

## § 610.12

(20) "Independent laboratory" means a test facility operated independently of any motor vehicle, motor vehicle engine, or retrofit device manufacturer capable of performing retrofit device evaluation tests. Additionally, the laboratory shall have no financial interests in the outcome of these tests other than a fee charged for each test performed.

(21) "Evaluation program" or "program" means the sequence of analyses and tests prescribed by the Administrator as described in § 610.13 in order to evaluate the performance of a retrofit device.

(22) "Preliminary analysis" means the engineering analysis performed by EPA prior to testing prescribed by the Administrator based on data and information submitted by a manufacturer or available from other sources.

[44 FR 17946, Mar. 23, 1979, as amended at 49 FR 18489, May 1, 1984]

### § 610.12 Program initiative.

A retrofit device evaluation program will be initiated as follows:

(a) At the request of the Federal Trade Commission (FTC) when it has reason to believe that fuel economy representation made for a retrofit device being marketed may be inadequate,

(b) At the EPA Administrator's initiative, or

(c) Upon the application of any manufacturer of a retrofit device (or prototype thereof) for which a fuel economy improvement claim is made.

### § 610.13 Program structure.

(a) Each device evaluation program will consist of up to three phases:

(1) A preliminary analysis of available information and test data on the device to be performed by the EPA Administrator;

(2) Designing and conducting of a sequence of tests to determine device effectiveness if considered necessary by virtue of the Administrator's preliminary analysis; and

(3) Publication in the FEDERAL REGISTER, and submission to the Department of Transportation and to the Federal Trade Commission, of a summary of the results of any tests conducted under subparts C through F, or if none

## 40 CFR Ch. I (7-1-04 Edition)

were conducted, then a summary of the results of the preliminary analysis conducted under subpart B; together with the Administrator's conclusions as to the effect of the tested retrofit device on fuel economy and exhaust emissions, and as to any other information that the Administrator determines is relevant in evaluating such device.

(b) Each of the above phases may, as appropriate, include the use of statistically valid sample sizes and statistical evaluation of measured results.

### § 610.14 Payment of program costs.

(a) All costs incurred in an evaluation program initiated at the request of the FTC or at the Administrator's initiative, including the cost of purchasing any necessary quantity of the device under evaluation, will be borne by the United States.

(b) For those evaluation programs initiated at the request of a manufacturer of a retrofit device, should the Administrator test the device, or cause the device to be tested, as part of the evaluation, then that manufacturer shall supply, at his own expense, one or more samples of the device to the Administrator and shall be liable for the costs of testing which are incurred by the Administrator. The manufacturer shall also be liable for the cost of any preliminary testing at an independent testing laboratory performed as part of the evaluation program. Apart from the costs of testing a device, EPA shall be responsible for costs of formulating its engineering evaluation of a device.

[44 FR 17946, Mar. 23, 1979, as amended at 49 FR 18838, May 3, 1984]

### § 610.15 Eligibility for participation.

Participation in an evaluation program initiated under § 610.12(c) will be available to any person or company who agrees to follow the procedures set forth in these protocols. Failure to conform to any aspect of these protocols, without the approval of the Administrator, may be interpreted as withdrawal from participation in the program.

### § 610.16 Applicant's responsibilities.

Each applicant for evaluation under § 610.12(c) will be responsible for the following: