitted by the constructed or reconstructed major source, and the estimated emission rate for each such HAP, to the extent this information is needed by the Department to determine MACT;

(vii) Any enforceable emission limitations applicable to the constructed or reconstructed major source;

(viii) The maximum and expected utilization of capacity of the constructed or reconstructed major source, and the associated uncontrolled emission rates for that source, to the extent this information is needed by the Department to determine MACT;

(ix) The controlled emissions for the constructed or reconstructed major source in tons/yr at expected and maximum utilization of capacity, to the extent this information is needed by the Department to determine MACT;

(x) A recommended emission limitation for the constructed or reconstructed major source consistent with the principles set forth in subparagraph (b) of this paragraph;

(xi) The selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, estimated control efficiency of the control technology (and the manufacturer's name, address, telephone number, and relevant specifications and drawings, if requested by the Department);

(xii) Supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of cost and non-air quality health environmental impacts or energy requirements for the selected control technology; and

(xiii) Any other relevant information required pursuant to Subpart A, 40 CFR 63.

3. In each instance where the owner or operator contends that a constructed or reconstructed major source will be in compliance, upon startup, with case-by-case MACT under this rule without a change in control technology, the application for a MACT determination shall contain the following information:

(i) The information described in subparagraphs (c)2.(i) through (c)2.(x) of this paragraph; and

(ii) Documentation of the control technology in place.

(d) Permit Content.

1. The Air Permit will contain a MACT emission limitation (or a MACT work practice standard if the Department determines it is not feasible to prescribe or enforce an emission standard) to control the emissions of HAP. The MACT emission limitation or standard will be determined by the Department and will conform to the principles set forth in subparagraph (3)(b) of this rule.

2. The Air Permit will specify any notification, operation and maintenance, performance testing, monitoring, reporting and record keeping requirements, including:

(i) Additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure enforceability of the MACT emission limitation;

(ii) Compliance certifications, testing, monitoring, reporting and record keeping requirements that are consistent with the requirements of 335-3-16-.07;

(iii) In accordance with Section 114(a)(3) of the Act, monitoring shall be capable of demonstrating continuous compliance during the applicable reporting period. Such monitoring data shall be of sufficient quality to be used as a basis for enforcing all applicable requirements established under this rule, including emission limitations;

(iv) A statement requiring the owner or operator to comply with all applicable requirements contained in Subpart A of 40 CFR 63;

3. All provisions contained in the Air Permit shall be enforceable upon the effective date of issuance of said permit, as provided by subparagraph (g) of this paragraph.

4. The Air Permit shall expire if construction or reconstruction has not commenced within 18 months of issuance, unless the Department has granted an extension which shall not exceed an additional 12 months.

(e) Public participation.

1. ~~Notice shall be given by posted on the Department's web site for the duration of the comment period, and also transmitted to a list developed by the Department for persons desiring notice of permit action, including persons who have requested in writing to be on such a list; publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice and also to persons on a mailing list developed by the Department for persons desiring notice of permit action, including persons who have requested in writing to be on such a list;~~

2. The notice shall include a link to the proposed permit and information on how to access the administrative record for the proposed permit; identify the affected facility; the name and address of the permittee; the address of the Department; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person (or an email or web site address) from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, monitoring and compliance certification report, except for information entitled to be kept confidential, and all other materials available to the Department that are relevant to the permit decision; a brief description of the comment procedures required by this chapter; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled);

3. The Department shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing; and

4. The Department shall keep a record of the comments made during the public participation process.

5. Exceptions.

(i) If the owner or operator obtains a Major Source Operating Permit prior to construction or reconstruction of a source subject to this rule, then the requirements of this subparagraph do not apply.

(ii) If the owner or operator is concurrently applying for an Air Permit under rules 335-3-14-.04 or 335-3-14-.05, the public participation requirements of those rules shall substitute for the requirements of this paragraph.

(f) Prohibition of construction. An owner or operator applying for a MACT emission limitation for new sources under this rule shall not begin construction until a permit has been issued pursuant to this rule.

(g) Effective date. The effective date of a MACT determination shall be the date of issuance of a final Major Source Operating Permit incorporating a MACT determination (in those instances where the owner or operator either is required or elects to obtain such a permit before construction or reconstruction), or a permit issued pursuant to this rule.

(h) Compliance date. On and after the date of start-up, a constructed or reconstructed major source which is subject to the requirements of this rule shall be in compliance with all applicable requirements specified in the MACT determination.

(i) Compliance with MACT determinations.

1. An owner or operator of a constructed or reconstructed major source that is subject to a MACT determination shall comply with all requirements in the final Major Source Operating Permit (in those instances where the owner or operator either is required or elects to obtain such a permit before construction or reconstruction), or other permit issued pursuant to this rule, including but not limited to any MACT emission limitation or MACT work practice standard, and any notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements.

2. An owner or operator of a constructed or reconstructed major source which has obtained a MACT determination shall be deemed to be in compliance with Section 112(g)(2)(B) of the Act and this rule only to the extent that the constructed or reconstructed major source is in compliance with all requirements set forth in the final Major Source Operating Permit (in those instances where the owner or operator either is required or elects to obtain such a permit before construction or reconstruction), or other permit issued pursuant to this rule. Any violation of such requirements by the owner or operator shall be deemed by the Department and by EPA to be a violation of the prohibition on construction or reconstruction in Section 112(g)(2)(B) and this rule for whatever period the owner or operator is determined to be in violation of such requirements, and shall subject the owner or operator to appropriate enforcement action under the Act.

(4) Requirements for Constructed or Reconstructed Major Sources Subject to a Subsequently Promulgated MACT Standard or MACT Requirement.

(a) If the Administrator promulgates an emission standard under Section 112(d) or Section 112(h) of the Act or the Department issues a determination under Section 112(j) of the Act [40 CFR 63, Subpart B, as incorporated by reference in rule 335-3-11-.06(1)] that is applicable to a stationary source or group of sources which would be deemed to be a constructed or reconstructed major source under this rule before the date that the owner or operator has obtained a final and legally effective MACT determination pursuant to this rule, the owner or operator of the source(s) shall comply with the promulgated standard or determination rather than any MACT determination under this rule, and the owner or operator shall comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates an emission standard under Section 112(d) or Section 112(h) of the Act or the Department makes a determination under Section 112(j) of the Act [40 CFR 63, Subpart B, as incorporated by reference in rule 335-3-11-.06(1)] that is applicable to a stationary source or group of sources which was deemed to be a constructed or reconstructed major source under this rule and has been subject to a prior case-by-case MACT determination pursuant to this rule, and the owner and operator obtained a final and legally effective case-by-case MACT determination prior to the promulgation date of such emission standard, then the Department shall (if the initial Major Source Operating Permit has not yet been issued) issue an initial operating permit which incorporates the emission standard or determination, or shall (if the initial Major Source Operating Permit has been issued) revise the operating permit according to the reopening procedures in chapter 335-3-16 to incorporate the emission standard or determination.

1. The EPA may include in the emission standard established under Section 112(d) or Section 112(h) of the Act a specific compliance date for those sources which have obtained a final and legally effective MACT determination under this rule and which have submitted the information required by paragraph (3) of this rule to the EPA before the close of the public comment period for the standard established under Section 112(d) of the Act. Such date shall assure that the owner or operator shall comply with the promulgated standard as expeditiously as practicable, but not longer than 8 years after such standard is promulgated. In that event, the Department shall incorporate the applicable compliance date in the Major Source Operating Permit.

2. If no compliance date has been established in the promulgated Section 112(d) or 112(h) standard or Section 112(j) determination [40 CFR 63, Subpart B, as incorporated by reference in rule 335-3-11-.06(1)], for those sources which have obtained a final and legally effective MACT determination under this rule, then the Department shall establish a compliance date in the permit that assures that the owner or operator shall comply with the promulgated standard or determination as expeditiously as practicable, but not longer than 8 years after such standard is promulgated or a Section 112(j) determination [40 CFR 63, Subpart B, as incorporated by reference in rule 335-3-11-.06(1)] is made.

(c) Notwithstanding the requirements of subparagraphs (a) and (b) of this paragraph, if the Administrator promulgates an emission standard under Section 112(d) or Section 112(h) of the Act or the Department issues a determination under Section 112(j) of the Act [40 CFR 63, Subpart B, as incorporated by reference in rule 335-3-11-.06(1)] that is applicable to a stationary source or group of sources which was deemed to be a constructed or reconstructed major source under this rule and which is the subject of a prior case-by-case MACT determination pursuant to paragraph (3) of this rule, and the level of control required by the emission standard issued under Section 112(d) or Section 112(h) or the determination issued under Section 112(j) [40 CFR 63, Subpart B, as incorporated by reference in rule 335-3-11-.06(1)] is less stringent than the level of control required by any emission limitation or standard in the prior MACT determination, the Department is not required to incorporate any less stringent terms of the promulgated standard in the Major Source Operating Permit applicable to such source(s) and may in its discretion consider any more stringent provisions of the prior MACT determination to be applicable legal requirements when issuing or revising such an operating permit.

**Author:** Ronald W. Gore.

**Statutory Authority:** Code of Alabama 1975, §§22-28-11, 22-28-14, 22-28-16, 22-22A-5.

**History:** Effective Date: March 27, 1998.

**Amended:** September 7, 2000-;XXXXXX, 2017.