



Environmental Council of the States

1250 H Street NW, Suite 850 | Washington, DC 20005
(202) 266-4920 | www.ecos.org

November 17, 2023

U.S. Environmental Protection Agency
EPA Docket Center
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Via Regulations.gov Docket ID No: EPA-HQ-OAR-2004-0489

Re: Proposed Updates to Air Emissions Reporting Requirements (AERR) Rule

Dear Administrator Regan:

The Environmental Council of the States (ECOS) appreciates the opportunity to provide input and recommendations to the U.S. Environmental Protection Agency (EPA) in response to its proposed updates to the Air Emissions Reporting Requirements (AERR) rule published in the *Federal Register* on August 9, 2023. ECOS is the national, non-partisan, non-profit association of state environmental agency leaders. Throughout our comments, the use of the word “states” is inclusive of states, territories, and the District of Columbia.

The following input on EPA’s proposed revisions to the AERR rule is based on states’ decades of direct experience implementing environmental protection programs. The comments are intended to reflect areas of broad consensus among our member agencies. This input does not necessarily reflect the views of every state environmental agency. As such, ECOS asks EPA to carefully consider comments from our individual member agencies, which are best positioned to speak to their own unique perspectives and circumstances.

Key Elements of EPA’s Proposal

EPA is proposing a range of significant changes to the scope, scale, and timing of emissions data reporting under the AERR rule. Beginning in the 2026 reporting year, EPA would require point sources, for the first time, to report their emissions of hazardous air pollutants (HAPs) in accordance with the proposed reporting thresholds for each pollutant. Under the current AERR rule, required industry reporting is limited to criteria air pollutants (CAPs) and their precursors, while HAP reporting is voluntary.

EPA’s proposal requires owners/operators of point sources to report annual actual emissions of HAPs directly to EPA. The proposal also provides an option for states to accept this reporting responsibility on behalf of owners/operators within their state. States that accept this responsibility would need to document their adoption of EPA’s reporting requirements, or the equivalent, into the state’s regulations.

The proposed rule would require sources to report at the same pollutant thresholds for every reporting year. As EPA notes, this proposed change would make reported data consistent from year to year. It would also increase the total volume of data reported since more point sources would be obligated to report annually. This differs from the current AERR, which sets lower reporting thresholds in every third year. For the purposes of HAP reporting, EPA is also proposing to expand the definition of “point source” to include “major” sources that are permitted to operate under Title V of the Clean Air Act, as well as unpermitted “non-major” sources whose emissions exceed certain reporting thresholds.

Elizabeth Biser
North Carolina Department of
Environmental Quality
ECOS President

Jon Niermann
Texas Commission on
Environmental Quality
ECOS Vice President

James Kenney
New Mexico Environment
Department
ECOS Secretary-Treasurer

Myra Reece
South Carolina Department of
Health and Environmental Control
ECOS Past President

Ben Grumbles
ECOS Executive Director

The proposed rule would also phase in progressively earlier emissions reporting deadlines for states and industry. EPA is proposing that by 2030, state agencies would be required to submit emissions data for the previous inventory year by May 31. This would be 7 months earlier than the current deadline of December 31.

Finally, the proposed rule also includes provisions related to prescribed burns, source test data, mobile sources, and other important topics.

State Perspectives on EPA's Proposal

As co-regulators with EPA, states play a key role in collecting and ensuring the quality of data on the emissions of air pollutants. In support of our shared mission to protect the environment and human health, ECOS and states recognize the value of collecting data on HAPs. As the proposed rule notes, many states currently collect HAP data from certain sources and voluntarily share this information with EPA. More complete and consistent information on HAP emissions can help fill gaps in state and national emissions inventories, which EPA and states use to inform regulations, develop state plans, and conduct air modeling.

ECOS supports efforts to improve data gathering for HAPs yet urges EPA to reconsider some aspects of the proposed rule that will pose real implementation challenges for states and segments of the regulated community, especially small businesses.

The rule proposes a significant increase in data reporting requirements and sets pollutant thresholds at levels that will increase the number of point sources subject to reporting. Many of those new sources are likely to be small businesses that do not generate enough emissions to require a Title V operating permit under the Clean Air Act yet would be subject to reporting under the AERR. States anticipate that many of those “non-major” point sources will be difficult to identify and will likely need assistance from states and EPA to comply with the proposed rule—activity that will require additional resources on the part of states and EPA.

At the same time, EPA is also proposing to phase in progressively tighter reporting deadlines, leaving less time for critical quality assurance and compliance activities to ensure the data are accurate and useful. The requirement for more data from more sources on tighter timelines would play out amidst a backdrop of severely strained and under-resourced state air programs. Without adjustments to certain elements of the proposal, states anticipate unworkable demands on state and EPA staff resources, a degradation of the quality of emissions data across data systems and inventories, and compliance challenges for new reporting entities, including small businesses.

ECOS respectfully submits the following input and recommended changes for EPA's consideration.

Begin requiring HAP reporting 5 years after finalization of the AERR

ECOS anticipates that many states will elect to apply for and accept HAP reporting responsibility. As part of that process, EPA's proposal would require states to adopt EPA's requirements, or the equivalent, into state regulations. EPA further proposes to require states to share details about their HAP collection program for review by March 31 of the inventory year for which the state intends to report emissions. EPA projects publishing a final rule in June 2024 and proposes HAP reporting to begin 3 years later, in 2027, for the 2026 inventory year. Under this scenario, states would be required to submit their HAP collection programs to EPA by March 31, 2026.

Most states will simply be unable to meet this timeline. In many instances, states indicate that it could take up to 5 years to work through the necessary legislative and administrative processes to fully align their state statutes and rules with new reporting requirements. ECOS recommends that EPA make the new HAP reporting requirements effective 5 years after the finalization of the AERR rule. For example, assuming the rule is finalized in June 2024, states would request that HAP reporting begin in 2029 for inventory year 2028. Until this time, states could continue to voluntarily submit HAP data to EPA.

Retain adequate time for states to ensure high quality data

Starting with the 2027 inventory year, EPA is proposing to phase in earlier point source emissions reporting deadlines for states that assume responsibility for HAP reporting. States acknowledge EPA's desire for more comprehensive and timely emissions data but urge EPA not to significantly shorten state review timelines—especially while simultaneously expanding the scope and volume of reported data. States stress that more data and faster data do not necessarily equate to better data.

States perform advanced quality assurance on industry-reported emissions information to ensure that it is accurate, complete, and useful for supporting decisions about human health and the environment. Importantly, states also depend on high quality emissions data to issue accurate Title V fee assessments. With shorter reporting timelines and more data from new sources, states see a real risk that the accuracy and completeness of emissions data will deteriorate, thereby negatively impacting fee assessments, air quality planning, and other core program responsibilities.

Most states simply do not have the resources to perform this essential quality assurance work by the proposed reporting deadline of May 31—even with the phased implementation. ECOS urges EPA to strike a better balance among data completeness, speed, and accuracy. EPA should retain the current deadline of December 31 (January 15 with the current grace period).

In cases where states do not elect to take responsibility for HAP reporting, they will still have a vested interest in the quality of the data. States ask EPA to make reported data available to state staff and to create optional opportunities for states to contribute to quality assurance of the data as resources allow.

Work closely with states to mitigate any potential for duplicative reporting obligations

EPA's proposed rule would significantly expand the scope of reported emissions data and the number of point sources obligated to report. The proposed reporting options would also create several different pathways for HAP data to flow—directly to EPA, through state reporting systems, or indirectly to states via EPA's Combined Air Emissions Reporting System (CAERS). While states appreciate EPA's efforts to build flexibility into the rule, the multiple reporting pathways could prove problematic in certain circumstances without thoughtful planning.

As states weigh which reporting option to pursue, they will need to consider a wide range of programmatic requirements that are often reliant on the same emissions data. For example, states will continue to collect emissions data to support Title V permitting programs and fees generated under Clean Air Act sections 502 and 185. States can see potential for unintended consequences, including duplicative reporting streams or redundant and mismatched data sets. EPA and states should work closely to understand and mitigate these risks to avoid unnecessary burden on the regulated community, duplicative workflows for regulators, and data quality issues stemming from redundant data reporting systems.

Engage states in defining an efficient approach for reviewing and approving state reporting programs

Many states are already successfully collecting and voluntarily reporting HAPs. ECOS anticipates that many states will consider retaining this role and assume responsibility for reporting HAP emissions to EPA on behalf of point source owners/operators. EPA should work closely with states to define efficient processes for the review and approval of state reporting programs. This may include flexibility for states to implement reporting programs that cover only a subset of the point source reporting universe, such as Title V sources, synthetic minor sources, or only sources associated with certain NAICS codes within the state. This will help ease the burden on state air programs, minimize duplicative reporting, and avoid costly reinvention of existing workflows that may include tie-ins to state billing systems that support state-imposed emissions fees.

Avoid excessively tight binding of the reporting rule and the Combined Emissions Reporting System (CAERS)

The proposed rule indicates that CAERS will be the reporting solution for point source owners/operators reporting to EPA. The rule also stipulates that states assuming reporting responsibility for HAPs may either elect to use CAERS to support owner/operator HAP reporting or they may use their own emissions reporting system.

ECOS emphasizes the importance of retaining this flexibility for states to choose the path that works best for their program and process needs. Reporting requirements under the AERR and other rules should always remain system-agnostic. Similarly, as EPA implements revised rules and continues to build out CAERS, states ask EPA to exercise caution so as not to inadvertently erode state authority or flexibility on technology choices. CAERS is a useful shared service for those states that opt-in, but states need the flexibility to maintain their own reporting tools and data management systems that may better suit their needs.

Develop strategies to identify “non-major” point sources and provide resources for compliance assistance

The proposed rule changes are likely to significantly increase the number of “non-major” sources subject to HAP reporting. Many of these point sources may be difficult to identify because they will not have had previous regulatory relationships with states or EPA. Similarly, they may have little awareness of or prior experience with emissions reporting. These factors raise considerable concerns around how states and EPA will handle enforcement of the HAP reporting requirements. States also anticipate that new reporters may struggle to provide quality data without proactive compliance assistance. EPA should prioritize the development of resources and guidance to ensure that states and owners/operators have adequate support for outreach, compliance assistance, and data quality assurance.

As a general rule in this and other rulemakings, ECOS urges EPA to carefully consider state capacity, resource constraints, and staffing challenges. State air programs are grappling with staff shortages and insufficient funding to run core programs. These already strained programs will struggle to support high quality data collection under tighter deadlines without increases in staffing or funding. EPA should support additional grant funding for states that choose to collect and submit any newly required HAP information.

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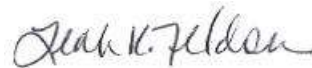
Similarly, ECOS asks EPA to engage with state co-regulators prior to formal rulemaking processes to help identify potential implementation challenges and opportunities associated with different policy options. Many states were not anticipating the earlier reporting deadlines proposed in the AERR rulemaking. As noted above, these tighter timelines pose real implementation and data quality challenges. Surfacing these types of issues early can produce better policy, more efficient rulemaking, and smoother implementation for states, EPA, and the regulated community.

ECOS appreciates the opportunity to share input with EPA on this important rulemaking process. Thank you for your consideration of our comments.

Sincerely,



Jon Niermann
Chair, ECOS Air Committee
Texas Commission on Environmental Quality



Leah Feldon
Vice Chair, ECOS Air Committee
Oregon Department of Environmental Quality