

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

X New 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 rule have an economic impact? YES

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.

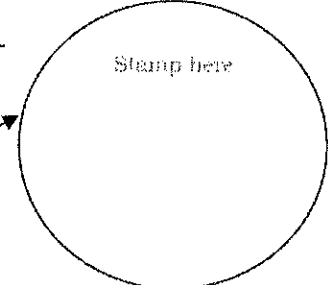
Certification of Authorized Official

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 Reference Service.

Signature of certifying officer Mandy Elliott

Date 07-20-2015

Date Filed



APA-2
11/96

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
AIR DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: Environmental Management

- RULE NO. & TITLE:** Division 335-3, Air Pollution Control Program
- 335-3-8-.07 - TR NOX Annual Trading Program-Purpose and Definitions (New)
 - 335-3-8-.08 - TR NOX Annual Trading Program- Applicability (New)
 - 335-3-8-.09 - TR NOX Annual Trading Program – Retired Unit Exemption (New)
 - 335-3-8-.10 - TR NOX Annual Trading Program – Standard Requirements (New)
 - 335-3-8-.11 - TR NOX Annual Trading Program – Computation of Time (New)
 - 335-3-8-.12 - Administrative Appeal Procedures (New)
 - 335-3-8-.13 - NOX Annual Trading Budgets and Variability Limits (New)
 - 335-3-8-.14 - TR NOX Annual Allowance Allocations (New)
 - 335-3-8-.16 - Authorization of Designated Representative and Alternate Designated Representative (New)
 - 335-3-8-.17 - Responsibilities of Designated Representative and Alternate Designated Representative (New)
 - 335-3-8-.18 - Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source (New)
 - 335-3-8-.19 - Certificate of Representation(New)
 - 335-3-8-.20 - Objections Concerning Designated Representative and Alternate Designated Representative (New)
 - 335-3-8-.21 - Delegation by Designated Representative and Alternate Designated Representative (New)
 - 335-3-8-.23 - Establishment of Compliance Accounts, Assurance Accounts, and General Accounts (New)
 - 335-3-8-.24 - Recordation of TR NOX Annual Allowance Allocations and Auction Results (New)
 - 335-3-8-.25 - Submission of TR NOX Annual Allowance Transfers (New)
 - 335-3-8-.26 - Recordation of TR NOX Annual Allowance Transfers (New)
 - 335-3-8-.27 - Compliance with TR NOX Annual Emissions Limitation (New)
 - 335-3-8-.28 - Compliance with TR NOX Annual Assurance Provisions (New)
 - 335-3-8-.29 - Banking (New)

- 335-3-8-.30 - Account Error (New)
- 335-3-8-.31 - Administrator's Action on Submissions (New)
- 335-3-8-.33 - General Monitoring, Recordkeeping, and Reporting Requirements (New)
- 335-3-8-.34 - Initial Monitoring System Certification and Recertification Procedures (New)
- 335-3-8-.35 - Monitoring System Out-of-Control Periods (New)
- 335-3-8-.36 - Notifications Concerning Monitoring (New)
- 335-3-8-.37 - Recordkeeping and Reporting (New)
- 335-3-8-.38 - Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements (New)
- 335-3-8-.39 - TR NOX Ozone Season Trading Program – Purpose and Definitions(New)
- 335-3-8-.40 - TR NOX Ozone Season Trading Program – Applicability (New)
- 335-3-8-.41 - TR NOX Ozone Season Trading Program – Retired Unit Exemption (New)
- 335-3-8-.42 - TR NOX Ozone Season Trading Program – Standard Requirements (New)
- 335-3-8-.43 - TR NOX Ozone Season Trading Program – Computation of Time (New)
- 335-3-8-.44 - Administrative Appeal Procedures (New)
- 335-3-8-.45 - NOX Ozone Season Trading Budgets and Variability Limits (New)
- 335-3-8-.46 - TR NOX Ozone Season Allowance Allocations (New)
- 335-3-8-.47 - Reserved (New)
- 335-3-8-.48 - Authorization of Designated Representative and Alternate Designated Representative (New)
- 335-3-8-.49 - Responsibilities of Designated Representative and Alternate Designated Representative (New)
- 335-3-8-.50 - Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source (New)
- 335-3-8-.51 - Certificate of Representation (New)
- 335-3-8-.52 - Objections Concerning Designated Representative and Alternate Designated Representative (New)
- 335-3-8-.53 - Delegation by Designated Representative and Alternate Designated Representative (New)
- 335-3-8-.54 - Reserved (New)
- 335-3-8-.55 - Establishment of Compliance Accounts, Assurance Accounts, and General Accounts (New)
- 335-3-8-.56 - Recordation of TR NOX Ozone Season Allowance Allocations and Auction Results (New)
- 335-3-8-.57 - Submission of TR NOX Ozone Season Allowance Transfers (New)
- 335-3-8-.58 - Recordation of TR NOX Ozone Season Allowance Transfers (New)
- 335-3-8-.59 - Compliance with TR NOX Ozone Season Emissions Limitation (New)

- 335-3-8-.60 - Compliance with TR NOX Ozone Season Assurance Provisions (New)
- 335-3-8-.61 - Banking (New)
- 335-3-8-.62 - TR NOX Ozone Season Trading Program – Account Error (New)
- 335-3-8-.63 - TR NOX Ozone Season Trading Program – Administrator’s Action on Submissions (New)
- 335-3-8-.64 - Reserved (New)
- 335-3-8-.65 - General Monitoring, Recordkeeping, and Reporting Requirements (New)
- 335-3-8-.66 - Initial Monitoring System Certification and Recertification Procedures (New)
- 335-3-8-.67 - Monitoring System Out-of-Control Periods (New)
- 335-3-8-.68 - Notifications Concerning Monitoring (New)
- 335-3-8-.69 - Recordkeeping and Reporting (New)
- 335-3-8-.70 - Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements (New)

INTENDED ACTION: Revise Division 3 of the ADEM Administrative Code with the adoption of Rules 335-3-8-.07 (TR NOX Annual Trading Program-Purpose and Definitions), 335-3-8-.08 (TR NOX Annual Trading Program- Applicability), 335-3-8-.09 (TR NOX Annual Trading Program – Retired Unit Exemption), 335-3-8-.10 (TR NOX Annual Trading Program – Standard Requirements), 335-3-8-.11 (TR NOX Annual Trading Program – Computation of Time), 335-3-8-.12 (Administrative Appeal Procedures), 335-3-8-.13 (NOX Annual Trading Budgets and Variability Limits), 335-3-8-.14 (TR NOX Annual Allowance Allocations), 335-3-8-.16 (Authorization of Designated Representative and Alternate Designated Representative), 335-3-8-.17 (Responsibilities of Designated Representative and Alternate Designated Representative), 335-3-8-.18 (Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source), 335-3-8-.19 (Certificate of Representation), 335-3-8-.20 (Objections Concerning Designated Representative and Alternate Designated Representative), 335-3-8-.21 (Delegation by Designated Representative and Alternate Designated Representative), 335-3-8-.23 (Establishment of Compliance Accounts, Assurance Accounts, and General Accounts), 335-3-8-.24 (Recordation of TR NOX Annual Allowance Allocations and Auction Results), 335-3-8-.25 (Submission of TR NOX Annual Allowance Transfers), 335-3-8-.26 (Recordation of TR NOX Annual Allowance Transfers), 335-3-8-.27 (Compliance with TR NOX Annual Emissions Limitation), 335-3-8-.28 (Compliance with TR NOX Annual Assurance Provisions), 335-3-8-.29 (Banking), 335-3-8-.30 (Account Error), 335-3-8-.31 (Administrator’s Action on Submissions), 335-3-8-.33 (General Monitoring, Recordkeeping, and Reporting Requirements), 335-3-8-.34 (Initial Monitoring System Certification and Recertification Procedures), 335-3-8-.35 (Monitoring System Out-of-Control Periods), 335-3-8-.36 (Notifications Concerning Monitoring), 335-3-8-.37 (Recordkeeping and Reporting), 335-3-8-.38 (Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements), 335-3-8-.39 (TR NOX Ozone Season Trading Program – Purpose and Definitions), 335-3-8-.40 (TR NOX Ozone Season Trading Program – Applicability), 335-3-8-.41 (TR NOX Ozone Season Trading Program – Retired Unit Exemption), 335-3-8-.42 (TR NOX Ozone Season Trading Program – Standard Requirements), 335-3-8-

.43 (TR NOX Ozone Season Trading Program – Computation of Time), 335-3-8-.44 (Administrative Appeal Procedures), 335-3-8-.45 (NOX Ozone Season Trading Budgets and Variability Limits), 335-3-8-.46 (TR NOX Ozone Season Allowance Allocations), 335-3-8-.47 (Reserved), 335-3-8-.48 (Authorization of Designated Representative and Alternate Designated Representative), 335-3-8-.49 (Responsibilities of Designated Representative and Alternate Designated Representative), 335-3-8-.50 (Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source), 335-3-8-.51 (Certificate of Representation), 335-3-8-.52 (Objections Concerning Designated Representative and Alternate Designated Representative), 335-3-8-.53 (Delegation by Designated Representative and Alternate Designated Representative), 335-3-8-.54 (Reserved), 335-3-8-.55 (Establishment of Compliance Accounts, Assurance Accounts, and General Accounts), 335-3-8-.56 (Recordation of TR NOX Ozone Season Allowance Allocations and Auction Results), 335-3-8-.57 (Submission of TR NOX Ozone Season Allowance Transfers), 335-3-8-.58 (Recordation of TR NOX Ozone Season Allowance Transfers), 335-3-8-.59 (Compliance with TR NOX Ozone Season Emissions Limitation), 335-3-8-.60 (Compliance with TR NOX Ozone Season Assurance Provisions), 335-3-8-.61 (Banking), 335-3-8-.62 (TR NOX Ozone Season Trading Program – Account Error), 335-3-8-.63 (TR NOX Ozone Season Trading Program – Administrator’s Action on Submissions), 335-3-8-.64 (Reserved), 335-3-8-.65 (General Monitoring, Recordkeeping, and Reporting Requirements), 335-3-8-.66 (Initial Monitoring System Certification and Recertification Procedures), 335-3-8-.67 (Monitoring System Out-of-Control Periods), 335-3-8-.68 (Notifications Concerning Monitoring), 335-3-8-.69 (Recordkeeping and Reporting), 335-3-8-.70 (Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements).

SUBSTANCE OF PROPOSED ACTION:

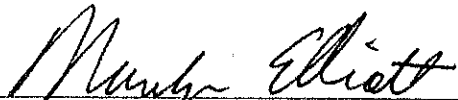
Revisions to the Division 3 Code are being proposed to add Rules 335-3-8-.07, 335-3-8-.08, 335-3-8-.09, 335-3-8-.10, 335-3-8-.11, 335-3-8-.13, 335-3-8-.14, 335-3-8-.16, 335-3-8-.17, 335-3-8-.18, 335-3-8-.19, 335-3-8-.20, 335-3-8-.21, 335-3-8-.23, 335-3-8-.24, 335-3-8-.25, 335-3-8-.26, 335-3-8-.27, 335-3-8-.28, 335-3-8-.29, 335-3-8-.30, 335-3-8-.31, 335-3-8-.33, 335-3-8-.34, 335-3-8-.35, 335-3-8-.36, 335-3-8-.37, 335-3-8-.38, 335-3-8-.39, 335-3-8-.40, 335-3-8-.41, 335-3-8-.42, 335-3-8-.43, 335-3-8-.44, 335-3-8-.45, 335-3-8-.46, 335-3-8-.47, 335-3-8-.48, 335-3-8-.49, 335-3-8-.50, 335-3-8-.51, 335-3-8-.52, 335-3-8-.53, 335-3-8-.54, 335-3-8-.55, 335-3-8-.56, 335-3-8-.57, 335-3-8-.58, 335-3-8-.59, 335-3-8-.60, 335-3-8-.61, 335-3-8-.62, 335-3-8-.63, 335-3-8-.64, 335-3-8-.65, 335-3-8-.66, 335-3-8-.67, 335-3-8-.68, 335-3-8-.69, and 335-3-8-.70 in order to incorporate provisions for the control of nitrogen oxides emissions from specified categories as required by the Environmental Protection Agency’s Cross-State Air Pollution Rule (CSAPR) as promulgated August 8, 2011 (76 FR 48208) and revised on December 3, 2014 (79 FR 71663). This adoption allows the Department to retain State primacy in the implementation of the regulations. Revisions to this Chapter 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., September 9, 2015, in ADEM Hearing Room, 1400 Coliseum Blvd., Montgomery, Alabama 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: September 11, 2015

CONTACT PERSON AT AGENCY: Chris Howard (334) 271-7878



Lance R. LeFleur
Director

335-3-8-.40 TR NO_x Ozone Season Trading Program – Applicability. [NEW RULE]

(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_x Ozone Season units, and any source that includes one or more such units shall be a TR NO_x Ozone Season 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_x Ozone Season 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_x Ozone Season 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_x Ozone Season 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_x Ozone Season 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_x Ozone Season 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_x Ozone Season 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_x Ozone Season 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_x Ozone Season 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_x Ozone Season 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_x Ozone Season 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_x Ozone Season 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: XXXXXX, 2016.

incorporate the requirements of federal regulations, as required by the Environmental Protection Agency (EPA). Through the adoption of these regulations, the Alabama Department of Environmental Management is given primacy to implement the regulations at the state level. In the event that these regulations are not implemented by the State, the EPA will implement the requirements on the federal level.

1. NEED/EXPECTED BENEFIT OF RULE:

These revisions are necessary to incorporate EPA's provisions for the control of nitrogen oxide emissions from specified categories of stationary sources as promulgated August 8, 2011 (76 FR 48208) and revised on December 3, 2014 (79 FR 71663). EPA has made a finding that 27 States and the District of Columbia contributed significantly to nonattainment of the national ambient air quality standards (NAAQS) for fine particles (PM2.5) and/or ozone in downwind States. EPA expects the benefit of this rule will assist the downwind PM2.5 and ozone nonattainment areas in achieving the NAAQS. Moreover, attainment will be achieved in a more equitable, cost-effective manner than if each nonattainment area attempted to achieve attainment by implementing local emissions reductions alone. EPA is presently implementing CSAPR through a Federal Implementation Plan (FIP). As discussed above, adoption of the federal requirements through these regulations will allow the Department to retain State primacy in the implementation and enforcement of the regulations rather than defaulting to regulation by the federal government.

2. COST/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:

The cost/benefits of this Rule are provided in EPA's regulatory impact analysis and the promulgated Rule in 76 FR 48208.

The costs are equivalent to the cost of compliance with the same regulations implemented by the federal government. Sources of air pollution will be subject to the same requirements for installation of controls to prevent the emissions of air pollution regardless of which agency (state or federal) implements these regulations.

3. EFFECT OF THIS RULE ON COMPETITION:

As stated above, if the regulations are not implemented by the State of Alabama, they will be implemented on the federal level and Alabama companies will be required to comply with the federal regulations and answer directly to the federal Environmental Protection Agency.

4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

As stated above, if the regulations are not implemented and enforced by the State of Alabama, they will be implemented on the federal level. Therefore, Alabama companies still would be required to comply with the federal regulations and answer directly to the federal Environmental Protection Agency.

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

Adoption of these federally required regulations is not expected to have any effect on the employment in the geographical area in which the regulation would be implemented (State of Alabama).

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

Moneys from the Federal Grant, and fines and fees collected by the Department will fund the adoption of this regulation. For sources subject to Title V of the Clean Air Act, as amended, fees are collected based on the amount of air pollution emitted annually.

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

As stated above, if the regulations are not implemented by the State of Alabama, they will be implemented on the federal level. Alabama companies would still be required to comply with the federal regulations and answer directly to the federal Environmental Protection Agency.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

No additional burdens are expected as a result of the adoption of these regulations. If the regulations are not adopted by the State of Alabama, they will be implemented on the federal level. Alabama companies would still be required to comply with the federal regulations and answer directly to the federal Environmental Protection Agency.

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

The effect of the regulation on the environment and public health is addressed in the Federal Register (76 FR 48208), August 8, 2011, that is the basis for these proposed rules.

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

The benefits of the proposed regulations have been discussed in the above paragraphs as well as the Federal Register (see No. 9). Through the adoption of these regulations, ADEM will have primacy to implement the regulations at the State level. In the event that the regulations are not adopted at the State level, the requirements will still exist at the federal level. However, it is generally acknowledged that regulations are implemented and enforced in a more effective and efficient manner at the State level than at the federal level.