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PART III



ENVIRONMENTAL PROTECTION AGENCY

LOW-NOISE-EMISSION
PRODUCTS
CERTIFICATION
PROCEDURES

Federal Register

SURCHAPTER C—NOISE ABATEMENT
PROGRAMS

PART 205—LOW-NOISE-EMISSION
PRODUCTS

Certification Procedures

Correction

In FR Doc. 74-3913 appearing at page 6670 of the issue of Thursday, February 21, 1974, the effective date in the last paragraph above Administrator Train's signature, now reading: "... and will take effect 30 days after promulgation (.....), 1974.", should read: "... and will take effect on March 25, 1974."

Title 40—Protection of Environment
 CHAPTER I—ENVIRONMENTAL
 PROTECTION AGENCY
 SUBCHAPTER C—NOISE ABATEMENT
 PROGRAMS
 PART 203—LOW-NOISE-EMISSION
 PRODUCTS
 Certification Procedures

The Environmental Protection Agency hereby establishes a new Part 203 of Title 40 of the Code of Federal Regulations (40 CFR 203.1 through 203.3).

Section 15 of the Noise Control Act of 1972, Public Law 92-574, 86 Stat. 1234, established a process under which the Federal Government will give preference in its purchasing to products whose noise emissions are significantly lower than those required by the Federal noise source emission standards, promulgated pursuant to section 8 of the act.

The process involves three steps. First, EPA will determine upon receipt of a properly filed certification application whether a class or model of product is a low-noise-emission product. Second, EPA will decide whether the low-noise-emission product is suitable for use as a substitute for a type of product at that time in use by agencies of the Federal Government. If the product is found suitable, the Administrator will issue a certificate for that product, effective for a period of one year from the date of issuance. Third, the Administrator of the General Services Administration will determine whether the certified product has procurement costs which are no more than 125 percent of the retail price of the least expensive type of product for which they are certified substitutes. If the low-noise-emission product meets this final requirement, it should be acquired by purchase or lease by the Federal Government for use by the Federal Government in lieu of the products for which it is a suitable substitute. The Administrator of GSA will promulgate separate procedures prescribing the circumstances under which the various Federal agencies will be required to purchase certified low-noise-emission products.

Section 15(b) (3) of the act also provides that the Administrator may establish a Low-Noise-Emission Product Advisory Committee. The regulations proposed on May 2, 1973, provided for such a committee to be composed of the Administrator of the Environmental Protection Agency or his designee, representatives of Federal agencies, and private individuals. The regulations herein omit reference to an advisory committee since the Administrator has decided to defer establishing the committee until a later date.

The notice of proposed rule making (NPRM) was issued in the Federal Register on May 2, 1973, in volume 38, number 64, page 10221. Comments were invited to be submitted to EPA on July 2, 1973, for consideration prior to issuing the regulation.

The definition of retail price in the Noise Control Act of 1972 caused con-

siderable difficulty with the Federal agencies that have commented upon this regulation. Since the term "retail price" is not actually used in this regulation, EPA decided that it was unnecessary to define the term for purposes of its regulation. The General Services Administration has responsibility under the act to administer the retail price determinations.

It was suggested that the definition of the term "product" should be included as defined in section 3(3) (b) (III) of the act. This suggestion has been adopted and appears in § 203.15(5).

Another comment questions whether EPA possesses the expertise to make suitable substitute decisions. Section 203.5(a) has been modified to specify that the Administrator will consult with the appropriate Federal agencies before making suitable substitute decisions.

Another comment recommended that the regulations should provide procedures prescribing the circumstances and method under which agencies other than the General Services Administration will be required to purchase certified low-noise-emission products. Since the General Services Administration has primary responsibility for administering government purchases, EPA believes that the GSA should prescribe the circumstances and methods under which all agencies will be required to purchase certified low-noise-emission products. However, the language of § 203.6(b) has been modified to indicate that GSA will act in coordination with other Federal agencies.

It was also suggested that any procurement of \$10,000 or less should be exempt from the operation of the act. This suggestion was rejected since the Administrator does not have authority, under section 15 of the act, to exempt procurement below a specified dollar amount.

It was recommended that reimbursement procedures for purchase of Low-Noise-Emission Products (LNEP) by Federal agencies be included in the regulation. Each Federal agency planning to make LNEP purchases should include a request for additional funds authorized in section 15(g) for these purchases in their budget submission to the Office of Management and Budget.

One comment recommended that § 203.2 should be modified to indicate that the Administrator will request the submission only of information relative to the requirements of Federal procurement specifications. This suggestion was rejected because EPA believes that the Administrator has implicit authority to request the submission of all information necessary to make a reasoned decision, especially where purchase specifications do not exist.

A request was made that the definition of "Low-Noise-Emission Product Determination" in § 203.1(a) (5) be modified by deleting the reference to a specific low-noise-emission product criterion. This suggestion was rejected because the agency believes that manufacturers should be given notice regarding the amount of reduction that will be neces-

sary to qualify as a low-noise-emission product.

It was also suggested that § 203.4(a) (2) be amended by eliminating the parenthetical reference to the issuance of low-noise-emission product criterion. This suggestion has been adopted.

In addition to these major comments, there were others that required minor clarification of the regulations.

The regulations prescribe procedures for the certification of low-noise-emission products. They do not contain the low-noise-emission criterion nor do they contain the specific data requirements necessary for deciding whether the product is a "suitable substitute". These will be published at a later date.

This regulation is issued under the authority of section 15 of the Noise Control Act of 1972 (Public Law 92-574, 86 Stat. 1234, and will take effect 30 days after promulgation (....., 1974).

Dated: February 13, 1974.

RUSSELL E. TRAIN,
 Administrator, Environmental
 Protection Agency.

Part 203 of Title 40 is added to read as follows:

- 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 Postcertification Testing.
 203.8 Recertification.

Authority: Section 15, Noise Control Act, 1972, Public Law 92-574, 86 Stat. 1234.

§ 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 (Public Law 92-574).

(1) "Act" means the Noise Control Act of 1972 (Public Law 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, propeller 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; and
- (2) Information pertaining to the test facility for the product establishing that the test facility meets all requirements which EPA may prescribe; and
- (3) All noise emission data from the test of the product; and
- (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 (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; and

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

(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 that 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 of this part, 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 product, 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 6(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.