

EPA Relaxes Part 75 Continuous Emission Monitoring Rules During the COVID-19 Pandemic

APRIL 28, 2020

On April 22, 2020, EPA published an interim rule granting temporary reprieve to regulated sources from the quality-assurance monitoring and reporting requirements under 40 CFR Part 75 due to COVID-19-related interruptions. The interim rule temporarily suspends the regulatory requirement to submit substitute data in place of actual monitoring data where quality-assurance testing cannot be conducted. It is important to note that the interim rule does not absolve a regulated source from reporting hourly emissions data, nor does it alter any applicable emissions limitations. Rather, EPA's interim rule allows the actual monitoring data to continue being used where pandemic-related restrictions inhibit quality-assurance verification. EPA estimates that up to 1,000 units could invoke the interim rule in order to continue submitting actual monitoring data.

The Part 75 regulations establish recordkeeping and reporting requirements for sources using continuous emissions monitoring systems (CEMS) to monitor air emissions. Affected sources must monitor and report hourly emissions data, as well as conduct periodic quality-assurance tests of the CEMS. In the event of a missed quality-assurance test, regulated units must submit substitute sampling data in place of the actual monitoring data. Substitute emissions data is deliberately conservative compared to actual emissions to incentivize regulated units to comply with the monitoring requirements.

EPA's amendment adds § 75.68, which provides that if an affected unit is unable to complete a required quality-assurance test, certification or recertification, fuel analysis, or emission-rate test by the applicable deadline due to current travel, plant access, and other safety restrictions implemented as a result of the COVID-19 national emergency, and actual CEMS monitoring data is otherwise valid, the reporting facility can continue to utilize actual monitoring data instead of submitting substitute data. EPA's interim rule avoids a situation where regulated entities relying on emissions credits would have to purchase additional credits to cover the "excess emissions" calculated by use of the high-biased substitute data even though actual emissions remain unchanged.

As we discussed in a previous [regulatory update](#), EPA issued a temporary enforcement policy last month that suspended enforcement and civil penalties for routine monitoring and compliance reporting violations due to COVID-19. Because the Part 75 regulations incorporate the backstop provision requiring sources to use substitute emissions data, simply waiving its enforcement discretion as described in the memo would not appropriately avoid penalizing facilities with the increased costs accompanying the use of substitute data.

Affected entities hoping to take advantage of the interim rule “must maintain documentation, notify EPA when a test is delayed and later completed, and certify to EPA that they meet the criteria.” A notification must be submitted within five days of the testing deadline by email to camdpetitions@epa.gov, and EPA plans to post on its website summaries of the units utilizing the amended reporting procedures. EPA expects that any delayed tests will be conducted “as soon as practicable” after COVID-19 restrictions expire. The interim rule is valid during the duration of the COVID-19 national emergency (plus a grace period of 60 days to complete delayed tests), or until the date of expiration of the amendments on October 19, 2020.

The full rule can be found [here](#). Though the rule is effective as of April 22, 2020, EPA is accepting comments to the published rule until May 22, 2020.

Please do not hesitate to contact Eleni Kouimelis (312-558-5133, ekouimel@winston.com), Matt Walker (312-558-7514, mawalker@winston.com) or your Winston relationship attorney if you have any questions.

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Author

[Eleni Kouimelis](#)

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Eleni Kouimelis

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