UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 23 2014

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

**MEMORANDUM**

SUBJECT: Issuance of the Guidance on Federally-Reportable Violations for Clean Air Act Stationary Sources

FROM: Lisa C. Lund
Director
Office of Compliance

TO: Regional Enforcement Division Directors
Regional Air Division Directors

Attached is a copy of the United States Environmental Protection Agency's (EPA's) revised Guidance on Federally-Reportable Violations for Clean Air Act Stationary Sources (FRV Policy). The revised FRV Policy is in direct response to concerns voiced by state and local air agencies about the reporting burden and lack of clarity of the previous (2010) FRV Policy. The purpose of the revised FRV policy is to outline the types of violations that state, local, and tribal agencies are to report to EPA. This revised policy reduces the burden associated with this activity by, most notably, narrowing the universe of sources for which violations are to be reported. This more focused policy allows EPA and our state, local, and tribal partners to better prioritize efforts to address air violations with the greatest potential for public health and environmental impact while also improving data accuracy, timeliness, and transparency. This revision supersedes the 2010 Memorandum "Clarification Regarding Federally-Reportable Violations for Clean Air Act Stationary Sources" and the 1986 Guidance on Federally-Reportable Violations for Stationary Air Sources.

A fundamental principle of an effective compliance monitoring program is having a complete and accurate inventory of sources with timely information on potential compliance problems. For the CAA program, the means by which to obtain such an inventory is through the reporting of CAA violations. Reporting of violations of the CAA in the national air compliance and enforcement data system, ICIS-Air (successor to AFS), is critical for national program management and oversight as well as for transparency and public access purposes. However,

EPA recognizes the need to prioritize the use of the limited resources available to the state, local, and tribal agencies. To minimize their reporting burden, EPA is limiting the FRV reportable source universe whose violations of federally enforceable CAA requirements are reportable to ICIS-Air and the scope of data to be reported as provided in the attached FRV Policy. The FRV reportable source universe is a subset of the ICIS-Air reportable source universe identified in the 2010 "Source Compliance and State Action Reporting Information Collection Request" (ICR).

The focused FRV reportable source universe whose violations are to be reported to EPA (emission limitation violations and certain procedural violations) is as follows: Title V major sources; synthetic minor sources that emit or have the potential to emit at or above 80 percent of the Title V major source threshold; sources included in an alternative CAA Stationary Source Compliance Monitoring Strategy (CMS) plan; and any source at which a High Priority Violation (HPV) has been identified. This FRV reportable source universe reduces the state, local, and tribal agency burden of reporting CAA violations, which in turn, should result in improved reporting.

In revising this FRV Policy, we have taken into account our discussions and consultation with the national and regional organizations representing air compliance and enforcement programs, as well as with individual state, local, and tribal agencies. As a result of our discussions, EPA developed a better appreciation for the resource constraints and prioritization challenges that our partners face. We will monitor implementation of this policy. EPA will again reach out to our state, local, and tribal partners for input should any significant revisions be considered in the future.

In implementing this policy, the state, local, and tribal agencies should be familiar with the "Timely and Appropriate Response to High Priority Violations" (HPV Policy) which has recently been revised on August 25, 2014. As a subset of federally reportable violations, HPVs are subject to additional reporting and oversight by EPA. The broader universe of FRVs provides context to the HPV universe and provides the public with access to a broader range of information on the violations and air pollution that affect their communities.

The FRV Policy is to be implemented consistent with the 2010 ICR and any subsequent revisions. EPA is currently in the process of renewing the ICR with the renewal expected in January 2015. Delegated agencies will have an opportunity to fully assess and officially comment on reporting burden and reporting requirements associated with the CAA stationary source program as part of the ICR renewal process.

This revised policy also reflects the upcoming completion of ICIS-Air. The ongoing training for the state, local, and tribal agencies on the new system and the development of ICIS-Air business rules will provide additional detailed guidance on the reporting of information to help promote

consistency in data entry and policy implementation. Reporting into ICIS-Air is scheduled to become available on October 27, 2014.

Please share this revised policy with your counterparts at all affected state, local, and tribal agencies in your region. If you or your staff has any questions concerning the FRV Policy, please contact Robert Lischinsky at 202-564-2628 or at lischinsky.robert@epa.gov.

Attachment

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# GUIDANCE ON FEDERALLY-REPORTABLE VIOLATIONS FOR CLEAN AIR ACT STATIONARY SOURCES

**September 2014**

## DISCLAIMER

The discussion in this document is intended solely as guidance. This document is not a regulation. It does not impose legally binding requirements on the United States Environmental Protection Agency (EPA), states, locals, tribes, or the regulated community. This policy does not confer legal rights or impose legal obligations upon any member of the public. The general description provided here may not apply to a particular situation based on the circumstances. Interested parties are free to raise questions and objections about the substance of this policy and the appropriateness of the application of this policy to a particular situation. EPA retains the discretion to adopt approaches on a case-by-case basis that differ from those described in this policy where appropriate. This document may be revised periodically without public notice. EPA welcomes public input on this document at any time.

Please direct questions regarding this policy and the meaning of Federally Reportable Violations as discussed herein to Robert Lischinsky of the Monitoring, Assistance, and Media Programs Division in the Office of Compliance at 202-564-2628 or at lischinsky.robert@epa.gov. Please direct questions regarding ICIS-Air data entry to Jason Swift of the Enforcement Targeting and Data Division in the Office of Compliance at 202-564-6692 or at swift.jason@epa.gov.

**GUIDANCE ON FEDERALLY-REPORTABLE VIOLATIONS FOR CLEAN AIR ACT STATIONARY SOURCES**
**September 2014**

## I. INTRODUCTION

The purpose of this revised Clean Air Act (CAA) guidance on Federally-Reportable Violations (the FRV Policy) is to outline the types of violations that state, local, and tribal agencies are to report to EPA. This revised FRV Policy is in direct response to concerns voiced by state, local, and tribal air agencies about the reporting burden and lack of clarity of the previous (2010) FRV Policy. Several recent and in-depth discussions with national and regional air representatives as well as individual state, local, and tribal agencies led to a better appreciation for the resource constraints and prioritization challenges that our partners face.

This revised policy reduces the burden associated with this activity by, most notably, narrowing the universe of sources for which violations are to be reported. This more focused policy allows EPA and our state, local, and tribal partners to better prioritize efforts to address air violations with the greatest potential for public health and environmental impact while also improving data accuracy, timeliness, and transparency.

## II. BACKGROUND

- On March 22, 2010, the Office of Enforcement and Compliance Assurance (OECA) issued guidance clarifying the definition of FRVs for CAA stationary air sources and the associated minimum data requirements (MDRs) (Memorandum from Adam M. Kushner and Lisa C. Lund to EPA Regional Air Enforcement Directors, EPA Regional Air Enforcement Branch Chiefs, and Regional Counsels, Regions I-X "Clarification Regarding Federally-Reportable Violations for Clean Air Act Stationary Sources") (2010 FRV Memo).

- Agency analysis indicated that many state and local agencies were not reporting minimum required data associated with violations of CAA requirements. Many reported only those violations that met the criteria as High Priority Violations (HPV's).[1] State Review Framework (SRF) evaluations confirmed this inconsistent and under-reporting of violations by states.

- The 2010 FRV Memo was issued to correct the misconception that only violations meeting the criteria as HPVs are to be reported to the EPA national air data system[2].

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[1] The Timely and Appropriate Enforcement Response to High Priority Violations Policy was recently revised and reissued on August 25, 2014 (2014 HPV Policy). The HPV Policy provides guidance on the prioritization of a certain subset of significant federally enforceable violations of the CAA and the timely and appropriate enforcement response when such violations are identified. (http://www2.epa.gov/sites/production/files/documents/issue-ta-rpt.pdf).

[2] AFS, the national database that supports the CAA stationary source enforcement and compliance program, is being modernized through integration with the Integrated Compliance Information System (ICIS). The new system, called

HPVs represent a subset of FRVs, which are subject to additional reporting and oversight by EPA. Although HPVs are important based on their potential significant adverse public health and/or environmental impact, the broader universe of FRVs also are important in providing context to the HPV universe and providing the public with access to a broader range of information on the violations and air pollution that affect their communities. Recognizing that the reporting of all FRVs in accordance with the MDRs could be burdensome, the 2010 FRV Memo introduced a "tiered" approach to reporting FRVs taking into consideration state and local resource constraints and reporting burden.

- After issuance of the 2010 FRV Memo, some state/local agencies continued to raise concerns with FRV reporting, most notably during the 2012 Air Facility System Information Collection Request (ICR) Renewal process and the ongoing AFS modernization effort. Agencies that had not previously been reporting consistent with the MDRs perceived the 2010 FRV Memo as requiring additional reporting, which strained state/local agency resources and ultimately led to greater reporting difficulties.

- In response to the concerns of additional burdens, OECA reviewed the EPA guidance on FRVs and committed to engage with the states/locals and tribes to more fully understand their concerns. On January 23, 2013, OECA met with several multi-jurisdictional organizations and state/local agencies and identified several discrete topics requiring additional discussion. In coordination with NACAA, the Environmental Council of the States (ECOS), and the Association of Air Pollution Control Agencies (AAPCA), OECA hosted a series of national conference calls throughout the Spring/Summer of 2013 with the EPA regional offices and a wide array of state/local agencies to obtain their input and solicit individual agency proposals for addressing their concerns while still meeting the reporting needs of EPA. OECA also sought input from the tribal agencies and sent them a draft policy for review.

- This policy supersedes the 2010 FRV Memo and the 1986 Guidance on Federally-Reportable Violations for Stationary Air Sources, and applies to all delegated state, local, and tribal agencies. The purpose of this policy is to outline those CAA violations that are to be reported to EPA, including those violations that may not rise to the level of an HPV. CAA violations that meet the HPV criteria are subject to additional reporting and oversight as provided in the 2014 HPV Policy. This policy is to be implemented consistent with the 2010 "Source Compliance and State Action Reporting Information Collection Request" (ICR) and any subsequent revisions.

- This policy relies fundamentally on the same violation reporting structure and format that historically has been used. However, in issuing this policy, EPA recognizes that a better long-term approach for violation reporting and noncompliance tracking is needed. EPA, in collaboration with our state/local/tribal partners, will look to leverage expected advances in monitoring, reporting, and information sharing to implement a more efficient, effective and transparent CAA compliance monitoring program.

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ICIS-Air, will provide users with an easy-to-use, web-based system that supports the CAA stationary source program.

JOINT VISION FOR THE ENHANCED COLLECTION AND EXCHANGE OF INFORMATION

EPA developed this policy at a time when the CAA program and information technology are undergoing transformative change. EPA and our state/local/tribal partners have been collaborating on several efforts to enhance our collective management of the stationary source CAA program based on more complete and timely information and data that are easily and efficiently shared with one another and the public.

With the support of the state/local/tribal agencies, OECA designed a new data system to replace AFS, the national database that supports the CAA stationary source compliance and enforcement program. The new state-of-the-art data system, ICIS-Air, offers a cost-efficient, intuitive, web based system that will support existing and future needs in implementing the CAA program. ICIS-Air includes modern computer and web technologies; user friendly interfaces to reduce reporting burden by eliminating dual reporting and supporting e-reporting; and multiple ways to gain access to high quality, integrated and more complete data. ICIS-Air will allow for improved targeting, program management, oversight and transparency. It also positions us to embrace the new E-Enterprise and Next Generation Compliance initiatives, and the National Environmental Information Exchange Network.

- E-Enterprise (a joint initiative of the states and EPA)[3] and the Next Generation Compliance initiatives seek to increase the ability of EPA and our partners to achieve more widespread compliance. Information needs to be more accessible to enhance the performance of both the government and regulated community. To build a 21st Century government, EPA is striving to maximize the use of advanced emissions/pollutant detection technology to obtain quality information about emissions and expand the use of electronic reporting.[4] Improved data and improved access to that data facilitates improved compliance. Sharing information through E-Enterprise is one of the new tools and strategies we need to embrace to build more efficient and cost-effective partnerships. Good government and the reality of scarcer resources necessitate that we work together to ensure the efficiency, efficacy, and coordination of our efforts to implement the CAA requirements.

- We recognize that our regulatory programs must continue to evolve by designing regulations that incorporate new IT and field technologies, including furtherance of increased electronic reporting. Better access to real-time data not only improves compliance, but also allows for innovative compliance approaches. As a result, we will be able to improve coverage of the regulated universe of sources and expand the range of compliance monitoring activities that are available for making and reporting compliance determinations beyond the traditional on-site compliance evaluations.

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[3] See Joint Governance Statement of the U.S. EPA and ECOS regarding the Joint EPA/ECOS E-Enterprise Initiative (December 5, 2012).

[4] See ECOS Resolution "E-Enterprise for the Environment Leadership Council" (Resolution Number 13-3, September 16, 2013); see also ECOS Resolution "Environmental Performance Data and Metrics" (Resolution Number 13-4, September 18, 2013).

- As a partnership between EPA and the state/local/tribal agencies, the Exchange Network is improving access to higher quality environmental information using modern technology to facilitate regulatory reporting and data sharing. It is envisioned that the Exchange Network will become the preferred way EPA and the state/local/tribal agencies share and exchange data.[5] An effort is now underway supporting data modernization that will expand the Exchange Network to include a data flow for CAA stationary source compliance and enforcement data.

- E-Enterprise and Next Generation Compliance will allow us to leverage the success of the Exchange Network by utilizing shared technology and mutually agreed upon data standards for automated and efficient data exchange. This will result in more accurate, complete, and timely information.

- Cooperative federalism and a mutual commitment to modernize approaches to environmental protection necessitates that EPA and our state/local/tribal partners look toward collection of timely, accurate, and complete data as well as increased access to this data. ICIS-Air is consistent with this vision. While EPA designed ICIS-Air to accommodate the reporting of the current minimum data requirements for program management and oversight, EPA also designed ICIS-Air with the capabilities to improve data analysis and information sharing in the future. ICIS-Air's current and future functionality will help improve compliance and ultimately the ability to protect human health and the environment.

## III. FRV POLICY: THE IMPORTANCE AND PURPOSE OF REPORTING CAA VIOLATIONS

A fundamental principle of effective compliance monitoring programs is having a complete and accurate inventory of sources with timely information on potential compliance problems. This concept exists across all major environmental programs, and for the CAA program, the means by which to obtain such an inventory is through the reporting of CAA violations. Reporting violations of the CAA in a national data system is critical as it allows EPA to:

- Manage and oversee state/local/tribal compliance and enforcement programs to ensure effectiveness and consistency across these programs.

- Focus compliance and enforcement activities on the sources with the greatest potential for adversely affecting human health and environmental problems.

- Develop compliance and enforcement strategies (including national enforcement initiatives) by providing, for example, compliance and enforcement data on sources, sectors, pollutants, types of emission units.

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[5] See ECOS Resolution "State/EPA Commitment to the Full Implementation of the National Environmental Information Exchange Network" (Resolution Number 09-4, March 23, 2009); EPA Administrator Lisa Jackson's Memorandum "Achieving the Promise of the National Environmental Information Exchange Network" (July 7, 2009).

- Conduct regulatory analyses and design new or modified regulations by providing data that may reflect the understanding or ability of regulated sources to comply with current regulations and permits.

- Provide the public with readily accessible and detailed information about sources' compliance with the CAA in a national, consistent, and understandable format.

- Be transparent regarding not only the EPA enforcement actions, but also those compliance monitoring activities of delegated states/locals/tribes so people have a broader understanding of the performance of both government and the regulated community.

- Provide a firm foundation for both policymaking and providing complete and timely responses to inquiries (e.g., Congress, Office of Management and Budget OMB, the public) about our compliance and enforcement programs.

## IV. SCOPE OF FRV POLICY/UNIVERSE OF SOURCES

- To minimize burden on our state/local/tribal partners, EPA is limiting the FRV reportable source universe whose violations are reportable and the scope of data to be reported as provided in this policy. The FRV reportable source universe is a subset of the ICIS-Air reportable source universe.

- For purposes of this policy, the applicable universe of sources whose violations of federally enforceable requirements are to be reported to EPA is the following:
    - Title V Major Sources: Major sources as defined in CAA 501(2);
    - SM-80 Sources: Minor sources that have taken an enforceable limit to remain minor sources, called synthetic minor sources[6], that emit or have the potential to emit (PTE)[7] at or above 80 percent of the Title V major source threshold;
    - Sources included in an alternative CAA Stationary Source Compliance Monitoring Strategy (CMS) plan;
    - Any source at which a HPV has been identified.

- In determining whether a synthetic minor source is an SM-80 and falls within the universe of sources subject to this policy, all synthetic minor sources with PTE at or above the 80 percent major source threshold are included regardless of whether the actual emissions are lower. If a state/local/tribal agency does not differentiate sources based on

[6] Sources that take enforceable limits to remain a minor source are called Synthetic Minor sources. Minor sources that have not taken enforceable limits to constrain their emissions below the major source thresholds are not included in this universe. These sources are often called True Minor sources.

[7] PTE means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable or legally and practicably enforceable by a State or local air pollution control agency.

PTE, all synthetic minor sources are included within the scope of this policy, and consistent with the CAA CMS, designated as SM-80s.

- This FRV reportable source universe aligns with the CAA CMS[8] and, as such, provides consistency to the delegated agencies. This narrow universe of sources, as opposed to all sources subject to CAA requirements, reduces the burden of reporting CAA violations, which in turn, should result in improved reporting.

- This FRV reportable source universe enables states/locals/tribes to direct resources to those sources that are most likely to have the greatest localized impact on the environment and public health. Our limited focus on this applicable FRV reportable source universe acknowledges the current resource constraints and the potential difficulties if we were to now expand the FRV reportable source universe to all sources subject to the CAA.

- EPA may revise the universe of sources subject to this FRV policy as we continue to make advances in pollution monitoring and information technologies to take full advantage of the opportunities made available through Next Generation Compliance and 21st Century government. EPA will consult with the state/local/tribal agencies before any revisions to this policy or the CAA MDRs are made.

- The following additional criteria for designating the universe of sources is allowed for state and local agencies with areas designated as "Extreme", "Severe", or "Serious" for ozone or "Serious" for particulate matter-10 (PM10):

  - 100 tons per year (TPY) or more of any criteria pollutant; 10 TPY or more of any hazardous air pollutant (HAP); or 25 TPY or more of any combination of HAPs may continue to be used as the threshold for reporting upon approval from the appropriate region.

  - To receive approval to use the above thresholds and not the more stringent thresholds for ozone and PM10, state/local/tribal agencies are to ensure that compliance and enforcement information on their entire source universe is readily accessible to the public and EPA (e.g., data system, website).

- The reporting of violations at sources not included within the FRV reportable source universe and, therefore, not included within the scope of this policy to ICIS-Air, while considered a best practice, is voluntary. States/locals/tribes may wish to include violations at such sources to capture the full extent of their compliance and enforcement program. Agencies may elect to include violations at these other sources because those violations could potentially have a significant localized impact for which the public would benefit from knowing.

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[8] The CAA CMS was recently revised and reissued on July 14, 2014 (2014 CMS Policy). (http://www.epa.gov/compliance/resources/policies/monitoring/caa/cmspolicy.pdf)

## V. REPORTABLE VIOLATIONS AT AN APPLICABLE SOURCE

- Generally, the process for determining a violation is as follows:
  (1) A compliance monitoring activity (e.g., Full or Partial Compliance Evaluation) conducted by an authorized inspector who is compliant with the state/local/tribal policies and processes.[9]
  (2) After collecting and analyzing information as appropriate, the inspector will document preliminary observations and a comparative analysis of the collected information with applicable rules, regulations, and standards. For example, the inspector may collect information indicating a deviation or excursion from a regulatory/permit requirement, a deficiency, or exceedance of an emission limit or surrogate parameter.
  (3) Thereafter, the appropriate agency official (e.g., inspector's supervisor, agency attorney) will review the inspector's observations and collected information to determine whether there is sufficient support to make an agency determination of a violation and whether that violation rises to the level of an HPV.[10]

- Violations of federally enforceable CAA requirements at an applicable source (Section IV) which are to be reported to EPA are called Federally Reportable Violations or FRVs.[11] The applicable CAA programs for FRV reporting are NSPS, NESHAP, MACT, NSR, PSD, EPA approved SIP, and Title V. FRVs include the following:

  * Violations of any emission limitation, emission standard or surrogate parameter.

  * Procedural violations including:
    - Failure to maintain reports and underlying records as required by permit or regulation such as:
      - continuous emissions monitoring system (CEM) and continuous parameter monitoring reports
      - malfunction reports
      - excess emission reports
      - semi-annual monitoring and periodic monitoring reports
    - Failure to timely test (e.g., performance test) or conduct valid monitoring as required by permit or regulation
    - Failure to timely report (e.g., annual compliance certifications)
    - Failure to construct, install, or operate facility/equipment in accordance with the permit or regulation (e.g., CEMs or other monitoring equipment)
    - Failure to obtain or maintain a permit (e.g., expired permit)

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[9] See the 2014 CMS Policy (pp.7 and 9) for a detailed discussion on authorized inspectors.
[10] When a delegated agency has determined that a deviation/excursion identified by an inspector is not a violation, the agency does not need to report that deviation/excursion to EPA. However, if a facility reports a deviation on a Title V annual compliance certification, the deviation is to be reported to ICIS-Air. See the 2014 CMS Policy, p. 16.
[11] In accordance with the current ICR and MDRs, delegated agencies report an FRV by updating the compliance status in AFS. While AFS is being modernized (the new data system is ICIS-Air), the MDR for reporting FRVs remains. Reporting MDRs will be revised according to this policy revision and the revision of the HPV Policy. Agencies will report FRVs in the new system by using the violation type in lieu of the compliance status.

- Work practice violation
- Violation of consent decree, court order or administrative order

Agencies also may optionally report violations at sources not within the scope of this policy to ICIS-Air. If agencies do not report such violations to ICIS-Air, EPA assumes the agencies will continue to maintain such violation data. EPA encourages states/locals/tribes to make that data publicly available consistent with state public record laws (e.g., state FOIA laws), and using any appropriate available means (e.g., docket center, state website, data system).

- Regardless of whether violations of a federally enforceable CAA requirement are identified as FRVs or further distinguished as HPVs, EPA considers all such violations to be important. Thus, in accordance with this FRV Policy and the HPV Policy, both FRVs and HPVs are to be addressed as appropriate and reported into ICIS-Air.

## VI. PROCESS AND TIMING FOR REPORTING FRVS

- FRVs are to be reported on a Case File in ICIS-Air. At the time of reporting the FRV, the state/local/tribe is to create a Case File, if one does not already exist upon which to report the FRV. Once a Case File in ICIS-Air is available to report the FRV, the state/local/tribe is to report the violation type, the applicable federal air program (i.e., NSPS, NESHAP, MACT, NSR, PSD, EPA-approved SIP, Title V) or implementing state/local regulation, and pollutant(s), where applicable, that are associated with the violation.

  - If at the time of reporting an FRV, the federal air program is unknown, ICIS-Air will allow the reporting agency, as an alternative, to report that a federally enforceable requirement has been violated and provide the equivalent state/local/tribal regulation.

  - If the state/local/tribe chooses to optionally report a non-FRV or other violation, the agency will be able to indicate that a non-federally enforceable requirement has been violated and provide the state/local/tribal regulation.

  - For a federally enforceable violation that is further distinguished as an HPV, information that is to be reported into ICIS-Air, in addition to the above, is the following: Day Zero Date; Discovery Action; Addressing Action; and Resolving Action.

- FRVs are expected to be reported as soon as practicable and as early as the agency determination to ICIS-Air. In accordance with the ICR, an FRV is to be reported to ICIS-Air within 60 days of the FRV determination.

- Having the FRV reported no later than 60 days after the FRV determination rather than deferring such reporting until an enforcement action is taken is necessary to:

- avoid having a potentially significant amount of time lapse between the compliance evaluation being completed and the identified alleged non-compliance being reported, during which time the public has no knowledge of what may be occurring at the source.

- address those situations where the public would otherwise never be informed of an FRV when such violation is determined not to require a formal enforcement action.

- The issuance of a notice of violation for the FRV reportable source universe is an MDR that is to be reported. Thus, in addition to reporting the FRV, the state/local/tribe is to report the formal notice of violation that has been issued to the source in the Enforcement Action Module of ICIS-Air.

  - A formal notice of violation is one step in the investigation and enforcement of violations of statutes and regulations. A formal notice of violation notifies the recipient that EPA or the delegated agency believes the recipient committed one or more violations and can provide instructions for coming into compliance. It also typically offers an opportunity for the recipient to discuss their actions, including efforts to achieve compliance. EPA or the delegated agency considers all appropriate information to determine the final enforcement response.

- Formal notice of an FRV or potential FRV to a source may be provided via a variety of mechanisms. For example, such formal notice may be a Notice of Violation (NOV), Notice to Correct (NTC), Notice of Opportunity to Correct (NOC), Notice to Comply (NTC), or Notice of Noncompliance (NON). Regardless of the name of the formal notice of violation, if the purpose of the formal notice is to notify a source of an FRV, it is to be reported to ICIS-Air. An Agency also may optionally report when the source was initially advised of a violation or potential violation. Methods of advisement may include meetings, teleconferences and electronic correspondence (e.g., e-mails).

- The state/local/tribe may elect to identify the Case File under which an FRV is reported as enforcement sensitive in ICIS-Air. The agency should be circumspect when making an enforcement sensitive designation and should only do so when there are concerns with public release of an FRV at the time of the FRV determination as a result of a legal or legislative constraint imposed upon the agency or when taking into consideration enforcement strategy.

- The state/local/tribal identification of the Case File as enforcement sensitive will result in the FRV not being available to the public[12] and will keep it from being displayed on an EPA public website (e.g., Enforcement and Compliance History Online (ECHO)).[13] The ability to report information as enforcement sensitive will allow case development to continue unhindered, prevent interference with enforcement proceedings, ensure due

[12] Nothing in this policy creates a legal basis for asserting a legal privilege against disclosure of any information.
[13] http://www.epa-echo.gov/echo/

process, and retain attorney-client privilege while also accommodating those state/local/tribal agencies with legal and legislative constraints.

- The reporting agency will be responsible for identifying (i.e., flagging) the Case File under which an FRV is reported as enforcement sensitive in ICIS-Air.

- The Case File (and the FRV) may remain as enforcement sensitive until an informal enforcement action such as a formal notice of violation (see above description of a formal notice) has been reported or a formal enforcement action has been taken or when an agency voluntarily removes the designation, whichever is first. These actions constitute public records which are available for public release. At such time, the reporting agency is responsible for removing the enforcement sensitive designation from the Case File; thereby, allowing for public release of the FRV.

- As discussed in Section VII, the reporting requirement regarding the linking of activities and actions is currently limited to HPV reporting. However, once a formal notice of violation regarding an FRV has been issued to the source, the reporting agency also has the option to link the notice to the Case File in lieu of removing the enforcement sensitive designation. The linkage of the formal notice (as a public record) to the Case File will result in the Case File and the FRV becoming public.

- An agency may elect to optionally report additional details about each FRV. For example, information such as the FRV Determination Date, the Occurrence Start and End Date, and the Number of Claims corresponding to each FRV may be reported into ICIS-Air.

- When the state/local/tribe is reporting FRVs, EPA does not have the presumption that a formal enforcement action is to be taken with each reported violation. While EPA expects each agency to address, as appropriate, all identified violations of federally enforceable requirements, such identification does not always impose an inalterable duty to bring a formal action.

  - However, EPA continues to have the expectation consistent with underlying applicable requirements that all sources are to be in compliance on a continuous basis or will have violations resolved in a reasonable appropriate time frame. Thus, even FRVs for which a formal enforcement action is not to be taken need to be reported for program management and analytical purposes.

  - ICIS-Air accommodates non-enforcement resolution if users choose to report. The state/local/tribe may elect to report non-enforcement resolutions in ICIS-Air on the Case File. Non-enforcement resolution actions include, but are not limited to, No Action Necessary, No Further Action Required At this Time, and Closeout Memos.

- When an enforcement performance issue is discovered with an individual state/local/tribal enforcement program, the EPA role is to raise the issue, clarify expectations, and work in a collaborative manner with the agency to reach agreement on the steps needed to obtain resolution. For instance, if an FRV without a formal enforcement action were to persist for an unreasonable amount of time (which would be determined by the particular facts) or were to be repeated indicating possible recalcitrance, the response to the FRV may need to be escalated. Having all FRVs reported, even those with enforcement action being initially deemed unnecessary, allows EPA to assist agencies in identifying and addressing programmatic issues such as a routine failure to take timely or appropriate enforcement actions when required to resolve a violation and prevent pollution from continuing unabated.

- Also, for overall management of the CAA stationary source program, it is essential for the state/local/tribal agency to report FRVs that are swiftly resolved with compliance verified for which a formal enforcement action was not required. This information is needed in capturing historic non-compliance, designing improved regulations taking into account such information streams, developing innovative compliance approaches and advances in new technology, optimizing facility operations, and increasing transparency.

- In instances where a Case File includes the same violation occurring multiple times, the state/local/tribe can report the violation once while indicating the number of such violations.

## VII. ICIS-AIR AND POTENTIAL FRV ACTION LINKING

- The requirement to link activities and actions (e.g., relating compliance evaluations to the violations and addressing actions) is currently limited to HPV reporting. EPA understands the difficulties certain agencies experienced with HPV reporting and action linking in the legacy AFS data base. We also recognize the potential changes needed with regard to individual agency processes and structures, as well as the possible changes in state/local environmental compliance and enforcement data systems, if linking were to be expanded now to FRV reporting. In addition, we understand that changes to state/local data systems may be further complicated because they may be part of an enterprise system that includes multiple state/local agencies and departments.

- However, in fulfilling our managerial and oversight responsibilities, it is critical that we not only know that violations are being identified but that they are being timely addressed and appropriately resolved. The linking of actions allows us to have a more comprehensive understanding of the outcomes of evaluations, the origins of the identified violations, and the overall enforcement process. Although FRV linking is voluntary, it is considered a best practice and can be accommodated in ICIS-Air.

- EPA will continue to evaluate, in partnership with the states/locals/tribes, the potential for FRV action linking in the future. While such action linking will have benefits, we need

to ensure that such data submission does not unnecessarily divert state/local/tribal focus and resources away from implementation of the compliance and enforcement program. State/local/tribal agencies will have the opportunity to engage in and comment on any future policy changes.