

# Small Business Regulatory Fairness Board

## Small Business Impact Statement

**Date:** 5/7/15

**Rule Number:** 10 CSR 10-6.372, Cross-State Air Pollution Rule Annual NO<sub>x</sub> Trading Allowance Allocations, and 10 CSR 10-6.374, Cross-State Air Pollution Rule Ozone Season NO<sub>x</sub> Trading Allowance Allocations

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Missouri Department of Natural Resources - Air Conservation Commission

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CSAPR is a U.S. Environmental Protection Agency (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 in downwind states. The federal rule affects electric generating units throughout the state greater than twenty-five (25) mega-watts (MW) that produce electricity for sale. The CSAPR program affects one hundred twenty-five (125) units at forty-one (41) power plants in Missouri and, affected facilities that are unable to meet their emission limit will be required to purchase additional NO<sub>x</sub> allowances or add control equipment. This rulemaking will reallocate annual and ozone season nitrogen oxide (NO<sub>x</sub>) emission allowances established in EPA's CSAPR to two (2) small utilities who did not receive any allowances for the control periods beginning in 2017 and thereafter. Small businesses that are allocated NO<sub>x</sub> allowances will be required to meet their NO<sub>x</sub> limit by operating at or below allowable levels, installing control equipment, or purchasing allowances. Two (2) small utilities, Chillicothe Municipal Utilities and Higginsville Municipal Power, may have to purchase allowances on the open market to comply. The proposed rulemakings will benefit these two (2) small utilities by assigning them a sufficient number of NO<sub>x</sub> allowances, offering flexibility to operate. The allowances that are reallocated to these small utilities would have been distributed into the new unit set-aside pool and apportioned to two (2) different units each year under the federal scheme. It is unknown which units would have received these allowances each year because it depends on prior year emissions from the state's new units. It is possible that electric generating units (EGUs) owned by other small businesses would have received one (1) or both of these allowances in any given year in the federal scheme but now will not receive the allowances as a result of the allocations to Chillicothe and Higginsville. Stakeholders concur that this is a reasonable solution. 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.

The Air Program shared initial development of this rulemaking by posting the draft rule text and the Regulatory Impact Report for the annual and ozone season NO<sub>x</sub> CSAPR rules on the program website for a 60-day comment period. In addition, meetings with affected utility stakeholders were convened providing technical expertise and feedback to assist the program in rule development which resulted in a more streamlined notification process via use of public web postings with email alerts. Finally, the rulemaking was discussed with the East-West Gateway Council of Governments' Air Quality Advisory Committee, and Air Program Advisory Forum. Small businesses will have additional opportunities to comment on this rulemaking at least thirty (30) days prior to, during, and seven (7) days after a public hearing. The normal rule process will be followed: public hearing, Missouri Air Conservation Commission adoption, order of rulemaking, and publication in the Code of State Regulations.

It is not anticipated that the Department of Natural Resources or any other state agency will incur additional costs to implement and enforce these proposed rules as similar tasks are currently being performed under a previous federal emission limit program which was the forerunner of CSAPR. The Program is not aware of any state agencies that operate applicable sources and would be required to comply. The proposed rulemakings will benefit two (2) small businesses (Chillicothe and Higginsville Municipal Utilities) by assigning them a sufficient number of NO<sub>x</sub> allowances, offering flexibility to operate. The allowances that are reallocated to these small utilities would have been distributed into the new unit set-aside pool and apportioned to two (2) different units each year under the federal scheme. It is unknown which units would have received these allowances each year because it depends on prior year emissions from the state's new units. It is possible that EGUs owned by other small businesses would have received one (1) or both of these allowances in any given year but now will not receive the allowances as a result of the allocations to Chillicothe and Higginsville. NO<sub>x</sub> allowance redistribution was a solution that most affected stakeholders agreed was not excessive and was reasonable. Reallocating both annual and ozone season NO<sub>x</sub> allowances to two (2) small businesses provides flexibility to operate in order to meet NO<sub>x</sub> emission limits in the federally administered programs.

The small businesses that will be affected are entities that own and operate a stationary fossil-fuel-fired boiler or stationary fossil-fuel-fired combustion turbine serving at anytime on or after January 1, 2005 a generator with a nameplate capacity greater than twenty-five (25) MW producing electricity for sale. All affected businesses will be required to meet NO<sub>x</sub> emission limits which includes a variability limit, by operating at or below allowable levels, installing control equipment, or purchasing NO<sub>x</sub> allowances. With agreement from most affected stakeholders to redistribute NO<sub>x</sub> allowances the Program does not expect any adverse effects to small businesses as the rules provide additional NO<sub>x</sub> allowances to two (2) facilities, offering flexibility to operate.

The Program does not expect any increase in cost for the two (2) facilities receiving additional NO<sub>x</sub> allowances as these allowances will enable them to operate at normal levels. However, other small businesses that are subject to the rule could incur a cost for a portion of the

redistributed NO<sub>x</sub> allowances that may have gone to their unit if not for the reallocation to Chillicothe and Higginsville.

Affected entities include Chillicothe Municipal Utilities and Higginsville Municipal Power who are two (2) small businesses that emit NO<sub>x</sub> from electric generating units and who will receive additional NO<sub>x</sub> allowances. These rules assist them with operating without penalty. Affected entities may also include other small businesses subject to the rule that may have received these allowances if not for the reallocation to Chillicothe and Higginsville. Additionally, units at twenty-one (21) facilities will be required to meet NO<sub>x</sub> emission limits by operating at or below allowable levels, installing control equipment, or purchasing NO<sub>x</sub> allowances which is similar to the obligations currently being fulfilled under the previous federal emission limit program.

**Does the proposed rulemaking(s) include provisions that are more stringent than those mandated by comparable or federal, state or county standards?**

Yes

No

**If yes, explain the reason for imposing a more stringent standard.**