

§ 205.170

40 CFR Ch. I (7-1-08 Edition)

standards of this regulation, the statement: "For Export Only."

[45 FR 86718, Dec. 31, 1980, as amended at 47 FR 57722, Dec. 28, 1982]

§ 205.170 Testing by the Administrator.

(a)(1) In order for the Administrator to determine whether such exhaust systems or a manufacturer's test facility conform to applicable regulations, the Administrator may require that exhaust systems to be tested pursuant to the Act be submitted to him, at such place and time as he reasonably designates. He may designate the quantity of exhaust systems and the duration of time he reasonably requires for the purpose of conducting tests in accordance with test procedures described in appendix I. The manner in which the Administrator conducts such tests, the EPA test facility, and the test procedures employed will be based upon good engineering practice and meet or exceed the requirements of appendix I.

(2) If the Administrator specifies that he will conduct such testing at the manufacturer's facility, the manufacturer shall make available instrumentation and equipment of the type required for test operators by these regulations. The Administrator may conduct such tests with his own equipment, having specifications equal to or exceeding the performance specifications of the instrumentation and equipment required in these regulations.

(3) The manufacturer may observe tests conducted by the Administrator pursuant to this section on exhaust systems produced by the manufacturer and may copy the data accumulated from such tests. The manufacturer may inspect any of the exhaust systems before and after testing by the Administrator.

(b)(1) If, based on tests conducted by the Administrator or on other relevant information, the Administrator determines that the test facility does not meet the requirements of appendix I or the requirements for an alternative test procedure approved under § 205.154, the Administrator will give notice to the manufacturer in writing of his determination and the reasons underlying it.

(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 met the requirements. Such notice will not take effect until 15 days after its receipt by the manufacturer, or, if a hearing is requested under this paragraph, until adjudication by the administrative law judge.

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

(4) The manufacturer may request in writing that the Administrator reconsider his 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 that such changes have resolved the reasons for disqualification.

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

(c) The Administrator will assume all reasonable costs associated with shipment of exhaust systems to the place designated pursuant to paragraph (a) of this section except with respect to:

(1) [Reserved]

(2) Testing of a reasonable number of exhaust systems (i) for purposes of selective enforcement auditing under § 205.171, or (ii) if the manufacturer has failed to establish that there is a correlation between its test facility and the EPA test facility, or (iii) the Administrator has reason to believe, and provides the manufacturer with a statement of such reason, that the exhaust systems to be tested would fail to meet the standard prescribed in this subpart if tested at the EPA test facility, even though they would meet such standard if tested at the manufacturer's test facility;

(3) Any testing performed during a period when a notice of non-conformance of the manufacturer's test facility issued pursuant to paragraph (b) of this section is in effect;

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(4) Any testing performed at a place other than the manufacturer's facility as a result of the manufacturer's failure to permit the Administrator to conduct or monitor testing as required by this subpart; and

(5) In addition to any exhaust systems included in paragraphs (c) (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.

(Secs. 11 and 13 of the Noise Control Act (42 U.S.C. 4910, 4912); 42 U.S.C. 4905; 86 Stat. 1237 and secs. 6, 10, 11, 13, Pub. L. 92-574, 86 Stat. 1234 (42 U.S.C. 4905, 4909, 4910, 4912))

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§ 205.171 Selective enforcement auditing (SEA) requirements.

§ 205.171-1 Test request.

(a) The Administrator will request all testing under § 205.171 by means of a test request addressed to the manufacturer.

(b) The test request will be signed by the Assistant Administrator for Enforcement or his designee. The test request will be delivered to the plant manager or other responsible official as designated by the manufacturer.

(c) The test request will specify the exhaust system category, model and model year of motorcycle selected for testing, the manufacturer's plant or storage facility from which the exhaust systems must be selected, the method of selection and the time at which the exhaust systems must be selected. The test request will also provide for situations in which the selected exhaust system is unavailable for testing. The test request may include an alternative exhaust system category designated for testing in the event that exhaust systems of the first specified category are not available for testing because the exhaust systems are not being manufactured at the specified plant or are not being manufactured during the specified time or are not being stored

at the specified plant or storage facility.

(d)(1) If the manufacturer projects a yearly production of fewer than 50 exhaust systems of the specified category to be tested, then, within five (5) days of receipt of the request, the manufacturer must notify the Administrator of such low volume production. The Administrator will then provide a revised test request specifying a testing plan which imposes no greater risk of failure (5%) at the acceptable quality level (10%) than the plan in appendix II. Upon receipt of the revised test request, the manufacturer must select and test a sample of exhaust systems from the category specified in the test request in accordance with this subpart and the conditions specified in the test request.

(2) If the manufacturer produces 50 or more of the specified category, then, upon receipt of the test request, the manufacturer must select and test a sample of exhaust systems for the category 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 exhaust systems per day unless otherwise provided by the Administrator or unless ambient test site conditions permit only the testing of a lesser number, in which event the ambient test site weather conditions for that period must be recorded.

(3) The manufacturer is allowed 24 hours to ship exhaust systems 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.