

**§ 204.57-8**

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

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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 continued testing if he determines that the manufacturer has not satisfied the requirements of paragraphs (a) (1) and (2) of this section.

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(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.