

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
AIR DIVISION**

NOTICE OF INTENDED ACTION

AGENCY NAME:

Department of Environmental Management

RULE NO. & TITLE:

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

~~(1) NO_x Allowance Tracking System accounts.~~

~~(a) Nature and function of compliance accounts and overdraft accounts. Consistent with subparagraph (2)(a) of this rule, the Administrator will establish one compliance account for each NO_x Budget unit and one overdraft account for each source with two or more NO_x Budget units. Allocations of NO_x allowances pursuant to rule 335 3 8 .09 or rule 335 3 8 .13(9) and deductions or transfers of NO_x allowances pursuant to rules 335 3 8 .08(2), 335 3 8 .10(7), 335 3 8 .11, or 335 3 8 .13 will be recorded in the compliance accounts or overdraft accounts in accordance with this rule.~~

~~(b) Nature and function of general accounts. Consistent with paragraph (2) of this rule, the Administrator will establish, upon request, a general account for any person. Transfers of allowances pursuant to rule 335 3 8 .11 will be recorded in the general account in accordance with this rule.~~

~~(2) Establishment of accounts.~~

~~(a) Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation under rule 335 3 8 .06(4), the Administrator will establish:~~

~~1. A compliance account for each NO_x Budget unit for which the account certificate of representation was submitted; and~~

~~2. An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NO_x Budget units.~~

~~(b) General accounts.~~

~~1. Any person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:~~

~~(i) Name, mailing address, e mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative;~~

~~(ii) The NO_x authorized account representative, organization name and type of organization;~~

~~(iii) A list of all persons subject to a binding agreement for the NO_x authorized account representative or any alternate NO_x authorized account representative to represent their ownership interest with respect to the allowances held in the general account;~~

~~(iv) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I~~

~~certify that I was selected as the NO_x-authorized account representative or the NO_x-alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."~~

~~(v) The signature of the NO_x-authorized account representative and any alternate NO_x-authorized account representative and the dates signed.~~

~~(vi) Unless otherwise required by the Department or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department nor the Administrator. Neither the Department nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.~~

~~2. Upon receipt by the Administrator of a complete application for a general account under subparagraph (b)1. of this paragraph:~~

~~(i) The Administrator will establish a general account for the person or persons for whom the application is submitted.~~

~~(ii) The NO_x-authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x-authorized account representative or any alternate NO_x-authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_x-authorized account representative or any alternate NO_x-authorized account representative by the Administrator or a court regarding the general account.~~

~~(iii) Each submission concerning the general account shall be submitted, signed, and certified by the NO_x-authorized account representative or any alternate NO_x-authorized account representative for the persons having an ownership interest with respect to NO_x allowances held in the general account. Each such submission shall include the following certification statement by the NO_x-authorized account representative or any alternate NO_x authorized account representative any: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_x allowances held in the general account. 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."

(iv) ~~The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subparagraph (b)2.(iii) of this paragraph above.~~

3. ~~An application for a general account may designate one and only one NO_x authorized account representative and one and only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.~~

(i) ~~Upon receipt by the Administrator of a complete application for a general account under subparagraph (b)1. of this paragraph, any representation, action, inaction, or submission by any alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.~~

4. Changing the NO_x authorized account representative and the alternate NO_x authorized account representative; changes in ownership interest.

(i) Changing the NO_x authorized account representative. The NO_x authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under subparagraph (b)1. of this paragraph. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(ii) Changing the alternate NO_x authorized account representative. The alternate NO_x authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under subparagraph (b)1. of this paragraph. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(iii) Changes in ownership interest.

~~(I) In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the Administrator, as if the new person were included in such list.~~

~~(II) Within 30 days following any change in the persons having an ownership interest with respect to NO_x allowances in the general account, including the addition of persons, the NO_x authorized account representative or any alternate NO_x authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_x allowances in the general account to include the change.~~

~~5. Once a complete application for a general account under subparagraph (b)1. of this paragraph has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under subparagraph (b)1. of this paragraph is received by the Administrator.~~

~~(i) Except as provided in subparagraph (b)4. of this paragraph, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative or the finality of any decision or order by the Administrator under the NO_x Budget Trading Program.~~

~~(ii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x allowance transfers.~~

~~(c) Account identification. The Administrator will assign a unique identifying number to each account established under subparagraph (a) or (b) of this paragraph.~~

~~(3) NO_x Allowance Tracking System responsibilities of NO_x authorized account representative.~~

~~(a) Following the establishment of a NO_x Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_x allowances in the account, shall be made only by the NO_x authorized account representative for the account.~~

~~(b) Authorized account representative identification. The Administrator will assign a unique identifying number to each NO_x authorized account representative.~~

~~(4) Recordation of NO_x allowance allocations.~~

~~(a) Upon approval of this Regional NO_x State Implementation Plan by the Administrator, the Administrator will record in the unit's compliance account NO_x allowances allocated to a NO_x Budget unit pursuant to rule 335 3 8 .09(2)(a), and in accordance with rule 335 3 8 .09(3) for the control periods in 2004, 2005, and 2006. Pursuant to subparagraph (d) of this paragraph, the year designated within each NO_x allowance's serial number shall determine the first control period in which the NO_x allowance is available for deduction for compliance.~~

~~(b) By May 1, 2004 and May 1 of every third year thereafter, the Administrator will record in the unit's compliance account all NO_x allowances allocated to a NO_x Budget unit pursuant to rule 335 3 8 .09(2)(b), and in accordance with rule 335 3 8 .09(3) for the control periods in the three years after the last year for which NO_x allowances were previously recorded. Pursuant to subparagraph (d) of this paragraph, the year designated within each NO_x allowance's serial number shall determine the first control period in which the NO_x allowance is available for deduction for compliance.~~

~~(c) For NO_x allowances allocated to a NO_x Budget opt in unit under rule 335 3 8 .13(9)(a), the Administrator will record the NO_x allowances in the unit's compliance account by May 1 of the control period for which the NO_x allowances were allocated.~~

~~(d) Serial numbers for allocated NO_x allowances. When allocating NO_x allowances to a NO_x Budget unit and recording them in an account, the Administrator will assign each NO_x allowance a unique identification number that will include digits identifying the year for which the NO_x allowance is allocated.~~

~~(5) Compliance.~~

~~(a) NO_x allowance transfer deadline. The NO_x allowances are available to be deducted for compliance with a unit's NO_x Budget emissions limitation for a control period in a given year only if the NO_x allowances:~~

~~1. Were allocated for a control period in a prior year or the same year; and,~~

~~2. Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_x allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under rule 335 3 8 .11(1) by the NO_x allowance transfer deadline for that control period.~~

~~(b) Deductions for compliance.~~

~~1. Following the recordation, in accordance with rule 335-3-8-11(2), of NO_x allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_x allowance transfer deadline for a control period, the Administrator will deduct NO_x allowances available under subparagraph (a) of this paragraph to cover the unit's NO_x emissions (as determined in accordance with rule 335-3-8-12) for the control period:~~

~~(i) From the compliance account; and,~~

~~(ii) Only if no more NO_x allowances available under subparagraph (a) of this paragraph remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator will begin with the unit having the compliance account with the lowest NO_x Allowance Tracking System account number and end with the unit having the compliance account with the highest NO_x Allowance Tracking System account number (with account numbers sorted beginning with the left most character and ending with the right most character and the letter characters assigned values in alphabetical order and less than all numeric characters).~~

~~2. The Administrator will deduct NO_x allowances first under subparagraph (b)1.(i) of this paragraph and then under paragraph (b)1.(ii) of this paragraph:~~

~~(i) Until the number of NO_x allowances deducted for the control period equals the number of tons of NO_x emissions, determined in accordance with rule 335-3-8-12, from the unit for the control period for which compliance is being determined, or~~

~~(ii) Until no more NO_x allowances available under subparagraph (a) of this paragraph remain in the respective account.~~

~~(c) Identification of NO_x allowances by serial number. The NO_x authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under subparagraphs (b), (d), or (e) of this paragraph. Such identification shall be made in the compliance certification report submitted in accordance with rule 335-3-8-08(1).~~

~~1. First in, first out. The Administrator will deduct NO_x allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under subparagraph (c) of this paragraph, or the overdraft account on a first in, first out (FIFO) accounting basis in the following order:~~

~~(i) Those NO_x allowances that were allocated for the control period to the unit under rules 335-3-8-09 or 335-3-8-13;~~

~~(ii) Those NO_x allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to rule 335 3 8 .11, in order of their date of recordation;~~

~~(iii) Those NO_x allowances that were allocated for a prior control period to the unit under rules 335 3 8 .09 or 335 3 8 .13; and~~

~~(iv) Those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to rule 335 3 8 .11, in order of their date of recordation.~~

~~(d) Deductions for excess emissions.~~

~~1. After making the deductions for compliance under subparagraph (b) of this paragraph, the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions. The Administrator will deduct, for excess emissions for the 2008 control period, either NO_x Budget trading program allowances allocated for the 2009 control period or CAIR NO_x Ozone Season allowances allocated for the 2009 control period.~~

~~2. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.~~

~~3. Any allowance deduction required under subparagraph (d) of this paragraph shall not affect the liability of the owners and operators of the NO_x Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:~~

~~(i) For purposes of determining the number of days of violation, if a NO_x Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.~~

~~(ii) Each ton of excess emissions is a separate violation.~~

~~(e) Deductions for units sharing a common stack. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with rule 335 3 8 .12:~~

~~1. The NO_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each such unit's compliance account to cover the unit's share of NO_x emissions from the common stack for a control period. Such identification shall be made in the~~

~~compliance certification report submitted in accordance with rule 335 3 8 .08(1).~~

~~2. Notwithstanding subparagraph (b)2.(i) of this paragraph, the Administrator will deduct NO_x allowances for each such unit until the number of NO_x allowances deducted equals the unit's identified percentage (under subparagraph (e)1. of this paragraph) of the number of tons of NO_x emissions, as determined in accordance with rule 335 3 8 .12, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit.~~

~~(f) The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to subparagraphs (b), (d), or (e) of this paragraph.~~

~~(6) Banking.~~

~~(a) NO_x allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:~~

~~1. Any NO_x allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NO_x allowance is deducted or transferred under rules 335 3 8 .08(2), 335 3 8 .10(5) and (6), 335 3 8 .11, or 335 3 8 .13.~~

~~2. The Administrator will designate, as a "banked" NO_x allowance, any NO_x allowance that remains in a compliance account, an overdraft account, or a general account after the Administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to paragraph (5) of this rule (except deductions pursuant to subparagraph (5)(d)2. above) and that was allocated for that control period or a control period in a prior year.~~

~~(b) Each year starting in 2005, after the Administrator has completed the designation of banked NO_x allowances under subparagraph (a)2. of this paragraph and before May 1 of the year, the Administrator will determine the extent to which banked NO_x allowances may be used for compliance in the control period for the current year, as follows:~~

~~1. The Administrator will determine the total number of banked NO_x allowances held in compliance accounts, overdraft accounts, or general accounts.~~

~~2. If the total number of banked NO_x allowances determined, under subparagraph (b)1. of this paragraph, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the State trading program budgets for the control period for the States in which NO_x Budget units are located, any banked NO_x allowance may be deducted for compliance in accordance with paragraph (5) of this rule.~~

~~3. If the total number of banked NO_x allowances determined, under subparagraph (b)1. of this paragraph, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the State trading program budgets for the control period for the States in which NO_x Budget units are located, any banked allowance may be deducted for compliance in accordance with paragraph (5) of this rule, except as follows:~~

~~(i) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the State trading program budgets for the control period for the States in which NO_x Budget units are located and divided by the total number of banked NO_x allowances determined, under subparagraph (b)1. of this paragraph, to be held in compliance accounts, overdraft accounts, or general accounts.~~

~~(ii) The Administrator will multiply the number of banked NO_x allowances in each compliance account or overdraft account by the ratio determined in subparagraph (i) above. The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with paragraph (5) of this rule. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with paragraph (5) of this rule, except that, if such NO_x allowances are used to make a deduction, two such NO_x allowances must be deducted for each deduction of one NO_x allowance required under paragraph (5) of this rule.~~

~~(c) For any NO_x Budget unit that reduces its NO_x emission rate in the 2001, 2002 or 2003 control period, the owner or operator of the unit may request early reduction credits, and the Department may allocate NO_x allowances by May 1, 2004 to the unit in accordance with the following requirements.~~

~~1. Each NO_x Budget unit for which the owner or operator requests any early reduction credits under subparagraph (c)4. of this paragraph shall monitor NO_x emissions in accordance with rule 335-3-8-.12 starting May 1 of the control period prior to the first control period for which such early reduction credits are requested and during each control period for which the early reduction credits are requested. The unit's monitoring system availability shall be not less than 90 percent, and the unit must be in compliance with any applicable State or Federal emissions or emissions related requirements, during the control period prior to the first control period for which such early reduction credits are requested. Early reduction credits may only be requested for emissions reductions that are not required by Alabama's State Implementation Plan or the Clean Air Act.~~

~~2. NO_x emission rate and heat input under subparagraphs (c)3. through 5. of this paragraph shall be determined in accordance with rule 335-3-8-.12.~~

~~3. Each NO_x Budget unit for which the owner or operator requests any early reduction credits under subparagraph (c)4. of this paragraph shall reduce its NO_x emission rate, for each control period for which early reduction credits are requested, to below the lesser of the NO_x emission rate required under 40~~

~~CFR 76, including emission averaging under 40 CFR 76.11, or ADEM Admin. Code r. 335-3-8-.03.~~

~~4. The NO_x authorized account representative of a NO_x Budget unit that meets the requirements of subparagraphs (c)1. and 3. of this paragraph may submit to the Department a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the control period for 2001, 2002 or 2003 in accordance with subparagraph (c)3. of this paragraph.~~

~~(i) Except as provided in subparagraph (c)4.(ii) below, in the early reduction credit request, the NO_x authorized account representative may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between the following:~~

~~(I) The unit's actual average NO_x emission rate in the ozone control period prior to the first ozone control period for which early reduction credits are requested; and,~~

~~(II)(I) The unit's NO_x emission rate for the ozone control period in which the early reductions occurred, divided by 2000 lb/ton, and rounded to the nearest ton.~~

~~(ii) In the early reduction credit request for units subject to ADEM Admin. Code r. 335-3-8-.03, the NO_x authorized account representative may request early reduction credits for 2003 in an amount equal to the difference between the allowable NO_x emission rate per million BTU of heat input and the actual seasonal NO_x emission rate multiplied by the total heat input of the subject units in the 2003 ozone control period.~~

~~(iii) The early reduction credit request must be submitted, in a format specified by the Department, by October 31 of the year in which the NO_x emission rate reductions on which the request is based are made or such later date approved by the Department.~~

~~5. The Department will allocate NO_x allowances to NO_x Budget units meeting the requirements of subparagraphs (c)1. and 3. of this paragraph and covered by early reduction requests meeting the requirements of subparagraph (c)4.(ii) of this paragraph, in accordance with the following procedures:~~

~~(i) Upon receipt of each early reduction credit request, the Department will accept the request only if the requirements of subparagraphs (c)1., (c)3., and (c)4.(ii) of this paragraph as well as subparagraphs 335-3-8-.10(7)(b), (c), and (d) are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirements of subparagraphs (c)2. and 4. of this paragraph.~~

~~(ii) If the State's compliance supplement pool has an amount of NO_x allowances not less than the number of early reduction credits in all accepted~~

~~early reduction credit requests for 2001 through 2003 (as adjusted under subparagraph (c)5.(i) of this paragraph), the Department will allocate to each NO_x Budget unit covered by such accepted requests one allowance for each early reduction credit requested (as adjusted under subparagraph (c)5.(i) of this paragraph).~~

~~(iii) If the State's compliance supplement pool has a smaller amount of NO_x allowances than the number of early reduction credits in all accepted early reduction credit requests for 2001 through 2003 (as adjusted under subparagraph (c)5.(i) of this paragraph), the Department will allocate NO_x allowances to each NO_x Budget unit covered by such accepted requests according to the following formula:~~

~~Unit's allocated early reduction credits = ((Unit's adjusted early reduction credits) / (Total adjusted early reduction credits requested by all units)) x (Available NO_x allowances from the State's compliance supplement pool) where:~~

~~"Unit's adjusted early reduction credits" is the number of early reduction credits for the unit for 2001 through 2003 in accepted early reduction credit requests, as adjusted under subparagraph (c)5.(i) of this paragraph.~~

~~"Total adjusted early reduction credits requested by all units" is the number of early reduction credits for all units for 2001 through 2003 in accepted early reduction credit requests, as adjusted under subparagraph (c)5.(i) of this paragraph.~~

~~"Available NO_x allowances from the State's compliance supplement pool" is the number of NO_x allowances in the State's compliance supplement pool and available for early reduction credits for 2001 through 2003.~~

~~6. By May 1, 2004, the Department will submit to the Administrator the allocations of NO_x allowances determined under subparagraph (c)5. of this paragraph. The Administrator will record such allocations to the extent that they are consistent with the requirements of subparagraphs (c)1. through 5. of this paragraph.~~

~~7. NO_x allowances recorded under subparagraph (c)6. of this paragraph may be deducted for compliance under paragraph (5) of this rule for the control periods in 2004 or 2005. Notwithstanding subparagraph (a) of this paragraph, the Administrator will deduct as retired any NO_x allowance that is recorded under subparagraph (c)6. of this paragraph and is not deducted for compliance in accordance with paragraph (5) of this rule for the control period in 2004 or 2005.~~

~~8. NO_x allowances recorded under subparagraph (c)6. of this paragraph are treated as banked allowances in 2005 for the purposes of subparagraphs (a) and (b) of this paragraph.~~

~~(7) Compliance Supplement Pool. The total number of allowances under the Compliance Supplement Pool will be determined upon promulgation of EPA's Phase II rules. The Department may issue the compliance supplement~~

~~pool to NO_x Budget units that implement emissions reductions during the ozone season beyond all applicable requirements in years prior to 2004 according to the following provisions:~~

~~(a) The Department shall complete the issuance process by no later than May 31, 2004.~~

~~(b) The emissions reduction may not be required by the Alabama SIP or be otherwise required by the CAA.~~

~~(c) The emissions reduction must be verified by the source as actually having occurred from May 1 through and including September 30 in any year in 2001 through 2003.~~

~~(d) Emissions reductions implemented by sources serving electric generators with a nameplate capacity greater than 25 MWe, or boilers, combustion turbines or combined cycle units with a maximum design heat input greater than 250 mmBTU/hr, must be quantified in accordance with rule 335-3-8-.12.~~

~~(e) The compliance supplement pool credits shall be available for the control periods of 2004 and 2005.~~

~~(f) Sources that receive credit according to the provisions of this rule, may trade the credit to other sources or persons in a NO_x Budget Trading Program established, and approved by the Administrator pursuant to 40 CFR, § 51.121, or the Federal NO_x Budget Trading Program promulgated under 40 CFR 97, pursuant to 40 CFR § 52.34.~~

~~(g) Notwithstanding other provisions regarding the distribution of allowances from the compliance supplement pool, operators of NO_x Budget sources may receive allowances from the compliance supplement pool only to the extent that the total number of allowances issued to such operators does not exceed 40% of the total number of NO_x allowances issued to that operator from the initial allowance allocation of all sources controlled by that operator.~~

~~(8) Account error. The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NO_x Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the NO_x authorized account representative for the account.~~

~~(9) Closing of general accounts.~~

~~(a) The NO_x authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement requesting deletion of the account from the NO_x Allowance Tracking System and by correctly submitting for recordation under rule 335-3-8-.11(1) an allowance transfer of all NO_x allowances in the account to one or more other NO_x Allowance Tracking System accounts.~~

~~(b) If a general account shows no activity for a period of a year or more and does not contain any NO_x allowances, the Administrator may notify the NO_x authorized account representative for the account that the account will be closed and deleted from the NO_x Allowance Tracking System following 20 business days after the notice is sent. The account will be closed after the 20 day period unless before the end of the 20 day period the Administrator receives a correctly submitted transfer of NO_x allowances into the account under rule 335 3 8 .11(1) or a statement submitted by the NO_x authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.~~

~~**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:** October 3, 2002; April 3, 2003; April 3, 2007.~~