

TO: OECA at EPA.gov

FROM: Oklahoma Department of Environmental Quality (“Oklahoma”)

DATE: March 7, 2005

RE: Federal Register: February 2005 (Volume 70, Number 22) [Pages 5646 - 5647]

Docket ID No. OECA-2004-0024

Oklahoma’s Comments on *Agency Information Collection Activities: Submission for OMB Review and Approval; Comment Request; Source Compliance and State Action Reporting (Renewal)*, ICR Number 0107.08, OMB Number 2060-0096

In addition to renewal, this ICR will be updated to take into account the reporting needs associated with several Agency policies and rules. The potential new reporting requirements include: A Subpart Identifier in the Air Program record for Maximum Achievable Control Technology (MACT), New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP). Approximately 90 MACT rules have been promulgated since 1990 (40 CFR part 63) and four additional rules are to be promulgated in 2004. Compliance dates are in place for approximately 43 MACT Standards. Fifty-five additional area source standards are to be promulgated (112k--Urban Air Toxics Strategy) between 2005 and 2010. This significant increase of Clean Air Act regulations has underscored the need for better targeting of affected facilities within the Air Compliance/Enforcement Program. Knowing the specific Subpart to which a facility is subject will significantly enhance our ability to target limited resources on the most environmentally significant sources. Subpart identification also will help the EPA and state/local agencies to establish compliance rates.

COMMENT: *Subpart identifiers will not help in determining affected facility status nor will it assist in determining which subparts are applicable to a facility. This analysis will still have to be done during facility evaluations. This requirement will increase the time/data input burden without providing much actual benefit.*

In order to reduce immediate implementation impact, it is recommended that when a Full Compliance Evaluation is conducted, an update of the applicable air program Subparts in AFS should be completed. This will streamline data entry for State/Local/Tribal agencies not previously reporting subpart information in AFS. Subpart Identifiers will also aid in the targeting of existing NSPS and NESHAP sources.

COMMENT: *Oklahoma has its own targeting plan. Comparing data currently in AIRS with data in the Oklahoma local database will require a lot of QC to determine what are the correct subparts so that when a batch program is used, the subparts are the same in both databases so nothing will get overwritten by mistake. Subpart Identifiers will only increase the time/data entry burden without aiding in targeting existing NSPS and NESHAP sources in Oklahoma. Maybe this [targeting of existing sources] is something the EPA could work out without adding additional burden to the states.*

Reporting of Partial Compliance Evaluations (PCEs) and the addition of the pollutant value to Stack Test actions (Action Pollutant Record - states to report the action multiple times, e.g., once for each pollutant): Due to the concerns expressed by State and local air pollution control agencies regarding additional reporting burden, the reporting of PCEs was made optional when the revised CMS policy was initially implemented in 2001. As we have passed the first two year cycle in implementing the revised policy, we now need to revisit the issue of reporting such information into the national data system. The Agency continues to believe that the reporting of PCEs and the results of stack testing on a pollutant level is essential to adequately portray the range of compliance monitoring activities conducted by States and locals; manage a national program; improve data accuracy providing the public with a more accurate and complete assessment of compliance status. Analyses conducted for the current ICR estimated the overall burden of reporting PCEs to be 70,000 burden hours

COMMENT: *Just in the two years Oklahoma has reported PCE, a very large number of records have been generated. It may become necessary to narrow the scope of what is considered a PCE. Further, the current database is running out of action numbers with the huge numbers of PCE being conducted and reported, especially those for larger (Mega) sources.*

3/2/05—EPA response: AFS utility for compressing, renumbering, & archiving to prevent “action overload.” EPA will only require on-site PCEs to be reported.

However, based on the level of voluntarily reported PCEs (during fiscal year 2003 thirty-nine (39) state agencies reported PCEs to AFS) and anecdotal information from the Regions and States, we believe that this number is inaccurate and that the reporting of PCEs would not impose such a significant burden on States. Reporting the results of stack tests at the pollutant level addresses a programmatic deficiency (identified by the EPA Inspector General in a report on stack testing --“Report of EPA's Oversight of State Stack Testing Program”-- (Report number 2000-P-00019) dated September 11, 2000, (<http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://epa.gov/oig/reports/2000/stack.pdf>) by removing the inconsistent reporting of stack tests. Without consistent reporting, the information is of limited utility in evaluating the level of activity; obtaining information on the ability of sources to comply with regulations; and tracking compliance status for specific pollutants that contribute to non-attainment designation. The benefits of pollutant level reporting of stack tests outweigh any possible reporting burden. At a minimum, \$5,000 and 4 days are expended by sources required to conduct a stack test. Spending the approximately 2-3 minutes to enter the data from the stack test and another minute for each additional pollutant tested at the same facility captures important information and prevents the loss of data that was obtained from an expensive effort. Consistent with the need for subpart information discussed under the Subpart Identifier requirement, this information would be provided for all stack tests.

COMMENT: *The time required to enter stack test data is much greater than 2-3 minutes. Most stack tests are from new facilities or existing facilities with new stacks. This information must be entered into AFS and pollutants assigned to new stacks. The number of tests is increasing due, in part, to additional rules requiring tests and also to the retests*

required after failing initial stack tests. Limited resources are available to analyze the tests, evaluate the compliance status of the tests (pass/fail), and enter the information into AFS.

Permit Program Data Elements (Date Permit Issued, Permit Number, Category): Permit Issuance data is critical for implementing and managing the Title V program. Knowing when a facility has been issued a Title V permit is essential for determining the universe of facilities subject to Title V requirements. Without the reporting of permit data, not all State/local/tribal activity is captured, hindering the ability to provide full recognition of the regulated universe.

Identification of High Priority Violator (HPV) ``Violation Discovered" date/activity: The HPV policy (located at URL: <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.epa.gov/Compliance/resources/policies/civil/caa/stationary/hpvmanualrevised.pdf>) sets a 30-90 day window for HPV determination, however, there is not an existing dataflow which documents the ``violation Determined" or ``first occurrence" date that initiates the HPV timeline process and allows EPA to measure whether this policy is being followed

COMMENT: *This adds an unnecessary reporting burden. The discovery date can already be inferred from the "day zero" date. If a state is going to disregard the policy now, then what is going to keep it from altering the "violation discovered" date to fall in line with the HPV policy? In addition, the violation discovery date may still require a comment for clarification. There doesn't appear to be a benefit to offset the cost in time and effort.*

3/2/05—EPA response: Will use "Violation Determined" or "first occurrence" which will create a minimal burden because will only require "action linkage." Oklahoma March 2005 response: action linkage usually takes longer than adding new actions because it is necessary to browse the database, determine the action number, return to the update page and link the action. It is not as fast and easy as just "action linkage" makes it sound.

Incorporating this milestone action is responsive to data requests made internally and externally regarding the need to better explain the results of inspections/evaluations. Though violations meeting the HPV requirements can be determined by methods other than inspection or evaluation, the link between compliance activities and HPV is critical. A defined list of current action types will be given this ``Violation Discovery" attribute so as to provide consistent analysis. A simple process will be defined to handle multiple actions (e.g., Full Compliance Evaluations (FCE), Partial Compliance Evaluations (PCE), and other routine compliance monitoring activities) since the first action may not necessarily be the basis for Day Zero.

HPV Violation Type Code and Violating Pollutants (VTP1: General, Matrix and Discretionary Criteria) and (VPL1: Violating Pollutants): As a result of OIG investigations (September 25, 1998 OIG report entitled ``Consolidated Report on OECA's Oversight of Regional and State Air Enforcement Programs recommendations 1, 4, 5, 6, and 7" (<http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.epa.gov/oig/reports/1998/8100244e.htm>) and Government Performance and Results Act (GPRA) requirements (GPRA Goal 5--Compliance and Environmental Stewardship; Objective 1:

Improve Compliance), the Agency has found a need to evaluate and measure priority enforcement in terms of 'environmental harm', pollutant loadings deterred through enforcement, etc. In addition, the public, regulated facilities, and environmental advocates have formally requested this type of information. Both the Clean Water Act (CWA) and RCRA programs and their databases (Permit Compliance System (PCS) and RCRAInfo) have sophisticated reporting and tracking of either pollutants violated or violating types/definitions or both. Clean Air Act HPV tracking has only two methods of tracking this information and neither HPV Violation Type Codes or Violating Pollutants are required to be reported as a Minimum Data Requirement (MDR). There are several advantages to these data elements. Not only do they provide insight to potential environmental harm, but they can provide details about the extent of the violations (e.g., percentage of excess emissions above legal limit). These data elements can also provide a clear connection to the HPV Policy and, therefore, make it easier to evaluate implementation. Both of these data elements are entered on the AFS 'Day Zero' record/menu screen and would be entered at the same time as the HPV Day Zero; thereby, not requiring a new update session in AFS. Consistent with the need for Subpart information discussed under the first potential new data requirement, this information would be provided for all new HPV violations.

COMMENT: *Taken individually, these requirements do not seem like they add a large burden; however, collectively will probably add up to several minutes to each action entered. In addition, an added time burden is placed on other staff to add this info to each case in the local database. States without databases will be at even greater disadvantage. Oklahoma is adding these whenever possible, but on a voluntary basis and believes that this should remain a voluntary reporting action. Also, the HPV network does not match the information required to be reported for NSPS, NESHAP, and MACT CEMS (EEAS & MDR REPORTS). It will take considerable time to convert these reports into meaningful HPV Date; it might even require the use of RFIs. NEW COMMENT: at this time I believe there are only fields for 3 or 4 pollutants. There may be times (improperly conducted stack tests for instance) where the violation pertains to 6, 8, even more pollutants (this is a current case). If EPA implements this requirement, they will need to expand the number of fields to accommodate these scenarios.*

3/2/05—EPA response: *Will reduce the burden by requiring only on new HPVs in FY06.*

Time Standard for State/Local Reporting (from 90 day to 30 day standard): With the public release of AFS data, and more timely reporting requirements placed upon EPA through the Government Performance and Results Act (GPRA), real time data is demanded. Moving from a 90 to a 30 day minimum reporting frequency is an attempt to move toward maintaining real time data in AFS, and meeting public demand.

COMMENT: *Oklahoma already updates monthly. Is this a rolling or calendar reporting frequency? (For example, ECA thinks that the compliance status of a major source changes if a full compliance evaluation is not conducted within 730 days, rather than once every 2 fiscal years. Will this requirement trigger some kind of flag if the data person does not log in within 30 days of last log-in?)*

3/2/05—EPA response: 60-day maximum reporting frequency. Eleven of twelve agencies consulted expressed no concerns with reporting on a 60-day basis.

COMMENT: *Theoretically this triples the reporting requirements for states not currently updating monthly. It triples the number of times required to log into the system and scroll through each page of data. So even if the amount of data isn't increased, it may substantially increase the time necessary to enter it. Oklahoma already updates monthly.*

3/2/05—EPA response: 60-day maximum reporting frequency. Eleven of twelve agencies consulted expressed no concerns with reporting on a 60-day basis.

Allowing for 90 days to report is inconsistent with the greater emphasis the Agency is placing on timely input of data. Having data lag for 90 days negatively impacts the ability to conduct on-going analysis. In addition to not meeting public demand, this lag in data reporting can also cause the public to be misled because inaccurate (or at least old, out of date) data ends up appearing in public on web sites such as the Enforcement Compliance History Online (ECHO) system which can lead to inaccurate conclusions being made regarding State compliance monitoring and enforcement program performance.

COMMENT: *If states are currently having problems with entering data in 90 days, how will increasing the reporting to 30 days help get the data into the system any faster? The 30-day time frame will only increase an already burdened reporting person.*

3/2/05—EPA response: 60-day maximum reporting frequency. Eleven of twelve agencies consulted expressed no concerns with reporting on a 60-day basis.

Burden Statement: In the previously approved ICR, the average annual burden to covered entities to meet the recordkeeping and reporting requirements was estimated at 85,496 person-hours for the three years following approval of that ICR. The total annualized cost burden was estimated as \$2,669,186. This is based on an estimated 89 respondents and a frequency of at least four times per year, with many reporting more frequently. The average annual burden for reporting per source per response for reporting activities is dependent upon the size of the State. A State with a small universe of federally reportable sources (150 major sources or less) spends an average 85 hours per quarter; a medium-sized universe of sources (having between 151 and 499 major sources) spends an average 337 hours per quarter; and a State with a large universe of sources (having more than 500 major sources) spends an average 586 hours per quarter. In order to estimate the burden that would be added by the proposed new MDR's, EPA will take all comments into consideration. In addition, a representative number state and local agencies will be contacted for their input.