

APA-1
11/96

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management
Rule No. 335-3-8-.26
Rule Title: CAIR Designated Representative for CAIR NOx Ozone Season Sources

 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

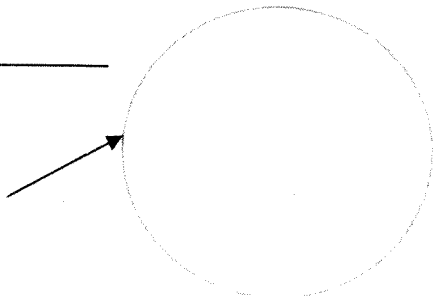
If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of section 41-22-23, Code of Alabama 1975.

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



**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
AIR DIVISION**

NOTICE OF INTENDED ACTION

AGENCY NAME: Department of Environmental Management

RULE NO. & TITLE:

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

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

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

SUBSTANCE OF PROPOSED ACTION:

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

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Comments may be submitted in writing or orally at a public hearing to be held 10:00 a.m., November 9, 2011, in the ADEM Hearing Room, 1400 Coliseum Blvd., Montgomery, Alabama 36110.

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

CONTACT PERSON AT AGENCY:

Chris Howard (334) 271-7878



Lance R. LeFleur
Director

335-3-8-.26 REPEAL CAIR Designated Representative for CAIR NO_x Ozone Season Sources Reserved.

~~(1) Authorization and responsibilities of CAIR designated representative.~~

~~(a) Except as provided under paragraph (2) below, each CAIR NO_x Ozone Season source, including all CAIR NO_x Ozone Season units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_x Ozone Season Trading Program concerning the source or any CAIR NO_x Ozone Season unit at the source.~~

~~(b) The CAIR designated representative of the CAIR NO_x Ozone Season source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_x Ozone Season units at the source and shall act in accordance with the certification statement in subparagraph (4)(a)4.(iv) of this rule.~~

~~(c) Upon receipt by the Administrator of a complete certificate of representation under paragraph (4) of this rule, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_x Ozone Season source represented and each CAIR NO_x Ozone Season unit at the source in all matters pertaining to the CAIR NO_x Ozone Season Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the Department, the Administrator, or a court regarding the source or unit.~~

~~(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_x Ozone Season Allowance Tracking System account will be established for a CAIR NO_x Ozone Season unit at a source, until the Administrator has received a complete certificate of representation under paragraph (4) of this rule for a CAIR designated representative of the source and the CAIR NO_x Ozone Season units at the source.~~

~~(e) Each submission under the CAIR NO_x Ozone Season Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_x Ozone Season source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or~~

omitting required statements and information, including the possibility of fine or imprisonment."

~~1. The Department and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit only if the submission has been made, signed, and certified in accordance with subparagraph (e) of this paragraph.~~

~~(2) Alternate CAIR designated representative.~~

~~(a) A certificate of representation under paragraph (4) of this rule may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.~~

~~(b) Upon receipt by the Administrator of a complete certificate of representation under paragraph (4) of this rule, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.~~

~~(c) Except in this paragraph and subparagraphs (1)(a) and (d) and paragraphs (3), (4) and (6) of this rule, and rules 335-3-8-.25(2), 335-3-8-.30(2), and 335-3-8-.33(3) whenever the term "CAIR designated representative" is used in rules 335-3-8-.25 through 335-3-8-.33, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.~~

~~(3) Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.~~

~~(a) Changing CAIR designated representative. The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under paragraph (4) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source.~~

~~(b) Changing alternate CAIR designated representative. The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under paragraph (4) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the~~

~~Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source.~~

~~(c) Changes in owners and operators.~~

~~1. In the event an owner or operator of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit is not included in the list of owners and operators in the certificate of representation under paragraph (4) of this rule, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the Department, the Administrator, or a court, as if the owner or operator were included in such list.~~

~~2. Within 30 days following any change in the owners and operators of a CAIR NO_x Ozone Season source, a CAIR NO_x Ozone Season unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under paragraph (4) of this rule amending the list of owners and operators to include the change.~~

~~(4) Certificate of representation.~~

~~(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:~~

~~1. Identification of the CAIR NO_x Ozone Season source, and each CAIR NO_x Ozone Season unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.~~

~~2. The name, address, e mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.~~

~~3. A list of the owners and operators of the CAIR NO_x Ozone Season source and of each CAIR NO_x Ozone Season unit at the source.~~

~~4. The following certification statements by the CAIR designated representative and any alternate CAIR designated representative:~~

~~(i) "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_x Ozone Season unit at the source."~~

~~(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Ozone Season Trading Program on behalf of the owners and operators of the source and of each CAIR NO_x Ozone Season unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."~~

~~(iii) "I certify that the owners and operators of the source and of each CAIR NO_x Ozone Season unit at the source shall be bound by any order issued to me by the Administrator, the Department, or a court regarding the source or unit."~~

~~(iv) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_x Ozone Season unit, or where a utility or industrial customer purchases power from a CAIR NO_x Ozone Season unit under a life of the unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_x Ozone Season unit at the source; and CAIR NO_x Ozone Season allowances and proceeds of transactions involving CAIR NO_x Ozone Season allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_x Ozone Season allowances by contract, CAIR NO_x Ozone Season allowances and proceeds of transactions involving CAIR NO_x Ozone Season allowances will be deemed to be held or distributed in accordance with the contract."~~

~~5. The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.~~

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

~~(5) Objections concerning CAIR designated representative.~~

~~(a) Once a complete certificate of representation under paragraph (4) of this rule has been submitted and received, the Department and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under paragraph (4) of this rule is received by the Administrator.~~

~~(b) Except as provided in subparagraphs (3)(a) or (b) of this rule, no objection or other communication submitted to the Department or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated~~

~~representative or the finality of any decision or order by the Department or the Administrator under the CAIR NO_x Ozone Season Trading Program.~~

~~(c) Neither the Department nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_x Ozone Season allowance transfers.~~

~~(6) Delegation by CAIR designated representative and alternate CAIR designated representative.~~

~~(a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this rule.~~

~~(b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this rule.~~

~~(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with subparagraph (a) or (b) of this paragraph, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:~~

~~(1) The name, address, e mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;~~

~~(2) The name, address, e mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an "agent");~~

~~(3) For each such natural person, a list of the type or types of electronic submissions under subparagraph (a) or (b) of this paragraph for which authority is delegated to him or her; and~~

~~(4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:~~

~~(i) "I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.315(d) shall be deemed to be an electronic submission by me."~~

~~(ii) "Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.315(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.315 is terminated."~~

~~(d) A notice of delegation submitted under subparagraph (c) of this paragraph shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.~~

~~(e) Any electronic submission covered by the certification in subparagraph (c)4.(i) of this paragraph and made in accordance with a notice of delegation effective under subparagraph (d) of this paragraph shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.~~

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: July 11, 2006.

Amended: April 3, 2007.