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tested under applicable regulations in this part, or any other products that are regulated under this part, be submitted to him, at a place and time that he designates, to conduct tests on them in accordance with the test procedures described in the regulations.

(2) The Administrator may specify that he will conduct the testing at the facility where the manufacturer conducted required testing. The Administrator will conduct the tests with his own equipment.

(b)(1) If, from the tests conducted by the Administrator, or other relevant information, the Administrator determines that the test facility used by the manufacturer(s) does not meet the requirements of this part for conducting the test required by this part, he will notify the manufacturer(s) in writing of his determination and the reasons for it.

(2) After the Administrator has notified the manufacturer, EPA will not accept any data from the subject test facility for the purposes of this part, and the Administrator may issue an order to the manufacturer(s) to cease to distribute in commerce products that come from the product categories in question. However, any such order shall be issued only after an opportunity for a hearing. Notification of this opportunity may be included in a notification under paragraph (b)(1) of this section. A manufacturer may request that the Administrator grant a hearing. He must make this request no later than fifteen (15) days (or any other period the Administrator allows) after the Administrator has notified the manufacturer that he intends to issue an order to cease to distribute.

(3) A manufacturer may request in writing that the Administrator reconsider his determination in paragraph (b)(1) of this section, if he can provide data or information which indicates that changes have been made to the test facility, and that those changes have remedied the reason for disqualification.

(4) The Administrator will notify a manufacturer of his decision concerning requalifying the test facility within 10 days of the time the manufacturer requested reconsideration under paragraph (b)(3) of this section.

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

(i) [Reserved]

(ii) Testing of a reasonable number of products for purposes of compliance audit testing under the Section titled Compliance Audit Testing of the product-specific Subpart, or if the manufacturer has failed to establish that there is a correlation between his test facility and the EPA test facility or the Administrator has reason to believe, and provides the manufacturer with a statement or reasons, that the products to be tested would fail to meet their verification level if tested at the EPA test facility, but would meet the level if tested at the manufacturer's test facility;

(iii) Any testing performed during a period when a notice issued under paragraph (b) of this section, is in effect; and

(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.

(Secs. 11 and 13, Pub. L. 92-574, 86 Stat. 1243 (42 U.S.C. 4910, 4912))

[44 FR 56127, Sept. 28, 1979, as amended at 47 FR 57716, Dec. 28, 1982]

Subpart B—Hearing Protective Devices

AUTHORITY: Sec. 8, Pub. L. 92-574, 86 Stat. 1241 (42 U.S.C. 4907), and additional authority as specified.

SOURCE: 44 FR 56139, Sept. 28, 1979, unless otherwise noted.

§211.201 Applicability.

Unless this regulation states otherwise, the provisions of this subpart apply to all hearing protective devices manufactured after the effective date of this regulation. (See §211.203(m) for definition of "hearing protective device.")

§211.202 Effective date.

Manufacturers of hearing protectors must comply with the requirements set

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forth in this part for all hearing protective devices manufactured on or after September 27, 1980.

§211.203 Definitions.

(a) As used in subpart B, all terms not defined here have the meaning given them in the Act or in subpart A of Part 211.

(b) *ANSI Z24.22-1957*. A measurement procedure published by the American National Standards Institute (ANSI) for obtaining hearing protector attenuation values at nine of the one-third octave band center frequencies by using pure tone stimuli presented to ten different test subjects under anechoic conditions.

(c) *ANSI S3.19-1974*. A revision of the ANSI Z24.22-1957 measurement procedure using one-third octave band stimuli presented under diffuse (reverberant) acoustic field conditions.

(d) *Carrying Case*. The container used to store reusable hearing protectors.

(e) *Category*. A group of hearing protectors which are identical in all aspects to the parameters listed in §211.210-2(c).

(f) *Claim*. An assertion made by a manufacturer regarding the effectiveness of his product.

(g) *Custom-molded device*. A hearing protective device that is made to conform to a specific ear canal. This is usually accomplished by using a moldable compound to obtain an impression of the ear and ear canal. The compound is subsequently permanently hardened to retain this shape.

(h) *Dispenser*. The permanent (intended to be refilled) or disposable (discarded when empty) container designed to hold more than one complete set of hearing protector(s) for the express purpose of display to promote sale or display to promote use or both.

(i) *Disposable Device*. A hearing protective device that is intended to be discarded after one period of use.

(j) *Ear Insert Device*. A hearing protective device that is designed to be inserted into the ear canal, and to be held in place principally by virtue of its fit inside the ear canal.

(k) *Ear Muff Device*. A hearing protective device that consists of two acoustic enclosures which fit over the ears and which are held in place by a spring-

like headband to which the enclosures are attached.

(l) *Headband*. The component of hearing protective device which applies force to, and holds in place on the head, the component which is intended to acoustically seal the ear canal.

(m) *Hearing Protective Device*. Any device or material, capable of being worn on the head or in the ear canal, that is sold wholly or in part on the basis of its ability to reduce the level of sound entering the ear. This includes devices of which hearing protection may not be the primary function, but which are nonetheless sold partially as providing hearing protection to the user. This term is used interchangeably with the terms, "hearing protector" and "device."

(n) *Impulsive Noise*. An acoustic event characterized by very short rise time and duration.

(o) *Label*. That item, as described in this regulation, which is inscribed on, affixed to or appended to a product, its packaging, or both for the purpose of giving noise reduction effectiveness information appropriate to the product.

(p) *Manufacturer*. As stated in the Act "means any person engaged in the manufacturing or assembling of new products, or the importing of new products for resale, or who acts for, and is controlled by, any such person in connection with the distribution of such products."

(q) *Noise Reduction Rating (NRR)*. A single number noise reduction factor in decibels, determined by an empirically derived technique which takes into account performance variation of protectors in noise reducing effectiveness due to differing noise spectra, fit variability and the mean attenuation of test stimuli at the one-third octave band test frequencies.

(r) *Octave Band Attenuation*. The amount of sound reduction determined according to the measurement procedure of §211.206 for one-third octave bands of noise.

(s) *Over-the-Head Position*. The mode of use of a device with a headband, in which the headband is worn such that it passes over the user's head. This is contrast to the behind-the-head and under-the-chin positions.