

Environmental Protection Agency

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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

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- 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

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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;

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(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

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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 com-

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merce 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.