

APA-1
11/96

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control 335 Department or Agency Environmental Management

Rule No. 335-3-8-.25

Rule Title: CAIR NOx Ozone Season Trading Program

 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.

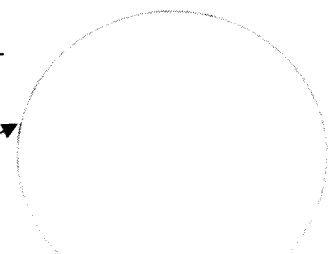
Certification of Authorized Official

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 Marilyn 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 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-.25 REPEAL CAIR NO_x Ozone Season Trading Program-Reserved.

~~(1) Purpose. This rule and rules 335 3 8 .26 through 335 3 8 .33 establish general provisions and the designated representative, permitting, allowance, monitoring, and opt in provisions for the Clean Air Interstate Rule (CAIR) NO_x Ozone Season Trading Program for Alabama's State Implementation Program, under section 110 of the Clean Air Act and 40 CFR § 51.123, as a means of mitigating interstate transport of ozone and nitrogen oxides. The State authorizes the Administrator to assist the State in implementing the CAIR NO_x Ozone Season Trading Program by carrying out the functions set forth for the Administrator in such requirements.~~

~~(2) Definitions. For the purpose of rules 335 3 8 .25 through 335 3 8 .33, the following definitions apply:~~

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

~~(b) "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.~~

~~(c) "Acid Rain Program" means a multi state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under Title IV of the CAA and 40 CFR 72 through 78.~~

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

~~(e) "Allocate or Allocation" means, with regard to CAIR NO_x Ozone Season allowances, the determination by the Department of the amount of such CAIR NO_x Ozone Season allowances to be initially credited to a CAIR NO_x Ozone Season unit under rule 335 3 8 .25 or 338 3 8 .33(9), or the determination by the Administrator or other permitting authority of the amount of CAIR NO_x Ozone Season allowances to be initially credited to a CAIR NO_x Ozone Season unit, new unit set aside, or other entity.~~

~~(f) "Allowance Transfer Deadline" means, for a control period, midnight of November 30 (if it is a business day), or midnight of the first business day thereafter (if November 30 is not a business day), immediately following the control period and is the deadline by which a CAIR NO_x Ozone Season allowance transfer must be submitted for recordation in a CAIR NO_x Ozone Season source's compliance account in order to be used to meet the source's CAIR NO_x Ozone Season emissions limitation for such control period in accordance with rule 335 3 8 .30(5).~~

~~(g) "Alternate CAIR Designated Representative" means, for a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source, the~~

~~natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with rules 335 3 8 .26 and 335 3 8 .33, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR NO_x source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR SO₂ source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program.~~

~~(h) "Automated Data Acquisition and Handling System or DAHS" means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under rule 335 3 8 .32, 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 .32.~~

~~(i) "Biomass" means:~~

~~1. Any organic material grown for the purpose of being converted to energy;~~

~~2. Any organic byproduct of agriculture that can be converted into energy; or~~

~~3. Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is;~~

~~(i) A forest related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or~~

~~(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure treated, chemically treated, or painted wood products), and landscape or right of way tree trimmings.~~

~~(j) "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.~~

~~(k) "Bottoming Cycle Cogeneration Unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.~~

~~(l) "CAIR Authorized Account Representative" means, with regard to a general account, a responsible natural person who is authorized, in accordance with rules 335 3 8 .26, 335 3 8 .30 and 335 3 8 .33, to transfer and otherwise dispose of CAIR NO_x Ozone Season allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.~~

~~(m) "CAIR Designated Representative" means, for a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with rules 335 3 8 .26 and 335 3 8 .33, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR NO_x source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR SO₂ source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.~~

~~(n) "CAIR NO_x Annual Trading Program" means a multi state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of 40 CFR 96 and 40 CFR § 51.123(o)(1) or (2) or established by the Administrator in accordance with subparts AA through II of 40 CFR 97 and 40 CFR §§ 51.123(p) and 52.35, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.~~

~~(o) "CAIR NO_x Ozone Season Allowance" means a limited authorization issued by the Department under rules 335 3 8 .29 or 335 3 8 .33(9) or issued by the Administrator or other permitting authority under provisions of a State Implementation Plan that are approved under 40 CFR §51.123 (aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee), or under 40 CFR 97, Subpart EEEE or § 97.388, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_x Ozone Season Trading Program or a limited authorization issued by the Department for a control period during 2003 through 2008 under the NO_x Budget Trading Program to emit one ton of nitrogen oxides during a control period, provided that the provision in 40 CFR § 51.121(b)(2)(ii)(E) shall not be used in applying this definition and the limited authorization shall not have been used to meet the allowance holding requirement under the NO_x Budget Trading Program. An authorization to emit nitrogen oxides that is not issued under provisions of rules 335 3 8 .25 through 335 3 8 .33 or other provisions of a State Implementation Plan that are approved under 40 CFR § 51.123(aa)(1) or (2) [and (bb)(1)], (bb)(2), (dd), or (ee) or 40 CFR 97, Subpart EEEE or § 97.388 or under the NO_x Budget Trading Program as described in the prior sentence shall not be a CAIR NO_x Ozone Season allowance.~~

~~(p) "CAIR NO_x Ozone Season Allowance Deduction or Deduct CAIR NO_x Ozone Season Allowances" means the permanent withdrawal of CAIR NO_x Ozone Season allowances by the Administrator from a compliance account, e.g., in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_x Ozone Season units at a CAIR NO_x Ozone Season source for a control period, determined in accordance with rule 335 3 8 .32, or to account for excess emissions.~~

~~(q) "CAIR NO_x Ozone Season Allowance Tracking System" means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_x Ozone Season allowances under the CAIR NO_x Ozone Season Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.~~

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

~~(s) "CAIR NO_x Ozone Season Allowances Held or Hold CAIR NO_x Ozone Season Allowances" means the CAIR NO_x Ozone Season allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with rules 335 3 8 .30, 335 3 8 .31, and 335 3 8 .33, in a CAIR NO_x Ozone Season Allowance Tracking System account.~~

~~(t) "CAIR NO_x Ozone Season Emissions Limitation" means, for a CAIR NO_x Ozone Season source, the tonnage equivalent, in NO_x emissions in a control period, of the CAIR NO_x Ozone Season allowances available for deduction for the source under rule 335 3 8 .30(5)a) and (b) for a control period.~~

~~(u) "CAIR NO_x Ozone Season Trading Program" means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of 40 CFR 96 and 40 CFR § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2) or (dd) or established by the Administrator in accordance with subparts AAAA through IIII of 40 CFR 97 and 40 CFR §§ 51.123(ee) and 52.35, as a means of mitigating interstate transport of ozone and nitrogen oxides.~~

~~(v) "CAIR NO_x Ozone Season Source" means a source that includes one or more CAIR NO_x Ozone Season units.~~

~~(w) "CAIR NO_x Ozone Season Unit" means a unit that is subject to the CAIR NO_x Ozone Season Trading Program under paragraph (4) of this rule and, except for purposes of paragraph (5) of this rule and rule 335 3 8 .29, a CAIR NO_x Ozone Season unit under rule 335 3 8 .33.~~

~~(x) "CAIR NO_x Source" means a source that is subject to the CAIR NO_x Annual Trading Program.~~

~~(y) "CAIR Permit" means the legally binding and federally enforceable written document issued by the Department under rule 335-3-8-27, including any permit revisions, specifying the CAIR NO_x-Ozone Season Trading Program requirements applicable to a CAIR NO_x-Ozone Season source, to each CAIR NO_x-Ozone Season unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.~~

~~(z) "CAIR SO₂ Source" means a source that is subject to the CAIR SO₂ Trading Program.~~

~~(aa) "CAIR SO₂ Trading Program" means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of 40 CFR 96 and 40 CFR § 51.124(o)(1) or (2) or established by the Administrator in accordance with subparts AAA through III of 40 CFR 97 and 40 CFR §§ 51.124(r) and 52.36, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.~~

~~(bb) "Clean Air Act or CAA" means the Clean Air Act, 42 U.S.C. 7401, et seq.~~

~~(cc) "Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.~~

~~(dd) "Coal Derived Fuel" means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.~~

~~(ee) "Coal Fired" means:~~

~~1. Except for purposes of rule 335-3-8-29, combusting any amount of coal or coal derived fuel, alone or in combination with any amount of any other fuel, during any year; or~~

~~2. For purposes of rule 335-3-8-29, combusting any amount of coal or coal derived fuel, alone or in combination with any amount of any other fuel, during a specified year.~~

~~(ff) "Cogeneration unit" means a stationary, fossil fuel fired boiler or stationary, fossil fuel fired combustion turbine:~~

~~1. Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and~~

~~2. Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—~~

~~(i) For a topping cycle cogeneration unit,~~

~~(I) Useful thermal energy not less than 5 percent of total energy output; and~~

~~(II) Useful power that, when added to one half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.~~

~~(ii) For a bottoming cycle cogeneration unit, useful power not less than 45 percent of total energy input;~~

~~3. Provided that the total energy input under subparagraphs 2.(i)(II) and 2.(ii) of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.~~

~~(gg) "Combustion Turbine" means:~~

~~1. An enclosed device comprising 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; and~~

~~2. If the enclosed device under subparagraph 1. of this definition is combined cycle, any associated duct burner, heat recovery steam generator and steam turbine.~~

~~(hh) "Commence Commercial Operation" means, with regard to a unit:~~

~~1. 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 and rule 335 3 8 .33(5)(h).~~

~~(i) For a unit that is a CAIR NO_x Ozone Season unit under paragraph (4) of this rule on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subparagraph 1. of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.~~

~~(ii) For a unit that is a CAIR NO_x Ozone Season unit under paragraph (4) of this rule on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subparagraph 1. of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in subparagraphs 1. or 2. of this definition as appropriate.~~

~~2. Notwithstanding subparagraph 1. of this definition and except as provided in paragraph (5) of this rule, for a unit that is not a CAIR NO_x Ozone~~

~~Season unit under paragraph (4) of this rule on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subparagraph 1. of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_x Ozone Season unit under paragraph (4) of this rule.~~

~~(i) For a unit with a date for commencement of commercial operation as defined in subparagraph 2. of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall be treated as the same unit.~~

~~(ii) For a unit with a date for commencement of commercial operation as defined in subparagraph 2. of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in subparagraph 1. or 2. of this definition as appropriate.~~

~~3. Notwithstanding subparagraphs 1. and 2. of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.~~

~~(ii) "Commence Operation" means:~~

~~1. 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 rule 335 3 8 .33(5)(h).~~

~~(i) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in subparagraph 1. of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.~~

~~(ii) For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in subparagraph 1. of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in subparagraph 1., 2., or 3. of this definition as appropriate, except as provided in rule 335 3 8 .33(5)(h).~~

~~2. Notwithstanding subparagraph 1. of this definition, and solely for purposes of rule 335 3 8 .32, for a unit that is not a CAIR NO_x Ozone Season unit under rule 335 3 8 .25(4)(a)1.(ii) on the later of November 15, 1990 or the date the unit commences operation as defined in subparagraph 1. of this definition and that subsequently becomes such a CAIR NO_x Ozone Season unit,~~

~~the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO_x Ozone Season unit under rule 335 3 8 .25(4)(a)1.(ii).~~

~~(i) For a unit with a date of commencement of operation as defined in subparagraph 2. of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.~~

~~(ii) For a unit with a date for commencement of operation as defined in subparagraph 2. of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in subparagraph 1. or 2. of this definition as appropriate.~~

~~(jj) "Common Stack" means a single flue through which emissions from 2 or more units are exhausted.~~

~~(kk) "Compliance Account" means a CAIR NO_x Ozone Season Allowance Tracking System account, established by the Administrator for a CAIR NO_x Ozone Season source under rule 335 3 8 .30 or 335 3 8 .33, in which any CAIR NO_x Ozone Season allowance allocations for the CAIR NO_x Ozone Season units at the source are initially recorded and in which are held any CAIR NO_x Ozone Season allowances available for use for a control period in order to meet the source's CAIR NO_x Ozone Season emissions limitation in accordance with rule 335 3 8 .30(5).~~

~~(ll) "Continuous Emission Monitoring System or CEMS" means the equipment required under rule 335 3 8 .32 to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR 75. The following systems are the principal types of continuous emission monitoring systems required under rule 335 3 8 .32:~~

~~1. A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);~~

~~2. A nitrogen oxides concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x emissions, in parts per million (ppm);~~

~~3. A nitrogen oxides emission rate (or NO_x diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂)~~

~~monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂, and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);~~

~~4. A moisture monitoring system, as defined in 40 CFR § 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H₂O;~~

~~5. A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; and~~

~~6. An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O₂, in percent O₂;~~

~~(mm) "Control Period or Ozone Season" means the period beginning May 1 of a calendar year, except as provided in paragraph (6)(e)2. of this rule, and ending on September 30 of the same year, inclusive.~~

~~(nn) "Department" means the Alabama Department of Environmental Management, authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR NO_x Ozone Season Trading Program in accordance with rule 335-3-8-.27.~~

~~(oo) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with rule 335-3-8-.32.~~

~~(pp) "Excess Emissions" means any ton of nitrogen oxides emitted by the CAIR NO_x Ozone Season units at a CAIR NO_x Ozone Season source during a control period that exceeds the CAIR NO_x Ozone Season emissions limitation for the source.~~

~~(qq) "Fossil Fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.~~

~~(rr) "Fossil Fuel Fired" means, with regard to a unit under paragraph (4)(a)1.(i), combusting any amount of fossil fuel in any calendar year.~~

~~With regard to a unit, under paragraph (4)(a)1.(ii), fossil fuel fired means:~~

~~1. The combustion of fossil fuel, alone or in combination with any other fuel, where the 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 the 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.~~

~~(ss) "Fuel Oil" means any petroleum based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by products used as a fuel whether in a liquid, solid, or gaseous state.~~

~~(tt) "General Account" means a CAIR NO_x Ozone Season Allowance Tracking System account, established under rule 335 3 8 .30, that is not a compliance account.~~

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

~~(vv) "Gross Electrical Output" means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).~~

~~(ww) "Heat Input" means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with rule 335 3 8 .32 and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.~~

~~(xx) "Heat Input Rate" means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.~~

~~(yy) "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 generated by 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 no less 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.~~

~~(zz) "Maximum Design Heat Input" means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.~~

~~(aaa) "Monitoring System" means any monitoring system that meets the requirements of rule 335-3-8-.32, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR 75.~~

~~(bbb) "Most Stringent State or Federal NO_x Emissions Limitation" means, with regard to a unit, 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.~~

~~(ccc) "Nameplate Capacity" means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.~~

~~(ddd) "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(p), as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.~~

~~(eee) "Oil Fired" means, for purposes of rule 335-3-8-.29, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year and not qualifying as coal fired.~~

~~(fff) "Operator" means any person who operates, controls, or supervises a CAIR NO_x Ozone Season unit or a CAIR NO_x Ozone Season source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.~~

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

~~1. With regard to a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit at a source, respectively:~~

~~(i) Any holder of any portion of the legal or equitable title in a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit;~~

~~(ii) Any holder of a leasehold interest in a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit; or~~

~~(iii) Any purchaser of power from a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit under a life-of-the-unit, firm power contractual arrangement; provided that, 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) on the revenues or income from such CAIR NO_x Ozone Season unit; or~~

~~2. With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_x Ozone Season allowances.~~

~~(hhh) "Potential Electrical Output Capacity" means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.~~

~~(iii) "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 hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the Department or the Administrator in the regular course of business.~~

~~(jjj) "Recordation", "Record", or "Recorded" means, with regard to CAIR NO_x Ozone Season allowances, the movement of CAIR NO_x Ozone Season allowances by the Administrator into or between CAIR NO_x Ozone Season Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.~~

~~(kkk) "Reference Method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR § 75.22 [incorporated by reference in ADEM Admin. Code r. 335-3-10-.03(1)].~~

~~(lll) "Replacement, replace, or replaced" means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).~~

~~(mmm) "Repowered" means, with regard to a unit, replacement of a coal fired boiler with one of the following coal fired technologies at the same source as the coal fired boiler:~~

~~1. Atmospheric or pressurized fluidized bed combustion;~~

- ~~2. Integrated gasification combined cycle;~~
- ~~3. Magnetohydrodynamics;~~
- ~~4. Direct and indirect coal fired turbines;~~
- ~~5. Integrated gasification fuel cells; or~~

~~6. As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under subparagraphs 1. through 5. of this definition and any other coal fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.~~

~~(nnn) "Serial Number" means, for a CAIR NO_x Ozone Season allowance, the unique identification number assigned to each CAIR NO_x Ozone Season allowance by the Administrator.~~

~~(ooo) "Sequential Use of Energy" means:~~

- ~~1. For a topping cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or~~
- ~~2. For a bottoming cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.~~

~~(ppp) "Solid waste incineration unit" means a stationary, fossil fuel fired boiler or stationary, fossil fuel fired combustion turbine that is a "solid waste incineration unit" as defined in section 129(g)(1) of the Clean Air Act.~~

~~(qqq) "Source" means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."~~

~~(rrr) "State" means~~

- ~~1. The State of Alabama, the Environmental Management Commission, and the Commission's representatives; or,~~
- ~~2. One of the States or the District of Columbia that adopts the CAIR NO_x Ozone Season Trading Program pursuant to 40 CFR § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd).~~

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

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

~~(uuu) "Title V Operating Permit" means a "Major Source Operating Permit" as defined and issued under chapter 335 3 16.~~

~~(vvv) "Title V Operating Permit Regulations" means the "Major Source Operating Permit" regulations in chapter 335 3 16 that the Administrator has approved as meeting the requirements of Title V of the Clean Air Act and 40 CFR 70 or 71.~~

~~(www) "Ton" means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_x Ozone Season emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with rule 335 3 8 .32, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.~~

~~(xxx) "Topping Cycle Cogeneration" unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.~~

~~(yyy) "Total Energy Input" means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:~~

$$\text{LHV} = \text{HHV} - 10.55(W + 9H)$$

~~Where:~~

~~LHV = lower heating value of fuel in Btu/lb,~~

~~HHV = higher heating value of fuel in Btu/ lb,~~

~~W = Weight % of moisture in fuel, and~~

~~H = Weight % of hydrogen in fuel.~~

~~(zzz) "Total Energy Output" means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.~~

~~(aaaa) "Unit" means a stationary, fossil fuel fired boiler or combustion turbine or other stationary, fossil fuel fired combustion device.~~

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

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

~~(dddd) "Useful Power" means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on site processing or treatment of fuel combusted at the unit and any on site emission controls).~~

~~(eeee) "Useful Thermal Energy" means, with regard to a cogeneration unit, thermal energy that is:~~

~~1. Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;~~

~~2. Used in a heating application (e.g., space heating or domestic hot water heating); or~~

~~3. Used in a space cooling application (i.e., thermal energy used by an absorption chiller).~~

~~(ffff) "Utility Power Distribution System" means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.~~

~~(3) Measurements, abbreviations, and acronyms. Measurements, abbreviations, and acronyms used in this rule and rules 335 3 8 .26 through 335 3 8 .33 are defined as follows:~~

~~(a) Btu — British thermal unit~~

~~(b) CO₂ — carbon dioxide~~

~~(c) H₂O — water~~

~~(d) Hg — mercury~~

~~(e) hr — hour~~

~~(f) kW — kilowatt electrical~~

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

~~2. If a stationary boiler or stationary combustion turbine that, under subparagraph (a)1.(i) of this paragraph, is not a CAIR 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 CAIR NO_x Ozone Season EGU unit as provided in subparagraph (a)1.(i) of this paragraph on the first date on which it both combusts fossil fuel and serves such generator.~~

~~(b) The units in the State that meet the requirements set forth in subparagraph (b)1. or (b)2. of this paragraph shall not be CAIR NO_x Ozone Season units under subparagraph (a)1.(i) or (a)2. of this paragraph.~~

~~1. Any unit that is a CAIR NO_x Ozone Season unit under subparagraph (a)1.(i) or 2. of this paragraph:~~

~~(i) Qualifying as a cogeneration unit during the 12 month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and~~

~~(ii) Not serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year 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 a unit qualifies as a cogeneration unit during the 12 month period starting on the date the unit first produces electricity and meets the requirements at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR 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.~~

~~2. Any unit that is a CAIR NO_x Ozone Season unit under subparagraph (a)1. or 2. of this paragraph commencing operation:~~

~~(i) Before January 1, 1985:~~

~~(I) Qualifying as a solid waste incineration unit; and~~

~~(II) With an average annual fuel consumption of non fossil fuel for 1985-1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).~~

~~(ii) On or after January 1, 1985:~~

~~(I) Qualifying as a solid waste incineration unit; and~~

~~(II) With an average annual fuel consumption of non fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).~~

~~(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of subparagraph (b)2.(i) or (ii) of this paragraph for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR 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 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.~~

~~(5) Retired Unit Exemption.~~

~~(a) Any CAIR NO_x Ozone Season unit that is permanently retired and is not a CAIR NO_x Ozone Season opt in unit shall be exempt from the CAIR NO_x Ozone Season Trading Program, except for the provisions of this paragraph, paragraphs (2), (3), (4), (7) and (8), subparagraphs (6)(c)4. through 7. of this rule, and rules 335 3 8 .26 and 335 3 8 .29 through 335 3 8 .31.~~

~~1. The exemption under subparagraph (a) of this paragraph shall become effective the day on which the CAIR NO_x Ozone Season unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the Department otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the Department, that the unit was permanently retired on a specific date and will comply with the requirements of subparagraph (b) of this paragraph.~~

~~2. After receipt of the statement under subparagraph (a)1. of this paragraph, the Department will amend any permit under rule 335 3 8 .27 covering the source at which the unit is located to add the provisions and requirements of the exemption under subparagraphs (a) and (b) of this paragraph.~~

~~(b) Special provisions.~~

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

~~2. The Department will assign CAIR NO_x Ozone Season allowances to the Retired Unit Allowance Pool under rule 335 3 8 .29(3)(c)2. for a unit exempt under subparagraph (a) of this paragraph.~~

~~3. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under subparagraph (a) of 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 before 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.~~

~~4. The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under subparagraph (a) of this paragraph shall comply with the requirements of the CAIR NO_x Ozone Season 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.~~

~~5. A unit exempt under subparagraph (a) of this paragraph and located at a source that is required, or but for this exemption would be required, to have a Title V operating permit or other federally enforceable permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under rule 335-3-8-.27(3) for the unit not less than 18 months [or such lesser time provided under the Department's major source operating permit regulations for final action on a permit application] before the later of January 1, 2009 or the date on which the unit resumes operation.~~

~~6. Loss of exemption.~~

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

~~(I) The date on which the CAIR designated representative submits a CAIR permit application for the unit under subparagraph (b)5. or (b)6. of this paragraph;~~

~~(II) The date on which the CAIR designated representative is required under subparagraph (b)5. of this paragraph to submit a CAIR permit application for the unit; or~~

~~(III) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.~~

~~7. For the purpose of applying monitoring, reporting, and recordkeeping requirements under rule 335-3-8-.32, a unit that loses its exemption under subparagraph (a) of this paragraph shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.~~

~~(6) Standard requirements.~~

~~(a) Permit Requirements.~~

~~1. The CAIR designated representative of each CAIR NO_x Ozone Season source required to have a Title V operating permit or other federally enforceable~~

~~permit and each CAIR NO_x Ozone Season unit required to have a Title V operating permit or other federally enforceable permit at the source shall:~~

~~(i) Submit to the Department a complete CAIR permit application under rule 335 3 8 .27(3) in accordance with the deadlines specified in rule 335 3 8 .27(2); and~~

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

~~2. The owners and operators of each CAIR NO_x Ozone Season source required to have a Title V operating permit or synthetic minor operating permit and each CAIR NO_x Ozone Season unit required to have a Title V operating permit or other federally enforceable permit at the source shall have a CAIR permit issued by the Department under rule 335 3 8 .27 for the source and operate the source and the unit in compliance with such CAIR permit.~~

~~3. Except as provided in rule 335 3 8 .33, the owners and operators of a CAIR NO_x Ozone Season source that is not otherwise required to have a Title V operating permit or other federally enforceable permit and each CAIR NO_x Ozone Season unit that is not otherwise required to have a Title V operating permit or other federally enforceable permit are not required to submit a CAIR permit application, and to have a CAIR permit, under rule 335 3 8 .27 for such CAIR NO_x Ozone Season source and such CAIR NO_x Ozone Season unit.~~

~~(b) Monitoring, reporting, and recordkeeping requirements.~~

~~1. The owners and operators, and the CAIR designated representative, of each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of rule 335 3 8 .32.~~

~~2. The emissions measurements recorded and reported in accordance with rule 335 3 8 .32 shall be used to determine compliance by each CAIR NO_x Ozone Season source with the CAIR NO_x Ozone Season emissions limitation under subparagraph (c) of this paragraph.~~

~~(c) Nitrogen oxides ozone season emission requirements.~~

~~1. As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO_x Ozone Season allowances available for compliance deductions for the control period under rule 335 3 8 .30(5)(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_x Ozone Season units at the source, as determined in accordance with rule 335 3 8 .32.~~

~~2. A CAIR NO_x Ozone Season unit shall be subject to the requirements under subparagraph (c)1. of this paragraph for the control period starting on~~

~~the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under rule 335 3 8 .32(1)(b)1., 2., 3., or 7. and for each control period thereafter.~~

~~3. A CAIR NO_x Ozone Season allowance shall not be deducted, for compliance with the requirements under subparagraph (c)1. of this paragraph, for a control period in a calendar year before the year for which the CAIR NO_x Ozone Season allowance was allocated.~~

~~4. CAIR NO_x Ozone Season allowances shall be held in, deducted from, or transferred into or among CAIR NO_x Ozone Season Allowance Tracking System accounts in accordance with rules 335 3 8 .30, 335 3 8 .31, and 335 3 8 .33.~~

~~5. A CAIR NO_x Ozone Season allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_x Ozone Season Trading Program. No provision of the CAIR NO_x Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or an exemption under paragraph (5) of this rule and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.~~

~~6. A CAIR NO_x Ozone Season allowance does not constitute a property right.~~

~~7. Upon recordation by the Administrator under rule 335 3 8 .30, 335 3 8 .31, or 335 3 8 .33, every allocation, transfer, or deduction of a CAIR NO_x Ozone Season allowance to or from a CAIR NO_x Ozone Season source's compliance account is incorporated automatically in any CAIR permit of the source.~~

~~(d) Excess emissions requirements. If a CAIR NO_x Ozone Season source emits nitrogen oxides during any control period in excess of the CAIR NO_x Ozone Season emissions limitation, then:~~

~~1. The owners and operators of the source and each CAIR NO_x Ozone Season unit at the source shall surrender the CAIR NO_x Ozone Season allowances required for deduction under rule 335 3 8 .30(5)(d)1. and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under rule 335 3 8 .30(5)(d)2.; and~~

~~2. Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this rule, the Clean Air Act, and applicable State law.~~

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

~~1. Unless otherwise provided, the owners and operators of the CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season 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 before the end of 5 years, in writing by the Department or the Administrator.~~

~~(i) The certificate of representation under rule 335-3-8-26(4) for the CAIR designated representative for the source and each CAIR NO_x Ozone Season unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; 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 certificate of representation under rule 335-3-8-26(4) changing the CAIR designated representative.~~

~~(ii) All emissions monitoring information, in accordance with rule 335-3-8-32, provided that to the extent that rule 335-3-8-32 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 CAIR NO_x Ozone Season Trading Program.~~

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

~~2. The CAIR designated representative of a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall submit the reports required under the CAIR NO_x Ozone Season Trading Program, including those under rule 335-3-8-32.~~

~~(f) Liability.~~

~~1. Each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit shall meet the requirements of the CAIR NO_x Ozone Season Trading Program.~~

~~2. Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a CAIR NO_x Ozone Season source or the CAIR designated representative of a CAIR NO_x Ozone Season source shall also apply to the owners and operators of such source and of the CAIR NO_x Ozone Season units at the source.~~

~~3. Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a CAIR NO_x Ozone Season unit or the CAIR designated representative of a CAIR NO_x Ozone Season unit shall also apply to the owners and operators of such unit.~~

~~(g) Effect on other authorities. No provision of the CAIR NO_x Ozone Season Trading Program, a CAIR permit application, a CAIR permit, or an exemption under paragraph (5) of this rule shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative,~~

~~of a CAIR NO_x Ozone Season source or CAIR NO_x Ozone Season unit from compliance with any other provision of the applicable, approved State Implementation Plan, a federally enforceable permit, or the Clean Air Act.~~

~~(7) Computation of time.~~

~~(a) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season Trading Program, falls on a weekend or a State or Federal holiday, including those designated as a holiday by the President or the Congress of the United States, or the Governor of Alabama, or as prescribed in Code of Alabama (1975), § 1-3-8, the time period shall be extended to the next business day.~~

~~(8) Appeal Procedures. The appeal procedures for decisions of the Administrator under the CAIR NO_x Ozone Season Trading Program are set forth in 40 CFR 78.~~

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.~~

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