

Missouri Department of Natural Resources
Regulatory Impact Report
In Preparation For Proposing
New Rule 10 CSR 10-6.376

Applicability: Pursuant to Section 640.015 RSMo, “all rulemakings that prescribe environmental conditions or standards promulgated by the Department of Natural Resources...shall... be based on the regulatory impact report...” This requirement shall not apply to emergency rulemakings pursuant to section 536.025 or to rules of other applicable federal agencies adopted by the Department “without variance.”

Determination: The Missouri Department of Natural Resources has determined this rulemaking prescribes environmental conditions or standards and verifies that this rulemaking is not a simple unvarying adoption of rules from other federal agencies. Accordingly, the Department has produced this regulatory impact report which will be made publicly available for comment for a period of at least 60 days. Upon completion of the comment period, official responses will be developed and made available on the agency web page prior to filing the proposed rulemaking with the Secretary of State. Contact information is at the end of this regulatory impact report.

1. Describe the environmental conditions or standards being prescribed.

This rulemaking reallocates the annual sulfur dioxide (SO₂) emission allowances established in the U.S. Environmental Protection Agency's (EPA's) Cross-State Air Pollution Rule (CSAPR) (76 FR 48208, August 8, 2011 and 77 FR 34830, June 12, 2012), starting with allowances distributed for 2017. 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. EPA's 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, 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).

One of the state's units affected by CSAPR, Iatan Unit I, is owned by three different stakeholders, Kansas City Power and Light Company, Kansas City Power and Light Greater Missouri, and Empire District Electric. Each of these owners is entitled to a proportionate share of the federally allocated SO₂ allowances at Iatan Unit I, which may be used at other units they own. This could be accomplished by trading the allowances from one unit in the state to another; however, there are certain provisions in the CSAPR that discourage units from emitting more emissions than what they were initially allocated. Therefore, in order to avoid exceeding their emission limits, Empire District Electric has requested that their share of the excess Iatan Unit I SO₂ allowances (1,300

allowances) be allocated to another unit that they own in the state in order to increase the initial SO₂ allowance allocation for that particular unit. This rulemaking reallocates 1,300 SO₂ allowances from Iatan Unit 1 to Empire District Electric's Asbury plant. In conjunction with the emission allowance reallocations, the state rule incorporates new unit set-aside and existing unit allocation methods closely following the federal rule. We are continuing to review these provisions for ways to streamline and clarify the notification process by the time we file the proposed rulemakings. 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.

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, this state rule 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 rule provides 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 rule 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 rule does not alter the federal CSAPR allocations for any units other than Chillicothe and Higginsville. However, the state rule differs from the federal CSAPR method in the treatment of retired units. Though both the federal CSAPR method and the state rule define a retired unit to be one that has not operated for two consecutive years, the state rule allows retired units to keep their allowances for one additional year compared to the FIP. Under the state rule, 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.

2. A report on the peer-reviewed scientific data used to commence the rulemaking process.

EPA used peer-reviewed scientific data in preparing CSAPR and a summary of the data was provided with EPA's final rule on August 8, 2011 (76 FR 48208). The Department of Natural Resources has not performed any additional review of scientific data in preparing the state rule reallocating emission allowances.

3. A description of the persons who will most likely be affected by the proposed rule, including persons that will bear the costs of the proposed rule and persons that will benefit from the proposed rule.

This state rulemaking will alter federal SO₂ emission allocations for two units owned by KCP&L and Empire District Electric.

4. A description of the environmental and economic costs and benefits of the proposed rule.

In the FIP, EPA distributed allowances to KCP&L since they are the majority owner but the allowances are actually Iatan Unit 1 property. Reallocation of SO₂ allowances in this proposed state rule will provide Empire District's Asbury unit more SO₂ allowances, increasing operational flexibility. KCP&L's and Empire District's SO₂ allowances will remain consistent with their ownership share. There is no net economic gain or loss in this transfer because the allowances were already owned by Empire District due to their percent ownership of Iatan Unit 1. The details of the economic costs will be provided in the fiscal notes accompanying this proposed state rulemaking.

5. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue.

This state rule is not anticipated to have costs that affect this agency or any other agency to implement and enforce and is not expected to affect state revenue as SO₂ allowances are only being reallocated under the federal CSAPR SO₂ emissions trading program. EPA will be administering and enforcing the trading program for all states affected by the federal rules.

6. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction, which includes both economic and environmental costs and benefits.

This new state rule maintains requirements prescribed in the federal CSAPR while at the same time redistributing SO₂ allowances between multiple owners of a unit. Compared to inaction, this rulemaking will benefit Empire District by assigning to them SO₂ allowances from a unit they partially own, providing flexibility to meet budgets in the federal SO₂ trading program. The details of the economic costs will be provided in the fiscal notes accompanying this proposed state rulemaking.

7. A determination of whether there are less costly or less intrusive methods for achieving the proposed rule.

The department is not aware of a less costly or less intrusive method for achieving the proposed rule amendments.

8. A description of any alternative method for achieving the purpose of the proposed rule that were seriously considered by the department and the reasons why they were rejected in favor of the proposed rule.

The department is not aware of any alternative method for achieving the purpose of the proposed rulemaking.

9. An analysis of both short-term and long-term consequences of the proposed rule.

The short-term and long-term consequences of this rulemaking are that annual SO₂ allowances at Empire District's Asbury unit will be increased, offering operational flexibility while at the same time KCP&L's Iatan Unit 1 will receive SO₂ allowances consistent with their share of the unit's ownership.

10. An explanation of the risks to human health, public welfare or the environment addressed by the proposed rule.

The purpose of the proposed rulemaking is to reallocate Iatan Unit 1's annual SO₂ allowances based on ownership share per a request from industry. Because this state rule does not change EPA's overall SO₂ emissions budget for Missouri, SO₂ emissions state-wide will not increase and will remain consistent with the CSAPR SO₂ trading program.

11. The identification of the sources of scientific information used in evaluating the risk and a summary of such information.

Sources of scientific information used in evaluating risk are contained in the supporting documents of the federal CSAPR. This proposed state rule is simply redistributing SO₂ allowances differently than the federal CSAPR SO₂ trading program; therefore no additional scientific data was necessary to evaluate risk.

12. A description and impact statement of any uncertainties and assumptions made in conducting the analysis on the resulting risk estimate.

EPA's analysis in the federal rulemaking and supporting documents address the impacts and uncertainties of the assumptions made in CSAPR. CSAPR is a federally implemented program. EPA's overall emissions budget for Missouri remains the same. The state rules only redistribute SO₂ allowances. Therefore, Missouri's aggregate emissions are not affected.

13. A description of any significant countervailing risks that may be caused by the proposed rule.

The department is not aware of any significant countervailing risks that may be caused by the proposed rulemaking.

14. The identification of at least one, if any, alternative regulatory approaches that will produce comparable human health, public welfare or environmental outcomes.

The department is not aware of any alternative method for achieving the purpose of the proposed rulemakings.

15. Provide information on how to provide comments on the Regulatory Impact Report during the 60-day period before the proposed rule is filed with the Secretary of State.

Formal comments can be provided on either the Regulatory Impact Report or the draft rule text by sending them to the contact listed in question 16.

16. Provide information on how to request a copy of comments or the web information where the comments will be located.

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or

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Copies of formal comments made on either the Regulatory Impact Report or the draft rule text may be obtained by request from the contact listed above or by accessing the Rules In Development section at web site www.dnr.mo.gov/env/apcp/RulesDev.htm for this particular rulemaking.