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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 204, 205 and 211.

(N-PRL 2202-1)

Noise Emission Standards for Portable Air Compressors, Medium and Heavy Trucks, Motorcycles and Motorcycle Replacement Exhaust Systems, Truck Mounted Solid Waste Compactors, and Noise Labeling Requirements for Hearing Protectors; Final Rule; Revocation of Product Verification Testing, Reporting and Recordkeeping Requirements.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency hereby revokes product verification testing and the attendant reporting and recordkeeping requirements for:

- (1) Noise Emission Standards for Portable Air Compressors;
- (2) Noise Emission Standards for Medium and Heavy Trucks;
- (3) Noise Labeling Requirements for Hearing Protectors;
- (4) Noise Emission Standards for Truck Mounted Solid Waste Compactors;
- (5) Noise Emission Standards for Motorcycles and Motorcycle Replacement Exhaust Systems;

This action stems from the Administration's budget for fiscal year 1982 which did not contain funding for the Noise Enforcement Division to accept or act on the product verification reports after fiscal year 1981. Also, based on the comments received, EPA is revoking the production verification testing provisions.

EFFECTIVE DATE: January 27, 1983.

FOR FURTHER INFORMATION CONTACT: Louise Gorsch, (202) 362-2935.

SUPPLEMENTARY INFORMATION: EPA promulgated noise regulations which established noise emission standards or labeling requirements for the following:

- 1. Portable Air Compressors, 40 CFR 204.50 *et seq.*, January 14, 1978 (41 FR 2262)
- 2. Medium and Heavy Trucks, 40 CFR 205.50 *et seq.*, April 13, 1976 (41 FR 15336)
- 3. Noise Labeling Requirements for Hearing Protectors, 40 CFR 211.203 *et seq.*, September 27, 1980 (44 FR 56130)
- 4. Truck Mounted Solid Waste Compactors, 40 CFR 205.20 *et seq.*, October 1, 1980 (44 FR 56326)
- 5. Motorcycles and Motorcycle Replacement Exhaust Systems, 40 CFR

205.150 *et seq.*, and 205.165 *et seq.*, December 31, 1980 (45 FR 66094).

Each of the noise regulations, listed above, imposes certain recordkeeping and reporting requirements on manufacturers of the regulated products. Contained within these regulations there are specific provisions for (1) Production Verification Testing, (2) Testing by the Administrator, and (3) Selective Enforcement Auditing. The provisions encompassing "Production Verification (PV) Testing" describe highly structured requirements to test products on an annual basis for their compliance with applicable noise emission standards in accordance with certain specified procedures. Provisions authorizing "Testing by the Administrator" describe the discretionary basis upon which the Administrator may require the testing of products to determine compliance with applicable noise emission standards as well as to determine the appropriateness of a manufacturer's test facility to conduct such product testing. The provisions related to "Selective Enforcement Auditing" (SEA) authorize the Administrator, on a discretionary basis, to require manufacturers to conduct assembly-line testing of products upon formal request. The latter two provisions apply only when an issue arises concerning product compliance with the applicable noise emission standard, while the former (PV Testing) provisions are required to be met on an annual basis.

Among these provisions there are various recordkeeping and reporting requirements, including the development and submission of PV testing reports and retention of test data supporting such reports.

On August 14, 1981, EPA suspended enforcement of reporting and recordkeeping requirements (48 FR 41037) and simultaneously proposed revocation of the reporting and recordkeeping provisions for each of these regulations (48 FR 41104). The action stemmed from that portion of the Administration's budget for Fiscal Year 1982, subsequently enacted by Congress, which did not contain funding for the Noise Enforcement Division to accept or act on the product verification reports after fiscal year 1981.

A 30 day comment period was established to allow interested parties to comment on the notice of proposed rulemaking. Fourteen written comments were received.

For the reasons discussed in the proposal and summarized below, this final action revokes the reporting and recordkeeping requirements, as proposed. Additionally, in response to the comments received, EPA is revoking

the production verification testing provisions of these regulations.

1. Public Comments.

Of the fourteen written comments received, seven were from six different manufacturers, three from trade associations, two from State agencies, one from a public interest legal foundation and one from a private citizen.

Four manufacturers commented on the substance of the proposed action and voiced their support. Two of the four also recommended revocation of the product verification and selective enforcement audit requirements to give them additional flexibility to comply with applicable Federal noise emission standards. Other comments by the manufacturers were on miscellaneous information and/or typographical errors.

The three trade associations supported the proposed action, but also requested that additional steps be taken to reduce regulatory burdens on industry. One association suggested the elimination of product verification and selective enforcement audit provisions to allow manufacturers additional flexibility to comply with applicable Federal standards.

One State agency supported the proposed action, while the other stated that if EPA did not intend to enforce its regulations, they should be rescinded. The notice of proposed rulemaking announced that EPA was considering the revocation of reporting and recordkeeping provisions of its noise emission regulations. EPA retains the statutory and regulatory tools to enforce its noise emission regulations both under the Agency's general authority in Section 13 of the Noise Control Act and under selective enforcement auditing and testing by the Administrator provisions within the regulations. EPA intends to use these tools as appropriate.

The public interest legal foundation supported the proposed action, and also suggested elimination of product verification, selective enforcement auditing, and testing by the Administrator provisions of the regulations.

The private citizen provided general comments on noise produced by trucks and motorcycles.

2. Agency Action.

EPA has considered current and proposed future Agency resources, the President's policy to reduce the burdens of federal regulation, and public comments where appropriate and has decided to revoke the reporting and

recordkeeping requirements as proposed. Additionally, EPA has considered carefully the comments requesting that the Agency revoke additional regulatory provisions. In light of those comments, EPA is revoking the product verification testing requirements as discussed below. It does not appear that this burden is necessary in view of the rescission of reporting and recordkeeping requirements.

With elimination of the reporting and recordkeeping requirements, the regulations become in part self-enforcing, since manufacturers no longer report their compliance efforts. Elimination of product verification is consistent with these changes, since without active monitoring by EPA of pre-production compliance, there is no reason to bind manufacturers to a formal program. This action will allow regulated manufacturers to structure their own testing programs to assure their products will meet applicable standards. However, the manufacturers must still comply with applicable standards, and must label each product and warrant that they conform to those standards. Moreover, EPA retains the right to require manufacturers to conduct noise tests, where warranted by the circumstances, both under the regulatory provisions discussed below and under the Agency's general authority in Section 13 of the Noise Control Act.

EPA has decided to retain the selective enforcement auditing and testing by the Administrator provisions in their present form. EPA believes these provisions are both necessary and adequate to determine whether a product or a manufacturer's test facility conforms to applicable specifications and/or standards. Without such provisions, there would be no federal mechanism by which questionable products could be adequately tested for compliance. In instances where there is reason to believe non-complying products have been introduced into commerce, the Administrator could require manufacturers to verify that products are meeting standards. For purposes of such verification, the Administrator could require the manufacturer to perform a selective-enforcement audit of production models of the products in question and/or review the manufacturer's files for those products. Additionally, manufacturers remain subject to various penalties and administrative actions where non-complying products have been distributed.

Retaining these provisions should not burden the regulated manufacturers. Both the selective enforcement auditing and testing by the Administrator provisions are discretionary. Unlike product verification, recordkeeping, and reporting requirements, they do not require manufacturers to take actions or expend resources except where the Administrator determines the facts so warrant.

This action affects only the product verification testing and the reporting and recordkeeping requirements of the regulations. All other provisions of the existing regulations remain in effect. Regulated products remain subject to the noise emission standards, labeling, and warranty requirements of the regulations. Moreover, although EPA will not directly monitor compliance with these regulations, states, localities and individuals can still initiate actions under Section 12 of the Noise Control Act [42 U.S.C. 4912] which provides for citizens' suits to enforce noise control standards. States and localities can also continue to exercise their powers to establish in-use controls for federally regulated products, as provided in Section 8(e) of the Act.

3. Regulatory Review

EPA has determined that this final rulemaking is not a major rule under Executive Order 12291, and therefore does not require a Regulatory Impact Analysis. EPA does not anticipate any significant adverse effects on competition, employment, investment, productivity, or innovation in the regulated industries. This action will result in a significant reduction in mandatory testing, reporting and recordkeeping burdens for the regulated industries and is directly translated into cost savings to those industries.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Under the provisions of the Regulatory Flexibility Act, 5 U.S.C. Section 602 *et seq.*, I hereby certify that this final action will not have a significant economic impact on a substantial number of small entities. The final rule affects only the product verification testing and attendant recordkeeping and reporting requirements of the regulation; other portions of the regulations are unchanged. Reduced testing, reporting and recordkeeping will ease the economic burdens of the affected manufacturers and should cause no adverse economic effects.

Lists of subjects

40 CFR Part 204

Construction industry; Noise control; Reporting requirements.

40 CFR Part 205

Labeling; Motor vehicles; Noise control; Reporting requirements.

40 CFR Part 211

Labeling; Noise control.

4. Authority

This action is being taken under the authority of Sections 8, 10, and 13 of the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1973, 42 U.S.C. 4905, 4909, and 4912.

Dated: November 22, 1982.

Anne M. Gorsuch,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 204 is revised and Parts 205 and 211 are amended.

Portable Air Compressors

1. The table of contents for Part 204 is revised to read as follows:

PART 204—NOISE EMISSION STANDARDS FOR CONSTRUCTION EQUIPMENT

Subpart A—General Provisions.

- Sec.
- 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 standards.
- 204.54 Test procedures.
- 204.55 Requirements.
- 204.55-1 General requirements.
- 204.55-2 Compliance with Standards.
- 204.55-3 Labeling.
- 204.56 Testing by the Administrator.
- 204.57 Selective enforcement auditing.
- 204.57-1 Test request.
- 204.57-2 Test compressor sample selection.
- 204.57-3 Test compressor preparation.
- 204.57-4 Testing.
- 204.57-5 Reporting of test results.
- 204.57-6 Acceptance and rejection of batches.
- 204.57-7 Acceptance and rejection of batch sequence.
- 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.

Sec.
204.56-2 Tampering.
204.50-3 Instructions for maintenance, use, and repair.
204.50 Recall of noncomplying compressors. Authority: (42 U.S.C. 4603), 50 Stat. 1237.

§ 204.2 (Amended).
2. In § 204.2 paragraph (a) (6); is removed.

3. In § 204.4, paragraph (a) is revised to read as follows:

§ 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.

4. In § 204.4, paragraph (b)(2), add the word "and" to the end of the statement.

5. In § 204.4, paragraph (b)(3), remove the word "and" at the end of the statement.

6. In § 204.4, paragraph (b)(4) is removed.

7. In § 204.4, paragraph (c)(1)(iii) is removed.

8. In § 204.4, paragraph (d)(3) is revised to read as follows:

(d) . . .
(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 (taking place, or any other procedure or activity related to selective enforcement audit testing or to product manufacture or assembly is being carried out.

§ 204.5-1 (Removed)

9. Section 204.5-1 is removed.

10. Section 204.5-2 is redesignated § 204.5-1 and is revised to read as follows:

§ 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 (3) 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.

§ 204.5-3 (Removed)

11. Section 204.5-3 is removed.

12. Section 204.5-4 is redesignated § 204.5-2 and is revised to read as follows:

§ 204.5-2 National security exemption:

(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.

§ 204.5-6 (Redesignated as § 204.5-3)

13. Section 204.5-6 is redesignated § 204.5-3.

§ 204.5-6 (Removed)

14. Section 204.5-6 is removed.

§ 204.5-7 (Removed)

15. Section 204.5-7 is removed.

§ 204.5f (Amended)

16. In § 204.5f, paragraph (f) is removed.

17. In § 204.5f, paragraph (w) is revised to read as follows:

(w) "Test Compressor" means a compressor used to demonstrate

compliance with the applicable noise emissions standard.

§ 204.53 (Removed)

18. Section 204.53 is removed.

§ 204.54 (Amended)

19. In § 204.54, paragraph (a) is revised to read as follows:

(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.

20. In § 204.54, paragraph (i), the last sentence is revised to read as follows:

(i) . . . Tests conducted by manufacturers under approved alternate procedures may be accepted by the Administrator for all purposes.

21. Section 204.55 is retitled as follows:

§ 204.55 Requirements.

§ 204.55-1 (Amended)

22. In § 204.55-1, paragraphs (a) (1) and (2) are removed; paragraphs (a) (3) and (4) are redesignated paragraphs (a) (1) and (2); and new paragraph (a)(1) is revised to read as follows:

(a) (1) Shall be labeled in accordance with the requirements of Section 204.55-4.

23. Section 204.55-2 is retitled as follows:

§ 204.55-1 Requirements.

24. In § 204.55-2, paragraph (a)(1) is revised to read as follows:

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

25. In § 204.55-2, paragraph (a)(2) is removed and reserved.

26. In § 204.55-2, paragraph (b) is revised to read as follows:

(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.

27. In § 204.55-2, paragraph (c)(1)(iii), is revised to read as follows:

(c) ---
 (1) ---

(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.

28. In § 204.55-2, paragraph (c)(1)(iv), remove the word "and" at the end of the statement.

29. In § 204.55-2, paragraph (c)(1)(v) is removed.

30. In § 204.55-2, paragraph (c)(2) is revised to read as follows:

(c) ---

(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.

31. In § 204.55-2, paragraph (c)(3) is revised to read as follows:

(c) ---

(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.

32. In § 204.55-2, paragraph (d) is revised to read as follows:

(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.

33. In § 204.55-2 paragraph (c)(1) and (2) are revised to read as follows:

(c) ---

(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.

34. In § 204.55-2, paragraph (f) is removed.

§§ 204.55-4 through 204.55-7 (Removed)

35. Sections 204.55-4 through 204.55-7 are removed.

§ 204.55-6. (Redesignated as § 204.55-4).

36. Section 204.55-6 is redesignated § 204.55-4.

§§ 204.55-9 through 204.55-11 (Removed).

37. Sections 204.55-9 through 204.55-11 are removed.

38. Section 204.57-3 is revised to read as follows:

§ 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 malfunction (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.

39. In § 204.57-9, paragraph (a)(1) is revised to read as follows:

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

(a) ---

(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 § 204.35-3 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 in his product line, he shall proceed in accordance with § 204.33-2.

(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.

§ 204.57-1. (Amended)

40-1. In § 204.57-1, paragraph (b) is removed and reserved.

§ 204.58-1. (Amended)

42. In § 204.58-1, paragraph (a) is revised to read as follows:

(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:

42. In § 204.50-1, paragraphs (b), (c), and (d) are removed.

§ 204.50-2 [Amended]

44. In § 204.50-2, paragraph (a) is revised; paragraphs (b), (c), and (g) are removed; paragraphs (d) and (e) are revised; and paragraphs (f), (h), and (i) are redesignated paragraphs (b), (c), and (d) respectively.

The amended § 204.50-2 reads as follows:

§ 204.50-2 Tampering.

(a) For each configuration of air compressor 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 Systems 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 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 act will not constitute tampering.

§ 204.50-3 [Amended]

45. In § 204.50-3, paragraphs (c), (d), and (e) are removed.

Medium and Heavy Trucks.

PART 205—TRANSPORTATION. EQUIPMENT NOISE EMISSION CONTROLS.

1. The table of contents for Part 205, Subparts A and B, are revised to read as follows:

Subpart A—General Provisions.

- Sec.
- 205.1: General applicability.
- 205.2: Definitions.
- 205.3: Number and gender.
- 205.4: Inspection and Monitoring.
- 205.5: Exemptions.
- 205.5-1: Testing exemption.
- 205.5-2: National security exemptions.
- 205.5-3: Export exemptions.

Subpart B—Medium and Heavy Trucks.

- 205.50: Applicability.
- 205.51: Definitions.
- 205.52: Vehicle noise emission standards.
- 205.54: Test procedures.
- 205.54-1: Low speed sound emission test procedures.
- 205.54-2: Sound data acquisition system.
- 205.55: Requirements.
- 205.55-1: General requirements.
- 205.55-2: Compliance with standards.
- 205.55-3: Configuration identification.
- 205.55-4: Labeling—compliance.
- 205.55-5: Labeling—exterior.
- 205.55-6: Labeling.
- 205.56: Testing by the administrator.
- 205.57: Selective enforcement auditing requirements.
- 205.57-1: Test request.
- 205.57-2: Test vehicle sample selection.
- 205.57-3: Test vehicle preparation.
- 205.57-4: Testing procedures.
- 205.57-5: Reporting of the test results.
- 205.57-6: Acceptance and rejection of batches.
- 205.57-7: Acceptance and rejection of batch sequences.
- 205.57-8: Continued testing.
- 205.57-9: Prohibition on distribution in commerce; manufacturer's remedy.
- 205.58: In-use requirements.
- 205.58-1: Warranty.
- 205.58-2: Tampering.
- 205.58-3: Instruction for maintenance, use and repair.
- 205.59: Recall of noncomplying vehicles.

Appendix I
Authority: Sec. b, 10, 11, 13, Pub. L. 92-374, 60 Stat. 1234 (42 U.S.C. 4903, 4904, 4910, 4912).

§ 205.2 [Amended]

2. In § 205.2, paragraph (a)(6) is removed.

§ 205.4 [Amended]

1. In § 205.4, paragraph (a) is revised to read as follows:

(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.

4. In § 205.4, paragraph (b)(2) add the word "and" at the end of the statement.

5. In § 205.4, paragraph (b)(3) remove the word "and" and the end of the statement.

6. In § 205.4, paragraph (b)(4) is removed.

7. In § 205.4, paragraph (c)(1)(iii) is removed, and paragraph (c)(1)(iv) is redesignated as paragraph (c)(1)(iii). Paragraph (c)(1)(iv) is reserved.

8. In § 205.4, paragraph (d)(2) is revised to read as follows:

(d) (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.

§ 205.5-1 [Removed]

9. Section 205.5-1 is removed.

§ 205.5-2 [Redesignated as § 205.5-1]

10. Section 205.5-2 is redesignated § 205.5-1 and revised to read as follows:

§ 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.

§ 205.5-3 [Removed]

11. Section 205.5-3 is removed.

§ 205.5-4 [Redesignated as § 205.5-2]

12. Section 205.5-4 is redesignated § 205.5-2 and revised to read as follows:

§ 205.3-2 National security exemption.

(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.

§ 205.3-2 (Redesignated as § 205.3-1)

13. Section 205.3-3 is redesignated § 205.3-2.

§ 205.3-3 (Removed)

14. Section 205.3-3 is removed.

§ 205.3-7 (Removed)

15. Section 205.3-7 is removed.

§ 205.31 (Amended)

16. In § 205.31, paragraph (a)(20) is removed and reserved.

17. In § 205.31, paragraph (a)(23) is revised to read as follows:

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

§ 205.33 (Removed)

18. Section 205.33 is removed.

19. Section 205.34 is revised to read as follows:

§ 205.34 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 § 205.32 for the purposes of Selective

Enforcement Auditing and Testing by the Administrator.

§ 205.34-2 (Amended)

20. In § 205.34-2, paragraph (b), the last sentence is removed.

21. Section 205.35 is retitled as follows:

§ 205.35 Requirements.

§ 205.35-1 (Amended)

22. In § 205.35-1, paragraph (a)(1) and

(2) are removed; paragraphs (a) (3) and

(4) are redesignated paragraphs (a) (1)

and (2); and new paragraph (a) (3) is

revised to read as follows:

(a) (3) Shall be labeled in accordance with the requirements of § 205.35-6 of this subpart.

23. In § 205.35-1, paragraph (c) is revised to read as follows:

(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.

24. Section 205.35-2 is retitled to read as follows:

§ 205.35-2 Compliance with standards.

25. In § 205.35-2, paragraph (a)(1) is revised to read as follows:

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

26. In § 205.35-2, paragraph (a)(2) is removed and reserved.

27. In § 205.35-2, paragraph (b) is revised to read as follows:

(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 § 205.34 of a vehicle selected in accordance with § 205.37-2; and

(2) Compliance of the test vehicle with the applicable standard when tested in accordance with § 205.34.

28. In § 205.35-2, paragraph (c)(1)(iii) is revised to read as follows:

(c) (1) (iii) Testing in accordance with § 205.34 of a vehicle selected in accordance with § 205.37-2 which must

be a vehicle of the configuration which is identified pursuant to paragraph (c)(ii) of this paragraph as having the highest sound pressure level (estimated or actual) within the category.

29. In § 205.35-2, paragraph (c)(1)(iii) add "and" at the end of the statement.

30. In § 205.35-2, paragraph (c)(1)(iv) remove "and" at the end of the statement.

31. In § 205.35-2, paragraph (c)(1)(v) is removed.

32. In § 205.35-2, paragraph (c)(2) is revised to read as follows:

(c) (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.

33. In § 205.35-2, paragraph (c)(3) is revised to read as follows:

(c) (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 (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.

34. In § 205.35-2, paragraph (d) is removed.

35. In § 205.35-2, paragraphs (a)(1) and (a)(2) are revised to read as follows:

(a) (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.

36. In § 205.55-2, paragraph (f) is removed.

§§ 205.55-4 through 205.55-10 [Removed].

37. Sections 205.55-4 through 205.55-10 are removed.

§ 205.55-11 [Redesignated as § 205.55-4].

38. Section 205.55-12 is redesignated § 205.55-1.

§ 205.55-12 [Redesignated as § 205.55-6].

39. Section 205.55-13 is redesignated § 205.55-5.

§ 205.55 [Amended].

40. In § 205.55 remove and reserve subparagraph (c)(1)(i) and remove (c)(1)(v).

§ 205.55 [Amended].

41. In § 205.55 remove the word "and" at the end of paragraph (c)(1)(iv).

42. In § 205.57-2, paragraph (a) is revised to read as follows:

§ 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 (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.

(3) 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.

43. Section 205.57-3 is revised to read as follows:

§ 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. 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.

§ 205.57-3 [Amended].

44. In § 205.57-3, paragraph (a)(1) is revised to read as follows:

(a) (1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the vehicle, 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.

§ 205.58-1 [Amended].

45. In § 205.58-1, paragraph (a) is revised to read as follows:

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

Noise Emissions Warranty

The manufacturer warrants to the first person who purchases this vehicle for purposes other than resale and to each subsequent purchaser that the vehicle was designed, built and equipped to conform at the time of sale to such first purchaser with all applicable U.S. EPA noise control regulations.

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

46. In § 205.58-1, paragraphs (b), (c), and (d) are removed.

47. In § 205.58-2, paragraph (a) is revised; paragraphs (b), (c), and (g) are removed; paragraphs (d) and (e) are revised and redesignated as paragraphs (b) and (c), respectively; paragraph (f) is redesignated as paragraph (d). The amended portions read as follows:

§ 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 the sale or delivery to the ultimate purchaser or while it is in use or (3) 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 prescribed 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 § 205.32, such act will not constitute tampering.

(d)

§ 205.36-3. (Amended)

4. In § 205.36-3, paragraphs (c), (d), and (e) are removed.

Product Noise Labeling

PART 211—PRODUCT NOISE LABELING

1. The table of contents for Part 211, subpart A is revised to read as follows:

Subpart A—General Provisions.

- Sec.
 - 211.101 Applicability.
 - 211.102 Definitions.
 - 211.103 Number and gender.
 - 211.104 Label content.
 - 211.105 Label format.
 - 211.106 Graphical requirements.
 - 211.107 Label type and location.
 - 211.108 Sample label.
 - 211.109 Inspection and monitoring.
 - 211.110 Exemptions.
 - 211.110-1 Testing exemption.
 - 211.110-2 National security exemptions.
 - 211.110-3 Export exemptions.
 - 211.111 Testing by the Administrator.
- Authority: Sec. 6, Noise Control Act of 1972 (42 U.S.C. 4907); and other authority as specified.

§ 211.109 (Amended)

2. In § 211.109, paragraph (a)(1), is removed and paragraphs (2), (3) and (4) are redesignated paragraphs (a)(1), (2), and (3).

3. In § 211.109, paragraph (b)(4) is removed.

4. In § 211.109, paragraph (d) is revised to read as follows:

(d)

(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.

5. Section 211.110-1 is revised to read as follows:

§ 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 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 12(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.

6. Section 211.110-2 is revised to read as follows:

§ 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 12(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.

§ 211.110-3 (Amended)

7. In § 211.110-3, paragraph (d) is removed.

§ 211.110-4 (Removed)

8. Section 211.110-4 is removed.

§ 211.110-5 (Removed)

9. Section 211.110-5 is removed.

§ 211.111 (Amended)

10. In § 211.111, paragraph (c)(1)(i), is removed and reserved.

Hearing Protective Devices

PART 211—PRODUCT NOISE LABELING

11. 40 CFR Part 211 is amended by revising the table of contents for Subpart B to read as follows:

Subpart B—Hearing Protective Devices.

- Sec.
- 211.201 Applicability.
- 211.202 Effective date.
- 211.203 Definitions.
- 211.204 Hearing protector labeling requirements.
- 211.204-1 Information content of primary label.
- 211.204-2 Primary label size, print and color.
- 211.204-3 Label location and type.
- 211.204-4 Supporting information.
- 211.205 Special claims.
- 211.206 Methods for measurement of sound attenuation.
- 211.206-1 Real ear method.
- 211.206-2 through 211.206-10 Alternative test methods (Reserved).
- 211.207 Computation of the noise reduction rating (NRR).
- 211.208 Export provisions.
- 211.210 Requirements.
- 211.210-1 General requirements.
- 211.210-2 Labeling requirements.
- 211.211 Compliance with labeling requirement.
- 211.212 Compliance audit testing.
- 211.212-1 Test request.
- 211.212-2 Test hearing protector selection.
- 211.212-3 Test hearing protector preparation.
- 211.212-4 Testing procedures.
- 211.212-5 Determination of compliance.
- 211.212-6 Continued compliance testing.
- 211.212-7 Relabeling requirements.
- 211.213 Remedial orders for violations of these regulations.
- 211.214 Removal of label.

APPENDIX A—Compliance Audit Testing Report

Authority: Sec. 3, Pub. L. 92-374, 80 Stat. 1241 (42 U.S.C. 4907); and additional authority as specified.

12. § 211.205, the heading is revised and paragraphs (b) and (c) are removed.

§ 211.208 Special claims.

§ 211.209 (Removed)

13. Section 211.209 is removed.

14. Section 211.210 is retitled to read as follows:

§ 211.210 Requirements.

§ 211.210-1 (Amended)

15. In § 211.210-1, paragraph (a) (1) and (2) are removed; and paragraphs (a) (3) and (4) are redesignated paragraphs (a) (1) and (2).

16. Section 211.210-2 is retitled to read as follows:

§ 211.210-2. Labeling requirements.

17. In § 211.210-2, paragraph (a)(1) is revised to read as follows:

(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.

18. In § 211.210-2, paragraph (a)(2) is revised to read as follows:

(a)(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, D.C. 20460. The Administrator must respond to a request within 2 business days. Responses may be either written or oral.

19. In § 211.210-2, paragraph (a)(3) is revised to read as follows:

(a)(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.

20. In § 211.210-2, paragraph (b) is revised to read as follows:

(b) Labeling requirements require that each hearing protector category in a manufacturer's product line consist of:

(1) Testing hearing protectors according to § 211.205 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.

21. In § 211.210-2, paragraph (d) is removed.

§§ 211.210-3 through 211.210-7 (Removed).

22. Sections 211.210-3 through 211.210-7 are removed.
23. Section 211.211 is revised to read as follows:

Section 211.211. Compliance with labeling requirements.

(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 § 211.205. 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.

§ 211.212-1 (Amended)

24. In § 211.212-1, paragraph (c) (4), the words enclosed by the parentheses are removed.

25. Section 211.212-3 is revised to read as follows:

§ 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 hearing protector selected according to § 211.212-2 must not be washed, 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.

26. In § 211.212-6, paragraph (a) is revised to read as follows:

§ 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.

Appendix A (Removed)

27. Appendix A is removed.

Appendix B: (Redesignated as Appendix A)

28. Appendix B is redesignated Appendix A.

Compactors

PART 205--TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

1. The table of contents for Part 205, Subpart F is revised to read as follows:

Subpart F--Truck-Mounted Solid Waste Compactors.

Sec.	205.200	Applicability.
	205.201	Definitions.
	205.202	Noise emission standards.
	205.204	Test procedures.
	205.205	Requirements.
	205.205-1	General requirements.
	205.205-2	Compliance with standards.
	205.205-3	Configuration identification.
	205.205-4	Labeling.
	205.206	Testing by the Administrator.
	205.207	Selective enforcement auditing requirements.
	205.207-1	Test request.
	205.207-2	Test sample selection.
	205.207-3	Testing procedures.
	205.207-4	Reporting of the test results.
	205.207-5	Passing or failing under SEA.
	205.207-7	Continued testing.
	205.207-8	Prohibition of distribution in commerce; manufacturer's remedy.
	205.208	In-use requirements.
	205.208-1	(Reserved).
	205.208-2	Tampering.
	205.208-3	Instructions for maintenance, use and repair.
	205.208-4	Noise Level Degradation Factor (NLD) and retention of durability data.
	205.209	Recall of non-complying compactors.
		Appendix F--Sample Tables.

Authority: See Noise Control Act (42 U.S.C. 4906) (except where otherwise specified).

§ 205.207 (Amended)

2. In § 205.207, paragraph (a) (13) is removed and reserved.

3. In § 205.207, paragraph (a) (5) is revised to read as follows:

(13) "Test compactor" means a compactor in a test sample.

4. In § 205.207, paragraph (b), the second sentence is revised to read as follows:

§ 205.207 Noise emission standards.

(b) At the time of selective enforcement auditing (SEA) testing provided in § 205.207, new truck-mounted solid waste compactors must comply with the standards set forth in paragraph (a) of this section minus the noise level degradation factor (NLDF) developed in accordance with § 205.208-1.

§ 205.207 (Removed)

5. Section 205.207 is removed.

§ 205.204 (Amended)

6. Section 205.204, paragraph (a) is revised to read as follows:

(a) *General.* This section prescribes the conditions under which noise emission standard compliance testing for selective enforcement auditing or testing by the Administrator must be conducted and the measurement procedures that must be used to determine the maximum noise level of truck-mounted solid waste compactors.

7. In § 205.204, paragraph (g), the last sentence is revised to read as follows:

(g) Tests conducted by manufacturers under approved alternate procedures may be accepted by the Administrator for all purposes, including, but not limited to, selective enforcement audit testing and testing by the Administrator.

8. Section 205.204 is revised to read as follows:

§ 205.205 Requirements.

§ 205.205-1 (Amended)

9. In § 205.205-1, paragraphs (a) (1) and (2) are removed; paragraph (a) (3) and (4) are redesignated paragraphs (a) (1) and (2); and paragraph (1) is revised to read as follows:

(a)

(1) Shall label each compactor in accordance with the requirements of § 205.205-4 of this subpart and:

10. In § 205.205-1, paragraph (c) is revised to read as follows:

(c) A subsequent manufacture of a truck-mounted solid waste compactor need not fulfill the requirements of paragraph (a) (1) of this section if the compactor, when received by the manufacturer, fits the definition of a new truck-mounted solid waste compactor in the regulation, and the prior manufacturer had already complied with these requirements.

In § 205.205-1, paragraph (d) is removed.

12. In § 205.205-2 is revised to read as follows:

§ 205.205-2 Compliance with standards.

13. In § 205.205-2, paragraph (a), (2) and (3) are removed.

14. In § 205.205-2, paragraph (b) is revised to read as follows:

(b) The requirements for purposes of Testing by the Administrator and Selective Enforcement Auditing with regard to each compactor configuration shall consist of:

(1) Testing in accordance with § 205.204 of a compactor selected in accordance with § 205.204-3; and

(2) Compliance of the test compactor with a noise level such that the arithmetic sum of the Noise Level Degradation Factor (NLDF, determined in accordance with § 205.208-4 of this Subpart) and that noise level does not exceed the applicable standards, when tested in accordance with § 205.204.

15. In § 205.205-3, paragraph (c), paragraph (1) (II) is revised to read as follows:

(C) (1) (I)

(II) Testing in accordance with § 205.204 of a compactor, selected in accordance with § 205.207-2 of the configuration identified pursuant to paragraph (c) (1) (II) of this section as having the highest noise level (estimated or actual) within category:

16. In § 205.205-2, paragraph (c) (1) (v) is removed.

17. In § 205.205-2, paragraph (c) (2) is revised to read as follows:

(c)

(2) If there has been compliance with the requirements of paragraph

(c) (1) of this section, all those configurations within a category are considered to be represented by the tested compactor, and therefore considered to be verified.

18. In § 205.205-2, paragraph (c) (3) is revised to read as follows:

(c)

(3) If there has been compliance with all other requirements of paragraph (c) (1) of this section, except that the manufacturer tests a configuration which does not have the highest noise level in a category (as identified in (c) (1) (II)), all those configurations in the category which have noise levels no greater than that of the tested compactor are considered to be verified. However, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify according to the requirements of (b) (1) or (c) (1) of this section any configurations in the category which have a higher noise level than that of the compactor configuration tested.

19. In § 205.205-2, paragraph (d) is revised to read as follows:

(d) A manufacturer may elect to verify all or part of his product line using representative testing pursuant to paragraph (c) of this section.

20. In § 205.205-2, paragraph (e) (1) and (2) are revised to read as follows:

(e)

(1) In the case of representative testing, a new test compactor from another configuration must be selected and verified according to the requirements of paragraph (c) of this section, in order to verify the category represented by the compactor that does not comply; or

(2) Modification of the test compactor and demonstration by testing that it meets applicable standards. The manufacturer shall modify all production compactors of the same configuration in the same manner as the test compactor before distribution into commerce.

21. In Section 205.205-2, paragraph (f) is removed.

§ 205.205-4 through 205.205-10 (Removed)

22. Sections 205.205-4 through § 205.205.10 are removed.

§ 205.205-11 (Redesignated as § 205.205-4)

Section 205.205-11 is redesignated as § 205.205-4 and paragraph (a)(3) is revised to read as follows:

§ 205.205-4 Labeling—compliance.

(a) (3) The compactor manufacturer shall affix the label in such a manner that it cannot be removed without destroying or defacing the label. He shall not affix the label to any piece of equipment that is easily detached from the compactor.

§ 205.206 (Amended).

24. In § 205.206 paragraph (c)(7)(i) is removed and reserved and paragraph (c)(4) is revised to read as follows:

(c)(3) (i) Testing of a reasonable number of compactors for purposes of selective enforcement auditing under § 205.207.

25. In § 205.206 paragraph (c)(1)(v) is revised to read as follows:

(c)(1)(v) Testing of up to 50 percent of the manufacturer's production test products to be tested during a year, if the Administrator determines it is necessary to test these vehicles to assure that a manufacturer has acted or is acting in compliance with the Act.

26. In § 205.207-2 paragraph (c) is revised to read as follows:

§ 205.207-2 Test sample selection.

(c) The compactors of the category configuration or subgroup selected for testing shall have been assembled by the manufacturer for distribution in commerce using the manufacturer's normal production process.

27. In § 205.207-3 is revised to read as follows:

§ 205.207-3 Test sample preparation.

(a) Before the official test, the test compactor selected must not be prepared, tested, modified, adjusted, or maintained in any manner unless such adjustments, preparation, modification or tests are part of the manufacturer's prescribed manufacturing and inspection procedures and are documented in the manufacturer's normal compactor assembly and inspection procedures, or unless such adjustments 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 production, if the resulting testing is not biased by this procedure. In the case of imported products, the manufacturer may perform adjustments, preparation, modifications or tests normally performed at the port of entry by the manufacturer, to prepare the compactor for delivery to a dealer or customer.

(b) Equipment or fixtures necessary to conduct the test may be installed on the compactor, if such equipment or fixtures have no effect on the noise emissions of the compactor, as determined by the measurement methodology.

(c) In the event of a compactor malfunction (e.g., failure to start) the manufacturer may perform the maintenance that is necessary to enable the compactor to operate in a normal manner.

(d) No quality control, quality assurance testing, assembly or selection procedures may be used on the test compactor or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other compactors of the 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.

28. In § 205.207-5, the address in paragraph (b) is revised to read as follows:

§ 205.207-5 Reporting of test results.

(b) Administrator, U.S. Environmental Protection Agency, Washington, D.C. 20460.

29. In § 205.207-6 paragraph (a)(1) is revised to read as follows:

§ 205.207-6 Prohibition of distribution in commerce, manufacturer's remedy.

(a)(1) Submit a written report to the Administrator which identifies the reason for the non-compliance of the compactors, describes the problem and describes the proposed quality control or quality assurance remedies to be taken by the manufacturer to correct the problem.

30. In § 205.208-2 paragraph (1) is revised; paragraphs (b) and (c) are removed; paragraphs (d) and (e) are revised and redesignated paragraphs (b) and (c); paragraph (h) is removed; and paragraphs (f) and (g) are redesignated (d) and (e), respectively. The revised portions of § 205.208-2 read as follows:

§ 205.208-2 Tampering.

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

(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 compactor 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 compactor 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 prescribed 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 § 205.202, such act will not constitute tampering.

(d) Manufacturers who only assemble compactors need not fulfill the requirements of paragraphs (a) and (b) of this section. Such manufacturers shall provide ultimate purchasers of their compactors with the tampering list developed by the compactor body manufacturer under paragraph (a) of this section for that particular compactor body and truck chassis combination.

31. In § 205.208-3 paragraphs (c), (d), and (f) are removed; paragraph (e) is redesignated (c) and is revised to read as follows:

§ 205.208-3 Instructions for maintenance, use and repair.

(c) Manufacturers who only assemble compactors are not required to fulfill the requirements of paragraphs (a) and (b) of this section. Such manufacturers shall

provide the maintenance instructions and log book developed by the compactor body manufacturer for that particular compactor body and chassis combination.

Motorcycles

PART 205—TRANSPORTATION EQUIPMENT NOISE

1. The table of contents for Part 205, Subpart D and E is revised to read as follows:

Subpart D—Motorcycles

See:

- 205.150: Applicability.
- 205.151: Definitions.
- 205.152: Noise emission standards.
- 205.153: Engine displacement.
- 205.154: Consideration of alternative test procedures.
- 205.155: Motorcycle class and manufacturer abbreviation.
- 205.156: [Reserved]
- 205.157: Requirements.
- 205.157-1: General requirements.
- 205.157-2: Compliance with standards.
- 205.157-3: Configuration identification.
- 205.158: Labeling requirements.
- 205.159: Testing by the Administrator.
- 205.160: Selective enforcement auditing (SEA) requirements.
- 205.160-1: Test request.
- 205.160-2: Test sample selection and preparation.
- 205.160-4: Testing procedures.
- 205.160-5: Reporting of the test results.
- 205.160-6: Passing or failing under SEA.
- 205.160-7: Continued testing.
- 205.160-8: Prohibition of distribution in commerce; manufacturer's remedy.
- 205.162-1: Warranty.
- 205.162-2: Tampering.
- 205.162-3: Instructions for maintenance, use, and repair.
- 205.163: Recall of noncomplying motorcycles; relabeling of mislabeled motorcycles.

Subpart E—Motorcycle Exhaust Systems

- 205.164: Applicability.
- 205.165: Definitions.
- 205.166: Noise emission standards.
- 205.167: Consideration of alternative test procedures.
- 205.168: Requirements.
- 205.168-1: General requirements.
- 205.168-2: [Removed]
- 205.169: Labeling requirements.
- 205.170: Testing by the Administrator.
- 205.171: Selective enforcement auditing (SEA) requirements.
- 205.171-1: Test request.
- 205.171-2: Test exhaust system sample selection and preparation.
- 205.171-3: Test motorcycle sample selection.
- 205.171-4: Test procedures.
- 205.171-5: Reporting of the test results.
- 205.171-6: Passing or failing under SEA.
- 205.171-7: Continued testing.
- 205.171-10: Prohibition on distribution in commerce; manufacturer's remedy.
- 205.173: In-use requirements.
- 205.173-1: Warranty.

See:

- 205.173-2: Tampering.
- 205.173-3: Warning statement.
- 205.173-4: Information sheet.
- 205.174: Remedial orders.

Appendix E—Motorcycle Noise Emission Test Procedure

Authority: Sec. 6, Noise Control Act (42 U.S.C. 4903) and additional authority as specified.

2. In § 205.157, paragraph (a)(24) is removed and reserved and paragraph (a)(27) is revised to read as follows:

§ 205.157 Definitions.

- (a) (27) "Test vehicle" means a vehicle in a Selective Enforcement Audit test sample.

3. In § 205.154, the last sentence is revised to read as follows:

§ 205.154. Consideration of alternative test procedures.

"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.

4. Section 205.157 is retitled as follows:

§ 205.157 Requirements.

§ 205.157-1: [Amended].

5. In 205.157-1, paragraphs (a) (1) and (2) are removed; paragraphs (3)(2) and (4) are redesignated paragraphs (a)(1) and (2); and paragraph (a)(1) is revised to read as follows:

(1) Shall be labeled in accordance with the requirements of section 205.158 of this subpart.

6. In § 205.157-1, paragraph (c) is revised to read as follows:

(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.

7. Section 205.157-2 is retitled to read as follows:

§ 205.157-2: Compliance with standards.

8. In § 205.157-2, paragraph (a)(1) is revised to read as follows:

(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.

9. In § 205.157-2, paragraph (a)(2) is removed and reserved.

10. In § 205.157-2, paragraph (b) is revised to read as follows:

(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.

11. In § 205.157-2, paragraph (c) (1)(III) is revised to read as follows:

(c)(1) (III) Testing in accordance with § 205.150-4 of a vehicle selected in accordance with § 205.160-2 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.

12. In § 205.157-2, paragraph (c) (1)(V) is removed.

13. In § 205.157-2, paragraph (c) (2) is revised to read as follows:

(c) (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.

14. § 205.157-2, paragraph (c) (3) is revised to read as follows:

(c) (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.

17. In § 205.157-2 paragraph (d) is revised to read as follows:

(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.

18. In § 205.157-2 paragraphs (e) (1) and (2) are revised to read as follows:

(e) ---
 (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.

19. In § 205.157-2 paragraph (f) is removed.

§§ 205.157-4-205.157-10 (Removed)
 19. Sections 205.157-4 through 205.157-10 are removed.

§ 205.158 (Amended)

10. In § 205.158, paragraph (a)(1) is revised to read as follows:

(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 paragraph (a) (2), (3), and (4) of this section, to all such vehicles to be distributed in commerce.

20. In § 205.158, paragraph (a)(3) is revised to read as follows:

(a) ---
 (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.

21. In § 205.158, paragraph (e) is removed.

22. Section 205.159, paragraph (c)(3) is revised to read:

§ 205.159 Testing by the Administrator.

(c) ---
 (3) 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.

23. In § 205.160-2, the section title and paragraph (a) are revised to read as follows:

§ 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.

§ 205.160-3 (Removed and reserved)

24. Section 205.160-3 is removed and reserved.

§ 205.160-4 (Amended)

25. In § 205.160-4, paragraph (b), the first sentence is removed.

26. In § 205.160-4, paragraph (a)(1) is revised to read as follows:

§ 205.160-5 Prohibition of distribution in commerce; manufacturer's remedy.

(a) ---

(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.

§ 205.161 (Removed)

27. Section 205.161 is removed.

§ 205.162-1 (Removed)

28. Section 205.162-1 is removed.

29. In § 205.162-2, paragraphs (b) and (c) are revised; paragraphs (d) and (e) are removed; paragraphs (f) and (g) are revised and redesignated paragraphs (b) and (c), respectively; paragraph (a) is removed; and paragraph (f) is redesignated paragraph (d). The revised portions of § 205.162-2 read as follows:

§ 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 Systems 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 these 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.

§ 205.162-2 [Amended]

30. In § 205.162-3, paragraphs (c), (d), and (e) are removed.

§ 205.162-4 [Removed]

31. Section 205.162-5 is removed.

§ 205.165 [Amended]

32. In § 205.165, paragraph (a)(6) is removed and reserved.

33. In § 205.165, paragraph (a)(8) is revised to read as follows:

(a) (8) "Test exhaust system" means an exhaust system in Selective Enforcement Audit test sample.

34. Section 205.168 is entitled to read as follows:

§ 205.168- Requirements.

35. Section 205.169-1 is revised to read as follows:

§ 205.169-1 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.

(2) Notwithstanding paragraph (a)(1) of this section, the manufacturer may distribute in commerce exhaust systems of that category for up to 50 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 paragraphs (d) or (e) of this section on such category as soon as conditions permit;

(ii) 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

(c) 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 materials; (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.

§§ 205.168-2-205.169-10 [Removed]

36. Sections 205.168-2 through 205.169-10 are removed.

§ 205.169 [Amended]

37. In § 205.169, paragraph (a) is revised to read as follows:

(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.

38. In § 205.169, paragraph (f) is removed.

§ 205.170 [Amended]

39. In § 205.170, paragraph (c)(1) is removed and reserved.

40. In § 205.170, paragraph (c)(3) is revised to read as follows:

(c) (3) In addition to any exhaust systems included in paragraph (c) (1), (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.

41. In § 205.171-2, the section title and paragraph (a) are revised to read as follows:

§ 205.171-2 Test exhaust system 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.

§ 205.171-4-205.171-6 (Removed)

42. Sections 205.171-4 and 205.171-5 are removed.

43. In § 205.171-6, paragraph (b), the first sentence is revised to read as follows:

§ 205.171-6 Testing procedures.

(b) No maintenance may be performed on the test exhaust system except as provided by § 205.171-2.

44. In § 205.171-10, paragraph (a)(1) is revised to read as follows:

§ 205.171-10 Prohibition on distribution in commerce; manufacturer's remedy.

(a) - - -

(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.

45. In § 205.173-1, paragraph (b) is removed and reserved and paragraph (a) is revised as follows:

§ 205.173-1 Warranty.

(a) The exhaust system manufacturer must include in the information supplied to the ultimate purchaser pursuant to section 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. EPA 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.)

46. In § 205.173-2, the introductory text is revised to read as follows:

§ 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:

47. In § 205.173-3, the introductory text is revised to read as follows:

§ 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:

§ 205.173-5 (Removed)

48. Section 205.173-5 is removed.

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