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Emily B Caudill
REGULATIONS COMPILER

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division for Air Quality

4 (Amended After Comments)

5 401 KAR 51:240. Cross-State Air Pollution Rule (CSAPR) NO_x 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_x) emissions from large boilers and turbines used in power plants, pursuant to
13 the Cross-State Air Pollution Rule (CSAPR) NO_x 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_x 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_x 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_x Annual Trading Budgets, New Unit Set-Asides, and Variability Limits for
13 the 2017 control period and thereafter:

14 1. The NO_x 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_x Annual trading budget in subparagraph (a)1. of this subsection
18 ~~[(a) of this section]~~ shall include any tons in the new unit set-aside but shall not include any tons
19 in the variability limit;

20 (8) 40 C.F.R. 97.411(a) through (b)(1) and (c)(1) through (c)(5)(ii), Timing Requirements
21 for CSAPR NO_x Annual Allowance Allocations, as published July 1, 2017;

22 (9) 40 C.F.R. 97.412(a), CSAPR NO_x Annual Allowance Allocations to New Units, as
23 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_x
16 Annual Allowance Allocations and Auction Results, as published July 1, 2017;
- 17 (18) 40 C.F.R. 97.422, Submission of CSAPR NO_x Annual Allowance Transfers, as
18 published July 1, 2017;
- 19 (19) 40 C.F.R. 97.423, Recordation of CSAPR NO_x Annual Allowance Transfers, as
20 published July 1, 2017;
- 21 (20) 40 C.F.R. 97.424, Compliance with CSAPR NO_x Annual Emissions Limitation, as
22 published July 1, 2017;

- 1 (21) 40 C.F.R. 97.425, Compliance with CSAPR NO_x 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.

5/10/2018
Date

Charles G. Snavely
Charles G. Snavely, Secretary
Energy and Environment Cabinet

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_x) emissions from electricity generating units (EGUs) subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) NO_x Annual Trading Program. This administrative regulation will assist in mitigating interstate transport of annual NO_x emissions for downwind states.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to reduce annual NO_x 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_x emissions will result in other criteria pollutant reductions because NO_x 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_x 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_x 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 amendment clarifies language to be consistent with federal regulations.

- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify language for consistency with federal regulations.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by providing clarity and consistency for language in federal regulations.
 - (d) How the amendment will assist in the effective administration of statutes: The amendment clarifies language to be consistent with federal regulations.
- (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_x 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 have clarification in language that is used in federal regulations.
 - (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 amendment.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the sources will have clarity on how to follow state regulations in comparison to related federal regulations.
- (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 amendment.
- (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

Phone Number: (502) 782-6604

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_x) 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_x 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

Phone: (502) 782-6604

E-mail: Christian.Ewing@ky.gov

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_x) 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_x) 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_x emissions from electricity generating units subject to the provisions of the CSAPR NO_x 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_x. Each affected unit will have to hold allocations for the tons of emissions of NO_x for each control period. The NO_x 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_x 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_x 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.

**STATEMENT OF CONSIDERATION RELATING TO
401 KAR 51:240, 401 KAR 51:250, and 401 KAR 51:260
Amended After Comments**

Energy and Environment Cabinet
Department for Environmental Protection
Division for Air Quality

I. The public hearing on 401 KAR 51:240, 51:250, and 51:260 scheduled for April 25, 2018 at 10:00 a.m. in Conference Room 216 at 300 Sower Boulevard, Frankfort, Kentucky, 40601 was cancelled in accordance with KRS 13A.270(7). However, written comments were received during the public comment period.

II. The following individuals submitted written comments:

<u>Name and Title</u>	<u>Affiliation</u>
Carolyn Brown, Counsel	Utility Information Exchange of Kentucky (UIEK)
R. Scott Davis Chief, Air Planning and Implementation Branch	US EPA

III. The following individuals responded to comments:

<u>Name and Title</u>	<u>Affiliation</u>
Chris Ewing*, Environmental Scientist	Division for Air Quality
Cassandra Jobe, Supervisor	Division for Air Quality
Sean Alteri, Director	Division for Air Quality

*Cabinet representative

IV. Summary of Comments and Responses

401 KAR 51:240, 51:250, 51:260

- (1) Subject Matter: Cross-State Air Pollution Rule**
- (a) Comment: Carolyn Brown, UIEK**

“UIEK supports the adoption of proposed regulations 401 KAR 51:240 (CSAPR NO_x Annual Trading Program), 401 KAR 51:250 (CSAPR NO_x Ozone Season Group 2 Trading Program), and 401 KAR 51:260 (CSAPR SO₂ Group 1 Trading Program). It is UIEK's understanding that inclusion of the Cross State Air Pollution Rule (CSAPR) provisions in the Kentucky regulations is important to Kentucky's demonstration of compliance with the Good Neighbor requirements of the Clean Air Act and also supports Kentucky's efforts to resolve U.S. EPA's disapproval of Kentucky's Regional Haze SIP and address the 2012 Federal Implementation Plan issued for Kentucky and other states related to Regional Haze.”

- (b) **Response:** The cabinet acknowledges the comment. These proposed administrative regulations will assist with implementing the following National Ambient Air Quality Standards: 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5}. These proposed administrative regulations will assist in addressing Clean Air Act Section 110 Good Neighbor requirements for interstate transport.

401 KAR 51:240 only

- (2) **Subject Matter: Cross-State Air Pollution Rule NO_x annual trading program**

- (a) **Comment: R. Scott Davis, US EPA**

In subsections (7)(b) of 401 KAR 51:240, Section 3, Kentucky may want to consider revising “subsection (a) of this section” to read “paragraph (a)1 of this subsection”.

- (b) **Response:** The Cabinet concurs and amends the proposed administrative regulation to the following: “subparagraph(a)1. of this subsection”.

- (3) **Subject Matter: Cross-State Air Pollution Rule NO_x annual trading program**

- (a) **Comment: R. Scott Davis, US EPA**

In 401 KAR 51:240, Section 3, subsection (19), the term “NO_x” should be inserted after the term “CSAPR” to properly identify the trading program.

- (b) **Response:** The Cabinet concurs and amends the proposed administrative regulations for clarity.

401 KAR 51:250 only

- (4) **Subject Matter: Cross-State Air Pollution Rule NO_x ozone season group 2 trading program**

- (a) **Comment: R. Scott Davis, US EPA**

In subsections (7)(b) of 401 KAR 51:250, Section 3, Kentucky may want to consider revising “subsection (a) of this section” to read “paragraph (a)1 of this subsection”.

- (b) **Response:** The Cabinet concurs and amends the proposed administrative regulation to the following: “subparagraph (a)1. of this subsection”.

- (5) **Subject Matter: Cross-State Air Pollution Rule NO_x ozone season group 2 trading program**

- (a) **Comment: R. Scott Davis, US EPA**

In 401 KAR 51:250, Section 3, subsection (19), the term “NO_x” should be inserted after the term “CSAPR.”

- (b) **Response:** The Cabinet concurs and amends the proposed administrative regulation for clarity.

401 KAR 51:260, only

- (6) **Subject Matter: Cross-State Air Pollution Rule SO₂ group 1 trading program**

- (a) **Comment: R. Scott Davis, US EPA**

In 401 KAR 51:260, Section 3, subsections (7), (7)(a), and (7)(d), the text “Group 1” should be inserted after the term “SO₂” to provide clarity as to the precise trading program.

- (b) **Response:** The Cabinet concurs and amends the proposed administrative regulation for clarity.

- (7) **Subject Matter: Cross-State Air Pollution Rule SO₂ group 1 trading program**

- (a) **Comment: R. Scott Davis, US EPA**

In 401 KAR 51:260, Section 3, subsection (7)(d) Kentucky may want to consider revising “subsection (a) of this section” to read “paragraph (a) of this subsection”.

- (b) **Response:** The Cabinet agrees and amends the proposed administrative regulation to the following: “subparagraph (a)1. of this subsection”.

- (8) **Subject Matter: Cross-State Air Pollution Rule SO₂ group 1 trading program**

- (a) **Comment: R. Scott Davis, US EPA**

In 401 KAR 51:260, subsection (17), the term “CSAPR” should be inserted before the term “SO₂” to properly identify the trading program.

- (b) **Response:** The Cabinet concurs and amends the proposed administrative regulation for clarity.

V. Summary of Action Taken by Promulgating Agency

401 KAR 51:240: Comments were considered and the following amendments are proposed:

Page 2

Section 3(7)(b)

Lines 17

After “in”, insert “subparagraph (a)1. of this”

Delete “(a) of this section”.

Page 3

Section 3(19)

Line 19

After “CSAPR”, insert “NO_x”.

401 KAR 51:250: Comments were considered and the following amendments are proposed:

Page 2

Section 3(7)(b)

Lines 20 and 21

After "in", insert "subparagraph (a)1. of this "
Delete "(a) of this section".

Page 3

Section 3(18)

Line 22

After "published" delete "by"

Page 4

Section 3(19)

Line 1

After "CSAPR", insert "NO_x".

401 KAR 51:260: Comments were considered and the following amendments are proposed:

Page 2

Section 3(7)

Line 12

After "(7)", insert "(a)".
After "SO₂", insert "Group 1".

Page 2

Section 3(7)(a)

Line 14

Insert "1."
Delete "(a)".
After "SO₂", insert "Group 1".

Page 2

Section 3(7)(b)

Insert "2."
Delete "(b)".

Page 2

Section 3(7)(c)

Insert "3."
Delete (c).

Page 2

Section 3(7)(d)

Lines 17 and 18

Insert "(b)".

Delete "(d)".

After "SO₂", insert "Group 1".

After "in", insert "subparagraph (a)1. of this".

Delete "(a) of this section".

Page 3

Section 3(17)

Line 15

After "of", insert "CSAPR".

Page 3

Section 3(18)

Line 18

After "published", delete "by".