

October 20, 2014

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Enforcement and Targeting Division
Office of Compliance Assurance, Mail Code: 2222A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Attn: Docket ID No. EPA-HQ-OECA-2014-0523

On behalf of the Northeast States for Coordinated Air Use Management (NESCAUM), we are providing comments on the U.S. Environmental Protection Agency's (EPA's) proposed Information Collection Request (ICR) concerning "Air Stationary Source Compliance and Enforcement Information Reporting" published on August 21, 2014 (79 Fed. Reg. 49511). NESCAUM is the association of state air quality agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont.

The purpose of the ICR is to seek comment on burden estimates for data reporting. This ICR, however, has been published during a time of transition from the previous Air Facility System (AFS) to the new ICIS-Air system. The new system is not yet fully available and only a few NESCAUM states have familiarity with it. Because states have not yet fully learned how to operate the new system, and as a consequence do not have any experience with using it, it is not possible to make informed comments on the burden estimate. In addition, because of this lack of operational experience, we are not able to gauge the reasonableness of EPA's broad assertions on the burden estimates for ICIS-Air and do not understand how EPA has been able make informed estimates about the impacts on reporting burdens. NESCAUM believes that EPA should base its burden estimate on actual data and experience with the system rather than on expectations. Therefore we strongly recommend that EPA revisit the ICR and burden estimates at a later point when reporting agencies can provide more informed estimates of reporting burdens.

NESCAUM recognizes and appreciates the effort put forward by EPA to reach out to state agencies to initiate a dialogue. This dialogue must continue in light of our continuing concerns with the new system. In the ICR's Supporting Statement, EPA fails to acknowledge the significant burden placed on reporting agencies who have participated in transition efforts to date, nor does it recognize the significant resources that will be required as states transition to the ICIS-Air system. In fact, many agencies have been unable to participate in transition efforts due to the resources required to fully participate. This has left many reporting agencies ill-prepared and unable to transition to the new system for the foreseeable future. EPA must develop a transition policy that includes clear guidance for reporting requirements and recognizes the need for robust resources, if all states are to fully participate in reporting to ICIS-Air.

Given the paucity of data for reporting to the new system, it is not possible to provide EPA with informed comment on the estimated burden. NESCAUM, however, believes that complying

with some or all of these requirements will be extremely challenging and costly. Our key comment is that EPA must revisit the ICR next year so that states have the opportunity to provide more fully informed comments. NESCAUM also offers specific comments below on the following items put forward in the ICR's Supporting Statement.

Reporting Universe

The universe of facilities detailed in the ICR Supporting Statement that agencies must report data for does not match the reporting universe for key EPA policies. These include the Compliance Monitoring Strategy (CMS), the Federal Reportable Violation (FRV) policy, and the High Priority Violation (HPV) policy. The number of facilities subject to reporting under this ICR is far larger than those covered by the above listed policies, which increases the reporting burden. NESCAUM recommends that EPA modify the reporting universe to follow recent policy changes and apply reporting requirements to sources subject to CMS, FRV and HPV policies.

Minimum Data Reporting (MDR)

Many of the data elements referenced in the ICR Supporting Statement are not currently MDR elements. We recognize that EPA has moved from the old AFS system to the new ICIS-Air system, however, EPA has not provided a clear cross walk on how MDR will be done in the new system versus AFS, including how many additional keystrokes of data must be input to report in the new system. The table provided in the ICR Supporting Statement is not clear and nor is it accurate. For example, it states that agencies can enter NAICS or SIC code data but this is not correct; ICIS-Air can only accept NAICS codes. In order to accurately assess the burden impact, NESCAUM urges EPA to create a clear cross walk from the AFS MDR elements to the data elements required for ICIS-Air. If EPA implements NESCAUM's recommendation to revisit the ICR next year, this information cross walk should be included.

Expansion of Reporting Requirements

Throughout the ICR Supporting Statement, EPA appears to expand or revise definitions of current reporting requirements that would increase the reporting burden. On page 29 of the Supporting Statement, EPA details a requirement that agencies will report informal enforcement actions to EPA. This clearly contradicts reporting requirements laid out in the revised FRV policy. Furthermore, states do not track these actions, making reporting of this information into a federal system infeasible. EPA should eliminate any reference in the ICR Supporting Statement stating or implying that informal enforcement actions are reporting requirements.

The creation of a case file is another area where EPA expands reporting requirements. In the Supporting Statement, EPA indicates it is eliminating reporting of compliance and attainment status, counting this as a burden reduction. EPA fails, however, to discuss that this information is being replaced with a new requirement to create a case file. The case file pages will require reporting of additional elements and more data than currently required under MDR. NESCAUM believes that the creation of case file reporting will result in a significant burden increase. EPA should acknowledge this burden increase and calculate the impact on reporting agencies.

Another area where the Supporting Statement expands reporting burdens is highlighted on page 7, where EPA states, “the delegated agency is to report the violation type, *the applicable federal air program or implementing delegated agency regulation*, and pollutant” (italics added). The italicized item is a change from current requirements and will change the burden estimate. It will require significant resources to address as this is an item not currently tracked and gathered by reporting agencies. Furthermore, reporting of this element will mandate new functionality and reporting requirements that states have not agreed they can or will provide. EPA must clarify and revise its expectations for reporting agencies in a manner that will not require reporting of new elements.

Electronic Data Transfer (EDT)

On page 10 of the Supporting Statement, EPA contends that the new ICIS-Air system will eliminate the need for double data entry. This is incorrect. In Section 3(a) of the Supporting Statement, EPA indicates that only a dozen delegated agencies out of more than 200 will use ICIS-Air as their primary data repository. This means that 94% of agencies that report data into EPA’s system also maintain and input data into their own system, which translates into a significant duplication of effort.

EPA further contends that the use of EDT will make transfer of data easy and will not require any additional effort or resources from agencies to report data. This is also incorrect. Currently, many in the NESCAUM region use the Universal Interface (UI) to reduce the double data entry burden, and none of these states will be able to use EDT for the foreseeable future. New York, who has received a grant to implement EDT, may be able to use it within the next year. Five other NESCAUM states who maintain their own state data system have not yet begun to investigate the use of EDT due to the fast track process EPA has taken in implementing the ICIS-Air system. To date, EDT has not been implemented in any agency outside of a small pilot group. NESCAUM estimates that it will require reporting agencies significant financial resources while taking years if not decades before reporting agencies might see burden reductions. Therefore, it is imperative that EPA continue to work with states to address double data entry issues, and address the need for the time and money states require to revise their systems and develop protocols and nodes to use EDT mechanisms. Furthermore, EPA must revise its burden estimate for the states that maintain their own systems to include the costs of EDT implementation.

Burden estimate

EPA states that the transition to ICIS-Air will require some investment, but it believes reporting agencies will experience “a significant overall reduction in reporting burden” for both direct and batch users. EPA goes on to assert that state operational and maintenance costs will increase modestly due only to inflationary pressures. Statements such as these trivialize the huge resource burden that has and will continue to be placed on reporting agencies as the new ICIS-Air system is put in place. Direct entry users will need to invest resources up front to learn the system and the impact will continue as EPA expands reporting requirements. The impact on batch users will be far greater. Those states will need to invest significant dollars and staff time

to revise their systems, yet the implementation of EDT mechanisms will not be viable for years to come, as discussed earlier. Below, NESCAUM highlights some of the areas of significant concern.

- Reporting time burden: On page 10 of the Supporting Statement, EPA indicates that it will take additional mouse clicks or key strokes to enter data but these items will not result in an increased reporting burden. NESCAUM acknowledges that the user interface may be more user-friendly but we do not agree that the user interface will streamline data entry. Based on EPA's recent ICIS-Air training, NESCAUM states believe it will take more time than EPA recognizes. If EPA is to support this contention, it must conduct a study to analyze the time differential. EPA should conduct a study comparing the time it takes for a knowledgeable user to enter data into both the old AFS system and the new EPA system.
- Action linking: We support EPA's revisions to the HPV policy but do not support the Supporting Statements contention that revisions to this policy will result in a significant burden reduction for reporting agencies. In the NESCAUM region, HPV information is currently input by EPA regional offices not state agencies due to problems associated with action-linking data elements. This policy change will not result in a burden reduction to states but it may reduce overall number of HPVs but the reporting component may not be reduced. In fact, this policy and system change may actually result in a burden increase if regions now require states to report HPVs. Furthermore, there has been discussion of expanding action-linking of data elements for FRVs. NESCAUM strongly opposes an increase in action-linking elements.
- Use of major source universe to calculate burden: In the Supporting Statement, EPA appears to evaluate burden based on analysis of major sources. NESCAUM does not feel this is an accurate analysis as the ICR applies to more than major sources, even if the universe of sources is limited to apply to CMS, FRV and HPV sources. Major sources typically only represent 30 to 40 percent of the facilities that agencies must input into ICIS-Air. If EPA uses the major source universe to calculate burden, it must use a multiplier of 3 or 4 to include non-major facilities in its calculations.

If EPA expects reporting agencies to comply with the proposed reporting requirements in the Supporting Statement, reporting agencies will need more resources from EPA than are currently being provided. EPA also needs to recognize that there will be no data in ICIS-Air from some states for several years.

Information Quality

In the Supporting Statement, EPA claims that the new system will improve information quality and data accuracy yet provides no factual data to support this claim. The previous reporting system, AFS, made entry of incorrect information impossible, as improperly coded entries were rejected. Reporting agencies have yet to learn of quality assurance procedures that will ensure data quality in the new system. NESCAUM believes that data quality issues will continue and potentially expand due to differing interpretations of data entry requirements. Furthermore,

reporting agencies cannot fully evaluate the information quality processes because EPA has failed to provide information on how data will flow from ICIS-Air to other data systems, such as the State Review Framework dashboards and the Enforcement and Compliance Online system ECHO.

The northeast states fully support public access to data relating to public health, including information on compliance of the regulated community consistent with the provisions of the Clean Air Act. We hope that EPA will endorse our recommendation to renew the ICR next year when comments can be informed by real world experience with the new data reporting system. We look forward to working with you and to continued discussions on the reporting requirements in issue. Please do not hesitate to contact Lisa Rector (lrector@nescaum.org), should you wish to discuss any of the matters raised by this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthur Marin".

Arthur Marin, Executive Director
NESCAUM

Cc: NESCAUM Board of Directors
NESCAUM Enforcement Committee
Julius Banks, US EPA OECA
Robert Lischinsky, US EPA OECA
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