

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

[EPA-HQ-OAR-2020-0211; FRL-xxxx-xx-OAR]

RIN 2060-AU85

Continuous Emission Monitoring; Quality-Assurance Requirements During the COVID-19

National Emergency

AGENCY: Environmental Protection Agency

ACTION: Interim final rule; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is amending the emissions reporting regulations applicable to sources that monitor and report emissions under the Acid Rain Program, the Cross-State Air Pollution Rule (CSAPR), and/or the NO_x SIP Call. The amendments provide that if an affected unit fails to complete a required quality-assurance, certification or recertification, fuel analysis, or emission rate test by the applicable deadline under the regulations because of travel, plant access, or other safety restrictions implemented to address the current COVID-19 national emergency and if the unit's actual monitored data would be considered valid if not for the delayed test, the unit may temporarily continue to report actual monitored data instead of substitute data. Sources must maintain documentation, notify EPA when a test is delayed and later completed, and certify to EPA that they meet the criteria for using the amended reporting procedures. Substitute data must be reported if those criteria are

not met or if monitored data are missing or are invalid for any non-emergency-related reason. Units are required to complete any delayed tests as soon as practicable after relevant emergency-related restrictions no longer apply, and the emergency period for which a unit can report valid data under the amendments is limited to the duration of the COVID-19 national emergency (plus a grace period of 60 days to complete delayed tests) or, if sooner, the expiration of the amendments. This action is necessary during the COVID-19 national emergency to protect on-site power plant operators and other essential personnel from unnecessary risk of exposure to the coronavirus. The amendments do not suspend emissions monitoring or reporting requirements or alter emissions standards under any program, and EPA expects the amendments not to cause any change in emissions levels. The rule therefore will not result in any harm to public health or the environment that might occur from increased emissions, and to the extent that the amendments facilitate plant operators' efforts to comply with travel and plant access restrictions imposed to protect public health during the COVID-19 emergency, the amendments will have a positive impact on public health by assisting efforts to slow the spread of the disease. EPA finds good cause to promulgate this rule without prior notice or opportunity for public comment and to make the rule effective immediately upon publication in the *Federal Register*. The amendments promulgated in this rule will expire in 180 days. EPA is also requesting comment on this rule.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. EPA will consider comments on this rule received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket No. EPA-HQ-OAR-2020-0211, at <https://regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA generally will not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://epa.gov/dockets/commenting-epa-dockets>. Additional materials related to this action, including submitted comments, can be viewed online at regulations.gov under Docket No. EPA-HQ-OAR-2020-0211. While the EPA Docket Center Reading Room in Washington, D.C. is currently closed to public visitors in order to reduce the risk of COVID-19 transmission, materials related to this action may also be viewed in person at the Reading Room at such time as it reopens. Information on the location and hours of the Reading Room is available at <https://www.epa.gov/dockets>. Please call or email the contact listed in “For further information contact” if you need alternative access to material indexed but not electronically available in the docket at regulations.gov.

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I. Overview

A. Summary of the Action

The emissions monitoring, recordkeeping, and reporting regulations at 40 CFR part 75 (referred to here as the “part 75 regulations” or “part 75 requirements”) require affected sources not only to continuously monitor emissions and other data for every operating hour in a control period, but also to conduct a variety of periodic or event-driven tests to ensure high quality of the reported data. Part 75 also requires sources to report substitute data instead of actual monitored data for operating hours when a required test has not been completed in a timely manner. The sources must continue reporting substitute data until the delayed test is successfully completed. The substitute data are intentionally conservative (i.e., high-biased), causing the emissions reported for the source to be higher than if the delayed test had been completed on time. The data become increasingly high-biased over time and ultimately may be as high as a unit’s maximum potential emissions. Most sources subject to part 75 participate in EPA trading programs that require surrender of sulfur dioxide (SO₂) or nitrogen oxides (NO_x) emission allowances for each ton of reported emissions, so the increase in reported emissions following a missed test deadline results in an increase in the quantity of allowances that must be surrendered, with a corresponding increase in the source’s allowance costs. In ordinary circumstances, this regulatory approach appropriately provides operators with a strong incentive to conduct all required tests by the applicable deadlines.

While affected sources typically perform part 75 continuous monitoring activities using highly automated monitoring systems overseen by plant staff, most sources conduct certain required part 75 tests using outside contractor personnel. Some tests also require calibration

gases to be obtained from outside facilities or require fuel samples to be analyzed at outside laboratories. Consequently, current travel, plant access, and other safety restrictions related to the novel coronavirus disease (COVID-19) emergency, as well as shutdowns of external facilities that provide necessary supplies or services, may make compliance with part 75 testing requirements difficult for some sources. Moreover, because of uncertainty regarding the duration of the restrictions and because tests requiring outside contractor personnel often must be scheduled months in advance, operators missing test deadlines now face considerable uncertainty as to when they will be able to reschedule and complete any delayed tests. However, the existing part 75 regulations require sources to report substitute data following all missed test deadlines until the tests are successfully completed, regardless of the reason for missing the test and the possible inability to reschedule the test for multiple months because of restrictions related to the emergency. Based on the reported dates of previous tests, EPA believes that from April to June of this year, approximately 1000 units will face deadlines for part 75 tests that typically require outside contractor personnel. In light of the current COVID-19 emergency, EPA has decided that a temporary alternative is needed to the part 75 data substitution requirements following tests that are not completed in a timely manner because of travel, plant access, or other safety restrictions related to the emergency. EPA believes that establishment of a temporary alternative is necessary to reduce risks to power plant operators and other essential personnel from exposure to COVID-19 and is consistent with similar social distancing efforts being taken at this time by all levels of government and the private sector while ensuring that mission-essential functions can be performed.

In this action, EPA is amending the part 75 data substitution requirements to establish a limited, temporary exception that applies only under qualifying conditions related to the current COVID-19 emergency. Specifically, in place of the existing requirements to report substitute data following any failure to complete a required test, the amendments instead allow actual monitored data to be reported after certain missed test deadlines, as long as the failure to complete the test is caused by travel, plant access, or other safety restrictions implemented to address the COVID-19 emergency and the monitored data would be considered valid if not for the delayed test. As a condition of applying the amended procedures, sources must document the reasons for delaying any required test and notify EPA when a test is delayed and when the delayed test is later completed. The notifications must include certifications that the source meets the criteria for using the amended procedures. EPA will post summaries of these notifications on a publicly accessible website. The amended requirements apply until the required test can be completed, but no longer than the duration of the national emergency (plus a grace period of 60 days to complete delayed tests), or if sooner, the expiration of the amendments. This action does not suspend the existing part 75 requirements to continuously monitor and report emissions for every operating hour in a control period and does not alter any emissions limitations under any program. The amendments and EPA's rationale are described in greater detail in section II of this notice.

This is a final rule. The amendments are effective immediately upon publication in the *Federal Register* and will expire after 180 days. EPA's findings of good cause for issuing the rule without prior notice and opportunity for comment and for making the rule effective immediately upon publication are contained in section III of this notice. In section IV of this

notice, EPA requests comment on all aspects of the rule. Section V of this notice addresses required statutory and executive order reviews.

B. Potentially Affected Entities

This action applies to any source that reports emissions to EPA under 40 CFR part 75. Generally, the types of sources that could be affected are fossil fuel-fired boilers and stationary combustion turbines serving electricity generators with capacities over 25 megawatts in the contiguous 48 states as well as other fossil fuel-fired boilers and stationary combustion turbines with heat input capacities over 250 million British thermal units per hour located in Alabama, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia. Sources meeting these criteria operate in a variety of industries, including but not limited to the following:

NAICS* Code	Industries with potentially affected sources
221112	Fossil fuel-fired electric power generation
3112	Grain and oilseed milling
3221	Pulp, paper, and paperboard mills
3241	Petroleum and coal products manufacturing
3251	Basic chemical manufacturing
3311	Iron and steel mills and ferroalloy manufacturing
6113	Colleges, universities, and professional schools

* North American Industry Classification System.

C. Statutory Authority

Statutory authority to issue the amendments promulgated in this action is provided by Clean Air Act (CAA) section 412, 42 U.S.C. 7651k, which also provided authority for the initial promulgation of 40 CFR part 75, and CAA section 301, 42 U.S.C. 7601, which authorizes the

Administrator to “promulgate such regulations as are necessary to carry out his functions under [the CAA].” Statutory authority for the rulemaking procedures followed in this action is provided by Administrative Procedure Act (APA) section 553, 5 U.S.C. 553.

II. Amendments to Quality-Assurance Requirements During the COVID-19 National Emergency

A. Background and Rationale

The part 75 regulations were originally promulgated to establish the emissions monitoring, recordkeeping, and reporting requirements under the Acid Rain Program, which covers over 3300 electricity generating units (EGUs) in the contiguous United States.¹ Subsequent rules including the Cross-State Air Pollution Rule (CSAPR)² and the CSAPR Update,³ as well as state implementation plans adopted to meet the requirements of CSAPR, the CSAPR Update, and the NO_x SIP Call,⁴ require over 600 additional EGUs and approximately 300 large non-EGU boilers and combustion turbines in eastern states to comply with the part 75 regulations. Affected units must follow specified procedures for determining and reporting hourly data for mass emissions of SO₂, NO_x, and carbon dioxide (CO₂), NO_x emission rate, and/or heat input using either continuous emission monitoring systems (CEMS) or, for qualifying units, several other monitoring methodologies.

The part 75 regulations require sources to report substitute data for their hourly emissions instead of actual monitored data in two general situations, only one of which may merit

¹ CAA title IV, 42 U.S.C. 7651-7651o; 40 CFR parts 72-78.

² 76 FR 48208 (August 8, 2011).

³ 81 FR 74504 (October 26, 2016).

⁴ 63 FR 57356 (October 27, 1998).

potentially different treatment during unusual circumstances such as the current COVID-19 emergency. The first general situation, which EPA sees no reason to address differently in emergency versus non-emergency circumstances, occurs when no data are obtained from a monitoring system (or when the data obtained are suspect). Because the part 75 regulations are designed to ensure a continuous record of each affected unit's hourly mass emissions (and other relevant data), the regulations require affected units to report substitute data for each operating hour when monitored data are missing.⁵ To give operators a strong incentive to maintain high availability of their monitoring systems, the data substitution provisions of the regulations require units to report increasingly conservative (i.e., high-biased) data as a missing data period grows longer.⁶ For example, when a CEMS fails to provide data for only a few hours – for example, because of a problem that is discovered and repaired promptly – substitute data are generally determined from the data for nearby hours.⁷ If a missing data period extends beyond a few hours, the unit must report data first approaching and then equaling the highest values recorded by the CEMS during a specified lookback period.⁸ Eventually, when a missing data period extends long enough to cause the CEMS to lack valid data for 20 percent of the unit's previous 8760 operating hours, the unit must report substitute data reflecting the unit's maximum potential value for the monitored variable.⁹ Thus, if a CEMS for a baseload unit had no previous missing data periods, after a single missing data period of about five weeks the unit would be required to report for every operating hour the highest hourly value recorded by the

⁵ See generally 40 CFR part 75, subpart D.

⁶ See § 75.32(a)(2).

⁷ See § 75.33(b)(1)(i), (b)(2)(i), (c)(1)(i), (c)(2)(i).

⁸ See, e.g., § 75.33(b)(1)(ii), (b)(2)(ii), (b)(3), (c)(1)(ii), (c)(2)(ii), (c)(3). The relevant lookback period is 720 operating hours for some reported variables and 2160 operating hours for others.

⁹ See, e.g., § 75.33(b)(4), (c)(4).

CEMS during the lookback period, and after a single missing data period of about ten weeks the unit would be required to report for every operating hour the maximum potential value for the parameter monitored by the CEMS. Because most affected units under part 75 participate in one or more EPA trading programs for SO₂ and/or NO_x emissions that require the units to surrender emission allowances equal to the amounts of their reported emissions, reporting higher-than-actual emissions causes the units to incur correspondingly increased costs for allowances under the trading programs. The additional allowance costs resulting from an extended period of missing data appropriately provide operators with incentives to maintain high availability of their emissions monitoring systems at all times when a unit is operating (including during periods of emergency).¹⁰

The second general situation when a source must report substitute data instead of actual monitored data, which EPA believes might be appropriate to address differently in certain emergency circumstances than in non-emergency circumstances, occurs when quality-assurance requirements are not met. The part 75 regulations are designed to achieve not only high availability of monitored data, but also high quality of those data. Accordingly, the regulations require various kinds of quality-assurance testing. Of particular relevance here, the regulations also require substitute data to be reported if the quality-assurance tests are not completed by applicable deadlines, following the same procedures described above for periods when data from a monitoring system are missing. The specific testing requirements depend on which of the permissible part 75 monitoring methodologies is being used and on the type of

¹⁰ In this action, EPA is not amending the existing requirements to report substitute data for operating hours when monitored data are missing or when data are invalid for reasons other than an emergency-related delay of quality-assurance activities.

fuel or monitoring equipment. For units using gas concentration CEMS, the required quality-assurance tests include relative accuracy test audits (RATAs), which involve stack testing and generally must be performed every two or four calendar quarters, as well as quarterly linearity checks and daily calibration error tests.¹¹ For units using stack gas flow rate CEMS, the required tests include RATAs, which again involve stack testing and generally must be performed every two or four calendar quarters, as well as quarterly leak checks or other tests that depend on the particular technology employed.¹² For gas- and oil-fired units using fuel sampling and fuel flowmeters under appendix D to part 75, the required tests generally include either flowmeter accuracy tests which must be performed every four calendar quarters or else less frequent accuracy tests combined with certain otherwise optional tests performed on a quarterly basis.¹³ In addition, the appendix D methodology requires periodic laboratory analyses of fuel samples to determine fuel sulfur content, density, and/or gross calorific value.¹⁴ Under the regulations, a unit's failure to conduct and pass any required CEMS or fuel flowmeter quality-assurance test by the applicable deadline (or within a specified grace period) causes the monitoring system to be considered "out of control" just as an equipment failure would. Data obtained from such a monitoring system are considered invalid and the unit must report substitute data until the required test is conducted and passed.¹⁵ The unit's operator must then bear the correspondingly higher allowance costs that are caused by the higher reported emissions.

¹¹ See 40 CFR part 75, appendix B, section 2.

¹² See *id.*

¹³ See 40 CFR part 75, appendix D, sections 2.1.6.3 and 2.1.6.4(b).

¹⁴ See 40 CFR part 75 appendix D, sections 2.2 and 2.3.

¹⁵ See, e.g., 40 CFR part 75, appendix B, section 2.3.1.1, and appendix D, sections 2.1.6 and 2.1.7.

In ordinary circumstances, requiring operators to report substitute data when quality-assurance testing deadlines are missed appropriately provides operators with a strong incentive to conduct the required tests in a timely manner, just as they are provided with a strong incentive to maintain high availability of their monitoring equipment. However, in circumstances where an operator may be unable to meet test deadlines for reasons related to a declared national emergency, and where it may not be possible to complete the delayed test for an extended period for reasons outside the operator's control, requiring data substitution cannot induce more timely compliance with quality-assurance requirements. Indeed, to the extent the desire to avoid an extended period of data substitution requirements incentivizes the operator to proceed with testing instead of more rigorously complying with travel, plant access, and other safety restrictions imposed to address the current COVID-19 emergency, the data substitution requirements may put plant operators and other personnel at risk and be in tension with immediate public health imperatives.

Conducting quality-assurance tests often requires resources from outside the plant being tested. RATAs and other stack tests are generally performed by contractor personnel who travel from plant to plant rather than by on-site plant personnel. State regulatory staff often attend as observers. Under emergency conditions when travel or plant access is restricted, it may be difficult or impossible for these outside personnel to perform or observe testing at the previously scheduled times. Further, such tests are often scheduled months in advance, and if a large number of units are delaying tests simultaneously, the average time until the tests can be rescheduled will be even longer than usual. Moreover, RATAs, linearity checks, and calibration error tests of gas concentration CEMS all require calibration gases that are delivered from

specialized producers, and appendix D fuel sample analyses are often performed at outside laboratories. Travel, plant access, and other safety restrictions, such as emergency-related shutdowns of external facilities, may make it difficult for affected sources to restock their calibration gases if on-site supplies run out or to obtain analyses of fuel samples.

According to data reported to EPA, part 75 RATAs were performed at 1033 monitoring locations in the second quarter of 2019.¹⁶ Given the typical four-quarter interval between required RATAs, EPA therefore believes that approximately 1000 units will have deadlines to perform RATAs in April, May, and June of 2020.¹⁷ Since the beginning of March 2020, EPA has been contacted by seven power plant owners (who collectively operate over 300 units subject to part 75 requirements), an emissions data acquisition and handling system (DAHS) vendor, two consulting companies, and two state regulatory agencies indicating that stack testing requirements will be difficult or impossible to meet on a timely basis in locations where plant access has been limited or where local or state governments have imposed shelter-in-place or other restrictions for all but essential activities. More information on these communications is provided in the document entitled “Stakeholder Communications Regarding the COVID-19 Emergency” in the docket for this action.¹⁸

¹⁶ See “Part 75 RATAs Reported for 2019 Q2.xlsx,” available in the docket for this action. Over 1500 RATAs were performed at the 1033 monitoring locations. See *id.* EPA notes that the number of monitoring locations is not identical to the number of affected units, because some monitoring locations are at common stacks serving multiple units, and emissions of some units are monitored at multiple monitoring locations.

¹⁷ The normal four-quarter interval can be extended if a unit does not operate in a given quarter. See 40 CFR part 75, appendix B, section 2.3.1.1. Thus, deadlines for some of the approximately 1000 units that conducted RATAs in the second quarter of 2019 will be extended beyond the second quarter of 2020, while other units whose most recent previous RATA was before the second quarter of 2019 will have an extended RATA deadline in the second quarter of 2020.

¹⁸ See also, e.g., “Sequestered in power plants or at-home call centers: Consumers Energy in the age of COVID-19,” [dailymenergyinsider.com](https://www.dailymenergyinsider.com) (April 9, 2020); “PJM ramps up preparations as COVID-19 hotspots emerge in its footprint,”

EPA believes the current national emergency related to COVID-19 has revealed a need for limited, temporary revisions to the quality-assurance requirements in the part 75 regulations. As discussed above, the regulations treat a missed quality-assurance test as equivalent to the failure of a monitoring system to provide any data at all, an approach that in ordinary circumstances appropriately provides operators with a strong incentive to conduct required quality-assurance and certification tests in a timely manner, just as they are provided with a strong incentive to maintain high availability of their monitoring equipment. However, the rationale for treating these two different sorts of failures as equivalent is no longer compelling in the circumstances of a declared national emergency that makes it difficult or impossible for some, or many, plant operators to conduct required quality-assurance tests on a timely basis for reasons outside their control and where efforts to conduct the tests may conflict with efforts to address the emergency and put plant operators and other essential personnel at risk. Travel, plant access, and other safety restrictions put in place to protect public health in light of the COVID-19 outbreak are highly likely to interfere with operators' ability to conduct some tests, both by limiting the availability of outside contractor personnel and state regulatory observers and by limiting plants' ability to restock depleted calibration gas supplies. Under the existing part 75 regulations, missing a test deadline could lead to an extended period for which an affected unit could be required to report increasingly conservative substitute data, with adverse cost consequences. Where the reason for missing a test is related to a national

www.powermag.com (April 8, 2020); "Power industry pleads for priority COVID-19 testing, PPE for mission-essential workers," www.powermag.com (April 7, 2020); "NYISO workers now living at grid control centers," www.powermag.com (March 30, 2020); "Utilities plan to keep key staff housed at power plants," www.powermag.com (March 20, 2020); "Utility workers prepare to sleep at work to keep the power flowing," www.salon.com (March 20, 2020); "How power companies are keeping your lights on during the pandemic," www.latimes.com (March 19, 2020).

emergency, EPA does not believe it is appropriate to impose this automatic consequence. The amendments promulgated in this action will ensure that the regulations do not inappropriately penalize plant operators.

The need to address the incentive features of the existing regulations is urgent in light of the actions being taken to address the current national emergency and the large number of units facing decisions in the near term on whether to proceed with tests scheduled for April and May. With each upcoming test, plant operators subject to restrictions because of the emergency must decide how to balance the potential regulatory consequences of delaying the test with the actions being implemented to protect the health of key plant and other personnel and public health under the emergency. The consequences to a source of missing a quality-assurance test are small initially, but grow rapidly as the period past the missed test deadline lengthens. Given uncertainty about the duration of the emergency-related restrictions, operators currently face uncertainty about when they might next be able to reschedule a delayed test, which leads to uncertainty regarding the magnitude of the automatic regulatory penalties that they risk incurring by deferring each test. As noted above, in April through June 2020, as many as 1000 units will face decisions on whether or not to defer scheduled annual or semi-annual RATAs. EPA believes operators should have clear information now about the consequences of decisions regarding plant testing so that they can make the best immediate decisions about how to address the public health emergency and not put their employees at risk because of potential adverse regulatory consequences that can be avoided through a temporary rule amendment.

The primary set of part 75 tests giving rise to the concerns that EPA is addressing in this action comprises the quality-assurance tests discussed above, because of the very large number of those tests that under normal circumstances would be conducted in April and May 2020 and whose timing is therefore very much affected by the current COVID-19 emergency. However, certain other types of part 75 testing requirements raise analogous concerns for smaller numbers of units, and because of the similarity of the issues, this action addresses the additional tests as well. First, initial certification of a monitoring system under the part 75 regulations likewise requires a variety of tests to be passed by specified deadlines before the monitoring system can be used to report valid data. Some of the same tests may also be required in instances where a monitoring system needs to be recertified following an equipment change. The required certification tests include RATAs for both gas concentration CEMS and stack gas flow rate CEMS, linearity checks and calibration error tests for gas concentration CEMS, and accuracy tests for fuel flowmeters.¹⁹ If certification testing for a monitoring system is not successfully completed by the applicable deadline, the unit must report substitute data in place of the data obtained from that monitoring system until all required tests have been passed.²⁰ In these instances, substitute data are generally based on the maximum potential values for the monitoring system starting in the first operating hour after the applicable test deadline. The regulations include provisions allowing a unit to report “conditionally valid” data following completion of the first required certification or recertification test until the timely and successful completion of the last required test.

¹⁹ See § 75.20(c) and (g).

²⁰ See § 75.4(j).

However, if all tests are not successfully completed by the applicable deadlines, the data that were previously considered conditionally valid are invalidated, and the unit must instead report substitute data for all operating hours until all required tests have been successfully completed.²¹ For any unit whose certification testing schedule calls for testing during the current emergency situation, the considerations over how to balance the regulatory consequences of deferring the test with the public health emergency are the same as for an existing unit facing a near-term decision on a required quality-assurance test.

Second, units using part 75 monitoring methodologies other than CEMS-based methodologies may also be required to meet periodic fuel analysis or emission rate testing requirements. For example, under appendix D to part 75, a qualifying unit calculates reported hourly SO₂ mass emissions and heat input from its monitored hourly fuel usage in combination with unit-specific data on fuel sulfur content, density, and/or gross calorific value. In general, the data on fuel characteristics must be regularly updated through laboratory analyses of fuel samples. When fuel analyses are not updated in a timely manner, as could happen if outside laboratories close in an emergency, the unit must report substitute data that eventually reflect default maximum values for each fuel type.

Other non-CEMS based methodologies under part 75 require periodic NO_x emission rate testing. Under appendix E to part 75, a qualifying unit calculates reported hourly NO_x mass emissions from its monitored hourly fuel usage in combination with unit-specific historical test data correlating the unit's hourly NO_x emission rate to the unit's hourly fuel usage. The

²¹ See § 75.20(b)(3).

appendix E regulations require the unit-specific correlations to be updated based on new stack testing at least every twenty calendar quarters, and if updated appendix E tests are not completed by the deadline, the unit must report substitute data based on the unit's maximum potential NO_x emission rate.²² Similarly, under the low mass emissions (LME) methodology in § 75.19, a qualifying unit may calculate its NO_x mass emissions using a fuel-and-unit-specific NO_x emission rate based on historical test data instead of using the default emission rates published in the regulations, and the fuel-and-unit-specific NO_x emission rate data must be updated based on new stack testing at least every twenty calendar quarters.²³ While the interval between required tests is long, for any unit for which the end of the interval – and therefore the unit's scheduled testing – falls in the emergency period, the considerations over whether to perform or defer the required NO_x emission rate testing are again the same as for a unit facing a near-term decision on a required quality-assurance test.

Finally, EPA notes that since its initial promulgation, part 75 has contained provisions at § 75.66 allowing EPA to make exceptions to individual regulatory requirements in appropriate circumstances. This authority is broad but requires exceptions to be made on a case-by-case basis: the designated representative for a unit (or group of units) must submit a petition to EPA for an alternative to a given regulatory requirement, describing the facts and the requested alternative, after which EPA considers the petition and provides a written response granting or denying the request.²⁴ Importantly, § 75.66 does not authorize EPA to grant exceptions to a given requirement or set of requirements for all affected units (or all affected units meeting

²² See 40 CFR part 75, appendix E, sections 2.2 and 2.5.

²³ See § 75.19(c)(1)(iv)(D).

²⁴ EPA's responses are posted at <https://www.epa.gov/airmarkets/part-75-petition-responses>.

specified conditions) simultaneously, even on a temporary basis, and for this reason the section is not well suited to addressing emergency situations that cause a particular regulatory requirement to have unintended consequences for a large number of affected units. Even if EPA ultimately were to grant some or even most of the petitions relating to the emergency, an owner or operator facing an immediate decision on whether to defer a test in light of public health concerns related to the COVID-19 emergency would be unable to predict that outcome at the time when the immediate decision must be made.

B. Description of Amendments

The amendments being finalized in this action are carefully targeted to address the regulatory provisions discussed in section II.A of this notice while leaving other features of the regulations unchanged. Specifically, the amendments allow sources to continue to report monitored data as valid instead of requiring the sources to report substitute data in instances where data from a monitoring system would otherwise be considered invalid solely because of failure to complete a required test by the applicable deadline and where the failure to complete the test is attributable to travel, plant access, and other safety restrictions implemented to address the COVID-19 national emergency. The amendments cover each of the types of testing requirements described in section II.A of this notice – quality-assurance tests, certification and recertification tests, appendix D fuel analyses, and appendix E and LME emission rate tests. Affected units will continue to be required to report emissions data for every operating hour of a control period, and no changes are made to any existing emissions limitations. Sources are required to complete any delayed tests as soon as practicable after relevant emergency-related restrictions no longer apply. The emergency period for which a

source can report valid data under the amended provisions is limited to the duration of the national emergency plus a grace period of 60 days to complete delayed tests, or if sooner, the expiration of the amendments (i.e., 180 days from publication in the *Federal Register*).

As discussed in section V.C of this notice, the Office of Management and Budget (OMB) has approved an emergency information collection request (ICR) establishing certain new recordkeeping and reporting provisions that will apply to any use of the amended emissions data reporting requirements promulgated in this action. Sources will be required to document the reasons for delaying any required test and to submit notifications to EPA when a test is delayed and when the delayed test is later completed. (In the case of tests that recur more often than quarterly, such as CEMS daily calibration error tests and certain appendix D fuel analyses, sources may treat a series of recurring tests as a single test for purposes of the required notifications.) Each notification of a delayed test must identify the affected unit, the test being delayed, the otherwise applicable deadline, and the emergency-related reasons why the test could not be completed by the deadline. Each notification of completion of a delayed test must identify the affected unit, the completed test, the date as of which emergency-related restrictions that formerly impaired testing for that unit no longer applied, and the date of test completion. In addition, both notifications must include certifications that the unit meets the criteria for using the amended procedures. Notifications may not contain Confidential Business Information (CBI) and must be submitted by email to camdpetitions@epa.gov, generally within five business days after the applicable test deadline or completion date. Notifications may be submitted by the designated representative or an agent with delegated authority to submit quality-assurance test data. EPA will prepare

summaries of the submitted notifications identifying the units, the delayed tests and test deadlines, and the completed tests and completion dates and will post the summaries on a publicly accessible website.

In addition to the new recordkeeping and reporting requirements described above, EPA notes that under the existing part 75 regulations, reporting monitored data as valid following failure to complete a required test will require sources to assign a different method of determination code (MODC) to the data in an affected unit's data acquisition and handling system (DAHS), and further notes that the existing regulations at § 75.53 require sources to keep their monitoring plans up to date with respect to any change in a DAHS. In addition, the existing compliance certification requirements at § 75.64(c) require an affected unit's designated representative to "indicate whether the monitoring data submitted were recorded in accordance with the applicable requirements of this part ..." which now include the provisions promulgated in these amendments. EPA also notes that nothing in these amendments prevents a state from requiring sources to record and/or report additional documentation demonstrating that the reason for any failure to complete a required test by the applicable deadline was in fact related to restrictions implemented to address emergency conditions.

The amended provisions are located in new section 40 CFR 75.68 entitled "Temporary modifications to otherwise applicable quality-assurance requirements during the COVID-19 national emergency." The introductory text of paragraph (a) provides that the provisions of the new section apply during the defined emergency period notwithstanding any other provisions of part 75. Paragraph (a)(1) defines the emergency period for purposes of the new section as

the period of the COVID-19 national emergency with an additional 60 days for completion of delayed tests (but not beyond the expiration of the amendments), keying the start and end dates of the national emergency to actions taken by the President and Congress in accordance with the National Emergencies Act, 50 U.S.C. 1601-1651. The start date of the emergency is therefore March 13, 2020, the date on which the President declared the national emergency related to the COVID-19 outbreak.²⁵ Paragraph (a)(2) identifies the quality-assurance tests, certification or recertification tests, appendix D fuel analyses, and appendix E and LME NO_x emission rate tests with respect to which the temporary procedures apply. Paragraph (a)(3) permits sources to report data from monitoring systems as valid during emergency periods despite failure to complete required quality-assurance tests by the applicable deadlines, provided that (i) the data are otherwise valid; (ii) the failure to complete the tests is attributable to travel, plant access, or other safety restrictions implemented to address the COVID-10 national emergency; and (iii) the applicable recordkeeping and reporting requirements are met. Paragraph (a)(4) addresses failures to complete required certification or recertification tests in the same manner, except that the data may be reported as conditionally valid rather than valid, pending successful completion of the delayed certification tests. Paragraph (a)(5) addresses failures to complete required appendix D fuel analyses or appendix E or LME emission rate tests in the same manner and provides that the sources may continue to use the results of the most recent previously approved analyses or tests to determine reported emissions. Paragraph (a)(6) requires any delayed tests to be completed as soon as practicable after the relevant emergency-related restrictions are lifted but no later than 60 days after the

²⁵ See 85 FR 15337 (March 18, 2020).

end of the COVID-19 national emergency (or, if earlier, the expiration of these amendments), requires reporting of substitute data if the delayed tests are not completed by these new deadlines, and provides that the completed tests are considered timely for purposes of identifying the deadlines for the next periodically scheduled tests. Paragraph (a)(7) sets out the new recordkeeping and reporting requirements that apply to use of the amended procedures.

The amendments are being promulgated as a final action and are effective immediately upon publication in the *Federal Register*. The amendments will expire after 180 days. Paragraph (b) of new § 75.68 provides the effective date and expiration date of the amendments.

C. Expected Impacts

The amendments finalized in this action do not suspend any existing requirements for any affected unit to report emissions for any hour of operation and do not alter any existing emissions limitations under any program. EPA consequently has no reason to expect the rule's amendments to the part 75 quality-assurance requirements to cause any change in affected units' emissions behavior. The rule therefore will not result in any harm to public health or the environment that might occur from increased emissions. To the extent that the amendments facilitate plant operators' efforts to comply with travel, plant access, and other safety restrictions imposed to protect public health during the COVID-19 emergency, the amendments will have a positive impact on public health by assisting efforts to slow the spread of the disease.

The actual monitored emissions data that will be reported under the amendments promulgated in this action will be the same data that would have been reported if the required

part 75 tests were successfully completed by the applicable deadlines. There is of course a possibility that if the tests had been completed on schedule at all units, the tests would not have been passed at some units, leading to adjustments to those units' monitoring systems, a further round of testing, and improvements to the reported data. While the data reported in emergency situations under the amendments will lack these improvements, failures of RATAs are rare,²⁶ which EPA considers evidence that operators treat the obligation to maintain their monitoring systems seriously, due at least in part to the periodic RATA requirements. Thus, there is no reason to expect the absence of the data improvements to cause a bias toward understatement of emissions, and given the need to balance data quality considerations with public health and other considerations, EPA believes it is reasonable to treat the resulting data as adequate for purposes of an emergency period.

In the case of units that decide to defer quality-assurance tests that in the absence of the amendments they would have performed as scheduled, EPA generally does not expect a significant impact on the units' quality-assurance costs because the primary effect on their testing costs would simply be to delay the costs for some portion of the COVID-19 emergency period.²⁷ EPA notes that, because the amendments are limited to circumstances where failure to complete a quality-assurance test is attributable to the COVID-19 national emergency, and there is no suspension of data substitution requirements when data are missing or are invalid

²⁶ For example, none of the 1500 RATAs reported for the second quarter of 2019 were failed.

²⁷ This expectation applies with respect to delayed RATAs, which typically account for the majority of quality-assurance and certification testing costs, and to delayed quarterly tests that can be rescheduled in the same quarter following the end of emergency-related restrictions. With respect to daily tests or other quarterly tests missed for reasons related to the national emergency, testing on normal schedules generally would resume without any rescheduling of tests missed because of the emergency.

for a non-emergency-related reason, there would be no diminishment of operators' existing incentives to maintain their monitoring systems.

By allowing operators to report monitored data instead of substitute data, the amendments will also cause reported emissions levels, both at individual facilities and in aggregate, to track actual monitored emissions levels more closely than would be the case if units had to report the higher, intentionally conservative data required by the data substitution provisions for extended periods of time. The expected consequence of this impact on reported emissions levels is that plant operators will need to surrender fewer emission allowances to cover their reported emissions and will therefore incur lower total costs for emissions allowances. EPA estimates that up to 1000 units may use the amended regulations to report actual monitored data instead of substitute data for some portion of the current emergency period, but has not attempted to estimate the magnitude of the impacts on either reported emission levels or allowance costs.

III. Rulemaking Procedures and Findings of Good Cause

EPA is promulgating this rule as a final action without prior notice or opportunity for public comment because the good cause exception under APA section 553(b)(B), 5 U.S.C. 553(b)(B), applies here. If APA section 553(b)(B) did not apply, this rule would be subject to the rulemaking procedures in CAA section 307(d).²⁸ However, CAA section 307(d) does not apply “in the case of any rule or circumstance referred to in [APA section 553(b)(B)]”²⁹—i.e., the good

²⁸ See CAA section 307(d)(1)(G), (T); 42 U.S.C. 7607(d)(1)(G), (T). See also CAA section 307(d)(3); 42 U.S.C. 7607(d)(3) (requiring publication of a proposed rule with an opportunity for public comment).

²⁹ See CAA section 307(d)(1); 42 U.S.C. 7607(d)(1).

cause exception noted above—making this rule subject to the rulemaking procedures in APA section 553 instead, other than subsection 553(b).³⁰ APA section 553(b)(B) allows an agency to promulgate a rule without providing prior notice and opportunity for public comment “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”

EPA finds that there is good cause for promulgating this final rule without providing prior notice and an opportunity for public comment because providing such notice and opportunity for comment, with respect to the amendments promulgated in this action, is impracticable and contrary to the public interest for the reasons further explained in this section. There is an urgent need for EPA to revise the part 75 regulations to adjust the near-term and cascading impacts on sources not meeting certain regulatory requirements during national emergencies, such that sources are better able to abide by the public health restrictions put in place to address the current national emergency concerning the COVID-19 outbreak. As noted above, EPA has been contacted by plant owners who collectively operate over 300 affected units, as well as stack-testing companies and state air agencies, regarding near-term problems in completing required part 75 quality-assurance tests because of travel and plant access restrictions imposed to protect public health in light of the COVID-19 outbreak.³¹ Personnel who would not be on-site for normal plant operations are often required to conduct these quality-assurance tests. In light of the current health emergency, many plant operators have

³⁰ APA section 553(b) generally requires notice-and-comment rulemaking procedures unless, as here, an exception applies under section 553(b)(A) or (B). 5 U.S.C. 553(b).

³¹ See “Stakeholder Communications Regarding the COVID-19 Emergency,” available in the docket.

restricted plant access to reduce the risk to plant essential personnel as well as the general public. In addition, travel has been severely restricted. Compliance by plant operators and others with these efforts to address the COVID-19 emergency are in tension with the existing regulatory provisions that automatically penalize plant operators for failing to complete required tests even when completing the tests requires travel or plant access that would otherwise be restricted because of the emergency. It is a matter of urgency for EPA to address this issue now so that plant operators can make informed decisions regarding plant access and determine whether to perform or delay tests scheduled in April and May 2020. If EPA were to delay action, the potential consequences of failing to timely conduct quality assurance tests would either lead to a weakening of steps taken to address the COVID-19 emergency or penalize plant operators for enforcing travel and plant access restrictions. As explained in this notice, EPA has determined that targeted, narrow revisions to the regulations to give plant operators additional flexibility regarding the timing of quality assurance tests can address this urgent problem without adversely impacting air quality or public health.

EPA has determined that there is good cause to forgo a public notice and comment process because such public process is impracticable, since notice and comment rulemaking would impair the agency's ability to timely address an urgent situation under our current regulations that has the potential to threaten public health and safety. In sum, the current regulations result in automatic penalties if certain requirements are not met but meeting those requirements could require sources to take actions contradictory to restrictions in place to address the COVID-19 emergency. Specifically, the flexibilities provided through this rule potentially impact over 1000 units with upcoming test deadlines in April, May, and June of this

year. Providing public notice and comment is impracticable, because plant operators must make decisions regarding whether to conduct tests in April and May 2020. Because of the limited amount of time between the declaration of the COVID-19 national emergency and the applicable testing deadlines, there was insufficient time to seek comment on the rule.

Taking the additional time required to allow for submission of comments and development of a response to comments is impracticable because, in this time of emergency, it would delay finalization of amendments needed to assure source operators that efforts to address the national emergency will not result in automatic adverse consequences for the many sources likely to be impacted. Although the costs to sources of reporting substitute data may be small initially, the costs grow substantially over time, and the operators need to make decisions in the near-term on whether to defer testing while facing considerable uncertainty as to when it will next be possible for them to conduct the testing (and, therefore, how large the costs may eventually become). It is therefore a matter of urgency to promulgate these amendments to address the tension between the existing regulations and travel and plant access restrictions imposed to address the public health emergency and protect essential plant and other personnel.³² EPA has concluded that an immediate response – promulgating these final amendments – is needed to ensure that part 75 regulatory requirements do not impose unnecessary adverse consequences on affected sources due to travel restrictions and other limitations on movement and plant access in place to respond to the emergency. Issuance of the amendments is needed to assure operators now that they will not, in fact, be penalized for deciding now to defer testing when proceeding with tests as scheduled would not be in

³² See *supra* note 18.

accordance with such restrictions. As noted in section II.A of this notice, by approximately five weeks after a missed quality-assurance test deadline, a baseload unit must report substitute data in all operating hours based on its highest hourly data value from a lookback period, and by approximately ten weeks after a missed test deadline, such a unit must report its maximum potential values. Notice-and-comment rulemakings (which in the case of this action, under CAA section 307(d), would involve providing an opportunity for a public hearing³³ and a comment period extending at least 30 days following the public hearing, and would also require time to evaluate and respond to all significant comments received) frequently take much longer than ten weeks.

EPA has also determined that there is good cause to forgo a public notice and comment process for this rule because such public process is contrary to the public interest. The delay associated with undertaking ordinary notice and comment procedures would, in fact, harm the public interest here. Such a delay would keep in place EPA regulations that incentivize actions counter to the restrictions necessary to protect public health and to address the COVID-19 emergency. Approximately 1000 sources with upcoming test deadlines in April, May, and June of this year are potentially impacted by the automatic provisions in the part 75 monitoring regulations and must make personnel and other decisions regarding operation of the sources before their respective test deadlines, including decisions regarding access to perform quality-assurance tests and certification tests. It is imperative that EPA provide immediate assurance that adverse consequences (in the form of impacts that flow from not meeting certain required testing deadlines that affect allowance holding requirements for reasons not anticipated when

³³ Adequate prior notice must be provided for any such hearing.

establishing the current requirements) will not flow from measures taken to comply with directives to protect public health, and to better ensure that the existing requirements would not result in actions being taken during the national emergency that would run counter to the efforts and restrictions in place to address the public health in light of the COVID-19 outbreak.³⁴ At the same time, the amendments are carefully targeted to avoid collateral adverse impacts. Specifically, the amendments stop the automatic penalties discussed above in national emergency circumstances but not in non-national emergency circumstances, they leave other monitoring-related requirements and reporting requirements in place, and they do not alter any emissions limitations. In addition, the regulatory revisions promulgated in this notice will expire in 180 days absent further action by EPA.

Thus, EPA finds good cause under APA section 553(b)(B) to take this final action without prior notice or opportunity for comment both because providing notice and an opportunity for comment would be impracticable and because it would be contrary to the public interest.

The amendments promulgated in this final rule will expire in 180 days. In deciding that the amendments should expire in 180 days, EPA considered the importance of providing regulatory certainty to the regulated community discussed above and the time-frame needed to conduct a full notice-and-comment rulemaking. Given the current uncertainty concerning the spread of COVID-19, EPA believes it is reasonable to provide regulatory certainty to sources that the amendments in this action will be in effect for at least 180 days. At the same time, given the narrow scope of the amendments, some stakeholders might challenge the reasonableness of

³⁴ See *supra* note 18.

keeping the amendments in effect on a temporary basis for longer than 180 days on the grounds that the Agency might have been able to make the temporary amendments effective beyond 180 days through notice-and-comment rulemaking within such a time period. For these reasons, EPA is providing that the amendments will expire in 180 days.

EPA is also making this final rule effective immediately upon publication in the *Federal Register*. As discussed in the first paragraph of this section, if the good cause exception in APA section 553(b)(B) did not apply, this rule would be subject to the rulemaking procedures in CAA section 307(d). Instead, because CAA section 307(d) does not apply, the rule is subject to the rulemaking procedures in APA section 553 other than subsection 553(b).³⁵ APA section 553(d), which therefore applies to this rule, generally requires that actions covered by the section become effective not less than 30 days after publication but also provides several exceptions.

Under APA section 553(d)(1), rulemaking actions may become effective less than 30 days after publication if the rule “grants or recognizes an exemption or relieves a restriction.” The purpose of this provision is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.”³⁶ However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule grants or recognizes an exemption or relieves a restriction because the nature of the rule change being approved is to allow sources to report their actual monitored data values instead of being required to report substitute data values – a change which is virtually always advantageous to the source – in

³⁵ See *supra* note 30.

³⁶ *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history).

circumstances where the source fails to complete a required test by the applicable deadline for reasons related to a national emergency.

Additionally, APA section 553(d)(3) allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” As noted above, the purpose of the 30-day waiting period generally prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect. Thus, in determining whether good cause exists to waive the 30-day delay, an agency should “balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.”³⁷ In the case of this rule, EPA has determined that there is good cause for making this final rule effective immediately. Regarding urgency, EPA finds that the reasons supporting EPA’s finding of good cause under APA section 553(b)(B) for making this action final without prior notice or opportunity for comment also support an immediate effective date. Primarily, it is urgent for EPA to revise the part 75 regulations to adjust the near-term and cascading impacts of sources not meeting certain regulatory requirements during national emergencies, such that sources are better able to abide with restrictions in place to address the current national emergency concerning the COVID-19 outbreak without facing unintended adverse regulatory consequences. Further, this rule raises no material concerns regarding the fairness of imposing new requirements without additional notice because it does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this action

³⁷ *Gavrilovic*, 551 F.2d at 1105.

simply allows sources to report actual monitored data values instead of substitute data values in specified circumstances, which is both advantageous to the sources and readily accomplished using their existing monitoring equipment and reporting software. For these reasons, EPA finds good cause exists for this action to become effective on the date of publication in the *Federal Register*.

IV. Request for Comment

As explained above, EPA finds good cause to take this final action without prior notice or opportunity for public comment and to make this action effective immediately upon publication in the *Federal Register*. However, EPA is also implementing this action on a temporary basis only and is providing notice and an opportunity for comment on the content of the temporary amendments. EPA requests comment on all aspects of this rule. EPA is not reopening for comment any provisions of 40 CFR part 75 other than the specific provisions added by this rule.

V. Statutory and Executive Order Reviews

Additional information about these statutes and executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to OMB for review because it may raise novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not subject to Executive Order 13771 because this final rule is expected to result in no more than *de minimis* costs.

C. Paperwork Reduction Act

The information collection activities in this rule have been submitted for approval to OMB under the PRA as an emergency information collection request (ICR). You can find a copy of the ICR document in the docket for this rule at [regulations.gov](https://www.regulations.gov) (Docket No. EPA-HQ-OAR-2020-0211), and it is briefly summarized here.

The collection of information is necessary in order to ensure that the amended procedures that allow sources to report actual monitored data instead of substitute data when a test cannot be completed by the applicable deadline because of travel, plant access, and other safety restrictions implemented to address the COVID-19 national emergency are used only in accordance with the regulations. Sources are required to maintain records demonstrating that the reasons they were unable to complete delayed tests by the applicable deadlines were related to travel, plant access, or other safety restrictions put in place to address the COVID-19 national emergency. Sources are also required to submit notifications to EPA following the delay or completion of a test for which the amended procedures are used. The notification for a delayed test includes information identifying the unit and test, the applicable deadline, and the emergency-related reasons why the test could not be completed by the deadline. The notification for a completed test includes information identifying the unit and test, the date when restrictions related to the national emergency ceased to apply for that unit, and the test

completion date. Each notification must include a certification of accuracy in order to ensure that the unit qualifies to use the amended procedures. To provide transparency regarding the use of the amended procedures, EPA will prepare summaries of the units and states, the delayed tests and test deadlines, and the completed tests and completion dates and will the summaries on a publicly accessible website.

OMB has approved an emergency ICR that will be in effect for 180 days while these temporary amendments are in effect.

Respondents / affected entities: approximately 4,300 units that monitor and report emissions under 40 CFR part 75 to meet requirements of the Acid Rain Program, a CSAPR trading program, or the NO_x SIP Call.

Respondents' obligation to respond: required to obtain a benefit (40 CFR 75.68).

Frequency of response: occasional.

Total estimated burden: 3000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$273,300 (per year); includes \$0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

D. Regulatory Flexibility Act

This action is not subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the APA or

any other statute. This rule is not subject to notice-and-comment requirements because the Agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b).

E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. This action simply allows some sources to report actual monitored data values instead of substitute data values for certain required information in specified circumstances related to the COVID-19 national emergency.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action simply allows some sources to report actual monitored data values instead of substitute data values for certain required information in specified circumstances related to the COVID-19 national emergency.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. This action simply allows some sources to

report actual monitored data values instead of substitute data values for certain required information in specified circumstances related to the COVID-19 national emergency. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. This action simply allows some sources to report actual monitored data values instead of substitute data values for certain required information in specified circumstances related to the COVID-19 national emergency.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action simply allows some sources to report actual monitored data values instead of substitute data values for certain required information in specified circumstances related to the COVID-19 national emergency.

J. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action is not subject to Executive Order 12898 because it does not establish an environmental health or safety standard. This action simply allows some sources to report actual monitored data values instead of substitute data values for certain required information in specified circumstances related to the COVID-19 national emergency.

L. Congressional Review Act

This action is subject to the Congressional Review Act (CRA), and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice-and-comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). EPA has made a good cause finding for this rule as discussed in section III of this notice, including the basis for that finding.

M. Determination Under CAA Section 307(b)

CAA section 307(b)(1), 42 U.S.C. 7607(b)(1), indicates which United States Courts of Appeals have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) if (i) the Agency action consists of “nationally applicable regulations promulgated, or final action taken, by the Administrator,” or (ii) the action is locally or regionally applicable, but “such action is based on a determination of nationwide scope or

effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” This action amends existing regulations that apply to sources in 48 states and the District of Columbia, and thus the action applies to sources in the same jurisdictions. For this reason, the Administrator determines that this final action is nationally applicable or, in the alternative, is based on a determination of nationwide scope and effect for purposes of section 307(b)(1). Thus, pursuant to section 307(b), any petitions for review of this final action must be filed in the D.C. Circuit within 60 days from the date this final action is published in the *Federal Register*.

List of Subjects

40 CFR Part 75

Environmental protection, Acid Rain, Administrative practice and procedure, Air pollution control, Carbon dioxide, Continuous emission monitoring, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April xx, 2020.

Andrew Wheeler,

Administrator.

For the reasons stated in the preamble, part 75 of chapter I of title 40 of the *Code of Federal Regulations* is amended as follows:

PART 75—CONTINUOUS EMISSION MONITORING

1. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651K, and 7651K note.

Subpart G—Reporting Requirements

2. Add § 75.68 to subpart G to read as follows:

§ 75.68 Temporary modifications to otherwise applicable quality-assurance requirements during the COVID-19 national emergency.

(a) Notwithstanding any other provision of this part, during and following the emergency period defined in paragraph (a)(1) of this section, the provisions of this section shall apply for purposes of reporting the data that are required to be reported under this part and completing the tests that are required to be completed under this part.

(1) For purposes of this section, the emergency period begins on March 13, 2020, the date of the declaration of a national emergency concerning the novel coronavirus disease (COVID-19) outbreak by the President of the United States in accordance with 50 U.S.C. 1621, and concludes 60 days after the date of termination of the national emergency by Congress or the President in accordance with 50 U.S.C. 1622, provided that the emergency period under this section shall not extend past the expiration of the effectiveness of this section.

(2) The provisions of this section shall apply with respect to the following tests that are required to be completed under this part:

(i) Any quality-assurance test of a continuous emission monitoring system required under appendix B to this part or § 75.74(c).

(ii) Any quality-assurance test of a fuel flowmeter required under section 2.1.6 of appendix D to this part or § 75.74(c).

(iii) Any certification or recertification test of a continuous emission monitoring system required under § 75.20 or § 75.70(d).

(iv) Any certification test of a fuel flowmeter required under section 2.1.5 of appendix D to this part or § 75.70(d).

(v) Any periodic analysis of fuel sulfur content, density, or gross calorific value required under section 2.2 or 2.3 of appendix D to this part, provided that there have been no changes in the fuel supply since the most recent previous fuel analysis that would reasonably be expected to cause a change in such fuel characteristics.

(vi) Any periodic retest of NO_x emission rates required under section 2.2 of appendix E to this part.

(vii) Any periodic retest of fuel-and-unit-specific NO_x emission rates required under § 75.19(c)(4)(i)(D) that is required only because of the passage of time and not because of changes in the fuel supply, physical changes to the unit, changes in the manner of unit operation, or changes to the emission controls.

(3) Following a failure to complete by the applicable deadline (or by the end of any grace period following the deadline) any required quality-assurance test or tests described in paragraph (a)(2)(i) or (ii) of this section for any continuous emission monitoring system or fuel flowmeter under this part, for any subsequent operating hour in the emergency period prior to completion of the test or tests in accordance with paragraph (a)(6)(i) of this section, the owner or operator of an affected unit may continue to report data determined using measurements obtained from the continuous emission monitoring system or fuel flowmeter as valid, provided that the following conditions are met:

(i) But for the failure to complete the quality-assurance test or tests, the data obtained from the monitoring system would be considered valid without the benefit of the provisions of this section;

(ii) The reason for failure to complete each such quality-assurance test is travel, plant access, or other safety restrictions implemented to address the COVID-19 national emergency; and

(iii) The owner or operator creates and maintains the records specified in paragraph (a)(7)(i) of this section and the designated representative submits the notifications required under paragraphs (a)(7)(ii) and (iii) of this section.

(4) Following a failure to complete by the applicable deadline any required certification or recertification test or tests described in paragraph (a)(2)(iii) or (iv) of this section for any continuous emission monitoring system or fuel flowmeter under this part, for any subsequent operating hour in an emergency period prior to completion of the test or tests in accordance

with paragraph (a)(6)(i) of this section, the owner or operator of an affected unit may continue to report data determined using measurements obtained from the continuous emission monitoring system or fuel flowmeter as conditionally valid provided that the following conditions are met:

(i) But for the failure to complete the certification or recertification test or tests, the data obtained from the monitoring system would be considered conditionally valid without the benefit of the provisions of this section;

(ii) The reason for failure to complete each such certification or recertification test is travel, plant access, or other safety restrictions implemented to address the COVID-19 national emergency; and

(iii) The owner or operator creates and maintains the records specified in paragraph (a)(7)(i) of this section and the designated representative submits the notifications required under paragraphs (a)(7)(ii) and (iii) of this section.

(5) Following a failure to complete by the applicable deadline any required periodic analysis of fuel characteristics under appendix D to this part described in paragraph (a)(2)(vi) of this section or any required periodic NO_x emission rate testing under appendix E to this part or § 75.19 described in paragraph (a)(vi) or (vii) of this section, for any subsequent operating hour during the emergency period prior to completion of the analysis or testing in accordance with paragraph (a)(6)(i) of this section, the owner or operator of an affected unit using the methodology in appendix D may continue to report data determined using the fuel characteristics authorized for use under the regulations following the most recent previous

analysis for that fuel, the owner or operator of an affected unit using the methodology in appendix E may continue to report data determined using the correlation curve developed from the most recent previous appendix E NO_x emission rate testing, and the owner or operator of an affected unit using a fuel-and-unit-specific emission rate under the LME methodology in § 75.19(c)(1)(iv) may continue to report data determined using the fuel-and-unit-specific emission rate developed from the most recent previous LME NO_x emission rate testing, provided that the following conditions are met:

(i) But for the failure to complete the appendix D fuel analysis or the appendix E or LME NO_x emission rate testing, the data obtained from the appendix D, appendix E, or LME monitoring methodology would be considered valid without the benefit of the provisions of this section;

(ii) The reason for failure to complete each such appendix D fuel analysis or appendix E or LME NO_x emission rate test is travel, plant access, or other safety restrictions implemented to address the COVID-19 national emergency; and

(iii) The owner or operator creates and maintains the records specified in paragraph (a)(7)(i) of this section and the designated representative submits the notifications required under paragraphs (a)(7)(ii) and (iii) of this section.

(6)(i) Each quality-assurance test, certification or recertification test, appendix D fuel analysis, and appendix E or LME NO_x emission rate test required under this part that was not completed for a unit by the applicable deadline (or by the end of any grace period following the deadline) must be completed as soon as practicable following the end of travel, plant access, or other safety restrictions implemented to address the COVID-19 national emergency that affect

that unit or the personnel or supplies required to complete the analysis or testing for that unit, but in no event later than the conclusion of the emergency period as defined in paragraph (a)(1) of this section.

(ii) If a test or analysis for which a deadline is established under paragraph (a)(6)(i) of this section is not completed by that deadline, the test or analysis shall be completed as soon as practicable thereafter, and for each operating hour following that deadline until completion of the test or analysis, the owner or operator shall report substitute data as if the originally applicable deadline for the test or analysis were the deadline under paragraph (a)(6)(i) of this section.

(iii) For purposes of determining the applicable deadline for the next quality-assurance test, appendix D fuel analysis, or appendix E or LME NO_x emission rate test required under this part after a delayed quality-assurance test, appendix D fuel analysis, or appendix E or LME NO_x emission rate test is completed or due to be completed in accordance with paragraph (a)(6)(i) of this section, the delayed test or analysis shall be considered to have been completed in a timely manner as of the date on which such delayed test or analysis was actually completed or, if earlier, the deadline for completion of the delayed test or analysis under paragraph (a)(6)(i) of this section.

(7) The following recordkeeping and reporting requirements shall apply to any use of the procedures under paragraphs (a)(3) through (6) of this section:

(i) The owner or operator of an affected unit reporting data under paragraph (a)(3), (4), or (5) of this section shall maintain records documenting the reasons for failure to complete by the

applicable deadline each test or analysis referenced in such paragraph and demonstrating that such failure is related to travel, plant access, or other safety restrictions implemented to address the COVID-19 national emergency. The owner or operator shall also maintain records documenting when any such travel, plant access, or other safety restrictions impairing the ability to complete testing or analyses for that unit ceased to apply. The records shall be maintained on site at the source in a form suitable for inspection for a period of three years from the date of each record.

(ii) By five business days after the applicable deadline for a test or analysis referenced in paragraph (a)(3), (4), or (5) of this section, the designated representative shall submit to the Administrator, by email transmitted to camdpetitions@epa.gov, a notification containing the following information:

(A) Facility ID (ORIS);

(B) Facility name;

(C) Monitoring location ID and/or unit ID;

(D) Identification of the quality-assurance test, certification or recertification test, appendix D fuel analysis, or appendix E or LME NO_x emission rate test for which the notification is being submitted;

(E) Identification of the applicable deadline for the test or analysis under part 75 (not including any applicable grace period);

(F) A detailed explanation of the reason for failure to complete the test or analysis by the applicable deadline under part 75, including an explanation of how such failure is related to

travel, plant access, or other safety restrictions implemented to address the COVID-19 national emergency;

(G) The certification statements in § 72.21(b)(1) and (2) of this chapter.

(iii) By five business days after the completion in accordance with paragraph (a)(6)(i) or (ii) of this section of a delayed test or analysis referenced in paragraph (a)(3), (4), or (5) of this section, the designated representative shall submit to the Administrator, by email transmitted to camdpetitions@epa.gov, a notification containing the following information:

(A) Facility ID (ORIS);

(B) Facility name;

(C) Monitoring location ID and/or unit ID;

(D) Identification of the quality-assurance test, certification or recertification test, appendix D fuel analysis, or appendix E or LME NO_x emission rate test for which the notification is being submitted;

(E) Identification of the date as of which travel, plant access, or other safety restrictions previously impairing the ability to complete the delayed test or analysis for the unit no longer applied;

(F) Identification of the date as of which the test or analysis was completed in accordance with paragraph (a)(6)(i) or (ii) of this section; and

(G) The certification statements in § 72.21(b)(1) and (2) of this chapter.

(iv) With respect to any test or analysis of a type that is required to be performed more frequently than once per unit operating quarter, a series of such required tests or analyses may be treated as a single test or analysis for purposes of a notification submitted under paragraph (a)(7)(ii) or (iii) of this section, with the notification under paragraph (a)(7)(ii) to be submitted by five business days after the first failure to perform such a test or analysis by the applicable deadline and the notification under paragraph (a)(7)(iii) to be submitted by five business days after the first completion of such a test or analysis in accordance with paragraph (a)(6)(i) or (ii) of this section.

(v) A notification submitted under paragraph (a)(7)(ii) or (iii) of this section may include information for more than one required test for a given unit or monitoring location, provided that each item of information required to be included in such notification pursuant to paragraphs (a)(7)(ii)(D) through (F) of this section or paragraphs (a)(7)(iii)(D) through (F) of this section is provided separately for each required test included in the notification.

(vi) No claim of confidentiality may be asserted with respect to any information included in a notification submitted under paragraph (a)(7)(ii) or (iii) of this section.

(vii) Notwithstanding the deadlines for submission of notifications in paragraphs (a)(7)(ii), (iii), and (iv) of this section, no such notification from any owner or operator shall be due less than 30 days after the effective date of this section.

(b) This section shall be effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and, except for paragraphs (a)(6)(ii) and (iii) and (a)(7)(i) of this section, shall cease to have effect [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].