

Missouri Department of Natural Resources

## **Rulemaking Report**

Updated: 4/8/15

Affected Rule(s): 10 CSR 10-6.372 Cross-State Air Pollution Rule Annual NO<sub>x</sub> Trading Allowance Allocations, 10 CSR 10-6.374 Cross-State Air Pollution Rule Ozone Season NO<sub>x</sub> Trading Allowance Allocations

1. What is the purpose of this proposed rulemaking?

The purpose of these rulemakings is to reallocate the annual and ozone season nitrogen oxides (NO<sub>x</sub>) emission allowances established in the U.S. Environmental Protection Agency's (EPA's) Cross-State Air Pollution Rule (CSAPR), starting with allowances distributed for 2017 (76 FR 48208, August 8, 2011; 76 FR 80760, December 27, 2011; 76 FR 80760, December 27, 2011; 77 FR 34830, June 12, 2012 and 79 FR 71663, December 3, 2014). CSAPR is an EPA-administered emission reduction program that aims to lessen the effect that emissions from air pollution sources in upwind states have on the attainment or maintenance of air quality standards in downwind states. CSAPR enables affected utilities to buy and sell emission allowances from other affected facilities in Missouri or other states. CSAPR is being implemented as a Federal Implementation Plan (FIP), which is a federal regulation effective without action by states; but, states have the option to distribute emission allowances differently from the federal scheme by means of a revision to their State Implementation Plan (SIP).

Two (2) small utilities in the state, Chillicothe Municipal Utilities and Higginsville Municipal Power, were not allocated any annual or ozone season NO<sub>x</sub> allowances in the FIP. These power plants are stand-alone utilities under the same designated representative (DR), which does not allow trading allowances between facilities. CSAPR defines "designated representative" as the individual authorized to represent owners and operators of each affected source and unit in matters pertaining to the CSAPR emission reduction programs. This means that these two (2) power plants may have to purchase allowances on the market in order to operate in compliance with the rule. The proposed rulemakings would allocate two annual and one ozone season NO<sub>x</sub> allowances to both Chillicothe and Higginsville. In conjunction with the emission allowance reallocations, the state rules incorporate new unit set-aside and existing unit allocation methods closely following the federal rule. These rulemakings also incorporate EPA's technical revisions to CSAPR finalized on June 12, 2012 (77 FR 34830), which updated Missouri's new unit set-aside and existing unit allowances.

Additionally, these rulemakings incorporate a December 3, 2014 (79 FR 71663) Federal Register, commonly referred to as the "Ministerial Rule" in which compliance deadlines were revised as a result of a D.C. Circuit Court decision to grant EPA's motion to lift the stay of CSAPR, advancing the compliance deadlines by three (3) years. CSAPR replaces the Clean Air Interstate Rule (CAIR), the CAIR FIPs, and the associated SO<sub>2</sub>, NO<sub>x</sub> and ozone season NO<sub>x</sub> trading programs. CAIR was implemented through the end of the

2014 compliance periods and was replaced by a federally mandated CSAPR FIP which took effect January 1, 2015. Missouri's SIPs began January 1, 2016 and for the state rules January 1, 2017. It is the department's Air Pollution Control Program's intention to eventually rescind all three (3) state CAIR rules; however, the Air Program is waiting on litigation surrounding CSAPR to be fully resolved before rescinding these rules.

EPA established the new unit set-aside budget as a percentage of Missouri's overall emissions budget. The new unit set-aside is allocated to new units, but a portion may also be distributed to existing units if surplus allowances are available for a given year (i.e., if the new units do not use the entire new unit set-aside). New units are those that begin operation after January 1, 2010. There are currently two units in Missouri that commenced operation after January 1, 2010: Iatan Unit 2 and John Twitty Unit 2. Consistent with the federal CSAPR method, these state rules will allocate allowances to new units each year from the new unit set-aside based on the previous year of emissions. If any surplus allowances remain after covering previous year emissions, the state rules provide any brand new units (units not currently operating that come on-line in the future) that began operation in the previous year with an opportunity to receive more allowances from the new unit set-aside. These additional allowances would be based on a state-developed formula that projects the amount of emissions a brand new unit would emit over the course of the year. After these steps are applied, any remaining allocations in the new unit set-aside are distributed to existing units. These new unit set-aside provisions in the state rules are consistent with the federal CSAPR method except for the state-developed formula to allocate any extra allowances to brand new units that did not operate for the entire previous year.

For the existing unit budget, the proposed state rules do not alter the federal CSAPR allocations for any units other than Chillicothe and Higginsville. However, the state rules differ from the federal CSAPR method in the treatment of retired units. Though both the federal CSAPR method and the state rules define a retired unit to be one that has not operated for two consecutive years, the state rules allow retired units to keep their allowances for one additional year compared to the FIP. Under the state rules, retired units would lose allowances in the sixth year after their first full year of nonoperation, compared with losing allowances after the fifth year in the federal method.

EPA finalized CSAPR in 2011 with implementation set to begin January 1, 2012. Since then, a number of court actions have delayed the implementation of CSAPR. Prior to the delay, in 2011/2012 the department began developing new rules to redistribute allocations for the year 2014 for all three emission reduction programs. The 2011/2012 state rulemakings were posted for a 60-day comment period. Commenters requested the state incorporate EPA's June 2012 technical revisions rule, which was proposed during the 60-day comment period. The 2015 state rulemakings incorporate EPA's technical revisions rule.

On April 29, 2014, the U.S. Supreme Court upheld CSAPR and reversed an earlier decision of the D.C. Circuit Court vacating the rule. The D.C. Circuit Court lifted the stay

of CSAPR on October 23, 2014. EPA then issued an interim final rule to delay (toll) all implementation dates and deadlines in CSAPR by three years with implementation beginning in 2015 (79 FR 71663, December 3, 2014). Now that CSAPR has been reinstated the Air Program plans to proceed with these new rules including another 60-day comment period on the regulatory impact report and draft rule texts. We held conference calls with affected utilities on November 20 and December 16, 2014, and March 24, 2015 to reconfirm their support for the State's actions. The state rules will now apply to utilities in the CSAPR programs for the years 2017 and beyond.

2. Why is the rulemaking being proposed now?

These state rulemakings are being proposed now per a request from utilities in the state to assign extra allowances in both the NO<sub>x</sub> annual and ozone season emission reduction programs beginning in 2017 to two (2) small utilities, Chillicothe Municipal Utilities and Higginsville Municipal Power. The EPA has established a deadline of December 2015 for states to submit SIP revisions for reallocating emission allowances, starting with allowances distributed for 2017.

3. Will the rulemaking incorporate any document by reference, rather than state the language within the rulemaking?

These rulemakings will not incorporate any document by reference.

4. Does this rulemaking prescribe environmental standards, limits or conditions and is a Regulatory Impact Report required for this rulemaking?

In CSAPR, EPA is limiting states' emissions of NO<sub>x</sub> and SO<sub>2</sub> that contribute to harmful levels of fine particulate matter and ozone in downwind states. CSAPR requires EGUs with a nameplate capacity greater than twenty-five (25) MW to demonstrate compliance with emission limits. These proposed state rulemakings reallocate unit-level emissions allowances without changing EPA's established emissions budgets for the state. These limits may necessitate purchasing allowances or implementing NO<sub>x</sub> controls for some units. Therefore, a Regulatory Impact Report is required for these proposed state rulemakings.

5. What authority does DNR have to carry out this rulemaking?

643.050, Powers and duties of commission, provides the commission shall have the power to adopt, promulgate, amend, and repeal rules and regulations consistent with the general intent and purposes of Sections 643.010 to 643.190, RSMo and chapter 536 RSMo.

643.055, Commission may adopt rules for compliance with federal law, provides the commission shall have authority to promulgate rules and regulations to establish standards and guidelines to ensure the state is in compliance with the provisions of the

federal Clean Air Act. The state is prohibited from being stricter than the federal Clean Air Act except for nonattainment and maintenance areas.

6. What does the rulemaking require and how does it produce benefits?

The federal CSAPR is designed to assist areas in attaining and maintaining the 1997 and 2006 fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS) and the 1997 ozone NAAQS. Specifically, compliance with CSAPR addresses Missouri's obligations for these three NAAQS under Clean Air Act Section 110(a)(2)(D)(i)(I), commonly referred to as the "good neighbor" provisions. The federal rule requires annual and ozone season NO<sub>x</sub> reductions from power plants in Missouri, which will assist in attaining and maintaining these PM<sub>2.5</sub> and ozone NAAQS in the St. Louis area and in downwind states.

The proposed state rulemakings allocate two annual and one ozone season NO<sub>x</sub> allowances to both Chillicothe and Higginsville without changing the overall emissions budget established by EPA. This rule offers operational flexibility to these two facilities. In conjunction with the emission allowance reallocations, the state rules incorporate new unit set-aside and existing unit allocation methods closely following the federal rule.

EPA established the new unit set-aside budget as a percentage of Missouri's overall emissions budget. The new unit set-aside is allocated to new units, but a portion may also be distributed to existing units if surplus allowances are available for a given year (i.e., if the new units do not use the entire new unit set-aside). New units are those that begin operation after January 1, 2010. There are currently two units in Missouri that commenced operation after January 1, 2010: Iatan Unit 2 and John Twitty Unit 2. Consistent with the federal CSAPR method, these state rules will allocate allowances to new units each year from the new unit set-aside based on the previous year of emissions. If any surplus allowances remain after covering previous year emissions, the state rules provide any brand new units (units not currently operating that come on-line in the future) that began operation in the previous year with an opportunity to receive more allowances from the new unit set-aside. These additional allowances would be based on a state-developed formula that projects the amount of emissions a brand new unit would emit over the course of the year. After these steps are applied, any remaining allocations in the new unit set-aside are distributed to existing units. These new unit set-aside provisions in the state rules are consistent with the federal CSAPR method except for the state-developed formula to allocate any extra allowances to brand new units that did not operate for the entire previous year.

For the existing unit budget, the proposed state rules do not alter the federal CSAPR allocations for any units other than Chillicothe and Higginsville. However, the state rules differ from the federal CSAPR method in the treatment of retired units. Though both the federal CSAPR method and the state rules define a retired unit to be one that has not operated for two consecutive years, the state rules allow retired units to keep their allowances for one additional year compared to the FIP. Under the state rules, retired

units would lose allowances in the sixth year after their first full year of nonoperation, compared with losing allowances after the fifth year in the federal method.

7. Who is most likely affected by the rulemaking?

CSAPR impacts one-hundred twenty-five (125) units at forty-one (41) facilities throughout the state, specifically facilities who own or operate any stationary fossil-fuel-fired boiler or turbine serving any time, on or after January 1, 2005 a generator with a nameplate capacity greater than twenty-five (25) MW producing electricity for sale. A number of EGUs are expected to be able to comply with the NO<sub>x</sub> emission limits in CSAPR. Those that cannot comply with the NO<sub>x</sub> limits will be required by EPA to either buy extra allowances or install control equipment.

These new proposed state rulemakings would directly impact Chillicothe and Higginsville by giving them annual and ozone season NO<sub>x</sub> allowances starting in 2017, assisting them with compliance. Without these state rules, existing units in the state would have received the NO<sub>x</sub> allowances that are being reallocated to Chillicothe and Higginsville.

8. What impact will the proposed rulemaking have on small businesses? (A small business is defined as a for-profit enterprise with fewer than 100 full or part-time employees.)

Small businesses that are unable to comply with their emission limits will be required by EPA to purchase additional NO<sub>x</sub> allowances or add control equipment.

9. What are the probable costs for the department or any other public agency in the implementation and enforcement of the rulemaking?

The Air Pollution Control Program does not expect this agency or any other public agency will incur additional costs to implement and enforce this proposed rulemaking. EPA will be administering the CSAPR programs for all states affected by the federal rules. The state would only re-distribute the NO<sub>x</sub> Annual and Ozone season allowances.

10. What is the anticipated effect of the rulemaking on state revenue?

There is no anticipated effect on state revenue as a result of this rulemaking.

11. Who was/will be involved in developing the rulemaking?

Since the inception of CSAPR, the Air Program has held numerous stakeholder meetings to address interpretations and concerns of the federal rule. Participants include affected utilities throughout the state with EGUs larger than twenty-five (25) MW. Based on extensive discussions with utilities related to reallocating NO<sub>x</sub> allowances established in CSAPR, most utilities are generally in support of this action. The Missouri Department

of Natural Resources Air Pollution Control Program will be responsible for developing the rulemaking.

12. How has/will the development of the rulemaking been/be shared with interested parties and the public at large?

The Regulatory Impact Report and draft rule text were posted and made available for comment for 60 days on the program website on February 9, 2015. We received comments from Kansas City Power & Light Company, EPA, City Utilities of Springfield, and Empire District Electric Company.

As a result of comments received during the 60-day comment period on the draft rule text, the following changes were incorporated into the proposed rulemaking text:

- Incorporated a more streamlined notification process to clarify how allowance allocation information will be relayed to interested parties (added the definition of notification in subsection (2)(B) and using it in subparagraph (3)(A)2.A.).
- Added headers to sections, subsections and paragraphs throughout the rule for ease in navigating through the rule provisions.
- Added the most recent EPA CSAPR rulemaking references in subsection (2)(A) and section (3).
- Clarified how new-unit set-asides are established in subparagraphs (3)(A)2.C. and (3)(B)3.B.
- Added a statement at the end of Table I to more clearly indicate NO<sub>x</sub> Annual and NO<sub>x</sub> Ozone Season units that are subject to the rule(s).

The normal process will be followed: public hearing, Missouri Air Conservation Commission adoption, order of rulemaking, and publication in the Code of State Regulations (CSR). Information on the rulemaking is also made available on the department's web site and distributed to appropriate entities via email.

Information regarding rulemakings is also provided to the Air Program Advisory Forum, the Air Quality Advisory Committee of the East-West Gateway Council of Governments, and the Air Quality Forum of the Mid-America Regional Council.

13. Who may I contact to either ask questions or provide input on this rulemaking?

Questions and/or comments can be sent to:

Chief, Air Quality Planning Section  
Missouri Department of Natural Resources' Air Pollution Control Program  
P.O. Box 176  
Jefferson City, MO 65102-0176

or

Missouri Air Conservation Commission  
P.O. Box 176  
Jefferson City, MO 65102-0176

or call: (573) 751-4817

14. What is the expected calendar for this rulemaking, particularly the dates for the comment period and public hearing?

A tentative filing of the proposed rulemakings is expected on May 15, 2015 and a public hearing is expected July 30, 2015. The comment period will begin after the rulemakings are filed and end seven (7) days after the public hearing.