



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

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Issuance of the Area Source Rule Implementation Guidance

FROM: Lisa C. Lund 
Director
Office of Compliance

TO: Regional Compliance/Enforcement Division Directors (I-X)

Attached is a copy of the final Area Source Rule Implementation Guidance. This guidance was developed in response to requests from the state and local agencies for guidance regarding the implementation of the Clean Air Act (CAA) Area Source Rules.

EPA is required under the CAA to identify thirty (30) hazardous air pollutants (HAPs) posing the greatest health threat in urban areas, which EPA has identified in its Urban Air Toxics Strategy. The CAA also requires EPA to identify sufficient area source categories to ensure that area sources representing ninety percent of area source emissions of the thirty urban HAPs are subject to regulations.

The purpose of this guidance is to: (1) prioritize the area source rules to help delegated agencies and implementing regions focus their limited resources on the most significant standards to achieve emission reductions to the greatest extent possible; (2) identify recommended approaches to ensuring compliance with individual rules; and (3) provide delegated agencies and implementing regions flexibility to address regionally significant issues. In addition to the above three major issues, the guidance addresses other implementation issues such as data reporting. The prioritization of the area source rules in this guidance is consistent with the July 2008 guidance developed by the Office of Air Quality Planning and Standards, referred to as: "*Area Source Program Implementation Priorities Assistance Document for Regional Air Division Directors.*"

We appreciate the feedback we have received from your offices as well as from the state and local agencies during the development of this guidance. If you or your staff have any questions regarding this guidance, please contact Robert Lischinsky at (202) 564-2628 or Scott Throwe at (202) 564-7013.

Attachment

cc: Regional Air Compliance/Enforcement Branch Chiefs
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Peter Tsirigotis, Director, Sector Policies and Programs Division,
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AREA SOURCE RULE IMPLEMENTATION GUIDANCE

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), state/local/tribal agencies, or the regulated community. This guidance 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 guidance and the appropriateness of the application of this guidance to a particular situation. EPA retains the discretion to adopt approaches on a case-by-case basis that differ from those described in this guidance where appropriate. This document may be revised periodically without public notice. EPA welcomes public input on this document at any time. Any questions concerning this guidance may be directed to Rob Lischinsky or Scott Throwe at 202-564-2300.

INTRODUCTION

- The purpose of this document is to provide guidance on recommended approaches for effective implementation of the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for area sources.
- EPA is required under the Clean Air Act (CAA) to identify thirty (30) hazardous air pollutants (HAPs) posing the greatest health threat in urban areas, which EPA has identified in its Urban Air Toxics Strategy. The CAA also requires EPA to identify sufficient area source categories to ensure that area sources representing 90 percent of area source emissions of the thirty (30) urban HAPs are subject to regulations. EPA is under a court order to complete this statutory 90 percent requirement by December 16, 2010.¹
- Due to the toxicity of HAPs, effective implementation of these rules is important. HAPs are pollutants that are known or suspected to cause serious health problems, such as cancer and birth defects, and cause adverse environmental and ecological effects. Health concerns result from both short and long-term exposure. Even low emission releases from the individual facilities subject to these rules can impact communities. In the aggregate, the HAP emissions from these area sources can have significant impacts on the health and environment of the communities in which they are located particularly where large numbers of sources are located in heavily populated areas and due to the cumulative effect of many, varied sources of emissions. Air toxics pose an even greater threat to sensitive subgroups such as children and the elderly. The impact of toxic emissions on minority and low-income communities is also greater because these communities are often located close to industrial and commercial urbanized areas.

¹ For additional information on the Urban Air Toxics Strategy, [please see](http://www.epa.gov/ttn/atw/urban/urbanpg.html) www.epa.gov/ttn/atw/urban/urbanpg.html

- Consistent with other CAA program rules and in recognition of the primary role of state/local/tribal agencies in the prevention and control of air pollution, responsibility for implementing these area source rules is intended to be delegated to the state/local/tribal agencies. However, some area source standards include an exemption from Title V requirements because EPA has found that compliance with Title V requirements is impracticable, infeasible, or unnecessarily burdensome on such area source categories. Currently, there are six (6) area source standards that require area sources to have a Title V permit.² As a result, Title V fees can not be used to implement the area source program and an alternate revenue stream may be required. State/local/tribal agencies have expressed concern and requested guidance from the EPA on issues relating to the adequate implementation of the program.
- EPA does recognize that Section 507 of the 1990 Clean Air Act Amendments (CAAA) requires each state to establish and fund from Title V fees, a Small Business Stationary Source Technical and Environmental Compliance Assistance Program [also known as: "*507 Program and/or Small Business Environmental Assistance Program (SBEAP)*"] to assist many of the sources regulated under the area source program.
- Although the state/local/tribal agencies initially requested guidance, this guidance also applies to the EPA regions where state/local/tribal agencies have not accepted delegation of the area source program or of individual rules. Therefore, we refer in this guidance to the state/local/tribal agencies and the regions as the delegated agencies/implementing regions.
- This guidance: (1) prioritizes the area source rules to help delegated agencies/implementing regions focus their limited resources on the most significant standards to achieve emission reductions to the greatest extent possible; (2) identifies recommended approaches to ensuring compliance with individual rules; and (3) provides delegated agencies/implementing regions flexibility to address regionally significant issues. In addition to the above three major issues, the guidance addresses other implementation issues such as data reporting.
- In recognition that successful implementation of a comprehensive compliance and enforcement program includes a variety of tools such as compliance monitoring, compliance assistance, compliance incentives, auditing, targeting, and enforcement to both address and promote increased compliance, this guidance is structured to advance the use of these tools in an integrated manner to maximize efficiencies. Depending upon the challenges that need to be met and the specific rule that is being implemented, delegated agencies/implementing regions should determine how best to direct their efforts and which tool(s) would be most appropriate and effective in achieving environmental goals.

² The following area source standards require Title V permits: Primary Copper Smelting, Secondary Copper Smelting, Primary Nonferrous Metal, Carbon Black Production, Pressed and Blown Glass Manufacturing, Stainless and Non-stainless Steel Manufacturing, Chemical Manufacturing (chemical manufacturing sources that installed controls after 1990 to become an area source under Part 63).

PRIORITIZATION OF AREA SOURCE RULES

- To assist the EPA regions and state/local/tribal agencies with prioritizing the area source rules for delegation and implementation, the Office of Air Quality Planning and Standards (OAQPS) initially developed a July 2008 guidance referred to as: “*Area Source Program Implementation Priorities Assistance Document for Regional Air Division Directors.*” This OAQPS guidance prioritizes the area source standards by creating three (3) groupings based on each rule’s potential for emission reductions. This guidance is available on EPA’s Technology Transfer Network Air Toxics Website (ATW) and will be updated as additional area source rules are promulgated. For current guidance and an up-to-date listing of the three groups, please visit the ATW at www.epa.gov/ttn/atw/area/arearules.html.
- The following is a summary of the three groups:

Group One Rules: In many cases, no state or Federal rules regulate HAPs in the industry sectors covered by the Group One rules. Consequently, opportunities exist for substantial emission reductions from implementation of these rules. Approximately 1,000 facilities are expected to be subject to the four Group One rules. The Group One area source rules are listed below.

Group One Rules
Electric Arc Furnaces
Iron and Steel Foundries
Glass Manufacturing
Chemical Manufacturing

Group Two Rules: Facilities covered by the Group Two Rules may individually have low HAP emissions. However, the large number of facilities (several thousand) covered by these rules provides the potential for significant emission reductions. Moreover, these rules may impact the attainment status of particular areas as well as having the co-benefit of reducing criteria pollutants. The Group Two area sources are listed below.

Group Two Rules
Paint Stripping and Miscellaneous Surface Coating Operations
Reciprocating Internal Combustion Engines
Gas Distribution Bulk Terminals, Bulk Plants and Pipeline Facilities, and Gasoline Dispensing Facilities
Oil and Natural Gas Dispensing Facilities ³

³ Oil and gas extraction and production will be part of the FY 2011-2013 National Enforcement Initiative on Energy Extraction. Delegated state/local agencies and implementing regions may choose to expand their compliance monitoring and enforcement activities to address this source category.

Group Three Rules: Standards in these rules generally codify existing effective HAPs emission reduction control approaches. Many of the facilities subject to these rules were already controlling and/or reducing emissions of urban HAPs for various reasons (e.g., OSHA requirements, state rules, and existing permit requirements). While some of the Group Three rules will apply to less than five (5) facilities (Primary Copper Smelting), other rules will apply to several thousand facilities (Metal Fabrication). The Group Three area sources are listed below.

Group Three Rules
Primary Nonferrous Metal Production
Primary Copper Smelting
Secondary Copper Smelting
Polyvinyl Chloride and Copolymers Production
Carbon Black Production
Acrylic and Modacrylic Fibers Production
Wood Preserving
Chemical Manufacturing: Chromium Compounds
Flexible Polyurethane Foam Production and Fabrication
Lead Acid Battery Manufacturing
Clay Ceramics Manufacturing
Secondary Nonferrous Metals
Hospital Ethylene Oxide Sterilizers
Plating and Polishing
Metal Fabrication
Ferroalloys Production
Aluminum Foundries
Copper Foundries
Other Nonferrous Foundries
Asphalt Processing & Asphalt Roofing
Paint and Allied Products Manufacturing
Chemical Preparations
Prepared Feeds

- This prioritization of the area source rules using the three groups forms the basis for implementation of a compliance and enforcement program that includes the recommended approaches discussed below.

IMPLEMENTATION OF AREA SOURCE RULES

- For delegated agencies/implementing regions to effectively implement the area source rules and maximize the use of available resources, a comprehensive compliance and enforcement strategy encompassing all three groups is essential. Development of the strategy will benefit by having the following:

- An indication of the source universe subject to the individual rules to assess the impact of facility emissions on health and the environment.
 - A scheme for how to most effectively use resources in implementing the area source rules to achieve environmental benefits and reduce hazardous emissions.
 - An approach for targeting compliance activities.
- Based upon the rule prioritization, EPA provides the following recommended approaches for implementing and reporting on the three groups of rules.
 - This guidance does not address or in any way alter the submittal of information pursuant to the area source rules (e.g., initial notifications, notifications of compliance status), nor does it address or in any way alter the responsibility of the delegated agency/implementing region to maintain such information.

GROUP ONE RULES

- EPA recommends an integrated strategy using various tools to address and promote compliance within the Group One rules. However, given the potential greater impact these facilities have on the environment and their effect on the health of communities because of their overall HAP emissions, EPA recommends delegated agencies/implementing regions focus their efforts and direct resources to the use of compliance monitoring and enforcement. Compliance monitoring provides the greatest deterrent to non-compliance and therefore, may increase compliance with the Group One Rules. When non-compliance is found, the delegated agencies/implementing regions should utilize the appropriate enforcement response.

Identify Source Universe

- In developing a strategy for the facilities subject to the Group One rules, it is important for delegated agencies/implementing regions to have a complete and accurate inventory of all regulated sources. This information is needed to implement a compliance and enforcement program that includes efforts such as targeting compliance activities; assessing impacts on sensitive communities; and evaluating compliance trends.
- Having an accurate up-to-date source universe is also essential to good governance by allowing local communities and citizens to be aware of the regulated facilities within a geographical area of interest and to allow them the opportunity to conduct their own assessment of these facilities, if they so choose. They may wish to obtain a better understanding of the degree and impact of toxic emissions by facilities within their jurisdiction.

- For the Group One rules, EPA developed inventories of facilities potentially subject to each standard during the rulemaking process. OAQPS intends to post inventory lists on the ATW. These lists were developed for regulatory purposes and agencies may find it beneficial to conduct additional activities to assess their current accuracy and completeness. Any updated information concerning the inventories of facilities that EPA may obtain will be shared to assist the delegated agencies/implementing regions with further developing and refining the source universe lists. Delegated agencies/implementing regions may choose to use the initial notifications/compliance certifications that are submitted by the regulated community to assist in maintaining accurate inventories. While receipt of such notifications/certifications is not expected to provide a complete and accurate list of facilities subject to each standard, information obtained from receiving these notifications/certifications may help to identify a subset of subject facilities.
- To the extent that overlap exists between the facilities subject to the Group One rules and the source information reported and maintained in the Agency's Air Facility System (AFS),⁴ EPA is not requiring these sources to be entered into AFS. Any future consideration concerning the reporting of information on such facilities in AFS will be conducted within the context of the AFS Information Collection Request renewal and design, development, and implementation of a modernized national air data system.

Compliance and Enforcement Strategy

- To effectively implement the Group One rules, EPA recommends that a compliance and enforcement strategy include an approach for addressing each rule, a rationale for the approach chosen, and the process/time frame for conducting the strategy.

Approach

This guidance provides delegated agencies/implementing regions with flexibility to develop a compliance and enforcement strategy for addressing each rule in a manner they deem would be most effective in achieving environmentally beneficial results. Therefore, delegated agencies/implementing regions may choose their preferred approach when implementing a strategy. The chosen approach should include a clear articulation of goals and measures of success. Suggested approaches available to delegated agencies/implementing regions include the following:

- Establish evaluation frequencies for area sources which would be based upon individual agency priorities, compliance issues, and available resources. In conducting the evaluations, delegated agencies/implementing regions may choose

⁴ AFS is the national repository for air stationary source surveillance and state enforcement activity. It maintains a universe of sources considered "Federally Reportable". Federally Reportable sources are those which exceed major source thresholds or have the potential to exceed synthetic minor source limits; operating Part 61 National Emission Standard for Hazardous Air Pollutant (NESHAP) sources regardless of emission level; sources identified within the Compliance Monitoring Strategy (CMS) plan; any facility in which a formal enforcement action has been brought against it; and any facility that is a High Priority Violator (HPV). The HPV Policy is available at: <http://www.epa.gov/compliance/resources/policies/civil/caa/stationary/hpvmanualrevised.pdf>.

to focus their efforts through the use of targeted on-site partial compliance evaluations.

- Establish an annual evaluation scheme to address facilities that are ranked highest in terms of risk or toxicity weighted emissions, or a scheme that identifies facilities in higher risk geographic areas for the pollutants of concern.
- Develop an approach that focuses on evaluating a percentage of facilities on a periodic basis to assess the overall compliance rate with a particular rule. Such evaluations would be completed on a cyclical basis to ensure an ongoing deterrent effect. If a high rate of compliance with the rule is discovered after conducting evaluations at a representative portion of the facilities, the delegated agency/implementing region may choose to stop conducting evaluations before reaching the percentage goal. Upon the delegated agency/implementing region demonstrating that the results are indicative of the remaining facilities, resources may be shifted to evaluate facilities subject to a different rule.
- Implement an Environmental Results Program (ERP) that includes self-audits and accompanying self-certifications.⁵
- Develop a voluntary Compliance Audit Program (CAP) utilizing, for example, any combination of the above approaches.⁶
- Provide information/documentation confirming facilities subject to an area source rule are also subject to an effectively equivalent rule, permit, or similar program being fully implemented.⁷
- Provide information/documentation confirming that facilities subject to an area source rule are also subject to other formally negotiated agreements (e.g., CAA Compliance Monitoring Strategy (CMS)⁸) with EPA and sufficient monitoring is occurring.

A delegated agency/implementing region, based upon universe size and/or degree of potential environmental impact, may determine it is appropriate to not focus on a particular Group One rule. When choosing not to focus on a rule, EPA recommends that the delegated agency/implementing region provide a sufficient explanation confirming the likelihood of minimal emission releases. For example, there may be no facilities subject to the rule within the jurisdiction of the delegated agency/implementing region.

⁵ For additional information on ERPs, please see www.epa.gov/erp.

⁶ For additional information on CAPs, please see www.epa.gov/oecaerth/incentives/programs/incentiveprog.html.

⁷ For purposes of this guidance, delegated agencies will provide information to their regional office and implementing regions will provide information to EPA headquarters.

⁸ The CMS is available at www.epa.gov/compliance/resources/policies/monitoring/cmsspolicy.pdf. EPA recognizes the implementation of a compliance and enforcement strategy for the Group One area source rules may serve as the rationale for proposing an alternative CMS plan in accordance with the CMS guidance (sections VII and VIII).

At its own discretion, a delegated agency/implementing region may expand compliance monitoring beyond facilities subject to Group One rules to Group Two and Group Three facilities. Factors for using compliance monitoring at certain Group Two and/or Group Three facilities may include:

- Large number of affected Group Two and/or Group Three facilities in the geographic area
- Elevated risk associated with emissions from an area source industry sector
- Existing Federal/state/local/tribal priorities that are focused on the alternate area source category
- Facilities located near sensitive populations (e.g., children, elderly) or in minority/low income communities

Rationale

Once a delegated agency/implementing region chooses an approach for implementing a particular area source rule, EPA recommends that the agency provide a brief explanation for why the approach is expected to be effective in having an environmentally effective outcome.

Process/Time Frame

To maximize the efficient use of resources and time, EPA recommends the area source compliance and enforcement strategy be developed concurrently with the development and negotiation of the CMS plans. Such timing will provide an opportunity for obtaining a comprehensive picture of all compliance monitoring activities. The Agency also recommends the area source strategy be reassessed routinely as part of the annual CMS discussions to ensure the strategy remains current and takes into account factors such as:

- industry changes
- source universe adjustments
- compliance concerns or widespread compliance
- resource issues
- revisions in Federal/state/local/tribal priorities

To the extent compliance monitoring at major sources and synthetic minor sources that emit or have the potential to emit at or above 80 percent of the Title V major source threshold may be impacted by implementation of the Group One rules, a delegated agency may propose an alternative CMS plan with a detailed rationale for EPA consideration.

Reporting of Compliance and Enforcement Activities

- Compliance and enforcement activities conducted at area sources subject to the Group One rules are generally not considered mandatory data requirements (MDRs). However, EPA recommends delegated agencies maintain electronically, in their air compliance and enforcement data systems, records of compliance and enforcement activities along with their lists of facilities subject to the Group One rules. Such records allow for information sharing and reporting on level of activity and accomplishments. Agencies that use AFS as their own database are encouraged to enter information on the Group One facilities into AFS. In addition, implementing regions are expected to enter such information into AFS.
- The possibility of revising the current MDRs to include such activities will be discussed in the context of the AFS Information Collection Request renewal and the design, development, and implementation of a modernized national air data system. MDRs that the Agency may deem appropriate regarding the Group One area sources include facility identification information, evaluation date and type, violation(s) identified, compliance status, and enforcement action date and type.

Implementation Accountability

- Where a state/local/tribal agency is the delegated agency for implementing a Group One rule, the EPA regional office is responsible for overseeing and evaluating an implementation strategy. Regional oversight may include the following:
 - The state/local/tribal agency develops and communicates to the regional office a proposed compliance and enforcement strategy. Thereafter, the region and state/local/tribal agency negotiate a final strategy consistent with this guidance. In evaluating the agency's strategy, the regions should determine whether there is a clear articulation of goals and measures of success for achieving environmentally beneficial results.
 - The region monitors implementation of the strategy.
 - The region evaluates the adequacy and success of the strategy. If it is determined that implementation is incomplete and/or ineffective, the region discusses with the state/local/tribal agency the adjustments that need to be made.
- A separate strategy for rule implementation may not be necessary if other formal agreements (i.e., Performance Partnership Agreements, grant agreements) provide the requested information and specify how the rules are to be implemented.
- When a state/local/tribal agency has not taken delegation and the EPA regional office is responsible for implementing a Group One rule, the EPA Office of Compliance intends to work with the region to oversee and evaluate the completion of an implementation strategy. Even where a state/local/tribal agency does not formally accept delegation, it is recognized that the state/local/tribal agency may assist the region in conducting activities such as universe identification, compliance monitoring, and compliance assistance.

GROUP TWO and GROUP THREE RULES

- For the Group Two and Group Three rules, EPA recommends delegated agencies/implementing regions focus primarily on compliance assistance activities at sources where such assistance may be effective in achieving greater compliance and when resources allow. Given the nature, impact, and significant size for several of the source universes for the facilities subject to the Group Two and Group Three rules, EPA considers compliance assistance to be the most effective tool. Compliance assistance allows delegated agencies/implementing regions to reach out in an effort to promote greater understanding of the new regulations and, therefore, greater compliance. Many of these facilities are small businesses which previously had limited or no regulatory experience and compliance assistance provides an effective and efficient opportunity to work with these small sources. Through various activities, tools, and technical assistance, these facilities can receive clear and consistent information educating them on the relevant requirements in order to minimize emissions and improve overall environmental performance.
- In developing and/or delivering compliance assistance, EPA recommends a range of mechanisms to facilitate information sharing. Some of the activities that can be used to promote and address compliance with these rules are: mass mailings of regulatory guidance materials; developing and conducting workshops/training courses; developing web-based tools; operating telephone “hotlines”; and creating compliance guides/fact sheets. Such activities may allow facilities to better comply with these rules leading to reduced emissions and environmentally beneficial results.
- OAQPS intends to maintain a compendium of all compliance assistance materials on the ATW. As delegated agencies/implementing regions develop compliance assistance tools, they should submit such materials to OAQPS for posting to avoid duplication of efforts and to enhance widespread distribution nationally. Therefore, the ATW can serve as a repository for information/products/services concerning the area source standards that are developed by Federal and state/local/tribal compliance assistance providers.
- In implementing the Group Two and Group Three rules, EPA encourages delegated agencies/implementing regions to collaborate and partner with the Small Business Stationary Source Technical and Environmental Compliance Assistance Programs established under Section 507 of the Clean Air Act in their state or regions (see list of contacts at <http://www.smallbizenviroweb.org/Contacts/sbosbeap.aspx>). Delegated agencies/implementing regions can also collaborate and partner with trade associations, non-profit organizations, academia, small business assistance programs, chambers of commerce, and better business bureaus. In addition, we advise working with community-based and citizen sector organizations to enhance the capability of such organizations to more effectively monitor environmental concerns in their own communities and be more readily able to bring compliance issues to the attention of the local authorities. As a result, environmental justice concerns and issues impacting sensitive populations within communities, such as children and the elderly, will be addressed in a more efficient manner.

Identify Source Universe

- For the Group Two and Group Three rules, EPA created, to a limited extent, inventories of facilities subject to these rules during the rulemaking process. Lists of these sources are posted on the ATW and are available to the delegated agencies/implementing regions. Delegated agencies/implementing regions, working with other compliance assistance providers, may review these lists and update them for their own purposes as they deem necessary and appropriate. Delegated agencies/implementing regions may choose to use the initial notifications/compliance certifications that are submitted by the regulated community to assist in improving the accuracy of these inventories.

Compliance Strategy

- **GROUP TWO RULES:** EPA recommends delegated agencies/implementing regions initially conduct an evaluation to determine for which Group Two rules the use of compliance assistance will achieve environmentally beneficial results. It is likely that for certain rules, compliance assistance will lead to significant emission reductions in nonattainment areas and may prevent areas in attainment from falling into nonattainment. For these Group Two rules, EPA suggests delegated agencies/implementing regions consider maximizing their resources by initially placing an emphasis on compliance assistance activities. In addition, the delegated agencies/implementing regions may conclude it would be beneficial to consider factors in addition to attainment status, such as, location of sensitive populations, and size of the source universe, when evaluating whether compliance assistance would be effective.

Approach/Rationale for Group Two Rules

For the Group Two rules, compliance assistance may include both developing and distributing new compliance assistance and outreach materials, as well as more widely distributing currently available materials. EPA suggests delegated agencies/implementing regions provide a brief description of the type of compliance assistance they plan to provide (e.g., develop and deliver compliance guides; conduct workshops; etc.) and state why such assistance would be effective in promoting compliance.

- **GROUP THREE RULES:** These rules generally codify existing laws and statutory/regulatory requirements. Therefore, similar to the evaluation to be conducted for the Group Two rules, EPA recommends delegated agencies/implementing regions evaluate the Group Three rules to determine for which rules the use of compliance assistance would be effective and beneficial in reducing emissions from individual area sources. Such an evaluation also would take into account available resources and other priorities.

Approach/Rationale for Group Three Rules

For the Group Three rules, compliance assistance may include distribution of existing compliance assistance and outreach materials to the extent resources allow. EPA

suggests delegated agencies/implementing regions provide a brief description of the materials they plan to provide and state why such materials would be effective in promoting compliance.

Process/Timeframe for Group Two and Group Three Rules

- Consistent with the Group One rules, EPA recommends the area source compliance strategy for the Group Two and Group Three rules be developed concurrently with the development and negotiation of the CMS plans. Such timing will maximize available resources and provide an opportunity for obtaining a comprehensive picture of all compliance monitoring activities. In addition, the Agency recommends the area source strategy be reassessed routinely as part of the annual CMS discussions to ensure the strategy remains current.
- A separate strategy for rule implementation may not be necessary if other formal agreements (i.e., Performance Partnership Agreements, grant agreements) provide the requested information and specify how the rules are to be implemented.
- In developing their strategies, as previously noted, delegated agencies/implementing regions, at their own discretion, may propose prioritizing Group Two or Group Three facilities to Group One status. Factors such as widespread impact within a geographic area, elevated risk, state/local/tribal priorities, and environmental justice concerns may be considered in such proposals.
- There are several Group Three rules with a small source universe (e.g., Primary Nonferrous Metal Production, Primary Copper Smelting, Polyvinyl Chloride and Copolymers Production) for which approaches other than compliance assistance also may be effective and practicable. For these rules, delegated agencies/implementing regions may prefer to implement a strategy that includes approaches such as compliance monitoring or implementing an ERP.

Reporting of Compliance Activities

- Compliance assistance activities conducted at area sources subject to the Group Two and Group Three rules are not considered MDRs. Based upon the large number of facilities subject to these rules and the type of compliance activities that are to be undertaken at the sources, EPA does not expect the delegated agencies to input information into AFS nor maintain electronically information in their air compliance and enforcement data systems. However, EPA recommends delegated agencies document their activities at these facilities. Implementing regions should input their compliance assistance activities in accordance with current Agency reporting processes. Also, EPA suggests delegated agencies/implementing regions evaluate the results of their compliance assistance activities as they deem appropriate.

- EPA does not anticipate requiring the reporting of compliance assistance activities at these sources as a result of the AFS Information Collection Request renewal process. However, the reporting of compliance activities at these sources will be included in discussions regarding the design of a modernized national air data system.

Implementation Accountability

- When a state/local/tribal agency is the delegated agency for implementing a Group Two or Group Three rule, the EPA regional office is responsible for reviewing the agency's evaluation in determining the rules for which compliance assistance will achieve environmentally beneficial results. For such rules, we recommend that the region monitor the extent such compliance assistance has taken place.
- When a state/local/tribal agency has not taken delegation and the EPA regional office is responsible for implementing a Group Two or Group Three rule, the EPA Office of Compliance intends to coordinate with the region to oversee the region's efforts in implementing compliance assistance for those rules for which such activity would be effective.