

## 2018 Kansas Statutes

### **65-3031. Electric generating units; carbon dioxide emissions standards; submission of state plan by secretary to environmental protection agency; review by study committee and attorney general; agency implementation, limitations.**

(a) In accordance with the requirements of the environmental protection agency's rulemaking pursuant to docket EPA-HQ-OAR-2013-0602, the secretary may develop and submit to the environmental protection agency a state plan for compliance with the regulation of carbon dioxide from any affected or existing electric generating units pursuant to 42 U.S.C. § 7411. The secretary of health and environment may establish separate standards of performance for carbon dioxide emissions based upon: (1) The best system of emission reduction that has been adequately demonstrated while considering the cost of achieving such reduction;

(2) reductions in emissions of carbon dioxide that can reasonably be achieved through measures taken at each electric generating unit; and

(3) efficiency improvements to any affected electric generating unit and other measures that can be undertaken at each electric generating unit to reduce carbon dioxide emissions without any requirements for fuel switching, co-firing with other fuels or limiting the utilization of the unit.

(b) In establishing any standard of performance for any existing electric generating unit pursuant to this section, the secretary may consider alternative standards and metrics or may provide alternative compliance schedules than those provided by federal rules or regulations by evaluating: (1) Unreasonable costs of achieving an emission limitation due to plant age, location or the design of an electric generating unit;

(2) any unusual physical or compliance schedule difficulties or impossibility of implementing emission reduction measures;

(3) the cost of applying the performance standard to an electric generating unit;

(4) the remaining useful life of an electric generating unit;

(5) any economic or electric transmission and distribution impacts resulting from closing the electric generating unit if compliance with the performance standard is not possible; and

(6) the potential for a standard of performance relating to unit efficiency, including any requirements for a new source review or the application of a best available control technology emission limitation for any criteria pollutant as a condition of receiving a permit or authorization for the project.

(c) The secretary may implement such standards through flexible regulatory mechanisms, including the averaging of emissions, emissions trading or other alternative implementation measures that the secretary determines to be in the interest of Kansas. The secretary may enter into voluntary agreements with utilities that operate fossil-fuel based electric generating units within Kansas to implement such carbon dioxide emission standards. Such agreements may aggregate the carbon dioxide emissions levels from electric resources in this state, including coal, petroleum, natural gas or renewable energy resources as defined in K.S.A. 66-1257, and amendments thereto, that are owned, operated or utilized by power purchase agreements by utilities for purposes of determining compliance with such carbon dioxide emission standards.

(d) The secretary and the state corporation commission shall enter into a memorandum of understanding concerning implementation of the requirements and responsibilities under the Kansas air quality act.

(e) (1) The secretary shall submit to the clean power plan implementation study committee:

(A) A plan to investigate, review and develop a state plan no later than the first week of November 2015;

(B) information on any final rule adopted by the environmental protection agency under docket EPA-HQ-OAR-2013-0602 no later than February 1, 2016; and

(C) any information requested by the chairperson.

(2) The state corporation commission shall submit information to the clean power plan implementation study committee concerning:

(A) Each utility's re-dispatch options along with the cost of each option;

(B) the lowest possible cost re-dispatch options on a state-wide basis; and

(C) the impact of each re-dispatch option on the reliability of Kansas' integrated electric systems.

(f) The secretary shall present any proposed state plan proposed for submission to the environmental protection agency to the clean power plan implementation study committee for review and input pursuant to K.S.A. 66-1285, and amendments thereto, at least 30 days prior to submission of such a plan to the environmental protection agency or any other federal agency. If a proposed plan is disapproved by the clean power plan implementation study committee, the secretary shall resubmit a revised plan to the study committee. The secretary may submit any proposed plan to the environmental protection agency that has been submitted to the study committee and that has not been disapproved by the committee within 30 days of the committee receiving such proposed plan.

(g) Notwithstanding review by the clean power plan implementation study committee of the submission of a state plan to the environmental protection agency, further action by the secretary to implement or enforce the final approved state plan is dependent upon the final adoption of the federal emission guidelines. If the federal emission guidelines are not adopted or are adopted and subsequently suspended, vacated, in whole or in part, or held to not be in accordance with the law, the secretary shall suspend or terminate, as appropriate, further action to implement or enforce the state plan.

(h) Notwithstanding any other provision of law, prior to submitting any state plan to the environmental protection agency, the secretary shall: (1) Submit such state plan as proposed rules and regulations pursuant to K.S.A. 77-415 et seq., and amendments thereto. Such submission shall be expedited by any agency reviewing such proposed rules and regulations pursuant to K.S.A. 77-415 et seq., and amendments thereto;

(2) request a review of the proposed state plan by the office of the attorney general. The attorney general review may certify to the secretary that the plan will not hinder, undermine or in any way harm the position of the state of Kansas in any current or pending litigation relating to the environmental protection agency docket EPA-HQ-OAR-2013-0602. The attorney general shall also review the proposed state plan concerning any impacts on the protections guaranteed by the constitutions of the United States or the state of Kansas; and

(3) not submit a state plan if the attorney general review indicates that the proposed plan would adversely impact the state's legal position in any current or pending litigation relating to the environmental protection agency docket EPA-HQ-OAR-2013-0602 or if the attorney general review indicates that the proposed state plan adversely impacts protections guaranteed by the constitutions of the United States or the state of Kansas.

(i) The secretary shall be responsible for submitting a state plan to the environmental protection agency in a timely manner. Notwithstanding any other provision of this act, the secretary shall prepare and submit any request for an extension of time to file a state plan, if necessary, an interim state plan or a final state plan to the environmental protection agency. Any interim or final state plan shall be submitted by the secretary no less than four calendar days prior to the federal submission deadline, or extended submission deadline, established by the environmental protection agency. Any final state plan submitted to the environmental protection agency may only be submitted if the secretary has previously submitted such plan for review by the clean power plan

implementation study committee pursuant to this act.

(j) Due to the February 9, 2016, stay issued by the United States supreme court, all state agency activities, studies and investigations in furtherance of the preparation of an initial submittal or the evaluation of any options for the submission of a final state plan pursuant to the environmental protection agency docket EPA-HQ-OAR-2013-0602, codified as 40 C.F.R. part 60, shall be suspended until the stay is lifted. Nothing in this subsection shall be construed so as to restrict the ability of a state agency from communicating with, or providing information to, other state agencies in furtherance of any of the agency's statutory obligations.

(k) This section shall be part of and supplemental to the Kansas air quality act.

**History:** L. 2014, ch. 64, § 1; L. 2015, ch. 74, § 1; L. 2016, ch. 48, § 3; May 19.