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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 renders 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 break-down 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.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61459, Dec. 5, 1977; 43 FR 12326, Mar. 24, 1978]

§ 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 paragraph (c) of this section based on the batch size designated by the Ad-

ministrator 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.

(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, Table 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 obtained from Table II. The batch sample size will be equal to the maximum cumulative sample size for the appropriate code letter obtained from Table I plus an additional 10 percent rounded off to the next highest number.

(d) If the test request specifies that vehicles comprising the batch sample must be selected randomly, individual vehicles 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 vehicle of the category, configuration or subgroup thereof selected for testing shall have been assembled by the manufacturer for distribution in commerce using the manufacturer's normal production process in accordance with § 205.55-5(a).

(f) Unless otherwise indicated in the test request, the manufacturer will select the batch sample from the production batch, next scheduled after receipt

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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 vehicles designated in the test request for testing.

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

(i) The manufacturer will keep on hand all vehicles in the batch sample until such time as the batch is accepted or rejected in accordance with § 205.57-6: Except, that vehicles actually tested and found to be in conformance with these regulations need not be kept.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61459, Dec. 5, 1977; 47 FR 57715, Dec. 28, 1982; 48 FR 27039, June 13, 1983]

§ 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. 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 so long as the resulting testing is not biased by the procedure. In the case of imported products 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 vehi-

cle, 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.

[47 FR 57715, Dec. 28, 1982; 48 FR 27039, June 13, 1983]

§ 205.57-4 Testing procedures.

(a) The manufacturer shall conduct one valid test in accordance with the test procedures specified in § 205.54 of this subpart for each vehicle selected for testing pursuant to this subpart.

(b) No maintenance will be performed on test vehicles except as provided for by § 205.57-3. In the event a vehicle is unable to complete the emission test, the manufacturer may replace the vehicle. Any replacement vehicle will be a production vehicle of the same configuration as the replaced vehicle. It will be randomly selected from the batch sample and will be subject to all the provisions of these regulations.

§ 205.57-5 Reporting of the test results.

(a) Within 5 working days after completion of testing of all vehicles in a batch sample the manufacturer shall submit to the Administrator a final report which will include the information required by the test request in the format stipulated in the test request in addition to the following:

(1) The name, location, and description of the manufacturer's emission test facilities which meet the specifications of § 205.54 and were utilized to conduct testing reported pursuant to this section: Except, that a test facility that has been described in a previous submission under this subpart need not again be described but must be identified as such.