

EPA Promulgates Minimum Competency Requirements for Source Testing Firms Performing Part 75 Work

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On March 28, 2011, EPA promulgated minimum competency requirements for firms performing Part 75 emission test programs (Protocol Gas Verification Program and Minimum Competency Requirements for Air Emission Testing, FR 76, No. 59, 17288-17325). In short, the rule requires that source testing firms - "air emission testing bodies or AETBs" - conform to ASTM D 7036-04, *Standard Practice of Competence of Air Emission Testing Bodies* beginning March 27, 2012.

ASTM D 7036-04 derives from ISO 17025, *General Requirements for the Competence of Testing and Calibration Laboratories*, and was developed to meet the needs of the source testing community. Although ASTM D 7036-04 requirements are detailed in a checklist published by the Stack Testing Accreditation Council (STAC, <http://www.betterdata.org/>) that encompasses approximately 300 items, the fundamental requirements for conformance to the standard include:

- Documentation, addressing the checklist items, in the form of Quality Manual,
- Documentation that the processes, systems, and procedures set forth in the Quality Manual are in place and being followed,
- A requirement for a test plan or test protocol for each test program, and
- A requirement for a "qualified individual" to be on-site and oversee test projects. In summary, a qualified individual will have participated in at least 10 tests employing the methods for which they are qualified (or completed at least one year of general emissions testing experience) and passed a qualification exam. External exams must be used if available. Otherwise internal exams must be used. Note that an individual qualifying by internal exam must re-qualify by external examination within three years of the date of initial availability of the external exam.

The importance and interrelationship of these items are reflected in three key provisions of the standard:

- Section 4.1, last sentence: "The quality manual and its implementation (including test protocols, reports, and personnel testing) shall provide the sole basis for determining conformance to this standard."
- Section 8.3.3.3: "[The Qualified Individual shall] Sign a statement, to be kept on file with the AETB, agreeing that all test projects conducted under his/her supervision will conform to the AETB's quality manual and to this practice [ASTM D 7036-04] in all respects."
- Section 12.3. "A site-specific test plan (protocol) shall be used for each test project."

EPA has identified AETB submittal information that it believes would reflect the presence of a quality management system that conforms to ASTM D 7036-04. The information is divided into two categories as described below:

Items the Source Must Request from the AETB

1. Certification that as of the time of testing the AETB is operating in conformance with ASTM D 7036-04.
2. The name, telephone number and email address of the AETB.
3. The name of each Qualified Individual on site.

4. For the reference methods performed by the Qualified Individual, the date that the Qualified Individual took and passed the exam.
5. The name and email address of each qualification exam provider.

Items that EPA suggests that the Source may find useful to request from the AETB:

1. The AETB's Quality Manual (note that the final rule allows the AETB to declare the Quality Manual "confidential business information").
2. Results of any internal audits performed during the preceding 12 months.
3. Performance data, as defined in ASTM D 7036-04 and collected by the AETB, including corrective actions implemented, during the 12-month period through the previous calendar quarter.
4. Training records for all on-site technical personnel for the 12-month period through the previous calendar quarter.

Although ASTM D 7036-04 stresses the importance of a test plan or test protocol for each test, EPA has not identified this as a submittal requirement; however, a test plan is a requirement of ASTM D 7036-04 and conforming AETBs must prepare them.

AETBs may satisfy the certification requirement by providing a certificate of accreditation or interim accreditation from an accrediting organization or they may self-certify with a signed statement from AETB management. Importantly, EPA allows an AETB to limit its scope of ASTM D 7036-04 conformance to Part 75 test programs.

Sources that encounter problems with AETB submittals can report the problems to EPA. If EPA agrees the AETB's submittal is incomplete or inaccurate, EPA will provide the AETB a description of submittal deficiencies to be remedied. The AETB will have 30 days to satisfactorily respond to the identified issues. If the AETB does not respond satisfactorily, EPA may list the "offending AETB" on EPA Web sites.

We have seen minimum competency requirements for AETBs wax and wane over the past few years. Although this rule still includes provisions that allow for discontent, it does address many of the concerns that AETBs and sources have raised since it was initially promulgated in 2008 (1/24/2008, FR 73, No. 16, pp. 4311-4317), stayed later that year (11/4/2008, FR 73, No. 214, pp. 65554-65556), and then proposed in 2010 (6/11/2010, FR 75, No. 112, pp. 33392-33420). While regulatory uncertainty seems to be the only certainty in recent years, this version of the minimum competency rule looks like it might stick.