

**2015 ICIS-Air ICR
(EPA-HQ-OECA-2014-0523)**

**Response to Comments
Executive Summary**

Over two rounds of comment solicitation via the Federal Register, 12 sets of comments were received on the proposed “*Air Stationary Source Compliance and Enforcement Information Reporting*” Information Collection Request (ICR) supporting statement (EPA-HQ-OECA-2014-0523). Comments received generally focused on the sources that comprise the federally-reportable universe of regulated sources and our method for determining the burden imposed by this ICR. This document summarizes the main points identified by commenters and our response.

Authority to Collect Information

In response to comments received questioning the Agency’s authority to collect the information included in the ICR, EPA identifies section 114 of the Clean Air Act (CAA) as the primary authority for collecting the information. Section 114 allows EPA to, among other things, require persons to provide information as EPA may reasonably require to carry out its obligations under the statute. EPA’s section 114 authority extends beyond owners and operators of emissions sources to include any person subject to the requirements of the statute, including state and local air quality control agencies.

Federally-Reportable Universe

Section 4(b) *Information Requested* of the second FR supporting statement identifies the universe of sources regulated by the CAA at which activities conducted by an agency charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution are to be reported to the EPA. This universe of sources is referred to as the federally-reportable universe. It does not include all sources regulated by the CAA, but it does include Title V major sources, all synthetic minor sources, all sources subject to a Part 61 NESHAP regulation, all sources that are included on a Compliance Monitoring Strategy plan, all sources with a High Priority Violation identified, and all sources subject to a formal enforcement action.

The federally-reportable universe is broader than the universe of sources included in the CMS, FRV and HPV policies. The CMS policy generally focuses on Title V majors and 80% synthetic minor sources; the FRV policy focuses on Title V majors, 80% synthetic minors, sources on a CMS plan, and any source with an HPV; and the HPV policy generally applies to Title V majors only.

The broader federally-reportable universe includes a greater percentage of sources covered by the CAA to allow EPA to, among other things, construct an inventory of regulated sources, support comprehensive CAA oversight activities, and ensure an effective regulatory framework.

During this three year ICR coverage period, EPA will initiate a dialogue with interested stakeholders to review the composition of the federally-reportable universe. But, we will not at this time wholly exclude sources that are currently part of the universe. Collectively these sources, including minor sources, can have a significant impact on the environment and public health. If it is determined that the federally-reportable universe should change, we may consider renewing this ICR in fewer than three years.

Why Include Minor Sources?

It is important to have a complete and accurate inventory of all regulated sources. This information is needed to implement a compliance and enforcement program that includes efforts such as targeting compliance activities; assessing impacts on sensitive communities; and evaluating compliance trends. Having an accurate, up-to-date source universe is also essential to good governance by allowing local communities and citizens to be aware of the regulated facilities within a geographical area of interest and to allow them the opportunity to conduct their own assessment of these facilities, if they choose. They may wish to obtain a better understanding of the degree and impact of emissions by facilities.

Minor sources are part of any comprehensive inventory of regulated sources. These include area or small sources under CAA regulations. Even low emission releases from these individual sources can impact communities. In the aggregate, their emissions can have significant impacts on the health and environment of the communities in which they are located particularly where large numbers are located in heavily populated areas.

ICR Universe versus FRV Universe

The 2014 Federally-Reportable Violation (FRV) policy states, “The FRV reportable source universe is a subset of the ICIS-Air reportable universe identified in the 2010 ‘Source Compliance and State Action Reporting Information Collection Request’ (ICR).” The 2014 FRV policy only narrowed the universe of sources for which violations are to be reported.

Enforcement versus Compliance Assistance

A successful compliance and enforcement program advances the use of compliance monitoring, compliance assistance, self-auditing, and enforcement in an integrated manner that maximizes efficiencies to both address and promote increased compliance. Depending upon the challenges that need to be met and the specific rule that is being implemented, delegated agencies should determine how best to direct their efforts and which tools would be most appropriate and effective in achieving environmental goals.

EPA Authority and Interests

Our policies should not be read to limit EPA authority. EPA retains parallel authority to enforce federal requirements even when EPA delegates program authority to state, tribal, or local governments. EPA’s authority remains that which is provided by section 113 of the Clean Air Act, which includes requirements and prohibitions that apply to smaller sources of emissions. It

is the intent of this ICR to limit the reporting universe of sources regulated by the CAA taking into consideration the reporting burden imposed on state, tribal, and local delegated agencies.

Minimum Data Requirements (MDRs)

There are some changes in how the current MDRs were reported in AFS compared to how they are reported into ICIS-Air. This is a result of the modernization of AFS from the mainframe to a web-based system. In order to fully capture some MDRs, ICIS-Air requires some additional information about the data being reported. For example, the description of the action type reported to AFS to indicate completion of a stack test included as a single entry whether the test was observed or not, and who conducted the test. In ICIS-Air this information is reported as separate data elements on the same stack test activity record. As another example, the forum for an enforcement action (e.g., Judicial) was inherent in the action type reported to AFS. In ICIS-Air agencies must explicitly identify the enforcement action forum. We do not believe these are fundamentally new requirements, but rather a new approach to reporting the same information.

We strongly believe that system efficiencies will be realized through several means such as:

- (1) Auto-populating data fields to the greatest extent possible based on characteristics of the record type being added and information known about the person adding the record;
- (2) Providing drop-down menus of values and type-ahead functionality wherever possible to facilitate entry of information, provide greater consistency in data entry, eliminate the need to refer to multiple lists of regional action types, and improve overall data quality; and
- (3) Using the technology and capabilities of the new electronic data transfer (EDT) process that are a vast improvement over the AFS direct batch process and the “Universal Interface.”

This modern system has also allowed us to streamline how some MDRs are reported. For example, the MDR for “Compliance Status” is streamlined so that the compliance status of an air program pollutant is no longer required to be entered or subsequently changed to reflect a return to compliance. Instead, only violations are reported into the new system. State, tribal and local agencies no longer need to report the MDR for “Attainment Status” because the new system automatically obtains this information from the EPA’s Facility Registry System (FRS).

Reporting FRV versus Notice of Violation (NOV)

The list of Minimum Reportable Activities (Table 1 of the Supporting Statement) contains those activities that if they occur at a federally-reportable source should be reported to ICIS. The activities include compliance monitoring activities, enforcement actions and violation determinations. Any minimum reportable activity related to a federally-reportable source should be reported consistent with the ICR and related policies. Informal and formal enforcement actions, including NOV’s, are reportable independent of the FRV determination.

If a source is only reportable because they are (or were) subject to a formal enforcement action, the source be maintained in ICIS until the violations are resolved that the enforcement action addressed, and the enforcement action is concluded. While the source is federally-reportable,

then subsequent minimum reportable activities that occur should be reported for the facility. Any informal enforcement action (e.g., NOV) that may have been issued prior to the source becoming federally-reportable (i.e., preceded the formal enforcement action) is not a minimum reportable activity.

Burden Assessment

The EPA's preliminary claim that agencies will experience a burden reduction is based on the following:

- ICIS is a web-based system as opposed to a mainframe system;
- both novice and experienced users will benefit from modern functionality like drop-down menus and type-ahead;
- the FRV and HPV policies, which include provisions for reporting to ICIS, were modified to reduce the universe of sources to which the policies apply;
- results from a limited burden assessment that compared data entry into AFS versus ICIS-Air;
- a one-time estimate of the resources required to participate in the design and development of ICIS-Air; and
- experience transitioning to ICIS from PCS, which was a mainframe database for reporting Clean Water Act NPDES data.

The limited burden assessment that EPA conducted is based on a time and motion study estimating the relative change in burden associated with directly entering data to ICIS-Air versus AFS. The study compared 47 different AFS direct data entry scenarios to the equivalent ICIS-Air direct data entry scenarios. Of the 47 scenarios, 12 are no longer warranted in ICIS-Air (e.g., changing compliance status), 22 took less time in ICIS-Air, 6 took the same amount of time, and 7 took more time in ICIS-Air than AFS. These preliminary findings are a strong indication that manual users will experience a discernable reduction in overall burden. EPA also interviewed agencies that have submitted data electronically to ICIS to compare the batch upload process they used for AFS to the EDT process they use for ICIS. In addition, EPA interviewed agencies to estimate the one-time burden imposed by the transition from AFS to ICIS-Air.

During this ICR coverage period, EPA will conduct a more robust burden assessment that includes the entire federally-reportable universe and also accounts for the method of reporting the MDRs both electronically and manually.

Expansion of HPV Policy Applicability

While the revised HPV policy's universe of sources includes minor sources on a CMS plan, the application of this policy to those sources is somewhat limited by the HPV criteria. For example, Criteria 1, 2, and 4 would not otherwise apply to minor sources because these criteria apply only to major sources (e.g., Criteria 1 and 2 apply to major sources as defined by NSR; Criterion 4 only applies to sources subject to a Major Source NESHAP). Criterion 3, which addresses violations of the New Source Performance Standards, could apply to Title V non-major sources, but these standards often have applicability thresholds within the individual subparts that could exempt Title V non-major sources from HPV designation. While Criterion 5 could also apply to

Title V non-major sources, this criterion includes only those violations of work practice standards, monitoring, recordkeeping and reporting that substantially interfere with an agency's ability to enforce, so Criterion 5 does not automatically apply to violations at a Title V non-major source. Lastly, Criterion 6 is the discretionary category, requiring no automatic HPV designation.

EPA, however, is aware that the inclusion of Title V non-major sources with a CMS plan could have a disproportionate impact on implementation of the revised HPV policy. EPA will monitor implementation of the revised HPV policy and the data submitted pursuant to the policy, including data on CMS non-major sources, to determine if further revisions to the policy are warranted.

Response to CA Local(s) – Program Variability

The Agency recognizes that regulatory applicability thresholds vary based on environmental conditions (e.g., nonattainment areas). But, it is for good reason these thresholds vary. Higher concentrations of criteria pollutants exist in these areas. The Agency would be remiss of its obligations if sources that may contribute to an area's nonattainment status were wholly excluded from this ICR. But, in recognition of the variability of the regulated universe of sources, Agency policies do provide exceptions for these areas.

The federally-reportable universe covered by the ICR includes a greater percentage of sources covered by the CAA than the CMS universe, which allows EPA to, among other things, construct an inventory of regulated sources, support comprehensive CAA oversight activities, and ensure an effective regulatory framework. Non-major sources are part of any comprehensive inventory of regulated sources. These include area or small sources under CAA regulations. Even low emission releases from these individual sources can impact communities. In the aggregate, their emissions can have significant impacts on the health and environment of the communities in which they are located particularly where large numbers are located in heavily populated areas.

The EPA recognizes that rules and regulations existed in California to control air emissions before the EPA and federal Clean Air Act, and appreciates that California jurisdictions (California's Metropolitan Los Angeles and San Francisco regions) were among the first to submit regional air pollution control plans to the EPA for sulfur oxides and particulate matter. Nonetheless, it was realized that the only practical way to control air pollution in the United States was through a national approach. EPA will always rely heavily on its partner agencies to maintain and improve the air quality of the United States, and we will continue to seek input from these partners for all significant policy revisions, as we did throughout design and development of ICIS-Air.

With that, we do recognize that there is an evolution regarding the data we collect and the method in which we collect it. For example, we have learned that some agencies do not utilize administrative authority to address and resolve compliance issues at regulated sources. In response, over the course of developing ICIS-Air, we plan to explore means to better capture these other response actions. Also, the initial release of ICIS-Air included a method for

reporting a state or local regulatory citation in lieu of reporting a federal air program to indicate a source's applicable set of rules or regulations. We hope agencies utilize this option.

Part of EPA's charge is implementing and maintaining a nationally consistent CAA stationary source compliance and enforcement program. With that as a goal, we certainly recognize that differences exist based on environmental conditions, composition of the sources of emissions, and regulatory framework.

Transparency Regarding Policy Development

The Office of Compliance will evaluate its methods for soliciting input and participation on workgroups and efforts to modify and/or develop policies related to this ICR. We rely heavily on collaboration with our partner compliance monitoring and enforcement agencies, and we have benefitted greatly from enhanced collaboration.

Please contact Jason Swift at (202)564-6692 or at swift.jason@epa.gov for any comments or questions.