

(2) If the manufacturer produces 50 or more vehicles of the specified category, configuration or configuration subgroup per year, then upon receipt of the test request, the manufacturer must select and test a sample of vehicles from the category, configuration or configuration subgroup specified in the test request in accordance with this subpart and the conditions specified in the test request.

(e)(1) Any testing conducted by the manufacturer under a test request must be initiated within the time period specified in the test request; except that initiation may be delayed for increments of 24 hours or one business day where ambient test site weather conditions, or other conditions beyond the control of the manufacturer, in that 24-hour period, do not permit testing. The manufacturer must record the conditions for this period.

(2) The manufacturer must complete noise emission testing on a minimum of ten vehicles per day unless otherwise provided by the Administrator or unless ambient test site conditions permit only the testing of a lesser number in which case the ambient test site weather conditions for that period must be recorded.

(3) The manufacturer is allowed 24 hours to ship vehicles from a 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. The Administrator may approve more 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 distribution in commerce of vehicles of a specified category, configuration, or configuration subgroup being manufactured at a particular facility, if:

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

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

(g) A cease distribution order will not be issued under paragraph (f) of this section if the manufacturer's refusal is caused by conditions and circumstances outside his control which

render compliance with the provisions of a test request or with any other requirements of this section impossible. Conditions and circumstances outside the control of the manufacturer include, but are not limited to, the temporary unavailability of equipment and personnel needed to conduct the required tests caused by uncontrollable factors, such as equipment breakdown or failure or illness of personnel. Failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests do not constitute uncontrollable factors. The manufacturer must bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(h) Any order to cease distribution will be issued only after a notice and opportunity for a hearing in accordance with 5 U.S.C. 554.

**§ 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

**§ 205.160-3**

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.

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

(c) The vehicles of the category, configuration or configuration subgroup selected for testing must be assembled by the manufacturer for distribution in commerce using the manufacturer's normal production process.

(d) Unless otherwise indicated in the test request, the manufacturer must initiate testing with the vehicles of the category, configuration or configuration subgroup specified in the test request which are next scheduled for production after receipt of the test request.

(e) The manufacturer must keep on hand all products in the test sample until the sample is accepted or rejected in accordance with §205.160-6; except that vehicles actually tested and found

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

to be in conformance with this regulation need not be kept.

[45 FR 86708, Dec. 31, 1980, as amended at 47 FR 57721, Dec. 28, 1982]

**§ 205.160-3 [Reserved]**

**§ 205.160-4 Testing procedures.**

(a) The manufacturer must conduct one valid test in accordance with the appropriate test procedures specified in Appendix I, on each vehicle selected for testing under this subpart.

(b) In the event a vehicle is unable to complete the noise emission test, the manufacturer may replace the vehicle. Any replacement vehicle must be a production vehicle of the same category, configuration or subgroup as the vehicle which it replaced, and it is subject to all the provisions of this subpart.

[45 FR 86708, Dec. 31, 1980, as amended at 47 FR 57721, Dec. 28, 1982]

**§ 205.160-5 Reporting of the test results.**

(a)(1) The manufacturer must submit a copy of the test report for all testing conducted pursuant to §205.160 at the conclusion of each 24-hour period during which testing is done.

(2) For each test conducted the manufacturer must provide the following information:

(i) Category, configuration or configuration subgroup identification where applicable;

(ii) Year, make, assembly date, and model of vehicle;

(iii) Vehicle serial number; and

(iv) Test results by serial numbers.

(b) In the case where an EPA Enforcement Officer is present during testing required by this subpart, the written reports requested in paragraph (a) of this section may be given directly to the Enforcement Officer.

(c) Within 5 days after completion of testing of an SEA, the manufacturer must submit to the Administrator a final report which will include the following:

(1) The name, location, and description of the manufacturer's noise emission test facilities which meet the specifications of Appendix I, and were utilized to conduct testing reported under this section, except, that a test