

7-96-01
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40 CFR Part 205

(FRL 1924-2)

Truck-Mounted Solid Waste Compactors; Noise Emission Standards; Technical Amendments.

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Technical amendments.

SUMMARY: This notice amends the regulation on Truck-Mounted Solid Waste Compactors; Noise Emission Standards, 40 CFR Part 205, Subpart F (44 FR 59524, October 1, 1979). The compliance labeling section is changed to reflect the decision of the U.S. Court of Appeals for the District of Columbia Circuit which invalidated the warranty provision in a similar noise emission regulation. The test procedures section is changed to reflect more accurately the Agency's intent and to correct a typographical error. Appendix I is changed to correct an editing error.

EFFECTIVE DATE: November 3, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Mintz, Program Manager, Office of Noise Abatement and Control (ANR-490), U.S. Environmental Protection Agency, Washington, D.C. 20460, (703) 557-2710.

SUPPLEMENTARY INFORMATION: On August 23, 1977 EPA proposed 40 CFR Part 205, Subpart F, Truck-Mounted Solid Waste Compactors; Noise Emission Standards (42 FR 43225 et seq.). Section 205.108-1 of the proposed regulation contained a provision setting

out the warranty obligations for manufacturers of regulated products.

After proposal of the regulation, the United States Court of Appeals for the District of Columbia Circuit invalidated a similar warranty provision appearing in the Noise Emission Regulation for Medium and Heavy Trucks (*Chrysler Corp. v. EPA*, 195 U.S. App. D.C. 90, 800 F.2d 904 (D.C. Cir. 1979)).

The final regulation for truck-mounted solid waste compactors accordingly reserved the warranty provision pending reproposal of a provision consistent with the decision in *Chrysler* (See 44 FR 59524, October 1, 1979).

The final regulation, however, included a provision requiring that notice of the manufacturer's warranty responsibility appear on a label affixed to the regulated product (40 CFR 205.205-11(a)(4)(v)). This provision is inconsistent with the Court's decision in *Chrysler*, but was inadvertently included in the final regulation. This notice amends the regulation to correct this inconsistency.

This amendment changes the labeling section in the regulation to conform to the decision in *Chrysler*. The amendment does not change the manufacturers' responsibilities and compliance activities under the regulation.

The Agency has received several inquiries on the interpretation of the test site requirements in the regulation. The specific questions were related to § 205.204(b), Test Site Description, of the final regulation, in which the last sentence reads:

"The test site may be graded to permit drainage, provided the elevation difference does not exceed one-half (1/2) of the microphone elevation tolerance of 0.15 meter."

This provision was interpreted by some to mean that the deviation of the reflecting plane from horizontal must not exceed the stated tolerance. This was not the Agency's intent. Our intent was, and is, to require that the amount by which the test pad surface deviates from being a true plane, not exceed the stated tolerance. The first sentence of the section states, "The test site shall consist of an open area above a hard reflecting plane" (italic added here for emphasis). In allowing grading for drainage, the intent is that the test pad remain a plane, with a constant slope for drainage. The "elevation difference" tolerance of 0.075 meter is the maximum amount that the test pad surface itself may deviate from a true plane. Thus, the drainage must be provided, not by using a crowned surface as on a roadway, but rather by tilting the entire pad as a plane, at the appropriate angle to

achieve the desired drainage properties. If crowning is provided, it is limited to the extent of the stated elevation difference.

This amendment modifies the provision for grading in Section 205.204(b) to more accurately reflect the Agency's intent.

The measurement equipment requirements of the regulation necessitate use of a Type 1 Sound Level Meter. The requirement for a Type 1 Sound Level Meter was spelled out in § 205.204(c)(1) of the proposed regulation, in accordance with the Agency's intent. In § 205.204(c)(1) of the final regulation, the words "Type 1" were inadvertently omitted.

This amendment corrects that omission by inserting the words "Type 1" into the description of the sound level meter and microphone system required by the regulation.

In the final regulation the title to Appendix I was inadvertently omitted. This amendment corrects that omission. In addition, in order to make it clear that "Appendix I" pertains to Subpart F and not to Part 205, it is also necessary to identify it as being an appendix to Subpart F.

Most of these amendments are critical to the compliance activities of manufacturers of truck-mounted solid waste compactors, including activities which must be completed prior to the October 1, 1980 effective date of the regulation. Moreover, the amendments are technical in nature, serve only to correct or clarify the final regulation, and do not change the intent of the regulation in any substantive aspect. Accordingly, the Agency finds that notice and opportunity to comment on the amendments prior to final rulemaking would be impractical and are unnecessary.

EPA has determined that these amendments do not constitute a "significant" regulatory action under the criteria of Executive Order 12044 and therefore do not require a Regulatory Analysis. The Regulatory Analysis (EPA 550/B-79-257) prepared in conjunction with the final regulation adequately addressed the technical issues discussed in these amendments.

This amendment is promulgated under the authority of 42 U.S.C. 4905 and 4912.

Dated: September 23, 1980.

David G. Hawkins,

Assistant Administrator for Air, Noise, and Radiation.

40 CFR Part 205, Subpart F is amended as follows:

1. Section 205.205-11 is amended by revising paragraph (a)(4)(v) to read as follows:

§ 205.205-11 Labeling-compliance.

- (a) * * *
(4) * * *

(v) The statement:

This compactor is subject to the Federal noise emission regulation effective on October 1, 1980. Tampering with any product noise control device or element of design (see owner's manual), or use of this product after such tampering, is prohibited by Federal Law.

2. Section 205.204 is amended by revising paragraphs (b) and (c)(1) to read as follows:

§ 205.204 Test procedures.

(b) *Test site description.* The test site shall consist of an open area above a hard reflecting plane. The reflecting plane shall consist of a surface of sealed Portland cement or bituminous concrete flat to within ± 0.05 meter, and shall extend 1.0 meter beyond each microphone location. The test site reflecting plane may be graded with a constant slope to permit drainage. The microphones shall be located at least 15 meters from any reflecting surface, such as a building, signboard, hillside, etc.

(c) * * *

(1) A sound level meter and microphone system conforming to the Type 1 requirements of American National Standards Institute (ANSI) S1.4-1971, "American National Specification for Sound Level Meters".

Appendix [Amended]

3. The Appendix to Part 205 is amended by inserting "Appendix I of Subpart F—Sample Tables", above the title, "Table I".

(Secs. 6 and 12, Pub. L. 92-874, 90 Stat. 1237, 1244 (42 U.S.C. 4902, 4912))

[FR Doc. 80-20241 Filed 10-3-80; 8:44 am]
BILLING CODE 6750-01-06