§ 205.55–5 Labeling-exterior. [Reserved]

§ 205.56 Testing by the Administrator.

(a)(1) The Administrator may require that any vehicles to be tested pursuant to the Act be submitted to him, at such place and time as he may reasonably designate and in such quantity and for such time as he may reasonably require for the purpose of conducting tests in accordance with test procedures described in § 205.54 to determine whether such vehicles or a manufacturer's test facility conform to applicable regulations. It is a condition of the requirements under this section that the manner in which the Administrator conducts such tests, the EPA test facility itself, and the test procedures he employs shall be based upon good engineering practice and meet or exceed the requirements of § 205.54 of the regulations.

(2) The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment of the type required by these regulations shall be made available by the manufacturer for test operations. The Administrator may conduct such tests with his own equipment, which shall equal or exceed the performance specifications of the instrumentation or equipment specified by the Administrator in these regulations.

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

(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 § 205.54–1 (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 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 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.

(c)(1) The Administrator will assume all reasonable costs associated with shipment of vehicles to the place designated pursuant to paragraph (a) of this section except with respect to:

(i) [Reserved]

(ii) Testing of a reasonable number of vehicles for purposes of selective enforcement auditing under § 205.57 or testing of smaller numbers of vehicles, if the manufacturer has failed to establish that there is a correlation between its test facility and the EPA test facility or the Administrator has reason to believe, and provides the manufacturer a statement of such reasons, that the vehicles to be tested would fail to meet the standard prescribed in this subpart if tested at the EPA test facility, but would meet such standard if tested at the manufacturer's test facility;

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

(iv) Any testing performed at 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 part.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61456, 61459, Dec. 5, 1977; 47 FR 57715, Dec. 28, 1982]

§ 205.57 Selective enforcement auditing requirements.

§ 205.57–1 Test request.

(a) The Administrator will request all testing under § 205.57 by means of a test request addressed to the manufacturer.

(1) Except as provided in paragraphs (a) (2) and (3) of this section, the Administrator will not issue to a manufacturer during any model year more test requests than a number determined by dividing the total number of vehicles subject to this regulation which the manufacturer projects he will produce during that model year by 25,000 and rounding to the next higher whole number: Except, that the Administrator may issue one additional test request beyond the annual limit to any manufacturer for each time a batch sequence for any category, configuration or subgroup thereof of such manufacturer's production is rejected in accordance with § 205.57–7.

(2) Any test request issued against a category, configuration or subgroup thereof which the Administrator has reason to believe does not meet the standards specified in § 205.52 will not be counted against the annual limit on test requests described in paragraph (a)(1) of this section. Any such request shall include a statement of the Administrator's reason for such belief.

(3) Any test request under which testing is not completed will not be counted against the annual limit on test requests described in paragraph (a)(1) of this section.

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

(c) The test request will specify the vehicle category, configuration or subgroup thereof selected for testing, the batch from which sampling is to begin, the batch size, the manufacturer's plant or storage facility from which the vehicles must be selected, the time at which a vehicle 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 vehicles of the first specified category or configuration are not available for testing because the vehicles 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 vehicles from two consecutively produced batches of the vehicle 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 within 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, or other conditions beyond the control of the manufacturer, in any 24-hour period do not permit testing: *Provided,* That these conditions for that period are recorded.

(2) The manufacturer shall complete emission testing on a minimum of five vehicles 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 vehicles 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 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 vehicles of a