

§ 204.57

40 CFR Ch. I (7-1-03 Edition)

specifications of the instrumentation or equipment specified by the Administrator in these regulations.

(b)(1) If, based on tests conducted by the Administrator or other relevant information, the Administrator determines that the test facility does not meet the requirements of §204.54-1 (a) and (b) he will notify the manufacturer in writing of his determination and the reasons therefor.

(2) The manufacturer may at any time within 15 days after receipt of a notice issued under paragraph (b)(1) of this section request a hearing conducted in accordance with 5 U.S.C. 554 on the issue of whether his test facility was in conformance. Such notice will not take effect until 15 days after receipt by the manufacturer, or if a hearing is requested under this paragraph, until adjudication by the hearing examiner.

(3) After any notification issued under paragraph (b)(1) of this section has taken effect, no data thereafter derived from such test facility will be acceptable for purposes of this part.

(4) The manufacturer may request in writing that the Administrator reconsider this determination under paragraph (b)(1) of this section based on data or information which indicates that changes have been made to the test facility and such changes have resolved the reasons for disqualification.

(5) The Administrator will notify the manufacturer of his determination and an explanation of the reasons underlying it with regard to the requalification of the test facility within 10 working days after receipt of the manufacturer's request for reconsideration pursuant to paragraph (b)(4) of this section.

(Secs. 6, 13, Pub. L. 92-574 (42 U.S.C. 4912))

[41 FR 2172, Jan. 14, 1976, as amended at 42 FR 61455, Dec. 5, 1977]

§ 204.57 Selective enforcement auditing.

§ 204.57-1 Test request.

(a) The Administrator will request all testing under this subpart by means of a test request addressed to the manufacturer.

(b) [Reserved]

(c) The test request will specify the compressor category or configuration selected for testing, the batch from which sampling is to begin, for testing and the batch size, the manufacturer's plant or storage facility from which the compressors must be selected, and the time at which compressors must be selected. The test request will also provide for situations in which the selected configuration or category is unavailable for testing. The test request may include an alternative category or configuration selected for testing in the event that compressors of the first specified category or configuration are not available for testing because the compressors are not being manufactured at the specified plant and/or are not being manufactured during the specified time or not being stored at the specified plant or storage facility.

(d) Any manufacturer shall, upon receipt of the test request, select and test a batch sample of compressors from two consecutively produced batches of the compressor category or configurations specified in the test request in accordance with these regulations and the conditions specified in the test request.

(e)(1) Any testing conducted by the manufacturer pursuant to a test request shall be initiated within such period as is specified in the test request; Except, that such initiation may be delayed for increments of 24 hours or one business day where ambient test site weather conditions in any 24-hour period do not permit testing: *Provided*, That ambient test site weather conditions for that period are recorded.

(2) The manufacturer shall complete noise emission testing on a minimum of five compressors per day, unless otherwise provided for by the Administrator or unless ambient test site conditions only permit the testing of a lesser number: *Provided*, That ambient test site weather conditions for that period are recorded.

(3) The manufacturer will be allowed 24 hours to ship compressors from a batch sample from the assembly plant to the testing facility if the facility is not located at the plant or in close proximity to the plant; Except, that the Administrator may approve more

Environmental Protection Agency

§ 204.57-2

time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) The Administrator may issue an order to the manufacturer to cease to distribute into commerce compressors of a specified category or configuration being manufactured at a particular facility if:

(1) The manufacturer refuses to comply with the provisions of a test request issued by the Administrator pursuant to this section; or

(2) The manufacturer refuses to comply with any of the requirements of this section.

(g) A cease-to-distribute order shall not be issued under paragraph (f) of this section if such refusal is caused by conditions and circumstances outside the control of the manufacturer which render it impossible to comply with the provisions of a test request or any other requirements of this section. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(h) Any such order shall be issued only after a notice and opportunity for a hearing in accordance with section 554 of Title 5 of the United States Code.

(Secs. 6, 11 and 13, Noise Control Act, Pub. L. 92-574, 86 Stat. 1244; (42 U.S.C. 4910 and 4912))

[41 FR 2172, Jan. 14, 1976, as amended at 42 FR 41635, Aug. 18, 1977; 42 FR 61455, Dec. 5, 1977; 47 FR 57712, Dec. 28, 1982]

§ 204.57-2 Test compressor sample selection.

(a) Compressors comprising the batch sample which are required to be tested pursuant to a test request in accordance with this subpart will be randomly selected from a batch of compressors of the category or configuration specified in the test request. The random selection will be achieved by

sequentially numbering all of the compressors in the batch and then using a table of random numbers to select the number of compressors, as specified in paragraph (c) of this section, based on the batch size designated by the Administrator in the test request. An alternative selection plan may be used by a manufacturer: *Provided*, That such a plan is approved by the Administrator.

(b) The Acceptable Quality Level is 10 percent. The appropriate sampling plans associated with the designated AQL are contained in Appendix I, Table II.

(c) The appropriate batch sample size will be determined by reference to Appendix I, Tables I and II. A code letter is obtained from Table I based on the batch size designated by the Administrator in a test request. The batch sample size will be equal to the maximum cumulative sample size as listed in Table II for the appropriate code letter obtained from Table I plus an additional ten percent rounded off to the next highest number.

(d) Individual compressors comprising the test sample will be randomly selected from the batch sample using the same random selection plan as in paragraph (a) of this section. Test sample size will be determined by entering Table II.

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

(f) Unless otherwise indicated in the test request, the manufacturer will select the batch sample from the production batch next scheduled after receipt of the test request of the category or configuration specified in the test request.

(g) Unless otherwise indicated in the test request, the manufacturer shall select the compressors designated in the test request for testing.

(h) At their discretion, EPA Enforcement Officers, rather than the manufacturer, may select the compressors designated in the test request.