

# STATE OF KANSAS

## Department of Health and Environment

### Notice of Public Hearing on Proposed Administrative Regulation

The Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Air, will conduct a public hearing at 10 a.m. Wednesday, October 7, 2015, in the Flint Hills Conference Room, third floor, of the Curtis State Office Building, 1000 S.W. Jackson, Topeka, to consider the adoption of proposed new air quality regulation K.A.R. 28-19-274. A summary of the proposed regulation and the estimated economic impact follows.

#### **Summary of Regulation:**

**K.A.R. 28-19-274.** The purpose of proposed new K.A.R. 28-19-274 regarding nitrogen oxides allocations is to replace the provision for allowance allocations for the Kansas TR NO<sub>x</sub> annual trading budget in the Transport Rule (TR) Nitrogen Oxide (NO<sub>x</sub>) Annual Trading Program for the 2017-2019 control periods under the U.S. Environmental Protection Agency's (USEPA) Cross-State Air Pollution Rule (CSAPR). When the proposed new regulation is adopted, KDHE will submit the regulation to the USEPA for approval into the State Implementation Plan (SIP).

#### **Economic Impact:**

Cost to agency: There are no costs to KDHE to implement this new proposed regulation. This regulation was developed for the sole purpose to ensure industries within the state do not lose valuable NO<sub>x</sub> annual allowance allocations.

Costs to the regulated community and consumers: There will be no additional cost burdens placed on either the regulated community or consumers due to the enactment of this regulation. The regulated community stands to gain NO<sub>x</sub> annual allowance allocations which

can be traded on an open marketplace. If this regulation is not enacted, those allocations will not be allotted to the regulated community and, consequently, the value would be lost.

Cost to other governmental agencies or units: There are no costs to other governmental agencies or units by implementing this proposed regulation.

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulation. All interested parties may submit written comments prior to 5 p.m. on the day of the hearing to Zac Graves, Kansas Department of Health and Environment, Bureau of Air, 1000 S.W. Jackson, Suite 310, Topeka, 66612, by e-mail to [zgraves@kdheks.gov](mailto:zgraves@kdheks.gov), or by fax to (785) 296-7455. During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulation as well as an opportunity to submit their written comments. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

Copies of the proposed regulation and the corresponding regulatory impact statement may be obtained from the KDHE Bureau of Air at <http://www.kdheks.gov/bar/planning/pnplanning.html> or by contacting Zac Graves by e-mail to [zgraves@kdheks.gov](mailto:zgraves@kdheks.gov), (785) 296-8142 or fax (785) 296-7455. Copies may also be viewed at the following locations:

- Department of Air Quality, Unified Government of Wyandotte County - Kansas City, Kansas Health Department, 619 Ann Ave., Kansas City, Kansas
- Johnson County Environmental Department, 11811 S. Sunset, Suite 2700, Olathe
- Curtis State Office Building, 1000 S.W. Jackson St., Suite. 310, Topeka

- KDHE Northeast District Office, 800 W. 24th St., Lawrence
- KDHE Northwest District Office, 2301 E. 13th St., Hays
- KDHE North Central District Office, 2501 Market Place, Suite D, Salina
- KDHE South Central District Office, 130 S. Market, Suite 6050, Wichita
- KDHE Southeast District Office, 1500 W. 7th St., Chanute
- KDHE Southwest District Office, 302 W. McArtor Rd., Dodge City
- Wichita-Sedgwick County Dept. of Community Health, 1900 E. 9th St., Wichita

Questions pertaining to the proposed regulation should be directed to Zac Graves at the contact information above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and the regulatory impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Zac Graves.

Susan Mosier, M.D.

Secretary of Health and Environment

**28-19-274. Nitrogen oxides; allocations.** (a) For purposes of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) “Indian country new unit set-aside allowance allocations” means any unallocated TR NO<sub>x</sub> annual allowances remaining after completion by USEPA of the procedures under 40 C.F.R. 97.412(b)(9) and (12).

(2) “NO<sub>x</sub>” means nitrogen oxides.

(3) “TR” means the federal transport rule established as an air pollution control and emission reduction program under section 110 of the federal clean air act and 40 C.F.R. 52.38.

(4) “TR NO<sub>x</sub> annual allowance” means a limited authorization issued and either allocated or auctioned by USEPA or by the secretary under a state implementation plan revision approved by USEPA, to emit one ton of NO<sub>x</sub> under the TR during a specified calendar year for which the authorization is allocated or auctioned or any subsequent calendar year.

(5) “TR NO<sub>x</sub> annual allowance allocation” means the secretary’s determination of the amount of TR NO<sub>x</sub> annual allowances to be initially credited to a TR NO<sub>x</sub> annual unit at no cost to the recipient.

(6) “TR NO<sub>x</sub> annual unit” means an electric generating unit that is subject to the TR for NO<sub>x</sub>.

(b) Pursuant to 40 C.F.R. 52.38(a)(4) as in effect on July 1, 2015, this regulation shall replace the provisions of 40 C.F.R. 97.411(a) and (b)(1) and 97.412(a) as in effect on July 1, 2015 for the calendar years 2017, 2018, and 2019 with regard to the implementation of the TR by the department.

(c) Each TR NO<sub>x</sub> annual unit shall receive TR NO<sub>x</sub> annual allowance allocations and

Indian country new unit set-aside allowance allocations for 2017, 2018, and 2019 according to the department's document titled "TR NO<sub>x</sub> annual allowance allocations for 2017, 2018, and 2019," dated July 17, 2015, which is hereby adopted by reference. (Authorized by K.S.A. 2014 Supp. 65-3005; implementing K.S.A. 2014 Supp. 65-3005 and K.S.A. 65-3010; effective P-\_\_\_\_\_.)



Division of Environment

Bureau of Air

**REGULATORY IMPACT STATEMENT CONSISTING OF:**

**I. ENVIRONMENTAL BENEFIT STATEMENT**

**AND**

**II. ECONOMIC IMPACT STATEMENT**

Pursuant to K.S.A. 2014 Supp. 77-416

**PROPOSED NEW PERMANENT AIR QUALITY REGULATION:**

**K.A.R. 28-19-274**

July 2015

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## **Background of Proposed New Regulation**

### **Introduction**

The purpose of the proposed new K.A.R. 28-19-274 *Transport Rule (TR) nitrogen oxides (NO<sub>x</sub>) annual allowance allocations* is for the Kansas Department of Health and Environment (KDHE) to replace the provision for allowance allocations for the Kansas TR NO<sub>x</sub> annual trading budget in the Transport Rule (TR) Nitrogen Oxide (NO<sub>x</sub>) Annual Trading Program for the 2017-2019 control periods under the U.S. Environmental Protection Agency's (EPA) Cross-State Air Pollution Rule (CSAPR).

The TR NO<sub>x</sub> Annual Allowance Allocations tables for 2017, 2018, and 2019 in the proposed K.A.R. 28-19-274(b) present the reallocation of 2,172 annual tons of annual NO<sub>x</sub>, which would otherwise be surrendered by Westar Energy's three units at Jeffrey Energy Center, and the allocation of 596 tons of annual NO<sub>x</sub> from new unit set-asides (NUSA). This CSAPR regulation revision simply redistributes Kansas' budgeted source allocations in 2017-2019 control periods identical to the 2020 budgeted distribution of allocations assigned by the EPA in the December 3, 2014 interim final rule, "Rulemaking To Amend Dates in Federal Implementation Plans Addressing Interstate Transport of Ozone and Fine Particulate Matter," (79 FR 71663) and then adds in the new unit set-aside allocations using the same proportional distribution methodology as was used for the original existing unit allocations. Any unallocated TR NO<sub>x</sub> annual allowances remaining in the Indian Country NUSAs for Kansas after completion by the USEPA Administrator of the procedures under 40 CFR 97.412(b)(9) and (12) for the 2017, 2018, and 2019 control periods shall be allocated under K.A.R. 28-19-274(c).

As of June 23, 2015, Argus Media reported an allocation of NO<sub>x</sub> was trading for \$140 (measured as a short ton). There are 2,172 NO<sub>x</sub> reallocation units and 596 NUSA allocations which could be distributed to Kansas's electric generation units (EGUs) that would be forfeited if they are not reallocated. This regulation will ensure Kansas industries will not lose these allocations which, if sold on the open trading market, would be worth approximately \$387,520 annually (\$1,162,560 for the 2017-2019 period).

### **Regulation Description**

The proposed new K.A.R. 28-19-274, once a final regulation and incorporated in a State Implementation Plan Revision submittal to EPA, gives the authority to the KDHE to assume

allocation responsibilities for the Kansas budget in the Transport Rule (TR) Nitrogen Oxide (NO<sub>x</sub>) Annual Trading Program for the 2017-2019 control periods under EPA's CSAPR. The regulation includes three tables which specify exact NO<sub>x</sub> allocations to existing EGUs in the state for the control periods 2017, 2018, and 2019.

### **I. Environmental Benefit Statement**

#### **1) Need for proposed amendments and environmental benefit likely to accrue.**

##### **a) Need**

There are 2,172 NO<sub>x</sub> reallocations and 596 NUSA allocations which equates to 2,768 total allocations which could be distributed to Kansas's electric generation industries. This regulation will ensure Kansas industries will not lose these allocations which, if sold on the open trading market, would be worth approximately \$387,520 annually (\$1,162,560 for the 2017-2019 period).

##### **b) Environmental benefit**

The proposed new regulation simply reallocates existing NO<sub>x</sub> annual allowances associated with the CSAPR NO<sub>x</sub> trading programs, keeping state budget caps the same as the federal rule, they are not intended to more lenient or stricter than federal guidelines. The environment will neither receive additional benefit nor will it be degraded by this regulation.

#### **2) When applicable, a summary of the research indicating the level of risk to the public health or the environment being removed or controlled by the proposed rules and regulations or amendment.**

Not applicable. The proposed amendment to K.A.R. 28-19-274 is not directly related to any risk to the public health or environment and does not impose any new or alter any existing emissions limitations or standards that will have direct bearing on public health or the environment. This regulation caps the annual NO<sub>x</sub> emissions statewide; therefore, it prevents additional pollution being released into the atmosphere.

#### **3) If specific contaminants are to be controlled by the proposed regulations or amendment, a description indicating the level at which the contaminants are considered harmful according to current available research.**

Not applicable. There are no new or modifications to existing emissions limitations or standards controlling specific contaminants imposed by this proposed regulation.

## **II. Economic Benefit Statement**

**1) Are the proposed regulations or amendments mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program?**

No. This is not relevant to this proposed regulation in any fashion.

**2) Do the proposed amendments exceed the requirements of applicable Federal law?**

No. The proposed new K.A.R. 28-19-274 does not exceed requirements of applicable federal law.

**3) Description of costs to agencies, to the general public and to persons who are affected by, or are subject to, the regulations:**

**a) Capital and annual costs of compliance with the proposed amendments and the persons who will bear those costs.**

This proposed new K.A.R. 28-19-274 is to take advantage of EPA's allowance to reallocate stranded allowances and NUSA allocations for 2017-2019. There are no capital or annual costs associated with this regulation. This regulation will ensure Kansas industries will not lose NO<sub>x</sub> allocations which, if sold on the open trading market, would be worth approximately \$387,520 annually (\$1,162,560 for the 2017-2019 period).

**b) Initial and annual costs of implementing and enforcing the proposed amendments, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other persons or entities who will bear the costs.**

The proposed new K.A.R. 28-19-274 will impose no new costs or paperwork burdens of implementing and enforcing upon the state agencies, other governmental agencies or other persons. CSAPR is a federal program and the affected units are already complying with the federal requirements. This proposed regulation is to take advantage of EPA's allowance to reallocate stranded allowances and NUSA allocations for 2017-2019.

**c) Costs which would likely accrue if the proposed regulations are not adopted, the persons who will bear the costs and those who will be affected by the failure to adopt the regulations.**

If this proposed regulation is not enacted, Kansas electric generating industries will lose 2,768 NO<sub>x</sub> allocations which, if sold on the open trading market, would be worth approximately \$387,520 annually (\$1,162,560 for the 2017-2019 period).

**d) A detailed statement of the data and methodology used in estimating the costs used in the statement.**

The data and methodology to determine costs associated with not enacting this proposed amendment are as follows:

- i. Argus Media Daily (<https://www.argusmedia.com/Emissions/Argus-Air-Daily-Market-Service>) was reviewed to determine the current market value for a single, annual allocation of NO<sub>x</sub>. As of June 22, 2015, an allocation would fetch \$140.
- ii. Per the Consent Decree [reference], EPA required Westar to forfeit 2,172 annual tons of NO<sub>x</sub> which can be reallocated to other EGUs within Kansas for 2017-2019. Additionally, Kansas was granted 596 annual allocations for future electric generating units in the state. Combined, there are 2,768 NO<sub>x</sub> annual allocations total to be distributed.
- iii. By multiplying 2,768 x \$140, the total annual fiscal impact is a positive \$387,520 (\$1,162,560 for the three year period this regulation covers). If these allocations are not distributed, many EGUs in Kansas will lose this benefit.

**e) Description of any less costly or less intrusive methods that were considered by the agency and why such methods were rejected in favor of the proposed regulations.**

No less costly or intrusive method was identified in the process of developing the proposed regulation.

**f) Consultation with League of Kansas Municipalities, Kansas Association of Counties, and Kansas Association of School Boards.**

Copies of the regulation, the regulatory impact statement, and the notice of hearing will be provided electronically to these organizations at the time of publication of the Notice of Hearing in the *Kansas Register*.