



**Response to Comment(s)  
On Rule in Development**

**Rule number: 10 CSR 10-6.372 / 10 CSR 10-6.374 / 10 CSR 10-6.376**

**Rule Title: Cross-State Air Pollution Rule Annual NO<sub>x</sub> Trading Allowance Allocations / Cross-State Air Pollution Rule Ozone Season NO<sub>x</sub> Trading Allowance Allocations / Cross-State Air Pollution Rule Annual SO<sub>2</sub> Trading Allowance Allocations**

**Type of rulemaking: New Rules**

**Response to Comment(s) from the U.S. Environmental Protection Agency Region 7.**

**Comment:**

1) 10 CSR 10-6.372 (2) Definitions.

EPA recommends that MDNR specifically indicate which terms found in 10 CSR 10-6.020 apply to rule section 10 CSR 10-6.372, rather than refer to those definitions as “other than those defined in this rule section” (10 CSR 10-6.372 (B)). For example, the definition for the term “Director”, which appears frequently within rule section 10 CSR 10-6.372, should be found in 10 CSR 10-6.020. Explicitly indicating which terms defined in 10 CSR 10-6.020 apply to 10 CSR 10-6.372, can help remove any potential ambiguity between terms used in 10 CSR 10-6.372 that are defined in 10 CSR 10-6.020 and those that are defined in 40 CFR 97.402 and 97.403.

**Response:** The Applicability section of 10 CSR 10-6.020 (the state definitions rule) establishes that any federal definition incorporated by reference into a state rule takes precedence over those found in the state definitions rule. If a term is defined in 40 CFR 97.402 or 97.403 and the state definitions rule, then the federal definition would be used. If a term is defined in the state definitions rule only, then the state definition is used. Because federal definitions take precedence over state definitions, there is no ambiguity regarding which definitions are used in the state CSAPR rules. For the example given, the term “director” in 10 CSR 10-6.372, 6.374, and 6.376 (the state CSAPR rules) is defined in 10 CSR 10-6.020 as the Director of the Missouri Department of Natural Resources (or designated representative). Since this term is not defined in 40 CFR 97.402 and 97.403, there is only one definition of the term “director” and the state definitions rule clearly would apply. As a result of this comment the federal definitions found in 40 CFR 97.402 or 97.403 will be incorporated by reference in subsection (2)(A).

- 2) Rule section 10-6.372 refers to “stakeholders”, yet this term is not defined in this rule section or in 10 CSR 10-6.020. EPA recommends that MDNR provide a definition for this term in order to provide clarity.

**Response:** Instead of defining the general term “stakeholders”, this term will be removed and replaced with language referring to a “notification” in subsection (2)(B) of the proposed state CSAPR rules to describe the actions that will be taken to relay information to affected sources and interested parties about updated allowance allocations.

- 3) Rule section 10-6.372 indicates that the director “will notify stakeholders” and “provide notification stating the outcome” (for example, see Rule section 10-6-372 (3)2.A.; Rule section 10-6-372 Rule section 10-6-372 (3)2.B.). EPA recommends that MDNR elaborate on the actions that will be taken by the director to provide notification (e.g., publish a public notice, if applicable).

**Response:** As a result of comment 2) and 3) “notification” will be defined in subsection (2)(B) of the proposed state CSAPR rules describing the actions that will be taken to relay information to interested parties about updated allowance allocations. In addition, subparagraph (3)(A)2.C. will be revised to better articulate actions to take when responding to objections about non-operating units.

- 4) 10 CSR 10-6.372 (3) (General Provisions) indicates that “this rule replaces 40 CFR 97.411(a), 40 CFR 97.411(b)(1) and 40 CFR 97.412(a) as promulgated in FR 48208, August 8, 2011 ...”. These FR references are of past rulemakings that have since been revised (most recently on December 3, 2014 at 79 FR 71663). EPA recommends, that MDNR reference the rule sections in the following manner: “40 CFR 97.411(a), 40 CFR 97.411(b)(1) and 40 CFR 97.412(a), as amended”.

**Response:** The Missouri Department of Natural Resources’ Air Pollution Control Program (Air Program), will modify subsection (2)(A) to incorporate by reference the latest updates to the federal CSAPR rules to clearly state that the federal rule sections being replaced include the latest amendments to the federal rules.

- 5) 10 CSR 10-6.372 (3)(A)2. Table 1:

EPA recommends that the following statement be added to Table 1 found in 10 CSR 10-6.372 (3) (A)2. :

“Providing an allocation in Table 1 does not constitute a determination that the unit is a TR NO<sub>x</sub> Annual unit, and not providing an allocation to a unit in such Table does not constitute a determination that the unit is not a Transport Rule (TR) nitrogen oxide (NO<sub>x</sub>) annual unit.”

**Response:** As EPA recommended, at the end of Table 1 in section (3) a similar phrase will be added that directs a source to determine applicability of the rule from 40 CFR 97.404 as opposed to just being listed or not listed in Table 1.

- 6) 10 CSR 10-6.372 (3)(B)3.B. Indicates that the director will establish a separate new unit set aside for the State. This new unit set aside, as per this rule section, will be allocated TR NO<sub>x</sub> Annual Allowances “in an amount equal to the applicable amount of tons of NO<sub>x</sub> emissions as set forth in 40 CFR 97.410(a)”. EPA recommends that MDNR revise this section to fully address the State’s intent to establish a new unit set aside of Transport Rule (TR) NO<sub>x</sub> Annual Allowances in an amount equal to the difference between the NO<sub>x</sub> annual trading budget for 2017 and thereafter as set forth in 40 CFR 97.410(a) and the total “TR NO<sub>x</sub> annual unit allowances (tons) for 2017 and thereafter” provided in Table I of 10 CSR 10-6.372 (3)(A)2.

**Response:** The Air Program will revise subparagraph (3)(B)3.B. to clearly indicate that the new unit set-aside account is equal to the difference between Missouri’s TR NO<sub>x</sub> trading budget for 2017 and thereafter as found in 40 CFR 97.410(a) and the total existing unit allowances that are allocated under paragraph (3)(A)1.

- 7) In the applicability section of all three rules, MDNR may want to consider whether adding a reference to where the reader can find the applicable units list, might be helpful. As discussed generally on rules, if MDNR’s intent is to make the rules plain language and clear, anyone reading the rule should be able to easily understand whether the rule applies to them or not.

**Response:** An initial list of existing units subject to the federal CSAPR rules can be found at: <http://www.epa.gov/airtransport/CSAPR/techinfo.html>, “Final Cross-State Air Pollution Rule (CSAPR) Revisions and Direct Final Rules,” “Unit Level Allocations Under the CSAPR Federal Implementation Plans (FIPs) after Tolling.” However, this list does not include Missouri’s two (2) new units nor will it be inclusive for units that retire or additional new units that come on-line in the future. Therefore, the Air Program does not plan to include a reference to this list in the proposed rule text. As mentioned in our response to comment 5), at the end of Table 1 in section (3) a phrase will be added that directs a source to determine applicability of the rule from 40 CFR 97.404 as opposed to just being listed or not listed in Table 1.

**Comment:**

- 8) EPA recommends that MDNR reference and/or describe in the Regulatory Impact Report (RIR) the latest EPA action on CSAPR, the ministerial FR notice.

**Response:** The Air Program will reference and describe the federal Ministerial notice in the Rulemaking Report.

- 9) EPA suggests that MDNR may want to add a brief statement to the RIR about when the CSAPR FIP started (based on the ministerial rule dates), and briefly explain the transition from CAIR to CSAPR.

**Response:** The Air Program will add and explain this information in the Rulemaking Report that is associated with the proposed rules.

10) MDNR may want to consider whether additional background information would be helpful in the RIR on how Missouri's CAIR rules are impacted by the new CSAPR rules.

**Response:** The Air Program will add this information to the Rulemaking Report that is associated with the proposed rules.

**Response to Comment(s) from Kansas City Power & Light (KCP&L).**

**Comment:** On March 24th, 2015, the Missouri Department of Natural Resources' Air Pollution Control Program conducted a conference call on the Cross-State Air Pollution Rule (CSAPR). The purpose of the call was in regards to a potential streamlined approach to the CSAPR New Unit Set-Aside (NUSA) Allocation process to be used in the state rules that are out on 60-day public comment through April 10, 2015. KCP&L is supportive of the proposed more streamlined approach outlined during the call for the state to allocate the NUSA.

**Response:** The Air Program's intent in streamlining the state CSAPR rules is to simplify the allocation of allowance process by removing the amount of public notifications required to allocate the NUSA allowances each year, while still providing interested parties ample opportunity to provide input. Changes to subsection (3)(B) will be made to incorporate the streamlined NUSA allocation process into the proposed rule text.

**Response to Comment(s) from City Utilities of Springfield.**

**Comment:**

Re: City Utilities Comments to Proposed Cross-State Air Pollution Rules (CSAPR)  
10 CSR 10-6.372 Annual NO<sub>x</sub> Trading Allowance Allocations,  
10 CSR 10-6.374 Ozone Season NO<sub>x</sub> Trading Allowance Allocations  
10 CSR 10-6.372 Annual SO<sub>2</sub> Trading Allowance Allocations

City Utilities of Springfield, Missouri submits the following comments to the Missouri Department of Natural Resources (MDNR) proposed rules implementing the Cross-State Air Pollution Rule (CSAPR) for the entire state of Missouri. City Utilities commends MDNR's efforts throughout the CSAPR stakeholder process on a shortened rule making schedule and we look forward to working cooperatively with the MDNR in the future.

In the main, City Utilities supports the rule language for each of the proposed rules as written. However, we would support language making existing unit allowances in Table I permanent, and revising regulatory language under section (3)(A) in each of the rules, consistent with the General Provisions under (3)(B) for the Clean Air Interstate Rules (CAIR) found in Missouri's Code of State Regulations (CSR), and consistent with stakeholder discussions on single allowance allocations in the near future. City Utilities believes this regulatory certainty is necessary in order for affected sources to make prudent decisions and plan for future control measures.

Further, City Utilities supports a *fast-track* New Unit Set-Aside (NUSA) process for distributing annual allocations from Missouri's NUSA pool. City Utilities agrees that the submission and

distribution process for those affected units can be accomplished informally with the MDNR mediating any disputes. The allocations will be based on quality-assured data, certified and submitted to the Environmental Protection Agency (EPA's) Clean Air Markets Division – Business System unit. Additionally, City Utilities appreciates MDNR's recognition that EPA's Federal Implementation Plan (FIP) does not reserve sufficient allocations for the 2015 control period for both Iatan Unit 2 and the John Twitty Energy Center Unit 2 under the NUSA.

**Response:** Through various stakeholder meetings held on the state CSAPR rules it was determined that excess allowances due to rounding would be distributed to Chillicothe and Higginsville and additionally, SO<sub>2</sub> allowances would be transferred from a multiple-owned unit. The state rules were written to distribute these allowances while keeping the existing unit and new unit allocation procedures consistent with the federal methods. No changes have been made as a result of this comment, but the Air Program is open to future discussion about keeping the existing unit allowances in Table 1 fixed every year as was similarly done in CAIR. The Air Program appreciates City Utilities supportive comments on the proposed rulemaking.

**Response to Comment(s) from The Empire District Electric Company.**

**Comment:** 10 CSR 10-6.372 Annual NO<sub>x</sub> Trading Allowance Allocations,  
10 CSR 10-6.374 Ozone Season NO<sub>x</sub> Trading Allowance Allocations  
10 CSR 10-6.372 Annual SO<sub>2</sub> Trading Allowance Allocations.

The Empire District Electric Company (EDE) has no objection to the streamlined new unit set-aside allowance allocation approach that the MDNR Air Program has proposed, associated with the regulations listed above, to implement in conjunction with the Cross State Air Pollution Rule.

**Response:** The Air Program appreciates EDE's supportive comment on the proposed rulemaking. No changes have been made to the rule text as a result of this comment.