Presentation to OMB AIR EMISSIONS REPORTING RULE

May 28, 2024

Overview

01

We support quality and useful emissions information and transparency.

02

The dramatic expansion and over-reach of the Air Emissions Reporting Rule (AERR) is not lawful and imposes significant burdens on major industries and small businesses, without yielding much benefit.

03

The Environmental Protection Agency (EPA) either has much of the information it seeks or can obtain the needed information in a targeted manner.

04

If EPA proceeds with the rule, it must be significantly narrowed.

Industry Supports

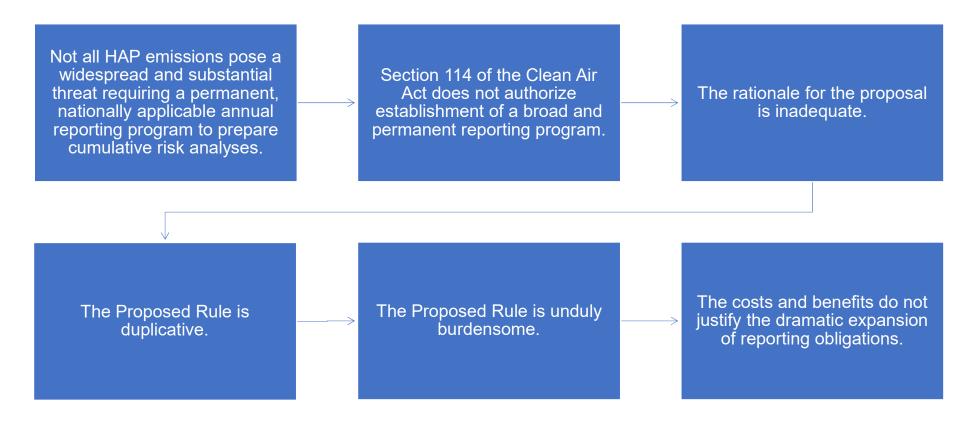
- Efforts to protect our employees, communities, and the environment.
- Working with community residents to share information about operations, identify any community questions, and work with community stakeholders to resolve issues.
- Data collection efforts to fill data gaps and address risks posed by emissions sources.
 - Since 1990, the EPA issued more than 100 regulations limiting emissions of HAPs from more than 200 types of major and area industrial sources.
 - EPA has completed its Risk and Technology Reviews (RTRs) for most of these rules and, with a few exceptions, concluded that any remaining risk does not warrant substantive changes to HAP emissions standards.



EPA is
Proposing an
Unprecedented
Expansion

Current AERR	Proposed AERR
Report criteria air pollutants (CAPs) and precursors from facilities, with states having the option to collect and report HAP information.	Report CAPs and precursors, and 188 hazardous air pollutants (HAPs).
States report information collected from facilities and provide to EPA.	Sources report directly to EPA and report separately to states.
States report emissions from the following sources: point, nonpoint (states may accept EPA's estimates for sources for which the EPA makes calculations), on road and nonroad mobile (except for CA, states may accept EPA estimates).	Sources required to report to (1) EPA CAPs and 188 HAPs for point source and fugitive emissions from stationary sources, road and nonroad mobile sources, and portable sources, and (2) state, local, and tribal authorities.
~12,400 facilities report as point sources.	More than 130,000 facilities to report all point sources.
Report every three years.	Report annually.

The Proposed Air Emissions Reporting Rule Should be Withdrawn





AERR Exceeds Statutory Authority

- The proposed AERR does not gather information to:
 - Fulfill the obligations of CAA Section 182(a)(3)(A), Section 187(a)(5), or the Nitrogen Oxides (NOX) State Implementation Plan (SIP) Call.
 - The proposed source-specific HAP reporting requirements are not required or authorized to ensure proper implementation of emissions standard or emissions control program.
- Each existing National Emission Standard for Hazardous Air Pollutants (NESHAP) which EPA issued under CAA § 112 has monitoring, recordkeeping, and reporting requirements.
 - If EPA needs additional information to develop and implement such standards, EPA should issue targeted CAA § 114 information requests.

EPA's Claim that CAA Sections 301 and 114 Authorize This Rule is Flawed

Section 301(a) does not confer more or different information gathering authority than CAA § 114. CAA § 114 authorizes to gather information that the Agency "may reasonably require"

 The information collection effort must be based on a rule of reason and subject to a costbenefit analysis.

EPA fails to explain how a new, stand-alone emissions reporting program is grounded in CAA § 114. EPA can collect information under CAA § 114 to develop an emission standard, to determine violations of a standard, or carry out any provision of CAA Title I. CAA § 114 does not justify a permanent, broad, and costly annual reporting program.

EPA's Justification for the AERR is Inadequate

CAA Section 112 technology and risk reviews under CAA Section 112

- EPA has been implementing the program for 35 years and almost all risk reviews have been completed. The stated need to conduct additional risk reviews provides no basis whatsoever for the proposed HAP emissions reporting program.
- EPA should issue a targeted CAA §114 for information to develop or assess a particular rule.

Environmental Justice

 EPA has information (e.g., EJ Screen and Health Impact Assessment) needed to conduct an EJ analysis of impacted communities. EPA fails to provide a balanced approach under the CAA that protects communities while not overburdening industry.

Speciation for air quality modeling

- Volatile HAP emissions data would be of only limited value to EPA for this purpose because many volatile organic compound (VOC) constituents are not HAPs.
- CAA § 112 does not justify collection of information related to potential criteria pollutant impacts because CAA § 112(b)(2) states that no air pollutant listed as a criteria pollutant can be listed as a HAP under 112 unless it independently meets the 112 listing criteria.

EPA's Justification for the AERR is Inadequate

Risk Assessment

- · Risk assessments are largely completed.
- A permanent, economy-wide HAP emissions reporting program is unnecessary for the remaining residual risk reviews.
- To identify pollutants to review under the IRIS program, EPA can look at information collected under TRI or used for Air Toxic Screening Assessment (AirToxScreen), or issue a targeted 114.

Enforcement

• EPA has not explained why existing compliance assurance provisions (e.g., monitoring, notification, recordkeeping, and reporting requirements) in CAA § 112 emissions standards are inadequate.

Paperwork Reduction Act

• EPA cannot certify that the proposed information collection under the proposed AERR (1) is needed for EPA to carry out its functions, (2) is not duplicative of information EPA already has, (3) reduces the burden on respondents, and (4) is consistent with the existing reporting and recordkeeping practices of respondents.



The AERR is Duplicative

- Section 313 of the 1986 Emergency Planning and Community Right to Know Act (EPCRA) includes the TRI program requiring sources to report HAPs.
- CAA Title V requires sources to identify emission limits applicable to each affected facility and makes that information publicly available.
- Many major sources report emissions under various CAA § 112 NESHAPs.
- Many state, local, and tribal authorities (SLTs) already require reporting of HAP emissions (albeit above de minimis reporting thresholds or exempting insignificant sources).
 - The proposed AERR will require SLTs to reconcile any differences between data directly reported to EPA by facilities for AERR requirements and data reported to SLTs.
 - EPA should allow sources to continue reporting to states to avoid conflicting applicability or requirements.
- EPA has data from its risk reviews for Maximum Achievable Control Technology (MACT) standards and many RTRs.
 - Major source facilities provided virtually all the information EPA says it needs as part of information collection requests (ICRs), or as part of comments on or industry data gathering exercises during Risk and Technology Review (RTR) rulemakings.
 - EPA obtains more information than emissions data as part of the RTR modeling process

The AERR Is Unduly Burdensome

Requires sources to report emissions from every release point

EPA grossly underestimated identified costs

EPA failed to account for the many requirements and associated burdens

EPA's AERR Facility Cost Burden is Significantly Understated in the Proposal

EPA has grossly underestimated the cost burden of the proposed AERR on affected facilitys. EPA's estimated annual program cost for affected point sources (\$450 million) is just 15% of the Coalition's estimated annual program cost (\$3 billion). The Coalition's annual program cost estimate accounts for "one time" activities with an annual reporting burden and would likely be higher if consultants are utilized.

EPA has not accounted for the costs of multiple essential tasks faced by affected facilities under the proposed AERR including: 1) Review/revise major facility release point inventory ~ 8 to 40 hours; 2) Update major facility HAP inventory for risk modeling purposes ~ 200+ hours; 3) Initial mobile source emissions inventory ~ 40 to 80 hours; 4) Annual mobile source emission inventory ~ 12 to 24 hours; 4) Initial small facility HAP inventory ~40 hours; and 5) Develop exempt/insignificant source emission inventory for large source ~ 40 hours.

EPA has accounted for but underestimated the annual time needed by a facility (i.e., 24 hours/year) to report HAP emissions under the proposed AERR. The actual time needed to "report" HAP emissions should include all effort including review of HAP emissions factors; compilation of annual facility utilization, production, throughput, and fuel usage information; account for new or modified emissions units; account for excess emissions events; consider emissions inventory improvements; and perform quality assurance checks. The Coalition estimates that up to 80 hours/year are needed to prepare facility annual emissions inventories and up to 200 hours/year for facility inventories that require updates.

EPA's intended use of the expanded AERR data (i.e., to support risk analyses under Air ToxScreen) will result in additional costs for many affected facilities that are not included. A facility's use of conservative HAP emission factors could result in unrealistically high risks prompting unfounded EPA and community concern. In such cases, many affected facilities would likely initiate actions to refine emissions and release point inventory data to prove that risks are acceptable. Emissions inventory refinement could cost well over six figures and include new emissions testing.

Small Entities Face Additional Burdens

Small businesses subject to the rule include:

- · Packaging and labeling services
- Printing shops
- · Warehouses and storage facilities
- · Autobody shops

Many small businesses are exempt or are area sources and, therefore, have no experience quantifying HAP emissions, which they must do in the proposed rule to determine if they emit HAPs above the thresholds.

• They lack personnel to comply with the Rule, requiring the use of consultants. Consequently, the compliance costs are much higher than estimated by EPA (some estimate costs at \$30,000 per facility for the first year).

Source testing is difficult and expensive. If testing is even feasible, cost estimates for it can range between \$20,000 and \$50,000 per source.

Those piloting CAERS, EPA's online data collection tool, found that required manual data input and the emissions calculation methodology was inflexible.

The Costs and Burdens Do Not Outweigh Benefits

EPA estimates costs to industry in 2027 to be about \$450 million. EPA's present value cost estimate could be more than \$3 billion in 2027 (higher if facilities use consultants). The agency has not demonstrated how the benefits of the proposal justify its estimated cost burden to the regulated community.

The agency has not credibly demonstrated that "cumulative impacts" are so detrimental and so pervasive as to justify a detailed, nation-wide data collection exercise for the stated investigative purpose of cumulative impacts modeling.

EPA admits "There are no monetized benefits estimates for this proposal since there are no changes in emissions or environmental effects that can be determined." Recommendation: EPA should work with SLTs to identify facilities or areas where cumulative risk from HAPs are of concern and address those areas. There is approximately \$170 million in funding for air monitoring programs in the Inflation Reduction Act.

If EPA Moves Forward, the Final AERR Must Reduce the Burden



Do not require reporting for "all HAPs"



Exempt certain industries and activities



Do not require reporting by release point







Ensure the public understands the context and meaning of emissions information

"All HAPs" Should Not Be Reported



Not all HAPs pose the same risk, so EPA should prioritize HAPs posing greatest health-based risk.



Remove requirement to report PFAS.

No test methods exist to detect or quantify de minimis levels of PFAS.



Allow flexibility in the calculation methods for HAPs (e.g., use of an AP-42 emissions factor; use of emissions factors on WebFire, engineering estimates, manufacturer's information, or actual emissions).

The final rule must make clear that emissions factors (versus performance tests) may be used to calculate emissions.



Oly require reporting of HAPs that exceed the major source thresholds.



Remove requirement to report trace HAP emissions from natural gas combustion because major sources aggregate annual natural gas usage.

Use existing TRI data to screen for HAPs of concern.

Revise HAP Thresholds

The "all HAP" requirement is infeasible because availability of "all HAP" content from manufacturers can be limited and difficult to obtain due to the business information being proprietorial and confidential.

Sources are not accustomed to quantifying "all HAPs." Criteria pollutants are used as surrogate pollutants for HAPs because their control leads to control of individual HAPs and because use of surrogates for compliance does not require complex and expensive measurements of individual HAPs.

Apply de minimis thresholds or adopt a single threshold for reported HAPs. Applicable NESHAPs regulate total organic HAPs, not individual HAP species, and allow affected facilities to rely on product technical and formulation related information provided by suppliers (e.g., safety data sheets, technical data sheets, or related product documentation to determine the HAP content of the coatings used). Often, NESHAPs exclude HAPs below a certain threshold (see e.g., 40 CFR §63.3360(c)(1) HAPs below 0.1 and 1.0 mass percent thresholds are excluded from the HAP content of the material and in associated emissions calculations).

To limit the burden on area sources, the AERR should apply a 100-in-1 million cancer risk threshold because that is EPA's presumptively acceptable level of risk and because CAA § 112(f)(5) does not require risk reviews for area source standards based on generally available control technology (GACT).

Revise the Definition of Point Source

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The current AERR ties reporting requirements to Title V applicability. Fugitive emissions are not counted in determining "major source" status, unless specifically listed.

Fugitive emissions should be counted in determining AERR applicability only if the source is in a "listed" category. Listed sources should be allowed to group fugitive emissions. There are significant challenges with measuring, estimating, and modeling fugitive emissions because processes that release such emissions vary.

There are challenges with estimating and modeling fugitive emissions, demonstrating the limited value of imposing a blanket requirement for all sources to count fugitive emissions.

The Final Rule Must Include a List of Exempt Sources

- Area sources in remote, sparsely populated areas do not pose risks to populations and should not be required to report HAPs that are part of a CAP.
 - Small, portable non-emergency generators with the potential to emit less than 10 tons per year (tpy) in remote areas should likewise be exempted.
- Certain industries and insignificant activities (e.g., laboratory analysis, print shops, cooling towers, and agricultural activities, and small combustion equipment).
 - State, local, and tribal authorities exclude reporting emissions from insignificant activities (See Oklahoma's air pollution control regulations at https://www.deq.ok.gov/wp-content/uploads/deqmainresources/100.pdf and Louisiana's regulations at https://www.deq.louisiana.gov/assets/docs/Air/Asbestos/AsbestosRegulations.pdf).
- Exclude cogeneration units and small portable electric generators and limit inclusion to those located at major stationary sources.
 - There are a vast number of small, non-emergency generators (engine-driven generators) that require daily tracking of their usage.



Mobile Sources Should Be Excluded

- CAA § 114 authority does not apply to mobile sources because they are not included as part of a facility's stationary air permit.
- Vehicles are registered through states, which report mobile source emissions in EPA's MOVES model, along with non-road sources. Title V operators have not been required to report these data and will be unfamiliar with how to calculate the data because the program is run by EPA and the states.
 - Tracking emissions from mobile sources is infeasible because many stationary sources have dedicated vehicles that operate on- and off-site, depending on need, as well as contractor vehicles. It is unclear how the requirement to report mobile sources will be tracked and enforced.
- Some facilities do not have site boundaries (e.g., pipelines, or surface mines use rights-of-way), so it will be difficult to ascribe mobile emissions to a specific facility.
- National Emissions Inventory (NEI) data under county-wide area source categories would need to be disaggregated in some fashion if individual sources began reporting portions of mobile emissions.
 - EPA can use local mobile source data from NEI that includes all mobile source emissions (*i.e.*, mobile emissions from facility and private vehicles).



Portable Sources Should Be Excluded

- Emissions from portable sources (e.g., asphalt plants, offshore drilling rigs, and offshore vessels) should not be reported.
 - Portable sources operate intermittently, resulting in temporary emissions. It will be very challenging to determine annual HAP emissions.
- It is infeasible to track emissions from portable facilities as "point sources" based on a 30-day same site threshold because:
 - Portable sources are associated with multiple sites during the year.
 - While a portable source may be present at a site for 30 days, it may not operate all 30 days.
 - Some states permit the portable sources, not the physical location of the source.
 - Operators cannot realistically track and report surface site development and nonroad engines and vehicles.



States Lack Resources to Implement the Proposal

- Several states submitted comments that they lack resources to implement this unprecedented expansion of the AERR.
- States object to the proposal because it lacks cooperative federalism and introduces duplicative reporting.
- States would need to:
 - Upgrade reporting systems and emissions inventory databases.
 - Reconcile differences between data directly reported by facilities to EPA for AERR and data reported to states to demonstrate permit compliance.
 - Dramatically increase their public outreach, training and compliance assistance, considering all the resulting vast increase in the number of reporting facilities.
 - Manage and QA/QC vast amounts of information (including emissions data that are not based on established emissions factors).

Confidentiality and Data Interpretation



While emissions data may not be confidential, the inputs into those calculations and testing methods are.



EPA must work with sources and state, local, and tribal authorities to ensure the information is accurately characterized to help the public understand the information.

