

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management
Rule No. 335-3-8-.05
Rule Title: NOx Budget Trading Program

X New Amend X Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? NO

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 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.

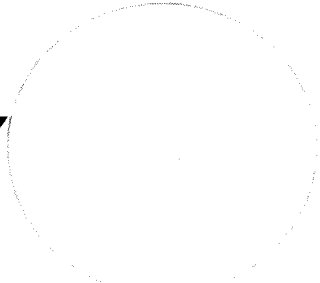
Certification of Authorized Official

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 Reference Service.

Signature of certifying officer Mandy Elliott

Date September 20, 2011

Date Filed



**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
AIR DIVISION**

NOTICE OF INTENDED ACTION

AGENCY NAME: Department of Environmental Management

RULE NO. & TITLE:

335-3-8-.05	<u>NO_x Budget Trading Program</u> (Repeal/New)
335-3-8-.06	<u>Authorized Account Representative for NO_x Budget Sources</u> (Repeal/New)
335-3-8-.07	<u>Permits</u> (Repeal)
335-3-8-.08	<u>Compliance Certification</u> (Repeal)
335-3-8-.09	<u>NO_x Allowance Allocations</u> (Repeal)
335-3-8-.10	<u>NO_x Allowance Tracking System</u> (Repeal)
335-3-8-.11	<u>NO_x Allowance Transfers</u> (Repeal)
335-3-8-.12	<u>Monitoring and Reporting</u> (Repeal)
335-3-8-.13	<u>Individual Unit Opt Ins</u> (Repeal)
335-3-8-.14	<u>New Combustion Sources</u> (Repeal/New)
335-3-8-.15	<u>Standards for New Combined Cycle Electric Generating Units</u> (Repeal/New)
335-3-8-.16	<u>CAIR NO_x Annual Trading Program</u> (Repeal)
335-3-8-.17	<u>CAIR Designated Representative for CAIR NO_x Sources</u> (Repeal)
335-3-8-.18	<u>CAIR Permits</u> (Repeal)
335-3-8-.20	<u>CAIR NO_x Allowance Allocations</u> (Repeal)
335-3-8-.21	<u>CAIR NO_x Allowance Tracking System</u> (Repeal)
335-3-8-.22	<u>CAIR NO_x Allowance Transfers</u> (Repeal)
335-3-8-.23	<u>CAIR Monitoring and Reporting</u> (Repeal)
335-3-8-.24	<u>CAIR NO_x Opt-in Units</u> (Repeal)
335-3-8-.25	<u>CAIR NO_x Ozone Season Trading Program</u> (Repeal)
335-3-8-.26	<u>CAIR Designated Representative for CAIR NO_x Ozone Season Sources</u> (Repeal)
335-3-8-.27	<u>CAIR NO_x Ozone Season Permits</u> (Repeal)
335-3-8-.29	<u>CAIR NO_x Ozone Season Allowance Allocations</u> (Repeal)
335-3-8-.30	<u>CAIR NO_x Ozone Season Allowance Tracking System</u> (Repeal)
335-3-8-.31	<u>CAIR NO_x Ozone Season Allowance Transfers</u> (Repeal)
335-3-8-.32	<u>CAIR NO_x Ozone Season Monitoring and Reporting</u> (Repeal)
335-3-8-.33	<u>CAIR NO_x Ozone Season Opt-in Units</u> (Repeal)

INTENDED ACTION: Revise Division 3 of the ADEM Administrative Code with the deletion of Rules 335-3-8-.05 (NO_x Budget Trading Program); 335-3-8-.06 (Authorized Account Representative for NO_x Budget Sources); 335-3-8-.07 (Permits); 335-3-8-.08 (Compliance Certification); 335-3-8-.09 (NO_x Allowance Allocations); 335-3-8-.10 (NO_x Allowance Tracking

System); 335-3-8-.11 (NO_x Allowance Transfers); 335-3-8-.12 (Monitoring and Reporting); 335-3-8-.13 (Individual Unit Opt Ins); 335-3-8-.16 (CAIR NO_x Annual Trading Program); 335-3-8-.17 (CAIR Designated Representative for CAIR NO_x Sources); 335-3-8-.18 (CAIR Permits); Rule 335-3-8-.20 (CAIR NO_x Allowance Allocations); 335-3-8-.21 (CAIR NO_x Allowance Tracking System); Rule 335-3-8-.22 (CAIR NO_x Allowance Transfers); 335-3-8-.23 (CAIR Monitoring and Reporting); Rule 335-3-8-.24 (CAIR NO_x Opt-in Units); 335-3-8-.25 (CAIR NO_x Ozone Season Trading Program); Rule 335-3-8-.26 (CAIR Designated Representative for CAIR NO_x Ozone Season Sources); Rule 335-3-8-.27 (CAIR NO_x Ozone Season Permits); Rule 335-3-8-.29 (CAIR NO_x Ozone Season Allowance Allocations); 335-3-8-.30 (CAIR NO_x Ozone Season Allowance Tracking System); Rule 335-3-8-.31 (CAIR NO_x Ozone Season Allowance Transfers); 335-3-8-.32 (CAIR NO_x Ozone Season Monitoring and Reporting); and 335-3-8-.33 (CAIR NO_x Ozone Season Opt-in Units). Rules 334-3-8-.14 (New Combustion Sources) and 334-3-8-.15 (Standards for New Combined Cycle Electric Generating Units) are being relocated to 335-3-8-.05 and 335-3-8-.06; respectively.

SUBSTANCE OF PROPOSED ACTION:


Revisions to the Division 3 Code are being proposed to delete Rules 335-3-8-.05; 335-3-8-.06; 335-3-8-.07; 335-3-8-.08; 335-3-8-.09; 335-3-8-.10; 335-3-8-.11; 335-3-8-.12; 335-3-8-.13; 335-3-8-.14; 335-3-8-.15; 335-3-8-.16; 335-3-8-.17; 335-3-8-.18; 335-3-8-.20; 335-3-8-.21; 335-3-8-.22; 335-3-8-.23; 335-3-8-.24; 335-3-8-.25; 335-3-8-.26; 335-3-8-.27; 335-3-8-.29; 335-3-8-.30; 335-3-8-.31; 335-3-8-.32; and 335-3-8-.33 in order to be consistent with Federal Rules. Rules 334-3-8-.14 (New Combustion Sources); and 334-3-8-.15 (Standards for New Combined Cycle Electric Generating Units) are being relocated to 335-3-8-.05 and 335-3-8-.06; respectively.

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., November 9, 2011, in the ADEM Hearing Room, 1400 Coliseum Blvd., Montgomery, Alabama 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: November 10, 2011.

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



Lance R. Lefleur
Director

335-3-8-.05 REPEAL NO_x Budget Trading Program.

~~(1) Purpose. Rules 335-3-8-.05 through 335-3-8-.13 establish general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NO_x Budget Trading Program for Alabama's State Implementation Plan as a means of mitigating the interstate transport of ozone and nitrogen oxides pursuant to 40 CFR, § 51.121 and 51.122. The State authorizes the Administrator to assist the State in implementing the NO_x Budget Trading Program by carrying out the functions set forth for the Administrator in such requirements.~~

~~(a) The provisions of rules 335-3-8-.05 through 335-3-8-.13 shall not apply to the control period beginning in 2009 and any control period thereafter.~~

~~(2) Definitions. For the purpose of rules 335-3-8-.05 through 335-3-8-.13, the following definitions apply:~~

~~(a) "Account Certificate of Representation" means the completed and signed submission required by rule 335-3-8-.06 for certifying the designation of a NO_x authorized account representative for a NO_x Budget source or a group of identified NO_x Budget sources who is authorized to represent the owners and operators of such source or sources and of the NO_x Budget units at such source or sources with regard to matters under the NO_x Budget Trading Program.~~

~~(b) "Account Number" means the identification number given by the Administrator to each NO_x Allowance Tracking System account.~~

~~(c) "Acid Rain Emissions Limitation" means, as defined in 40 CFR, § 72.2 and incorporated by reference in ADEM Admin. Code r. 335-3-18-.01, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under Title IV of the CAA.~~

~~(d) "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.~~

~~(e) "Allocate or Allocation" means the determination by the Department or the Administrator of the number of NO_x allowances to be initially credited to a NO_x Budget unit.~~

~~(f) "Automated Data Acquisition and Handling System or DAHS" means that component of the CEMS, or other emissions monitoring system approved for use under rule 335-3-8-.12, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by rule 335-3-8-.12.~~

~~(g) "Boiler" means an enclosed fossil or other fuel fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.~~

~~(h) "CAA" means the CAA, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101-549 (November 15, 1990).~~

~~(i) "Cogeneration Combined Cycle System" means a combined cycle system that has equipment used to produce electricity and forms the useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes through the sequential use of energy.~~

~~(j) "Combined Cycle System" means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.~~

~~(k) "Combustion Turbine" means an enclosed fossil or other fuel fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.~~

~~(l) "Commence Commercial Operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in paragraph (5) of this rule, for a unit that is a NO_x Budget unit under paragraph (4) of this rule on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or re-powered. Except as provided in paragraph (5) of this rule or rule 335-3-8-13, for a unit that is not a NO_x Budget unit under paragraph (4) of this rule on the date the unit commences commercial operation, the date the unit becomes a NO_x Budget unit under paragraph (4) of this rule shall be the unit's date of commencement of commercial operation.~~

~~(m) "Commence Operation" means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start up of a unit's combustion chamber. Except as provided in paragraph (5) of this rule, for a unit that is a NO_x Budget unit under paragraph (4) of this rule on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or re-powered. Except as provided in paragraph (5) of this rule or rule 335-3-8-13, for a unit that is not a NO_x Budget unit under paragraph (4) of this rule on the date of commencement of operation, the date the unit becomes a NO_x Budget unit under paragraph (4) of this rule shall be the unit's date of commencement of operation.~~

~~(n) "Common Stack" means a single flue through which emissions from two or more units are exhausted.~~

~~(o) "Compliance Account" means a NO_x Allowance Tracking System account, established by the Administrator for a NO_x Budget unit under rule 335-3-8-10, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for a control period for the purpose of meeting the unit's NO_x Budget emissions limitation.~~

~~(p) "Compliance Certification" means a submission to the Department or the Administrator, as appropriate, that is required under rule 335-3-8-08 to report a NO_x Budget source's or a NO_x Budget unit's compliance or noncompliance with this rule and that is signed by the NO_x authorized account representative in accordance with rule 335-3-8-06.~~

~~(q) "Continuous Emission Monitoring System or CEMS" means the equipment required under rule 335-3-8-12 to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with 40 CFR 75, in a continuous emission monitoring system:~~

- ~~1. Flow monitor;~~
- ~~2. Nitrogen oxides pollutant concentration monitors;~~
- ~~3. Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by rule 335-3-8-12;~~
- ~~4. A continuous moisture monitor when such monitoring is required by rule 335-3-8-12; and~~
- ~~5. An automated data acquisition and handling system.~~

~~(r) "Control Period" means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.~~

~~(s) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Department and the Administrator by the NO_x authorized account representative and as determined by the Administrator in accordance with rule 335-3-8-12.~~

~~(t) "Energy Information Administration" means the Energy Information Administration of the United States Department of Energy.~~

~~(u) "Excess Emissions" means any tonnage of nitrogen oxides emitted by a NO_x Budget unit during a control period that exceeds the NO_x Budget emissions limitation for the unit.~~

~~(v) "Fossil Fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material. Fossil fuel fired means, with regard to a unit:~~

~~1. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or~~

~~2. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year; provided that the unit shall be "fossil fuel fired" as of the date, during such year, on which the unit begins combusting fossil fuel.~~

~~(w) "General Account" means a NO_x Allowance Tracking System account, established under rule 335 3 8 .10, that is not a compliance account or an overdraft account.~~

~~(x) "Generator" means a device that produces electricity.~~

~~(y) "Heat Input" means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the Administrator by the NO_x authorized account representative and as determined by the Department and the Administrator in accordance with rule 335 3 8 .12, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.~~

~~(z) "Life of the Unit, Firm Power Contractual Arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:~~

- ~~1. For the life of the unit;~~
- ~~2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or~~
- ~~3. For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.~~

~~(aa) "Maximum Design Heat Input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.~~

~~(bb) "Maximum Potential Hourly Heat Input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR 75 to report heat input, this value should be calculated, in accordance with 40 CFR 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit~~

intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR 75, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).

~~(cc) "Maximum Potential NO_x Emission Rate" means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with paragraph 3 of Appendix F of 40 CFR 75, using the maximum potential nitrogen oxides concentration as defined in paragraph 2 of Appendix A of 40 CFR 75, and either the maximum oxygen concentration (in percent O₂) or the minimum carbon dioxide concentration (in percent CO₂), under all operating conditions of the unit except for unit start up, shutdown, and upsets.~~

~~(dd) "Maximum Rated Hourly Heat Input" means a unit specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.~~

~~(ee) "Monitoring System" means any monitoring system that meets the requirements of rule 335 3 8 .12, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.~~

~~(ff) "Most Stringent State or Federal NO_x Emissions Limitation" means, with regard to a NO_x Budget opt in source, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.~~

~~(gg) "Nameplate Capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.~~

~~(hh) "Non title V Permit" shall have the same meaning as either an "Air Permit" issued pursuant to the rules in chapter 335 3 14 or "Synthetic Minor Operating Permit" defined in chapter 335 3 15.~~

~~(ii) "NO_x Allowance" means an authorization by the Department or the Administrator under a NO_x Budget Trading Program established, and approved by the Administrator pursuant to 40 CFR, § 51.121 or § 52.34 to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter, except as provided under rule 335 3 8 .10(6)(b).~~

~~(jj) "NO_x Allowance Deduction or Deduct NO_x Allowances" means the permanent withdrawal of NO_x allowances by the Administrator from a NO_x Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO_x emissions from a NO_x Budget unit for a control period, determined in accordance with rule 335 3 8 .12, or for any other allowance surrender obligation under rules 335 3 8 .05 through 335 3 8 .13.~~

~~(lkk) "NO_x Allowances Held or Hold NO_x Allowances" means the NO_x allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with rules 335 3 8 .10 and 335 3 8 .11, in a NO_x Allowance Tracking System account.~~

~~(ll) "NO_x Allowance Tracking System" means the system by which the Administrator records allocations, deductions, and transfers of NO_x allowances under the NO_x Budget Trading Program.~~

~~(lmm) "NO_x Allowance Tracking System Account" means an account in the NO_x Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.~~

~~(l nn) "NO_x Allowance Transfer Deadline" means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x Budget emissions limitation for the control period immediately preceding such deadline.~~

~~(loo) "NO_x Authorized Account Representative" means, for a NO_x Budget source or NO_x Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x Budget units at the source, in accordance with rule 335 3 8 .06, to represent and legally bind each owner and operator in matters pertaining to the NO_x Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with rule 335 3 8 .10, to transfer or otherwise dispose of NO_x allowances held in the general account.~~

~~(lpp) "NO_x Budget Emissions Limitation" means, for a NO_x Budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit under rule 335 3 8 .10(5)(a), (b), (c), and (f) in a control period adjusted by deductions of such NO_x allowances to account for excess emissions for a prior control period under rule 335 3 8 .10(5)(d) or, for a NO_x Budget opt in source, to account for withdrawal from the NO_x Budget Program under rule 335 3 8 .13(7), or for a change in regulatory status for a NO_x Budget opt in source under rule 335 3 8 .13(8).~~

~~(lqq) "NO_x Budget Opt in Permit" means a NO_x Budget permit covering a NO_x Budget opt in source.~~

~~(lrr) "NO_x Budget Opt in Source" means a unit that elects to become a NO_x Budget unit under the NO_x Budget Trading Program and whose NO_x Budget opt in permit has been issued and is in effect under rule 335 3 8 .13.~~

~~(lss) "NO_x Budget Permit" means the legally binding and enforceable written document, or portion of such document, issued by the Department under rules 335 3 8 .05 through 335 3 8 .13, including any permit revisions,~~

~~specifying the NO_x Budget Trading Program requirements applicable to a NO_x Budget source, to each NO_x Budget unit at the NO_x Budget source, and to the owners and operators and the NO_x authorized account representative of the NO_x Budget source and each NO_x Budget unit.~~

~~(tt) "NO_x Budget Source" means a source that includes one or more NO_x Budget units.~~

~~(uu) "NO_x Budget Trading Program" means a multi state nitrogen oxides air pollution control and emission reduction program established pursuant to 40 CFR § 51.121, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.~~

~~(vv) "NO_x Budget Unit" means a unit that is subject to the NO_x Budget Trading Program emissions limitation under paragraph (4) of this rule or rule 335 3 8 .13.~~

~~(ww) "Operating" means, with regard to a unit under rules 335 3 8 .07(3)(d)2. and 335 3 8 .13(1), having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NO_x Budget permit under rule 335 3 8 .13(4)(a).~~

~~(xx) "Operator" means any person who operates, controls, or supervises a NO_x Budget unit, a NO_x Budget source, or unit for which an application for a NO_x Budget opt in permit under rule 335 3 8 .13(4) is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.~~

~~(yy) "Opt in" means to elect to become a NO_x Budget unit under the NO_x Budget Trading Program through a final, effective NO_x Budget opt in permit under rule 335 3 8 .13.~~

~~(zz) "Overdraft Account" means the NO_x Allowance Tracking System account, established by the Administrator under rule 335 3 8 .10, for each NO_x Budget source where there are two or more NO_x Budget units.~~

~~(aaa) "Owner" means any of the following persons:~~

~~1. Any holder of any portion of the legal or equitable title in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt in permit under rule 335 3 8 .13(4) is submitted and not denied or withdrawn; or~~

~~2. Any holder of a leasehold interest in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt in permit under rule 335 3 8 .13(4) is submitted and not denied or withdrawn; or~~

~~3. Any purchaser of power from a NO_x Budget unit or from a unit for which an application for a NO_x Budget opt in permit under rule 335 3 8 .13(4) is submitted and not denied or withdrawn under a life of the unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who~~

has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x Budget unit or the unit for which an application for a NO_x Budget opt-in permit under rule 335-3-8-.13(4) is submitted and not denied or withdrawn; or

4. With respect to any general account, any person who has an ownership interest with respect to NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.

(bbb) "Department" means the Alabama Department of Environmental Management authorized by the Administrator to issue or revise permits to meet the requirements of the NO_x Budget Trading Program in accordance with rule 335-3-8-.07.

(ccc) "Receive or Receipt of" means, when referring to the Department or the Administrator, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the Department or the Administrator in the regular course of business.

(ddd) "Recordation, Record, or Recorded" means, with regard to NO_x allowances, the movement of NO_x allowances by the Administrator from one NO_x Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.

(eee) "Reference Method" means any direct test method of sampling and analyzing for an air pollutant or diluent as specified in 40 CFR 60, Appendix A [incorporated by reference in ADEM Admin. Code r. 335-3-10-.03(1)].

(fff) "Serial Number" means, when referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the Administrator, under rule 335-3-8-.10(4)(c).

(ggg) "Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of paragraph 502(c) of the CAA, a "source", including a "source" with multiple units, shall be considered a single "facility".

(hhh) "State" means the State of Alabama, the Environmental Management Commission, and the Commission's representatives.

(iii) "State Trading Program Budget" means the total number of NO_x tons apportioned to all NO_x Budget units in the State, in accordance with the NO_x Budget Trading Program, for use in a given control period.

~~(jjj) "Submit or Serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:~~

- ~~1. In person;~~
- ~~2. By United States Postal Service; or~~
- ~~3. By other means of dispatch or transmission and delivery.~~

~~(i) Compliance with any "submission", "service", or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.~~

~~(kkk) "Title V Operating Permit" means a "Major Source Operating Permit" as defined and issued under chapter 335-3-16. Title V operating permit regulations means the Major Source Operating Permits regulations in chapter 335-3-16 that the Administrator has approved or issued as meeting the requirements of Title V of the CAA and 40 CFR 70 or 71.~~

~~(lll) "Ton or Tonnage" means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the NO_x Budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with rule 335-3-8-12, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.~~

~~(mmm) "Unit" means a fossil fuel fired stationary boiler, combustion turbine, combined cycle system, or cogeneration combined cycle system.~~

~~(nnn) "Unit Load" means the total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:~~

- ~~1. The total electrical generation (MWe) produced by the unit, including generation for use within the plant; or~~
- ~~2. In the case of a unit that uses heat input for purposes other than electrical generation, the total steam produced by the unit, including steam for use by the unit.~~

~~(ooo) "Unit Operating Day" means a calendar day in which a unit combusts any fuel.~~

~~(ppp) "Unit Operating Hour or Hour of Unit Operation" means any hour (or fraction of an hour) during which a unit combusts any fuel.~~

~~(qqq) "Utilization" means the heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year will be determined in accordance with 40 CFR 75 if the NO_x Budget 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.~~

~~(3) Measurements, Abbreviations, and Acronyms. Measurements, abbreviations, and acronyms used in this rule are defined as follows:~~

~~(a) Btu British thermal unit.~~

~~(b) hr hour.~~

~~(c) Kwh kilowatt hour.~~

~~(d) lb pounds.~~

~~(e) mmBtu million Btu.~~

~~(f) MWe megawatt electrical.~~

~~(g) ton 2000 pounds.~~

~~(h) CO₂ carbon dioxide.~~

~~(i) NO_x nitrogen oxides.~~

~~(j) O₂ oxygen.~~

~~(4) Applicability.~~

~~(a) The following units in the Counties of Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, Dallas, DeKalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Macon, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, Russell, Shelby, St. Clair, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston shall be NO_x Budget units, and any source that includes one or more such units shall be a NO_x Budget source, subject to the requirements of this rule:~~

~~1. Any unit that any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe and sells any amount of electricity; or,~~

~~2. Any unit that is not a unit under subparagraph (a)1. of this paragraph and that has a maximum design heat input greater than 250 mmBtu/hr.~~

~~(5) Retired Unit Exemption.~~

~~(a) This paragraph applies to any NO_x Budget unit, other than a NO_x Budget opt in source, that is permanently retired.~~

~~(b) Any NO_x Budget unit, other than a NO_x Budget opt in source, that is permanently retired shall be exempt from the NO_x Budget Trading Program, except for the provisions of this paragraph, paragraphs (2), (3), (4), and (7) of this rule and rules 335 3 8 .09, 335 3 8 .10, and 335 3 8 .11 of this Division.~~

~~1. The exemption under subparagraph (b) of this paragraph shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NO_x authorized account representative (authorized in accordance with rule 335 3 8 .06) shall submit a statement to the Department. A copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the Department) that the unit is permanently retired and will comply with the requirements of subparagraph (c) of this paragraph. After receipt of the notice under this subparagraph, the Department will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subparagraphs (b) and (c) of this paragraph.~~

~~(c) Special provisions.~~

~~1. A unit exempt under this paragraph shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.~~

~~2. The owners and operators of the unit will be allocated allowances in accordance with rule 335 3 8 .09(m). For each control period for which the retired unit has remaining, one or more NO_x allowances, the owners and operators of the unit shall specify a general account, in which the Administrator will record such NO_x allowances.~~

~~3. A unit exempt under this paragraph and located at a source that is required, or but for this exemption would be required, to have a major source (Title V) operating permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under rule 335 3 8 .07(3) for the unit not less than 18 months (or such lesser time provided under the Department's major source operating permits regulations for final action on a permit application) prior to the later of May 31, 2004 or the date on which the unit is to first resume operation.~~

~~4. A unit exempt under this paragraph and located at a source that is required, or but for this exemption would be required, to have a synthetic minor operating permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under rule 335 3 8 .07(3) for the unit not less than 18 months (or such lesser time provided under the Department's synthetic minor operating permits regulations for final action on a permit application) prior to the later of May 31, 2004 or the date on which the unit is to first resume operation.~~

~~5. The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under this paragraph shall comply with the requirements of the NO_x Budget Trading Program concerning~~

all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

~~6. A unit that is exempt under this paragraph is not eligible to be a NO_x Budget opt in source under rule 335 3 8 .13.~~

~~7. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this paragraph shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5 year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Department or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.~~

~~8. Loss of exemption.~~

~~(i) On the earlier of the following dates, a unit exempt under subparagraph (b) of this paragraph shall lose its exemption:~~

~~(I) The date on which the NO_x authorized account representative submits a NO_x Budget permit application under subparagraph (c)2. of this paragraph; or~~

~~(II) The date on which the NO_x authorized account representative is required under subparagraphs (c)3. and (c)4. of this paragraph to submit a NO_x Budget permit application.~~

~~(ii) For the purpose of applying monitoring requirements under rule 335 3 8 .12, a unit that loses its exemption under this paragraph shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.~~

~~(6) Standard Requirements.~~

~~(a) Permit Requirements.~~

~~1. The NO_x authorized account representative of each NO_x Budget source required to have an enforceable permit and each NO_x Budget unit required to have an enforceable permit at the source shall:~~

~~(i) Submit to the Department a complete NO_x Budget permit application under rule 335 3 8 .07(3) in accordance with the deadlines specified in rules 335 3 8 .07(2)(b), (c) and (d);~~

~~(ii) Submit in a timely manner any supplemental information that the Department determines is necessary in order to review a NO_x Budget permit application and issue or deny a NO_x Budget permit.~~

~~2. The owners and operators of each NO_x Budget source required to have an enforceable permit and each NO_x Budget unit required to have an~~

~~enforceable permit at the source shall have a NO_x Budget permit issued by the Department and operate the unit in compliance with such NO_x Budget permit.~~

~~3. The owners and operators of a NO_x Budget source that are not otherwise required to have an enforceable permit are not required to submit a NO_x Budget permit application, and to have a NO_x Budget permit, under rule 335-3-8-.07 for such NO_x Budget source.~~

~~(b) Monitoring requirements.~~

~~1. The owners and operators and, to the extent applicable, the NO_x authorized account representative of each NO_x Budget source and each NO_x Budget unit at the source shall comply with the monitoring requirements of rule 335-3-8-.12.~~

~~2. The emissions measurements recorded and reported in accordance with rule 335-3-8-.12 shall be used to determine compliance by the unit with the NO_x emissions limitation under subparagraph (c) below.~~

~~(c) Nitrogen Oxides requirements.~~

~~1. The owners and operators of each NO_x Budget source and each NO_x Budget unit at the source shall hold NO_x allowances available for compliance deductions under rule 335-3-8-.10(5)(a), (b), (c), or (f), as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_x emissions for the control period from the unit, as determined in accordance with rule 335-3-8-.12, plus any amount necessary to account for excess emissions for a prior control period under rule 335-3-8-.10(5)(d) or, for a NO_x Budget opt in source, to account for withdrawal from the NO_x Budget Program under rule 335-3-8-.13(7), or for a change in regulatory status for a NO_x Budget opt in source under rule 335-3-8-.13(8).~~

~~2. Each ton of nitrogen oxides emitted in excess of the NO_x Budget emissions limitation shall constitute a separate violation of this Division, the CAA, and applicable State law.~~

~~3. A NO_x Budget unit shall be subject to the requirements under subparagraph (c)1. of this paragraph starting on the later of May 31, 2004 or the date on which the unit commences operation.~~

~~4. NO_x allowances shall be held in, deducted from, or transferred among NO_x Allowance Tracking System accounts in accordance with rules 335-3-8-.09, 335-3-8-.10, 335-3-8-.11, and 335-3-8-.13 of this Division.~~

~~5. A NO_x allowance shall not be deducted, in order to comply with the requirements under subparagraph (c)1. of this paragraph, for a control period in a year prior to the year for which the NO_x allowance was allocated.~~

~~6. A NO_x allowance allocated by the Department or the Administrator under the NO_x Budget Trading Program is a limited authorization to emit one~~

~~ton of nitrogen oxides in accordance with the NO_x Budget Trading Program. No provision of the NO_x Budget Trading Program, the NO_x Budget permit application, the NO_x Budget permit, or an exemption under paragraph (5) of this rule and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit such authorization.~~

~~7. A NO_x allowance allocated by the Department or the Administrator under the NO_x Budget Trading Program does not constitute a property right.~~

~~8. Upon recordation by the Administrator under rules 335 3 8 .10, 335 3 8 .11, or 335 3 8 .13, every allocation, transfer, or deduction of a NO_x allowance to or from a NO_x Budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO_x budget permit of the NO_x budget unit by operation of law without further review.~~

~~(d) Excess emissions requirements.~~

~~1. The owners and operators of a NO_x Budget unit that has excess emissions in any control period shall:~~

~~(i) Surrender the NO_x allowances required for deduction under rule 335 3 8 .10(5)(d)1.; and~~

~~(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under 335 3 8 .10(5)(d)3.~~

~~(e) Recordkeeping and Reporting requirements.~~

~~1. Unless otherwise provided, the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the Department or the Administrator.~~

~~(i) The account certificate of representation for the NO_x authorized account representative for the source and each NO_x Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with rule 335 3 8 .06(4); provided that the certificate and documents shall be retained on site at the source beyond such 5 year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.~~

~~(ii) All emissions monitoring information, in accordance with rule 335 3 8 .12; provided that to the extent that rule 335 3 8 .12 provides for a 3 year period for recordkeeping, the 3 year period shall apply.~~

~~(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_x Budget Trading Program.~~

~~(iv) Copies of all documents used to complete a NO_x Budget permit application and any other submission under the NO_x Budget Trading Program or to demonstrate compliance with the requirements of the NO_x Budget Trading Program.~~

~~2. The NO_x authorized account representative of a NO_x Budget source and each NO_x Budget unit at the source shall submit the reports and compliance certifications required under the NO_x Budget Trading Program, including those under rules 335 3 8 .08, 335 3 8 .12, or 335 3 8 .13.~~

~~(f) Liability.~~

~~1. Any person who knowingly violates any requirement or prohibition of the NO_x Budget Trading Program, a NO_x Budget permit, or an exemption under paragraph (5) of this rule shall be subject to enforcement pursuant to applicable State or Federal law.~~

~~2. Any person who knowingly makes a false material statement in any record, submission, or report under the NO_x Budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.~~

~~3. No permit revision shall excuse any violation of the requirements of the NO_x Budget Trading Program that occurs prior to the date that the revision takes effect.~~

~~4. Each NO_x Budget source and each NO_x Budget unit shall meet the requirements of the NO_x Budget Trading Program.~~

~~5. Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget source (including a provision applicable to the NO_x authorized account representative of a NO_x Budget source) shall also apply to the owners and operators of such source and of the NO_x Budget units at the source.~~

~~6. Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget unit (including a provision applicable to the NO_x authorized account representative of a NO_x budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under rule 335 3 8 .12, the owners and operators and the NO_x authorized account representative of one NO_x Budget unit shall not be liable for any violation by any other NO_x Budget unit of which they are not owners or operators or the NO_x authorized account representative and that is located at a source of which they are not owners or operators or the NO_x authorized account representative.~~

~~(g) Effect on other authorities. No provision of the NO_x Budget Trading Program, a NO_x Budget permit application, a NO_x Budget permit, or an exemption under paragraph (5) of this rule shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_x authorized account representative of a NO_x Budget source or NO_x Budget unit~~

~~from compliance with any other provision of the applicable, approved State Implementation Plan, an enforceable permit, or the CAA.~~

~~(7) Computation of time.~~

~~(a) Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.~~

~~(b) Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.~~

~~(c) Unless otherwise stated, if the final day of any time period, under the NO_x Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.~~

~~**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: April 6, 2001.~~

~~**Amended:** July 11, 2006; April 3, 2007.~~

New Combustion Sources.

(1) No person shall cause or permit emissions of nitrogen oxides from a new gas-fired boiler with a capacity of 250 million BTU/hr or more in excess of 0.20 pounds per million BTU of heat input per hour.

(2) No person shall cause or permit emissions of nitrogen oxides from a new oil-fired boiler with a capacity of 250 million BTU/hr or more in excess of 0.30 pounds per million BTU of heat input per hour.

(3) No person shall cause or permit emission of nitrogen oxides from a new coal-fired boiler with a capacity of 250 million BTU per hour or more in excess of 0.7 pounds per million BTU of heat input per hour.

(4) For purposes of this rule, the total heat input from all similar fuel combustion units at a plant or premises shall be used for determining the maximum allowable emission of nitrogen oxides that passes through a stack or stacks.

Author: James W. Cooper and John E. Daniel.

Statutory Authority: Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.

History: Effective Date: January 18, 1972.

Amended: April 6, 2001; XXXXXX.