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SUBCHAPTER G—NOISE ABATEMENT PROGRAMS

PART 201—NOISE EMISSION STANDARDS FOR TRANSPORTATION EQUIPMENT; INTERSTATE RAIL CARRIERS

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AUTHORITY: Noise Control Act of 1972, sec. 17(a), 86 Stat. 1234 (42 U.S.C. 4916(a)).

SOURCE: 45 FR 1263, Jan. 4, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 201.1 Definitions.

As used in this part, all terms not defined herein shall have the meaning given them in the Act:

(a) *Act* means the Noise Control Act of 1972 (Pub. L. 92–574, 86 Stat. 1234).

(b) *Car Coupling Sound* means a sound which is heard and identified by the observer as that of car coupling impact, and that causes a sound level meter indicator (FAST) to register an increase of at least ten decibels above the level observed immediately before hearing the sound.

(c) *Carrier* means a common carrier by railroad, or partly by railroad and partly by water, within the continental United States, subject to the Interstate Commerce Act, as amended, excluding street, suburban, and interurban electric railways unless operated as a part of a general railroad system of transportation.

(d) *Classification of Railroads* means the division of railroad industry operating companies by the Interstate Commerce Commission into three categories. As of 1978, Class I railroads must have annual revenues of $50 million or greater, Class II railroads must have annual revenues of between $10 and $50 million, and Class III railroads must have less than $10 million in annual revenues.

(e) *Commercial Property* means any property that is normally accessible to the public and that is used for any of the purposes described in the following standard land use codes (reference *Standard Land Use Coding Manual*. U.S. DOT/FHWA, reprinted March 1977): 53–59, Retail Trade; 61–64, Finance, Insurance, Real Estate, Personal, Business and Repair Services; 652–659, Legal and other professional services; 671, 672, and 673 Governmental Services; 692 and 699, Welfare, Charitable and Other Miscellaneous Services; 712 and 719, Nature exhibitions and other Cultural Activities; 721, 723, and 729, Entertainment, Public and other Public Assembly; and

74–79, Recreational, Resort, Park and other Cultural Activities.

(f) *dB(A)* is an abbreviation meaning A-weighted sound level in decibels, reference: 20 micropascals.

(g) *Day-night Sound Level* means the 24-hour time of day weighted equivalent sound level, in decibels, for any continuous 24-hour period, obtained after addition of ten decibels to sound levels produced in the hours from 10 p.m. to 7 a.m. (2200–0700). It is abbreviated as L_{dn}.

(h) *Decibel* means the unit measure of sound level, abbreviated as dB.

(i) *Energy Average Level* means a quantity calculated by taking ten times the common logarithm of the arithmetic average of the antilogs of one-tenth of each of the levels being averaged. The levels may be of any consistent type, e.g. maximum sound levels, sound exposure levels, and day-night sound levels.

(j) *Energy Summation of Levels* means a quantity calculated by taking ten times the common logarithm of the sum of the antilogs of one-tenth of each of the levels being summed. The levels may be of any consistent type, e.g., day-night sound level or equivalent sound level.

(k) *Equivalent Sound Level* means the level, in decibels, of the mean-square A-weighted sound pressure during a stated time period, with reference to the square of the standard reference sound pressure of 20 micropascals. It is the level of the sound exposure divided by the time period and is abbreviated as L_{eq}.

(l) *Fast Meter Response* means that the ''fast'' response of the sound level meter shall be used. The fast dynamic response shall comply with the meter dynamic characteristics in paragraph 5.3 of the American National Standard Specification for Sound Level Meters. ANSI S1.4–1971. This publication is available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

(m) *Idle* means that condition where all engines capable of providing motive power to the locomotive are set at the lowest operating throttle position; and where all auxiliary non-motive power engines are not operating.

(n) *Interstate Commerce* means the commerce between any place in a State and any place in another State, or between places in the same State through another State, whether such commerce moves wholly by rail or partly by rail and partly by motor vehicle, express, or water. This definition of ''interstate commerce'' for purposes of this regulation is similar to the definition of ''interstate commerce'' in section 203(a) of the Interstate Commerce Act (49 U.S.C. 303(a)).

(o) *Load Cell* means a device external to the locomotive, of high electrical resistance, used in locomotive testing to simulate engine loading while the locomotive is stationary. (Electrical energy produced by the diesel generator is dissipated in the load cell resistors instead of the traction motors).

(p) *Locomotive* means for the purpose of this regulation, a self-propelled vehicle designed for and used on railroad tracks in the transport or rail cars, including self-propelled rail passenger vehicles.

(q) *Locomotive Load Cell Test Stand* means the load cell § 201.1(o) and associated structure, equipment, trackage and locomotive being tested.

(r) *Maximum Sound Level* means the greatest A-weighted sound level in decibels measured during the designated time interval or during the event, with either fast meter response § 201.1(l) or slow meter response § 201.1(ii) as specified. It is abbreviated as L_{max}.

(s) *Measurement Period* means a continuous period of time during which noise of railroad yard operations is assessed, the beginning and finishing times of which may be selected after completion of the measurements.

(t) *Rail Car* means a non-self-propelled vehicle designed for and used on railroad tracks.

(u) *Railroad* means all the roads in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease.

(v) *Receiving Property Measurement Location* means a location on receiving property that is on or beyond the railroad facility boundary and that meets the receiving property measurement location criteria of subpart C.

(w) *Receiving Property* means any residential or commercial property that receives the sound from railroad facility operations, but that is not owned or operated by a railroad; except that occupied residences located on property owned or controlled by the railroad are included in the definition of ''receiving property.'' For purposes of this definition railroad crew sleeping quarters located on property owned or controlled by the railroad are not considered as residences. If, subsequent to the publication date of these regulations, the use of any property that is currently not applicable to this regulation changes, and it is newly classified as either residential or commercial, it is not receiving property until four years have elapsed from the date of the actual change in use.

(x) *Residential Property* means any property that is used for any of the purposes described in the following standard land use codes (ref. *Standard Land Use Coding Manual*. U.S. DOT/FHWA Washington, DC, reprinted March 1977): 1, Residential: 651, Medical and other Health Services; 68, Educational Services; 691, Religious Activities; and 711, Cultural Activities.

(y) *Retarder (Active)* means a device or system for decelerating rolling rail cars and controlling the degree of deceleration on a car by car basis.

(z) *Retarder Sound* means a sound which is heard and identified by the observer as that of a retarder, and that causes a sound level meter indicator at fast meter response §201.1(l) to register an increase of at least ten decibels above the level observed immediately before hearing the sound.

(aa) *Sound Level* means the level, in decibels, measured by instrumentation which satisfies the requirements of American National Standard Specification for Sound Level Meters S1.4–1971 Type 1 (or S1A) or Type 2 if adjusted as shown in Table 1. This publication is available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018. For the purpose of these procedures the sound level is to be measured using the Aweighting of spectrum and either the FAST or SLOW dynamic averaging characteristics, as designated. It is abbreviated as L_A.

(bb) *Sound Exposure Level* means the level in decibels calculated as ten times the common logarithm of time integral of squared A-weighted sound pressure over a given time period or event divided by the square of the standard reference sound pressure of 20 micropascals and a reference duration of one second.

(cc) *Sound Pressure Level* (in stated frequency band) means the level, in decibels, calculated as 20 times the common logarithm of the ratio of a sound pressure to the reference sound pressure of 20 micropascals.

(dd) *Special Purpose Equipment* means maintenance-of-way equipment which may be located on or operated from rail cars including: Ballast cribbing machines, ballast regulators, conditioners and scarifiers, bolt machines, brush cutters, compactors, concrete mixers, cranes and derricks, earth boring machines, electric welding machines, grinders, grouters, pile drivers, rail heaters, rail layers, sandblasters, snow plows, spike drivers, sprayers and other types of such maintenance-of-way equipment.

(ee) *Special Track Work* means track other than normal tie and ballast bolted or welded rail or containing devices such as retarders or switching mechanisms.

(ff) *Statistical Sound Level* means the level in decibels that is exceeded in a stated percentage (x) of the duration of the measurement period. It is abbreviated as L_x.

(gg) *Switcher Locomotive* means any locomotive designated as a switcher by the builder or reported to the ICC as a switcher by the operator-owning-railroad and including, but not limited to, all locomotives of the builder/model designations listed in Appendix A to this subpart.

(hh) *Warning Device* means a sound emitting device used to alert and warn people of the presence of railroad equipment.

(ii) *Slow Meter Response* means that the slow response of the sound level meter shall be used. The slow dynamic response shall comply with the meter dynamic characteristics in paragraph 5.4 of the American National Standard Specification for Sound Level Meters. ANSI S1.4–1971. This publication is

available from the American National Standards Institute Inc., 1430 Broadway, New York, New York 10018.

[45 FR 1263, Jan. 4, 1980, as amended at 47 FR 14709, Apr. 6, 1982]

APPENDIX A TO SUBPART A OF PART 201—SWITCHER LOCOMOTIVES

[The following locomotives are considered to be ''switcher locomotives'' under the general definition of this regulation]

Type	Engine
General Electric Co.	
44 ton	8–D17000(2).
70 ton	6–CBFWL–6T.
95 ton	6–CBFWL–6T.
Electromotive Division (GMC)	
SC	8–201A.
NC	12–201A.
NC1	12–201A.
NC2	12–201A.
NW	12–201A.
NW1	12–201A.
NW1A	12–201A.
NW2	12–567.
NW2	12–567A.
NW3	12–567.
NW4	12–201A.
NW5	12–567B.
SW	8–201A/6–567.
SW1	6–567A/AC.
SW2	6–567.
SW3	6–567.
SW600	6–567C.
SW7	12–567A.
SW8	8–567B/BC.
SW900	8–567B.
SW9	12–567B/BC/C.
SW1200	12–567C.
SW1000	8–645E.
SW1001	8–645E.
SW1500	12–645E.
MP15	12–645E.
MP15AC	12–645E.
GMD1	12–567C.
RS1325	12–567C.
Transfer Switcher including ''Cow and Calf''	
T	12–201A(2)
TR	12–567(2)
TR1	16–567(2)
TR2	12–567A(2)
TR3	12–567(3)
TR4	12–567A(2)
TR5	12–567B(2)
TR6	8–567B(2)
Baldwin	
VO–660	6–VO.
DS–446	6–606NA.
DS4475	6–750.
S–8	6–606.
VO–1000	8–VO.
DS–4410	8–608NA.
DS–4410	6–606SC.
S–12	6–606A.
DRS–4410 [1]	6–606SC.
DRS–12 [1]	6–606A.

[The following locomotives are considered to be ''switcher locomotives'' under the general definition of this regulation]

Type	Engine
Fairbanks Morse	
H–10–44	6–OP.
H–12–44	6–OP.
H–12–44TS	6–OP.
H–12–46 [1]	6–OP.
Lima	
750 hp.	6–Hamilton.
800 hp.	6–Hamilton.
1000 hp.	8–Hamilton.
1200 hp.	8–Hamilton.
LRS [1]	8–Hamilton.
TL [1]	8–Hamilton (2).
ALCO and MLW	
S1	6–539NA.
S2	6–539T.
S3	6–539NA.
S4	6–539T.
S5	6–251.
S6	6–251A,B.
S7	6–539.
S10	6–539.
S11	6–539.
S12	6–539T.
S13	6–251C.
RSD–1	6–539.
RSC–13	6–539.
RSC–24	12–244
RS1	6–539T.
RS2 [1]	12–244.
RS3 [1]	12–244.
RS10 [1]	12–244.
RSC–2 [1]	12–244.
RS3 [1]	12–244.
RSD–4 [1]	12–244.
RSD–5 [1]	12–244.
T6	6–251B.
C–415 [1]	8–251F.
M–420TR	12–251.

[1] These models may be found assigned to road service as well as switcher service, but are considered switcher locomotives for the purpose of this regulation.

Subpart B—Interstate Rail Carrier Operations Standards

§ 201.10 Applicability.

The provisions of this subpart apply to all rail cars and all locomotives, except steam locomotives, operated or controlled by carriers as defined in subpart A of this part, except that § 201.11 (a), (b), and (c) do not apply to gas turbine-powered locomotives and to any locomotive type which cannot be connected by any standard method to a load cell. They apply to the total sound level emitted by rail cars and locomotives operated under the conditions specified, including the sound produced by refrigeration and air conditioning

units which are an integral element of such equipment. The provisions of this subpart apply to all active retarders, all car coupling operations, all switcher locomotives, and all load cell test stands. These provisions do not apply to the sound emitted by a warning device, such as a horn, whistle or bell when operated for the purpose of safety. They do not apply to special purpose equipment which may be located on or operated from railcars; they do not apply to street, suburban or interurban electric railways unless operated as a part of a general railroad system of transportation. When land use changes after the publication date of this regulation from some other use to residential or commercial land use around a specific railyard facility, this regulation will become effective four (4) years from the date of that land use change.

§ 201.11 Standard for locomotive operation under stationary conditions.

(a) Commencing December 31, 1976, no carrier subject to this regulation shall operate any locomotive to which this regulation is applicable, and of which manufacture is completed on or before December 31, 1979, which produces A-weighted sound levels in excess of 93 dB at any throttle setting except idle, when operated singly and when connected to a load cell, or in excess of 73 dB at idle when operated singly, and when measured in accordance with the criteria specified in Subpart C of this part with slow meter response at a point 30 meters (100 feet) from the geometric center of the locomotive along a line that is both perpendicular to the centerline of the track and originates at the locomotive geometric center.

(b) No carrier subject to this regulation shall operate any locomotive to which this regulation is applicable, and of which manufacture is completed after December 31, 1979, which produces A-weighted sound levels in excess of 87 dB at any throttle setting except idle, when operated singly and when connected to a load cell, or in excess of 70 dB at idle when operated singly, and when measured in accordance with the criteria specified in Subpart C of this part with slow meter response at a point 30 meters (100 feet) from the geometric center of the locomotive along a line that is both perpendicular to the centerline of the track and originates at the locomotive geometric center.

(c) Commencing January 15, 1984, no carrier subject to this regulation may operate any switcher locomotive to which this regulation is applicable, and of which manufacture is completed on or before December 31, 1979, which produces A-weighted sound levels in excess of 87 dB at any throttle setting except idle, when operated singly and when connected to a load cell, or in excess of 70 dB at idle, and when measured in accordance with the criteria specified in Subpart C of this part with slow meter response at a point 30 meters (100 feet) from the geometric center of the locomotive along a line that is both perpendicular to the centerline of the track and originates at the locomotive geometric center. All switcher locomotives that operate in a particular railroad facility are deemed to be in compliance with this standard if the A-weighted sound level from stationary switcher locomotives, singly or in combination with other stationary locomotives, does not exceed 65 dB when measured with fast meter response at any receiving property measurement location near that particular railyard facility and when measured in accordance wtih Subpart C of this regulation.

[45 FR 1263, Jan. 4, 1980; 47 FR 14709, Apr. 6, 1982]

§ 201.12 Standard for locomotive operation under moving conditions.

(a) Commencing December 31, 1976, no carrier subject to this regulation may operate any locomotive or combination of locomotives to which this regulation is applicable, and of which manufacture is completed on or before December 31, 1979, which produces A-weighted sound levels in excess of 96 dB when moving at any time or under any condition of grade, load, acceleration, or deceleration, when measured in accordance with the criteria specified in Subpart C of this regulation with fast meter response at 30 meters (100 feet) from the centerline of any section of track having less than a two (2) degree curve (or a radius of curvature greater than 873 meters (2865 feet)).

(b) No carrier subject to this regulation may operate any locomotive or combination of locomotives to which this regulation is applicable, and of which manufacture is completed after December 31, 1979, which produce A-weighted sound levels in excess of 90 dB when moving at any time or under any condition of grade, load, acceleration, or deceleration, when measured in accordance with the criteria specified in Subpart C of this part with fast meter response at 30 meters (100 feet) from the centerline of any section of track having less than a two (2) degree curve (or a radius of curvature greater than 873 meters (2,865 feet)).

(c) Commencing January 15, 1984, no carrier subject to this regulation may operate any switcher locomotive or a combination of switcher locomotives to which this regulation is applicable, and of which manufacture is completed on or before December 31, 1979 which produce A-weighted sound levels in excess of 90 dB when moving at any time or under any condition of grade, load, acceleration or deceleration, and when measured in accordance with the criteria in Subpart C of this part with fast meter response at 30 meters (100 feet) from the centerline of any section of track having less than a two (2) degree curve (or a radius of curvature greater than 873 meters (2,865 feet)). All switcher locomotives that operate in a particular railroad facility are deemed to be in compliance with this standard if the A-weighted sound level from stationary switcher locomotives, singly or in combination with other stationary locomotives, does not exceed 65 dB when measured with fast meter response at any receiving property measurement location near that particular railyard facility and when measured in accordance with Subpart C of this regulation.

[45 FR 1263, Jan. 4, 1980; 47 FR 14709, Apr. 6, 1982]

§ 201.13 Standard for rail car operations.

Effective December 31, 1976, no carrier subject to this regulation shall operate any rail car or combination of rail cars which while in motion produce sound levels in excess of (1) 88 dB(A) at rail car speeds up to and including 75 km/hr (45 mph); or (2) 93 dB(A) at rail car speeds greater than 72 km/hr (45 mph); when measured in accordance with the criteria specified in Subpart C of this part with fast meter response at 30 meters (100) feet from the centerline of any section of track which is free of special track work or bridges or trestles and which exhibits less than a two (2) degree curve (or a radius of curvature greater than 873 meters (2,865 feet)).

[45 FR 1263, Jan. 4, 1980; 47 FR 14709, Apr. 6, 1982]

§ 201.14 Standard for retarders.

Effective January 15, 1984, no carrier subject to this regulation shall operate retarders that exceed an adjusted average maximum A-weighted sound level of 83 dB at any receiving property measurement location, when measured with fast meter response in accordance with Subpart C of this part.

[45 FR 1263, Jan. 4, 1980; 47 FR 14709, Apr. 6, 1982]

§ 201.15 Standard for car coupling operations.

Effective January 15, 1984, no carrier subject to this regulation shall conduct car coupling operations that exceed an adjusted average maximum A-weighted sound level of 92 dB at any receiving property measurement location, when measured with fast meter response in accordance with Subpart C of this part, except, such coupling will be found in compliance with this standard and the carrier will be considered in compliance, if the railroad demonstrates that the standard is exceeded at the receiving property measurement locations (where the standard was previously exceeded) when cars representative of those found to exceed the standard are coupled at similar locations at coupling speeds of eight miles per hour or less.

[45 FR 1263, Jan. 4, 1980; 47 FR 14709, Apr. 6, 1982]

§ 201.16 Standard for locomotive load cell test stands.

(a) Effective January 15, 1984, no carrier subject to this reguation shall operate locomotive load cell test stands that exceed an A-weighted sound level

of 78 dB when measured with slow meter response in accordance with Subpart C of this part excluding § 201.23 (b) and (c), at a point 30 meters (100 feet) from the geometric center of the locomotive undergoing test, along a line that is both perpendicular to the centerline of the track and originates at the locomotive geometric center, and in the direction most nearly towards the closest receiving property measurement location. All locomotive load cell test stands in a particular railroad facility are in compliance with this standard if the A-weighted sound level from the load cell does not exceed 65 dB at any receiving property measurement location near that particular railyard facility and when measured with fast meter response in accordance with Subpart C of this regulation.

(b) If the conditions of any part of § 201.23(a) cannot be met at a specific load cell test stand site, then the A-weighted sound level from that specific load cell test stand must not exceed 65 dB when measured with fast meter response at a receiving property measurement location more than 120 meters (400 feet) from the geometric center of the locomotive being tested and in accordance with Subpart C of this regulation.

[45 FR 1263, Jan. 4, 1980; 47 FR 14709, Apr. 6, 1982]

Subpart C—Measurement Criteria

§ 201.20 Applicability and purpose.

The following criteria are applicable to and contain the necessary parameters and procedures for the measurement of the noise emission levels prescribed in the standards of Subpart B of this part. These criteria are specified in order to further clarify and define such standards. Equivalent measurement procedures may be used for establishing compliance with these regulations. Any equivalent measurement procedure, under any circumstance, shall not result in a more stringent noise control requirement than those specified in this regulation using the measurement procedures in Subpart C.

§ 201.21 Quantities measured.

The quantities to be measured under the test conditions described below, are the A-weighted sound levels for ''fast'' or ''slow'' meter response as defined in the American National Standard S1.4–1971.

§ 201.22 Measurement instrumentation.

(a) A sound level meter or alternate sound level measurement system that meets, as a minimum, all the requirements of American National Standard S1.4–1971[1] for a Type 1 (or S1A) instrument must be used with the ''fast'' or ''slow'' meter response chacteristic as specified in Subpart B. To insure Type 1 response, the manufacturer's instructions regarding mounting or orienting of the microphone, and positioning of the observer must be observed. In the event that a Type 1 (or S1A) instrument is not available for determining non-compliance with this regulation, the measurements may be made with a Type 2 (or S2A), but with the measured levels reduced by the following amount to account for possible measurement instrument errors pertaining to specific measurements and sources:

TABLE 1—SOUND LEVEL CORRECTIONS WHEN USING A TYPE 2 (OR S2A) INSTRUMENT

Measurement section	Source	Decibels[1]
201.24	Locomotives	0
	Rail cars	0
	Locomotive load cell test stand	0
201.26	Retarder	4
	Car coupling	2
201.27	Locomotive load cell test stand	0
	Stationary locomotive	0

[1] Amount of correction to be subtracted from measured level (dB).

(b) A microphone windscreen and an acoustic calibrator of the coupler type must be used as recommended by: (1) the manufacturer of the sound level meter or (2) the manufacturer of the microphone. The choice of both devices must be based on ensuring that Type 1 or 2 performance, as appropriate, is maintained for frequencies below 10,000 Hz.

[1] American National Standards are available from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

§ 201.23 Test site, weather conditions and background noise criteria for measurement at a 30 meter (100 feet) distance of the noise from locomotive and rail car operations and locomotive load cell test stands.

(a) The standard test site shall be such that the locomotive or train radiates sound into a free field over the ground plane. This condition may be considered fulfilled if the test site consists of an open space free of large, sound reflecting objects, such as barriers, hills, signboards, parked vehicles, locomotives or rail cars on adjacent tracks, bridges or buildings within the boundaries described by Figure 1, as well as conforms to the other requirements of this § 201.23.

(b) Within the complete test site, the top of at least one rail upon which the locomotive or train is located shall be visible (line of sight) from a position 1.2 meters (4 feet) above the ground at the microphone location, except as provided in paragraph (c) of this section.

(c) Ground cover such as vegetation, fenceposts, small trees, telephone poles, etc., shall be limited within the area in the test site between the vehicle under test and the measuring microphone such that 80 percent of the top of at least one rail along the entire test section of track be visible from a position 1.2 meters (4 feet) above the ground at the microphone location; except that no single obstruction shall account for more than 5 percent of the total allowable obstruction.

(d) The ground elevation at the microphone location shall be within plus 1.5 meters (5 feet) or minus 3.0 meters (10 feet) of the elevation of the top of the rail at the location in-line with the microphone.

(e) Within the test site, the track shall exhibit less than a 2 degree curve or a radius of curvature greater than 873 meters (2,865 feet). This paragraph shall not apply during a stationary test. The track shall be tie and ballast, free of special track work and bridges or trestles.

(f) Measurements shall not be made during precipitation.

(g) The maximum A-weighted fast response sound level observed at the test site immediately before and after the test shall be at least 10 dB(A) below the level measured during the test. For the locomotive and rail car pass-by tests this requirement applies before and after the train containing the rolling stock to be tested has passed. This background sound level measurement shall include the contribution from the operation of the load cell, if any, including load cell contribution during test.

(h) Noise measurements may only be made if the measured wind velocity is 19.3 km/hr (12 mph) or less. Gust wind measurements of up to 33.2 km/hr (20 mph) are allowed.

§ 201.24 Procedures for measurement at a 30 meter (100 feet) distance of the noise from locomotive and rail car operations and locomotive load cell test stands.

(a) *Microphone positions.* (1) The microphone shall be located within the test site according to the specifications given in the test procedures of paragraphs (b), (c) and (d) of this section, and shall be positioned 1.2 meters (4 feet) above the ground. It shall be oriented with respect to the source in accordance with the manufacturer's recommendations.

(2) The observer shall not stand between the microphone and the source whose sound level is being measured.

(b) *Stationary locomotive and locomotive load cell test stand tests.* (1) For stationary locomotive and locomotive load cell test stand tests, the microphone shall be positioned on a line perpendicular to the track at a point 30 meters (100 feet) from the track centerline at the longitudinal midpoint of the locomotive.

(2) The sound level meter shall be observed for thirty seconds after the test throttle setting is established to assure operating stability. The maximum sound level observed during that time shall be utilized for compliance purposes.

(3) Measurement of stationary locomotive and locomotive load cell test stand noise shall be made with all cooling fans operating.

(c) *Rail car pass-by test.* (1) For rail car pass-by tests, the microphone shall be positioned on a line perpendicular to the track 30 meters (100 feet) from the track centerline.

(2) Rail car noise measurements shall be made when the locomotives have passed a distance 152.4 meters (500 feet) or 10 rail cars beyond the point at the intersection of the track and the line which extends perpendicularly from the track to the microphone location, providing any other locomotives are also at least 152.4 meters (500 feet) or 10 rail car lengths away from the measuring point. The maximum sound level observed in this manner which exceeds the noise levels specified in § 201.13 shall be utilized for compliance purposes.

(3) Measurements shall be taken on reasonably well maintained tracks.

(4) Noise levels shall not be recorded if brake squeal is present during the test measurement.

(d) *Locomotive pass-by test.* (1) For locomotive pass-by tests, the microphone shall be positioned on a line perpendicular to the track at a point 30 meters (100 feet) from the track centerline.

(2) The noise level shall be measured as the locomotive approaches and passes by the microphone location. The maximum noise level observed during this period shall be utilized for compliance purposes.

(3) Measurements shall be taken on reasonably well maintained tracks.

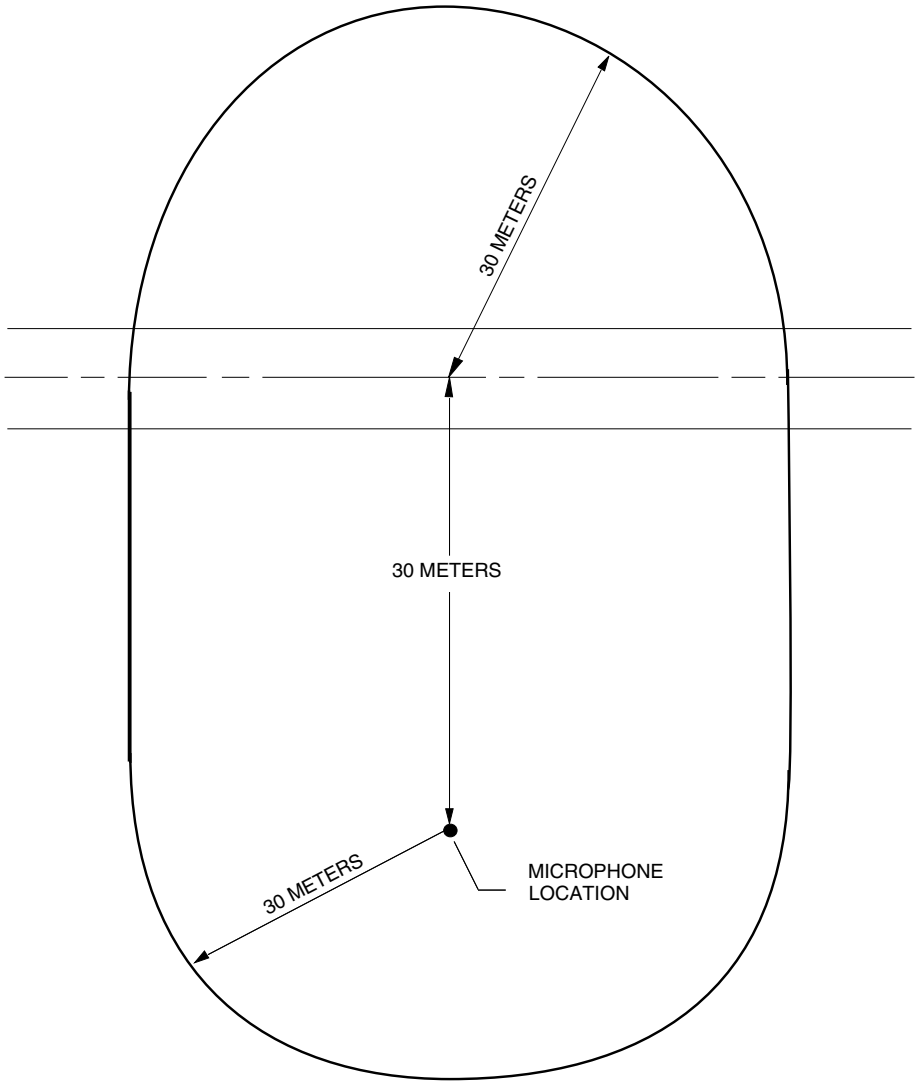

Figure 1. Test Site Clearance Requirement for Stationary Locomotive, Locomotive Pass-by, Rail Car Pass-by, and Locomotive Load Cell Test Stand Tests.

§ 201.25 Measurement location and weather conditions for measurement on receiving property of the noise of retarders, car coupling, locomotive load cell test stands, and stationary locomotives.

(a) Measurements must be conducted only at receiving property measurement locations.

(b) Measurement locations on receiving property must be selected such that no substantially vertical plane surface, other than a residential or commercial unit wall or facility boundary noise barrier, that exceeds 1.2 meters (4 feet) in height is located within 10 meters (33.3 feet) of the microphone and that no exterior wall of a residential or commercial structure is located within 2.0 meters (6.6 feet) of the microphone. If the residential structure is a farm home, measurements must be made 2.0 to 10.0 meters (6.6 to 33.3 feet) from any exterior wall.

(c) No measurement may be made when the average wind velocity during the period of measurement exceeds 19.3 km/hr (12 mph) or when the maximum wind gust velocity exceeds 32.2 km/hr (20 mph).

(d) No measurement may be taken when precipitation, e.g., rain, snow, sleet, or hail, is occurring.

§ 201.26 Procedures for the measurement on receiving property of retarder and car coupling noise.

(a) *Retarders*—(1) *Microphone*. The microphone must be located on the receiving property and positioned at a height between 1.2 and 1.5 meters (4 to 5 feet) above the ground. The microphone must be positioned with respect to the equipment in accordance with the manufacturers' recommendations for Type 1 or 2 performance as appropriate. No person may stand between the microphone and the equipment being measured or be otherwise positioned relative to the microphone at variance with the manufacturers' recommendations for Type 1 or 2 performance as appropriate.

(2) *Data*. The maximum A-weighted sound levels (FAST) for every retarder sound observed during the measurement period must be read from the indicator and recorded. At least 30 consecutive retarder sounds must be measured. The measurement period must be at least 60 minutes and not more than 240 minutes.

(3) *Adjusted average maximum A-weighted sound level*. The energy average level for the measured retarder sounds must be calculated to determine the value of the average maximum A-weighted sound level ($L_{ave\ max}$). This value is then adjusted by adding the adjustment (C) from Table 2 appropriate to the number of measurements divided by the duration of the measurement period (n/T), to obtain the adjusted average maximum A-weighted sound level ($L_{adj\ ave\ max}$) for retarders.

(b) *Car coupling impact*—(1) *Microphone*. The microphone must be located on the receiving property and at a distance of at least 30 meters (100 feet) from the centerline of the nearest track on which car coupling occurs and its sound is measured (that is, either the microphone is located 30 meters (100 feet) from the nearest track on which couplings occur, or all sounds resulting from car coupling impacts that occur on tracks with centerlines located less than 30 meters (100 feet) from the microphone are disregarded). The microphone shall be positioned at a height between 1.2 and 1.5 meters (4 and 5 feet) above the ground, and it must be positioned with respect to the equipment in accordance with the manufacturers' recommendations for Type 1 or 2 performance as appropriate. No person may stand between the microphone and the equipment being measured or be otherwise positioned relative to the microphone at variance with the manufacturers' recommendations for Type 1 or 2 performance as appropriate.

(2) *Data*. The maximum A-weighted sound levels (FAST) for every car coupling impact sound observed during the measurement period must be read from the indicator and recorded. At least 30 consecutive car coupling impact sounds must be measured. The measurement period must be at least 60 minutes and not more than 240 minutes, and must be reported.

TABLE 2—ADJUSTMENT TO $L_{ave\ max}$ TO OBTAIN $L_{adj\ ave\ max}$ FOR RETARDERS AND CAR COUPLING IMPACTS [1]

[n/T=number of measurements/measurement duration (min) C=Adjustment in dB]

0.111 to 0.141	−9
0.142 to 0.178	−8
0.179 to 0.224	−7
0.225 to 0.282	−6
0.283 to 0.355	−5
0.356 to 0.447	−4
0.448 to 0.562	−3
0.563 to 0.708	−2
0.709 to 0.891	−1
0.892 to 1.122	0
1.123 to 1.413	+1
1.414 to 1.778	+2
1.779 to 2.239	+3
2.240 to 2.818	+4
2.819 to 3.548	+5
3.549 to 4.467	+6

[1] $L_{adj\ ave\ max}=L_{ave\ max}$ +C in dB.

Values in Table 2 were calculated from [C=10 log n/T] with intervals selected to round off values to the nearest whole decibel. The table may be extended or interpolated to finer interval gradations by using this defining equation.

(3) *Adjusted average maximum A-weighted sound level.* The energy average level for the measured car coupling sounds is calculated to determine the average maximum sound level ($L_{ave\ max}$). It is then adjusted by adding the adjustment (C) from Table 2 appropriate to the number of measurements divided by the duration of the measurement period (n/T), to obtain the adjusted average maximum A-weighted sound level ($L_{adj\ ave\ max}$) for car coupling impacts.

§ 201.27 Procedures for: (1) Determining applicability of the locomotive load cell test stand standard and switcher locomotive standard by noise measurement on a receiving property; (2) measurement of locomotive load cell test stands more than 120 meters (400 feet) on a receiving property.

(a) *Microphone.* The microphone must be located at a receiving property measurement location and must be positioned at a height between 1.2 and 1.5 meters (4 and 5 feet) above the ground. Its position with respect to the equipment must be in accordance with the manufacturers' recommendations for Type 1 or 2 performance as appropriate. No person may stand between the microphone and the equipment being measured or be otherwise positioned relative to the microphone at variance to the manufacturers' recommendations for Type 1 or Type 2 performance as appropriate.

(b) *Data.* (1) When there is evidence that at least one of these two types of nearly steady state sound sources is affecting the noise environment, the following measurements must be made. The purpose of these measurements is to determine the A-weighted L_{90} statistical sound level, which is to be used as described in subparagraph (c) below to determine the applicability of the source standards. Before this determination can be made, the measured L_{90} is to be ''validated'' by comparing the measured L_{10} and L_{99} statistical sound levels. If the difference between these levels is sufficiently small (4 dB or less), the source(s) being measured is considered to be a nearly steady state source.

(2) Data shall be collected by measuring the instantaneous A-weighted sound level (FAST) at a rate of at least once each 10 seconds for a measurement period of at least 15 minutes and until 100 measurements are obtained. The data may be taken manually by direct reading of the indicator at 10 second intervals (±1 second), or by attaching a statistical analyzer, graphic level recorder, or other equivalent device to the sound level meter for a more continuous recording of the instantaneous sound level.

(3) The data shall be analyzed to determine the levels exceeded 99%, 90%, and 10% of the time, i.e., L_{99}, L_{90}, and L_{10}, respectively. The value of L_{90} is considered a valid measure of the A-weighted sound level for the standards in § 201.16 only if the difference between L_{10} and L_{99} has a value of 4 dB or less. If a measured value of L_{90} is not valid for this purpose, measurements may be taken over a longer period to attempt to improve the certainty of the measurement and to validate L_{90}. If L_{90} is valid and is less than the level in applicable standards for these source types, the sources are in compliance. If the measured value of L_{90} is valid and exceeds the initial 65 dB requirement for any of the source types that appear to be affecting the noise environments, the evaluation according to the following paragraph (c) is required.

(c) *Determination of applicability of the standard when L_{90} is validated and is in excess of one or more of the source standards.* The following procedures must be

used to determine the compliance of the various source types when L_{90} is validated and in excess of one or more of the applicable standards.

(1) The principal direction of the nearly steady-state sound at the measurement location must be determined, if possible, by listening to the sound and localizing its apparent source(s). If the observer is clearly convinced by this localization process that the sound emanates only from one or both of these two sources, then:

(i) If only stationary locomotive(s), including at least one switcher locomotive, are present, the value of L_{90} is the value of the A-weighted sound level to be used in determining if the 65 dB requirement is exceeded and compliance with the standards in §§ 201.11(c) and 201.12(c) is necessary.

(ii) If only a locomotive load cell test stand and the locomotive being tested are present and operating, the value of L_{90} is the value of the A-weighted sound level to be used in determining applicability of the standard in § 201.16.

(iii) If a locomotive load cell test stand(s) and the locomotive being tested are present and operating with stationary locomotive(s), including at least one switcher locomotive, the value L_{90} minus 3 dB is the value of the A-weighted sound level to be used in determining applicability of the standards in §§ 201.11(c), 201.12(c) and 201.16.

(iv) If a locomotive load cell test stand(s) and the locomotive being tested are present and operating, and a stationary locomotive(s) is present, and if the nearly steady-state sound level is observed to change by 10 dB, coincident with evidence of a change in operation of the locomotive load cell test stand but without apparent change in the location of stationary locomotives, another measurement of L_{90} must be made in accordance with paragraph (b) of this section. If this additional measure of L_{90} is validated and differs from the initial measure of L_{90} by an absolute value of 10 dB or more, then the higher value of L_{90} is the value of the A-weighted sound level to be used in determining applicability of the standard in § 201.16.

(2) In order to accomplish the comparison demonstration of paragraph (c)(3) of this section, when one or more source types is found not to be in compliance with the applicable standard(s), documentation of noise source information shall be necessary. This will include, but not be limited to, the approximate location of all sources of each source type present and the microphone position on a diagram of the particular railroad facility, and the distances between the microphone location and each of the sources must be estimated and reported. Additionally, if other rail or non-rail noise sources are detected, they must be identified and similarly reported.

(3) If it can be demonstrated that the validated L_{90} is less than 5 dB greater than any L_{90} measured at the same receiving property location when the source types that were operating during the initial measurement(s) are either turned off or moved, such that they can no longer be detected, the initial value(s) of L_{90} must not be used for determining applicability to the standards. This demonstration must be made at a time of day comparable to that of the initial measurements and when all other conditions are acoustically similar to those reported in paragraph (c)(2) of this section.

[45 FR 1263, Jan. 4, 1980; 47 FR 14709, Apr. 6, 1982]

§ 201.28 Testing by railroad to determine probable compliance with the standard.

(a) To determine whether it is probably complying with the regulation, and therefore whether it should institute noise abatement, a railroad may take measurements on its own property at locations that:

(1) Are between the source and receiving property

(2) Derive no greater benefit from shielding and other noise reduction features that does the receiving property; and

(3) Otherwise meet the requirements of § 201.25.

(b) Measurements made for this purpose should be in accordance with the appropriate procedures in § 201.26 or § 201.27. If the resulting level is less than the level stated in the standard, then there is probably compliance with the standard.

(c) This procedure is set forth to assist the railroad in devising its compliance plan, not as a substantive requirement of the regulation.

PART 202—MOTOR CARRIERS ENGAGED IN INTERSTATE COMMERCE

Subpart A—General Provisions

Sec.
202.10 Definitions.
202.11 Effective date.
202.12 Applicability.

Subpart B—Interstate Motor Carrier Operations Standards

202.20 Standards for highway operations.
202.21 Standard for operation under stationary test.
202.22 Visual exhaust system inspection.
202.23 Visual tire inspection.

AUTHORITY: Sec. 18, 36 Stat. 1249, 42 U.S.C. 4917(a).

Subpart A—General Provisions

§ 202.10 Definitions.

As used in this part, all terms not defined herein shall have the meaning given them in the Act:

(a) *Act* means the Noise Control Act of 1972 (Pub. L. 92–574, 86 Stat. 1234).

(b) *Common carrier by motor vehicle* means any person who holds himself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes.

(c) *Contract carrier by motor vehicle* means any person who engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce for compensation (other than transportation referred to in paragraph (b) of this section) under continuing contracts with one person or a limited number of persons either (1) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (2) for the furnishing of transportation services designed to meet the distinct need of each individual customer.

(d) *Cutout or by-pass or similar devices* means devices which vary the exhaust system gas flow so as to discharge the exhaust gas and acoustic energy to the atmosphere without passing through the entire length of the exhaust system, including all exhaust system sound attenuation components.

(e) *dB(A)* means the standard abbreviation for A-weighted sound level in decibels.

(f) *Exhaust system* means the system comprised of a combination of components which provides for enclosed flow of exhaust gas from engine parts to the atmosphere.

(g) *Fast meter response* means that the fast dynamic response of the sound level meter shall be used. The fast dynamic response shall comply with the meter dynamic characteristics in paragraph 5.3 of the American National Standard Specification for Sound Level Meters, ANSI S1. 4–1971. This publication is available from the American National Standards Institute, Inc., 1420 Broadway, New York, New York 10018.

(h) *Gross Vehicle Weight Rating* (GVWR) means the value specified by the manufacturer as the loaded weight of a single vehicle.

(i) *Gross Combination Weight Rating* (GCWR) means the value specified by the manufacturer as the loaded weight of a combination vehicle.

(j) *Highway* means the streets, roads, and public ways in any State.

(k) *Interstate commerce* means the commerce between any place in a State and any place in another State or between places in the same State through another State, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, water or air. This definition of ''interstate commerce'' for purposes of these regulations is the same as the definition of ''interstate commerce'' in section 203(a) of the Interstate Commerce Act. [49 U.S.C. 303(a)]

(l) *Motor carrier* means a common carrier by motor vehicle, a contract carrier by motor vehicle, or a private carrier of property by motor vehicle as those terms are defined by paragraphs (14), (15), and (17) of section 203(a) of

the Interstate Commerce Act [49 U.S.C. 303(a)].

(m) *Motor vehicle* means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails.

(n) *Muffler* means a device for abating the sound of escaping gases of an internal combustion engine.

(o) *Open site* means an area that is essentially free of large sound-reflecting objects, such as barriers, walls, board fences, signboards, parked vehicles, bridges, or buildings.

(p) *Private carrier of property by motor vehicle* means any person not included in terms ''common carrier by motor vehicle'' or ''contract carrier by motor vehicle'', who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for sale, lease, rent or bailment, or in furtherance of any commercial enterprise.

(q) *Sound level* means the quantity in decibles measured by a sound level meter satisfying the requirements of American National Standards Specification for Sound Level Meters S1.4–1971. This publication is available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018. Sound level is the frequency-weighted sound pressure level obtained with the standardized dynamic characteristic ''fast'' or ''slow'' and weighting A, B, or C; unless indicated otherwise, the A-weighting is understood.

[39 FR 38215, Oct. 29, 1974]

§ 202.11 Effective date.

The provisions of Subpart B shall become effective October 15, 1975, except that the provisions of § 202.20(b) and § 202.21(b) of Subpart B shall apply to motor vehicles manufactured during or after the 1986 model year.

[51 FR 852, Jan. 8, 1986]

§ 202.12 Applicability.

(a) The provisions of Subpart B apply to all motor carriers engaged in interstate commerce.

(b) The provisions of Subpart B apply only to those motor vehicles of such motor carriers which have a gross vehicle weight rating or gross combination weight rating in excess of 10,000 pounds, and only when such motor vehicles are operating under the conditions specified in Subpart B.

(c) Except as provided in paragraphs (d) and (e) of this section, the provisions of Subpart B apply to the total sound produced by such motor vehicles when operating under such conditions, including the sound produced by auxiliary equipment mounted on such motor vehicles.

(d) The provisions of Subpart B do not apply to auxiliary equipment which is normally operated only when the transporting vehicle is stationary or is moving at a speed of 5 miles per hour or less. Examples of such equipment include, but are not limited to, cranes, asphalt spreaders, ditch diggers, liquid or slurry pumps, air compressors, welders, and trash compactors.

(e) The provisions of Subpart B do not apply to warning devices, such as horns and sirens; or to emergency equipment and vehicles such as fire engines, ambulances, police vans, and rescue vans, when responding to emergency calls; or to snow plows when in operation.

(f) The provisions of § 202.20(a) and § 202.21(a) of Subpart B apply only to applicable motor vehicles manufactured prior to the 1986 model year.

(g) The provisions of § 202.20(b) and § 202.21(b) apply to all applicable motor vehicles manufactured during or after the 1986 model year.

[39 FR 38215, Oct. 29, 1974, as amended at 51 FR 852, Jan. 8, 1986]

Subpart B—Interstate Motor Carrier Operations Standards

§ 202.20 Standards for highway operations.

(a) No motor carrier subject to these regulations shall operate any motor vehicle of a type to which this regulation

is applicable which at any time or under any condition of highway grade, load, acceleration or deceleration generates a sound level in excess of 86dB(A) measured on an open site with fast meter response at 50 feet from the centerline of lane of travel on highways with speed limits of 35 MPH or less; or 90 dB(A) measured on an open site with fast meter response at 50 feet from the centerline of lane of travel on highways with speed limits of more than 35 MPH.

(b) No motor carrier subject to these regulations shall operate any motor vehicle of a type to which this regulation is applicable which at any time or under any condition of highway grade, load, acceleration or deceleration generates a sound level in excess of 83 dB(A) measured on an open site with fast meter response at 50 feet from the centerline of lane of travel on highways with speed limits of 35 MPH or less; or 87 dB(A) measured on an open site with fast meter response at 50 feet from the centerline of lane of travel on highways with speed limits of more than 35 MPH.

[39 FR 38215, Oct. 29, 1974, as amended at 51 FR 852, Jan. 8, 1986]

§ 202.21 Standard for operation under stationary test.

(a) No motor carrier subject to these regulations shall operate any motor vehicle of a type to which this regulation is applicable which generates a sound level in excess of 88 dB(A) measured on an open site with fast meter response at 50 feet from the longitudinal centerline of the vehicle, when its engine is accelerated from idle with wide open throttle to governed speed with the vehicle stationary, transmission in neutral, and clutch engaged. This section shall not apply to any vehicle which is not equipped with an engine speed governor.

(b) No motor carrier subject to these regulations shall operate any motor vehicle of a type to which this regulation is applicable which generates a sound level in excess of 85 dB(A) measured on an open site with fast meter response at 50 feet from the longitudinal centerline of the vehicle when its engine is accelerated from idle with wide open throttle to governed speed with the vehicle stationary, transmission in neutral, and clutch engaged. This paragraph shall not apply to any vehicle which is not equipped with an engine speed governor.

[39 FR 38215, Oct. 29, 1974, as amended at 51 FR 852, Jan. 8, 1986]

§ 202.22 Visual exhaust system inspection.

No motor carrier subject to these regulations shall operate any motor vehicle of a type to which this regulation is applicable unless the exhaust system of such vehicle is (a) free from defects which affect sound reduction; (b) equipped with a muffler or other noise dissipative device; and (c) not equipped with any cut-out, bypass, or similar device.

§ 202.23 Visual tire inspection.

No motor carrier subject to these regulations shall at any time operate any motor vehicle of a type to which this regulation is applicable on a tire or tires having a tread pattern which as originally manufactured, or as newly retreaded, is composed primarily or cavities in the tread (excluding sipes and local chunking) which are not vented by grooves to the tire shoulder or circumferentially to each other around the tire. This § 202.23 shall not apply to any motor vehicle which is demonstrated by the motor carrier which operates it to be in compliance with the noise emission standard specified for operations on highways with speed limits of more than 35 MPH in § 202.20 of this Subpart B, if the demonstration is conducted at the highway speed limit in effect at the inspection location, or, if speed is unlimited, the demonstration is conducted at a speed of 65 MPH.

[39 FR 38215, Oct. 29, 1974]

PART 203—LOW-NOISE-EMISSION PRODUCTS

Sec.

203.1 Definitions.
203.2 Application for certification.
203.3 Test procedures.
203.4 Low-noise-emission product determination.
203.5 Suitable substitute decision.

203.6 Contracts for low-noise-emission products.
203.7 Post-certification testing.
203.8 Recertification.

AUTHORITY: Sec. 15, Noise Control Act, 1972, Pub. L. 92–574, 86 Stat. 1234.

SOURCE: 39 FR 6670, Feb. 21, 1974, unless otherwise noted.

§ 203.1 Definitions.

(a) As used in this part, any term not defined herein shall have the meaning given it in the Noise Control Act of 1972 (Pub. L. 92–574).

(1) *Act* means the Noise Control Act of 1972 (Pub. L. 92–574).

(2) *Federal Government* includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia.

(3) *Administrator* means the Administrator of the Environmental Protection Agency.

(4) *Product* means any manufactured article or goods or component thereof; except that such term does not include—

(i) Any aircraft, aircraft engine, propellor or appliance, as such terms are defined in section 101 of the Federal Aviation Act of 1958; or

(ii)(*a*) Any military weapons or equipment which are designed for combat use; (*b*) any rockets or equipment which are designed for research, experimental or developmental work to be performed by the National Aeronautics and Space Administration; or (*c*) to the extent provided by regulations of the Administrator, any other machinery or equipment designed for use in experimental work done by or for the Federal Government.

(5) *Low-Noise-Emission Product Determination* means the Administrator's determination whether or not a product, for which a properly filed application has been received, meets the low-noise-emission product criterion.

(6) *Suitable Substitute Decision* means the Administrator's decision whether a product which the Administrator has determined to be a low-noise-emission product is a suitable substitute for a product or products presently being purchased by the Federal Government.

§ 203.2 Application for certification.

(a) Any person desiring certification of a class or model of product under section 15 of the act shall submit to the Administrator an application for certification. The application shall be completed upon such forms as the Administrator may deem appropriate and shall contain:

(1) A description of the product, including its power source, if any;

(2) Information pertaining to the test facility for the product establishing that the test facility meets all requirements which EPA may prescribe;

(3) All noise emission data from the test of the product;

(4) Data required by the Administrator relative, but not limited to, the following characteristics;

(i) Safety;

(ii) Performance Characteristics;

(iii) Reliability of product and reliability of low-noise-emission features;

(iv) Maintenance;

(v) Operating Costs;

(vi) Conformance with Federal Agency Purchase Specifications; and

(5) Such other information as the Administrator may request.

(b) Specific data requirements relative to paragraph (a)(4) of this section will be published separately from the low-noise-emission criterion for that product or class of products.

(c) The Administrator will, immediately upon receipt of the application for certification, publish in the FEDERAL REGISTER a notice of the receipt of the application. The notice will request written comments and documents from interested parties in support of, or in opposition to, certification of the class or model of product under consideration.

§ 203.3 Test procedures.

(a) The applicant shall test or cause his product to be tested in accordance with procedures contained in the regulations issued pursuant to section 6 of the act unless otherwise specified.

(b) The Administrator may conduct whatever investigation is necessary, including actual inspection of the product at a place designated by him.

§ 203.4 Low-noise-emission product determination.

(a) The Administrator will, within ninety (90) days after receipt of a properly filed application for certification, determine whether such product is a low-noise-emission product. In doing so, he will determine if the product:

(1) Is one for which a noise source emission standard has been promulgated under section 6 of the act;

(2) Emits levels of noise in amounts significantly below the levels specified in noise emission standard under regulations under section 6 of the act applicable to that product or class of products; and

(3) Is labeled in accordance with regulations issued pursuant to section 8 of the act.

(b) The Administrator will, upon making the determination whether a product is a low-noise-emission product, publish in the FEDERAL REGISTER notice of his determination, and the reasons therefor.

(c) The notice of determination that a product is a low-noise-emission product shall be revocable whenever a change in the low-noise-emission product criterion for what product occurs between determination and decision. Notice of any revocation will be published in the FEDERAL REGISTER, together with a statement of the reasons therefor.

(d) The notice of determination that a product is a low-noise-emission product shall expire upon publication in the FEDERAL REGISTER of the Administrator's notice of a decision that a product will not be certified.

§ 203.5 Suitable substitute decision.

(a) If the Administrator determines that a product is a low-noise-emission product, then within one hundred and eighty (180) days of such determination, in consultation with the appropriate Federal agencies, the Administrator will decide whether such product is a suitable substitute for any class or model or product being purchased by the Federal Government for use by its agencies. Such decision will be based upon the data obtained under § 203.2, the Administrator's evaluation of the data, comments of interested parties, and, as the Administrator deems appropriate, an actual inspection or test of the product at such places and times as the Administrator may designate.

(b) In order to compare the data for any class or model of product with any class or model of product presently being purchased by the Federal Government for which the applicant seeks to have its product substituted, the Administrator will enter into appropriate agreements with other Government agencies to gather the necessary data regarding such class or model.

(c) Immediately upon making the decision as to whether a product determined to be a low-noise-emission product is a suitable substitute for any product or class of products being purchased by the Federal Government for its use, the Administrator shall publish in the FEDERAL REGISTER notice of such decision and the reasons therefor.

(d) If the Administrator decides that the product is a suitable substitute for products being purchased by the Federal Government, he will issue a certificate that the product is a suitable substitute for a product or class of products presently being purchased by the Federal Government and will specify with particularity the product or class of products for which the certified product is a suitable substitute.

(e) Any certification made under this section shall be effective for a period of one year from date of issuance.

§ 203.6 Contracts for low-noise-emission products.

(a) Data relied upon by the Administrator in determining that a product is a certified low-noise-emission product will be incorporated by reference in any contract for the procurement of such product.

(b) A determination of price to the Government of any certified low-noise-emission product will be made by the Administrator of General Services in coordination with the appropriate Federal agencies in accordance with such procedures as he may prescribe and with subsection c(1) of section 15 of the Act.

§ 203.7 Post-certification testing.

The Administrator will, from time to time, as he deems appropriate, test the emissions of noise from certified low-

noise-emission products purchased by the Federal Government. If at any time he finds that the noise emission levels exceed the levels on which certification was based, the Administrator shall give the suppliers of such product written notice of this finding, publish such findings in the FEDERAL REGISTER and give the supplier an opportunity to make necessary repairs, adjustments or replacements. If no repairs, adjustments or replacements are made within a period to be set by the Administrator, he may order the supplier to show cause why the product involved should be eligible for recertification.

§ 203.8 Recertification.

(a) A product for which a certificate has been issued may be recertified for the following year upon reapplication to the Administrator for this purpose upon such forms as the Administrator may deem appropriate.

(b) If the applicant supplies information establishing that:

(1) The data previously submitted continues to describe his product for purpose of certification;

(2) The low-noise-emission product criterion and ''suitable substitute'' criteria are to be the same during the period recertification is desired; and

(3) No notice has been issued under § 203.7, then recertification will be made within 30 days after receipt of an appropriate recertification application by the Administrator.

PART 204—NOISE EMISSION STANDARDS FOR CONSTRUCTION EQUIPMENT

Subpart A—General Provisions

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204.1 General applicability.
204.2 Definitions.
204.3 Number and gender.
204.4 Inspection and monitoring.
204.5 Exemptions.
204.5–1 Testing exemption.
204.5–2 National security exemptions.
204.5–3 Export exemptions.

Subpart B—Portable Air Compressors

204.50 Applicability.
204.51 Definitions.
204.52 Portable air compressor noise emission standard.
204.54 Test procedures.
204.55 Requirements.
204.55–1 General standards.
204.55–2 Requirements.
204.55–3 Configuration identification.
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204.56 Testing by the Administrator.
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204.57–2 Test compressor sample selection.
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204.57–5 Reporting of test results.
204.57–6 Acceptance and rejection of batches.
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204.57–8 Continued testing.
204.57–9 Prohibition of distribution in commerce; manufacturer's remedy.
204.58 In-use requirements.
204.58–1 Warranty.
204.58–2 Tampering.
204.58–3 Instructions for maintenance, use, and repair.
204.59 Recall of non-complying compressors.
APPENDIX I TO PART 204

AUTHORITY: (42 U.S.C. 4905), 86 Stat. 1237.

SOURCE: 41 FR 2172, Jan. 14, 1976, unless otherwise noted.

Subpart A—General Provisions

§ 204.1 General applicability.

The provisions of this subpart are applicable to all products for which regulations have been published under this part and which are manufactured after the effective date of such regulations.

§ 204.2 Definitions.

(a) As used in this subpart, all terms not defined herein shall have the meaning given them in the Act.

(1) *Act* means the Noise Control Act of 1972 (Pub. L. 92–574, 86 Stat. 1234).

(2) *Administrator* means the Administrator of the Environmental Protection Agency or his authorized representative.

(3) *Agency* means the United States Environmental Protection Agency.

(4) *Export exemption* means an exemption from the prohibitions of section 10 (a) (1), (2), (3), and (4) of the Act, granted by statute under section 10(b)(2) of the Act for the purpose of exporting regulated products.

(5) *National security exemption* means an exemption from the prohibitions of section 10(a) (1), (2), (3), and (5) of the

Act, which may be granted under section 10(b)(1) of the Act for the purpose of national security.

(6) [Reserved]

(7) *Testing exemption* means an exemption from the prohibitions of section 10(a) (1), (2), (3), and (5) of the Act, which may be granted under section 10(b)(1) of the Act for the purpose of research, investigations, studies, demonstrations, or training, but not including national security where lease or sale of the exempted product is involved.

(8) *Warranty* means the warranty required by section 6(c)(1) of the Act.

(9) *Tampering* means those acts prohibited by section 10(a)(2) of the Act.

(10) *Maintenance instructions* means those instructions for maintenance, use, and repair, which the Administrator is authorized to require pursuant to section 6(c)(1) of the Act.

(11) *Type I Sound Level Meter* means a sound level meter which meets the Type I requirements of American National Standard Specification S1.4–1971 for sound level meters. This publication is available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

(12) *dBA* is the standard abbreviation for A-weighted sound level in decibels.

(13) *Reasonable assistance* means providing timely and unobstructed access to test products or products and records required by this part and opportunity for copying such records or testing such test products.

(14) *Slow meter response* means the meter ballistics of meter dynamic characteristics as specified by American National Standard S1.4–1971 or subsequent approved revisions.

(15) *Sound level* means the weighted sound pressure level measured by the use of a metering characteristic and weighing A, B, or C as specified in American National Standard Specification for Sound Level Meters S1.4–1971 or subsequent approved revision. The weighting employed must be specified, otherwise A-weighting is understood.

(16) *Sound pressure level* means, in decibels, 20 times the logarithm to the base ten of the ratio of a sound pressure to the reference sound pressure of 20 micropascals (20 micronewtons per square meter). In the absence of any modifier, the level is understood to be that of a root-mean-square pressure.

(17) *Product* means any construction equipment for which regulations have been promulgated under this part and includes ''test product.''

(18) *Test product* means any product that is required to be tested pursuant to this part.

[41 FR 2172, Jan. 14, 1976, as amended at 47 FR 57711, Dec. 28, 1982]

§ 204.3 Number and gender.

As used in this part, words in the singular shall be deemed to import the plural, and words in the masculine gender shall be deemed to import the feminine and vice versa, as the case may require.

§ 204.4 Inspection and monitoring.

(a) Any inspection or monitoring activities conducted under this section shall be for the purpose of determining (1) whether test products are being selected and prepared for testing in accordance with the provisions of these regulations, (2) whether test product testing is being conducted in accordance with these regulations, and (3) whether products being produced for distribution into commerce comply with these regulations.

(b) The Director, Noise Enforcement Division, may request that a manufacturer subject to this part admit an EPA Enforcement Officer during operating hours to any of the following:

(1) Any facility or site where any product to be distributed into commerce is manufactured, assembled, or stored;

(2) Any facility or site where any tests conducted pursuant to this part or any procedures or activities connected with such tests are or were performed; and

(3) Any facility or site where any test product is present.

(c)(1) An EPA Enforcement Officer, once admitted to a facility or site, will not be authorized to do more than:

(i) To inspect and monitor test product manufacture and assembly, selection, storage, preconditioning, noise emission testing, and maintenance, and to verify correlation or calibration of test equipment;

(ii) To inspect products prior to their distribution in commerce;

(iii) [Reserved]

(iv) To inspect and photograph any part or aspect of any such product and any component used in the assembly thereof that are reasonably related to the purpose of his entry;

(v) To obtain from those in charge of the facility or site such reasonable assistance as he may request to enable him to carry out any proper function listed in this section.

(2) [Reserved]

(3) The provisions of this section apply whether the facility or site is owned or controlled by the manufacturer or by one who acts for the manufacturer.

(d) For purposes of this section:

(1) An ''EPA Enforcement Officer'' is an employee of the EPA Office of Enforcement who displays upon arrival at a facility or site the credentials identifying him as such an employee and a letter signed by the Director, Noise Enforcement Division designating him to make the inspection.

(2) Where test product storage areas or facilities are concerned, ''operating hours'' shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (d)(2) of this section are concerned, ''operating hours'' shall mean all times during which product manufacture or assembly is in operation or all times during which product testing or maintenance, production, or compilation of records is taking place, or any other procedure or activity related to selective enforcement audit testing or to product manufacture or assembly is being carried out.

(e) The manufacturer shall admit to a facility or site an EPA Enforcement Officer who presents a warrant authorizing entry. In the absence of such warrant, entry to any facility or site under this section will be only upon the consent of the manufacturer.

(1) It is not a violation of this regulation or the Act for any person to refuse entry without a warrant.

(2) The Administrator or his designee may proceed ex parte to obtain a warrant whether or not the manufacturer has refused entry.

(42 U.S.C. 4905, 4912, 86 Stat. 1237–1239, 1244)

[41 FR 2172, Jan. 14, 1976, as amended at 43 FR 27989, June 28, 1978; 47 FR 57711, Dec. 28, 1982]

§ 204.5 Exemptions.

§ 204.5–1 Testing exemption.

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of sections 10(a) (1), (2), (3), and (5) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of section 11(d) of the Act any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

[47 FR 57711, Dec. 28, 1982]

§ 204.5–2 National security exemptions.

(a) A new product which is produced to conform with specifications developed by a national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of sections 10(a) (1), (2), (3), and (4) of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of section 11(d) of the Act, any national security exemption shall be void ab initio with respect to each new product, originally intended to be produced to conform with specifications developed by a national security agency but distributed in commerce for other uses.

(d) Any manufacturer or person subject to the liabilities of section 11(a) with respect to any product originally intended for a national security agency, but distributed in commerce for use in any State, may be excluded from the

application of section 11(a) with respect to such product based upon a showing that such manufacturer:

(1) Had no knowledge of such product being distributed in commerce for use in any state; and

(2) Made reasonable efforts to ensure that such products would not be distributed in commerce for use in any State. Such reasonable efforts would include investigation, prior dealings, contract provisions, etc.

[47 FR 57711, Dec. 28, 1982]

§ 204.5–3 Export exemptions.

(a) A new product intended solely for export, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of section 10(a), (1), (2), (3), and (4) of the Act.

(b) No request for an export exemption is required.

(c) For purposes of section 11(d) of the Noise Control Act, any export exemption under section 10(b)(2) shall be void ab initio with respect to each new product intended solely for export which is distributed in commerce for use in any state.

(d) The Administrator will not institute proceedings against any manufacturer pursuant to section 11(d)(1) of the Noise Control Act with respect to any product, originally intended for export, but distributed in commerce for use in any state, if it is demonstrated to the Administrator's satisfaction that:

(1) The manufacturer had no knowledge that such product would be distributed in commerce for use in any state; and

(2) The manufacturer made reasonable efforts to ensure that such product would not be distributed in commerce for use in any state. Such reasonable efforts would include consideration of prior dealings with any person which resulted in introduction into commerce of a product manufactured for export only, investigation of prior instances known to the manufacturer of introduction into commerce of a product manufactured for export only, and contract provisions which minimize the probability of introduction into commerce of a product manufactured for export only.

[41 FR 2172, Jan. 14, 1976, as amended at 42 FR 61454, Dec. 5, 1977. Redesignated at 47 FR 57711, Dec. 28, 1982]

Subpart B—Portable Air Compressors

§ 204.50 Applicability.

The provisions of this subpart shall apply to portable air compressors which are manufactured after the effective dates specified in § 204.52, and which are ''New Products'' as defined in the Act. These provisions apply only to portable air compressors with a rated capacity equal to or above 75 cubic feet per minute which deliver air at pressures greater than 50 psig. The provisions do not apply to the pneumatic tools or equipment that the portable air compressor is designed to power.

§ 204.51 Definitions.

(a) *Portable air compressor* or *compressor* means any wheel, skid, truck, or railroad car mounted, but not self-propelled, equipment designed to activate pneumatic tools. This consists of an air compressor (air end), and a reciprocating rotary or turbine engine rigidly connected in permanent alignment and mounted on a common frame. Also included are all cooling, lubricating, regulating, starting, and fuel systems, and all equipment necessary to constitute a complete, self-contained unit with a rated capacity of 75 cfm or greater which delivers air at pressures greater than 50 psig, but does not include any pneumatic tools themselves.

(b) *Maximum Rated Capacity* means that the portable air compressor, operating at the design full speed with the compressor on load, delivers its rated cfm output and pressure, as defined by the manufacturer.

(c) *Model year* means the manufacturer's annual production period which includes January 1 of such calendar year; Provided, that if the manufacturer has no annual production period, the term ''model year'' shall mean the calendar year.

(d) *Compressor configuration* means the basic classification unit of a manufacturer's product line and is comprised of compressor lines, models or series which are identical in all material respects with regard to the parameters listed in § 204.55–3.

(e) *Category* means a group of compressor configurations which are identical in all aspects with respect to the parameters listed in paragraph (c)(1)(i) of § 204.55–2.

(f) [Reserved]

(g) *Noise emission test* means a test conducted pursuant to the measurement methodology specified in § 204.54.

(h) *Inspection Criteria* means the rejection and acceptance numbers associated with a particular sampling plan.

(i) *Acceptable Quality Level (AQL)* means the maximum percentage of failing compressors that, for purposes of sampling inspection can be considered satisfactory as a process average.

(j) *Batch* means the collection of compressors of the same category or configuration, as designated by the Administrator in a test request, from which a batch sample is to be randomly drawn and inspected to determine conformance with the acceptability criteria.

(k) *Batch sample* means the collection of compressors that are drawn from a batch.

(l) *Batch sample size* means the number of compressors of the same category or configuration which is randomly drawn from the batch sample and which will receive emissions tests.

(m) *Test sample* means the collection of compressors from the same category or configuration which is randomly drawn from the batch sample and which will receive emissions tests.

(n) *Batch size* means the number, as designated by the Administrator in the test request, of compressors of the same category or configuration in a batch.

(o) *Test sample size* means the number of compressors of the same configuration in a test sample.

(p) *Acceptable of a batch* means that the number of non-complying compressors in the batch sample is less than or equal to the acceptance number as determined by the appropriate sampling plan.

(q) *Rejection of a batch* means that the number of non-complying compressors in the batch sample is greater than or equal to the rejection number as determined by the appropriate sampling plan.

(r) *Acceptance of a batch sequence* means that the number of rejected batches in the sequence is less than or equal to the sequence acceptable number as determined by the appropriate sampling plan.

(s) *Rejection of a batch sequence* means that the number of rejected batches in a sequence is greater than or equal to the sequence rejection number as determined by the appropriate sampling plan.

(t) *Shift* means the regular production work period for one group of workers.

(u) *Failing compressor* means that the measured noise emissions of the compressor, when measured in accordance with the applicable procedure, exceeds the applicable standard.

(v) *Acceptance of a compressor* means that the measured noise emissions of the compressor, when measured in accordance with the applicable procedure, conforms to the applicable standard.

(w) *Test Compressor* means a compressor used to demonstrate compliance with the applicable noise emissions standard.

(x) *Tampering* means those acts prohibited by section 10(a)(2) of the Act.

(Secs. 6 and 13, Noise Control Act, Pub. L. 92–574, 86 Stat. 1244; (42 U.S.C. 4912))

[41 FR 2172, Jan. 14, 1976, as amended at 42 FR 41635, Aug. 18, 1977; 47 FR 57711, Dec. 28, 1982]

§ 204.52 Portable air compressor noise emission standard.

(a) Effective January 1, 1978, portable air compressors with maximum rated capacity of less than or equal to 250 cubic feet per minute (cfm) shall not produce an average sound level in excess of 76 dBA when measured and evaluated according to the methodology provided by this regulation. Effective July 1, 1978, portable air compressors with maximum rated capacity greater than 250 cfm shall not produce an average sound level in excess of 76 dBA

when measured and evaluated according to the methodology provided by this regulation.

(b) *In-Use Standard.* [Reserved]

(c) *Low Noise Emission Product.* [Reserved]

§ 204.54 Test procedures.

(a) *General.* This section prescribes the conditions under which noise emission standard compliance Selective Enforcement Auditing or Testing by the Administrator must be conducted and the measurement procedures that must be used to measure the sound level and to calculate the average sound level of portable air compressors on which the test is conducted.

(b) *Test site description.* The location for measuring noise employed during noise compliance testing must consist of an open site above a hard reflecting plane. The reflecting plane must consist of a surface of sealed concrete or sealed asphalt and must extend one (1) meter beyond each microphone location. No reflecting surface, such as a building, signboard, hillside, etc., shall be located within 10 meters of a microphone location.

(c) *Measurement equipment.* The measurement equipment must be used during noise standard compliance testing and must consist of the following or its equivalent:

(1) A sound level meter and microphone system that conform to the Type I requirements of American National Standard (ANS) S1.4–1971, ''Specification for Sound Level Meters,'' and to the requirements of the International Electrotechnical Commission (IEC) Publication No. 179, ''Precision Sound Level Meters.''

(2) A windscreen must be employed with the microphone during all measurements of portable air compressor noise when the wind speed exceeds 11 km/hr. The windscreen shall not affect the A-weighted sound levels from the portable air compressor in excess of ±0.5 dB.

(3) The entire acoustical instrumentation system including the microphone and cable shall be calibrated before each test series and confirmed afterward. A sound level calibrator accurate to within ±0.5 dB shall be used. A calibration of the instrumentation shall be performed at least annually using the methodology of sufficient precision and accuracy to determine compliance with ANS S1.4–1971 and IEC 179. This calibration shall consist, at a minimum, of an overall frequency response calibration and an attenuator (gain control) calibration plus a measurement of dynamic range and instrument noise floor.

(4) An anemometer or other device accurate to within ±10 percent shall be used to measure wind velocity.

(5) An indicator accurate to within ±2 percent shall be used to measure portable air compressor engine speed.

(6) A gauge accurate to within ±5 percent shall be used to measure portable compressor air pressure.

(7) A metering device accurate to within ±10 percent shall be used to measure the portable air compressor compressed air volumetric flow rate.

(8) A barometer for measuring atmospheric pressure accurate to within ±5 percent.

(9) A thermometer for measuring temperature accurate to within ±1 degree.

(d) *Portable air compressor operation.* The portable air compressor must be operated at the design full speed with the compressor on load, delivering its rated flow and output pressure, during noise emission standard compliance testing. The air discharge shall be provided with a resistive loading such that no significant pressure drop or throttling occurs across the compressor discharge valve. The air discharge shall be piped clear of the test area or fed into an effective silencer. The sound pressure level due to the air discharge shall be at least 10 dB below the sound pressure level generated by the portable air compressor.

(e) *Test conditions.* Noise standard compliance testing must be carried out under the following conditions:

(1) No rain or other precipitation,

(2) No wind above 19 km/hr,

(3) No observer located within 1 meter, in any direction, of any microphone location, nor between the test unit and any microphone,

(4) Portable air compressor sound levels, at each microphone location, 10 dB or greater than the background sound level,

(5) The machine shall have been warmed up and shall be operating in a stable condition as for continuous service and at its maximum rated capacity. All cooling air vents in the engine/compressor enclosure, normally open during operation, shall be fully open during all sound level measurements. Service doors that should be closed during normal operation (at any and all ambient temperatures) shall be closed during all sound level measurements.

(f) *Microphone locations.* Five microphone locations must be employed to acquire portable air compressor sound levels to test for noise standard compliance. A microphone must be located 7 ±.1 meters from the right, left, front, and back sides and top of the test unit. The microphone position to the right, left, front, and back sides of the test unit must be located 1.5 ±.1 meters above the reflecting plane.

(g) *Data required.* The following data must be acquired during noise emission standard compliance testing:

(1) A-weighted sound level at one microphone location prior to operation of the test unit and at all microphone locations during test unit operations, as defined in paragraph (d) of this section.

(2) Portable air compressor engine speed.

(3) Portable air compressor compressed gas pressure.

(4) Portable air compressor flow rate.

(5) All other data contained in Appendix I, Table IV.

(h) *Calculation of average sound level.* The average A-weighted sound level from measurements at the specified microphone locations must be calculated by the following method:

$$L=10 \log (1/5[\text{Antilog } L_1/10+\text{Antilog } L_2/10+\text{Antilog } L_3/10+\text{ Antilog } L_4/10+\text{ Antilog } L_5/10])$$

Where:

L=The average A-weighted sound level (in decibels)

L_1=The A-weighted sound level (in decibels) at microphone position 1

L_2=The A-weighted sound level (in decibels) at microphone position 2

L_3=The A-weighted sound level (in decibels) at microphone position 3

L_4=The A-weighted sound level (in decibels) at microphone position 4

L_5=The A-weighted sound level (in decibels) at microphone position 5

(i) The Administrator may approve applications from manufacturers of portable air compressors for the approval of test procedures which differ from those contained in this part so long as the alternate procedures have been demonstrated to correlate with the prescribed procedure. To be acceptable, alternate testing procedures shall be such that the test results obtained will identify all those test units which would not comply with the noise emission limit prescribed in § 204.52 when tested in accordance with the procedures contained in § 204.54 (a) through (h). Tests conducted by manufacturers under approved alternate procedures may be accepted by the Administrator for all purposes.

(j) *Presentation of information.* All information required by this section may be recorded using the format recommended on the Noise Data Sheet shown in Appendix I, Table IV.

[41 FR 2172, Jan. 14, 1976, as amended at 41 FR 8347, Feb. 26, 1976; 47 FR 57711, Dec. 28, 1982]

§ 204.55 Requirements.

§ 204.55–1 General standards.

(a) Every new compressor manufactured for distribution in commerce in the United States which is subject to the standards prescribed in this subpart and not exempted in accordance with § 204.5:

(1) Shall be labeled in accordance with the requirements of § 204.55–4.

(2) Shall conform to the applicable noise emission standard established in § 204.52

(b) [Reserved]

[41 FR 2172, Jan. 14, 1976, as amended at 47 FR 57711, Dec. 28, 1982]

§ 204.55–2 Requirements.

(a)(1) Prior to distribution in commerce, compressors of a specific configuration must verify such configurations in accordance with this subpart.

(2) [Reserved]

(3) At any time with respect to a configuration under this subpart, the Administrator may require that the manufacturer ship test compressors to an

EPA test facility in order for the Administrator to perform the tests required for production verification.

(b) The requirements for purposes of testing by the Administrator and Selective Enforcement Auditing consist of:

(1) Testing in accordance with § 204.54 of a compressor selected in accordance with § 204.57–2; and

(2) Compliance of the test compressor with the applicable standards when tested in accordance with § 204.54.

(c)(1) In lieu of testing compressors of every configuration, as described in paragraph (b) of this section, the manufacturer may elect to verify the configuration based on representative testing, the requirements of which consist of:

(i) Grouping configurations into a category where each category will be determined by a separate combination of at least the following parameters (a manufacturer may use more parameters):

(A) Engine type.

(*1*) Gasoline—two stroke cycle

(*2*) Gasoline—four stroke cycle

(*3*) Diesel—two stroke cycle

(*4*) Diesel—four stroke cycle

(*5*) Rotary—Wankel

(*6*) Turbine

(*7*) Other

(B) Engine manufacturer

(C) Compressor delivery rate (at rated pressure)

(ii) Identifying the configuration within each category which emits the highest sound level in dBA based on best technical judgment, emission test data, or both.

(iii) Testing in accordance with § 204.54 selected in accordance with § 204.57–2 which must be a compressor of the configuration which is identified pursuant to paragraph (c)(1)(iii) of this section as having the highest sound level (estimated or actual) within the category.

(iv) Compliance of the test compressor with applicable standards when tested in accordance with § 204.54.

(2) Where the requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within a category are considered represented by the tested compressor.

(3) Where the manufacturer tests a compressor configuration which has not been determined as having the highest sound level of a category, but all other requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within that category which are determined to have sound levels no greater than the tested compressor are considered to be represented by the tested compressor: However, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify according to the requirements of paragraph (b)(1) and/or (c)(1) of this section any configurations in the subject category which have a higher sound level than the compressor configuration tested.

(d) A manufacturer may elect for purposes of Testing by the Administrator and Selective Enforcement Auditing to use representative testing, pursuant to paragraph (c) of this section, all or part of his product line.

(e) The manufacturer may, at his option, proceed with any of the following alternatives with respect to any compressor determined not in compliance with applicable standards:

(1) In the case of representative testing, a new test compressor from another configuration must be selected according to the requirements of paragraph (c) of this section in order to verify the configurations represented by the non-compliant compressor.

(2) Modify the test compressor and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production compressors of the same configuration in the same manner as the test compressor before distribution into commerce.

(Secs. 6 and 13, Noise Control Act, Pub. L. 92–574, 86 Stat. 1244; (42 U.S.C. 4912); 42 U.S.C. 4905; 86 Stat. 1237 and secs. 6, 10, 11, 13, Pub. L. 92–574, 86 Stat. 1234 (42 U.S.C. 4905, 4909, 4910, 4912))

[41 FR 2172, Jan. 14, 1976, as amended at 42 FR 61455, Dec. 5, 1977; 47 FR 57711, Dec. 28, 1982; 49 FR 26738, June 29, 1984]

§ 204.55–3 Configuration identification.

(a) A separate compressor configuration shall be determined by each combination of the following parameters:

(1) The compressor type (screw, sliding vane, etc.).
(2) Number of compressor stages.
(3) Maximum pressure (psi).
(4) Air intake system of compressor:
(i) Number of filters;
(ii) Type of filters.
(5) The engine system:
(i) Number of cylinders and configuration (L–6, V–8, V–12);
(ii) Displacement;
(iii) Horsepower;
(iv) Full load rpm.
(6) Type cooling system, e.g., air cooled, water cooled.
(7) Fan:
(i) Diameter;
(ii) Maximum fan rpm.
(8) The compressor enclosure:
(i) Height, length, and width;
(ii) Acoustic material manufacturer, type, part number.
(9) The induction system (engine):
(i) Natural;
(ii) Turbocharged.
(10) The muffler:
(i) Manufacturer;
(ii) Manufacturer part number;
(iii) Quantity of mufflers used;
(11) Category parameters listed at § 204.55–2.

§ 204.55–4 Labeling.

(a)(1) The manufacturer of any compressor subject to the standards prescribed in § 204.52 shall, at the time of manufacture, affix a permanent, legible label, of the type and in the manner described below, containing the information hereinafter provided, to all such compressors to be distributed in commerce.

(2) The label shall be permanently attached, in a readily visible position, on the compressor enclosure.

(3) The label shall be affixed by the compressor manufacturer, who has verified such compressor, in such a manner that it cannot be removed without destroying or defacing the label, and shall not be affixed to any equipment that is easily detached from such compressor.

(4) Labels for compressors not manufactured solely for use outside the United States shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(i) The label heading: Compressor Noise Emission Control Information;

(ii) Full corporate name and trademark of manufacturer;

(iii) Date of manufacture, which may consist of a serial number or code in those instances where records are specified and maintained.

(iv) The statement:

This Compressor Conforms to U.S. E.P.A. Regulations for Noise Emissions Applicable to Portable Air Compressors. The following acts or the causing thereof by any person are prohibited by the Noise Control Act of 1972:

(A) The removal or rendering inoperative, other than for the purpose of maintenance, repair, or replacement, of any noise control device or element of design (listed in the owner's manual) incorporated into this compressor in compliance with the Noise Control Act;

(B) The use of this compressor after such device or element of design has been removed or rendered inoperative.

(b) Compressors manufactured solely for use outside the United States shall be clearly labeled ''For Export Only.''

(Secs. 6, 13, Pub. L. 92–574, (42 U.S.C. 4912); 42 U.S.C. 4905; 86 Stat. 1237 and secs. 6, 10, 11, 13, Pub. L. 92–574, 86 Stat. 1234 (42 U.S.C. 4905, 4909, 4910, 4912))

[41 FR 2172, Jan. 14, 1976, as amended at 42 FR 61455, Dec. 5, 1977. Redesignated at 47 FR 57712, Dec. 28, 1982, and amended at 49 FR 26738, June 29, 1984]

§ 204.56 Testing by the Administrator.

(a)(1) The Administrator may require that any compressor tested or scheduled to be tested pursuant to these regulations or any other untested compressors be submitted to him, at such place and time as he may designate, for the purpose of conducting tests in accordance with the test procedures described in § 204.54 to determine whether such compressors conform to applicable regulations.

(2) The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment of the type required by these regulations shall be made available by the manufacturer for test operations. The Administrator may conduct such tests with his own equipment, which shall be equal to or exceed the performance

specifications of the instrumentation or equipment specified by the Administrator in these regulations.

(b)(1) If, based on tests conducted by the Administrator or other relevant information, the Administrator determines that the test facility does not meet the requirements of § 204.54–1 (a) and (b) he will notify the manufacturer in writing of his determination and the reasons therefor.

(2) The manufacturer may at any time within 15 days after receipt of a notice issued under paragraph (b)(1) of this section request a hearing conducted in accordance with 5 U.S.C. 554 on the issue of whether his test facility was in conformance. Such notice will not take effect until 15 days after receipt by the manufacturer, or if a hearing is requested under this paragraph, until adjudication by the hearing examiner.

(3) After any notification issued under paragraph (b)(1) of this section has taken effect, no data thereafter derived from such test facility will be acceptable for purposes of this part.

(4) The manufacturer may request in writing that the Administrator reconsider this determination under paragraph (b)(1) of this section based on data or information which indicates that changes have been made to the test facility and such changes have resolved the reasons for disqualification.

(5) The Administrator will notify the manufacturer of his determination and an explanation of the reasons underlying it with regard to the requalification of the test facility within 10 working days after receipt of the manufacturer's request for reconsideration pursuant to paragraph (b)(4) of this section.

(Secs. 6, 13, Pub. L. 92–574 (42 U.S.C. 4912))

[41 FR 2172, Jan. 14, 1976, as amended at 42 FR 61455, Dec. 5, 1977]

§ 204.57 Selective enforcement auditing.

§ 204.57–1 Test request.

(a) The Administrator will request all testing under this subpart by means of a test request addressed to the manufacturer.

(b) [Reserved]

(c) The test request will specify the compressor category or configuration selected for testing, the batch from which sampling is to begin, for testing and the batch size, the manufacturer's plant or storage facility from which the compressors must be selected, and the time at which compressors must be selected. The test request will also provide for situations in which the selected configuration or category is unavailable for testing. The test request may include an alternative category or configuration selected for testing in the event that compressors of the first specified category or configuration are not available for testing because the compressors are not being manufactured at the specified plant and/or are not being manufactured during the specified time or not being stored at the specified plant or storage facility.

(d) Any manufacturer shall, upon receipt of the test request, select and test a batch sample of compressors from two consecutively produced batches of the compressor category or configurations specified in the test request in accordance with these regulations and the conditions specified in the test request.

(e)(1) Any testing conducted by the manufacturer pursuant to a test request shall be initiated within such period as is specified in the test request; Except, that such initiation may be delayed for increments of 24 hours or one business day where ambient test site weather conditions in any 24-hour period do not permit testing: *Provided*, That ambient test site weather conditions for that period are recorded.

(2) The manufacturer shall complete noise emission testing on a minimum of five compressors per day, unless otherwise provided for by the Administrator or unless ambient test site conditions only permit the testing of a lesser number: *Provided*, That ambient test site weather conditions for that period are recorded.

(3) The manufacturer will be allowed 24 hours to ship compressors from a batch sample from the assembly plant to the testing facility if the facility is not located at the plant or in close proximity to the plant; Except, that the Administrator may approve more

time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) The Administrator may issue an order to the manufacturer to cease to distribute into commerce compressors of a specified category or configuration being manufactured at a particular facility if:

(1) The manufacturer refuses to comply with the provisions of a test request issued by the Administrator pursuant to this section; or

(2) The manufacturer refuses to comply with any of the requirements of this section.

(g) A cease-to-distribute order shall not be issued under paragraph (f) of this section if such refusal is caused by conditions and circumstances outside the control of the manufacturer which render it impossible to comply with the provisions of a test request or any other requirements of this section. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(h) Any such order shall be issued only after a notice and opportunity for a hearing in accordance with section 554 of Title 5 of the United States Code.

(Secs. 6, 11 and 13, Noise Control Act, Pub. L. 92–574, 86 Stat. 1244; (42 U.S.C. 4910 and 4912))

[41 FR 2172, Jan. 14, 1976, as amended at 42 FR 41635, Aug. 18, 1977; 42 FR 61455, Dec. 5, 1977; 47 FR 57712, Dec. 28, 1982]

§ 204.57–2 Test compressor sample selection.

(a) Compressors comprising the batch sample which are required to be tested pursuant to a test request in accordance with this subpart will be randomly selected from a batch of compressors of the category or configuration specified in the test request. The random selection will be achieved by sequentially numbering all of the compressors in the batch and then using a table of random numbers to select the number of compressors, as specified in paragraph (c) of this section, based on the batch size designated by the Administrator in the test request. An alternative selection plan may be used by a manufacturer: *Provided*, That such a plan is approved by the Administrator.

(b) The Acceptable Quality Level is 10 percent. The appropriate sampling plans associated with the designated AQL are contained in Appendix I, Table II.

(c) The appropriate batch sample size will be determined by reference to Appendix I, Tables I and II. A code letter is obtained from Table I based on the batch size designated by the Administrator in a test request. The batch sample size will be equal to the maximum cumulative sample size as listed in Table II for the appropriate code letter obtained from Table I plus an additional ten percent rounded off to the next highest number.

(d) Individual compressors comprising the test sample will be randomly selected from the batch sample using the same random selection plan as in paragraph (a) of this section. Test sample size will be determined by entering Table II.

(e) The test compressor of the category or configuration selected for testing shall have been assembled by the manufacturer for distribution in commerce using the manufacturers normal production process.

(f) Unless otherwise indicated in the test request, the manufacturer will select the batch sample from the production batch next scheduled after receipt of the test request of the category or configuration specified in the test request.

(g) Unless otherwise indicated in the test request, the manufacturer shall select the compressors designated in the test request for testing.

(h) At their discretion, EPA Enforcement Officers, rather than the manufacturer, may select the compressors designated in the test request.

(i) The manufacturer will keep on hand all compressors in the batch sample until such time as the batch is accepted or rejected in accordance with § 204.57–6; Except, that compressors actually tested and found to be in conformance with these regulations need not be kept.

§ 204.57–3 Test compressor preparation.

(a) Prior to the official test, the test compressor selected in accordance with § 204.57–2 shall not be prepared, tested, modified, adjusted, or maintained in any manner unless such adjustments, preparations, modifications and/or tests are part of the manufacturer's prescribed manufacturing and inspection procedures and are documented in the manufacturer's internal compressor assembly and inspection procedures or unless such adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator. The manufacturer may perform adjustments, preparations, modifications and/or tests normally performed by a dealer to prepare the compressor for delivery to a customer or the adjustments, preparations, modifications and/or tests normally performed at the port-of-entry by the manufacturer to prepare the compressor for delivery to a dealer or customer.

(b) Equipment of fixtures necessary to conduct the test may be installed on the compressor: *Provided*, That such equipment of fixtures shall have no effect on the noise emissions of the compressor, as determined by the appropriate measurement methodology.

(c) In the event of compressor manfunction (i.e., failure to start, misfiring cylinder, etc.), the manufacturer may perform the maintenance necessary to enable the compressor to operate in a normal manner.

(d) No quality control, testing, assembly, or selection procedures shall be used on the completed test compressor or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other compressors of that category which will be distributed in commerce, unless such procedures are required or permitted under this subpart or are approved in advance by the Administrator.

[47 FR 57712, Dec. 28, 1982]

§ 204.57–4 Testing.

(a) The manufacturer shall conduct one valid test in accordance with the test procedures specified in § 204.54 for each compressor selected for testing pursuant to this subpart.

(b) No maintenance will be performed on test compressors, except as provided for by § 204.57–3. In the event a compressor is unable to complete the emission test, the manufacturer may replace the compressor. Any replacement compressor will be a production compressor of the same configuration, and the replacement compressor will be randomly selected from the batch sample and will be subject to all the provisions of these regulations.

§ 204.57–5 Reporting of test results.

(a)(1) The manufacturer shall submit a copy of the test report for all testing conducted pursuant to § 204.57 at the conclusion of each twenty-four hour period during which testing is done.

(2) For each test conducted the manufacturer will provide the following information:

(i) Configuration and category identification, where applicable.

(ii) Year, make, assembly date, and model of compressor.

(iii) Compressor serial number.

(iv) Test results by serial numbers

(3) The first test report for each batch sample will contain a listing of all serial numbers in that batch.

(b) In the case where an EPA Enforcement Officer is present during testing required by this subpart, the written reports requested in paragraph (a) of this section may be given directly to the Enforcement Officer.

(c) Within five days after completion of testing of all compressors in a batch sample, the manufacturer shall submit to the Administrator a final report which will include the information required by the test request in the format as stipulated, in addition to the following:

(1) The name, location, and description of the manufacturer's noise test facilities which meet the specifications of § 204.54 and were utilized to conduct

testing reported pursuant to this section; except, that a test facility that has been described in a previous submission under this subpart need not be described again but must be identified as such.

(2) A description of the random compressor selection method used, referencing any tables of random numbers that were used, and the name of the person in charge of the random number selection.

(3) The following information for each test conducted:

(i) The completed data sheet required by § 204.54 for all noise emission tests including, for each invalid test, the reason for invalidation.

(ii) A complete description of any modification, repair, preparation, maintenance, and/or testing which was performed on the test compressor and will not be performed on all other production compressors.

(iii) The reason for the replacement, where a replacement compressor was authorized by the Administrator, and, if any, the test results for replaced compressors.

(4) The following statement and endorsement:

This report is submitted pursuant to section 6 and section 13 of the Noise Control Act of 1972. All testing for which data is reported herein was conducted in strict conformance with applicable regulations under 40 CFR Part 204 *et seq*. All the data reported herein are a true and accurate representation of such testing. All other information reported herein is, to the best of (company) knowledge true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder.

(authorized representative)

(d) All information required to be forwarded to the Administrator pursuant to this section shall be addressed to Director, Noise Enforcement Division (EN–387), U.S. Environmental Protection Agency, Washington, DC 20460.

(Secs. 6 and 13, Noise Control Act, Pub. L. 92–574, 86 Stat. 1244 (42 U.S.C. 4912))

[41 FR 2172, Jan. 14, 1976, as amended at 42 FR 41635, Aug. 18, 1977; 43 FR 38705, Aug. 30, 1978]

§ 204.57–6 Acceptance and rejection of batches.

(a) A failing compressor is one whose measured sound level is in excess of the applicable noise emission standard.

(b) The batch from which a batch sample is selected will be accepted or rejected based upon the number of failing compressors in the batch sample. A sufficient number of test samples will be drawn from the batch sample until the cumulative number of failing compressors is less than or equal to the acceptance number or greater than or equal to the rejection number appropriate for the cumulative number of compressors tested. The acceptance and rejection numbers listed in Appendix I, Table II at the appropriate code letter obtained according to § 204.57–2 will be used in determining whether the acceptance or rejection of a batch has occurred.

(c) Acceptance or rejection of a batch takes place when a decision is made on the last compressor required to make a decision under paragraph (b) of this section.

§ 204.57–7 Acceptance and rejection of batch sequence.

(a) The manufacturer will continue to inspect consecutive batches until the batch sequence is accepted or rejected. The batch sequence will be accepted or rejected based upon the number of rejected batches. A sufficient number of consecutive batches will be inspected until the cumulative number of rejected batches is less than or equal to the sequence acceptance number or greater than or equal to the sequence rejection number appropriate for the cumulative number of batches inspected. The acceptance and rejection numbers listed in Appendix I, Table III at the appropriate code letter obtained according to § 204.57–2 will be used in determining whether the acceptance or rejection of a batch sequence has occurred.

(b) Acceptance or rejection of a batch sequence takes places when the decision is made on the last compressor required to make a decision under paragraph (a) of this section.

(c) If the batch sequence is accepted, the manufacturer will not be required to perform any additional testing on

compressors from subsequent batches pursuant to the initiating test request.

(d) The Administrator may terminate testing earlier than required in paragraph (b) of this section based on a request by the manufacturer accompanied by voluntary cessation of distribution in commerce, from all plants, of compressors from the configuration in question: *Provided*, That once production is reinitiated, the manufacturer must take the action described in § 204.57–9 (a)(1) and (a)(2) prior to distribution in commerce of any compressors from any plant of the compressor category or configuration in question.

§ 204.57–8 Continued testing.

(a) If a batch sequence is rejected in accordance with paragraph (b) of § 204.57–7, the Administrator may require that any or all compressors of that category, configuration or subgroup thereof produced at that plant be tested before distribution in commerce.

(b) The Administrator will notify the manufacturer in writing of his intent to require such continued testing of compressors pursuant to paragraph (a) of this section.

(c) The manufacturer may request a hearing on the issues of whether the selective enforcement audit was conducted properly; whether the criteria for batch sequence rejection in § 204.57–7 have been met; and, the appropriateness or scope of a continued testing order. In the event that a hearing is requested, the hearing shall begin no later than 15 days after the date on which the Administrator received the hearing request. Neither the request for a hearing nor the fact that a hearing is in progress shall affect the responsibility of the manufacturer to commence and continue testing required by the Administrator pursuant to paragraph (a) of this section.

(d) Any tested compressor which demonstrates conformance with the applicable standards may be distributed into commerce.

(e) Any knowing distribution into commerce of a compressor which does not comply with the applicable standards is a prohibited act.

(Sec. 6, 13, Pub. L. 92–574 (42 U.S.C. 4912))

[41 FR 2172, Jan. 14, 1976, as amended at 42 FR 61455, Dec. 5, 1977; 44 FR 54295, Sept. 19, 1979]

§ 204.57–9 Prohibition of distribution in commerce; manufacturer's remedy.

(a) The Administrator will permit the cessation of continued testing under § 204.57–8 once the manufacturer has taken the following actions:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the compressors, describes the problem, and describes the proposed quality control and/or quality assurance remedies to be taken by the manufacturer to correct the problem or follows the requirements for an engineering change. Such requirements include the following:

(i) Any change to a configuration with respect to any of the parameters stated in § 204.55–3 shall constitute the addition of a new and separate configuration or category to the manufacturer's product line.

(ii) When a manufacturer introduces a new category or configuration to his product line, he shall proceed in accordance with § 204.55–2.

(iii) If the configuration to be added can be grouped within a verified category and the new configuration is estimated to have a lower sound level than a previously verified configuration with the same category, the configuration shall be considered verified.

(2) Demonstrates that the specified compressor category, configuration or subgroup thereof has passed a retest conducted in accordance with § 204.57 and the conditions specified in the initial test request.

(3) The manufacturer may begin testing under paragraph (a)(2) of this section, upon submitting such report, and may cease continued testing upon making the demonstration required by paragraph (a)(2) of this section: *Provided*, That the Administrator may require resumption of contined testing if he determines that the manufacturer has not satisfied the requirements of paragraphs (a) (1) and (2) of this section.

(4) In lieu of paragraphs (a) (1) and (2) of this section, the Administrator will permit the cessation of continued testing under § 204.57–8 with respect to any subgroup of a nonconforming category or configuration if the manufacturer demonstrates to the satisfaction of the Administrator that such subgroup does not exhibit the cause of the nonconformity of such category or configuration.

(b) Any compressor failing the prescribed noise emission tests conducted pursuant to this Subpart B may not be distributed in commerce until necessary adjustments or repairs have been made and the compressor passes a retest.

(c) No compressors of a rejected batch which are still in the hands of the manufacturer may be distributed in commerce unless the manufacturer has demonstrated to the satisfaction of the Administrator that such compressors do, in fact, conform to the regulations; except, that any compressor that has been tested and does, in fact, conform with these regulations may be distributed in commerce.

(Secs. 6, 10, 13, Pub. L. 92–574 (42 U.S.C. 4909 and 4912))

[41 FR 2172, Jan. 14, 1976, as amended at 42 FR 61455, Dec. 5, 1977; 47 FR 57712, Dec. 28, 1982]

§ 204.58 In-use requirements.

§ 204.58–1 Warranty.

(a) The portable air compressor manufacturer shall include in the owner's manual or in other information supplied to the ultimate purchaser, the following statement:

NOISE EMISSIONS WARRANTY

The manufacturer warrants to the ultimate purchaser and each subsequent purchaser that this air compressor was designed, built, and equipped to conform at the time of sale to the first retail purchaser, with all applicable U.S. E.P.A. noise control regulations.

This warranty is not limited to any particular part, component, or system of the air compressor. Defects in the design, assembly, or in any part, component, or system of the compressor which, at the time of sale to the first retail purchaser, caused noise emissions to exceed Federal standards are covered by this warranty for the life of the air compressor.

(b) [Reserved]

(Secs. 6 and 13, Noise Control Act, Pub. L. 92–574, 86 Stat. 1244 (42 U.S.C. 4912))

[41 FR 2172, Jan. 14, 1976, as amended at 47 FR 57712, Dec. 28, 1982]

§ 204.58–2 Tampering.

(a) For each configuration of air compressors covered by this part, the manufacturer shall develop a list of those acts which, in his judgment, might be done to the air compressor in use and which would constitute the removal or rendering inoperative of noise control devices or elements of design of the compressor.

(b) The manufacturer shall include in the owner's manual the following information:

(1) The statement:

TAMPERING WITH NOISE CONTROL SYSTEM PROHIBITED

Federal law prohibits the following acts or the causing thereof:

(1) The removal or rendering inoperative by any persons, other than for purposes of maintenance, repair, or replacement, of any devices or element of design incorporated into any new compressor for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use; or (2) the use of the compressor after such device or element of design has been removed or rendered inoperative by any person.

(2) The statement:

Among those acts included in the prohibition against tampering are the acts listed below.

Immediately following this statement, the manufacturer shall include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a proscribed act has been committed and it can be shown that such act resulted in no increase in the sound level of the compressor or that the compressor still meets the noise emission standard of § 204.52, such set will not constitute tampering.

(d) The provisions of this section are not intended to preclude any State or local jurisdiction from adopting and enforcing its own prohibitions against the removal or rendering inoperative of noise control systems on compressors subject to this part.

(Secs. 6 and 13, Noise Control Act, Pub. L. 92–574, 86 Stat. 1244 (42 U.S.C. 4912))

[41 FR 2172, Jan. 14, 1976, as amended at 47 FR 57713, Dec. 28, 1982]

§ 204.58–3 Instructions for maintenance, use, and repair.

(a)(1) The manufacturer shall provide to the ultimate purchaser of each portable air compressor covered by this part written instructions for the proper maintenance, use, and repair of the compressor in order to provide reasonable assurance of the elimination or minimization of noise emission degradation throughout the life of the compressor.

(2) The purpose of the instructions is to inform purchasers and mechanics of those acts necessary to reasonably assure that degradation of noise emission levels is eliminated or minimized during the life of the compressor. Manufacturers should prepare the instructions with this purpose in mind. The instructions should be clear and, to the extent practicable, written in nontechnical language.

(3) The instructions must not be used to secure an unfair competitive advantage. They should not restrict replacement equipment to original equipment or service to dealer service. Manufacturers who so restrict replacement equipment must make public any performance specifications on such equipment.

(b) For the purpose of encouraging proper maintenance, the manufacturer shall provide a record or log book which shall contain a performance schedule for all required noise emission control maintenance. Space shall be provided in this record book so that the purchaser can note what maintenance was done, by whom, where and when.

(Secs. 6, 13, Pub. L. 92–574 (42 U.S.C. 4912))

[41 FR 2172, Jan. 14, 1976, as amended at 47 FR 57713, Dec. 28, 1982]

§ 204.59 Recall of non-complying compressors.

(a) Pursuant to section 11(d)(1) of the Act, the Administrator may issue an order to the manufacturer to recall and repair or modify any compressor distributed in commerce not in compliance with this subpart.

(b) A recall order issued pursuant to this section shall be based upon a determination by the Administrator that compressors of a specified category or configuration have been distributed in commerce which do not conform to the regulations. Such determination may be based on:

(1) A technical analysis of the noise emission characteristics of the category or configuration in question; or

(2) Any other relevant information, including test data.

(c) For the purposes of this section, noise emissions may be measured by any test prescribed in § 204.54 for testing prior to sale or any other test which has been demonstrated to correlate with the prescribed test procedure.

(d) Any such order shall be issued only after notice and an opportunity for a hearing in accordance with section 554 of Title 5 of the United States Code.

(e) All costs, including labor and parts, associated with the recall and repair or modification of non-complying compressors under this section shall be borne by the manufacturer.

(f) This section shall not limit the discretion of the Administrator to take any other actions which are authorized by the Act.

(Secs. 6, 11, Pub. L. 92–574 (42 U.S.C. 4910))

[41 FR 2172, Jan. 14, 1976, as amended at 42 FR 61456, Dec. 5, 1977]

APPENDIX I TO PART 204

TABLE I—SAMPLE SIZE CODE LETTERS

Batch size	Code letter
4 to 8	A.
9 to 15	B.
16 to 25	C.
26 and larger	D.

TABLE II—SAMPLING PLANS FOR INSPECTING BATCHES

Sample size code letter	Test sample	Test sample size	Cumulative test sample size	Batch inspection criteria	
				Acceptance number	Rejection number
A	1st	4	4	0	1
B	1st	3	3	0	1
C	1st	3	3	0	2
	2d	3	6	1	2
D	1st	2	2	([1])	2
	2d	2	4	([1])	2
	3d	2	6	0	2
	4th	2	8	0	3
	5th	2	10	1	3
	6th	2	12	1	3
	7th	2	14	2	3

[1] Batch acceptance not permitted at this sample size.

TABLE III—BATCH SEQUENCE PLANS

Sample size code letter	Number batches	Cumulative number batches	Sequence inspection criteria	
			Acceptance number	Rejection number
A	2	2	1	([1])
	2	4	2	4
	2	6	3	5
	2	8	4	5
B	2	2	0	([1])
	2	4	1	4
	2	6	2	5
	2	8	3	5
	2	10	4	6
	2	12	5	6
C	2	2	([2])	2
	2	4	0	2
	2	6	0	3
	2	8	1	3
	2	10	2	4
	2	12	3	4
D	2	2	0	2
	2	4	1	3
	2	6	2	4
	2	8	3	4

[1] Batch sequence rejection not permitted for this number of batches.
[2] Batch sequence acceptance not permitted for this number of batches.

TABLE IV—RECOMMENDED FORMAT FOR PORTABLE AIR COMPRESSOR NOISE DATA SHEET

Test report number: ..... .
Subject:
Manufacturer: ..... Model: ..... Serial No.: .....
Rated speed: ..... Rpm: ..... Rated capacity: .... cfm (m^3/in).
Configuration identification: ..... Category identification: ....
Portable air compressor identification No.: ..... Build date: ....
Test conditions:
Manufacturer's test site identification and location: .....
Reflecting plane composition: .....
Operating speed as tested:
Beginning of test ..... rpm
End of test ..... rpm
Air pressure supplied: ..... psi (kg/cm^2) Ambient wind speed_____mph (km/hr).
Actual flow rate: ..... cfm (m^3/min.) Atmospheric pressure_____psi (kg/cm^2).
Temperature: ..... °F (°C)
Instrumentation:
Microphone Manufacturer: ..... Model No.: ..... Serial No.: .....
Sound Level Meter Manufacturer: ..... Model No.: ..... Serial No.: .....
Calibrator Manufacturer: ..... Model No.: ..... Serial No.: .....

TABLE IV—RECOMMENDED FORMAT FOR PORTABLE AIR COMPRESSOR NOISE DATA SHEET—Continued

Other and Manufacturer: ..... Model No.: ..... Serial No.: .....
Data:

Sound levels (decibels)	Background sound level at location 1 (decibels)	Location					
		1	2	3	4	5	Average sound level (decibels)
A-Weighted							

Tested by: ..... Date: ....
Reported by: ..... Date: ....
Supervisory personnel: ..... Title: ....
Title: ....

PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

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APPENDIX II TO SUBPART E—SAMPLING TABLES

AUTHORITY: Secs. 6, 10, 11, 13, Pub. L. 92–574, 86 Stat. 1234 (42 U.S.C. 4905, 4909, 4910, 4912).

SOURCE: 41 FR 15544, Apr. 13, 1976, unless otherwise noted.

Subpart A—General Provisions

§ 205.1 General applicability.

The provisions of this subpart are applicable to all products for which regulations have been published under this part and which are manufactured after the effective date of such regulations.

§ 205.2 Definitions.

(a) As used in this subpart, all terms not defined herein shall have the meaning given them in the Act.

(1) *Act* means the Noise Control Act of 1972 (Pub. L. 92–574, 86 Stat. 1234).

(2) *Administrator* means the Administrator of the Environmental Protection Agency or his authorized representative.

(3) *Agency* means the United States Environmental Protection Agency.

(4) *Export exemption* means an exemption from the prohibitions of section 10(a) (1), (2), (3), and (4) of the Act, granted by statute under section 10(b)(2) of the Act for the purpose of exporting regulated products.

(5) *National security exemption* means an exemption from the prohibitions of section 10(a) (1), (2), (3), and (5) of the Act, which may be granted under section 10(b)(1) of the Act for the purpose of national security.

(6) [Reserved]

(7) *Sound Level* means 20 times the logarithm to base 10 of the ratio of pressure of a sound to the reference pressure. The reference pressure is 20 micropascals (20 micronewtons per square meter). NOTE: Unless otherwise explicitly stated, it is to be understood that the sound pressure is the effective (rms) sound pressure, per American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

(8) *Sound Pressure Level* means in decibels, 20 times the logarithm to the base 10 of the ratio of a sound pressure to the reference sound pressure of 20 micropascals (20 micronewtons per square meter). In the absence of any modifier, the level is understood to be that of a root-mean-square pressure. The unit of any sound level is the decibel, having the unit symbol dB.

(9) *dB(A)* means the standard abbreviation for A-weighted sound levels in decibels.

(10) *Highway* means the streets, roads, and public ways in any State.

(11) *Fast Meter Response* means that the fast dynamic response of the sound level meter shall be used. The fast dynamic response shall comply with the meter dynamic characteristics in paragraph 5.3 of the American National Standard Specification for Sound Level Meters, ANSI SI.4–1971. This publication is available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

(12) *Person* means an individual, corporation, partnership, or association, and except as provided in sections 11(e) and 12(a) of the Act includes any officer, employee, department, agency or instrumentality of the United States, a State or any political subdivision of a State.

(13) *Reasonable assistance* means providing timely and unobstructed access to test products or products and records required by this part, and opportunity for copying such records or testing such test products.

(14) *Ultimate purchaser* means the first person who in good faith purchases a product for purposes other than resale.

(15) *New product* means (i) a product the equitable or legal title of which has never been transferred to an ultimate purchaser, or (ii) a product which is imported or offered for importation into the United States and which is manufactured after the effective date of a regulation under section 6 or 8 which would have been applicable to such product had it been manufactured in the United States.

(16) *Manufacturer* means any person engaged in the manufacturing or assembling of new products, or the importing of new products for resale, or who acts for and is controlled by any such person in connection with the distribution of such products.

(17) *Commerce* means trade, traffic, commerce, or transportation:

(i) Between a place in a State and any place outside thereof, or

(ii) Which affects trade, traffic, commerce, or transportation described in paragraph (a)(17)(i) of this section.

(18) *Distribute in commerce* means sell in, offer for sale in, or introduce or deliver for introduction into, commerce.

(19) *State* includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(20) *Federal Agency* means an executive agency (as defined in section 105 of title 5, United States Code) and includes the United States Postal Service.

(21) *Environmental noise* means the intensity, duration, and the character of sounds from all sources.

(22) *Warranty* means the warranty required by section 6(c)(1) of the Act.

(23) *Tampering* means those acts prohibited by section 10(a)(2) of the Act.

(24) *Maintenance instructions* or *instructions* means those instructions for maintenance, use, and repair, which the Administrator is authorized to require pursuant to section 6(c)(1) of the Act.

(25) *Type I Sound Level Meter* means a sound level meter which meets the Type I requirements of ANSI SI.4–1972 specification for sound level meters. This publication is available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

(26) *Testing exemption* means an exemption from the prohibitions of section 10(a) (1), (2), (3), and (5) of the Act, which may be granted under section 10(b)(1) of the Act for the purpose of research, investigations, studies, demonstrations, or training, but not including national security.

(27) *Product* means any transportation equipment for which regulations have been promulgated under this part and includes ''test product.''

(28) *Test product* means any product that is required to be tested pursuant to this part.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61457, Dec. 5, 1977]

§ 205.3 Number and gender.

As used in this part, words in the singular shall be deemed to import the plural, and words in the masculine gender shall be deemed to import the feminine and vice versa, as the case may require.

§ 205.4 Inspection and monitoring.

(a) Any inspection or monitoring activities conducted under this section shall be for the purpose of determining (1) whether test products are being selected and prepared for testing in accordance with the provisions of these regulations, (2) whether test product testing is being conducted in accordance with these regulations, and (3) whether products being produced for distribution into commerce comply with these regulations.

(b) The Director, Noise Enforcement Division, may request that a manufacturer subject to this part admit an EPA Enforcement Officer during operating hours to any of the following:

(1) Any facility or site where any product to be distributed into commerce is manufactured, assembled, or stored;

(2) Any facility or site where any tests conducted pursuant to this part or any procedures or activities connected with such tests are or were performed; and

(3) Any facility or site where any test product is present.

(c)(1) An EPA Enforcement Officer, once admitted to a facility or site, will not be authorized to do more than:

(i) To inspect and monitor test product manufacture and assembly, selection, storage, preconditioning, noise emission testing, and maintenance, and to verify correlation or calibration of test equipment;

(ii) To inspect products prior to their distribution in commerce:

(iii) To inspect and photograph any part or aspect of any such product and any component used in the assembly thereof that are reasonably related to the purpose of his entry.

(iv) [Reserved]

(v) To obtain from those in charge of the facility or site such reasonable assistance as he may request to enable him to carry out any proper function listed in this section.

(2) [Reserved]

(3) The provisions of this section apply whether the facility or site is owned or controlled by the manufacturer or by one who acts for the manufacturer.

(d) For purposes of this section:

(1) An ''EPA Enforcement Officer'' is an employee of the EPA Office of Enforcement who displays upon arrival at a facility or site the credentials identifying him as such an employee and a letter signed by the Director, Noise Enforcement Division designating him to make the inspection.

(2) Where test product storage areas or facilities are concerned, ''operating hours'' shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (d)(2) of this section are concerned, ''operating hours'' shall mean all times during which product manufacture or assembly is in operation or all times during which product testing and maintenance is taking place and/or production or compilation of records is taking place, or any other procedure or activity related to selective enforcement audit testing or product manufacture or assembly being carried out in a facility.

(e) The manufacturer shall admit to a facility or site an EPA Enforcement Officer who presents a warrant authorizing entry. In the absence of such warrant, entry to any facility or site under this section will be only upon the consent of the manufacturer.

(1) It is not a violation of this regulation or the Act for any person to refuse entry without a warrant.

(2) The Administrator or his designee may proceed ex parte to obtain a warrant whether or not the manufacturer has refused entry.

[41 FR 15544, Apr. 13, 1976, as amended at 43 FR 27990, June 28, 1978; 47 FR 57713, Dec. 28, 1982]

§ 205.5 Exemptions.

§ 205.5–1 Testing exemption.

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of section 10(a)(1), (2), (3), and (5) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of section 11(d) of the Act, any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

[47 FR 57713, Dec. 28, 1982]

§ 205.5–2 National security exemptions.

(a) A new product which is produced to conform with specifications developed by a national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of section 10(a)(1), (2), (3), and (5) of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of section 11(d) of the Act, any national security exemption shall be void ab initio with respect to each new product, originally intended to be produced to conform with specifications developed by a national security agency, but distributed in commerce for other uses.

(d) Any manufacturer or person subject to the liabilities of section 11(a) with respect to any product originally intended for a national security agency, but distributed in commerce for use in any State, may be excluded from the application of section 11(a) with respect to such product based upon a showing that such manufacturer:

(1) Had no knowledge of such product being distributed in commerce for use in any state; and

(2) Made reasonable effort to ensure that such products would not be distributed in commerce for use in any State. Such reasonable efforts would include investigation, prior dealings, contract provisions, etc.

[47 FR 57714, Dec. 28, 1982]

§ 205.5–3 Export exemptions.

(a) A new product intended solely for export, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of section 10(a), (1), (2), (3), and (4) of the Act.

(b) No request for an export exemption is required.

(c) For purposes of section 11(d) of the Noise Control Act, the Administrator may consider any export exemption under section 10(b)(2) as void ab initio with respect to each new product intended solely for export which is distributed in commerce for use in any State.

(d) In deciding whether to institute proceedings against a manufacturer pursuant to section 11(d)(1) of the Act with respect to any product originally intended solely for export but distributed in commerce for use in any state, the Administrator will consider:

(1) Whether the manufacturer had knowledge that such product would be distributed in commerce for use in any state; and

(2) Whether the manufacturer made reasonable efforts to ensure that such product would not be distributed in commerce for use in any state. Such reasonable efforts would include consideration of prior dealings with any person which resulted in introduction into commerce of a product manufactured for export only, investigation of prior instances known to the manufacturer of introduction into commerce of a product manufactured for export only, and contract provisions which minimize the probability of introduction into commerce of a product manufactured for export only.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61457, Dec. 5, 1977. Redesignated at 47 FR 57714, Dec. 28, 1982]

Subpart B—Medium and Heavy Trucks

§ 205.50 Applicability.

(a) Except as otherwise provided for in these regulations the provisions of this subpart apply to any vehicle which has a gross vehicle weight rating (GVWR) in excess of 10,000 pounds, which is capable of transportation of property on a highway or street and which meets the definition of the term ''new product'' in the Act.

(b) The provisions of the subpart do not apply to highway, city, and school buses or to special purpose equipment which may be located on or operated from vehicles. Tests performed on vehicles containing such equipment may be carried out with the special purpose equipment in nonoperating condition. For purposes of this regulation special purpose equipment includes, but is not limited to, construction equipment, snow plows, garbage compactors and refrigeration equipment.

§ 205.51 Definitions.

(a) As used in this subpart, all terms not defined herein shall have the meaning given them in the Act or in other subparts of this part.

(1) *Acceptable Quality Level* means the maximum percentage of failing vehicles that for purposes of sampling inspection, can be considered satisfactory as a process average.

(2) *Acceptance of a batch* means that the number of noncomplying vehicles in the batch sample is less than or

equal to the acceptance number as determined by the appropriate sampling plan.

(3) *Batch* means the collection of vehicles of the same category, configuration or subgroup thereof as designated by the Administrator in a test request, from which a batch sample is to be drawn, and inspected to determine conformance with the acceptability criteria.

(4) *Batch size* means the number as designated by the Administrator in the test request of vehicles of the same category or configuration in a batch.

(5) *Batch sample* means the collection of vehicles of the same category, configuration or subgroup thereof which are drawn from a batch and from which test samples are drawn.

(6) *Batch sample size* means the number of vehicles of the same category or configuration in a batch sample.

(7) *Cab over axle* or *cab over engine* means the cab which contains the operator/passenger compartment is directly above the engine and front axle and the entire cab can be tilted forward to permit access to the engine compartment.

(8) *Category* means a group of vehicle configurations which are identical in all material aspects with respect to the parameters listed in § 205.55–2.

(9) *Configuration* means the basic classification unit of a manufacturer's product line and is comprised of all vehicle designs, models or series which are identical in material aspects with respect to the parameters listed in § 205.55–3.

(10) *Acceptance of a Batch sequence* means that the number of rejected batches in the sequence is less than or equal to the acceptance number as determined by the appropriate sampling plan.

(11) *Rejection of a Batch sequence* means that the number of rejected batches in a sequence is equal to or greater than the rejection number as determined by the appropriate sampling plan.

(12) *Capable of Transportation of Property on a street or highway* means that the vehicle:

(i) Is self propelled and is capable of transporting any material or fixed apparatus, or is capable of drawing a trailer or semi-trailer;

(ii) Is capable of maintaining a cruising speed of at least 25 mph over level, paved surface;

(iii) Is equipped or can readily be equipped with features customarily associated with practical street or highway use, such features including but not being limited to: A reverse gear and a differential, fifth wheel, cargo platform or cargo enclosure, and

(iv) Does not exhibit features which render its use on a street or highway impractical, or highly unlikely, such features including, but not being limited to, tracked road means, an inordinate size or features ordinarily associated with combat or tactical vehicles.

(13) *Exhaust System* means the system comprised of a combination of components which provides for enclosed flow of exhaust gas from engine exhaust port to the atmosphere.

(14) *Gross Combination Weight Rating* (GCWR) means the value specified by the manufacturer as the loaded weight of a combination vehicle.

(15) *Gross Vehicle Weight Rating* (GVWR) means the value specified by the manufacturer as the loaded weight of a single vehicle.

(16) *Inspection Criteria* means the rejection and acceptance numbers associated with a particular sampling plan.

(17) *Model year* means the manufacturer's annual production period which includes January 1 of such calendar year: Provided, that if the manufacturer has no annual production period, the term ''model year'' shall mean the calendar year.

(18) *Noise Control System* includes any vehicle part, component or system the primary purpose of which is to control or cause the reduction of noise emitted from a vehicle.

(19) *Noise emission test* means a test conducted pursuant to the measurement methodology specified in this subpart.

(20) [Reserved]

(21) *Rejection of a batch* means the number of noncomplying vehicles in the batch sample is greater than or equal to the rejection number as determined by the appropriate sampling plan.

(22) *Shift* means the regular production work period for one group of workers.

(23) *Test sample* means the collection of vehicles from the same category, configuration or subgroup thereof which is drawn from the batch sample and which will receive noise emissions tests.

(24) *Failing vehicle* means that the measured emissions of the vehicle, when measured in accordance with the applicable procedure, exceeds the applicable standard.

(25) *Acceptance of a vehicle* means that the measured emissions of the vehicle when measured in accordance with the applicable procedure, conforms to the applicable standard.

(26) *Tampering* means those acts prohibited by section 10(a)(2) of the Act.

(27) *Test sample size* means the number of vehicles of the same category or configuration in a test sample.

(28) *Test vehicle* means a vehicle selected and used to demonstrate compliance with the applicable noise emission standards.

(29) *Vehicle* means any motor vehicle, machine or tractor, which is propelled by mechanical power and capable of transportation of property on a street or highway and which has a gross vehicle weight rating in excess of 10,000 pounds and a partially or fully enclosed operator's compartment.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61456, 61458, Dec. 5, 1977; 47 FR 57714, Dec. 28, 1982]

§ 205.52 Vehicle noise emission standards.

(a) *Low Speed Noise Emission Standard.* Vehicles which are manufactured after the following effective dates shall be designed, built and equipped so that they will not produce sound emissions in excess of the levels indicated.

Effective date	Level
(i) January 1, 1979	83 dBA.
(ii) January 1, 1988	80 dBA.

(b) The standards set forth in paragraph (a) of this section refer to the sound emissions as measured in accordance with the procedures prescribed in § 205.54–1,2.

(c) Every manufacturer of a new motor vehicle subject to the standards prescribed in this paragraph shall, prior to taking any of the actions specified in section 10(a)(1) of the Act, comply with the other provisions of this subpart or Subpart A, as applicable.

(d) *In-Use Standard.* [Reserved]

(e) *Low Noise Emission Product.* [Reserved]

(Sec. 6, Pub. L. 92–574, 86 Stat. 1237 (42 U.S.C. 4905, 4906))

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61456, Dec. 5, 1977; 51 FR 852, Jan. 8, 1986]

§ 205.54 Test procedures.

The procedures described in this and subsequent sections will be the test program to determine the conformity of vehicles with the standards set forth in § 205.52 for the purposes of Selective Enforcement Auditing and Testing by the Administrator.

[47 FR 57714, Dec. 28, 1982]

§ 205.54–1 Low speed sound emission test procedures.

(a) *Instrumentation.* The following instrumentation shall be used, where applicable.

(1) A sound level meter which meets the Type 1 requirements of ANSI S1.4–1971, Specification for Sound Level Meters, or a sound level meter may be used with a magnetic tape recorder and/or a graphic level recorder or indicating meter, providing the system meets the requirements of § 205.54–2.

(2) A sound level calibrator. The calibrator shall produce a sound pressure level, at the microphone diaphragm, that is known to within an accuracy of ±0.5 dB. The calibrator shall be checked annually to verify that its output has not changed.

(3) An engine-speed tachometer which is accurate within ±2 percent of meter reading.

(4) An anemometer or other device for measurement of ambient wind speed accurate within ±10 percent.

(5) A thermometer for measurement of ambient temperature accurate within ±1 C.

(6) A barometer for measurement of ambient pressure accurate within ±1 percent.

(b)(1) The test site shall be such that the truck radiates sound into a free field over a reflecting plane. This condition may be considered fulfilled if the test site consists of an open space free

of large reflecting surfaces, such as parked vehicles, signboards, buildings or hillsides, located within 100 feet (30.4 meters) of either the vehicle path or the microphone.

(2) The microphone shall be located 50 feet ±4 in. (15.2 ±0.1 meter) from the centerline of truck travel and 4 feet ±4 in. (1.2 ±0.1 meters) above the ground plane. The microphone point is defined as the point of intersection of the vehicle path and the normal to the vehicle path drawn from the microphone. The microphone shall be oriented in a fixed position to minimize the deviation from the flattest system response over the frequency range 100 Hz to 10 kHz for a vehicle traversing from the acceleration point through the end zone.

The microphone shall be oriented with respect to the source so that the sound strikes the diaphragm at the angle for which the microphone was calibrated to have the flattest frequency response characteristic over the frequency range 100 Hz to 10 kHz.

(3) An acceleration point shall be established on the vehicle path 50 feet (15 m) before the microphone point.

(4) An end point shall be established on the vehicle path 100 feet (30 m) from the acceleration point and 50 feet (15 m) from the microphone point.

(5) The end zone is the last 40 feet (12 m) of vehicle path prior to the end point.

(6) The measurement area shall be the triangular paved (concrete or sealed asphalt) area formed by the acceleration point, the end point, and the microphone location.

(7) The reference point on the vehicle, to indicate when the vehicle is at any of the points on the vehicle path, shall be the front of the vehicle except as follows:

(i) If the horizontal distance from the front of the vehicle to the exhaust outlet is more than 200 inches (5.1 meters), tests shall be run using both the front and rear of the vehicle as reference points.

(ii) If the engine is located rearward to the center of the chassis, the rear of the vehicle shall be used as the reference point.

(8) The plane containing the vehicle path and the microphone location (plane ABCDE in Figure 1) shall be flat within ±2 inches (.05 meters).

(9) Measurements shall not be made when the road surface is wet, covered with snow, or during precipitation.

(10) Bystanders have an appreciable influence on sound level meter readings when they are in the vicinity of the vehicle or microphone; therefore not more than one person, other than the observer reading the meter, shall be within 50 feet (15.2 meters) of the vehicle path or instrument and the person shall be directly behind the observer reading the meter, on a line through the microphone and observer. To minimize the effect of the observer and the container of the sound level meter electronics on the measurements, cable should be used between the microphone and the sound level meter. No observer shall be located within 1 m in any direction of the microphone location.

(11) The maximum A-weighted fast response sound level observed at the test site immediately before and after the test shall be at least 10 dB below the regulated level.

(12) The road surface within the test site upon which the vehicle travels, and, at a minimum, the measurements area (BCD in figure 205.1) shall be smooth concrete or smooth sealed asphalt, free of extraneous material such as gravel.

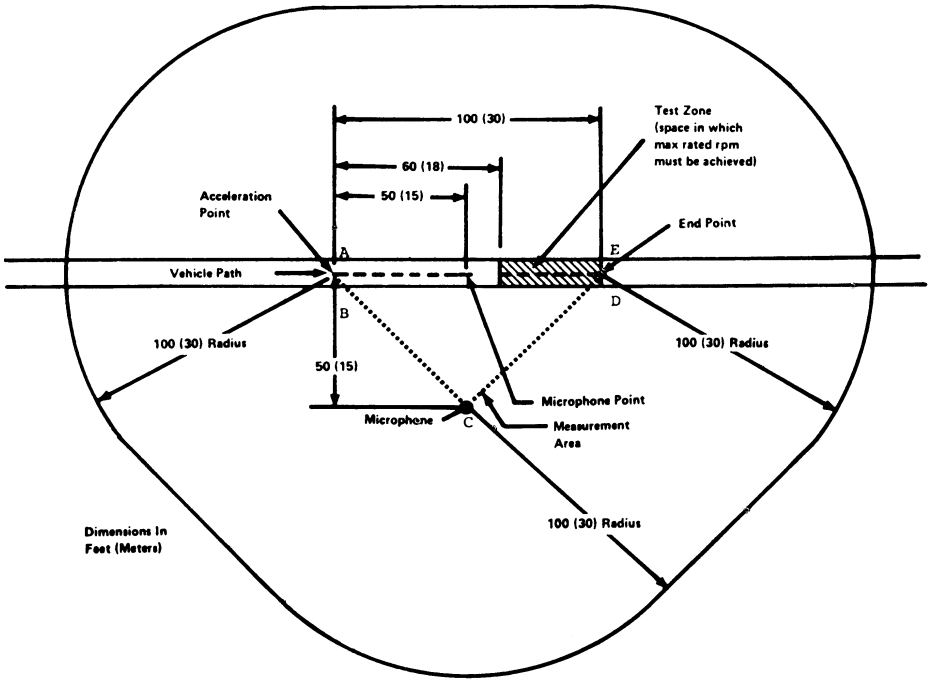


FIGURE 205.1

(13) Vehicles with diesel engines shall be tested using Number 1D or Number 2D diesel fuel possessing a cetane rating from 42 to 50 inclusive.

(14) Vehicles with gasoline engines shall use the grade of gasoline recommended by the manufacturer for use by the purchaser.

(15) Vehicles equipped with thermostatically controlled radiator fans may be tested with the fan not operating.

(c) *Procedures*—(1) *Vehicle operation for vehicles with standard transmissions.* Full throttle acceleration and closed throttle deceleration tests are to be used. A beginning engine speed and proper gear ratio must be determined for use during measurements. Closed throttle deceleration tests are required only for those vehicles equipped with an engine brake.

(i) Select the highest rear axle and/or transmission gear (''highest gear'' is used in the usual sense; it is synonymous to the lowest numerical ratio) and an initial vehicle speed such that at wide-open throttle the vehicle will accelerate from the acceleration point.

(*a*) Starting at no more than two-thirds (66 percent) of maximum rated or of governed engine speed.

(*b*) Reaching maximum rated or governed engine speed within the end zone.

(*c*) Without exceeding 35 mph (56 k/h) before reaching the end point.

(*1*) Should maximum rated or governed rpm be attained before reaching the end zone, decrease the approach rpm in 100 rpm increments until maximum rated or governed rpm is attained within the end zone.

(*2*) Should maximum rated or governed rpm not be attained until beyond the end zone, select the next lower gear until maximum rated or governed rpm is attained within the end zone.

(*3*) Should the lowest gear still result in reaching maximum rated or governed rpm beyond the permissible end zone, unload the vehicle and/or increase the approach rpm in 100 rpm increments until the maximum rated or

governed rpm is reached within the end zone.

(ii) For the acceleration test, approach the acceleration point using the engine speed and gear ratio selected in paragraph (c)(1) of this section and at the acceleration point rapidly establish wide-open throttle. The vehicle reference shall be as indicated in paragraph (b)(7) of this section. Acceleration shall continue until maximum rated or governed engine speed is reached.

(iii) Wheel slip which affects maximum sound level must be avoided.

(2) *Vehicle operation for vehicles with automatic transmissions.* Full throttle acceleration and closed throttle deceleration tests are to be used. Closed throttle deceleration tests are required only for those vehicles equipped with an engine brake.

(i) Select the highest gear axle and/or transmission gear (highest gear is used in the usual sense; it is synonymous to the lowest numerical ratio) in which no up or down shifting will occur under any operational conditions of the vehicle during the test run. Also, select an initial vehicle speed such that at wide-open throttle the vehicle will accelerate from the acceleration point.

(*a*) Starting at two-thirds (66 percent) of maximum rated or of governed engine speed.

(*b*) Reaching maximum rated or governed engine speed within the end zone.

(*c*) Without exceeding 35 mph (56 k/h) before reaching the end point.

(*1*) Should maximum rated or governed rpm be attained before reaching the end zone, decrease the approach rpm in 100 rpm increments until maximum rated or governed rpm is attained within the end zone.

(*2*) Should maximum rated or governed rpm not be attained until beyond the end zone, select the next lower gear until maximum rated or governed rpm is attained within the end zone.

(*3*) Should the lowest gear still result in reaching maximum rated or governed rpm beyond the permissible end zone, unload the vehicle and/or increase the approach rpm in 100 rpm increments until the maximum rated or governed rpm is reached within the end zone, notwithstanding that approach engine speed may now exceed two-thirds of maximum rated or of full load governed engine speed.

(*4*) Should the maximum rated or governed rpm still be attained before entering the end zone, and the engine rpm during approach cannot be further lowered, begin acceleration at a point 10 feet closer to the beginning of the end zone. The approach rpm to be used is to be that rpm used prior to the moving of the acceleration point 10 feet closer to the beginning of the end zone.

(*5*) Should the maximum rated or governed rpm still be attained before entering the end zone, repeat the instructions in paragraph (c)(2)(i)(*c*)(*4*) of this section until maximum rated or governed rpm is attained within the end zone.

(ii) For the acceleration test, approach the acceleration point using the engine speed and gear ratio selected in paragraph (c)(2)(i) of this section and at the acceleration point rapidly establish wide-open throttle. The vehicle reference shall be as indicated in paragraph (b)(7) of this section. Acceleration shall continue until maximum rated or governed engine speed is reached.

(iii) Wheel slip which affects maximum sound level must be avoided.

(3) *Measurements.* (i) The meter shall be set for ''fast response'' and the A-weighted network.

(ii) The meter shall be observed during the period while the vehicle is accelerating or decelerating. The applicable reading shall be the highest sound level obtained for the run. The observer is cautioned to rerun the test if unrelated peaks should occur due to extraneous ambient noises. Readings shall be taken on both sides of the vehicle.

(iii) The sound level associated with a side shall be the average of the first two pass-by measurements for that side, if they are within 2 dB(A) of each other. Average of measurements on each side shall be computed separately. If the first two measurements for a given side differ by more than 2 dB(A), two additional measurements shall be made on each side, and the average of the two highest measurements on each side, within 2 dB(A) of each other, shall be taken as the measured vehicle sound level for that side. The reported vehicle

sound level shall be the higher of the two averages.

(d) *General requirements.* (1) Measurements shall be made only when wind velocity is below 12 mph (19 km/hr).

(2) Proper usage of all test instrumentation is essential to obtain valid measurements. Operating manuals or other literature furnished by the instrument manufacturer shall be referred to for both recommended operation of the instrument and precautions to be observed. Specific items to be adequately considered are:

(i) The effects of ambient weather conditions on the performance of the instruments (for example, temperature, humidity, and barometric pressure).

(ii) Proper signal levels, terminating impedances, and cable lengths on multi-instrument measurement systems.

(iii) Proper acoustical calibration procedure to include the influence of extension cables, etc. Field calibration shall be made immediately before and after each test sequence. Internal calibration means is acceptable for field use, provided that external calibration is accomplished immediately before or after field use.

(3)(i) A complete calibration of the instrumentation and external acoustical calibrator over the entire frequency range of interest shall be performed at least annually and as frequently as necessary during the yearly period to insure compliance with the standards cited in American National Standard S1.4–1971 ''Specifications for Sound Level Meters'' for a Type 1 instrument over the frequency range 50 Hz–10,000 Hz.

(ii) If calibration devices are utilized which are not independent of ambient pressure (e.g., a piston-phone) corrections must be made for barometric or altimetric changes according to the recommendation of the instrument manufacturer.

(4) The truck shall be brought to a temperature within its normal operating temperature range prior to commencement of testing. During testing appropriate caution shall be taken to maintain the engine temperatures within such normal operating range.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 11836, Mar. 1, 1977; 42 FR 61456, Dec. 5, 1977]

§ 205.54–2 Sound data acquisition system.

(a) Systems employing tape recorders and graphic level recorders may be established as equivalent to a Type I—ANSI S1.4–1971 sound level meter for use in determining compliance with this regulation by meeting the requirements of this section (§ 205.54–2(b)). This sound data acquisition system qualification procedure is based primarily on ANSI S6.1–1973.

(1) *Performance requirements*—(i) *System frequency response.* It is required that the overall steady-state frequency response of the data acquisition system shall be within the tolerances prescribed in Table 205.1 when measured in accordance with section (2). The tolerances in Table 205.1 are applicable to either flat or A-weighted response. (See paragraph (a)(3)(iii) of this section.)

(ii) *Detector response.* To ensure that a (true) rms indication is provided, the difference between the level indicated for a 1000 Hz sinusoidal signal equivalent to a sound level of 86 dB (rms) and the level indicated for an octave band of random noise of equal energy as the sinusoidal signal centered at 1000 Hz shall be no greater than 0.5 dB. A true rms voltmeter shall be used to determine equivalence of two input signals.

(iii) *Indicating meter.* If an indicating meter is used to obtain sound levels or band pressure levels, it must meet the requirements of paragraphs (a)(1)(ii) and (vi)(B) of this section and the following.

TABLE 205.1—SYSTEM RESPONSE DATA

Freq. (hertz)	A-weighted response (Re-1000 Hz, dB)	Tolerance (decibels)	
		Plus—	Minus—
31.5	−39.4	1.5	1.5
40.0	−34.6	1.5	1.5
50.0	−30.2	1.0	1.0
63.0	−26.2	1.0	1.0
80.0	−22.5	1.0	1.0
100.0	−19.1	1.0	1.0
125.0	−16.1	1.0	1.0
160.0	−13.4	1.0	1.0
200.0	−10.9	1.0	1.0
250.0	−8.6	1.0	1.0

TABLE 205.1—SYSTEM RESPONSE DATA—Continued

Freq. (hertz)	A-weighted response (Re-1000 Hz, dB)	Tolerance (decibels)	
		Plus—	Minus—
315.0	−6.6	1.0	1.0
400.0	−4.8	1.0	1.0
500.0	−3.2	1.0	1.0
630.0	−1.9	1.0	1.0
800.0	−.8	1.0	1.0
1,000.0	0	1.0	1.0
1,250.0	.6	1.0	1.0
1,600.0	1.0	1.0	1.0
2,000.0	1.2	1.0	1.0
2,500.0	1.3	1.0	1.0
3,150.0	1.2	1.0	1.0
4,000.0	1.0	1.0	1.0
5,000.0	.5	1.5	2.0
6,300.0	−.1	1.5	2.0
8,000.0	−1.1	1.5	3.0
10,000.0	−2.5	2.0	4.0
12,500.0	−4.3	3.0	6.0

(A) The scale shall be graduated in 1 dB steps.

(B) No scale indication shall be more than 0.2 dB different from the true value of the signal when an input signal equivalent to 86 dB sound level indicates correctly.

(C) Maximum indication for an input signal of 1000 Hz tone burst of 0.2 sec duration shall be within the range of −2 to 0 dB with respect to the steady-state indication for a 1000 Hz tone equivalent to 86 dB sound level.

(iv) *Microphone.* If microphone is used which has not been provided as a component of a precision sound level meter, it must be determined to meet the microphone characteristics described in IEC Publication 179, Precision Sound Level Meters.

(v) *Magnetic tape recorders.* No requirements are described in this document pertaining to tape recorders, except for frequency response. Generally, recorders of adequate quality to provide the frequency response performance required will also meet other minimum requirements for distortion, signal-to-noise ratio, etc.

(vi) *Graphic level recorder dynamic response.* When using a graphic level recorder, it is necessary to select pen response settings such that the readings obtained are statistically equivalent to those obtained by directly reading a meter which meets the ''fast'' dynamic requirement of a precision sound level meter indicating meter system for the range of vehicles to be tested. To ensure statistical equivalence, at least 30 comparative observations of real test data shall be made and the average of the absolute value of the differences observed shall be less than 0.5 dB. The settings described in this paragraph likely assure appropriate dynamic response; however, different settings may be selected on the basis of the above requirement.

(A) Use a pen writing speed of nominally 60–100 dB/sec. If adjustable, low frequency response should be limited to about 20 Hz.

(B) Indicated overshoot for a suddenly applied 1000 Hz sinusoidal signal equivalent to 86 dB sound level shall be no more than 1.1 dB and no less than 0.1 dB.

(2) *Frequency response qualification procedure.* (i) Typical noise measurement and analysis configurations are shown in Figures 205.2 through 205.4. The qualification procedure described herein duplicates these configurations, but with the microphone replaced by an electronic sinewave oscillator. Caution should be exercised when connecting an oscillator to the input of a sound level meter to ensure, perhaps by using a resistive voltage divider network, that the input is not overloaded (see § 205.54–2(a)(2)(ii)).

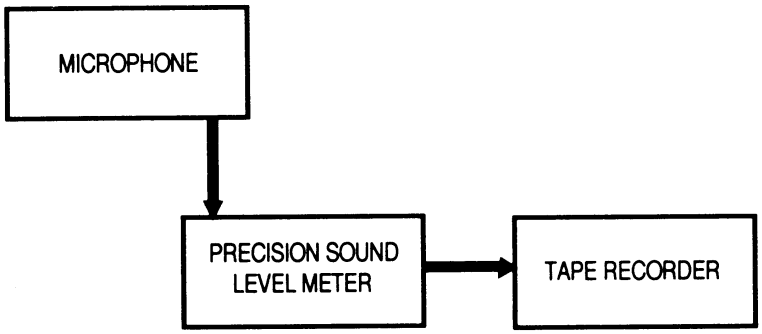


FIGURE 205.2 DATA RECORDING

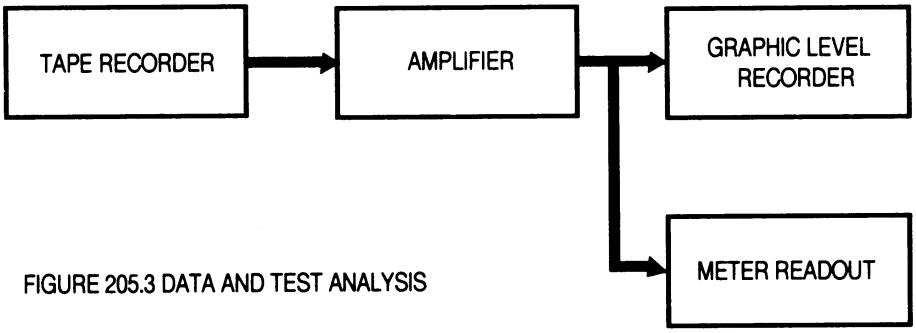


FIGURE 205.3 DATA AND TEST ANALYSIS

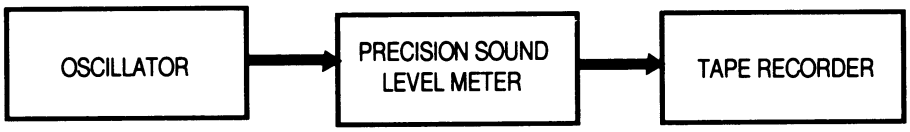


FIGURE 205.4 TEST RECORDING

(ii) Calibrate the oscillator to be used by measuring its output relative to the voltage which is equivalent to 86 dB sound level at each of the 27 frequencies listed in Table 205.1 using an electronic voltmeter of known calibration. Record the result in voltage level in dB re voltage corresponding to 86 dB

sound level at 1000 Hz. This will describe the frequency response characteristics of the oscillator.

(iii) If a graphic level recorder is to be used, connect it to the oscillator output. If the oscillator and graphic level recorder can be synchronized, slowly sweep the frequency over the range of 31.5 to 12,500 Hz, recording the oscillator output. If they cannot be synchronized, record oscillator output for signals at the 27 frequencies given in Table 205.1. The differences between the combined response thus obtained and the oscillator response obtained previously will describe the frequency response of the graphic level recorder.

(iv) If visual observation of an indicating meter is to be used for obtaining data, the oscillator should be connected to the indicating meter input (such as the microphone input of a sound level meter) and the meter reading observed for a fixed oscillator output voltage setting for signals at the 27 frequencies given in Table 205.1.

(v) To check a tape recorder, connect the instruments as shown in Figure 205.4. Using a 1000 Hz tone, adjust the oscillator output level to obtain a reading 15 dB below maximum record level. If the synchronized oscillator/graphic level recorder system is to be used for analysis, record an oscillator sweep over the range of 31.5 to 12,500 Hz, using an appropriate tape recorder input attenuator setting. Alternatively, tape-record frequency tones at the 27 frequencies given in Table 205.1. Replay the tape recordings using the setup shown in Figure 205.3. Record the data on a graphic level recorder or through visual observation of the indicating meter. Subtract the oscillator frequency response in paragraph (b)(2) of this section from the response obtained through the record-playback sequence to obtain the record/reproduce frequency response of the system except for the microphone.

(vi) To obtain the overall system frequency response, add the manufacturer's microphone calibration data to the response just obtained. This may be the frequency response for the specific microphone to be used, including calibration tolerances. Alternatively, use the manufacturer's ''typical'' microphone response plus and minus the maximum deviation expected from ''typical'' including calibration tolerances. Use the microphone response curve which corresponds to the manner in which it is used in the field. It may be required to add a correction to the response curves provided to obtain field response; refer to the manufacturer's manual.

(vii) Adjustment or repair of equipment may be required to obtain response within the requirements of paragraph (a) of this section. After any adjustments, the system shall be requalified according to paragraph (b) of this section.

(3) *General comments.* (i) Calibrate tape recorders using the brand and type of magnetic tape used for actual data acquisition. Differences in tape can cause an appreciable variation in the recorder/reproduce frequency response characteristics of tape recorder.

(ii) It shall be ensured that the instrumentation used will perform within specifications and applicable tolerances over the temperature, humidity, and other environmental variation ranges which may be encountered in vehicle noise measurement works.

(iii) Qualification tests shall be performed using equipment (including cables) and recording and playback techniques identical with those used while recording vehicle noise. For example, if weighted sound level data are normally recorded use similar weighting and apply the tolerances of Table 205.1 to the weighting curve for comparison with record-playback curves. Precautions should also be taken to ensure that source and load impedances are appropriate to the device being tested. Other data acquisition systems may use any combination of microphones, sound level meters, amplifiers, tape recorders, graphic level recorders, or indicating meters. The same approach to qualifying such a system shall be taken as described in this document for the systems depicted in Figures 205.2, 205.3 and 205.4.

(b) Systems other than those specified in §§ 205.54–1(a) and 205.54–2(a) may be used for establishing compliance with this regulation. In each case the system must yield sound levels which are equivalent to those produced by a sound level meter Type 1 ANSI S1.4–

1971. The manufacturer bears the burden of demonstrating such equivalence.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61456, Dec. 5, 1977; 47 FR 57714, Dec. 28, 1982]

§ 205.55 Requirements.

§ 205.55–1 General requirements.

(a) Every new vehicle manufactured for distribution in commerce in the United States which is subject to the standards prescribed in this subpart and not exempted in accordance with § 205.5:

(1) Shall be labeled in accordance with the requirements of § 205.55–5 of this subpart.

(2) Shall conform to the applicable noise emission standard established in § 205.52 of this regulation.

(b) The requirements of paragraph (a) apply to new products which conform to the definition of vehicles in these regulations and at the time such new products are assembled to that state of completeness in which the manufacturer distributes them in commerce.

(c) Subsequent manufacturers of a new product which conforms to the definition of vehicle in these regulations when received by them from a prior manufacturer, need not fulfill the requirements of paragraph (a)(1) where such requirements have already been complied with by a prior manufacturer.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61456, Dec. 5, 1977; 47 FR 57714, Dec. 28, 1982]

§ 205.55–2 Compliance with standards.

(a)(1) Prior to distribution in commerce of vehicles of a specific configuration, the first manufactures of such vehicles must verify such configurations in accordance with the requirements of this subpart.

(2) [Reserved]

(3) At any time following receipt of notice under this section with respect to a configuration, the Administrator may require that the manufacturer ship test vehicles to the EPA test facility in order for the Administrator to perform the tests required for production verification.

(b) The requirements for purposes of testing by the Administrator and selective enforcement auditing with regard to each vehicle configuration consist of:

(1) Testing in accordance with § 205.54 of a vehicle selected in accordance with § 205.57–2, and

(2) Compliance of the test vehicle with the applicable standard when tested in accordance with § 205.54.

(c)(1) In lieu of testing vehicles of every configuration as described in paragraph (b) of this section, the manufacturer may elect to verify the configuration based on representative testing, the requirements of which consist of:

(i) Grouping configurations into a category where each category will be determined by a separate combination of at least the following parameters (a manufacturer may use more parameters):

(*a*) *Engine type*.

(*1*) Gasoline—two stroke cycle.

(*2*) Gasoline—four stroke cycle.

(*3*) Diesel—two stroke cycle.

(*4*) Diesel—four stroke cycle.

(*5*) Rotary—wankel.

(*6*) Turbine.

(*7*) Other.

(*b*) *Engine manufacturer*.

(*c*) *Engine displacement*.

(*d*) *Engine configuration* (e.g., L–6, V–8, etc.).

(*e*) *Series* (i.e., cab design) including but not limited to conventional, cab over engine, and cab forward.

(ii) Identifying the configuration within each category which emits the highest sound pressure level (dBA) based on his best technical judgment and/or emission test data;

(iii) Testing in accordance with § 205.54 of a vehicle selected in accordance with § 205.57–2 which must be a vehicle of the configuration which is identified pursuant to paragraph (c)(1)(ii) of this section as having the highest sound pressure level (estimated or actual) within the category; and

(iv) Compliance of the test vehicle with applicable standards when tested in accordance with § 205.54.

(2) Where the requirements of paragraph (c)(1) are complied with, all those configurations contained within a category are considered represented by the tested vehicle.

(3) Where the manufacturer tests a vehicle configuration which has not

been determined as having the highest sound pressure level of a category, but all other requirements of paragraph (c)(1) of this section are complied with all those configurations contained with that category which are determined to have sound pressure levels no greater than the tested vehicle are considered to be represented by the tested vehicle, however, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify according to the requirements of paragraphs (b)(1) and/or (c)(1) of this section any configurations in the subject category which have a higher sound pressure level than the vehicle configuration tested.

(d) [Reserved]

(e) The manufacturer may, at his option, proceed with any of the following alternatives with respect to any vehicle determined not in compliance with applicable standards.

(1) In the case of representative testing a new test vehicle from another configuration must be selected according to the requirements of paragraph (c) of this section, in order to verify the configurations represented by the non-compliant vehicle.

(2) Modify the test vehicle and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production vehicles of the same configuration in the same manner as the test vehicle before distribution into commerce.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61458, Dec. 5, 1977; 47 FR 57714, Dec. 28, 1982; 48 FR 27040, June 13, 1983]

§ 205.55–3 Configuration identification.

(a) A separate vehicle configuration shall be determined by each combination of the following parameters:

(1) *Exhaust system configuration*. (i) Single vertical.

(ii) Dual vertical.

(iii) Single horizontal.

(iv) Dual horizontal.

(2) *Air induction system* (*engine*). (i) Natural.

(ii) Turbocharged.

(3) *Fan*. (i) Diameter.

(ii) Drive.

(*a*) Direct.

(*b*) Thermostatic.

(iii) Max fan rpm.

(4) *Engine manufacturer's horsepower rating*.

(5) *Cab characteristic*. (i) Sleeper.

(ii) Non sleeper.

(6) *Category parameters listed in § 205.55–2*.

§ 205.55–4 Labeling-compliance.

(a)(1) The manufacturer of any vehicle subject to the provisions of § 205.52 shall, at the time of manufacture, affix a permanent, legible label, of the type and in the manner described below, containing the information hereinafter provided, to all such vehicles to be distributed in commerce. The labels shall be affixed in such a manner that they cannot be removed without destroying or defacing them, and shall not be affixed to any equipment which is easily detached from such vehicle.

(2) A label shall be permanently attached, in a readily visible position, in the operator's compartment.

(3) Labels for vehicles not manufactured solely for use outside the United States shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(i) The label heading: Vehicle Noise Emission Control Information;

(ii) Full corporate name and trademark of manufacturer;

(iii) Month and year of manufacture;

(iv) The statement:

This Vehicle Conforms to U.S. EPA Regulations for Noise Emission Applicable to Medium and Heavy Trucks.

The following acts or the causing thereof by any person are prohibited by the Noise Control Act of 1972:

(A) The removal or rendering inoperative, other than for purposes of maintenance, repair, or replacement, of any noise control device or element of design (listed in the owner's manual) incorporated into this vehicle in compliance with the Noise Control Act;

(B) The use of this vehicle after such device or element of design has been removed or rendered inoperative.

(b) Labels for vehicles manufactured solely for use outside the United States shall contain the words ''For Export Only.''

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61456, 61458, Dec. 5, 1977. Redesignated at 47 FR 57715, Dec. 28, 1982]

§ 205.55–5 Labeling-exterior. [Reserved]

§ 205.56 Testing by the Administrator.

(a)(1) The Administrator may require that any vehicles to be tested pursuant to the Act be submitted to him, at such place and time as he may reasonably designate and in such quantity and for such time as he may reasonably require for the purpose of conducting tests in accordance with test procedures described in § 205.54 to determine whether such vehicles or a manufacturer's test facility conform to applicable regulations. It is a condition of the requirements under this section that the manner in which the Administrator conducts such tests, the EPA test facility itself, and the test procedures he employs shall be based upon good engineering practice and meet or exceed the requirements of § 205.54 of the regulations.

(2) The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment of the type required by these regulations shall be made available by the manufacturer for test operations. The Administrator may conduct such tests with his own equipment, which shall equal or exceed the performance specifications of the instrumentation or equipment specified by the Administrator in these regulations.

(3) The manufacturer may observe tests conducted by the Administrator pursuant to this section on vehicles produced by such manufacturer and may copy the data accumulated from such tests. The manufacturer may inspect any such vehicles before and after testing by the Administrator.

(b)(1) If, based on tests conducted by the Administrator or other relevant information, the Administrator determines that the test facility does not meet the requirements of § 205.54–1 (a) and (b) he will notify the manufacturer in writing of his determination and the reasons therefor.

(2) The manufacturer may at any time within 15 days after receipt of a notice issued under paragraph (b)(1) of this section request a hearing conducted in accordance with 5 U.S.C. 554 on the issue of whether his test facility was in conformance. Such notice will not take effect until 15 days after receipt by the manufacturer, or if a hearing is requested under this paragraph, until adjudication by the hearing examiner.

(3) After any notification issued under paragraph (b)(1) of this section has taken effect, no data thereafter derived from such test facility will be acceptable for purposes of this part.

(4) The manufacturer may request in writing that the Administrator reconsider his determination under paragraph (b)(1) of this section based on data or information which indicates that changes have been made to the test facility and such changes have resolved the reasons for disqualification.

(5) The Administrator will notify the manufacturer of his determination and an explanation of the reasons underlying it with regard to the requalification of the test facility within 10 working days after receipt of the manufacturer's request for reconsideration pursuant to paragraph (b)(4) of this section.

(c)(1) The Administrator will assume all reasonable costs associated with shipment of vehicles to the place designated pursuant to paragraph (a) of this section except with respect to:

(i) [Reserved]

(ii) Testing of a reasonable number of vehicles for purposes of selective enforcement auditing under § 205.57 or testing of smaller numbers of vehicles, if the manufacturer has failed to establish that there is a correlation between its test facility and the EPA test facility or the Administrator has reason to believe, and provides the manufacturer a statement of such reasons, that the vehicles to be tested would fail to meet the standard prescribed in this subpart if tested at the EPA test facility, but would meet such standard if tested at the manufacturer's test facility;

(iii) Any testing performed during a period when a notice of nonconformance of the manufacturer's test facility issued pursuant to paragraph (b) of this section is in effect;

(iv) Any testing performed at place other than the manufacturer's facility as a result of the manufacturer's failure to permit the Administrator to

conduct or monitor testing as required by this part.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61456, 61459, Dec. 5, 1977; 47 FR 57715, Dec. 28, 1982]

§ 205.57 Selective enforcement auditing requirements.

§ 205.57–1 Test request.

(a) The Administrator will request all testing under § 205.57 by means of a test request addressed to the manufacturer.

(1) Except as provided in paragraphs (a) (2) and (3) of this section, the Administrator will not issue to a manufacturer during any model year more test requests than a number determined by dividing the total number of vehicles subject to this regulation which the manufacturer projects he will produce during that model year by 25,000 and rounding to the next higher whole number: Except, that the Administrator may issue one additional test request beyond the annual limit to any manufacturer for each time a batch sequence for any category, configuration or subgroup thereof of such manufacturer's production is rejected in accordance with § 205.57–7.

(2) Any test request issued against a category, configuration or subgroup thereof which the Administrator has reason to believe does not meet the standards specified in § 205.52 will not be counted against the annual limit on test requests described in paragraph (a)(1) of this section. Any such request shall include a statement of the Administrator's reason for such belief.

(3) Any test request under which testing is not completed will not be counted against the annual limit on test requests described in paragraph (a)(1) of this section.

(b) The test request will be signed by the Assistant Administrator for Enforcement or his designee. The test request will be delivered by an EPA Enforcement Officer to the plant manager or other responsible official as designated by the manufacturer.

(c) The test request will specify the vehicle category, configuration or subgroup thereof selected for testing, the batch from which sampling is to begin, the batch size, the manufacturer's plant or storage facility from which the vehicles must be selected, the time at which a vehicle must be selected. The test request will also provide for situations in which the selected configuration or category is unavailable for testing. The test request may include an alternative category or configuration selected for testing in the event that vehicles of the first specified category or configuration are not available for testing because the vehicles are not being manufactured at the specified plant and/or are not being manufactured during the specified time or not being stored at the specified plant or storage facility.

(d) Any manufacturer shall, upon receipt of the test request, select and test a batch sample of vehicles from two consecutively produced batches of the vehicle category or configurations specified in the test request in accordance with these regulations and the conditions specified in the test request.

(e)(1) Any testing conducted by the manufacturer pursuant to a test request shall be initiated within such period as is specified within the test request: Except, that such initiation may be delayed for increments of 24 hours or one business day where ambient test site weather conditions, or other conditions beyond the control of the manufacturer, in any 24-hour period do not permit testing: *Provided*, That these conditions for that period are recorded.

(2) The manufacturer shall complete emission testing on a minimum of five vehicles per day unless otherwise provided for by the Administrator or unless ambient test site conditions only permit the testing of a lesser number: *Provided*, that ambient test site weather conditions for that period are recorded.

(3) The manufacturer will be allowed 24 hours to ship vehicles from a batch sample from the assembly plant to the testing facility if the facility is not located at the plant or in close proximity to the plant: Except, that the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) The Administrator may issue an order to the manufacturer to cease to distribute into commerce vehicles of a

specified category or configuration being manufactured at a particular facility if:

(1) The manufacturer refuses to comply with the provisions of a test request issued by the Administrator pursuant to this section; or

(2) The manufacturer refuses to comply with any of the requirements of this section.

(g) A cease-to-distribute order shall not be issued under paragraph (f) of this section if such refusal is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with the provisions of a test request or any other requirements of this section. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment break-down or failure or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(h) Any such order shall be issued only after a notice and opportunity for a hearing.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61459, Dec. 5, 1977; 43 FR 12326, Mar. 24, 1978]

§ 205.57–2 Test vehicle sample selection.

(a) Vehicles comprising the batch sample which are required to be tested pursuant to a test request in accordance with this subpart will be selected in the manner specified in the test request from a batch of vehicles of the category or configuration specified in the test request. If the test request specifies that the vehicles comprising the batch sample must be selected randomly, the random selection will be achieved by sequentially numbering all of the vehicles in the batch and then using a table of random numbers to select the number of vehicles as specified in paragraph (c) of this section based on the batch size designated by the Administrator in the test request. An alternative random selection plan may be used by a manufacturer: *Provided*, That such a plan is approved by the Administrator. If the test request does not specify that test vehicles must be randomly selected, the manufacturer shall select test vehicles consecutively.

(1) Should a situation arise in which the configuration to be tested consists of only vehicles with automatic transmissions, they shall be tested in accordance with § 205.54–1(c)(2).

(2) If the configuration to be tested consists of both automatic transmission and standard transmission vehicles, the test vehicle shall be a standard transmission vehicle unless the manufacturer has reason to believe that the automatic transmission vehicle emits a greater sound level.

(b) The Acceptable Quality Level is 10 percent. The appropriate sampling plans associated with the designated AQL are contained in Appendix I, Table II.

(c) The appropriate batch sample size will be determined by reference to Appendix I, Table I and II. A code letter is obtained from Table I based on the batch size designated by the Administrator in a test request. The batch sample size will be obtained from Table II. The batch sample size will be equal to the maximum cumulative sample size for the appropriate code letter obtained from Table I plus an additional 10 percent rounded off to the next highest number.

(d) If the test request specifies that vehicles comprising the batch sample must be selected randomly, individual vehicles comprising the test sample will be randomly selected from the batch sample using the same random selection plan as in paragraph (a) of this section. Test sample size will be determined by entering Table II.

(e) The test vehicle of the category, configuration or subgroup thereof selected for testing shall have been assembled by the manufacturer for distribution in commerce using the manufacturer's normal production process in accordance with § 205.55–5(a).

(f) Unless otherwise indicated in the test request, the manufacturer will select the batch sample from the production batch, next scheduled after receipt

of the test request, of the category or configuration specified in the test request.

(g) Unless otherwise indicated in the test request, the manufacturer shall select the vehicles designated in the test request for testing.

(h) At their discretion, EPA Enforcement Officers, rather than the manufacturer, may select the vehicles designated in the test request.

(i) The manufacturer will keep on hand all vehicles in the batch sample until such time as the batch is accepted or rejected in accordance with § 205.57–6: Except, that vehicles actually tested and found to be in conformance with these regulations need not be kept.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61459, Dec. 5, 1977; 47 FR 57715, Dec. 28, 1982; 48 FR 27039, June 13, 1983]

§ 205.57–3 Test vehicle preparation.

(a) Prior to the official test, the test vehicle selected in accordance with § 205–57–2 shall not be prepared, tested, modified, adjusted, or maintained in any manner unless such adjustments, preparation, modification and/or tests are part of the manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal vehicle assembly and inspection procedures or unless such adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator. For purposes of this section, prescribed manufacturing and inspection procedures include quality control testing and assembly procedures normally performed by the manufacturer on like products during early production so long as the resulting testing is not biased by the procedure. In the case of imported products the manufacturer may perform adjustments, preparations, modification and/or tests normally performed at the port of entry by the manufacturer to prepare the vehicle for delivery to a dealer or customer.

(b) Equipment or fixtures necessary to conduct the test may be installed on the vehicle: *Provided,* That such equipment or fixtures shall have no effect on the noise emissions of the vehicle, as determined by measurement methodology.

(c) In the event of vehicle malfunction (i.e., failure to start, misfiring cylinder, etc.) the manufacturer may perform the maintenance that is necessary to enable the vehicle to operate in a normal manner.

(d) No quality control, testing, assembly or selection procedures shall be used on the completed vehicle or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other vehicles of the category which will be distributed in commerce, unless such procedures are required or permitted under this subpart.

[47 FR 57715, Dec. 28, 1982; 48 FR 27039, June 13, 1983]

§ 205.57–4 Testing procedures.

(a) The manufacturer shall conduct one valid test in accordance with the test procedures specified in § 205.54 of this subpart for each vehicle selected for testing pursuant to this subpart.

(b) No maintenance will be performed on test vehicles except as provided for by § 205.57–3. In the event a vehicle is unable to complete the emission test, the manufacturer may replace the vehicle. Any replacement vehicle will be a production vehicle of the same configuration as the replaced vehicle. It will be randomly selected from the batch sample and will be subject to all the provisions of these regulations.

§ 205.57–5 Reporting of the test results.

(a) Within 5 working days after completion of testing of all vehicles in a batch sample the manufacturer shall submit to the Administrator a final report which will include the information required by the test request in the format stipulated in the test request in addition to the following:

(1) The name, location, and description of the manufacturer's emission test facilities which meet the specifications of § 205.54 and were utilized to conduct testing reported pursuant to this section: Except, that a test facility that has been described in a previous submission under this subpart need not again be described but must be identified as such.

(2) A description of the random vehicle selection method used, referencing any tables of random numbers that were used, name of the person in charge of the random number selection, if the vehicle test request specifies a random vehicle selection.

(3) The following information for each noise emission test conducted,

(i) The completed data sheet required by § 205.54 for all noise emission tests including: For each invalid test, the reason for invalidation.

(ii) A complete description of any modification, repair, preparation, maintenance, and/or testing which could affect the noise emissions of the vehicle and which was performed on the test vehicle but will not be performed on all other production vehicles.

(iii) The reason for the replacement where a replacement vehicle was authorized by the Administrator, and, if any, the test results for the replaced vehicles.

(4) A complete description of the sound data acquisition system if other than those specified in §§ 205.54–1(a) and 205.54–2(a).

(5) The following statement and endorsement:

This report is submitted pursuant to section 6 and section 13 of the Noise Control Act of 1972. To the best of _____(company name) knowledge, all testing for which data are reported herein was conducted in strict conformance with applicable regulations under 40 CFR 205.1 et seq., all the data reported herein are a true and accurate representation of such testing and all other information reported herein is true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder.

(authorized representative)

(b) All information required to be forwarded to the Administrator pursuant to this section shall be addressed to Director, Noise Enforcement Division (EN–387), U.S. Environmental Protection Agency, Washington, DC 20460.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61459, Dec. 5, 1977; 43 FR 12326, Mar. 24, 1978]

§ 205.57–6 Acceptance and rejection of batches.

(a) The batch from which a batch sample is selected will be accepted or rejected based upon the number of failing vehicles in the batch sample. A sufficient number of test samples will be drawn from the batch sample until the cumulative number of failing vehicles is less than or equal to the acceptance number or greater than or equal to the rejection number appropriate for the cumulative number of vehicles tested. The acceptance and rejection numbers listed in Appendix I, Table II at the appropriate code letter obtained according to § 205.57–2 will be used in determining whether the acceptance or rejection of a batch has occurred.

(b) Acceptance or rejection of a batch takes place when the decision that a vehicle is a failing vehicle is made on the last vehicle required to make a decision under paragraph (a) of this section.

§ 205.57–7 Acceptance and rejection of batch sequence.

(a) The manufacturer will continue to inspect consecutive batches until the batch sequence is accepted or rejected based upon the number of rejected batches. A sufficient number of consecutive batches will be inspected until the cumulative number of rejected batches is less than or equal to the sequence acceptance number of greater than or equal to the sequence rejection number appropriate for the cumulative number of batches inspected. The acceptance and rejection numbers listed in Appendix I, Table III at the appropriate code letter obtained according to § 205.57–2 will be used in determining whether the acceptance or rejection of a batch sequence has occurred.

(b) Acceptance or rejection of a batch sequence takes place when the decision that a vehicle is a failiing vehicle is made on the last vehicle required to make a decision under paragraph (a) of this section.

(c) If the batch sequence is accepted, the manufactureer will not be required to perform any additional testing on vehicles from subsequent batches pursuant to the initiating test request.

(d) The Administrator may terminate testing earlier than required in paragraph (b) of this section based on a request by the manufacturer accompanied by voluntary cessation of distribution in commerce, of vehicles from the category, configuration or subgroup in question manufactured at the plant which produced the vehicles under test: *Provided*, That before reinitiating distribution in commerce of vehicles from such plant of such vehicle category, configuration or subgroup, the manufacturer must take the action described in § 205.57–9(a)(1) and (a)(2).

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61460, Dec. 5, 1977]

§ 205.57–8 Continued testing.

(a) If a batch sequence is rejected in accordance with paragraph (b) of § 205.57–7, the Administrator may require that any or all vehicles of that category, configuration of subgroup thereof produced at that plant be tested before distribution in commerce.

(b) The Administrator will notify the manufacturer in writing of his intent to require such continued testing of vehicles pursuant to paragraph (a) of this section.

(c) The manufacturer may request a hearing on the issues of whether the selective enforcement audit was conducted properly; whether the criteria for batch sequence rejection in § 204.57–7 have been met; and, the appropriateness or scope of a continued testing order. In the event that a hearing is requested, the hearing shall begin no later than 15 days after the date on which the Administrator received the hearing request. Neither the request for a hearing nor the fact that a hearing is in progress shall affect the reponsibility of the manufacturer to commence and continue testing required by the Administrator pursuant to paragraph (a) of this section.

(d) Any tested vehicle which demonstrated conformance with the applicable standards may be distributed into commerce.

(e) Any knowing distribution into commerce of a vehicle which does not comply with the applicable standards is a prohibited act.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61460, Dec. 5, 1977; 44 FR 54296, Sept. 19, 1979]

§ 205.57–9 Prohibition on distribution in commerce; manufacturer's remedy.

(a) The Administrator will permit the cessation of continued testing under § 205.57–8 once the manufacturer has taken the following actions:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the vehicles, describes the problem and describes the proposed quality control and/or quality assurance remedies to be taken by the manufacturer to correct the problem or follows the requirements for an engineering change. Such requirements include the following:

(i) Any change to a configuration with respect to any of the parameters stated in § 205.55–3 shall constitute the addition of a new and separate configuration or category to the manufacturer's product line.

(ii) When a manufacturer introduces a new category or configuration to his product line, he shall proceed in accordance with § 205.55–2.

(iii) If the configuration to be added can be grouped within a verified category and the new configuration is estimated to have a lower sound pressure level than a previously verified configuration within the same category, the configuration shall be considered verified.

(2) Demonstrates that the specified vehicle category, configuration or subgroup thereof has passed a retest conducted in accordance with § 205.57 and the conditions specified in the initial test request.

(3) The manufacturer may begin testing under paragraph (a)(2) of this section upon submitting such report, and may cease continued testing upon making the demonstration required by paragraph (a)(2) of this section, provided that the Administrator may require resumption of continued testing if he determines that the manufacturer has not satisfied the requirements of paragraphs (a)(1) and (2) of this section.

(b) Any vehicle failing the prescribed noise emission tests conducted pursuant to this Subpart B may not be distributed in commerce until necessary adjustments or repairs have been made and the vehicle passes a retest.

(c) No vehicles of a rejected batch which are still in the hands of the manufacturer may be distributed in commerce unless the manufacturer has demonstrated to the satisfaction of the Administrator that such vehicles do in fact conform to the regulations: Except, that any vehicle that has been tested and does, in fact, conform with these regulations may be distributed in commerce.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61460, Dec. 5, 1977; 47 FR 57715, Dec. 28, 1982]

§ 205.58 In-use requirements.

§ 205.58–1 Warranty.

(a) The vehicle manufacturer shall include the owner's manual or in other information supplied to the ulitmate purchaser the following statement:

NOISE EMISSIONS WARRANTY

(Name of vehicle manufacturer) warrants to the first person who purchases this vehicle for purposes other than resale and to each subsequent purchaser that this vehicle as manufactured by (names of vehicle manufacturer), was designed, built and equipped to conform at the time it left (name of vehicle manufacturer)'s control with all applicable U.S. EPA Noise Control Regulations.

This warranty covers this vehicle as designed, built and equipped by (Name of vehicle manufacturer), and is not limited to any particular part, component or system of the vehicle manufactured by (name of vehicle manufacturer). Defects in design, assembly or in any part, component or system of the vehicle as manufactured by (name of vehicle manufacturer), which, at the time it left (name of vehicle manufacturer)'s control, caused noise emissions to exceed Federal standards, are covered by this warranty for the life of the vehicle.

(b) [Reserved]

[41 FR 15544, Apr. 13, 1976, as amended at 47 FR 57715, Dec. 28, 1982; 48 FR 27040, June 13, 1983]

§ 205.58–2 Tampering.

(a) For each configuration of vehicles covered by this part, the manufacturer shall develop a list of those acts which, in his judgment, might be done to the vehicle in use and which would constitute the removal or rendering inoperative of noise control devices or elements of design of the vehicle.

(b) The manufacturer shall include in the owner's manual the following information:

(1) The statement:

TAMPERING WITH NOISE CONTROL SYSTEM PROHIBITED

Federal law prohibits the following acts or the causing thereof:

(1) The removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new vehicle for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use; or (2) the use of the vehicle after such device or element of design has been removed or rendered inoperative by any person.

(2) The statement:

Among those acts presumed to constitute tampering are the acts listed below.

Immediately following this statement, the manufacturer shall include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a proscribed act has been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of § 205.52, such act will not constitute tampering.

(d) The provisions of this section are not intended to preclude any State or local jurisdiction from adopting and enforcing its own prohibitions against the removal or rendering inoperative of noise control systems on vehicles subject to this part.

[41 FR 15544, Apr. 13, 1976, as amended at 47 FR 57715, Dec. 28, 1982; 48 FR 27040, June 13, 1983]

§ 205.58–3 Instructions for maintenance, use and repair.

(a)(1) The manufacturer shall provide to the ultimate purchaser of each vehicle covered by this subpart written instructions for the proper maintenance,

use and repair of the vehicle in order to provide reasonable assurance of the elimination or minimization of noise emission degradation throughout the life of the vehicle.

(2) The purpose of the instructions is to inform purchasers and mechanics of those acts necessary to reasonably assure that degradation of noise emission level is eliminated or minimized during the life of the vehicle. Manufacturers should prepare the instructions with this purpose in mind. The instructions should be clear and, to the extent practicable, written in nontechnical language.

(3) The instructions must not be used to secure an unfair competitive advantage. They should not restrict replacement equipment to original equipment or service to dealer service. Manufacturers who so restrict replacement equipment should be prepared to make public any performance specifications on such equipment.

(b) For the purpose of encouraging proper maintenance, the manufacturer shall provide a record or log book which shall contain a schedule for the performance of all required noise emission control maintenance. Space shall be provided in this record book so that the purchaser can note what maintenance was done, by whom, where and when.

[41 FR 15544, Apr. 13, 1976, as amended at 47 FR 57716, Dec. 28, 1982]

§ 205.59 Recall of noncomplying vehicles.

(a) Pursuant to section 11(d)(1) of the Act, the Administrator may issue an order to the manufacturer to recall and repair or modify any vehicle distributed in commerce not in compliance with this subpart.

(b) A recall order issued pursuant to this section shall be based upon a determination by the Administrator that vehicles of a specified category or configuration have been distributed in commerce which do not conform to the regulations. Such determination may be based on:

(1) A technical analysis of the noise emission characteristics of the category or configuration in question; or

(2) Any other relevant information, including test data.

(c) For the purposes of this section, noise emissions may be measured by any test prescribed in § 205.54 for testing prior to sale or any other test which has been demonstrated to correlate with the prescribed test procedure.

(d) Any such order shall be issued only after notice and an opportunity for a hearing.

(e) All costs, including labor and parts, associated with the recall and repair or modification of non-complying vehicles under this section shall be borne by the manufacturer.

(f) This section shall not limit the discretion of the Administrator to take any other actions which are authorized by the Act.

APPENDIX I TO SUBPART B OF PART 205

TABLE I—SAMPLE SIZE CODE LETTERS

Batch size	Code letter
4 to 8	A.
9 to 15	B.
16 to 25	C.
26 and larger	D.

TABLE II—SAMPLING PLANS FOR INSPECTING BATCHES

Sample size code letter	Test sample	Test sample size	Cumulative test sample size	Batch inspection criteria	
				Acceptance No.	Rejection No.
A	1st	4	4	0	1
B	1st	3	3	0	1
C	1st	3	3	0	2
	2d	3	6	1	2
D	1st	2	2	(1)	2
	2d	2	4	(1)	2
	3d	2	6	0	2
	4th	2	8	0	3
	5th	2	10	1	3
	6th	2	12	1	3

TABLE II—SAMPLING PLANS FOR INSPECTING BATCHES—Continued

Sample size code letter	Test sample	Test sample size	Cumulative test sample size	Batch inspection criteria	
				Acceptance No.	Rejection No.
	7th	2	14	2	3

[1] Batch acceptance not permitted at this sample size.

TABLE III—BATCH SEQUENCE PLANS

Sample size code letter	Number of batches	Cumulative number of batches	Sequence inspection criteria	
			Acceptance No.	Rejection No.
A	2	2	1	([2])
	2	4	2	4
	2	6	3	5
	2	8	4	5
B	2	2	0	([2])
	2	4	1	4
	2	6	2	5
	2	8	3	5
	2	10	4	6
	2	12	5	6
C	2	2	([1])	2
	2	4	0	2
	2	6	0	3
	2	8	1	3
	2	10	2	4
	2	12	3	4
D	2	2	0	2
	2	4	1	3
	2	6	2	4
	2	8	3	4

[1] Batch sequence acceptance not permitted for this number of batches.
[2] Batch sequence rejection not permitted for this number of batches.

TABLE IV—RECOMMENDED FORMAT FOR VEHICLE NOISE DATA SHEET

Test Report Number: ..... Manufacturer:.
VEHICLE:
Trade Name: ..... VIN:.
Model Year: ..... Other Reference No:.
Configuration Identification: ..... Category Identification:.
Test Site Identification and Location:.
INSTRUMENTATION:
Microphone Manufacturer: ..... Model No: ..... Serial No:.
Sound Level Manufacturer: ..... Model No: ..... Serial No:.
Calibrator Manufacturer: ..... Model No: ..... Serial No:.
Other and Manufacturer: ..... Model No: ..... Serial No:.
TEST DATA:
Approach Gear: ..... Date of Test:.
Approach RPM: ..... Temp: ..... Wind:.
Acceleration Test:.
Deceleration Test:.

Acceleration Test					
	Run No.				
	1	2	3	4	5
dBA Left.					
Right.					
Highest RPM attained in End Zone					
Calculated Sound Pressure	.....	dBA			
Deceleration Test with Exhaust Brake Applied					
dBA Left.					

Acceleration Test

	Run No.				
	1	2	3	4	5
Right.					

Calculated Sound Pressure .... dBA

TEST Personnel:.

(Name)

Recorded By: ..... Date:.....

(Signature)

Supervisor: ..... Title:.....

(Signature)

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61460, Dec. 5, 1977]

Subpart C [Reserved]

Subpart D—Motorcycles

SOURCE: 45 FR 86708, Dec. 31, 1980, unless otherwise noted.

§205.150 Applicability.

(a) Except as otherwise provided in these regulations, the provisions of this subpart apply to 1983 and subsequent model year motorcycles manufactured after December 31, 1982, which meet the definition of ''new product'' in the Act.

(b) The provisions of this subpart do not apply to electric or battery-powered motorcycles.

(c) Except as provided in §205.158, the provisions of this subpart do not apply to competition motorcycles as defined in §205.151(a)(3).

§205.151 Definitions.

(a) As used in this subpart and in Subpart E, all terms not defined herein shall have the meaning given them in the Act or in Subpart A of this part.

(1) *Motorcycle* means any motor vehicle, other than a tractor, that:

(i) Has two or three wheels;

(ii) Has a curb mass less than or equal to 680 kg (1499 lb); and

(iii) Is capable, with an 80 kg (176 lb) driver, of achieving a maximum speed of at least 24 km/h (15 mph) over a level paved surface.

(2) *Street motorcycle* means:

(i) Any motorcycle that:

(A) With an 80 kg (176 lb) driver, is capable of achieving a maximum speed of at least 40 km/h (25 mph) over a level paved surface; and

(B) Is equipped with features customarily associated with practical street or highway use, such features including but not limited to any of the following: stoplight, horn, rear view mirror, turn signals: or

(ii) Any motorcycle that:

(A) Has an engine displacement less than 50 cubic centimeters;

(B) Produces no more than two brake horse power;

(C) With a 80 kg (176 lb) driver, cannot exceed 48 km/h (30 mph) over a level paved surface.

(3) *Competition motorcycle* means any motorcycle designed and marketed solely for use in closed course competition events.

(4) *Off-road motorcycle* means any motorcycle that is not a street motorcycle or competition motorcycle.

(5) *Acceleration test procedure* means the measurement methodologies specified in Appendix I.

(6) *Acceptable quality level* (AQL) means the maximum allowable average percentage of vehicles or exhaust systems that can fail sampling inspection under a Selective Enforcement Audit.

(7) *Acoustical Assurance Period* (AAP) means a specified period of time or miles driven after sale to the ultimate purchaser during which a newly manufactured vehicle or exhaust system, properly used and maintained, must continue in compliance with the Federal standard.

(8) *Advertised Engine Displacement* means the rounded off volumetric engine capacity used for marketing purposes by the motorcycle manufacturer.

(9) *Category* means a group of vehicle configurations which are identical in

all material aspects with respect to the parameters listed in § 205.157–2 of this subpart.

(10) *Class* means a group of vehicles which are identical in all material aspects with respect to the parameters listed in § 205.155 of this subpart.

(11) *Closed course competition event* means any organized competition event covering an enclosed, repeated or confined route intended for easy viewing of the entire route by all spectators. Such events include short track, dirt track, drag race, speedway, hillclimb, ice race, and the Bonneville Speed Trials.

(12) *Closing rpm* means the engine speed in Figure 2 of Appendix I.

(13) *Configuration* means the basic classification unit of a manufacturer's product line and is comprised of all vehicle designs, models or series which are identical in all material aspects with respect to the parameters listed in § 205.157–3 of this subpart.

(14) *Engine displacement* means volumetric engine capacity as defined in § 205.153.

(15) *Exhaust system* means the combination of components which provides for the enclosed flow of exhaust gas from the engine exhaust port to the atmosphere. ''Exhaust system'' further means any constituent components of the combination which conduct exhaust gases and which are sold as separate products. ''Exhaust System'' does not mean any of the constituent components of the combination, alone, which do not conduct exhaust gases, such as brackets and other mounting hardware.

(16) *Failing vehicle* means a vehicle whose noise level is in excess of the applicable standard.

(17) *Maximum rated RPM* means the engine speed measured in revolutions per minute (RPM) at which peak net brake power (SAE J–245) is developed for motorcycles of a given configuration.

(18) *Model specific code* means the designation used for labeling purposes in §§ 205.158 and 205.169 for identifying the motorcycle manufacturer, class, and ''advertised engine displacement,'' respectively.

(19) *Model year* means the manufacturer's annual production period, which includes January 1 of any calendar year, or if the manufacturer has no annual production period, the term ''model year'' shall mean the calendar year.

(20) *Motorcycle noise level* means the A-weighted noise level of a motorcycle as measured by the acceleration test procedure.

(21) *Noise control system* means any vehicle part, component or system, the purpose of which includes control or the reduction of noise emitted from a vehicle, including all exhaust system components.

(22) *Noise emission standard* means the noise levels in § 205.152 or § 205.166.

(23) *Noise emission test* means a test conducted pursuant to a measurement methodology specified in this subpart.

(24) [Reserved]

(25) *Serial number* means the identification number assigned by the manufacturer to a specific production unit.

(26) *Tampering* means the removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any product in compliance with regulations under section 6, prior to its sale or delivery to the ultimate purchaser or while it is in use; or the use of a product after such device or element of design has been removed or rendered inoperative by any person.

(27) *Test vehicle* means a vehicle in a Selective Enforcement Audit test sample.

(28) *Tractor* means for the purposes of this subpart, any two or three wheeled vehicle used exclusively for agricultural purposes, or for snow plowing, including self-propelled machines used exclusively in growing, harvesting or handling farm produce.

(29) *Vehicle* means any motorcycle regulated pursuant to this subpart.

(30) *Warranty* means the warranty required by section 6(d)(1) of the Act.

[45 FR 86708, Dec. 31, 1980, as amended at 47 FR 57720, Dec. 28, 1982]

§ 205.152 Noise emission standards.

(a) *Noise emission standards.* (1) Street motorcycles of the following and subsequent model years must not produce noise emissions in excess of the levels indicated:

(i) Street motorcycles other than those that meet the definition of § 205.151(a)(2)(ii):

Model year	A-weighted noise level (dB)
(A) 1983	83
(B) 1986	80

(ii) Street motorcycles that meet the definition of § 205.151(a)(2)(ii)(moped-type street motorcycles):

Model year	A-weighted noise level (dB)
(A) 1983	70

(2) Off-road motorcycles of the following and subsequent model years must not produce noise emissions in excess of the levels indicated:

(i) Off-road motorcycles with engine displacements of 170 cc and lower:

Model year	A-weighted noise level (dB)
(A) 1983	83
(B) 1986	80

(ii) Off-road motorcycles with engine displacements greater than 170 cc:

Model year	A-weighted noise level (dB)
(A) 1983	86
(B) 1986	82

(3) Street motorcycles must be designed, built and equipped so that, when properly maintained and used, they will not produce noise emissions in excess of the levels specified in paragraph (a)(1) of this section, for an Acoustical Assurance Period of one year or a distance of 6000 km (3730 mi) after the time of sale to the ultimate purchaser, whichever occurs first.

(4) Off-road motorcycles must be designed, built and equipped so that, when properly maintained and used, they will not produce noise emissions in excess of the levels specified in paragraph (a)(2) of this section, for an Acoustical Assurance Period of one year or a distance of 3000 km (1865 mi) after the time of sale to the ultimate purchaser, whichever occurs first.

(5) At the time of sale to the ultimate purchaser, all products must comply with the standards set forth in paragraphs (a)(1) and (2) of this section.

(b) *Measurement procedure.* (1) The standards set forth in paragraph (a) of this section refer to noise emissions as measured in accordance with the measurement methodology specified in Appendix I–1 for all motorcycles except those street motorcycles that meet the definition of § 205.151(a)(2)(ii).

(2) The standards set forth in paragraph (a) of this section for street motorcycles that meet the definition of § 205.151(a)(2)(ii) (moped-type street motorcycles) refer to noise emissions measured in accordance with the measurement methodology specified in Appendix I–2.

(c) *Low noise emission product standard.* For the purpose of Low-Noise-Emission Product certification pursuant to 40 CFR part 203, motorcycles procured by the Federal government after the following dates must not produce noise emissions in excess of the noise levels indicated:

(1) For street motorcycles with engine displacement greater than 170 cc:

Date	A-weighted noise level (dB)
(i) January 1, 1982	73
(ii) January 1, 1989	71

(2) For off-road motorcycles with engine displacements greater than 170 cc:

Date	A-weighted noise level (dB)
(i) January 1, 1982	75

(3) For off-road motorcycles with engine displacement 170 cc and lower and street motorcycles with engine displacement 170 cc and lower that do not meet the definition of § 205.151(a)(2)(ii):

Date	A-weighted noise level (dB)
(i) January 1, 1982	71

(4) For street motorcycles that meet the definition of § 205.151(a)(2)(ii) (moped-type street motorcycles):

Date	A-weighted noise level (dB)
(i) January 1, 1982	60

These levels refer to noise emissions as measured in accordance with the measurement methodologies specified in appendix I. LNEP's must also meet all requirements contained in paragraphs (a)(3), (4), and (5), of this section.

(Secs. 10 and 15 of the Noise Control Act, (42 U.S.C. 4909, 4914))

§ 205.153 Engine displacement.

(a) Engine displacement must be calculated using nominal engine values and rounded to the nearest whole cubic centimeter, in accordance with American Society for Testing Materials (ASTM) E 29–67.

(b) For rotary engines, displacement means the maximum volume of a combustion chamber between two rotor tip seals minus the minimum volume of that combustion chamber between those two rotor seals times three times the number of rotors.

cc=(Maximum chamber volume − minimum chamber volume) × 3 × number of rotors.

§ 205.154 Consideration of alternative test procedures.

The Administrator may approve applications from manufacturers of motorcycles for the approval of test procedures which differ from those contained in this subpart so long as the alternative procedures have been demonstrated to correlate with the prescribed procedure. To be acceptable, alternative test procedures must be such that the test results obtained will identify all those test motorcycles which would not comply with the noise emission standards prescribed in § 205.152 when tested in accordance with the measurement methodology specified in Appendix I. After approval by the Administrator, testing conducted by manufacturers using alternative test procedures will be accepted by the Administrator for all purposes including, but not limited to, selective enforcement audit testing.

[45 FR 86708, Dec. 31, 1980, as amended at 47 FR 57720, Dec. 28, 1982]

§ 205.155 Motorcycle class and manufacturer abbreviation.

(a) Motorcycles must be grouped into classes determined by separate combinations of the following parameters:

(1) Engine type:

(i) Gasoline—two stroke.

(ii) Gasoline—four stroke.

(iii) Gasoline—rotary.

(iv) Other.

(2) Engine displacement.

(3) Engine configuration:

(i) Number of cylinders.

(ii) Cylinder arrangement (i.e., in line, opposed, etc.).

(4) Exhaust system:

(i) Muffler: (A) Type, (B) Location, (C) Number.

(ii) Expansion chambers: (A) Location, (B) Size.

(iii) Spark arrestors.

(iv) Other exhaust system components.

§ 205.156 [Reserved]

§ 205.157 Requirements.

§ 205.157–1 General requirements.

(a) Each manufacturer of vehicles manufactured for distribution in commerce in the United States which are subject to the standards prescribed in this subpart and not exempted in accordance with Subpart A, § 205.5:

(1) Shall be labeled in accordance with the requirements of § 205.158 of this subpart.

(2) Must ensure that each vehicle conforms to the applicable noise emission standard establishd in § 205.152 of this subpart.

(b) The requirements of paragraph (a) of this section apply to new products which conform to the definition of vehicles in these regulations and at the time such new products are assembled to that state of completeness in which the manufacturer sends them to a subsequent manufacturer or otherwise distributes them in commerce.

(c) Subsequent manufacturers of a new product which conforms to the definition of vehicle in these regulations when received by them from a prior manufacturer, need not fulfill the requirements of paragraph (a)(1) of this section where such requirements have

already been complied with by a prior manufacturer.

(d) The manufacturer who is required to conduct product verification testing to demonstrate compliance with a particular standard, must satisfy all other provisions of this subpart applicable to that standard, including but not limited to, record keeping, reporting and in-use requirements.

[45 FR 86708, Dec. 31, 1980, as amended at 47 FR 57720, Dec. 28, 1982]

§ 205.157–2 Compliance with standards.

(a)(1) Prior to distribution in commerce of vehicles of a specific configuration, the first manufacturer of such vehicle must verify such configurations in accordance with the requirements of this subpart.

(2) [Reserved]

(3) At any time following receipt of notice under paragraph (a)(2)(iii) of this section with respect to a configuration, the Administrator may require that the manufacturer ship test vehicles to an EPA test facility for the required production verification testing.

(b) The requirements for purposes of testing by the Administrator and selective enforcement auditing with regard to each vehicle configuration consist of:

(1) Testing in accordance with § 205.160–4 of a vehicle selected in accordance with § 205.160–2.

(2) Compliance of the test vehicle with the applicable standard when tested in accordance with § 205.160–4.

(c)(1) In lieu of testing vehicles of every configuration as described in paragraph (b) of this section, the manufacturer may elect to verify the configuration based on representative testing. The requirements of representative testing are:

(i) Grouping configurations into categories where each category is determined by a separate combination of at least the following parameters (a manufacturer may use more parameters):

(A) Engine type: (*1*) Gasoline-two stroke; (*2*) gasoline-four stroke; (*3*) gasoline-rotary; and (*4*) other.

(B) Engine displacement.

(C) Engine configuration: (*1*) Number of cylinders; and (*2*) cylinder arrangement (i.e., in line, opposed, etc.)

(ii) Identifying the configuration within each category which emits the highest A-weighted sound level (in dB).

(iii) Testing in accordance with § 205.160–4 of a vehicle selected in accordance with § 205.160–2 which much be a vehicle of the configuration which is identified pursuant to paragraph (c)(1)(ii) of this section as having the highest sound pressure level (estimated or actual) within the category.

(iv) Demonstrating compliance of that vehicle with the applicable standard when tested in accordance with the test procedure specified in Appendix I.

(2) Where the requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within a category are considered represented by the tested vehicle.

(3) Where the manufacturer tests a vehicle configuration which has not been determined as having the highest sound pressure level of a category, but all other requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within that category which are determined to have sound pressure levels not greater than the tested vehicle are considered to be represented by the tested vehicle; however, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify according to the requirements of (b)(1) and/or (c)(1) of this section any configurations in the subject category which have a higher sound pressure level than the vehicle configuration tested.

(d) A manufacturer may elect for purposes of Testing by the Administrator and Selective Enforcement Auditing to use representative testing pursuant to paragraph (c) of this section for all or part of his product line.

(e) The manufacturer has the following alternatives if any test vehicle is determined to not be in compliance with applicable standards:

(1) In the case of representative testing, a new test vehicle from another configuration must be selected according to the requirements of paragraph (c) of this section, in order to verify the configurations represented by the non-compliant vehicle.

(2) Modify the test vehicle and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production vehicles of the same configuration in the same manner as the test vehicle before distribution into commerce.

[45 FR 86708, Dec. 31, 1980, as amended at 47 FR 57720, Dec. 28, 1982]

§ 205.157–3 Configuration identification.

(a) A separate vehicle configuration shall be determined by each combination of the following parameters:

(1) Exhaust system (engine): (i) Mufflers; (ii) expansion chambers; (iii) spark arrestors; and (iv) other exhaust system components.

(2) Air induction system (engine): (i) Intake muffler; (ii) intake ducting; and (iii) air cleaner element.

(3) Vehicle drive train: (i) Chain; and (ii) shaft.

(4) Transmission gear ratio: (i) Standard transmission; and (ii) automatic transmission.

(5) Cooling system configuration: (i) Natural air cooled; (ii) liquid cooled; and (iii) forced air cooled.

(6) Category parameters listed in § 205.157–2.

(b) [Reserved]

§ 205.158 Labeling requirements.

(a)(1) The manufacturer of any vehicle subject to this subpart must, at the time of manufacture, affix a label, of the type specified in paragraphs (a)(2), (3), and (4) of this section, to all such vehicles to be distributed in commerce.

(2) The label must be plastic or metal and be welded, riveted, or otherwise permanently attached in a readily visible position.

(3) The label must be affixed by the vehicle manufacturer to the vehicle in such a manner that the label cannot be removed without destroying or defacing it, and must not be affixed to any piece of equipment that is easily detached from such vehicle.

(4) The label must be lettered in the English language in legible block letters and numerals, which must be of a color that contrasts with the background of the label.

(5) The label must contain the following information:

(i) The label heading: Motorcycle Noise Emission Control Information;

(ii) The statement:

This _____ (model year) _____ (model specific code) motorcycle, _____ (serial number), meets EPA noise emission requirements of _____ (noise emission standard) dBA at _____ (closing rpm) rpm by the Federal test procedure. Modifications which cause this motorcycle to exceed Federal noise standards are prohibited by Federal law. See owner's manual.

(6) The model specific code is limited to ten spaces which includes three spaces for the manufacturer's abbreviation (see paragraph (a)(7) of this section), three spaces for the class identification, and four spaces for the advertised engine displacement respectively.

(7) All motorcycle manufacturers shall use the following abbreviations in their model specific code.

BMW	BMW
Bultaco	BUL
Can-Am Bombardier	CAB
Chaparral	CHA
Cheeta	CHE
Ducati	DUC
Fox	FOX
Harley Davidson	HAR
Heald	HEA
Hercules	HER
Hodaka	HOD
Honda	HON
Husqvarna	HUS
JAWA/CZ	JAW
Kawasaki	KAW
KTM	KTM
Laverda	LAV
Moto Benilli	BEN
Moto Guzzi	GUZ
Moto Morini	MOR
MV Agusta	MVA
Norton Triumph	TRI
Rokon	ROK
Suzuki	SUZ
Yamaha	YAM

(8) Moped manufacturers only shall use the following abbreviations in their model specific code.

AMF	AMF
Benelli	BEL
Califfo	CAL
Carabela	CAR
Cimatti	CIM
Columbia	COL
E-Z Rider	EZR
Flying Dutchman	FLY
Foxi	FOI
Gadabout	GAD
Garelli	GAR
Gitane	GIT
Honda	HON
Indian	IND
Intramotor	INT
Italvelo	ITA
Kreidler	KRE
Lazer	LAZ

Malagati	MAL
Morini	MOI
Motobecane/Solex	MBE
Moto Guzzi	GUZ
Negrini	NEG
Odyssey	ODY
Pacer	PAC
Pack-A-Way	PAK
Peugeot	PEU
Puch	PUC
Riviera	RIV
Sachs	SAC
Safari	SAF
Scorpion	SCO
Smily	SMI
Snark	SNA
Sori II	SON
Speed Bird	SPE
Sprinter	SPR
SuVega	SUV
Tomas	TOM
Vaespa	VES
Yankee Peddler	YAN

(9) If a new motorcycle manufacturer begins production of vehicles subject to this regulation, the Administrator will assign him a 3-letter manufacturer abbreviation as soon as reasonably practical after his existence is known to the Agency.

(b) Any vehicle manufactured in the United States solely for use outside the United States must be clearly labeled in accordance with the provisions of paragraphs (a) (2), (3), and (4) of this section with the statement; ''For Export Only''.

(c) Any competition motorcycle as defined in § 205.151(a)(3), shall be labeled in accordance with the provisions of paragraphs (a)(1), (2), (3) and (4) of this section with the statement:

This motorcycle is designed for closed course competition use only. It does not conform to U.S. EPA motorcycle noise standards.

(d) It will be permissible for manufacturers to meet the requirements of this section by consolidating these labeling requirements with other government labeling requirements in one or more labels, provided the provisions of paragraphs (a) (2), (3) and (4) of this section are met.

[45 FR 86708, Dec. 31, 1980, as amended at 47 FR 57721, Dec. 28, 1982]

§ 205.159 Testing by the Administrator.

(a)(1) In order for the Administrator to determine whether such vehicles or a manufacturer's test facility conform to applicable regulations, the Administrator may require that vehicles to be tested pursuant to the Act be submitted to him, at such place and time as he reasonably designates. He may designate the quantity of vehicles and the duration of time he reasonably requires for the purpose of conducting tests in accordance with test procedures described in appendix I. The manner in which the Administrator conducts such tests, the EPA test facility, and the test procedures employed will be based upon good engineering practice and meet or exceed the requirements of appendix I of the regulations.

(2) If the Administrator specifies that he will conduct such testing at the manufacturer's facility, the manufacturer shall make available instrumentation and equipment of the type required for test operations by these regulations. The Administrator may conduct such tests with his own equipment, having specifications equal to or exceeding the performance specifications of the instrumentation and equipment required in these regulations.

(3) The manufacturer may observe tests conducted by the Administrator pursuant to this section on vehicles produced by the manufacturer and may copy the data accumulated from such tests. The manufacturer may inspect any of the vehicles before and after testing by the Administrator.

(b)(1) If, based on tests conducted by the Administrator, or on other relevant information, the Administrator determines that the test facility does not meet the requirements of appendix I (or the requirements for an alternative test procedure approved under § 205.154), the Administrator will give notice to the manufacturer in writing of his determination and the reasons underlying it.

(2) The manufacturer may, at any time within 15 days after receipt of a notice issued under paragraph (b)(1) of this section, request a hearing conducted in accordance with 5 U.S.C. 554 on the issue of whether his test facility met the requirements as specified in appendix I (or the alternative procedure). Such notice will not take effect until 15 days after its receipt by the manufacturer or, if a hearing is requested under this paragraph, until adjudication by the Administrative law judge.

(3) After any notice issued under paragraph (b)(1) of this section has taken effect, no data thereafter derived from that test facility will be acceptable for purposes of this subpart.

(4) The manufacturer may request in writing that the Administrator reconsider his determination under paragraph (b)(1) of this section based on data or information which indicates that changes have been made to the test facility and that those changes have resolved the reasons for disqualification.

(5) Within 10 working days after receipt of the manufacturer's request for reconsideration pursuant to paragraph (b)(4) of this section, the Administrator will notify the manufacturer of his determination and of the reasons underlyng it with regard to the requalification of the test facility.

(c) The Administrator will assume all reasonable costs associated with shipment of vehicles to the place designated pursuant to paragraph (a) of this section except with respect to:

(1) Any production verification testing performed at a place other than the manufacturer's facility as provided in § 205.157–2(a), or as a result of the manufacturer's not owning or having access to a test facility;

(2) Testing of a reasonable number of vehicles (i) for purposes of selective enforcement auditing under § 205.160, (ii) or if the manufacturer has failed to establish that there is a correlation between its test facility and the EPA test facility, (iii) or the Administrator has reason to believe, and provides the manufacturer with a statement of such reason, that the vehicles to be tested would fail to meet the standard prescribed in this subpart if tested at the EPA test facility even though they would meet such standard if tested at the manufacturer's test facility;

(3) Any testing performed during a period when a notice issued pursuant to paragraph (b) of this section is in effect;

(4) Any testing performed at a place other than the manufacturer's facility as a result of the manufacturer's failure to permit the Administrator to conduct or monitor testing as required by this subpart; and

(5) Testing of up to 10 percent of the manufacturer's test vehicles for a model year if the Administrator determines testing these vehicles at the EPA test site is necessary to assure that a manufacturer has acted or is acting in compliance with the Act.

[45 FR 86708, Dec. 31, 1980, as amended at 47 FR 57721, Dec. 28, 1982]

§ 205.160 Selective enforcement auditing (SEA) requirements.

§ 205.160–1 Test request.

(a) The Administrator will request all testing under § 205.160 by means of a test request addressed to the manufacturer.

(b) The test request will be signed by the Assistant Administrator for Enforcement or his designee. The test request will be delivered to the plant manager or other responsible official as designated by the manufacturer.

(c) The test request will specify the vehicle category, configuration or configuration subgroup selected for testing, the manufacturer's plant or storage facility from which the vehicles must be selected, and the time at which the vehicles must be selected. The test request will also provide for situations in which the selected category, configuration, or configuration subgroup is unavailable for testing. The test request may include an alternative category, configuration, or configuration subgroup designated for testing in the event that vehicles of the first specified category, configuration, or configuration subgroup are not available for testing because the vehicles are not being manufactured at the specified plant, are not being manufactured during the specified time, or are not being stored at the specified plant or storage facility.

(d)(1) If the manufacturer projects a yearly production of fewer than 50 vehicles of the specified category, configuration or configuration subgroup to be tested, then within five (5) days of receipt of the request, the manufacturer must notify the Administrator of such low volume production. The Administrator will then provide a revised test request specifying a testing plan which imposes no greater risk of failure (5%) at the acceptable quality level

(10%) than the plan in Appendix II. Upon receipt of the revised test request, the manufacturer must select and test a sample of vehicles from the category, configuration or configuration subgroup specified in the test request in accordance with this subpart and the conditions specified in the test request.

(2) If the manufacturer produces 50 or more vehicles of the specified category, configuration or configuration subgroup per year, then upon receipt of the test request, the manufacturer must select and test a sample of vehicles from the category, configuration or configuration subgroup specified in the test request in accordance with this subpart and the conditions specified in the test request.

(e)(1) Any testing conducted by the manufacturer under a test request must be initiated within the time period specified in the test request; except that initiation may be delayed for increments of 24 hours or one business day where ambient test site weather conditions, or other conditions beyond the control of the manufacturer, in that 24-hour period, do not permit testing. The manufacturer must record the conditions for this period.

(2) The manufacturer must complete noise emission testing on a minimum of ten vehicles per day unless otherwise provided by the Administrator or unless ambient test site conditions permit only the testing of a lesser number in which case the ambient test site weather conditions for that period must be recorded.

(3) The manufacturer is allowed 24 hours to ship vehicles from a sample from the assembly plant to the testing facility if the facility is not located at the plant or in close proximity to the plant. The Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) The Administrator may issue an order to the manufacturer to cease distribution in commerce of vehicles of a specified category, configuration, or configuration subgroup being manufactured at a particular facility, if:

(1) The manufacturer refuses to comply with the provisions of a test request issued by the Administrator under this section; or

(2) The manufacturer refuses to comply with any of the requirements of this section.

(g) A cease distribution order will not be issued under paragraph (f) of this section if the manufacturer's refusal is caused by conditions and circumstances outside his control which render compliance with the provisions of a test request or with any other requirements of this section impossible. Conditions and circumstances outside the control of the manufacturer include, but are not limited to, the temporary unavailability of equipment and personnel needed to conduct the required tests caused by uncontrollable factors, such as equipment breakdown or failure or illness of personnel. Failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests do not constitute uncontrollable factors. The manufacturer must bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(h) Any order to cease distribution will be issued only after a notice and opportunity for a hearing in accordance with 5 U.S.C. 554.

§ 205.160–2 Test sample selection and preparation.

(a) Vehicles comprising the sample which are required to be tested under a test request in accordance with this subpart must be selected consecutively as they are produced. Before the official test, the test vehicle must not be prepared, tested, modified, adjusted, or maintained in any manner unless such preparation, tests, modifications, adjustments or maintenance are part of the manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal vehicle assembly and inspection procedures, are required or permitted under this subpart, or are approved in advance by the Administrator. For purposes of this section, prescribed manufacturing and inspection procedures include quality control testing and assembly procedures normally performed by the manufacturer

on like products during early production if the resulting testing is not biased by this procedure. In the case of imported products, the manufacturer may perform adjustments, preparations, modification or tests normally performed at the port of entry by the manufacturer to prepare the vehicle for delivery to a dealer or customer.

(1) Equipment or fixtures necessary to conduct the test may be installed on the vehicle if such equipment or fixtures have no effect on the noise emissions of the vehicle, as determined by the measurement methodology.

(2) In the event of a vehicle malfunction (i.e., failure to start, etc.) the manufacturer may perform the maintenance that is necessary to enable the vehicle to operate in a normal manner. This maintenance must be documented and reported in the SEA report.

(3) No quality control, quality assurance testing, assembly or selection procedures may be used on the test vehicle or any portion of the test vehicle including parts and subassemblies, unless such quality control, quality assurance testing, assembly or selection procedures are used normally during the production and assembly of all other vehicles of this configuration which will be distributed in commerce, are required or permitted under this subpart or are approved in advance by the Administrator.

(4) If a vehicle is unable to complete the noise tests, the manufacturer may replace the vehicle. Any replacement vehicle must be a production vehicle of the same configuration as the replaced vehicle or a noisier configuration and will be subject to all the provisions of these regulations. Any replacement must be reported in the SEA report.

(b) The Acceptable Quality Level (AQL) is 10 percent. The appropriate sampling plans associated with the designated AQL are contained in Appendix II or the test request.

(c) The vehicles of the category, configuration or configuration subgroup selected for testing must be assembled by the manufacturer for distribution in commerce using the manufacturer's normal production process.

(d) Unless otherwise indicated in the test request, the manufacturer must initiate testing with the vehicles of the category, configuration or configuration subgroup specified in the test request which are next scheduled for production after receipt of the test request.

(e) The manufacturer must keep on hand all products in the test sample until the sample is accepted or rejected in accordance with § 205.160–6; except that vehicles actually tested and found to be in conformance with this regulation need not be kept.

[45 FR 86708, Dec. 31, 1980, as amended at 47 FR 57721, Dec. 28, 1982]

§ 205.160–3 [Reserved]

§ 205.160–4 Testing procedures.

(a) The manufacturer must conduct one valid test in accordance with the appropriate test procedures specified in Appendix I, on each vehicle selected for testing under this subpart.

(b) In the event a vehicle is unable to complete the noise emission test, the manufacturer may replace the vehicle. Any replacement vehicle must be a production vehicle of the same category, configuration or subgroup as the vehicle which it replaced, and it is subject to all the provisions of this subpart.

[45 FR 86708, Dec. 31, 1980, as amended at 47 FR 57721, Dec. 28, 1982]

§ 205.160–5 Reporting of the test results.

(a)(1) The manufacturer must submit a copy of the test report for all testing conducted pursuant to § 205.160 at the conclusion of each 24-hour period during which testing is done.

(2) For each test conducted the manufacturer must provide the following information:

(i) Category, configuration or configuration subgroup identification where applicable;

(ii) Year, make, assembly date, and model of vehicle;

(iii) Vehicle serial number; and

(iv) Test results by serial numbers.

(b) In the case where an EPA Enforcement Officer is present during testing required by this subpart, the written reports requested in paragraph (a) of this section may be given directly to the Enforcement Officer.

(c) Within 5 days after completion of testing of an SEA, the manufacturer must submit to the Administrator a final report which will include the following:

(1) The name, location, and description of the manufacturer's noise emission test facilities which meet the specifications of Appendix I, and were utilized to conduct testing reported under this section, except, that a test facility that has been described in a previous submission under this subpart need not again be described, but must be identified as that facility.

(2) The following information for each noise emission test conducted:

(i) The individual records for the test vehicles required by § 205.161(a)(2) for all noise emission tests including for each invalid test, the reason for invalidation.

(ii) A complete description of any modification, repair, preparation, maintenance, or testing which could affect the noise emissions of the product and which was performed on the test vehicle but not performed on all other production vehicles; and,

(iii) The test results for any replaced vehicle and the reason for its replacement.

(3) A complete description of the sound data acquisition system if other than those specified in Appendix I.

(4) The following statement and endorsement:

This report is submitted pursuant to section 6 and section 13 of the Noise Control Act of 1972. To the best of _____ (company name) knowledge, all testing for which data are reported here was conducted in strict conformance with applicable regulations under 40 CFR part 205 *et seq.*, all the data reported here are a true and accurate representation of such testing, and all other information reported here is true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder. _____ (authorized representative).

(5) Additional information required by the test request.

(d) Information required to be submitted to the Administrator under this section must be sent to the following address: Director, Noise and Radiation Enforcement Division, (EN–387), U.S. Environmental Protection Agency, Washington, DC 20460.

§ 205.160–6 Passing or failing under SEA.

(a) A failing vehicle is one whose measured noise level is in excess of the applicable noise emission standard in § 205.152.

(b) The number of failing vehicles in a sample determines whether the sample passes or fails (See applicable tables in Appendix II). If the number of failing vehicles is greater than or equal to the number of Column B, the sample fails. If the number of failing vehicles is less than or equal to the number in Column A, the sample passes.

(c) Pass or failure of an SEA takes place when a decision that a vehicle is a passing or failing unit is made on the last vehicle required to make a decision under paragraph (b) of this section.

(d) If the manufacturer passes the SEA, he will not be required to perform any additional testing on subsequent vehicles to satisfy the test request.

(e) The Administrator may terminate testing earlier than required in paragraph (b) of this section, based on a request by the manufacturer, accompanied by voluntarily ceasing distribution in commerce of vehicles from the category, configuration or configuration subgroup in question, manufactured at the plant which produced the products being tested. Before reinitiating distribution in commerce of that vehicle category, configuration or configuration subgroup from that plant, the manufacturer must take the action described in § 205.160–8(a)(1) and (2).

§ 205.160–7 Continued testing.

(a) If an SEA failure occurs according to paragraph (b) of § 205.160–6, the Administrator may require that any or all vehicles of that category, configuration or configuration subgroup produced at that plant be tested before distribution in commerce.

(b) The Administrator will notify the manufacturer in writing of his intent to require continued testing of vehicles under paragraph (a) of this section.

(c) The manufacturer may request a hearing on the issues of whether the SEA was conducted properly; whether the criteria for SEA failure have been met; and the appropriateness or scope

of a continued testing order. If a hearing is requested, the hearing will begin no later than 15 days after the date on which the Administrator received the hearing request. Neither the request for a hearing nor the fact that a hearing is in progress will affect the responsibility of the manufacturer to commence and continue testing required by the Administrator pursuant to paragraph (a) of this section.

(d) Any tested vehicle which demonstrates conformance with the applicable standard may be distributed into commerce.

(e) Any distribution into commerce of a vehicle which does not comply with the applicable standard is a prohibited act.

§ 205.160–8 Prohibition of distribution in commerce; manufacturer's remedy.

(a) The Administrator will permit the manufacturer to cease testing under § 205.160–7 after the manufacturer has taken the following actions:

(1) Submission of a written report to the Administrator which identifies the reason for the noncompliance of the vehicles, describes the problem and/or quality control or quality assurance remedies to be taken by the manufacturer to correct the problem.

(2) Demonstration that the specified vehicle category, configuration or configuration subgroup has passed a retest conducted in accordance with § 205.160, and the conditions specified in the test request.

(b) The manufacturer may begin testing under paragraph (a)(2) of this section upon submitting the report required by paragraph (a)(1) of this section, and may cease continued testing upon making the demonstration required by paragraph (a)(2) of this section. The Administrator may require resumption of continued testing if he determines that the manufacturer has not satisfied the requirements of paragraphs (a)(1) and (2) of this section.

(c) Any vehicle failing the prescribed noise emission tests conducted pursuant to appendix I may not be distributed in commerce until necessary adjustments or repairs have been made and the vehicle passes a retest.

[45 FR 86708, Dec. 31, 1980, as amended at 47 FR 57721, Dec. 28, 1982]

§ 205.162 In-use requirements.

§ 205.162–1 Warranty.

(a) The vehicle manufacturer who is required to production verify under this subpart must include in the owner's manual or in other information supplied to the ultimate purchaser the following statement:

NOISE EMISSIONS WARRANTY [RESERVED]

(b) [Reserved]

[45 FR 86708, Dec. 31, 1980, as amended at 48 FR 27040, June 13, 1983]

§ 205.162–2 Tampering.

(a) For each configuration of vehicles covered by this part, the manufacturer shall develop a list of acts which, in his judgment, constitute the removal or rendering totally or partially inoperative, other than for purposes of maintenance, repair, or replacement of noise control devices or elements of design of the vehicle.

(b) The manufacturer shall include in the owner's manual the following information:

(1) The statement:

TAMPERING WITH NOISE CONTROL SYSTEM PROHIBITED

Federal law prohibits the following acts or causing thereof:

(1) The removal or rendering inoperative by any person other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new vehicle for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use, or (2) the use of the vehicle after such device or element of design has been removed or rendered inoperative by any person.

(2) The statement:

Among those acts presumed to constitute tampering are the acts listed below.

Immediately following this statement, the manufacturer must include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a presumed act of tampering has been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of § 205.152, the act will not constitute tampering.

(d) The provisions of this section are not intended to preclude any State or local jurisdiction from adopting and enforcing its own prohibitions against the removal or rendering inoperative of noise control systems on vehicles subject to this part.

[45 FR 86708, Dec. 31, 1980, as amended at 47 FR 57721, Dec. 28, 1982]

§ 205.162–3 Instructions for maintenance, use, and repair.

(a)(1) The manufacturer must provide to the purchaser of each vehicle covered by this subpart written instructions for the proper maintenance, use, and repair of the vehicle in order to provide reasonable assurance of the elimination or minimization of noise emission degradation throughout the life of the vehicle.

(2) The purpose of the instructions is to inform purchasers and mechanics of the acts necessary to reasonably assure that degradation of noise emission level is eliminated or minimized during the life of the vehicle. Manufacturers shall prepare the instructions with this purpose in mind. The instructions shall be clear and, to the extent practicable, written in non-technical language.

(3) The instructions must not be used to secure an unfair competitive advantage. They shall not restrict replacement equipment to original equipment or restrict service to dealer service unless such manufacturer makes public the performance specifications on such equipment.

(b) For the purpose of encouraging proper maintenance, the manufacturer must provide a record or log book which shall contain a schedule for the performance of all required noise emission control maintenance. Space must be provided in this record book so that the purchaser can note what maintenance was done, by whom, where, and when.

[45 FR 86708, Dec. 31, 1980, as amended at 47 FR 57722, Dec. 28, 1982]

§ 205.163 Recall of noncomplying motorcycles; relabeling of mislabeled motorcycles.

(a) Pursuant to section 11(d)(1) of the Act, the Administrator may issue an order to the manufacturer to recall, repair, modify, or relabel any vehicles distributed in commerce which are not in compliance with this subpart.

(b) A recall order issued under this section shall be based upon a determination by the Administrator that vehicles of a specified category, configuration, or class which do not conform to the regulations or are improperly labeled have been distributed in commerce. This determination may be based on: (1) A technical analysis of the noise emission characteristics of the category, configuration, or class in question; or (2) any other relevant information, including test data.

(c) For the purpose of this section, noise emissions are to be measured by the appropriate test procedure prescribed in appendix I prior to sale or any other test which has been demonstrated to correlate with the prescribed test procedure in accordance with § 205.154.

(d) Any order to recall shall be issued only after notice and an opportunity for a hearing.

(e) All cost, including labor and parts, associated with the recall and repair or modification of noncomplying vehicles and relabeling of mislabeled vehicles under this section shall be borne by the manufacturer.

(f) This section shall not limit the discretion of the Administrator to take any other actions which are authorized by the Act.

APPENDIX I TO SUBPARTS D AND E—MOTORCYCLE NOISE EMISSION TEST PROCEDURES [NOTE]

EDITORIAL NOTE: The text of appendix I follows subpart E.

Subpart E—Motorcycle Exhaust Systems

AUTHORITY: Sec. 6 of the Noise Control Act (42 U.S.C. 4905).

SOURCE: 45 FR 86718, Dec. 31, 1980, unless otherwise noted.

§ 205.164 Applicability.

(a) Except as otherwise provided in these regulations, the provisions of this subpart apply to any motorcycle replacement exhaust system or motorcycle replacement exhaust system component which:

(1) Meets the definition of the term ''new product'' in the Act; and

(2) Is designed and marketed for use on any motorcycle subject to the provisions of subpart D of this part.

(b) The provisions of § 205.169 additionally apply to the motorcycle exhaust systems originally installed on vehicles subject to the requirements of subpart D of this part.

(c) The provisions of § 205.169(d)(3) additionally apply to motorcycle replacement exhaust systems manufactured after January 1, 1983 that are designed and marketed for use on motorcycles manufactured before January 1, 1983.

(d) Except as provided for in § 205.169, the provisions of this subpart do not apply to exhaust systems which are designed and marketed solely for use on competition motorcycles as defined in § 205.151(a)(3).

(e) The provisions of the subpart do not apply to exhaust header pipes sold as separate products.

§ 205.165 Definitions.

(a) As used in this subpart, all terms not defined herein have the meaning given them in subpart D of this part or in the Act.

(1) *Category* means a group of exhaust systems which are identical in all material aspects with respect to the parameters listed in § 205.168 of this subpart.

(2) *Exhaust header pipe* means any tube of constant diameter which conducts exhaust gas from an engine exhaust port to other exhaust system components which provide noise attenuation. Tubes with cross connections or internal baffling are not considered to be ''exhaust header pipes.''

(3) *Failing exhaust system* means that, when installed on any Federally regulated motorcycle for which it is designed and marketed, that motorcycle and exhaust system exceed the applicable standards.

(4) *Federally regulated motorcycle* means, for the purpose of this subpart, any motorcyle subject to the noise standards of subpart D of this part.

(5) *Federal standards* means, for the purpose of this subpart, the standards specified in § 205.152(a)(1), (2) and (3).

(6) [Reserved]

(7) *Stock configuration* means that no modifications have been made to the orginal equipment motorcycle that would affect the noise emissions of the vehicle when measured according to the acceleration test procedure.

(8) *Test exhaust system* means an exhaust system in Selective Enforcement Audit test sample.

(b) [Reserved]

[45 FR 86718, Dec. 31, 1980, as amended at 47 FR 57722, Dec. 28, 1982]

§ 205.166 Noise emission standards.

(a) *Noise emission standards.* (1) Exhaust systems and exhaust system components that are designed and marketed for use on any Federally regulated street motorcycle of the following and subsequent model years must be designed and built so that when installed on any such motorcycle which is in compliance with the requirements of subpart D of this part, they will not cause that motorcycle to produce noise emissions in excess of the levels indicated:

(i) Systems designed and marketed for use on street motorcycles other than those that meet the definition of § 205.151(a)(2)(ii):

Motorcycle model year	A-weighted noise level (dB)
(A) 1983	83
(B) 1986	80

(ii) Systems designed and marketed for street motorcycles that meet the definition of § 205.151(a)(2)(ii) (moped-type street motorcycles):

Motorcycle model year	A-weighted noise level (dB)
(A) 1983	70

(2) Exhaust systems and exhaust system components that are designed and marketed for use on any Federally regulated off-road motorcycle of the following and subsequent model years must be designed and built so that, at the time of sale, when installed on any such motorcycle which is in compliance with the requirements of subpart D of this part, they will not cause that motorcycle to produce noise emissions in excess of the levels indicated:

(i) Systems designed and marketed for use on off-road motorcycles with engine displacements of 170 cc and lower:

Motorcycle model year	A-weighted noise level (dB)
(A) 1983	83
(B) 1986	80

(ii) Systems designed and marketed for use on off-road motorcycles with engine displacements greater than 170 cc:

Motorcycle model year	A-weighted noise level (dB)
(A) 1983	86
(B) 1986	82

(3) Exhaust systems and exhaust system components that are designed and marketed for use on any Federally regulated street motorcycle shall be designed and built so that, when installed on any such motorcycle which is in compliance with the requirements of subpart D of this part, and when both the motorcycle and the exhaust system are properly maintained and used, they will not cause that motorcycle to produce noise emissions in excess of the levels specified in paragraph (a)(1) of this section, for an Acoustical Assurance Period of one year or a distance of 6000 km (3729 mi) after the time of sale to the ultimate purchaser, whichever occurs first.

(4) Exhaust systems and exhaust system components that are designed and marketed for use on any Federally regulated off-road motorcycle must be designed and built so that, when installed on any such motorcycle which is in compliance with the requirements of subpart D of this part, and when both the motorcycle and the exhaust system are properly maintained and used, they will not cause that motorcycle to produce noise emissions in excess of the levels specified in paragraph (a)(2) of this section, for an Acoustical Assurance Period of one year or a distance of 3000 km (1865 mi) after the time of sale to the ultimate purchaser, whichever occurs first.

(5) At the time of sale to the ultimate purchaser all products must comply with the standards set forth in paragraphs (a) (1) and (2) of this section.

(b) *Measurement procedure.* (1)(i) The standards set forth in paragraph (a) of this section refer to the noise emissions as measured in accordance with the measurement methodology specified in appendix I–1 for all motorcycles except those street motorcycles meeting the definition of § 205.151(a)(2)(ii). Exhaust systems which alter a motorcycle's maximum rated RPM shall be tested using the unmodified motorcycle's maximum rated RPM to determine closing RPM or test RPM.

(ii) The standards set forth in paragraph (a) of this section for street motorcycles meeting the definition of § 205.151(a)(2)(ii) (moped-type street motorcycles) refer to noise emissions measured in accordance with the measurement methodology specified in appendix I–2.

(2) Exhaust system components sold as separate products shall be tested as part of a system made up of that part and original equipment components to complete the system.

(3) Exhaust system components sold as separate products which are incompatible with original equipment components necessary to make a complete exhaust system, or which would not meet standards as prescribed in this subpart in such configuration, may be tested with non-original equipment components provided that the provisions of § 205.169(e)(1)(ii)(B) are carried out.

§ 205.167 Consideration of alternative test procedures.

The Administrator may approve applications from manufacturers of original equipment and replacement exhaust systems for the approval of test procedures which differ from those contained in this subpart so long as the alternative procedures have been demonstrated to correlate with the prescribed procedure. To be acceptable, alternative test procedures must be such that the test results obtained will identify all those test exhaust systems which would not comply with the noise emission standards prescribed in § 205.166 when tested in accordance with the measurement methodology specified in appendix I. After approval by the Administrator, testing conducted by manufacturers using alternative test procedures may be accepted by the Administrator for all purposes including, but not limited to, production verification testing and selective enforcement audit testing.

§ 205.168 Requirements.

§ 205.168–1 General requirements.

(a) Each manufacturer of motorcycle exhaust systems manufactured for Federally regulated motorcycles and distributed in commerce in the United States which are subject to the noise emission standards prescribed in this subpart and not exempted in accordance with subpart A, § 205.5:

(1) Must label each exhaust system in accordance with the requirements of § 205.169 of this subpart; and

(2) Must only manufacture exhaust systems which conform to the applicable noise emission standard established in § 205.166 of this regulation when installed on any Federally regulated motorcycle for which it has been designed and marketed.

(b) The manufacturer who is required to conduct testing to demonstrate compliance with a particular standard must satisfy all other provisions of this subpart applicable to that standard.

(c) Prior to distribution into commerce of exhaust systems of a specific category, the manufacturer of the exhaust system shall verify the category in accordance with this subpart.

(1) Not withstanding paragraph (a)(1) of this section, the manufacturer may distribute in commerce exhaust systems of that category for up to 90 days if weather or other conditions beyond the control of the manufacturer make testing of a category impossible and if the following conditions are met:

(i) The manufacturer performs the tests required under paragraph (d) or (e) of this section on such category as soon as conditions permit;

(ii) [Reserved]

(d) The requirements for each exhaust system category consist of:

(1) Testing in accordance with § 205.171–1 of an exhaust system selected in accordance with § 205.171–2.

(2) Compliance of the test exhaust system on a motorcycle for which it is marketed with the applicable standard when tested in accordance with appendix I; and

(e) A manufacturer is required to verify all categories of exhaust systems within his product line for each class of Federally regulated motorcycle for which it is designed and marketed. A category of a replacement exhaust system is defined by a separate combination of at least the following parameters:

(1) *Muffler/Silencer:* (i) Volume; (ii) type of absorption material; (iii) amount of absorption material; (iv) length; (v) diameter; (vi) directional flow of exhaust gas; (vii) interior construction; (viii) shell and inner construction material; (ix) number of header pipes entering muffler; and (x) specific motorcycle application.

(2) *Expansion Chamber:* (i) Volume; (ii) diameter; (iii) construction material; (iv) directional flow of exhaust gas; (v) length; and (vi) specific motorcycle application.

(3) *Spark Arrestors:* (i) Volume; (ii) construction material; (iii) directional flow of exhaust gas; (iv) length; (v) diameter, and (vi) specific motorcycle application.

(4) *Other Exhaust System Components:* (i) Volume; (ii) shape; (iii) length; (iv) diameter; (v) material; (vi) directional flow of exhaust gas; and (vii) specific motorcycle application.

(f) Exhaust system components sold as separate products shall be tested pursuant to § 205.166(b).

(g) Original equipment exhaust systems that are also sold as replacement systems for the same motorcycle configuration need not be tested under this subpart if they have been tested or represented in a test report under subpart D of this part.

(h) A manufacturer has the following alternatives if any test exhaust system is determined not to be in compliance with applicable standards:

(i) Modify the test exhaust system and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production exhaust systems of the same category in the same manner as the test exhaust system before distribution in commerce.

[47 FR 57722, Dec. 28, 1982; 48 FR 27040, June 13, 1983]

§ 205.168–11 Order to cease distribution.

(a) If a category of exhaust systems is found not to comply with this subpart because it has not been verified or labeled as required by § 205.169, the Administrator may issue an order to the manufacturer to cease distribution in commerce exhaust systems of that category. This order will not be issued if the manufacturer has made a good faith attempt to properly production verify the category and can establish such good faith.

(b) Any such order shall be issued after notice and opportunity for a hearing which will be held in accordance with title 5 U.S.C. 554.

[45 FR 86718, Dec. 31, 1980, as amended at 48 FR 27040, June 13, 1983]

§ 205.169 Labeling requirements.

(a) The manufacturer of any product (including the manufacturer of newly produced motorcycles) subject to this subpart must, at the time of manufacture, affix a permanent, legible label, or mark of the type and in the manner described below, containing the information provided below, to all such exhaust systems or exhaust system components to be distributed in commerce.

(b) The labels or marks shall be affixed in such a manner that they cannot be removed without destroying or defacing them, and must not be applied to any part which is easily detached from such product.

(c) The label or mark shall be in a readily visible position when the exhaust system or exhaust system component is installed on all motorcycles for which it is designed and marketed.

(d) All required language shall be lettered in the English language in block letters and numerals in a color that contrasts with its background.

(e) The label or mark must contain the following information:

(1) For exhaust systems subject to the noise emission standards of § 205.166:

(i) The label heading: Motorcycle Exhaust System Noise Emission Control Information;

(ii)(A) For original equipment and replacement exhaust system, the following statement:

This (manufacturer's name) exhaust system (serial number) meets EPA noise emission requirements of (noise emission standard) dBA for the following motorcycles: (list of model specific codes). Installation of this exhaust system on motorcycle models not specified may violate Federal law.

(B) For exhaust system components designed and marketed for motorcycles, and tested in accordance with § 205.168 as a constituent of a complete exhaust system comprising non-original equipment components (other than itself), as provided for in § 205.166(b)(3), the following statement:

This (manufacturer's name) (type of component) (serial number), when installed with a legal (type of component), meets EPA noise emission requirements of (noise emission standard) dBA for the following motorcycles: (list of model specific codes). Installation of this exhaust system components on motorcycle models not specified may violate Federal law.

(iii) The model specific code must be the same as used by the motorcycle manufacturer and described in § 205.158(a)(6).

(2) For exhaust systems designed solely for use on competition motorcycles (as defined by § 205.151(a)(3) and so designated and labeled by the manufacturer), the statement:

This product is designed for use on closed course competition motorcycles only and does not conform to U.S. EPA noise emission standards. Used on motorcycles subject to

EPA noise regulations constitutes tampering and is a violation of Federal law unless it can be shown that such use does not cause the motorcycle to exceed applicable Federal standards.

(3) For exhaust systems designed solely for use on motorcyles manufactured before January 1, 1982, the statement:

This product is designed for use on pre-1982 model year motorcycles only and does not conform to U.S. EPA noise emission standards. Use on motorcycles subject to EPA noise regulations constitutes tampering and is a violation of Federal law unless it can be shown that such use does not cause the motorcycle to exceed applicable Federal standards.

(4) For replacement exhaust systems manufactured in the United States solely for use outside the U.S. and not conforming to the noise emissions standards of this regulation, the statement: ''For Export Only.''

[45 FR 86718, Dec. 31, 1980, as amended at 47 FR 57722, Dec. 28, 1982]

§ 205.170 Testing by the Administrator.

(a)(1) In order for the Administrator to determine whether such exhaust systems or a manufacturer's test facility conform to applicable regulations, the Administrator may require that exhaust systems to be tested pursuant to the Act be submitted to him, at such place and time as he reasonably designates. He may designate the quantity of exhaust systems and the duration of time he reasonably requires for the purpose of conducting tests in accordance with test procedures described in appendix I. The manner in which the Administrator conducts such tests, the EPA test facility, and the test procedures employed will be based upon good engineering practice and meet or exceed the requirements of appendix I.

(2) If the Administrator specifies that he will conduct such testing at the manufacturer's facility, the manufacturer shall make available instrumentation and equipment of the type required for test operators by these regulations. The Administrator may conduct such tests with his own equipment, having specifications equal to or exceeding the performance specifications of the instrumentation and equipment required in these regulations.

(3) The manufacturer may observe tests conducted by the Administrator pursuant to this section on exhaust systems produced by the manufacturer and may copy the data accumulated from such tests. The manufacturer may inspect any of the exhaust systems before and after testing by the Administrator.

(b)(1) If, based on tests conducted by the Administrator or on other relevant information, the Administrator determines that the test facility does not meet the requirements of appendix I or the requirements for an alternative test procedure approved under § 205.154, the Administrator will give notice to the manufacturer in writing of his determination and the reasons underlying it.

(2) The manufacturer may, at any time within 15 days after receipt of a notice issued under paragraph (b)(1) of this section, request a hearing conducted in accordance with 5 U.S.C. 554 on the issue of whether his test facility met the requirements. Such notice will not take effect until 15 days after its receipt by the manufacturer, or, if a hearing is requested under this paragraph, until adjudication by the administrative law judge.

(3) After any notice issued under paragraph (b)(1) of this section has taken effect, no data thereafter derived from that test facility will be acceptable for purposes of this subpart.

(4) The manufacturer may request in writing that the Administrator reconsider his determination under paragraph (b)(1) of this section based on data or information which indicates that changes have been made to the test facility and that such changes have resolved the reasons for disqualification.

(5) Within 10 working days after receipt of the manufacturer's request for reconsideration pursuant to paragraph (b)(4) of this section, the Administrator will notify the manufacturer of his determination and the reasons underlying it with regard to the requalification of the test facility.

(c) The Administrator will assume all reasonable costs associated with shipment of exhaust systems to the place designated pursuant to paragraph (a) of this section except with respect to:

(1) [Reserved]

(2) Testing of a reasonable number of exhaust systems (i) for purposes of selective enforcement auditing under § 205.171, or (ii) if the manufacturer has failed to establish that there is a correlation between its test facility and the EPA test facility, or (iii) the Administrator has reason to believe, and provides the manufacturer with a statement of such reason, that the exhaust systems to be tested would fail to meet the standard prescribed in this subpart if tested at the EPA test facility, even though they would meet such standard if tested at the manufacturer's test facility;

(3) Any testing performed during a period when a notice of non- conformance of the manufacturer's test facility issued pursuant to paragraph (b) of this section is in effect;

(4) Any testing performed at a place other than the manufacturer's facility as a result of the manufacturer's failure to permit the Administrator to conduct or monitor testing as required by this subpart; and

(5) In addition to any exhaust systems included in paragraphs (c) (2), (3), or (4) of this section, testing of up to 10 percent of the manufacturer's exhaust systems for a model year if the Administrator determines testing these exhaust systems at the EPA test site is necessary to assure that a manufacturer has acted or is acting in compliance with the Act.

(Secs. 11 and 13 of the Noise Control Act (42 U.S.C. 4910, 4912); 42 U.S.C. 4905; 86 Stat. 1237 and secs. 6, 10, 11, 13, Pub. L. 92–574, 86 Stat. 1234 (42 U.S.C. 4905, 4909, 4910, 4912))

[45 FR 86718, Dec. 31, 1980; 46 FR 4918, Jan. 19, 1981, as amended at 47 FR 57722, Dec. 28, 1982; 49 FR 26738, June 29, 1984]

§ 205.171 Selective enforcement auditing (SEA) requirements.

§ 205.171–1 Test request.

(a) The Administrator will request all testing under § 205.171 by means of a test request addressed to the manufacturer.

(b) The test request will be signed by the Assistant Administrator for Enforcement or his designee. The test request will be delivered to the plant manager or other responsible official as designated by the manufacturer.

(c) The test request will specify the exhaust system category, model and model year of motorcycle selected for testing, the manufacturer's plant or storage facility from which the exhaust systems must be selected, the method of selection and the time at which the exhaust systems must be selected. The test request will also provide for situations in which the selected exhaust system is unavailable for testing. The test request may include an alternative exhaust system category designated for testing in the event that exhaust systems of the first specified category are not available for testing because the exhaust systems are not being manufactured at the specified plant or are not being manufactured during the specified time or are not being stored at the specified plant or storage facility.

(d)(1) If the manufacturer projects a yearly production of fewer than 50 exhaust systems of the specified category to be tested, then, within five (5) days of receipt of the request, the manufacturer must notify the Administrator of such low volume production. The Administrator will then provide a revised test request specifying a testing plan which imposes no greater risk of failure (5%) at the acceptable quality level (10%) than the plan in appendix II. Upon receipt of the revised test request, the manufacturer must select and test a sample of exhaust systems from the category specified in the test request in accordance with this subpart and the conditions specified in the test request.

(2) If the manufacturer produces 50 or more of the specified category, then, upon receipt of the test request, the manufacturer must select and test a sample of exhaust systems for the category specified in the test request in accordance with this subpart and the conditions specified in the test request.

(e)(1) Any testing conducted by the manufacturer under a test request must be initiated within the time period specified in the test request; except that initiation may be delayed for increments of 24 hours or one business day where ambient test site weather conditions, or other conditions beyond

the control of the manufacturer, in that 24-hour period do not permit testing. The manufacturer must record the conditions for this period.

(2) The manufacturer must complete noise emission testing on a minimum of ten exhaust systems per day unless otherwise provided by the Administrator or unless ambient test site conditions permit only the testing of a lesser number, in which event the ambient test site weather conditions for that period must be recorded.

(3) The manufacturer is allowed 24 hours to ship exhaust systems from a sample from the assembly plant to the testing facility if the facility is not located at the plant or in close proximity to the plant. The Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) The Administrator may issue an order to the manufacturer to cease distribution in commerce of exhaust systems of a specified category being manufactured at a particular facility if:

(1) The manufacturer refuses to comply with the provisions of a test request issued by the Administrator under this section; or

(2) The manufacturer refuses to comply with any of the requirements of this section.

(g) A cease distribution order will not be issued under paragraph (f) of this section if the manufacturer's refusal is caused by conditions and circumstances outside his control which render compliance with the provisions of a test request or with any other requirements of this section impossible. Conditions and circumstances outside the control of the manufacturer include, but are not limited to, the temporary unavailability of equipment and personnel needed to conduct the required tests, caused by uncontrollable factors such as equipment breakdown or failure or illness of personnel. Failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests does not constitute uncontrollable factors. The manufacturer must bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(h) Any order to cease distribution will be issued only after notice and opportunity for a hearing in accordance with 5 U.S.C. 554.

§ 205.171–2 Test exhaust system sample selection and preparation.

(a)(1) Exhaust systems comprising the sample which are required to be tested under a test request in accordance with this subpart must be selected consecutively as they are produced.

(2) Test motorcycles and test exhaust systems to be used for testing of exhaust systems must be of the subject class which has been assembled using the manufacturer's normal production processes, in stock configuration including exhaust system, as sold or offered for sale in commerce.

(3) Before the official test, the test motorcycle and test exhaust system must not be prepared, tested, modified, adjusted, or maintained in any manner unless such preparation, tests, modifications, adjustments or maintenance are part of the original equipment manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal motorcycle assembly and inspection procedures, or are required or permitted under this subpart, or are approved in advance by the Administrator.

(4) Equipment or fixtures necessary to conduct the test may be installed on the motorcycle, if such equipment or fixtures shall have no effect on the noise emissions of the motorcycle as determined by the measurement methodology.

(5) In the event of a motorcycle malfunction (i.e., failure to start, etc.) maintenance that is necessary may be performed to enable the vehicle to operate in a normal manner. This maintenance must be documented and reported in the final report prepared and submitted in accordance with this subpart.

(6) No quality control, quality assurance testing, assembly or selection procedures may be used on the test vehicle or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other motorcycles of that class which will be distributed

in commerce, unless such procedures are required or permitted under this subpart or are approved in advance by the Administrator.

(b) The Acceptable Quality Level (AQL) is 10 percent. The appropriate sampling plans associated with the designated AQL are contained in appendix II or the test request.

(c) The exhaust systems of the category selected for testing must be assembled by the manufacturer for distribution in commerce using the manufacturer's normal production process.

(d) Unless otherwise indicated in the test request, the manufacturer must initiate testing with the exhaust systems of the category specified in the test request which are next scheduled for production after receipt of the test request.

(e) The manufacturer must keep on hand all products in the test sample until the sample is accepted or rejected in accordance with § 205.171–8; except that exhaust systems actually tested and found to be in conformance with this regulation need not be kept.

[45 FR 86718, Dec. 31, 1980, as amended at 47 FR 57723, Dec. 28, 1982]

§ 205.171–3 Test motorcycle sample selection.

A test motorcycle to be used for selective enforcement audit testing of exhaust systems must be a motorcycle of the subject class which has been assembled using the manufacturer's normal production process, in stock configuration including exhaust system, and sold or offered for sale in commerce.

§ 205.171–6 Testing procedures.

(a) The manufacturer of the exhaust system must conduct one valid test in accordance with the appropriate test procedure specified in appendix I for each exhaust system selected for testing under this subpart.

(b) No maintenance may be performed on the test exhaust system except as provided by § 205.171–2. In the event an exhaust system is unable to complete the noise emission test, the manufacturer may replace the exhaust system. Any replacement exhaust system must be a production exhaust system of the same category as the exhaust system which it replaced, and it is subject to all the provisions of this subpart.

[45 FR 86718, Dec. 31, 1980, as amended at 47 FR 57723, Dec. 28, 1982]

§ 205.171–7 Reporting of the test results.

(a)(1) The manufacturer must submit a copy of the test report for all testing conducted pursuant to § 205.171 at the conclusion of each 24-hour period during which testing is done.

(2) For each test conducted, the manufacturer must provide the following information:

(i) Category identification where applicable;

(ii) Year, manufacturing date, serial number and model of exhaust system;

(iii) Year, make serial number, and model of test motorcycle; and

(iv) Test results by serial numbers.

(b) In the case where an EPA Enforcement Officer is present during testing required by this subpart, the written reports requested in paragraph (a) of this section may be given directly to the Enforcement Officer.

(c) Within 5 days after completion of an SEA, the manufacturer must submit to the Administrator a final report which will include the following:

(1) The name, location, and description of the manufacturer's noise emission test facilities which meet the specifications of appendix I and where utilized to conduct testing reported under this section, except, that a test facility that has been described in a previous submission under this subpart need not again be described, but must be identified as that facility.

(2) The following information for each noise emission test conducted:

(i) The individual records required by § 205.172 (a)(2) for all noise emission tests including for each invalid test, the reason for invalidation;

(ii) A complete description of any modification, repair, preparation, maintenance, or testing, which could affect the noise emissions of the product and which was performed on the test exhaust system but not performed on all other production exhaust systems;

(iii) The test results for any replacement exhaust system and the reason for its replacement.

(3) A complete description of the sound data acquisition system if other than that specified in appendix I.

(4) The following statement and endorsement:

This report is submitted pursuant to section 6 and section 13 of the Noise Control Act of 1972. To the best of (company name) knowledge, all testing for which data is reported here was conducted in strict conformance with applicable regulations under 40 CFR Part 205 *et seq.*, all the data reported here are a true and accurate representation of such testing, and all other information reported here is true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder. (authorized representative).

(5) Additional information required by the test request.

(d) Information required to be submitted to the Administrator under this section must be sent to the following address: Director, Noise and Radiation Enforcement Division, (EN–387), U.S. Environmental Protection Agency, Washington, DC 20460.

§ 205.171–8 Passing or failing under SEA.

(a) A failing exhaust system is one which, when installed on any motorcycle which is in compliance with the requirements of subpart D and for which it is designed and marketed, together with such motorcycle produces a measured noise level in excess of the applicable noise emission standard in § 205.166.

(b) The number of failing vehicles in a sample determines whether the sample passes or fails (See applicable tables in appendix II). If the number of failing vehicles is greater than or equal to the number in Column B, the sample fails. If the number of failing vehicles is less than or equal to the number in Column A, the sample passes.

(c) Pass or failure of a SEA takes place when a decision that an exhaust system is a passing or failing unit is made on the last exhaust system required to make a decision under paragraph (b) of this section.

(d) If the manufacturer passes the SEA, he will not be required to perform any additional testing on subsequent exhaust systems to satisfy the test request.

(e) The Administrator may terminate testing earlier than required in paragraph (b) of this section, based on a request by the manufacturer, accompanied by voluntarily ceasing distribution in commerce of exhaust systems from the category in question, manufactured at the plant which produced the exhaust systems being tested. Before reinitiating distribution in commerce of that exhaust system category from that plant, the manufacturer must take the action described in § 205.171–10(a)(1) and (2).

§ 205.171–9 Continued testing.

(a) If an SEA failure occurs according to paragraph (b) of § 205.171–8, the Administrator may require that any or all exhaust systems of that category produced at that plant be tested before distribution in commerce.

(b) The Administrator will notify the manufacturer in writing of his intent to require continued testing of exhaust systems under paragraph (a) of this section.

(c) The manufacturer may request a hearing on the issues of whether the SEA was conducted properly; whether the criteria for SEA failure have been met; and the appropriateness or scope of a continued testing order. If a hearing is requested, the hearing will begin no later than 15 days after the date on which the Administrator received the hearing request. Neither the request for a hearing nor the fact that a hearing is in progress will affect the responsibility of the manufacturer to commence and continue testing required by the Administrator pursuant to paragraph (a) of this section.

(d) Any tested exhaust system which demonstrates conformance with the applicable standard may be distributed into commerce.

(e) Any distribution into commerce of an exhaust system which does not comply with the applicable standard is a prohibited act.

§ 205.171–10 Prohibition on distribution in commerce; manufacturer's remedy.

(a) The Administrator will permit the manufacturer to cease testing under § 205.171–9 after the manufacturer has taken the following actions:

(1) Submission of a written report to the Administrator which identifies the reason for the noncompliance of the exhaust systems, describes the problem and describes the proposed quality control or quality assurance remedies to be taken by the manufacturer to correct the problem.

(2) Demonstration that the specified exhaust system category has passed a retest conducted in accordance with § 205.171 and the conditions specified in the test request.

(b) The manufacturer may begin testing under paragraph (a)(2) of this section upon submitting the report, required by paragraph (a)(1) of this section any may cease continued testing upon making the demonstration required by paragraph (a)(2) of this section. The Administrator may require resumption of continued testing if he determines that the manufacturer has not satisfied the requirements of paragraphs (a)(1) and (2) of this section.

(c) Any exhaust system failing the noise emission tests conducted pursuant to Appendix I may not be distributed into commerce until necessary adjustment or repairs have been made and the exhaust system passes a retest.

[45 FR 86718, Dec. 31, 1980, as amended at 47 FR 57723, Dec. 28, 1982]

§ 205.172 Maintenance of records; submittal of information.

(a) Except as otherwise provided in regulation, the manufacturer of any new exhaust system subject to any of the standards or procedures prescribed in this subpart must establish, maintain and retain the following adequately organized and indexed records:

(1) General records:

(i) Identification and description by category parameters of all exhaust systems in the manufacturer's product line;

(ii) A description of any procedures other than those contained in this subpart used to perform noise emission tests on any test exhaust system;

(iii) A record of the calibration of the acoustical instrumentation as is described in appendix I;

(iv) A record of the date of manufacture of each exhaust system subject to this subpart, keyed to the serial number.

(2) Individual records for test exhaust systems:

(i) A complete record of all noise emission tests performed for Production Verification and Selective Enforcement Audit (except tests performed by EPA directly), including all individual worksheets and other documentation or exact copies relating to each test;

(ii) A record of the information recorded as described in Appendix I; and

(iii) A record and description of all repairs, maintenance and other servicing which were performed before successful testing of the exhaust system pursuant to these regulations and which could affect the noise emission of the exhaust system, giving the date and time of the maintenance or service, the reason for it, the person authorizing it, and the names of supervisory personnel responsible for the conduct of the maintenance or service.

(3) A properly filed production verification report following the format prescribed by the Administrator in § 205.168–3 fulfills the requirements of paragraphs (a)(1)(i) and (ii) of this section.

(4) All records required to be maintained under this subpart must be retained by the manufacturer for a period of three (3) years from the production verification date. Records may be retained as hard copy or alternatively reduced to microfilm, punch cards, etc., depending on the record retention procedures of the manufacturer; however, when an alternative method is used, all information contained in the hard copy must be contained in the copy made by the alternative method.

(b) The manufacturer must, upon request, submit to the Administrator the following information with regard to new exhaust system production:

(1) Number of exhaust systems, by category, scheduled for production for the time period designated in the request.

(2) Number of exhaust systems, by category, produced during the time period designated in the request.

(c) The reporting requirements of this regulation will no longer be effective after five (5) years from the last effective date of this regulation. However, the requirements will remain in

effect if the Administrator is taking appropriate steps to repromulgate or modify the reporting requirements at that time.

§ 205.173 In-use requirements.

§ 205.173–1 Warranty.

(a) The exhaust system manufacturer must include in the information supplied to the ultimate purchaser pursuant to § 205.173–4, the following statement:

NOISE EMISSION WARRANTY

[The manufacturer] warrants that this exhaust system, at time of sale, meets all applicable U.S. E.P.A. Federal noise standards. This warranty extends to the first person who buys this exhaust system for purposes other than resale, and to all subsequent buyers. Warranty claims should be direct to _____. (Manufacturer shall fill in this blank with his name, address and telephone number.)

(b) [Reserved]

(c) All information must be sent to:

Director, Noise and Radiation Enforcement Division (EN–387), Environmental Protection Agency, Washington, DC 20460.

[45 FR 86718, Dec. 31, 1980, as amended at 47 FR 57723, Dec. 28, 1982]

§ 205.173–2 Tampering.

The manufacturer must include the following statement pursuant to § 205.173–4 with each product of that category the manufacturer distributes into commerce:

TAMPERING PROHIBITION

Federal law prohibits any modification to this exhaust system which causes the motorcycle to exceed the Federal noise standard. Use of the motorcycle with such a modified exhaust system is also prohibited.

Acts likely to constitute tampering include removal or puncturing the muffler, baffles, header pipes, or any other component which conducts exhaust gases.

[45 FR 86718, Dec. 31, 1980, as amended at 47 FR 57723, Dec. 28, 1982]

§ 205.173–3 Warning statement.

The manufacturer must include the following statement pursuant to § 205.173–4 with each product of that category the manufacturer distributes into commerce:

Warning: This product should be checked for repair or replacement if the motorcycle noise has increased significantly through use. Otherwise, the owner may become subject to penalties under state and local ordinances.

[45 FR 86718, Dec. 31, 1980, as amended at 47 FR 57723, Dec. 28, 1982]

§ 205.173–4 Information sheet.

The manufacturer must include the Noise Emissions Warranty statement, Tampering Prohibition statement and the Warning statement with each product. All three statements must be printed on a white sheet or card at least 8½″×11″. Each statement must cover no more than ⅓ of the sheet or card. No other printing must be on the sheet. The statements must be printed in black ink; the statement headings must be in capital letters in a minimum size type of 12 point (pica type) or its equal; and the text of the statement must be a minimum size type of 10 point (elite type) or its equal. The sheet or card must be placed with the exhaust system inside any packaging. If there is no packaging, the sheet or card must be affixed to the exhaust system so that it will not be accidentally detached in shipping.

§ 205.174 Remedial orders.

The Administrator may issue appropriate remedial orders to a manufacturer if products are distributed into commerce not in compliance with the regulations of this subpart. Potential orders are stop sale orders, orders to cease distribution, relabel, replace or recall, or any other orders appropriate in the specific circumstances. A remedial order will be issued only after notice and opportunity for a hearing in accordance with 5 U.S.C. 554.

APPENDIX I TO SUBPARTS D AND E OF PART 205—MOTORCYCLE NOISE EMISSION TEST PROCEDURES

APPENDIX I–1 TO SUBPARTS D AND E—TEST PROCEDURE FOR STREET AND OFF-ROAD MOTORCYCLES

(a) *Instrumentation.* Proper usage of all test instrumentation is essential to obtain valid measurements. Operating manuals or other literature furnished by the instrument manufacturer must be referred to for both recommended operation of the instrument

and precautions to be observed. The following instrumentation must be used, where applicable:

(1) A sound level measurement system which meets the type S1A requirements of American National Standard Specification for Sound Level Meters, ANSI S1.4–1971. As an alternative to making direct measurements using a sound level meter, a microphone or sound level meter may be used with a magnetic tape recorder and/or a graphic level recorder or indicating instrument provided that the system meets the performance requirements of ANSI S1.4–1971. The sound level measurement system must be calibrated at least annually to insure that the system meets the performance requirements of ANSI S1.4–1971.

(2) An acoustic calibrator with an accuracy of within ±0.5 dB. The calibrator must be checked annually to verify that its output is within the specified accuracy.

(3)(i) An engine speed measurement system having the following characteristics:

(A) Steady-state accuracy of within ±3% of actual engine speed in the range of 45% to 100% of the engine speed (RPM) where peak net brake power (maximum rated RPM) is developed; and

(B) Response characteristics such that, when closing RPM is indicated under an acceleration as described below, actual engine speed is no more than 3 percent (of closing RPM) greater than the specified closing RPM.

(ii) The vehicle tachometer may be used to ascertain:

(A) The approach RPM provided it meets the specifications in paragraph (a)(3)(i)(A).

(B) The closing RPM provided it meets the specifications in paragraphs (a)(3)(i)(A) and (B).

(iii) Indirect engine speed measurement systems, such as systems which determine engine speed from vehicle speed measurement, may be used provided the specifications of paragraph (a)(1)(i) are met.

(4) An anemometer with steady-state accuracy of within ±10% at 20 km/h (12.4 mph).

(5) A microphone wind screen which does not affect microphone response more than ±0.5 dB for frequencies of 20–4000 Hz or ±1.0 dB for frequencies of 4000–10,000 Hz, taking into account the orientation of the microphone.

(b) *Test site.* (1) The measurement area within the test site must meet the following requirements and be laid out as described:

(i) The following points must be established:

(A) Microphone target point—a reference point on the vehicle path;

(B) End point—a point on the vehicle path 7.5 ±0.3m (24.6 ±1.0 ft) beyond the microphone target point, and

(C) Microphone location point—a point 15 ±0.3m (49.2 ±1.0 ft) from the microphone target point on a normal to the vehicle path through the microphone target point.

(ii) The microphone must be:

(A) Positioned at the microphone location point 1.2 ±0.1 m (3.9 ±0.3 ft) above the ground plane; and

(B) Oriented in a plane perpendicular to the vehicle path, and at an angle for which the microphone was calibrated to have the flatest response characteristics over the frequency range of 100 Hz to 10,000 Hz when measured with respect to the motorcycle source.

(iii) The surface of the ground within at least the triangular area formed by the microphone location and the points 15 ±0.3m (49.2 ±1.0 ft.) prior to and 15 ±0.3 m (49.2 ±1.0 ft.) beyond the microphone target point must be flat (+ 5 cm (2.0 in)) and level (grade not more than 0.5% along vehicle path), have a concrete or sealed asphalt surface, and be free from snow, soil or other extraneous material.

(iv) The vehicle path must be relatively smooth and of sufficient length for safe acceleration, deceleration and stopping of the motorcycle.

(2) The test site must be flat, open space free of large sound-reflecting surfaces (other than the ground), such as parked vehicles, sign-boards, buildings or hillsides located within a 30 ±0.3 m (98.4 ±1.0 ft) radius of the microphone location and the following points on the vehicle path (see Figure 1):

(i) The microphone location point;

(ii) A point 15 ±0.3 m (49.2 ±1.0 ft.) before the microphone target point; and

(iii) A point 15 ±0.3 m (49.2 ±1.0 ft) beyond the microphone target point.

(c) *Measurement procedure.* (1) To establish the acceleration point, the end point must be approached in second gear from the reverse of the intended test direction at a constant engine speed of 50% of maximum rated RPM or closing RPM less ten percent (of maximum rated RPM), whichever is lower, (±2.5% of observed reading). When the front of the motorcycle reaches the end point (approached from the reverse direction), the throttle must be smoothly and fully opened to accelerate the motorcycle past the microphone target point under wide open throttle. When the motorcycle reaches closing RPM the throttle must be smoothly and fully closed. An ignition disable device may be used to turn off the engine at closing RPM in lieu of closing the throttle manually. The location of the front of the motorcycle at the time of throttle closure is the acceleration point for the test runs. The test runs must be made in the opposite direction. A sufficient number of trial runs must be made to assure accurate establishment of the acceleration point.

(2) Closing RPM must be determined according to the motorcycle engine displacement, as follows (see Figure 2):

Displacement (cc)	Closing RPM (Fraction of maximum rated RPM—percent)
0 to 175	95
176 to 675	109 to 0.08×(engine displacement in cc)
676 and above	55

(3) The distance from the acceleration point to the end point must be at least 10 m (32.8 ft). If this distance is less than 10 m (32.8 ft) by the procedure specified in paragraph (c)(1), above, third gear, if the motorcycle is so equipped, must be used. If the distance is still less than 10 m (32.8 ft), fourth gear, if the motorcycle is so equipped, must be used, and so on. If closing RPM is reached before the vehicle travels 10 m (32.8 ft), with the vehicle in its highest gear, the throttle must be opened less rapidly, but in such a manner that full throttle and closing RPM are attained at the end point.

(4) If the motorcycle is equipped with an automatic transmission, the procedure specified in paragraph (c)(1), must be followed except that the lowest selectable range must be employed, and the procedure specified in paragraph (c)(3) must be followed using the next selectable higher range, if necessary, and if the vehicle is so equipped. If closing RPM is reached before the vehicle travels 10 m (32.8 ft.), the throttle must be opened less rapidly, but in such a manner that full throttle and closing RPM are attained at the end point.

(5) Throttle opening must be controlled to avoid excessive wheel slip or lift-off.

(6) To conduct a sound measurement, the motorcycle must proceed along the vehicle path in the forward direction in second gear (or higher gear as applicable under paragraph (c)(3)) at a constant engine speed of 50% of maximum rated RPM or at closing RPM less ten percent (of maximum rated RPM), whichever is lower (±2.5 percent of observed reading). When the front of the vehicle reaches the acceleration point, the throttle must be smoothly and fully opened. Full acceleration must continue until closing RPM is reached, which must occur within ±1.0 m (3.3 ft.) of the end point, and at which time the throttle must be smoothly and fully closed. An ignition disable device may be used to turn off the engine at closing RPM in lieu of closing the throttle manually.

(7) A sufficient number of preliminary runs must be conducted before the testing to familiarize the rider with the test procedure and operating conditions of the vehicle. The engine temperature must be within the normal operating range prior to each run.

(d) *Measurements.* (1) The sound level meter must be set for fast response and for the A-weighting network. The microphone wind screen must be used. The sound level meter must be calibrated with the acoustic calibrator as often as is necessary throughout testing to maintain the accuracy of the measurement system.

(2) The sound level meter must be observed throughout the acceleration period. The highest sound level obtained for the run must be recorded.

(3) Measurements must be made until at least four readings from each side are within 2 dB of each other. The noise level for each side is the average of the four which are within 2 dB of each other. The noise level reported must be for that side of the motorcycle having the highest noise level.

(4) While making sound level measurements, not more than one person other than the rider and the observer reading the meter may be within 15 m (49.2 ft) of the vehicle or microphone, and that person must be directly behind the observer reading the meter, on a line through the microphone and the observer.

(5) The ambient noise level (including wind effects) at the test site due to sources other than the motorcycle being measured must be at least 10 dB lower than the noise level at the microphone location produced by the motorcycle under test.

(6) Wind speed at the test site during tests must be less than 20 km/h (12.4 mph).

(e) *Required data.* For each valid test, the following data must be recorded:

(1) Motorcycle type, serial number, model year, and date of manufacture.

(2) Names of persons conducting test.

(3) Test location.

(4) Wind speed and ambient noise level measured on the same day as the test and representative of conditions during the test.

(5) Motorcycle engine displacement, maximum rated RPM, and closing RPM.

(6) The gear used for testing if other than second gear; or type of transmission and description of testing if motorcycle is equipped with automatic transmission.

(7) Description of the sound level meter including type, serial number, and calibration date.

(8) Description of the external acoustic calibrator including type, serial number, and calibration date.

(9) Description of the tachometer or engine speed measurement system used for conducting the test.

(10) Maximum noise level for each pass on each side of the motorcycle including invalid readings and reasons for invalidation.

(11) Reported noise level.

(12) Other information as appropriate to completely describe testing conditions and procedure.

APPENDIX I–2 TO SUBPARTS D AND E—TEST PROCEDURE FOR STREET MOTORCYCLES THAT MEET THE DEFINITION OF §205.151(A)(2)(II) (MOPED-TYPE STREET MOTORCYCLES)

(a) *Instrumentation.* Proper usage of all test instrumentation is essential to obtain valid

measurements. Operating manuals or other literature furnished by the instrument manufacturer must be referred to for both recommended operation of the instrument and precautions to be observed. The following instrumentation must be used, where applicable:

(1) A sound level measurement system which meets the type SIA requirements of American National Standard Specification for Sound Level Meters, ANSI S1.4–1971. As an alternative to making direct measurements using a sound level meter, a microphone or sound level meter may be used with a magnetic tape recorder and/or a graphic level recorder or indicating instrument provided that the system meets the performance requirements of ANSI S1.4–1971. The sound level measurement system must be calibrated at least annually to insure that the system meets the performance requirements of ANSI S1.4–1971.

(2) An acoustic calibrator with an accuracy of within ±0.5 dB. The calibrator must be checked annually to verify that its output is within the specified accuracy.

(3) An anemometer with steady-state accuracy of within ±10% at 20 km/h (12.4 mph).

(4) A microphone wind screen which does not affect microphone response more than ±0.5 dB for frequencies of 20–4000 Hz or ±1.0 dB for frequencies of 4000–10,000 Hz, taking into account the orientation of the microphone.

(b) *Test site.* (1) The measurement area within the test site must meet the following requirements and be laid out as described:

(i) The following points must be established:

(A) Microphone target point—a reference point on the vehicle path;

(B) End point—a point on the vehicle path 7.5 ±0.3 m (24.6 ±1.0 ft) beyond the microphone target point; and

(C) Microphone location point—a point 15 ±0.3 m (49.2 ±1.0 ft) from the microphone target point on a normal to the vehicle path through the microphone target point. Alternately, the microphone location point may be a point 7.5 ±0.3 m (24.6 ±1.0 ft) from the microphone target point provided that the sound level reported is adjusted as provided in this appendix under paragraph (d)(3).

(ii) The microphone must be:

(A) Positioned at the microphone location point 1.2 ±0.1 m (3.9 ±0.3 ft) above the ground plane; and

(B) Oriented in a plane perpendicular to the vehicle path, and at an angle for which the microphone was calibrated to have the flattest response characteristics over the frequency range of 100 Hz to 10,000 Hz when measured with respect to the motorcycle source.

(iii) The surface of the ground within at least the triangular area formed by the microphone location and the points 15 ±0.3 m (49.2 ±1 ft) prior to and 15 ±0.3 m beyond the microphone target point must be flat (±5 cm (2.0 in)) and level (grade not more than 0.5% along vehicle path), have a concrete or sealed asphalt surface, and be free from snow, soil or other extraneous material.

(iv) The vehicle path must be relatively smooth and of sufficient length for safe acceleration, deceleration and stopping of the motorcycle.

(2) The test site must be a flat, open space free of large sound-reflecting surfaces (other than the ground), such as parked vehicles, signboards, buildings or hillsides located within a 30 ±0.3 m (98.4 ±1.0 ft) radius of the microphone location and the following points on the vehicle path (see Figure 1):

(i) The microphone location point;

(ii) A point 15 ±0.3 m (49.2 ±1 ft) before the microphone target point; and

(iii) A point 15 ±0.3 m (49.2 ±1 ft) beyond the microphone target point.

(c) *Measurement procedure.* (1) The combined weight of the test rider and test equipment used on the motorcycle must not be more than 80 kg (176 lb) nor less than 75 kg (165 lb). Weights shall be placed on the motorcycle saddle behind the rider to compensate for any difference between the actual driver/equipment load and the required 75 kg (165 lb) minimum.

(2) The motorcycle must approach the microphone target point with the throttle fully open and in the highest gear. The motorcycle must start such that maximum speed is reached before the vehicle is within 7.5 m of the microphone target point. The motorcycle must continue along the vehicle path with fully open throttle and at maximum speed past the end point, at which time the throttle must be closed.

(3) If the motorcycle is equipped with an automatic transmission, the procedure of paragraph (1), above, must be followed except that the highest selectable range shall be employed.

(d) *Measurements.* (1) The sound level meter must be set for fast response and for the A-weighting network. The microphone wind screen must be used. The sound level meter must be calibrated with the acoustic calibrator as often as is necessary throughout testing to maintain the accuracy of the measurement system.

(2) The sound level meter must be observed throughout the passby period. The highest noise level obtained for the run must be recorded.

(3) At least three measurements shall be made for each side of the motorcycle. Measurements must be made until at least three readings from each side are within 2 dB of each other. The noise level for each side must be the average of the three. The noise level reported must be for that side of the motorcycle having the highest noise level. If the microphone location point is 7.5 m from the vehicle path as allowed in this appendix

under paragraph (b)(1)(i)(c), the noise level must be adjusted by subtracting 6 dB prior to being reported.

(4) While making noise level measurements, not more than one person other than the rider and the observer reading the meter may be within 15 m (49.2 ft) of the vehicle or microphone, and that person must be directly behind the observer reading the meter, on a line through the microphone and the observer.

(5) The ambient sound level (including wind effects) at the test site due to sources other than the motorcycle being measured must be no greater than 60 dB if the microphone is located 15 m from the vehicle path or 66 dB if the microphone is located 7.5 m from the vehicle path as allowed in this appendix under paragraph (b)(1)(i)(c).

(6) Wind speed at the test site during tests must be less than 20 km/h (12.4 mph).

(e) *Required data.* For each valid test, the following data must be recorded:

(1) Motorcycle type, serial number, model year, and date of manufacture.

(2) Names of persons conducting test.

(3) Test location.

(4) Wind speed and ambient noise level measured on the same day as the test and representative of conditions during the test.

(5) Description of the sound level meter including type, serial number, and calibration date.

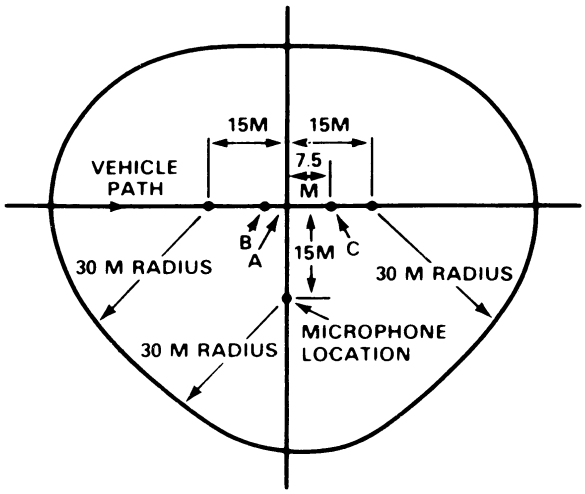
(6) Description of the external acoustic calibrator including type, serial number, and calibration date.

(7) Maximum noise level for each pass on each side of the motorcycle including invalid readings and reasons for invalidation.

(8) Reported noise level.

(9) Other information as appropriate to completely describe testing conditions and procedure.

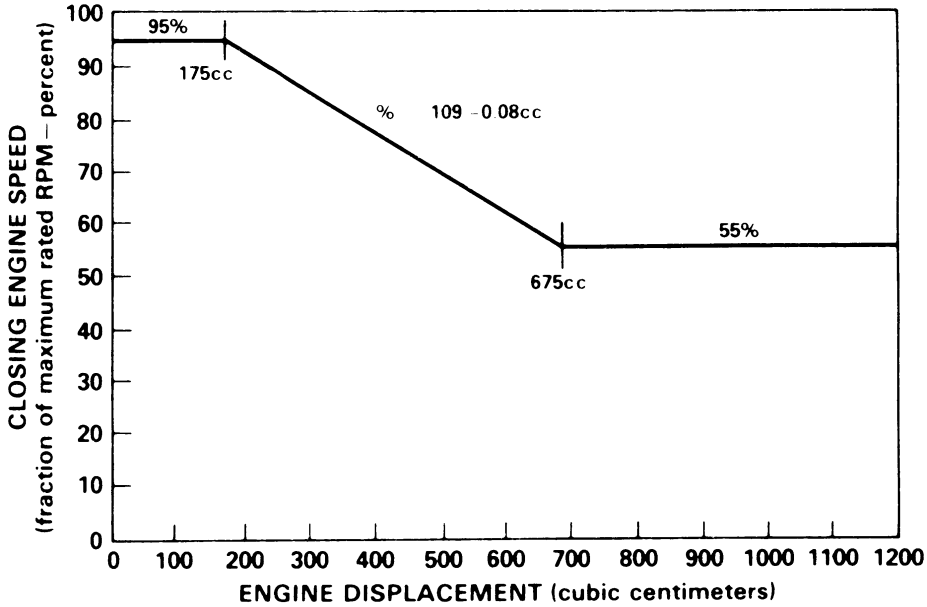
FIGURE 1 — TEST MEASUREMENT AREA



A – MICROPHONE TARGET POINT
B – ACCELERATION POINT (VARIABLE)
C – END POINT

TEST MEASUREMENT AREA

FIGURE 2 — CLOSING RPM



APPENDIX II TO SUBPART E—SAMPLING TABLES

TABLE 1—MODEL YEAR PRODUCTION VOLUME OF 50–99 VEHICLES

Cumulative number of tests	Number of failing vehicles	
	Column A	Column B
1	.....	.....
2	.....	.....
3	.....	3
4	.....	3
5	.....	3
6	.....	3
7	0	3
8	0	4
9	0	4
10	0	4
11	1	4
12	1	4
13	1	5
14	1	5
15	2	5
16	2	5
17	2	5
18	2	5
19	2	5
20	4	5

TABLE 2—MODEL YEAR PRODUCTION VOLUME OF 100–199 VEHICLES

Cumulative number of tests	Number of failing vehicles	
	Column A	Column B
1	.....	.....
2	.....	.....
3	.....	3
4	.....	3
5	.....	3
6	.....	3
7	0	4
8	0	4
9	0	4
10	0	4
11	1	4
12	1	5
13	1	5
14	1	5
15	1	5
16	2	5
17	2	5
18	2	5
19	2	5
20	4	5

TABLE 3—MODEL YEAR PRODUCTION VOLUME OF 200–399 VEHICLES

Cumulative number of tests	Number of failing vehicles	
	Column A	Column B
1	.....	.....
2	.....	.....
3	.....	3
4	.....	3
5	.....	3
6	.....	3
7	0	4
8	0	4

TABLE 3—MODEL YEAR PRODUCTION VOLUME OF 200–399 VEHICLES—Continued

Cumulative number of tests	Number of failing vehicles	
	Column A	Column B
9	0	4
10	0	4
11	0	5
12	1	5
13	1	5
14	1	5
15	1	5
16	2	5
17	2	5
18	2	5
19	2	5
20	4	5

TABLE 4—MODEL YEAR PRODUCTION VOLUME OF 400 OR MORE VEHICLES

Cumulative number of tests	Number of failing vehicles	
	Column A	Column B
1	.....	.....
2	.....	.....
3	.....	3
4	.....	3
5	.....	3
6	.....	4
7	0	4
8	0	4
9	0	4
10	0	4
11	0	5
12	1	5
13	1	5
14	1	5
15	1	5
16	2	5
17	2	5
18	2	5
19	2	5
20	4	5

PART 209—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE NOISE CONTROL ACT OF 1972

Subpart A—Rules of Practice Governing Hearings for Orders Issued Under Section 11(d) of the Noise Control Act

Sec.
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209.4 Issuance of complaint.
209.5 Complaint.
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209.7 Effective date of order in complaint.
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209.10 Approval of plan, implementation.
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209.19 Informal settlement and consent agreement.
209.20 Conferences.
209.21 Primary discovery (exchange of witness lists and documents).
209.22 Other discovery.
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209.25 Accelerated decision; dismissal.
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209.28 Record.
209.29 Proposed findings, conclusions.
209.30 Decision of the administrative law judge.
209.31 Appeal from the decision of the administrative law judge.
209.32 Review of the administrative law judge's decision in absence of appeal.
209.33 Decision on appeal or review.
209.34 Reconsideration.
209.35 Conclusion of hearing.
209.36 Judicial review.

AUTHORITY: Sec. 11, Noise Control Act of 1972 (42 U.S.C. 4910) and additional authority as specified.

SOURCE: 43 FR 34132, Aug. 3, 1978, unless otherwise noted.

Subpart A—Rules of Practice Governing Hearings for Orders Issued Under Section 11(d) of the Noise Control Act

§ 209.1 Scope.

These rules of practice govern all proceedings conducted in the issuance of an order under section 11(d) of the Noise Control Act of 1972, 42 U.S.C. 4910.

§ 209.2 Use of number and gender.

In these rules of practice, words in the singular number apply to the plural and words in the masculine gender apply to the feminine and vice versa.

§ 209.3 Definitions.

All terms not defined in this section shall have the meaning given them in the Act.

(a) *Act* means the Noise Control Act of 1972 (42 U.S.C. 4901 *et seq.*).

(b) *Administrative law judge* means an administrative law judge appointed under 5 U.S.C. 3105 (see also 5 CFR part 930, as amended by 37 FR 16787). ''Administrative law judge'' is synonymous with ''hearing examiner'' as used in Title 5 of the United States Code.

(c) *Administrator* means the Administrator of the Environmental Protection Agency or his or her delegate.

(d) *Agency* means the U.S. Environmental Protection Agency.

(e) *Complainant* means the Agency acting through any person authorized by the Administrator to issue a complaint to alleged violators of the Act. The complainant shall not be the judicial officer or the Administrator.

(f) *Hearing clerk* means the hearing clerk of the Environmental Protection Agency.

(g) *Intervener* means a person who files a motion to be made a party under § 209.15 or § 209.16, and whose motion is approved.

(h) *Party* means the Environmental Protection Agency, the respondent(s) and any interveners.

(i) *Person* means any individual, corporation, partnership, or association, and includes any officer, employee, department, agency or instrumentality of the United States, a State, or any political subdivision of a State.

(j) *Respondent* means any person against whom a complaint has been issued under this subpart.

(k) *Environmental Appeals Board* means the Board within the Agency described in § 1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this part. An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this part to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall

be interpreted as referring to the Administrator.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5344, Feb. 13, 1992]

§ 209.4 Issuance of complaint.

If the complainant has reason to believe that a person has violated any provision of the Act or the regulations, he or she may institute a proceeding for the issuance of a remedial order by issuing a complaint.

§ 209.5 Complaint.

(a) *Contents.* The complaint shall include (1) specific reference to each provision of the Act or regulations which respondent is alleged to have violated; (2) a brief statement of the factual basis for alleging each violation; (3) the proposed order issued under section 11(d) of the Act to remedy the violation, signed by the Assistant Administrator for Enforcement, with notice that the order shall be effective 20 days after service of the complaint unless respondent requests a hearing under § 209.6; (4) notice of respondent's right to request a hearing on any material fact or issue of law contained in the complaint, or on the appropriateness of the proposed order; and (5) a statement of whether the respondent must submit a remedial plan pursuant to § 209.8.

(b) *Amendment of the complaint.* At any time prior to the filing of an answer, the complainant may amend the complaint as a matter of right. Respondent shall have twenty (20) additional days from the date of service of the amended complaint to file an answer. At any time after the filing of an answer, the complaint may be amended upon motion granted by the administrative law judge.

(c) *Withdrawal of the complaint.* Where, on the basis of new information or evidence, the complainant concludes that no violation of the Act or the regulations has been committed by the respondent or that the issuance of the complaint was otherwise inappropriate, the complainant may withdraw the complaint without prejudice at any stage in the proceeding.

(d) *Service of complaint.* (1) Service of the complaint shall be made on the respondent personally (or on his or her representative), or by certified mail, return receipt requested.

(2) Service upon a domestic or foreign corporation or upon a partnership or another unincorporated association which is subject to suit under a common name shall be made by personal service or certified mail, return receipt requested, directed to an officer or partner, a managing or general agent, or any other agent authorized by appointment or by Federal or State law to receive service of process.

(3) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed return receipt.

§ 209.6 Answer.

(a) *General.* Where respondent (1) contests any material fact alleged in the complaint to constitute a violation of the Act or regulations; or (2) contends that the remedial order proposed in the complaint is inappropriate to the violation; or (3) contends that he or she is entitled to judgment as a matter of law, he or she shall file a written answer with the complainant. Any answer must be filed with the complainant within twenty (20) days after service of the complaint. Initiation of informal conferences with the Agency under § 209.19 does not add to the twenty (20) day period. The time period in which to file an answer may be extended by the Administrator upon motion.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Whenever an allegation is denied, the answer shall state briefly the facts upon which the denial is based. The answer shall also state (1) whether a hearing is requested, (2) the facts respondent intends to place at issue, and (3) the circumstances or arguments which are alleged to constitute the grounds of defense.

(c) *Hearing upon the issues.* A hearing upon the issues raised by the complaint and answer shall be held upon written demand of respondent.

(d) *Failure to plead specifically.* A respondent's failure to plead specifically

to any material factual allegation contained in the complaint shall constitute an admission of such allegation.

(e) *Amendment of the answer*. The respondent may amend the answer upon motion granted by the administrative law judge.

§ 209.7 Effective date of order in complaint.

(a) The order in the complaint is effective and binding on respondent 20 days after service of the complaint, unless respondent requests a hearing pursuant to § 209.6. If the respondent does not request a hearing, the order is then a final order of the Agency.

(b) Respondent may file a motion with the complainant to vacate the final order, reopen the proceedings and request a hearing after the order is effective. This motion must be filed within twenty (20) days after the effective date of the order. The motion shall state the reasons respondent failed to file a timely answer, and provide the information required by § 209.6(b). The Administrator may, in his or her discretion and for good cause shown, grant the motion.

§ 209.8 Submission of a remedial plan.

(a) The Administrator may require the respondent to submit a remedial plan. Notice of this requirement and the due date will be given in the complaint. If the respondent requests a hearing, the remedial plan required by the complaint need not be submitted. The final order may include a requirement that the respondent submit a remedial plan.

(b) A respondent may always submit a remedial plan voluntarily in pursuit of informal settlement.

(Sec. 13, Noise Control Act (42 U.S.C. 4912))

§ 209.9 Contents of a remedial plan.

(a) The Administrator will specify the requirements of the remedial plan. This may include, but is not limited to, the following information:

(1) A detailed description of the products covered by the remedial order, including the category and/or configuration if applicable, and the make, model year and model number, if applicable.

(2) A detailed description of the present location of the products, including a list of those in possession of the products and, if necessary, how the respondent intends to contact the persons in possession and retrieve the products.

(3) Any appropriate remedies the respondent would propose as an alternative to the specific remedies proposed by the Administrator.

(4) A detailed plan for implementing the remedies, both those proposed by the Administrator and those proposed by the respondent.

(5) A detailed account of the costs of implementing each of the proposed plans.

(b) Remedial plans shall be submitted to Director, Noise Enforcement Division (EN–387), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(Sec. 13, Noise Control Act (42 U.S.C. 4912))

§ 209.10 Approval of plan, implementation.

(a) If the Administrator finds that the remedial plan is designed to remedy the noncompliance effectively, he or she will so notify the respondent in writing. If the remedial plan is not approved, the Administrator will provide the respondent with written notice of the disapproval and the reasons for the disapproval. The Administrator may give the respondent an opportunity to revise the plan, or the Administrator may revise the plan.

(b) The respondent shall commence implementation of the approved plan upon receipt of notice from the Administrator that the remedial plan has been approved, or revised by the Administrator and then approved.

(Sec. 13, Noise Control Act (42 U.S.C. 4912))

§ 209.11 Filing and service.

(a) After an answer containing a written demand for a hearing has been filed, an original and two copies of all documents or papers required or permitted to be filed under these rules of practice shall be filed with the hearing clerk.

(b) When a party files with the hearing clerk any pleadings, any additional issues for consideration at the hearing, or any written testimony, documents, papers, exhibits, or materials, proposed

to be introduced into evidence or papers filed in connection with any appeal, it shall serve copies upon all other parties. A certificate of service shall be provided on or accompany each document or paper filed with the hearing clerk. Documents to be served upon the Director of the Noise Enforcement Division shall be mailed to: Director, Noise Enforcement Division, U.S. Environmental Protection Agency (EN–387), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(c) Service by mail is complete upon mailing. Filing is completed when the document reaches the hearing clerk. It shall be timely if mailed within the time allowed for filing as determined by the postmark.

§ 209.12 Time.

(a) In computing any period of time prescribed or allowed by these rules of practice, the day of the act or event from which the designated period of time begins to run shall not be included, except as otherwise provided. Saturdays, Sundays, and Federal legal holidays shall be included in computing any period allowed for the filing of any document or paper, except that when a period expires on a Saturday, Sunday, or Federal legal holiday, the period shall be extended to include the next following business day.

(b) A prescribed period of time within which a party is required or permitted to do an act shall be computed from the time of service, except that when service is accomplished by mail, 3 days shall be added.

§ 209.13 Consolidation.

The Administrator or the administrative law judge may consolidate two or more proceedings to be held under this section for resolving one or more issues whenever it appears that such consolidation will expedite or simplify consideration of such issues. Consolidation shall not affect the right of any party to raise any issues that could otherwise have been raised.

§ 209.14 Motions.

(a) All motions, except those made orally during the course of the hearing, shall be in writing, shall state the grounds with particularity, and shall set forth the relief or order sought.

(b) Within 10 days after service of any motion filed under this section or within such other time as may be fixed by the Environmental Appeals Board or the administrative law judge, as appropriate, any party may serve and file an answer to the motion. The movant shall, by leave of the Environmental Appeals Board or the administrative law judge, as appropriate, serve and file reply papers within the time set by the request.

(c) The administrative law judge shall rule upon all motions filed or made subsequent to his or her appointment and prior to the filing of his or her decision or accelerated decision, as appropriate. The Environmental Appeals Board shall rule upon all motions filed before the appointment of the administrative law judge and all motions filed after the filing of the decision of the administrative law judge or accelerated decision. Oral argument of motions will be permitted only if the administrative law judge or the Environmental Appeals Board, as appropriate, deems it necessary.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5344, Feb. 13, 1992]

§ 209.15 Intervention.

(a) Persons desiring to intervene in a hearing to be held under section 11(d) of the act shall file a motion setting forth the facts and reasons why they should be permitted to intervene.

(b) In passing on a motion to intervene, the following factors, among other things, shall be considered by the administrative law judge:

(1) The nature of the movant's interest including the nature and the extent of the property, financial, environmental protection, or other interest of the movant;

(2) The effect the order which may be entered in the proceeding may have on the movant's interest;

(3) The extent to which the movant's interest will be represented by existing parties or may be protected by other means;

(4) The extent to which the movant's participation may reasonably be expected to assist materially in the development of a complete record;

(5) The extent to which one movant's participation may reasonably be expected to delay the proceedings.

(c) A motion to intervene should be filed before the first prehearing conference, the initiation of correspondence under § 209.20, or the setting of the time and place for the hearing, whichever occurs earliest. Motions shall be served on all parties. Any opposition to such motion must be filed within 10 days of service.

(d) All motions to be made an intervener shall be reviewed by the administrative law judge using the criteria set forth in paragraph (b) of this section and considering any opposition to such motion. The administrative law judge may, in granting such motion, limit a movant's participation to certain issues only.

(e) If the administrative law judge grants the motion with respect to any or all issues, he or she shall notify, or direct the hearing clerk to notify, the petitioner and all parties. If the administrative law judge denies the motion he or she shall notify, or direct the hearing clerk to notify, the petitioner and all parties and shall briefly state the reasons why the motion was denied.

(f) All motions to be made an intervener shall include the movant's agreement that the movant and any person he or she represents will be subject to examination and cross-examination, and will also include an agreement to make any supporting and relevant records available at the movant's own expense upon the request of the administrative law judge, on his or her own motion or the motion of any party or other intervener. If the intervener fails to comply with any of these requests, the administrative law judge may, in his or her discretion, terminate his or her status as an intervener.

§ 209.16 Late intervention.

Following the expiration of the time prescribed in § 209.15 for the submission of motions to intervene in a hearing, any person may file a motion with the administrative law judge to intervene in a hearing. Such a motion must contain the information and commitments required by paragraph (b) and (f) of § 209.15, and, in addition, must show that there is good cause for granting the motion and must contain a statement that the movant shall be bound by agreements, arrangements, and other determinations which may have been made in the proceeding.

§ 209.17 Amicus curiae.

Persons not parties to the proceedings who wish to file briefs may do so by leave of the Environmental Appeals Board or the administrative law judge, as appropriate, granted on motion. This motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. An amicus curiae shall be eligible to participate in any briefing following the granting of his or her motion, and shall be served with all briefs, reply briefs, motions and orders relating to issues to be briefed.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5344, Feb. 13, 1992]

§ 209.18 Administrative law judge.

(a) *General.* The administrative law judge shall conduct a fair and impartial hearing in accordance with 5 U.S.C. 554, and shall take all necessary action to avoid delay and maintain order. He or she shall have all power consistent with Agency rule and with the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, necessary to this end, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and receive relevant evidence;

(3) To regulate the course of the hearings and the conduct of the parties and their counsel;

(4) To hold conferences for simplification of the issues or any other proper purpose;

(5) To consider and rule upon all appropriate procedural and other motions, and to issue all necessary orders;

(6) To require the submission of testimony in written form whenever in the opinion of the administrative law judge oral testimony is not necessary for full and true disclosure of the facts.

(7) To require the filing of briefs on any matter on which he or she is required to rule;

(8) To require any party or any witness, during the course of the hearing,

to state his or her position on any relevant issue;

(9) To take depositions or cause depositions to be taken in accordance with § 209.22.

(10) To render judgments upon issues of law during the course of the hearing.

(11) To issue subpenas authorized by law.

(b) *Assignment of administrative law judge*. When an answer which contains a written demand for a hearing is filed, the administrator shall refer the proceeding to the chief administrative law judge, who shall conduct the proceeding, or assign another administrative law judge to conduct the proceeding.

(Sec. 16, Noise Control Act (42 U.S.C. 4915))

§ 209.19 Informal settlement and consent agreement.

(a) *Settlement policy*. The Agency encourages settlement of the proceeding at any time after the issuance of a complaint if settlement is consistent with the provisions and the objectives of the act and the regulations. Whether or not respondent requests a hearing, he or she may confer with complainant concerning the facts stated in the complaint or concerning the appropriateness of the proposed remedial order. The terms of any settlement agreement shall be expressed in a written consent agreement. Conferences with complainant concerning possible settlement shall not affect the 20 day time limit for filing an answer under § 209.6.

(b) *Consent agreement*. A written consent agreement signed by the complainant and respondent shall be prepared by the complainant and forwarded to the Environmental Appeals Board whenever settlement or compromise is proposed. A copy shall be served on all other parties to the proceeding, no later than the date the consent agreement is forwarded to the Environmental Appeals Board. The consent agreement shall state that, for the purpose of this proceeding, respondent (1) admits the jurisdictional allegations of the complaint; (2) admits the facts as stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; and (3) consents to the issuance of a given remedial order. The consent agreement shall include (i) the terms of the agreement; (ii) any appropriate conclusions regarding material issues of law, fact and/or discretion as well as reasons therefor; and (iii) the Environmental Appeals Board's proposed final order. The administrative law judge does not have jurisdiction over a consent agreement.

(c) *Final order*. No settlement or consent agreement shall be dispositive of any action pending under section 11(d) of the act without a final order of the Environmental Appeals Board. In preparing a final order, the Environmental Appeals Board may require that any or all of the parties to the settlement or other parties appear before it to answer inquiries relating to the proposed consent agreement. The hearing is terminated without further proceedings upon the filing of the final order with the hearing clerk.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5344, Feb. 13, 1992]

§ 209.20 Conferences.

(a) At the discretion of the administrative law judge, conferences may be held prior to or during any hearing. The administrative law judge shall direct the hearing clerk to notify all parties of the time and location of any such conferences. At the discretion of the administrative law judge, persons other than parties may attend. At a conference the administrative law judge may:

(1) Obtain stipulations and admissions, receive requests and order depositions to be taken, identify disputed issues of fact and law, and require or allow the submission of written testimony from any witness or party.

(2) Set a hearing schedule for as many of the following as are deemed necessary by the administrative law judge:

(i) Oral and written statements;

(ii) Submission of written testimony as required or authorized by the administrative law judge;

(iii) Oral direct and cross-examination of a witness;

(iv) Oral argument, if appropriate;

(3) Identify matters of which official notice may be taken;

(4) Consider limitation of the number of expert and other witnesses;

(5) Consider the procedure to be followed at the hearing; and

(6) Consider any other matter that may expedite the hearing or aid in the disposition of the issue.

(b) The results of any conference including all stipulations shall, if not transcribed, be summarized in writing by the administrative law judge and made part of the record.

(c) The administrative law judge, on motion or sua sponte, may request correspondence from the parties for any of the objectives set forth in this section. Copies of the administrative law judge's request and the parties' correspondence shall be served upon all parties. The administrative law judge shall include such correspondence in the record and a written summary of any stipulation or agreement reached by means of such correspondence as provided in paragraph (b) of this section.

§ 209.21 Primary discovery (exchange of witness lists and documents).

(a) At a prehearing conference or within some reasonable time set by the administrative law judge prior to the hearing, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief summary of their expected testimony and copies of all documents and exhibits which the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and summaries of expected testimony amended upon motion by a party.

(b) The administrative law judge, may, upon motion by a party or other person, and for good cause shown, by order (1) restrict or defer disclosure by a party of the name of a witness or a narrative summary of the expected testimony of a witness, and (2) prescribe other appropriate measures to protect a witness. Any party affected by any such action shall have an adequate opportunity, once he or she learns the name of a witness and obtains the narrative summary of the witness' expected testimony, to prepare for the presentation of his or her case.

§ 209.22 Other discovery.

(a) Further discovery under this section shall be undertaken only upon order of the administrative law judge or upon agreement of the parties, except as provided in § 209.21. The administrative law judge shall order further discovery only after determining:

(1) That such discovery will not delay the proceeding unreasonably;

(2) That the information to be obtained is not obtainable voluntarily; and

(3) That such information is relevant to the subject matter of the hearing.

(b) The administrative law judge shall order depositions upon oral questions only upon a showing of good cause and a finding that:

(1) The information sought cannot be obtained by alternative methods; or

(2) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(c) Any party to the proceeding may make a motion or motions for an order of discovery. The motion shall set forth:

(1) The circumstances which require the discovery;

(2) The nature of the information expected to be discovered; and

(3) The proposed time and place where it will be taken. If the administrative law judge determines the motion should be granted, he or she shall issue an order for the taking of such discovery together with the conditions and terms thereof.

(d) A person's or party's failure to comply with a discovery order may lead to the inference that the information to be discovered is adverse to the person or party who failed to provide it.

§ 209.23 Trade secrets and privileged information.

In the presentation, admission, disposition, and use of evidence, the administrative law judge shall preserve the confidentiality of trade secrets and other privileged commercial and financial information. The confidential or trade secret status of any information shall not, however, preclude its being

introduced into evidence. The administrative law judge may make such orders as may be necessary to consider such evidence in camera. This may include a supplemental initial decision to consider questions of fact and conclusions regarding material issues of law, fact or discretion which arise out of that portion of the evidence which is confidential or which includes trade secrets.

§ 209.24 Default order.

(a) *Default*. Respondent may be found to be in default upon failure to comply with a prehearing or hearing ruling of the Administrator or the administrative law judge. A respondent's default shall constitute an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. The remedial order proposed is binding on respondent without further proceedings upon the issuance by the Environmental Appeals Board of a final order issued upon default.

(b) *Proposed default order*. Where the administrative law judge finds a default has occurred after a request for a hearing has been filed, the administrative law judge may render a proposed default order to be issued against the defaulting party. For the purpose of appeal pursuant to § 209.31 this order shall be deemed to be the initial decision of the administrative law judge.

(c) *Contents of a final order issued upon default*. A final order issued upon default shall include findings of fact, conclusions regarding all material issues of law, fact, or discretion, and the remedial order which is issued. An order issued by the Environmental Appeals Board upon default of respondent shall constitute a final order in accordance with the terms of § 209.33.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5345, Feb. 13, 1992]

§ 209.25 Accelerated decision; dismissal.

(a) The administrative law judge, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the Agency or the respondent as to all or any part of the proceeding, without further hearing or upon such limited additional evidence such as affidavits as he or she may require, or dismiss any party with prejudice, under any of the following conditions:

(1) Failure to state a claim upon which relief can be granted, or direct or collateral estoppel;

(2) No genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or any part of a proceeding; or

(3) Such other reasons as are just, including failure to obey a procedural order of the administrative law judge.

(b) If under this section an accelerated decision is issued as to all the issues and claims joined in the proceedings, the decision shall be treated as the decision of the administrative law judge as provided in § 209.30.

(c) If under this section, judgment is rendered on less than all issues or claims in the proceeding, the administrative law judge shall determine what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The administrative law judge shall thereupon issue an order specifying the facts which appear without substantial controversy, and the issues and claims upon which the hearing will proceed.

§ 209.26 Evidence.

(a) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. Evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to judicial proceedings, provided it is relevant, competent and material and not unduly repetitious. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as practicable. The weight to be given evidence shall be determined by its reliability and probative value.

(b) Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in these rules of practice or by the administrative law judge. Parties shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) Rulings of the administrative law judge on the admissibility of evidence, the propriety of examination and cross-examination and other procedural matters shall appear in the record.

(d) Parties shall automatically be presumed to have taken exception to an adverse ruling.

§ 209.27 Interlocutory appeal.

(a) An interlocutory appeal may be taken to the Environmental Appeals Board either (1) with the consent of the administrative law judge where he or she certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense or prejudice to any party or substantial detriment to the public interest, or (2) absent the consent of the administrative law judge, by permission of the Environmental Appeals Board.

(b) Applications for interlocutory appeal of any ruling or order of the administrative law judge may be filed with the administrative law judge within 5 days of the issuance of the ruling or order being appealed. Answers by other parties may be filed within 5 days of the service of such applications.

(c) Applications to file such appeals absent consent of the administrative law judge shall be filed with the Environmental Appeals Board within 5 days of the denial of any appeal by the administrative law judge.

(d) The Environmental Appeals Board will consider the merits of the appeal on the application and answers. No oral argument will be heard nor other briefs filed unless the Environmental Appeals Board directs otherwise.

(e) Except under extraordinary circumstances as determined by the administrative law judge, the taking of an interlocutory appeal will not stay the hearing.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5345, Feb. 13, 1992]

§ 209.28 Record.

(a) Hearings shall be reported and transcribed verbatim, stenographically or otherwise, and the original transcript shall be part of the record and the sole official transcript. Copies of the record shall be filed with the hearing clerk and made available during Agency business hours for public inspection. Any person who desires a copy of the record of the hearing or any part of it shall be entitled to it upon payment of the cost.

(b) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record.

§ 209.29 Proposed findings, conclusions.

(a) Within 20 days of the filing of the record with the hearing clerk as provided in § 209.28, or within such longer time as may be fixed by the administrative law judge, any party may submit for the consideration of the administrative law judge proposed findings of fact, conclusions of law, and a proposed rule or order, together with briefs in support of it. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

(b) The record shall show the administrative law judge's ruling on the proposed findings and conclusions except when the administrative law judge's order disposing of the proceedings otherwise informs the parties of the action taken by him or her thereon.

§ 209.30 Decision of the administrative law judge.

(a) The administrative law judge shall issue and file with the hearing clerk his or her decision as soon as practicable after the period for filing proposed findings as provided for in § 209.29 has expired.

(b) The administrative law judge's decision shall become the decision of the Environmental Appeals Board (1) when no notice of intention to appeal as described in § 209.31 is filed, 30 days after its issuance, unless in the interim the Environmental Appeals Board shall have taken action to review or stay the effective date of the decision; or (2) when a notice of intention to appeal is filed but the appeal is not perfected as required by § 209.31, 5 days after the period allowed for perfection of an appeal has expired unless within that 5 day period, the Environmental Appeals Board

has taken action to review or stay the effective date of the decision.

(c) The administrative law judge's decision shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the material issues of fact or law presented on the record and an appropriate rule or order. The decision shall be supported by a preponderance of the evidence and based upon a consideration of the whole record.

(d) At any time prior to issuing his or her decision, the administrative law judge may reopen the proceeding for the reception of further evidence.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5345, Feb. 13, 1992]

§ 209.31 Appeal from the decision of the administrative law judge.

(a) Any party to a proceeding may appeal the administrative law judge's decision to the Environmental Appeals Board: Provided, That within 10 days after the administrative law judge's decision is issued, the party files a notice of intention to appeal, and within 30 days of the decision the party files an appeal brief.

(b) When an appeal is taken from the decision of the administrative law judge, any party may file a brief with respect to such appeal. The brief shall be filed within 20 days of the date of the filing of the appellant's brief.

(c) Any brief filed under this section shall contain, in the order indicated:

(1) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(2) A specification of the issues which will be argued;

(3) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each issue, with specific page references to the record and the legal or other material relied upon; and

(4) A proposed form of rule or order for the Environmental Appeals Board's consideration if different from the rule or order contained in the administrative law judge's decision.

(d) Briefs shall not exceed 40 pages without leave of the Environmental Appeals Board.

(e) The Environmental Appeals Board may allow oral argument in its discretion.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5345, Feb. 13, 1992]

§ 209.32 Review of the administrative law judge's decision in absence of appeal.

(a) If, after the expiration of the period for taking an appeal under § 209.31, no notice of intention to appeal the decision of the administrative law judge has been filed, or if filed, not perfected, the hearing clerk shall so notify the Environmental Appeals Board.

(b) The Environmental Appeals Board, upon receipt of notice from the hearing clerk that no notice of intention to appeal has been filed, or if filed, not perfected pursuant to § 209.31, may, on its own motion, within the time limits specified in § 209.30(b), review the decision of the administrative law judge. Notice of the Environmental Appeals Board's intention to review the decision of the administrative law judge shall be given to all parties and shall set forth the scope of such review and the issues which shall be considered and shall make provision for filing of briefs.

[57 FR 5345, Feb. 13, 1992]

§ 209.33 Decision on appeal or review.

(a) Upon appeal from or review of the administrative law judge's decision, the Environmental Appeals Board shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and, in addition shall to the extent necessary or desirable exercise all the powers which the Environmental Appeals Board could have exercised if it had presided at the hearing.

(b) The Environmental Appeals Board shall render a decision as expeditiously as possible. The Environmental Appeals Board shall adopt, modify, or set aside the findings, conclusions, and rule or order contained in the decision of the administrative law judge and

shall set forth in its decision a statement of the reasons or bases for its action. The Environmental Appeals Board's decision shall be the final order in the proceeding.

(c) In those cases where the Environmental Appeals Board determines that it should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Environmental Appeals Board, in its discretion, may withhold final action pending the receipt of such additional information or views, or may remand the case to the administrative law judge.

[57 FR 5345, Feb. 13, 1992]

§209.34 Reconsideration.

Within five (5) days after service of the Environmental Appeals Board's decision, any party may file a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. Petitions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Petitions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator's pursuant to §209.3(k) and in which the Administrator has issued the final order. Any petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the administrative law judge or the Environmental Appeals Board. Any party desiring to oppose a petition shall file an answer thereto within five (5) days after service of the petition. The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order.

[57 FR 5345, Feb. 13, 1992]

§209.35 Conclusion of hearing.

(a) If no appeal has been taken from the administrative law judge's decision before the period for taking an appeal under §209.31 has expired, and the period for review by the Environmental Appeals Board on its own motion under §209.30 has expired, and the Environmental Appeals Board does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(b) If an appeal of the administrative law judge's decision is taken under §209.31, or if, in the absence of such appeal, the Environmental Appeals Board moves to review the decision of the administrative law judge under §209.32, the hearing will be deemed to have ended upon the rendering of a final decision by the Environmental Appeals Board.

[57 FR 5346, Feb. 13, 1992]

§209.36 Judicial review.

(a) The Administrator hereby designates the general counsel, Environmental Protection Agency as the officer upon whom copy of any petition for judicial review shall be served. That officer shall be responsible for filing in the court the record on which the order of the Environmental Appeals Board is based.

(b) Before forwarding the record to the court, the Agency shall advise the petitioner of the costs of preparing it and as soon as payment to cover fees is made shall forward the record to the court.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5346, Feb. 13, 1992]

PART 210—PRIOR NOTICE OF CITIZEN SUITS

Sec.
210.1 Purpose.
210.2 Service of notice.
210.3 Contents of notice.

AUTHORITY: Sec. 12, Noise Control Act, (Pub. L. 92–574, 86 Stat. 1234).

SOURCE: 39 FR 36011, Oct. 7, 1974, unless otherwise noted.

§210.1 Purpose.

Section 12 of the Noise Control Act authorizes any person to commence a civil action on his own behalf to enforce the Act or to enforce certain requirements promulgated pursuant to the Act. The purpose of this part is to prescribe procedures governing the manner of giving notices as required by

subsection 12(b) of the Act (Pub. L. 92–574, 86 Stat. 1234) as a prerequisite to the commencement of such actions.

§ 210.2 Service of notice.

(a) Notice of intent to file suit pursuant to section 12(a)(1) of the Act shall be served upon an alleged violator of a noise control requirement issued under the Act in the following manner:

(1) If the alleged violator is a private individual or a corporation, service of notice shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the owner or managing agent of the equipment, plant, facility, vehicle, or activity alleged to be in violation. A copy of the notice shall be mailed to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the region in which such violation is alleged to have occurred; and in the case of a violation of a noise control requirement under section 611 of the Federal Aviation Act, to the Administrator of the Federal Aviation Administration, and the Regional Administrator of the Federal Aviation Administration for the region in which such violation is alleged to have occurred. If the alleged violator is a corporation, a copy of such notice also shall be mailed to the registered agent, if any, of such corporation in the State in which such violation is alleged to have occurred.

(2) If the alleged violator is a State or local government entity, service of notice shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the head of such agency. A copy of such notice shall be mailed to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the region in which such violation is alleged to have occurred; and in the case of a violation of a noise control requirement under section 611 of the Federal Aviation Act, to the Administrator of the Federal Aviation Administration, and the Regional Administrator of the Federal Aviation Administration for the region in which such violation is alleged to have occurred.

(3) If the alleged violator is a Federal agency, service of notice shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the head of such agency. A copy of such notice shall be mailed to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the region in which such violation is alleged to have occurred, the Attorney General of the United States; and in the case of a violation of a noise control requirement under section 611 of the Federal Aviation Act, to the Administrator of the Federal Aviation Administration, and the Regional Administrator of the Federal Aviation Administration for the region in which such violation is alleged to have occurred.

(b) Service of notice of intent to file suit pursuant to section 12(a)(2)(A) of the Act shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the Administrator, Environmental Protection Agency, Washington, DC 20460. A copy of such notice shall be mailed to the Attorney General of the United States.

(c) Service of notice of intent to file suit pursuant to section 12(a)(2)(B) of the Act shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the Administrator, Federal Aviation Administration, Washington, DC. A copy of such notice shall be mailed to the Attorney General of the United States, and to the Administrator of the Environmental Protection Agency.

(d) Notice given in accordance with the provisions of this part shall be deemed to have been served on the date of receipt. If service was accomplished by mail, the date of receipt will be deemed to be the date noted on the return receipt card.

§ 210.3 Contents of notice.

(a) *Violation of noise control requirement.* Notice regarding an alleged violation of a noise control requirement shall include sufficient information to permit the recipient to identify the specific standard or regulation alleged

to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation and the full name, address, and telephone number of the person giving notice.

(b) *Failure to act.* Notice regarding an alleged failure of the Administrator of the Environmental Protection Agency to perform any act or duty under the Noise Control Act which is not discretionary with such Administrator or notice regarding an alleged failure of the Administrator of the Federal Aviation Administration to perform any act or duty under section 611 of the Federal Aviation Act which is not discretionary with such Administrator shall identify the statutory provision which requires such act or creates such duty, shall describe with reasonable specificity the action taken or not taken by such Administrator which is alleged to constitute a failure to perform such act or duty, and shall state the full name, address, and telephone number of the person giving the notice.

(c) *Identification of Counsel.* The notice shall state the name, address, and telephone number of the legal counsel, if any, representing the person giving the notice.

PART 211—PRODUCT NOISE LABELING

Subpart A—General Provisions

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APPENDIX A TO PART 211—COMPLIANCE AUDIT TESTING REPORT

SOURCE: 44 FR 56127, Sept. 28, 1979, unless otherwise noted.

Subpart A—General Provisions

AUTHORITY: Sec. 8, Noise Control Act of 1972, (42 U.S.C. 4907), and other authority as specified.

§211.101 Applicability.

The provisions of subpart A apply to all products for which regulations are published under part 211 and manufactured after the effective date of this regulation, unless they are made inapplicable by product-specific regulations.

§211.102 Definitions.

(a) All terms that are not defined in this subpart will have the meaning given them in the Act.

(b) *Act* means the Noise Control Act of 1972 (Pub. L. 92–574, 86 Stat. 1234).

(c) *Administrator* means the Administrator of the Environmental Protection

Agency or his authorized representative.

(d) *Agency* means the United States Environmental Protection Agency.

(e) *Acoustic descriptor* means the numeric, symbolic, or narrative information describing a product's acoustic properties as they are determined according to the test methodology that the Agency prescribes.

(f) *Export exemption* means an exemption from the prohibitions of section 10(a) (3) and (4) of the Act; this type of exemption is granted by statute under section 10(b)(2) of the Act for the purpose of exporting regulated products.

(g) *National security exemption* means an exemption from the prohibitions of section 10(a) (3) and (5) of the Act, which may be granted under section 10(b)(1) of the Act in cases involving national security.

(h) *Product* means any noise-producing or noise-reducing product for which regulations have been promulgated under part 211; the term includes ''test product''.

(i) *Regulations published under this part* means all subparts to part 211.

(j) *Testing exemption* means an exemption from the prohibitions of section 10(a) (1), (2), (3), and (5) of the Act, which may be granted under section 10(b)(1) of the Act for research, investigations, studies, demonstrations, or training, but not for national security.

(k) *Test product* means any product that must be tested according to regulations published under part 211.

§ 211.103 Number and gender.

In this part, words in the singular will be understood to include the plural, and words in the masculine gender will be understood to include the feminine, and vice versa, as the case may require.

§ 211.104 Label content.

The following data and information must be on the label of all products for which regulations have been published under this part:

(a) The term ''Noise Rating'' if the product produces noise, or the term ''Noise Reduction Rating'' if the product reduces noise;

(b) The acoustic rating descriptor that is determined according to procedures specified in the regulations that will be published under this part;

(c) Comparative acoustic rating information, which EPA will specify in the regulations published under this part;

(d) A product manufacturer identification consisting of: (1) The Company name, and (2) The City and State of the principal office;

(e) A product model number or type identification;

(f) The phrase ''Federal law prohibits removal of this label prior to purchase'';

(g) The U.S. Environmental Protection Agency logo, as shown in Figure 1;

(h) The phrase ''Label Required by U.S. EPA regulation 40 CFR part 211, subpart _____.''

FIGURE 1

§ 211.105 Label format.

(a) Unless specified otherwise in other regulations published under this part, the format of the label must be as shown in Figure 2. The label must include all data and information required under § 211.104.

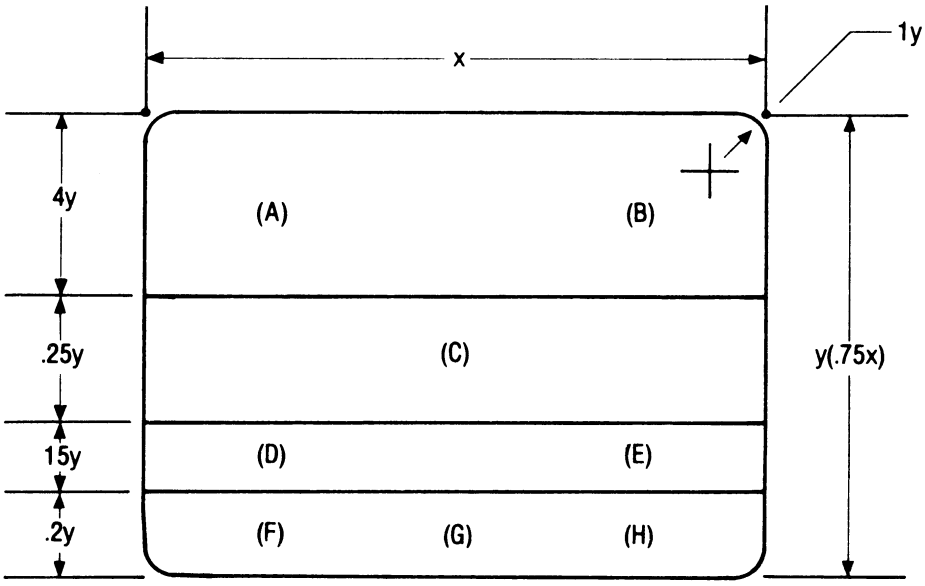

FIGURE - 2

(b) Unless EPA specifies otherwise in regulations published under this part, the required data and information specified in §211.104 (a) through (h) must be located in the following areas of the prescribed label (see Figure 2 of this section):

(1) Section 211.104 (a)—Area A.
(2) Section 211.104 (b)—Area B.
(3) Section 211.104 (c)—Area C.
(4) Section 211.104 (d)—Area D.
(5) Section 211.104 (e)—Area E.
(6) Section 211.104 (f)—Area F.
(7) Section 211.104 (g)—Area G.
(8) Section 211.104 (h)—Area H.

§211.106 Graphical requirements.

(a) *Color*. Unless EPA requires otherwise, the product manufacturer or supplier must determine the colors used for the label background, borders, and all included letters, numerals, and figures. However, the colors on the label must contrast sufficiently with each other and with any information or material surrounding the label so that the label and the information within it are clearly visible and legible.

(b) *Label Size*. The prescribed label must be sized as specified in regulations published under this part.

(c) *Character Style*. Except when specified otherwise in this part, all letters and numerals that appear on the prescribed label must be Helvetica Medium.

(d) *Character Size*. All letters and numerals that appear on the prescribed label must be sized as specified in regulations published under this part.

§211.107 Label type and location.

The prescribed label must be of the type and in the location specified in regulations published under this part.

§211.108 Sample label.

Examples of labels conforming to the requirements of §§211.104, 211.105, and 211.106 are presented in Figure 3.

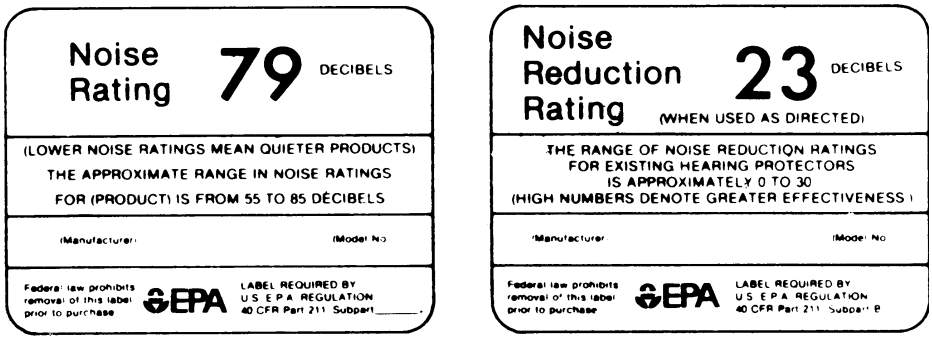

Figure – 3

§ 211.109 Inspection and monitoring.

(a) Any inspecting or monitoring activities that EPA conducts under this part with respect to the requirements set out in regulations published under this part, will be for the purpose of determining:

(1) Whether test products are being selected and prepared for testing in accordance with the provisions of the regulations;

(2) Whether test product testing is being conducted according to the provisions of those regulations; and

(3) Whether products that are being produced and distributed into commerce comply with the provisions of those regulations.

(b) The Director of the Noise Enforcement Division may request that a manufacturer who is subject to this part admit an EPA Enforcement Officer during operating hours to any of the following:

(1) Any facility or site where any product to be distributed into commerce is manufactured, assembled, or stored;

(2) Any facility or site where the manufacturer performed or performs any tests conducted under this part or any procedures or activities connected with those tests;

(3) Any facility or site where any test product is located.

(c)(1) Once an EPA Enforcement Officer has been admitted to a facility or site, that officer will not be authorized to do more than the following:

(i) Inspect and monitor the manufacture and assembly, selection, storage, preconditioning, noise testing, and maintenance of test products, and to verify the correlation or calibration of test equipment;

(ii) Inspect products before they are distributed in commerce;

(iii) Inspect and make copies of any records, reports, documents, or information that the manufacturer must maintain or provide to the Administrator under the Act or under any provision of this part;

(iv) Inspect and photograph any part or aspect of any product and any components used in manufacturing the product that is reasonably related to the purpose of this entry; and

(v) Obtain from those in charge of the facility or site any reasonable assistance that he may request to enable him to carry out any function listed in this section.

(2) The provisions of this section apply whether the facility or site is owned or controlled by the manufacturer, or by someone who acts for the manufacturer.

(d) For the purposes of this section:

(1) An ''EPA Enforcement Officer'' is an employee of the EPA Office of Enforcement. When he arrives at a facility or site, he must display the credentials that identify him as an employee of the EPA and a letter signed by the Director of the Noise Enforcement Division designating him to make the inspection.

(2) Where test product storage areas or facilities are concerned, ''operating hours'' means all times during which personnel, other than custodial personnel, are at work in the vicinity of the area or facility and have access to it.

(3) Where other facilities or areas are concerned, ''operating hours'' means all times during which products are being manufactured or assembled; or all times during which products are being tested or maintained; or records are being compiled; or when any other procedure or activity related to labeling, selective enforcement auditing, or product manufacture or assembly being carried out.

(4) ''Reasonable assistance'' means providing timely and unobstructed access to test products or to products and records that are required by this part, and the means for copying those records or the opportunity to test the test products.

(e) The manufacturer must admit an EPA Enforcement Officer who presents a warrant authorizing entry to a facility or site. If the EPA officer does not have the warrant, he may enter a facility or site only if the manufacturer consents.

(1) It is not a violation of this regulation or the Act if anyone refuses to allow an officer without a warrant to enter the site.

(2) The Administrator or his designee may proceed *ex parte* (without the other party's knowledge) to obtain a warrant whether or not the manufacturer has refused entry to an EPA Enforcement Officer.

(Secs. 11 and 13, Pub. L. 92–574, 86 Stat. 1242, 1244 (42 U.S.C. 4910, 4912))

[44 FR 56127, Sept. 28, 1979, as amended at 47 FR 57716, Dec. 28, 1982]

§211.110 Exemptions.

§211.110–1 Testing exemption.

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the produce itself, shall be exempt from the prohibitions of sections 10(a), (1), (2), (3), and (5) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of section 11(d) of the Act, any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

[47 FR 57716, Dec. 28, 1982]

§211.110–2 National security exemptions.

(a) A new product which is produced to conform with specifications developed by national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of sections 10(a), (1), (2), (3), and (5) of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of section 11(d) of the Act, any national security exemption shall be void ab initio with respect to each new product, originally intended for a national security agency, but distributed in commerce for other uses.

[47 FR 57716, Dec. 28, 1982]

§211.110–3 Export exemptions.

(a) A new product intended solely for export, and which has satisfied the requirements of other applicable regulations of this part, will be exempt from the prohibitions of section 10(a) (3) and (4) of the Act.

(b) Requests for an export exemption are not required.

(c) For purposes of section 11(d) of the Noise Control Act, the Administrator may consider any export exemption under section 10(b)(2) void from the beginning if a new product, intended only for export, is distributed in commerce in the United States.

(Sec. 10(b)(2), Pub. L. 92–574, 86 Stat. 1242 (42 U.S.C. 4909(b)(2)))

[44 FR 56127, Sept. 28, 1979, as amended at 47 FR 57716, Dec. 28, 1982]

§211.111 Testing by the Administrator.

(a)(1) To determine whether products conform to applicable regulations under this part, the Administrator may require that any product that is to be

tested under applicable regulations in this part, or any other products that are regulated under this part, be submitted to him, at a place and time that he designates, to conduct tests on them in accordance with the test procedures described in the regulations.

(2) The Administrator may specify that he will conduct the testing at the facility where the manufacturer conducted required testing. The Administrator will conduct the tests with his own equipment.

(b)(1) If, from the tests conducted by the Administrator, or other relevant information, the Administrator determines that the test facility used by the manufacturer(s) does not meet the requirements of this part for conducting the test required by this part, he will notify the manufacturer(s) in writing of his determination and the reasons for it.

(2) After the Administrator has notified the manufacturer, EPA will not accept any data from the subject test facility for the purposes of this part, and the Administrator may issue an order to the manufacturer(s) to cease to distribute in commerce products that come from the product categories in question. However, any such order shall be issued only after an opportunity for a hearing. Notification of this opportunity may be included in a notification under paragraph (b)(1) of this section. A manufacturer may request that the Administrator grant a hearing. He must make this request no later than fifteen (15) days (or any other period the Administrator allows) after the Administrator has notified the manufacturer that he intends to issue an order to cease to distribute.

(3) A manufacturer may request in writing that the Administrator reconsider his determination in paragraph (b)(1) of this section, if he can provide data or information which indicates that changes have been made to the test facility, and that those changes have remedied the reason for disqualification.

(4) The Administrator will notify a manufacturer of his decision concerning requalifying the test facility within 10 days of the time the manufacturer requested reconsideration under paragraph (b)(3) of this section.

(c)(1) The Administrator will assume all reasonable costs associated with shipment of products to the place designated pursuant to paragraph (a) of this section, except with respect to:

(i) [Reserved]

(ii) Testing of a reasonable number of products for purposes of compliance audit testing under the Section titled Compliance Audit Testing of the product-specific Subpart, or if the manufacturer has failed to establish that there is a correlation between his test facility and the EPA test facility or the Administrator has reason to believe, and provides the manufacturer with a statement or reasons, that the products to be tested would fail to meet their verification level if tested at the EPA test facility, but would meet the level if tested at the manufacturer's test facility;

(iii) Any testing performed during a period when a notice issued under paragraph (b) of this section, is in effect; and

(iv) Any testing performed at place other than the manufacturer's facility as a result of the manufacturer's failure to permit the Administrator to conduct or monitor testing as required by this part.

(Secs. 11 and 13, Pub. L. 92–574, 86 Stat. 1243 (42 U.S.C. 4910, 4912))

[44 FR 56127, Sept. 28, 1979, as amended at 47 FR 57716, Dec. 28, 1982]

Subpart B—Hearing Protective Devices

AUTHORITY: Sec. 8, Pub. L. 92–574, 86 Stat. 1241 (42 U.S.C. 4907), and additional authority as specified.

SOURCE: 44 FR 56139, Sept. 28, 1979, unless otherwise noted.

§ 211.201 Applicability.

Unless this regulation states otherwise, the provisions of this subpart apply to all hearing protective devices manufactured after the effective date of this regulation. (See § 211.203(m) for definition of ''hearing protective device.'')

§ 211.202 Effective date.

Manufacturers of hearing protectors must comply with the requirements set

forth in this part for all hearing protective devices manufactured on or after September 27, 1980.

§ 211.203 Definitions.

(a) As used in subpart B, all terms not defined here have the meaning given them in the Act or in subpart A of Part 211.

(b) *ANSI Z24.22–1957*. A measurement procedure published by the American National Standards Institute (ANSI) for obtaining hearing protector attenuation values at nine of the one-third octave band center frequencies by using pure tone stimuli presented to ten different test subjects under anechoic conditions.

(c) *ANSI S3.19–1974*. A revision of the ANSI Z24.22–1957 measurement procedure using one-third octave band stimuli presented under diffuse (reverberant) acoustic field conditions.

(d) *Carrying Case*. The container used to store reusable hearing protectors.

(e) *Category*. A group of hearing protectors which are identical in all aspects to the parameters listed in § 211.210–2(c).

(f) *Claim*. An assertion made by a manufacturer regarding the effectiveness of his product.

(g) *Custom-molded device*. A hearing protective device that is made to conform to a specific ear canal. This is usually accomplished by using a moldable compound to obtain an impression of the ear and ear canal. The compound is subsequently permanently hardened to retain this shape.

(h) *Dispenser*. The permanent (intended to be refilled) or disposable (discarded when empty) container designed to hold more than one complete set of hearing protector(s) for the express purpose of display to promote sale or display to promote use or both.

(i) *Disposable Device*. A hearing protective device that is intended to be discarded after one period of use.

(j) *Ear Insert Device*. A hearing protective device that is designed to be inserted into the ear canal, and to be held in place principally by virtue of its fit inside the ear canal.

(k) *Ear Muff Device*. A hearing protective device that consists of two acoustic enclosures which fit over the ears and which are held in place by a spring-like headband to which the enclosures are attached.

(l) *Headband*. The component of hearing protective device which applies force to, and holds in place on the head, the component which is intended to acoustically seal the ear canal.

(m) *Hearing Protective Device*. Any device or material, capable of being worn on the head or in the ear canal, that is sold wholly or in part on the basis of its ability to reduce the level of sound entering the ear. This includes devices of which hearing protection may not be the primary function, but which are nonetheless sold partially as providing hearing protection to the user. This term is used interchangeably with the terms, ''hearing protector'' and ''device.''

(n) *Impulsive Noise*. An acoustic event characterized by very short rise time and duration.

(o) *Label*. That item, as described in this regulation, which is inscribed on, affixed to or appended to a product, its packaging, or both for the purpose of giving noise reduction effectiveness information appropriate to the product.

(p) *Manufacturer*. As stated in the Act ''means any person engaged in the manufacturing or assembling of new products, or the importing of new products for resale, or who acts for, and is controlled by, any such person in connection with the distribution of such products.''

(q) *Noise Reduction Rating (NRR)*. A single number noise reduction factor in decibels, determined by an empirically derived technique which takes into account performance variation of protectors in noise reducing effectiveness due to differing noise spectra, fit variability and the mean attenuation of test stimuli at the one-third octave band test frequencies.

(r) *Octave Band Attenuation*. The amount of sound reduction determined according to the measurement procedure of § 211.206 for one-third octave bands of noise.

(s) *Over-the-Head Position*. The mode of use of a device with a headband, in which the headband is worn such that it passes over the user's head. This is contrast to the behind-the-head and under-the-chin positions.

(t) *Package*. The container in which a hearing protective device is presented for purchase or use. The package in some cases may be the same as the carrying case.

(u) *Primary Panel*. The surface that is considered to be the front surface or that surface which is intended for initial viewing at the point of ultimate sale or the point of distribution for use.

(v) *Spectral uncertainty*. Possible variation in exposure to the noise spectra in the workplace. (To avoid the underprotection that would result from these variations relative to the assumed ''Pink Noise'' used to determine the NRR, an extra three decibel reduction is included when computing the NRR.)

(w) *Tag*. Stiff paper, metal or other hard material that is tied or otherwise affixed to the packaging of a protector.

(x) *Test Facility*. For this subpart, a laboratory that has been set up and calibrated to conduct ANSI Std S3.19–1974 tests on hearing protective devices. It must meet the applicable requirements of these regulations.

(y) *Test Hearing Protector*. A hearing protector that has been selected for testing to verify the value to be put on the label, or which has been designated for testing to determine compliance of the protector with the labeled value.

(z) *Test Request*. A request submitted to the manufacturer by the Administrator that will specify the hearing protector category, and test sample size to be tested according to § 211.212–1, and other information regarding the audit.

(aa) *Random Incident Field*. A sound field in which the angle of arrival of sound at a given point in space is random in time.

(bb) *Real-Ear Protection at Threshold*. The mean value in decibels of the occluded threshold of audibility (hearing protector in place) minus the open threshold of audibility (ears open and uncovered) for all listeners on all trials under otherwise identical test conditions.

(cc) *Reverberation Time*. The time that would be required for the mean-square sound pressure level, originally in a steady state, to fall 60 dB after the source is stopped.

§ 211.204 Hearing protector labeling requirements.

All provisions of subpart A apply to this subpart except as otherwise noted.

§ 211.204–1 Information content of primary label.

The information to appear on the primary label must be according to § 211.104 of subpart A except as stated here and shown in Figure 1 of § 211.204–2:

(a) Area A must state ''Noise Reduction Rating.''

(b)(1) Area B must state the value of the Noise Reduction Rating (NRR) in decibels for that model hearing protector. The value stated on the label must be no greater than the NRR value determined by using the computation method of § 211.207 of this subpart.

(2) For devices with headbands that are intended for use with the headband in different positions, the worst case NRR must be specified. The top of Area B must state the position(s) associated with that NRR. The other positions and the respective NRRs must be included with the supporting information specified in § 211.204–4.

(c) Area C must contain the statement ''The range of Noise Reduction Ratings for existing hearing protectors is approximately 0 to 30 (higher numbers denote greater effectiveness).''

(d) At the bottom of Area A-B, there must be the phrase ''(When used as directed).''

[44 FR 56127, Sept. 28, 1979, as amended at 45 FR 8275, Feb. 6, 1980]

§ 211.204–2 Primary label size, print and color.

The primary label characteristics are the same as those specified in §§ 211.105 and 211.106 of subpart A except as stated here.

(a) The label must be no smaller than 3.8 centimeters by 5.0 centimeters (cm) (approximately 1.5 inches by 2.0 inches).

(b) The minimum type face size for each area shall be as follows, based upon a scale of 72 points=1 inch:

(1) Area A—2.8 millimeters (mm) or 8 point.

(2) Area B—7.6 mm or 22 point for the Rating;—1.7 mm or 5 point for ''Decibels''.

(3) Area A-B—1.5 mm or 4 point.
(4) Area C—1.5 mm or 4 point.
(5) Area D—0.7 mm or 2 point.
(6) Area E—0.7 mm or 2 point.
(7) Area F—0.7 mm or 2 point.
(8) Area H—0.7 mm or 2 point.

These type face sizes apply to the 3.8 cm × 5.0 cm label; type face sizes for larger labels must be in the same approximate proportion to the label as those specified for the 3.8 cm × 5.0 cm label.

(c) The use of upper and lower case letters and the general appearance of the label must be similar to the example in Figure (1).

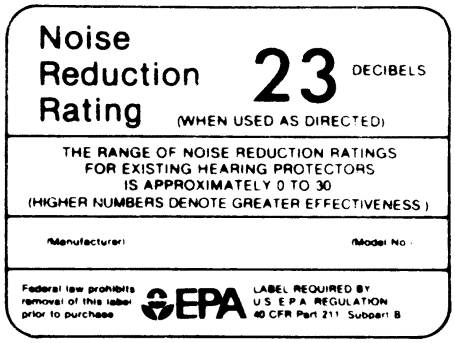

Figure - 1

(d) The color of the label must be as specified in subpart A.

[44 FR 56127, Sept. 28, 1979, as amended at 45 FR 8275, Feb. 6, 1980]

§ 211.204–3 Label location and type.

(a) The manufacturer labeling the product for ultimate sale or use selects the type of label and must locate it as follows:

(1) Affixed to the device or its carrying case; and

(2) Affixed to primary panel of the product packaging if the label complying with § 211.204–3(a)(1) is not visible at the point of ultimate purchase or the point of distribution to users.

(b) Labeling with a minimum sized label will occur as follows:

(1) If the protector is individually packaged and so displayed at the point of ultimate purchase or distribution to the prospective user, the package must be labeled as follows:

(i) If the primary panel of the package has dimensions greater than 3.8 × 5.0 cm (approximately 1½ × 2 in) the label must be presented on the primary panel.

(ii) If the primary panel of the package is equal to or smaller than 3.8 × 5.0 centimeters, a label at least 3.8 × 5.0 centimeters must be affixed to the package by means of a tag.

(2) If the protector is displayed at the point of ultimate purchase or distribution to prospective users in a permanent or disposable bulk container or dispenser, even if the protector is individually packaged within the dispenser and labeled as above, the container or dispenser itself must be labeled. The label must be readily visible to the ultimate purchaser or prospective user.

§ 211.204–4 Supporting information.

The following minimum supporting information must accompany the device in a manner that insures its availability to the prospective user. In the case of bulk packaging and dispensing, such supporting information must be affixed to the bulk container or dispenser in the same manner as the label, and in a readily visible location.

(a) The mean attenuation and standard deviation values obtained for each test frequency according to § 211.206, and the NRR calculated from those values. For ''muff'' type protectors with various use positions, the positions providing higher NRR values shall be identified, and their associated NRR values listed in bold type.

(b) The following statement, example and cautionary note: ''The level of noise entering a person's ear, when hearing protector is worn as directed, is closely approximated by the difference between the A-weighted environmental noise level and the NRR.

Example

1. The environmental noise level as measured at the ear is 92 dBA.
2. The NRR is (value on label) decibels (dB).
3. The level of noise entering the ear is approximately equal to [92 dB(A)—NRR] dB(A).

CAUTION: For noise environments dominated by frequencies below 500 Hz the C-weighted environmental noise level should be used.''

(c) The month and year of production, which may be in the form of a serial number or a code in those instances where the records specified in § 211.209(a)(1)(iv) are maintained;

(d) The following statement: ''Improper fit of this device will reduce its effectiveness in attenuating noise. Consult the enclosed instructions for proper fit'';

(e) Instructions as to the proper insertion or placement of the device; and

(f) The following statement: ''Although hearing protectors can be recommended for protection against the harmful effects of impulsive noise, the Noise Reduction Rating (NRR) is based on the attenuation of *continuous* noise and may not be an accurate indicator of the protection attainable against *impulsive* noise such as gunfire.''

[44 FR 56127, Sept. 28, 1979, as amended at 45 FR 8275, Feb. 6, 1980]

§ 211.205 Special claims.

(a) Any manufacturer wishing to make claims regarding the acoustic effectiveness of a device, other than the Noise Reduction Rating, must be prepared to demonstrate the validity of such claims.

(b) [Reserved]

[44 FR 56139, Sept. 28, 1979, as amended at 47 FR 57716, Dec. 28, 1982]

§ 211.206 Methods for measurement of sound attenuation.

§ 211.206–1 Real ear method.

(a) The value of sound attenuation to be used in the calculation of the Noise Reduction Rating must be determined according to the ''Method for the Measurement of Real-Ear Protection of Hearing Protectors and Physical Attenuation of Earmuffs.'' This standard is approved as the American National Standards Institute Standard (ANSI STD) S3.19–1974. The provisions of this standard, with the modifications indicated below, are included by reference in this section. Copies of this standard may be obtained from: American National Standards Institute, Sales Department, 1430 Broadway, New York, New York 10018.

(b) For the purpose of this subpart only, sections 1, 2, 3 and appendix A of the standard, as modified below, shall be applicable. These sections describe the ''Real Ear Method.'' Other portions of the standard are not applicable in this section.

(1) The sound field characteristics described in paragraph 3.1.1.3 are ''required.''

(2) Sections 3.3.2 and 3.3.3 shall be accomplished in this order during the same testing session. Any breaks in testing should not allow the subject to engage in any activity that may cause a Temporary Threshold Shift.

(3) Section 3.3.3.1(1) shall not apply. Only ''Experimenter fit'' described in Section 3.3.3.1(2) is permitted.

(4) Section 3.3.3.3 applies to all devices except custom-molded devices. When testing custom-molded devices, each test subject must receive his own device molded to fit his ear canal.

[44 FR 56139, Sept. 28, 1979, as amended at 45 FR 8275, Feb. 6, 1980]

§ 211.206–2 Alternative test data.

(a) In lieu of testing according to § 211.206–1, manufacturers may use the latest available test data obtained according to ANSI STD Z24.22–1957 or ANSI STD S3.19–1974 to determine the mean attenuation and standard deviation for each test frequency and the NRR calculated from those values. Manufacturers whose data is based on the ANSI STD Z24.22–1957 measurement procedure must state in the supporting information required by § 211.204–4 that the mean attenuation and standard deviation values used to calculate the NRR are based on ANSI STD Z24.22–1957.

(b) Manufacturers who initially use available data based on ANSI STD Z24.22–1957 must retest within one year of the effective date of this regulation (by September 27, 1981) the affected categories of hearing protectors in accordance with § 211.206–1 of the regulation, and must relabel those categories as necessary.

(c) Manufacturers who use available data based on ANSI STD S3.19–1974 are not required to retest the affected categories of hearing protectors.

(d) If a manufacturer has both ANSI STD S3.19–1974 test data and ANSI STD Z24.22–1957 test data on a hearing protector category, that manufacturer

must use the data obtained according to ANSI STD S3.19–1974.

[45 FR 8275, Feb. 6, 1980]

§§ 211.206–3—211.206–10 Alternative test methods. [Reserved]

§ 211.207 Computation of the noise reduction rating (NRR).

Calculate the NRR for hearing protective devices by substituting the average attenuation values and standard deviations for the pertinent protector category for the sample data used in steps #6 and #7 in Figure 2. The values of −.2, 0, 0, 0, −.2, −.8, −3.0 in Step 2 and −16.1, −8.6, −3.2, 0, +1.2, +1.0, −1.1 in Step 4 of Figure 2 represent the standard ''C''- and ''A''-weighting relative response corrections applied to any sound levels at the indicated octave band center frequencies. (NOTE: The manufacturer may label the protector at values lower than indicated by the test results and this computation procedure, e.g. lower NRR from lower attenuation values. (Ref. § 211.211(b).)

FIGURE 2—COMPUTATION OF THE NOISE REDUCTION RATING

Octave band center frequency (Hz)	125	250	500	1000	2000	3000	4000	6000	8000
1 Assumed Pink noise (dB)	100	100	100	100	100	.....	100	.....	100
2 ''C'' weighting corrections (dB)	−.2	0	0	0	−.2	.....	−.8	.....	−3.0
3 Unprotected ear ''C''-weighted level (dB)	99.8	100	100	100	99.8	.....	99.2	.....	97.0
(The seven logarithmically added ''C''-weighted sound pressure levels of Step #3 =107.9 dS)									
4 ''A''-weighting corrections (dB)	−16.1	−8.6	−3.2	0	+1.2	.....	+1.0	.....	−1.1
5 Unprotected ear ''A''-weighted level (step #1-step #4) (dB)	83.9	91.4	96.8	100	101.2	.....	101	.....	98.9
6 Average attenuation in dB at frequency	21	22	23	29	41	.....	(43+47)/2=45	.....	(41+36)/2=38.5
7 Standard deviation in dB at frequency	3.7	3.3	3.8	4.7	3.3	.....	(3.3+3.4)=6.7	.....	(6.1+6.5)=12.6
	×2	×2	×2	×2	×2	.....	.....	.....	.....
	7.4	6.6	7.6	9.4	6.6	.....	.....	.....	.....
8 Step #5-(step #6-step #7) develops the protected ear ''A'' weighted levels (dB)	70.3	76.0	81.4	80.4	66.8	.....	62.7	.....	73.0
(The seven logarithmically added ''A''-weighted sound pressure levels of Step #8 using this sample data=85.1 dB)									

9 NRR=Step #3—Step #8—3 dB*; =107.9 dB—85.1 dB—3 dB*; =19.8 dB (or 20) (Round values ending in .5 to next lower whole number).

*Spectral uncertainty (as defined in § 211.203).

The value for #3 is constant. Use Logarithmic mathematics to determine the combined value of protected ear levels (Step #8) which is used in Step #9 to exactly derive the NRR; or use the following table as a substitute for logarithmic mathematics to determine the value of Step #8 and thus very closely approximate the NRR.

Difference between any two sound pressure levels being combined (dB)	Add this level to the higher of the two levels (dB)
0 to less than 1.5	3
1.5 to less than 4.5	2
4.5 to 9	1
Greater than 9	0

§ 211.208 Export provisions.

(a) The outside of each package or container containing a hearing protective device intended solely for export must be so labeled or marked. This will include all packages or containers that are used for shipping, transporting, or dispersing the hearing protective device along with any individual packaging.

(b) In addition, the manufacturer of a hearing protective device intended solely for export is subject to the export exemption requirements of § 211.110–3 of subpart A.

(Sec. 10(b)(2), Pub. L. 92–574, 86 Stat. 1242 (42 U.S.C. 4909(b)(2)))

§ 211.210 Requirements.

§ 211.210–1 General requirements.

(a) Every hearing protector manufactured for distribution in commerce in the United States, and which is subject to this regulation:

(1) Must be labeled at the point of ultimate purchase or distribution to the prospective user according to the requirements of § 211.204 of this subpart; and

(2) Must meet or exceed the mean attenuation values determined by the procedure in § 211.206 and explained in § 211.211(b).

(b) Manufacturers who distribute protectors in commerce to another manufacturer for packaging for ultimate purchase or use must provide to that manufacturer the mean attenuation values and standard deviations at each of the one-third octave band center frequencies as determined by the test procedure in § 211.206. He must also provide the Noise Reduction Rating calculated according to § 211.207.

(Sec. 13, Pub. L. 92–574, 86 Stat. 1244 (42 U.S.C. 4912))

[44 FR 56139, Sept. 28, 1979, as amended at 45 FR 8275, Feb. 6, 1980; 47 FR 57716, Dec. 28, 1982]

§ 211.210–2 Labeling requirements.

(a)(1) A manufacturer responsible for labeling must satisfy the requirements of this subpart for a category of hearing protectors before distributing that category of hearing protectors in commerce.

(2) A manufacturer may apply to the Administrator for an extension of time to comply with the labeling requirements for a category of protectors before he distributes any protectors in commerce. The Administrator may grant the manufacturer an extension of up to 20 days from the date of distribution. The manufacturer must provide reasonable assurance that the protectors equal or exceed their mean attenuation values, and that labeling requirements will be satisfied before the extension expires. Requests for extension should go to the Administrator, U.S. Environment Protection Agency, Washington, DC 20460. The Administrator must respond to a request within 2 business days. Responses may be either written or oral.

(3) A manufacturer, receiving hearing protectors through the chain of distribution that were labeled by a previous manufacturer, may use that previous manufacturer's data when labeling the protectors for ultimate sale or use, but is responsible for the accuracy of the information on the label. The manufacturer may elect to retest the protectors.

(b) Labeling requirements regarding each hearing protector category in a manufacturer's product line consist of:

(1) Testing hearing protectors according to § 211.206 and the hearing protectors must have been assembled by the manufacturer's normal production process; and it must have been intended for distribution in commerce.

(c) Each category of hearing protectors is determined by the combination of at least the following parameters. Manufacturers may use additional parameters as needed to create and identify additional categories of protectors.

(1) *Ear muffs.* (i) Head band tension (spring constant);

(ii) Ear cup volume or shape;

(iii) Mounting of ear cup on head band;

(iv) Ear cushion;

(v) Material composition.

(2) *Ear inserts.* (i) Shape;

(ii) Material composition.

(3) *Ear caps.* (i) Head band tension (spring constant);

(ii) Mounting of plug on head band;

(iii) Shape of plug;

(iv) Material composition.

If an ear insert or ear cap is manufactured in more than one size (small, medium, large, etc.) each size does not constitute a separate category and is not required to be separately label verified. However, each size must be used when conducting the required test to determine the labeled values for the specified category.

[44 FR 56139, Sept. 28, 1979, as amended at 47 FR 57717, Dec. 28, 1982]

§ 211.211 Compliance with labeling requirement.

(a) All hearing protective devices manufactured after the effective date of this regulation, and meeting the applicability requirements of § 211.201,

must be labeled according to this subpart, and must comply with the Labeled Values of mean attenuation.

(b) A manufacturer must take into account both product variability and test-to-test variability when labeling his devices in order to meet the requirements of paragraph (a) of this section. A specific category is considered when the attenuation value at the tested one-third octave band is equal to or greater than the Labeled Value, or mean attenuation value, stated in the supporting information required by § 211.204–4, for that tested frequency. The attenuation value must be determined according to the test procedures of § 211.206. The Noise Reduction Rating for the label must be calculated using the Labeled Values of mean attenuation that will be included in the supporting information required by § 211.204–4.

[47 FR 57717, Dec. 28, 1982]

§ 211.212 Compliance audit testing.

§ 211.212–1 Test request.

(a) The Administrator will request all testing under this section by means of a test request addressed to the manufacturer.

(b) The test request will be signed by the Assistant Administrator for Enforcement or his designee. The test request will be delivered by an EPA Enforcement Officer or sent by certified mail to the plant manager or other responsible official as designated by the manufacturer.

(c) In the test request, the Administrator must specify the following:

(1) The hearing protector category selected for testing;

(2) The manufacturer's plant or storage facility from which the protectors must be selected;

(3) The selection procedure the manufacturer will use to select test protectors;

(4) The test facility where the manufacturer is required to have the protectors tested;

(5) The number of protectors to be forwarded to the designated test facility and the number of those protectors which must be tested by the facility.

(6) The time period allowed for the manufacturer to initiate testing; and

(7) Any other information that will be necessary to conduct testing under this section.

(d) The test request may provide for situations in which the selected category is unavailable for testing. It may include an alternative category to be selected for testing in the event that protectors of the first specified category are not available because the protectors are not being manufactured at the specified plant, at the specified time, and are not being stored at the specified plant or storage facility.

(e)(1) Any testing conducted by the manufacturer under a test request must commence within the period specified within the test request. The Administrator may extend the time period on request by the manufacturer, if a test facility is not available to conduct the testing.

(2) The manufacturer must complete the required testing within one week following commencement of the testing.

(3) The manufacturer will be allowed 1 calendar week to send test hearing protectors from the assembly plant to the testing facility. The Administrator may approve more time based upon a request by the manufacturer. The request must be accompanied by a satisfactory justification.

(f) Failure to comply with any of the requirements of this section will not be considered a violation of these regulations if conditions and circumstances outside the control of the manufacturer render it impossible for him to comply. These conditions and circumstances include, but are not limited to, the temporary unavailability of equipment and personnel needed to conduct the required tests. The manufacturer bears the burden of establishing the presence of the conditions and circumstances.

(Sec. 13. Pub. L. 92–574, 86 Stat. 1244 (42 U.S.C. 4912))

[44 FR 56139, Sept. 28, 1979, as amended at 45 FR 8275, Feb. 6, 1980; 47 FR 57717, Dec. 28, 1982]

§ 211.212–2 Test hearing protector selection.

(a) The test request will specify the number of test protectors which will be selected for testing from the number of

protectors delivered to the test facility in accordance with § 211.212–1(c)(5). The remainder may be used as replacement protectors if replacement is necessary. The test request will also specify that the protectors be selected from the next batch scheduled for production after receipt of the test request.

(b) If random selection is specified, it must be achieved by sequentially numbering all the protectors in the group and then using a table of random numbers to select the test hearing protectors. The manufacturer may use an alternative random selection plan when it is approved by the Administrator.

(c) Each test protector of the category selected for testing must have been assembled, by the manufacturer, for distribution in commerce using the manufacturer's normal production process.

(d) At their discretion, EPA Enforcement Officers, rather than the manufacturer, may select the protectors designated in the test request.

(e) The manufacturer must keep on hand the test protectors designated for testing until such time as the category is determined to be in compliance. Hearing protectors actually tested and found to be in compliance with these regulations may be distributed in commerce.

(Sec. 13, Pub. L. 92–574, 86 Stat. 1244 (42 U.S.C. 4912))

[44 FR 56139, Sept. 28, 1979, as amended at 45 FR 8275, Feb. 6, 1980]

§ 211.212–3 Test hearing protector preparation.

The manufacturer must select the test hearing protector according to § 211.212–2 before the official test, and must comply with the test protector preparation requirements described in this subpart:

(a) A test hearing protector selected according to § 211.212–2 must not be tested, modified, or adjusted in any manner before the official test unless the adjustments, modifications and/or tests are part of the manufacturer's prescribed manufacturing and inspection procedures.

(b) Quality controls, testing, assembly or selection procedures must not be, used on the completed protector or any portion of the protector, including parts, that will not normally be used during the production and assembly of all other protectors of that category to be distributed in commerce.

[47 FR 57717, Dec. 28, 1982]

§ 211.212–4 Testing procedures.

(a) The manufacturer must conduct one valid test according to the test procedures specified in § 211.206 for each hearing protector selected for testing under § 211.212–2.

(b) The manufacturer must not repair or adjust the test hearing protectors once compliance testing has been initiated. In the event a hearing protector is unable to complete the test, the manufacturer may replace the protector. Any replacement protector will be of the same category as the protector being replaced. It will be selected from the remaining designated test protectors and will be subject to all the provisions of these regulations. Any replacement and the reason for replacement must be reported in the compliance audit test report.

(Sec. 13, Pub. L. 92–574, 86 Stat. 1244 (42 U.S.C. 4912))

§ 211.212–5 Reporting of test results.

(a)(1) The manufacturer must submit to the Administrator a copy of the Compliance Audit Test report for all testing conducted under § 211.212. It must be submitted within 5 days after completion of testing. A suggested compliance audit test report form is included as appendix B.

(2) The manufacturer must provide the following test information:

(i) Category identification;

(ii) Production date, and model of hearing protector;

(iii) The name and location of the test facility used;

(iv) The completed data sheet in the form specified for all tests including, for each invalid test, the reason for invalidation; and

(v) The reason for the replacement where a replacement protector was necessary.

(3) The manufacturer must provide the following statement and endorsement:

This report is submitted under section 8 and section 13 of the Noise Control Act of

1972. All testing, for which data are reported here, was conducted in strict conformance with applicable regulations under 40 CFR Part 211 et seq. All the data reported are true and accurate representations of this testing. All other information reported here is, to the best of (company name) and (test laboratory name) knowledge, true and accurate. I am aware of the penalties associated with violation of the Noise Control Act of 1972 and the regulations published under it. (authorized representative)

If the testing is conducted by an outside laboratory the manufacturer must require an authorized representative of the laboratory to cosign both the statement and the endorsement.

(b) In the case where an EPA Enforcement Officer is present during testing required by this subpart, the written reports required in paragraph (a) of this section may be given directly to the Enforcement Officer.

(c) The reporting requirements of this regulation will no longer be effective after five (5) years from the date of publication; however, the requirements will remain in effect if the Administrator is taking appropriate steps to repromulgate or modify the reporting requirements at that time.

(Sec. 13, Pub. L. 92–574, 86 Stat. 1244 (42 U.S.C. 4912))

§ 211.212–6 Determination of compliance.

(a) A category will be in compliance with these requirements if the results of the test conducted under the test request show that:

(1) The mean attenuation value, at each one-third octave band center frequency as determined from the Compliance Audit Test values plus 3 dB(A), is equal to or greater than the mean attenuation value at the same one-third octave band as stated in the Supporting Information required by § 211.204–4; and

(2) The Noise Reduction Rating, when calculated from the mean attenuation values determined by Compliance Audit Testing, equals or exceeds the Noise Reduction Rating as stated on the label required by § 211.204.

(b) If a category is not in compliance, as determined in paragraph (a) of this section, the manufacturer must satisfy the continued testing requirements of § 211.212–7, and the relabeling requirements of § 211.212–8 before further distributing hearing protectors of that category in commerce.

(Sec. 13, Pub. L. 92–574, 86 Stat. 1244 (42 U.S.C. 4912))

[44 FR 56139, Sept. 28, 1979, as amended at 47 FR 57717, Dec. 28, 1982]

§ 211.212–7 Continued compliance testing.

If a category is not in compliance as determined under § 211.212–6, the manufacturer must satisfy the requirements of paragraph (a) or (b) of this section.

(a) The manufacturer must continue to conduct additional tests until the mean attenuation values from the last test at each octave band equal or exceed the lowest attenuation values obtained from all previous compliance tests.

(b) Upon approval by the Administrator, the manufacturer may relabel at a lower level in compliance with § 211.212–8 in lieu of testing under paragraph (a) of this section. The manufacturer must obtain approval by showing that the relabeled values adequately take into account results achieved from the Compliance Audit Testing and product variability. The Administrator is to exercise his discretion in light of factors including the prior compliance record of the manufacturer, the adequacy of the proposed new labeling value, the amount of deviation of test results from the labeled values, and any other relevant information.

(c) When the manufacturer can show that the non-compliance under § 211.212–6 was caused by a quality control failure and that the failure has been remedied, he may, with the Administrator's approval, conduct an additional test and relabel using the mean attenuation values no higher than those obtained in that test.

(d) The manufacturer may request a hearing on the issue of whether the compliance audit testing was conducted properly and whether the criteria for non-compliance in § 211.212–6 have been met; and the appropriateness or scope of a continued testing order. In the event that a hearing is requested, the hearing shall begin no later than 15 days after the date on which the Administrator received the hearing request. Neither the request

for a hearing, nor the fact that a hearing is in progress, shall affect the responsibility of the manufacturer to commence and continue testing required by the Administrator pursuant to paragraph (a) of this section.

(Sec. 13, Pub. L. 92–574, 86 Stat. 1244 (42 U.S.C. 4912))

[44 FR 56139, Sept. 28, 1979, as amended at 45 FR 8275, Feb. 6, 1980]

§ 211.212–8 Relabeling requirements.

(a) Any manufacturer who is found to not conform with § 211.212–6, and who has met the requirement of § 211.212–7, must relabel all protectors of the specified category already in his possession according to § 211.211 before distributing them in commerce. The manufacturer shall relabel at values no greater than any mean attenuation values received from Compliance Audit Testing. Any manufacturer who proceeds with § 211.212–7(a) or (b) must relabel his product line with the lowest mean attenuation value at each octave band received from testing; or he may take into account product variability under § 211.211(b) and label with a lower mean attenuation value than the worst case values obtained from Compliance Audit Testing.

(b) [Reserved]

(Sec. 10(a)(3), Pub. L. 92–574, 86 Stat. 1242 (42 U.S.C. 4909(a)(3)))

§ 211.213 Remedial orders for violations of these regulations.

(a) The Administrator may issue an order under section 11(d)(1) of the Act when any person is in violation of these regulations.

(b) A remedial order will be issued only after the violator has been notified of the violation and given an opportunity for a hearing according to section 554 of title 5 of the United States Code.

(c) All costs associated with a remedial order shall be borne by the violator.

(Sec. 11(d) Pub. L. 92–574, 86 Stat. 1243 (42 U.S.C. 4910(d)))

§ 211.214 Removal of label.

Section 10(a)(4) of the Act prohibits any person from removing, prior to sale, any label required by this subpart, by either physical removal or defacing or any other physical act making the label and its contents not accessible to the ultimate purchaser prior to sale.

(Sec. 10(a)(4), Pub. L. 92–574, 86 Stat. 1242 (42 U.S.C. 4909(a)(4)))

APPENDIX A TO PART 211—COMPLIANCE AUDIT TESTING REPORT

Data Sheet

Company name: _____
Address: _____
Test laboratory: _____
Address: _____
Model number of hearing protector: _____
Category designation: _____
Production date: _____

Test Results—Frequency, Mean Attenuation, and Standard Deviation

125 _____
250 _____
500 _____
1000 _____
2000 _____
3150 _____
4000 _____
6300 _____
8000 _____
Noise Reduction Rating: _____

If replacement hearing protector was necessary to conduct test, reason for replacement:

This report is submitted under sections 8 and 13 of the Noise Control Act of 1972. All testing, for which data are reported here, was conducted in strict conformance with applicable regulations under 40 CFR Part 211, et seq. All the data reported here are true and accurate representations of this testing. All other information reported here is, to the best of (company name) and (test laboratory name) knowledge, true and accurate. I am aware of the penalties associated with violation of the Noise Control Act of 1972 and the regulations published under it.

_____

(Authorized representative of company)

_____

(Authorized representative of test laboratory)

[44 FR 56139, Sept. 28, 1979. Redesignated at 47 FR 57717, Dec. 28, 1982]