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REGULATIONS COMPILER

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division for Air Quality

4 (New Administrative Regulation)

5 401 KAR 51:240. Cross-State Air Pollution Rule (CSAPR) NO<sub>x</sub> annual trading program.

6 RELATES TO: KRS 224.1-010(8), KRS 224.10-100, 224.20-100, 224.20-110, 224.20-  
7 120, 40 C.F.R. 97.401- 97.435, 42 U.S.C. 7410

8 STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-110, 42 U.S.C. 7410

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the  
10 cabinet to promulgate administrative regulations for the prevention, abatement, and control of air  
11 pollution. This administrative regulation establishes the requirements for the control of annual  
12 nitrogen oxides (NO<sub>x</sub>) emissions from large boilers and turbines used in power plants, pursuant to  
13 the Cross-State Air Pollution Rule (CSAPR) NO<sub>x</sub> annual trading program, 40 C.F.R. 97.401  
14 through 97.435, Subpart AAAAA for sources located in the Commonwealth of Kentucky. This  
15 administrative regulation is not more stringent than the provisions of the federal regulations.

16 Section 1. Definitions. (1) Except as established in subsection (2) of this section, terms  
17 shall have the meaning established in 40 C.F.R. 97.402 and 97.403, as published July 1, 2017.

18 (2) "Permitting Authority" means:

19 (a) For a unit located in Kentucky, the cabinet, as defined by KRS 224.1-010(8); and

20 (b) For a unit located outside of the Commonwealth of Kentucky participating in the  
21 trading program, "permitting authority" as defined by 40 C.F.R. 97.402.

1 Section 2. Applicability. This administrative regulation shall apply to CSAPR NO<sub>x</sub> Annual  
2 units in Kentucky subject to 40 C.F.R. 97.404, as published July 1, 2017.

3 Section 3. Compliance Requirements. CSAPR NO<sub>x</sub> Annual units shall comply with:

4 (1) 40 C.F.R. 97.401, Purpose, as published July 1, 2017;

5 (2)(a) 40 C.F.R. 97.404, Applicability, as published July 1, 2017; and

6 (b) In 40 C.F.R. 97.404(a)(1) and (b), the phrase “in a state (and Indian Country within the  
7 borders of such state)” shall be replaced with “in Kentucky”.

8 (3) 40 C.F.R. 97.405, Retired Unit Exemption, as published July 1, 2017;

9 (4) 40 C.F.R. 97.406, Standard Requirements, as published July 1, 2017;

10 (5) 40 C.F.R. 97.407, Computation of Time, as published July 1, 2017;

11 (6) 40 C.F.R. 97.408, Administrative Appeal Procedures, as published July 1, 2017;

12 (7)(a) State NO<sub>x</sub> Annual Trading Budgets, New Unit Set-Asides, and Variability Limits for  
13 the 2017 control period and thereafter:

14 1. The NO<sub>x</sub> Annual trading budget shall be 77,238 tons;

15 2. The new unit set-aside shall be 3,090 tons; and

16 3. The variability limit shall be 13,903 tons; and

17 (b) Each Kentucky NO<sub>x</sub> Annual trading budget in subsection (a) of this section shall  
18 include any tons in the new unit set-aside but shall not include any tons in the variability limit;

19 (8) 40 C.F.R. 97.411(a) through (b)(1) and (c)(1) through (c)(5)(ii), Timing Requirements  
20 for CSAPR NO<sub>x</sub> Annual Allowance Allocations, as published July 1, 2017;

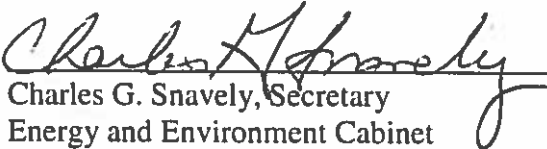
21 (9) 40 C.F.R. 97.412(a), CSAPR NO<sub>x</sub> Annual Allowance Allocations to New Units, as  
22 published July 1, 2017;

- 1 (10) 40 C.F.R. 97.413, Authorization of Designated Representative and Alternate  
2 Designated Representative, as published July 1, 2017;
- 3 (11) 40 C.F.R. 97.414, Responsibilities of Designated Representative and Alternate  
4 Designated Representative, as published July 1, 2017;
- 5 (12) 40 C.F.R. 97.415, Changing Designated Representative and Alternate Designated  
6 Representative; Changes in Owners and Operators; Changes in Units at the Source, as published  
7 July 1, 2017;
- 8 (13) 40 C.F.R. 97.416, Certificate of Representation, as published July 1, 2017;
- 9 (14) 40 C.F.R. 97.417, Objections Concerning Designated Representative and Alternate  
10 Designated Representative, as published July 1, 2017;
- 11 (15) 40 C.F.R. 97.418, Delegation by Designated Representative and Alternate Designated  
12 Representative, as published July 1, 2017;
- 13 (16) 40 C.F.R. 97.420, Establishment of Compliance Accounts, Assurance Accounts, and  
14 General Accounts, as published July 1, 2017;
- 15 (17) 40 C.F.R. 97.421(a) through (g), (i), and (k) through (l), Recordation of CSAPR NO<sub>x</sub>  
16 Annual Allowance Allocations and Auction Results, as published July 1, 2017;
- 17 (18) 40 C.F.R. 97.422, Submission of CSAPR NO<sub>x</sub> Annual Allowance Transfers, as  
18 published July 1, 2017;
- 19 (19) 40 C.F.R. 97.423, Recordation of CSAPR Annual Allowance Transfers, as published  
20 July 1, 2017;
- 21 (20) 40 C.F.R. 97.424, Compliance with CSAPR NO<sub>x</sub> Annual Emissions Limitation, as  
22 published July 1, 2017;

- 1 (21) 40 C.F.R. 97.425, Compliance with CSAPR NO<sub>x</sub> Annual Assurance Provisions, as  
2 published July 1, 2017;
- 3 (22) 40 C.F.R. 97.426, Banking, as published July 1, 2017;
- 4 (23) 40 C.F.R. 97.427, Account Error, as published July 1, 2017;
- 5 (24) 40 C.F.R. 97.428, Administrator's Action on Submissions, as published July 1, 2017;
- 6 (25) 40 C.F.R. 97.430, General Monitoring, Recordkeeping, and Reporting Requirements,  
7 as published July 1, 2017;
- 8 (26) 40 C.F.R. 97.431, Initial Monitoring System Certification and Recertification  
9 Procedures, as published July 1, 2017;
- 10 (27) 40 C.F.R. 97.432, Monitoring System Out-of-Control Periods, as published July 1,  
11 2017;
- 12 (28) 40 C.F.R. 97.433, Notifications Concerning Monitoring, as published July 1, 2017;
- 13 (29) 40 C.F.R. 97.434, Recordkeeping and Reporting, as published July 1, 2017; and
- 14 (30) 40 C.F.R. 97.435, Petitions for Alternative to Monitoring, Recordkeeping, or  
15 Reporting Requirements, as published July 1, 2017.

401 KAR 51:240 approved for filing.

3/8/2018  
Date

  
Charles G. Snavely, Secretary  
Energy and Environment Cabinet

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation and State Implementation Plan (SIP) amendment will be held on April 25, 2018, at 10:00 a.m. (Eastern Time) in Conference Room 216 at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 18, 2018, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing shall be cancelled, and notification of the cancellation shall be posted at <http://air.ky.gov/pages/publicnoticesandhearings.aspx>. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

This administrative regulation will be added to Kentucky's SIP approved by US EPA. The SIP revision package for the regulation will be submitted to US EPA once the administrative regulation becomes effective.

The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

### CONTACT PERSON:

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## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 401 KAR 51:240

Contact person: Christian Ewing

Phone: (502) 782-6604

E-mail: Christian.Ewing@ky.gov

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the requirements for the control of nitrogen oxides (NO<sub>x</sub>) emissions from electricity generating units (EGUs) subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) NO<sub>x</sub> Annual Trading Program. This administrative regulation will assist in mitigating interstate transport of annual NO<sub>x</sub> emissions for downwind states.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to reduce annual NO<sub>x</sub> emissions from EGUs. This administrative regulation will assist with implementing the 1997 and 2006 fine particulate matter National Ambient Air Quality Standards (NAAQS) and the 1997 ozone NAAQS. A reduction in annual NO<sub>x</sub> emissions will result in other criteria pollutant reductions because NO<sub>x</sub> is a precursor to particulate matter and contributes to the formation of ozone. The United States Environmental Protection Agency (US EPA) is requiring states to address the interstate transport of fine particulates and nitrogen oxides in their State Implementation Plans (SIPs).
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation reduces annual NO<sub>x</sub> emissions from EGUs. This administrative regulation will address Clean Air Act Section 110, requirements for interstate transport. This administrative regulation will be part of the Kentucky SIP.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of KRS 224.10-100(5) by reducing annual NO<sub>x</sub> emissions from EGUs, resulting in the protection of human health and the environment. This administrative regulation will address Clean Air Act Section 110, requirements for interstate transport.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

- (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
  - (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
  - (d) How the amendment will assist in the effective administration of statutes: This is a new administrative regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation.  
Owners, operators, and designated representatives of stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 Megawatt electrical (MWe) producing electricity for sale, subject to the provisions of the CSAPR NO<sub>x</sub> Annual Trading Program will be affected by this administrative regulation. This includes 8 organizations: American Electric Power/Kentucky Power, Eastern Kentucky Power Cooperative, Big Rivers Electric Corporation, Louisville Gas & Electric/Kentucky Utilities, Duke Energy Kentucky, Owensboro Municipal Utilities, Tennessee Valley Authority, and Riverside Generating Company. These organizations represent a total of 78 affected units.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any additional actions to comply with this proposed administrative regulation. Regulated entities are already subject to the requirements of the CSAPR Federal Implementation Plan (FIP).
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional costs to the regulated entities to comply with this administrative regulation. These entities are already subject to the requirements of the CSAPR FIP.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, annual NO<sub>x</sub> emissions will be reduced from 85,086 tons to 77,238 tons, a reduction of approximately 9 percent.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: The Cabinet will not incur any additional costs for the implementation of this administrative regulation initially.



- (b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of this administrative regulation on a continual basis.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.
- (9) TIERING: Is tiering applied? (Explain why or why not) No. The requirements of this administrative regulation apply to stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving a generator with a nameplate capacity of more than 25 MWe producing electricity for sale.

## FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

Administrative Regulation: 401 KAR 51:240

Contact person: Christian Ewing

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E-mail: Christian.Ewing@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?  
This administrative regulation will affect any unit, part, or division of state or local government operating a unit subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) Nitrogen Oxide (NO<sub>x</sub>) Annual Trading Program. Henderson Municipal Power & Light (HMP&L), owned by the City of Henderson, and Owensboro Municipal Utilities (OMU), owned by the City of Owensboro, operate units affected by this administrative regulation. However, both of the above utilities are already subject to the requirements of this administrative regulation pursuant to the CSAPR FIP.
2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation.  
KRS 224.10-100(5), 224.20-110, 224.20-120, 42 U.S.C. 7410, and 40 C.F.R. Part 97, Subpart AAAAA CSAPR NO<sub>x</sub> Annual Trading Program
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?  
The proposed administrative regulation will not generate revenue in the first year.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?  
The proposed administrative regulation will not generate revenue in subsequent years.
  - (c) How much will it cost to administer this program for the first year?  
The Energy and Environment Cabinet's (Cabinet) current operating budget will be used to administer this program for the first year. Costs incurred by HMP&L and OMU will not be more than what is already required by the CSAPR Federal Implementation Plan (FIP).
  - (d) How much will it cost to administer this program for subsequent years?  
The Cabinet's operating budget will be used to administer this program for subsequent years. Expenditures from HMP&L and OMU will not be more than the costs already required under the CSAPR FIP.

**Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.**

**Revenues (+/-):** There is no known effect on current revenues.

**Expenditures (+/-):** There is no known effect on current expenditures.

**Other Explanation:** There is no further explanation.

## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 401 KAR 51:240

Contact person: Christian Ewing

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1. Federal statute or regulation constituting the federal mandate.

The federal mandate for this administrative regulation is in 40 C.F.R. Part 97, Subpart AAAAA, Cross-State Air Pollution Rule (CSAPR) Nitrogen Oxide (NO<sub>x</sub>) Annual Trading Program and Clean Air Act (CAA) Section 110. On July 6, 2011, the United States Environmental Protection Agency (US EPA) issued a Federal Implementation Plan (FIP) for the CSAPR Nitrogen Oxide (NO<sub>x</sub>) annual emission budgets for affected units. The Energy and Environment Cabinet (Cabinet) is promulgating this administrative regulation to address CAA Section 110 requirements for interstate transport.

2. State compliance standards.

This administrative regulation adopts the federal standards for the control of NO<sub>x</sub> emissions from electricity generating units subject to the provisions of the CSAPR NO<sub>x</sub> Annual Trading Program.

3. Minimum or uniform standards contained in the federal mandate.

The federal mandate requires states to revise their State Implementation Plan (SIP) to reduce the emission of NO<sub>x</sub>. Each affected unit will have to hold allocations for the tons of emissions of NO<sub>x</sub> for each control period. The NO<sub>x</sub> Annual trading budget is 77,238 tons. The new-unit set aside is 3,090 tons and the variability is 13,903 tons. This administrative regulation will reduce annual NO<sub>x</sub> emissions from 85,086 tons to 77,238 tons, a reduction of approximately 9 percent.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No. This administrative regulation establishes the same requirements as the federal CSAPR NO<sub>x</sub> Annual Trading Program and will impose no more stringent requirements than those required by the CSAPR FIP.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Stricter standards or additional or different responsibilities and requirements are not imposed.