



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAR 22 2010

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Clarification Regarding Federally-Reportable Violations for Clean Air Act Stationary Sources

FROM: Adam M. Kushner, Director
Office of Civil Enforcement

Handwritten signature of Adam M. Kushner in blue ink.

Lisa C. Lund, Director
Office of Compliance

Handwritten signature of David A. Lindin in blue ink, with the text "David A. Lindin, Acting for" written below it.

TO: EPA Regional Air Enforcement Directors
EPA Regional Air Enforcement Branch Chiefs
Regional Counsels, Regions I – X

INTRODUCTION

This memorandum clarifies existing minimum data requirements (MDRs) for federally-reportable violations (FRV) for Clean Air Act (CAA or the Act) stationary air sources. This is a clarification of existing guidance on the subject, with additional information attached on how to report FRV data into the United States Environmental Protection Agency's (EPA) Air Facility Subsystem (AFS). This clarification is necessary because EPA has observed, partly as a result of the first round of the State Review Framework (SRF) evaluations, that a significant percentage of violations of federally-enforceable requirements of the CAA and its implementing regulations are not being reported by states to EPA in a consistent or accurate manner. In short, the problem is that some states and regions have incorrectly assumed that they need to only report High Priority Violations (HPV), and that violations that do not rise to the level of an HPV do not need to be reported. This memorandum clarifies that both HPVs and other violations of federally-enforceable requirements should be reported to AFS as set forth here.

There will now be four documents that the EPA regions as well as state and local agencies should consult with regard to the reporting requirements for CAA stationary air sources:

- 1) The 1998 HPV Policy (concerning the prioritization and reporting of high priority violations);
- 2) The AFS Information Collection Request (ICR) (on the minimum data requirements for CAA stationary source compliance and the data required to be reported to the national data system, AFS);
- 3) This clarification memorandum (concerning the reporting of federally-reportable violations); and
- 4) The attached Appendix to this clarification memorandum (for instructions concerning the accurate and complete reporting of federally-reportable violations into AFS).

BACKGROUND: EPA's National Information Needs and Existing Policy

State and local agencies play a primary role in CAA enforcement. EPA also maintains an important role in implementing the CAA compliance and enforcement program and in providing state/local oversight to ensure consistent national implementation of the program. In particular, EPA needs accurate and timely enforcement and compliance data to: 1) maintain a nationally consistent federal/state compliance and enforcement program; 2) assess the states' ability to implement and enforce compliance with the Act; 3) identify the national air compliance program's strengths and weaknesses and improve the program accordingly; 4) understand noncompliance rates in any given industry or source category; 5) better target state and EPA compliance monitoring and enforcement efforts; and 6) provide the public, via the Enforcement and Compliance History Online (ECHO) website, with complete, accurate, and timely information on state and EPA CAA compliance monitoring and enforcement activities.

There are three policies relevant to this clarification that EPA designed to help meet these CAA enforcement and compliance business information needs.

Policy on Timely and Appropriate Enforcement Response to High Priority Violations (December 1998)

This HPV Policy applies to all major sources and to synthetic minor sources for which the violation affects the source's major source status. It establishes General and Matrix Criteria that define which, if any, violations are to be prioritized as High Priority Violations subject to the provisions of the Policy. It also establishes time lines by which a source must be notified of the violation, and by which the violation must be addressed with a formal enforcement action. In addition, the HPV Policy establishes requirements for periodic consultations between the state/local agencies and EPA on finding and processing HPVs, sharing data regarding the HPV, reporting compliance status and addressing and resolving actions in AFS, and the adequacy of penalties.

This HPV Policy was primarily intended to replace the prior policy related to significant violation (SV) identification and reporting. It was not intended to eliminate the identification and reporting of other violations of federally-enforceable CAA requirements that did not rise to the level of an HPV.

Source Compliance and State Action Reporting Information Collection Request (July 2005 and July 2008)

The 2005 ICR, now continued into the 2008 ICR, reaffirmed existing MDRs and added new MDRs for reporting to AFS. These MDRs apply for any source that is: 1) a major source, 2) a synthetic minor source, 3) a Part 61 NESHAP minor source, 4) included in a Compliance Monitoring Strategy (CMS) plan, 5) the subject of a formal enforcement action, or 6) an active HPV. For any of these sources, the MDRs include, but are not limited to, reporting enforcement actions (notices of violations (NOVs), administrative orders, consent decrees, assessed penalties and civil referrals), HPV actions (with the associated data elements), compliance status or violations, the results of any stack tests, and Title V compliance certifications. The reporting of these MDRs is not further limited by violation type, magnitude or duration. The ICR also establishes a timeliness standard which requires an action to be reported within 60 days of the event.

The reporting of compliance status is impacted by several activities, such as evaluations conducted, and other compliance monitoring information (e.g., excess emissions reports, stack test results, and Title V compliance certification results). The Agency's 2008 ICR renewal submission was fully consistent with the 2005 ICR. No additional MDRs were proposed in the 2008 ICR.

Guidance on Federally-Reportable Violations for Stationary Air Sources (April 11, 1986)

This guidance defines FRVs for certain universes of stationary air sources and includes minimum reporting requirements for state and local agencies. This guidance represented a major effort by EPA, working with the states, associations of state and local governments and EPA regions to create nationally consistent definitions of what constitutes an FRV, which included both significant violations (now HPVs) as well as other violations of federally-enforceable requirements. Another major purpose of this FRV Guidance was to switch from just reporting the compliance status as a snapshot at the end of a quarter, to a more continuous tracking that noted all FRVs as they occurred. The document describes several key reportable items relating to violations that carry forward to the existing ICR. These items include: the source, the nature of the violation (pollutant, emissions or procedural, etc.), and the method and date of detection (inspection report, quarterly compliance report, stack test, malfunction report). The Guidance also requires entry of a return to compliance date and method of compliance verification (e.g., source certification, inspection, stack test, etc.) so that users are aware of how and when compliance has been achieved.

CLARIFICATION

This memorandum does not establish new policy or guidance, but, rather, clarifies how EPA interprets the 1998 HPV Policy, the AFS ICR, and the 1986 FRV Guidance. The 1998 HPV Policy may have caused confusion regarding what constitutes an FRV. The transmittal (cover) memorandum to the HPV Policy states:

The policy supersedes and consolidates previous Clean Air Act guidance related to Significant Violators (SVs), Timely and Appropriate (T&A), and Federally Reportable Violations (FRV). Specifically, this document supersedes all previous guidance on the three subjects. (Memorandum from Eric Schaeffer: "Issuance of Policy on Timely and Appropriate Enforcement Response to High Priority Violations" (December 22, 1998)).

The above-quoted transmittal memorandum is inconsistent with the plain language of the body of the 1998 HPV Policy, in which EPA references only the 1992 SV/T&A Policy and the 1994 and 1995 SV/T&A policies. The 1998 HPV Policy does not itself reference the 1986 FRV Guidance. EPA's HPV Workbook (June 23, 1999) may have engendered further confusion as it states that the "HPV Policy replaces the Guidance on the Timely and Appropriate Enforcement Response to Significant Air Pollution Violators and related guidance . . ." As a result, EPA understands that some state/local agencies are interpreting the HPV Policy and AFS ICR differently, resulting in inconsistent and/or incomplete data reporting that does not meet EPA's business needs.

Therefore, this memorandum clarifies that the 1986 FRV Guidance has been superseded by the 1998 HPV Policy but only with respect to the definition and reporting of significant violations (SVs). Thus, the provisions of the 1986 FRV Guidance concerning the obligation for states, local entities and EPA regions to report other violations of federally-enforceable requirements, even though they do not rise to the level of HPVs, continue to apply today. Justification for these reportable violations and this clarification is clearly found in the HPV Policy as it states:

- 1) "EPA expects that all violations of air pollution regulations, whether meeting HPV criteria or not, will be addressed by States, local agencies, or EPA."¹
- 2) "Nothing in this policy is intended to change the underlying applicable requirements or somehow imply that compliance must be achieved on less than a continuous basis."²
- 3) "This policy is also intended to foster and develop a more complete and accurate compliance picture and to enhance the responsibility of the state and local agencies, as well as EPA, to track and address all violations. (emphasis added)."³

For clarity, we have incorporated into this clarification memorandum all relevant parts of the 1986 FRV Guidance that were not and have never been superseded by the 1998 HPV Policy. As a result, the 1986 FRV Guidance should only be used for the purpose of understanding the genesis of the FRV concept.

EPA understands the constraints and resource limitations state and local agencies may have regarding data reporting requirements. Therefore, by this memorandum, we are establishing two “Tiers” of FRV reporting. We expect that state and local agencies authorized to implement the CAA would prioritize their efforts to first focus on complete, timely and accurate reporting of Tier I violations and enforcement actions. Thus, while it is important to report Tier II violations and enforcement actions, EPA’s highest national need is for complete, timely and accurate reporting of Tier I data from states and local agencies. EPA will continue to report both EPA Tier I and II activities.

Tier I FRVs are:

Any emissions⁴ or significant procedural⁵ violation, continuing, or likely to continue, based on any credible evidence, for at least seven days⁶, of a federally-enforceable requirement at any source that is:

1. a major source,
2. a synthetic minor source,
3. listed in a CMS compliance monitoring plan,
4. a Part 61 National Emission Standards for Hazardous Air Pollutants (NESHAP) minor source (not reportable are Asbestos NESHAP Demolition and Renovation violations), or
5. an active HPV.

Tier II FRVs are:

Any emissions⁴ or significant procedural⁵ violation, continuing, or likely to continue, based on any credible evidence, for at least seven days⁶, of a federally-enforceable requirement at any source not covered by Tier I that is:

1. subject to a formal enforcement action (not reportable are violations of open burning or nuisance violations, or violations of Asbestos Demolition and Renovation requirements).

The seven-day minimum requirement does not apply to violations at NESHAP Part 61 minor sources or to HPVs.

The above two Tiers for FRVs are effective immediately and continuing until further notice. EPA anticipates reviewing FRV reporting policies and procedures as part of the project to modernize AFS.

In summary, there are now four documents that the EPA regions as well as state and local agencies should consult with regard to the reporting requirements for CAA stationary air sources:

- 1) The 1998 HPV Policy concerning the prioritization and reporting of high priority violations.

- 2) The AFS ICR on the MDRs for CAA stationary source compliance and the data required to be reported to the national data system, AFS.
- 3) This clarification memorandum concerning the reporting of FRVs.
- 4) The attached Appendix to this clarification memorandum for instructions concerning the accurate and complete reporting of federally-reportable violations into AFS.

For questions regarding this memorandum, the meaning of FRV as clarified herein, or the HPV Policy, please direct them to Edward Messina, Chief of the Stationary Source Enforcement Branch in the Office of Civil Enforcement, at 202-564-1191 or at messina.edward@epa.gov. For questions regarding the display and use of CAA FRVs and HPV data in ECHO, please direct them to Michael Barrette of the Information Targeting and Access Branch (ITAB) in the Office of Compliance at 202-564-7019 or at barrette.michael@epa.gov. For questions regarding AFS data entry and policy, please direct them to Betsy Metcalf of the Data and System Information Branch in the Office of Compliance at 202-564-5962 or at metcalf.betsy@epa.gov.

EPA's Offices of Compliance and Civil Enforcement appreciate all of the input received from the EPA Regions and states that aided in developing this memorandum. Because of the comments and suggestions, this memorandum will better serve the national CAA compliance and enforcement program.

Attachment: AFS User Guide for Federally Reportable Violations.

cc: (w/attachment)
OECA OC and OCE CAA Managers
AFS Managers, Regions I - X
State Air Directors
Executive Director, NACAA

¹ Quote from HPV Policy, Section I (SCOPE OF POLICY), C (General Process Summary), pg. 2

² Quote from HPV Policy, Section I (SCOPE OF POLICY), A (Introduction), pg. 1

³ Quote from the HPV Policy, Section I (SCOPE OF POLICY), C (General Process Summary), pg. 2

⁴ An emissions violation includes not only a violation of numerical emissions limitations, but also violations of other requirements that directly impact the amount of allowable emissions, such as equipment standards, work practice standards, and sulfur-in-fuel standards.

⁵ A significant procedural violation includes:

- for NSPS, NESHAP and MACT sources, such activities as failure to install a continuous emissions monitoring system (CEMS) or other monitoring equipment, failure to conduct timely performance tests, and failure to conduct appropriate monitoring and associated recordkeeping;
- for SIP sources, such activities as failure to install CEMS, or failure to obtain required NSR permits;
- for Title V sources, failure to apply for a Title V permit or failure to submit annual compliance certification reports,
- for a State consent decree, court order, or administrative order, failure by the source to accomplish or maintain interim emission reductions or to achieve interim increments of progress which jeopardizes the ability of the source to meet the final compliance dates.

⁶ A continuing violation (emission or significant procedural) includes violations which, while not necessarily continuous for seven days (i.e., 168 or more hours), reoccur regularly or intermittently, and have not been adequately addressed or resolved by the source. A violation of this nature becomes reportable if it cannot be or has not been corrected within seven days after the enforcement agency first becomes aware of the violation.

APPENDIX

AIR FACILITY SYSTEM (AFS) USER GUIDE FOR FEDERALLY REPORTABLE VIOLATIONS (FRVs)

October 2009

This document provides AFS users with the information needed to accurately and completely report federally-reportable violations consistent with the March 2010 memorandum, *Clarification Regarding Federally-Reportable Violations for Clean Air Act Stationary Sources* (FRV Clarification Memorandum). Specifically, the purpose of this document is to assist AFS users with identifying federally-reportable violations, updating the compliance status fields in AFS (e.g., Minimum Data Requirements (MDRs) reporting), and maintaining the correct values for compliance status fields in AFS. This document contains:

- Definitions of Compliance
- Violation Tracking from Start to Finish in AFS
- AFS Data Entry Procedures
- Frequently Asked Questions (FAQ)

Definition of Compliance: Violation reporting in AFS is not defined by an action record, but defined as a “flag” entered against the air program pollutant records. This “flag”, known as **Compliance Status** in AFS, is associated with the status of compliance concerning a particular pollutant. At this time, there are no requirements to report the start and stop date of a violation in AFS. Change to the compliance status field is required to document violations and a return to compliance.

When a source has violated the Clean Air Act (the CAA), the agency with delegation or implementation authority for the statute is required to evaluate the violation and report FRVs to AFS in a complete, accurate and timely manner consistent with the AFS MDRs and the FRV Clarification Memorandum. A change to the compliance status field documenting the violation also is required. In addition, all violations must be reviewed pursuant to the *Policy on Timely and Appropriate Enforcement Response to High Priority Violations* (HPV Policy) and if applicable, designated and reported as an HPV.

“**In Compliance**” means all Federal and State administrative and judicial actions against the source are complete and the source has been confirmed to be complying with the CAA. This term, as it is used in the HPV Policy, refers to a source being in compliance with all aspects of CAA requirements, not simply their emissions limit.

There may be situations when the violation does not concern a particular pollutant, especially when the violations concern paperwork or recordkeeping. AFS has created an administrative pollutant code “FACIL” to capture these types of violations. It is allowable to enter a violation compliance status with this “FACIL” pollutant code only when no particular pollutant is in violation. There may also be situations, as described in the FAQ section of this document, when a facility returns to compliance on its own and the administering agency chooses not to pursue enforcement.

Violation Tracking from Start to Finish in AFS: The following scenario describes violation tracking from start to finish in AFS:

► **Violation Identification:** A possible violation is identified through compliance monitoring (Full Compliance Evaluation, Partial Compliance Evaluation, Stack Test, Title V Annual Compliance Certification review, Excess Emission Report review or other compliance monitoring activity) or through complaints or other notifications from the public. The situation is investigated to determine if an alleged violation has occurred. *In addition to the reporting of an FRV into AFS through updating the compliance status*, the violation specifics must be reviewed against the definition of the 1998 HPV Policy. The FRV/compliance status reporting, and the HPV designation and reporting are two separate reporting data flows. HPVs should always have an “in-violation” compliance status reported per the AFS MDR procedures, which immediately follow.

► **Delegated Agency Documentation:** A violation is tracked by the agency of authority. It may be tracked in a local database system by identifying the violation rule/regulation, start of violation, duration, nature and magnitude, pollutant(s) involved or other information required by the agency. The violation also needs to be evaluated for *federal reportability* in AFS. As noted in the FRV Clarification Memorandum, the delegated agency should review the requirements for a Tier I or II FRV to ascertain if a violation is federally reportable to AFS.

Tier I FRVs are any emission or significant procedural violation of a federally-enforceable requirement, continuing, or likely to continue, based on any credible evidence, for at least seven days at any source that is:

- A major source,
- A synthetic minor source,
- Listed in a Compliance Monitoring Strategy (CMS) compliance monitoring plan,
- A Part 61 National Emission Standards for Hazardous Air Pollutants (NESHAP) minor source, or
- An active HPV.

Tier II FRVs are found at sources not meeting the requirements for Tier I and have any emission or significant procedural violation of a federally-enforceable requirement, continuing for, or likely to continue, for at least seven days, at any source that is subject to a formal enforcement action.

Please note that the seven-day minimum requirement does not apply to violations at NESHAP Part 61 minor sources or to HPVs.

If a violation is found to be federally-reportable, the delegated agency is required to report the violation to AFS by updating the compliance status field as appropriate. Current reporting requirements direct agencies to report data within 60 days of the occurrence (e.g., 60 days from date of violation commencing).

Tier I and Tier II FRVs are reportable to AFS. However, EPA expects prioritization of efforts be placed on the complete, timely, and accurate reporting of Tier I reporting.

▶ **AFS Compliance Status Update:** A federally-reportable violation is reported to AFS via the Air Program Pollutant fields of AFS—Screen 303 in the update mode of AFS. The appropriate air program pollutant needs to be identified and the appropriate compliance status code entered (see the section on AFS Data Entry Procedures for a list of compliance status codes).

▶ **Delegated Agency Actions:** The agency then initiates an enforcement action, whether formal or informal, to address the violation. A Notice of Violation may be sent to the source and a formal action (Civil or Criminal Referral, Administrative Order, etc.) may be completed. The appropriate MDRs are also tracked in AFS along with any data management system used by the delegated agency.

▶ **AFS Compliance Status Update:** When the source has returned to compliance as a result of an enforcement action as specified on page 1 or, particularly in the case of non-HPV FRVs, if the facility returns to compliance on its own without the need for appropriate enforcement, the compliance status value in AFS is updated (see examples 1 and 2 of the following FAQ section). A source may have been given a compliance schedule as part of a formal enforcement action and could be in physical compliance with regulations, but would be listed as “Meeting Schedule” in AFS. The source would not be considered “in compliance.” When an enforcement action has been issued, only when all injunctive relief, supplemental environmental projects, paid penalties, and any other required actions are completed would the source be considered in compliance and reported as such.

AFS Data Entry Procedures: In order to establish a source in AFS, the following records are required:

- Plant Name, Address, Zip Code
- NAICS Code (SIC accepted)
- Government Ownership
- Air Programs (at least one)
- Air Program Subparts (if applicable)
- Air Program Pollutants (at least one)

When a source is established, the appropriate air program codes and pollutants should be entered using an issued permit as the basis for applicability. The required fields within the Air Program Pollutant records are:

- A Pollutant Code (5-digit code) or Chemical Abstract Service (CAS) Number: AFS has a table of valid values, and CAS numbers can be found in the EPA Substance Registry System
- State Classification Code (Major-A, Minor-B, Synthetic Minor-SM, or Unknown-C)
- State Attainment/Nonattainment Indicator: For Criteria Pollutants only, see AFS for a table of valid values.

- State Compliance Status: Compliance is defined within four categories—in violation, in compliance, meeting schedule, and unknown compliance status. AFS users are encouraged to use all compliance status values. See the chart below for valid values.

Compliance Status Values in AFS: The following values are taken from the AFS Data Dictionary and listed in order from worst to best case:

Violation:

- B In violation with regard to both emissions and procedural compliance
- 1 In violation - no schedule
- 6 In violation - not meeting schedule
- 7 In violation - unknown with regard to schedule
- W In violation with regard to procedural compliance

Unknown Compliance:

- Y Unknown with regard to both emissions and procedural compliance
- 0 Unknown compliance status
- A Unknown with regard to procedural compliance
- U Unknown by evaluation calculation (generated value – not available for input)

On Schedule:

- 5 Meeting compliance schedule – in “physical” compliance with emissions or significant procedural requirements

In Compliance:

- C In compliance with procedural requirements
- 4 In compliance – certification (used in reporting Title V Annual Compliance Certifications)
- 3 In compliance – inspection (used in reporting compliance determinations from Full Compliance Evaluations)
- M In compliance – Continuous Emission Monitors
- 2 In compliance – source test
- 8 No applicable state regulation
- 9 In compliance – shut down
- P Present, see other programs

Direct Data Entry into AFS: Air Program Pollutant data is entered into Screen 303:

```
DATE : 05/06/08      AIRS FACILITY SUBSYSTEM - UPDATE      PGM: AFP303
SCREEN: 303          PLANT POLLUTANT AIR PROGRAMS      MAP: AFM3032
=====
00002 BAXTER HEALTHCARE COMPANY      1900 N HWY 201
-----
*AIR PROGRAM CODE: 0      POLLUTANT: VOC      CHEMICAL ABSTRACT #:
-----

*STATE POLLUTANT COMPLIANCE STATUS: C      EPA POLLUTANT COMPLIANCE STATUS : _
STATE POLLUTANT CLASSIFICATION : A_      EPA POLLUTANT CLASSIFICATION .. : _
STATE ATTAINMENT/NON-ATTAINMENT : A      EPA ATTAINMENT/NON-ATTAINMENT : _
LOADING DERIVATION CODE ..... : _      RDE 14 ..... : _
TOXICITY LEVEL ..... : _
STATE REGULATION NUMBER ..... : 544A0P-R5

PF1=HELP PF3=END PF4=MAIN PF5=TERM PF9=DUPL PF10=SCRN PF12=BRWS      SCREEN: 040
MA + a                                                                11/038
```

For example: Required fields for Pollutant Code volatile organic compound (VOC) would be Compliance Status, Classification, and Attainment/Nonattainment Indicator. Although AFS will accept just the Compliance Status for non-criteria pollutants, it is recommended that ALL Air Program Pollutant records contain a classification and the attainment/nonattainment indicator.

EPA has the ability to add values for sources under their jurisdiction, or if there is a conflict in the appropriate values to use. EPA HQ routinely populates the EPA Attainment/Nonattainment indicator to insure accuracy.

AFS will provide the worst case scenario of compliance status on the Plant General screen, based on all air program pollutant records present at a source:

```

STATE COMPLIANCE STATUS : C - IN COMPL      EPA COMPLIANCE STATUS : -
STATE CLASSIFICATION .. : A                EPA CLASSIFICATION .. :
OPERATING STATUS ..... : 0 - OPERATIN
CONTINUOUS EMISSIONS .. :
PRIORITY CODE ..... : -
STATE REGISTRATION # .. : 28.0801-05
GOVT. FACILITY CODE ... : 0 - ALL OTHER FACILITIES NOT OWNED OR OPER. BY F
FACILITY CAPACITY ..... :                CAPACITY UNITS:

CONTACT PERSON ..... :                ( ) -
PLANT DESCRIPTION ..... :

PRIVATE (Y/N) : N

PF1=HELP PF3=END PF4=MAIN PF5=TERM PF6=PGUP PF12=UPDT SCREEN: 050
MA + b 24/077

```

HPV Considerations: Active (unaddressed and addressed but not resolved) HPV cases should never reflect an “in compliance” status. Use the following guidance for assignment of compliance status for HPV violators:

- New or Unaddressed HPVs: In Violation
- Addressed HPVs: Meeting Schedule or In Violation. One of the following actions must take place that impose a compliance schedule or require immediate compliance:
 - Section 120 Order (AFS Code 7A)
 - EPA Civil Referral (AFS Code 4B)
 - EPA Administrative Order (AFS Code 8A)
 - EPA Section 167 Order (AFS Code 7E)
 - EPA Section 113(d) Complaint Filed (AFS Code 7F)
 - EPA Criminal Referral to the Department of Justice (DOJ) (AFS Code 5B)
 - EPA Consent Decree (AFS Code 6B)
 - State Consent Decree or Agreement (AFS Code 2B)
 - State Civil Referral (AFS Code 1E)
 - State Criminal Referral (AFS Code 1D)
 - State Administrative Order (AFS Code 8C)
 - Proposed state implementation plan (SIP) or federal implementation plan (FIP) Provision Which Will Lead to Compliance Upon Approval (AFS Codes 2M or 2L)
 - Returned to Compliance with No Further Action (AFS Codes 7G or 2K)
- Resolved HPVs: In Compliance. The violation is addressed and a closeout memo has been issued. All penalties have been collected and the source is confirmed to be in

compliance. One of the following actions must be added to AFS in the appropriate HPV pathway:

- Violation Resolved (AFS Code VR)
- Closeout Memo Issued (AFS Code C7)
- EPA Section 113(d) Penalty Collected (AFS Code C3)
- Withdrawn (AFS Code WD)

Batch Transactions: For data updated using file transfer, use a transaction code of 13 and a sequence code of 1 and the following fields:

Name of Field	Columns		Field Length	Remarks
	From	Thru		
State Code	1	2	2	Key
County Code	3	5	3	Key
Plant ID	6	10	5	Key
Transaction Type	11	12	2	Key, Always 13
Sequence Number	13	13	1	Key, Always 1
Air Program Code	14	14	1	Key
Pollutant Code/Chemical				
Abstract Number	15	23	9	Key
State Pollutant Compliance Status	24	24	1	
State Pollutant Classification	25	26	2	
State Attainment/Nonattainment	27	27	1	
EPA Pollutant Compliance Status	28	28	1	
EPA Pollutant Classification	29	30	2	
EPA Attainment/Nonattainment	31	31	1	
Loading Derivation Code	32	32	1	
RDE 14	33	33	1	
Toxicity Level	34	34	1	
State Regulation Number	35	49	15	
Update Code	80	80	1	Key, always A,C,or D

Agencies updating data via file transfer will need to update compliance status codes each time there is a change. An example of this transaction follows:

```
09009090531310PT    3A 2    AA2    C
09011000011319PT    9B 21A  AP0    C
```

Highlighted Field = State Compliance Status

Historic Compliance History: As previously mentioned, AFS will “roll up” all air program pollutant compliance values to the Plant General screen (300/500). Additionally, AFS maintains an historic record of compliance history for three years. This historic record is displayed by monthly and quarterly values. During the last week of each month, AFS will capture the worst case scenario of compliance values and populate the monthly historic compliance values by air program. On the last day of each calendar quarter, AFS will capture the worst case scenario of compliance status for the last three months and populate the quarterly historic compliance values

by air program. These values can be seen using screen 504 of AFS. Historic values can also be incorporated into AFS Ad Hoc retrievals by using the following acronyms:

Acronym	Level of AFS	Note
ECS1	Plant General	EPA Value
SCS1	Plant General	State Value
DCS1	Plant General	Returns State Value if EPA Blank
ECA1	Plant Air Program	*EPA Value
SCA1	Plant Air Program	*State Value
DCA1	Plant Air Program	*Returns State Value if EPA Blank
ECH1	History Plant	**EPA Individual Value
SCH1	History Plant	**State Individual Value
DCH1	History Plant	**Returns State Value if EPA Blank, Individual Value
ESH1	History Plant	**EPA Horizontal Display of All Values
SSH1	History Plant	**State Horizontal Display of All Values
DSH1	History Plant	**Horizontal Display of all Values, Returns State Value if EPA Blank

*Use of these acronyms requires identification of the air program code (APC1).

**Use of these acronyms requires identification of the air program code (APH1) and the period of time –month or quarter (MORQ).

Frequently Asked Questions (FAQs):

I found a violation during an evaluation (e.g., FCE/PCE) and it was corrected on the spot. Do I have to change the compliance status in AFS? If the violation was an emissions or significant procedural violation meeting the definition of a Tier I or Tier II federally-reportable violation, then, YES, you would report the violation and change the compliance status in AFS as appropriate. However, delegated agencies are expected to prioritize efforts in first focusing on complete, timely and accurate reporting of Tier I violations. While Tier II reporting also is important, EPA’s highest national need is for full reporting of Tier I data. Data entry using the on line mode would require the entry of the violation value on Screen 303. The compliance status can be immediately updated to “in compliance” and the transaction entered into the database. This reporting activity is important in order to capture the historic non-compliance in AFS. (Note: This immediate capture of the worst compliance status is a feature in AFS which went into production on January 1, 2008). Batch users would have to transfer both the “in violation” and “in compliance” code during one update, making sure the codes are presented to the database in the proper order.

A Tier I or Tier II violation was found but the source corrected it before I completed my monthly AFS updates. What should I put in AFS? Even if corrected before completion of the monthly AFS updates, federally-reportable violations are to be reported to AFS. However, priority should be placed on the reporting of Tier I violations. As in the scenario under the previous question, data entry in the on line mode would require the entry of the violation value on Screen 303. The compliance status can then be immediately updated to “in compliance” and

entered upon the transaction into the database. This reporting activity is important in order to capture the historic non-compliance in AFS. (Note: This immediate capture of the worst compliance status is a feature in AFS which went into production on January 1, 2008). Batch users would have to transfer both the “in violation” and “in compliance” code during one update, making sure the codes are presented to the database in the proper order.

Do I have to enter violations at sources for nuisance or odors violations? No, not unless you find that the violations are emissions or significant procedural violations. Remember that any FRV is also a federally-enforceable violation. Most nuisance and odor regulations were not promulgated into the State Implementation Plans, therefore, are not federally enforceable.

If I have a deviation reported on a Title V Annual Compliance Certification, does that automatically put the source into a violation status? No, unless the reviewer finds that the deviation reported is an emission or significant procedural violation. The guidance for federally-reportable violations should be reviewed. However, there is normally a temporal difference between the date the regulatory authority receives a Title V Certification, and date that any reported deviations/violations actually occurred. For example, the Title V certification may cover January-December, but may indicate violations only for the March-May time frame. The regulatory authority may not receive the Title V certification until the following February. However, in many cases, the violations that are listed and compiled in the Title V certifications were reported in other documents such as “prompt reporting” within 48 hours of the violation, and are reported in documents such as excess emissions reports, and semi-annual monitoring. It is easier for the regulatory authority to report such violations to AFS when the original documentation about the violation was received. However, in the case that the regulatory authority has not entered violations that are discussed in the Title V certification, the regulatory authority will need to:

1. First apply the criteria discussed in the attached memorandum and supporting documents to determine whether the violation is federally-reportable. Then, the regulatory authority would need to determine the duration of the violation.
2. If the violation is ongoing, update the appropriate Air Program Pollutant in AFS with a violation status. If the violation started before the current month, the AFS historical compliance records will need to be updated.
3. If the AFS reporting period for that violation has passed, the regulatory authority should request correction to AFS historical compliance records. This can be done by contacting your AFS Regional Compliance Manager and requesting a compliance history change. It is important that federally-reportable violations that are listed on a Title V certification but are not already noted in AFS be reported when the Title V certification is reviewed. This ensures that the public Title V certification document matches the facility’s compliance status – giving public users greater confidence in the accuracy of the AFS compliance data.

EPA isn’t expecting violation reporting at minor sources, are they? While the answer is generally “No,” there are important caveats. Violations at an active HPV or at a source listed in an agency’s CMS plan are considered Tier I FRV violations and are to be reported to AFS. EPA also considers a violation at a Part 61 NESHAP minor source to be an FRV that will be reported. However, such a violation, pursuant to the FRV Clarification Memorandum, is considered a Tier

II FRV. Given resource limitations, state and local agencies should prioritize the reporting of Tier I violations.

How am I supposed to track a seven-day duration in AFS? While delegated agencies are responsible for determining if a violation is federally-reportable, you are not responsible for tracking the seven day duration in AFS. Moreover, not all FRVs require a seven-day duration. The criteria outlined in the attached FRV Clarification Memorandum and this Appendix is to assist delegated agencies in determining whether a violation should be reported in AFS. Should you need assistance with determining federally-reportable violations, please contact Edward Messina, Chief of the Stationary Source Enforcement Branch in the Office of Civil Enforcement at (202) 564-1191 or at messina.edward@epa.gov. If you need assistance with AFS data entry, please contact your AFS Regional Compliance Manager or the AFS Hotline at (800) 367-1044.

My source is in physical compliance with its permit and all regulations, but it is in the process of completing a compliance schedule and paying a penalty. Why do I have to maintain a compliance status of "In Violation"? While the source may be in "Physical Compliance" with regulations, they will not have returned to compliance until all outstanding enforcement requirements are completed. "In Compliance" means that all Federal and State administrative and judicial actions against the source are complete. The source will have to remain in violation or reflect "Meeting Schedule" until all requirements are met.

My agency does not maintain compliance status, and we certainly do not maintain compliance by pollutant. Why does EPA track compliance by pollutant? Many regulations are written for pollutant standards. Program analysis and effectiveness are tracked based on pollutant-specific data. National Ambient Air Quality Standards are based on individual pollutants. AFS was designed with an air program and pollutant based structure in 1990 as was its preceding database called CDS. Reporting requirements have been established since before 1990. Although changes have been made over the years to reporting requirements, the basic structure of AFS and CAA program implementation has not changed. Agencies that do not operate on a pollutant-based structure will need to adapt their reporting structures to provide the minimal data required by AFS. Should you have problems mapping your data or interpreting what is needed to report to AFS, please call your AFS Regional Compliance Manager or contact Betsy Metcalf at (202) 564-5962 or at metcalf.betsy@epa.gov.

My agency does not take into account the duration of a violation when reporting to AFS. Is it acceptable to report ALL identified violations to AFS whether or not the violations continued for at least 7 days? The key to this situation is whether or not the violation in question is federally-enforceable. Agencies are encouraged to report any violation of a federally-enforceable requirement. Violations that are not federally-enforceable (state/local agency only violations) should not affect the compliance status in AFS. It is not recommended that state/local only violations be tracked in AFS until a process for unique identification is in place. As AFS is a national database, a state reporting all violations will have its data analyzed with states reporting only FRVs. Agencies using AFS as its sole compliance and enforcement data tracking system can contact their AFS Regional Compliance Manager or contact Betsy Metcalf at (202) 564-5962 or at metcalf.betsy@epa.gov for assistance in tracking violations which are not federally-reportable.

My agency just determined that a violation is a Tier I Federally Reportable Violation. The violation, however, started over three months ago. What do I do? Violations of the CAA are documented via the compliance status field in AFS, so the compliance status field should be updated during the next scheduled upload to AFS. When the identification of the violation comes after your regularly scheduled AFS upload (data is reported to AFS within 60 days of the event date), then you should contact your Regional AFS Compliance Manager to request a change to compliance history. AFS maintains compliance history for three years. All that is needed is an email or call to your respective manager with the following information:

- AFS ID and Plant Name
- Air Program
- Air Program Pollutant
- Starting Month and Year of Compliance Status Change
- Compliance Status Value Correction.