

## Environmental Protection Agency

## § 205.2

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#### APPENDIX I TO SUBPARTS D AND E—MOTORCYCLE NOISE EMISSION TEST PROCEDURES 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.

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(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 re-

quire 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 S1.4-1972 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;

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(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.

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(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