

Environmental Protection Agency

§211.212-7

1972. All testing, for which data are reported here, was conducted in strict conformance with applicable regulations under 40 CFR Part 211 et seq. All the data reported are true and accurate representations of this testing. All other information reported here is, to the best of (company name) and (test laboratory name) knowledge, true and accurate. I am aware of the penalties associated with violation of the Noise Control Act of 1972 and the regulations published under it. (authorized representative)

If the testing is conducted by an outside laboratory the manufacturer must require an authorized representative of the laboratory to cosign both the statement and the endorsement.

(b) In the case where an EPA Enforcement Officer is present during testing required by this subpart, the written reports required in paragraph (a) of this section may be given directly to the Enforcement Officer.

(c) The reporting requirements of this regulation will no longer be effective after five (5) years from the date of publication; however, the requirements will remain in effect if the Administrator is taking appropriate steps to repromulgate or modify the reporting requirements at that time.

(Sec. 13, Pub. L. 92-574, 86 Stat. 1244 (42 U.S.C. 4912))

§211.212-6 Determination of compliance.

(a) A category will be in compliance with these requirements if the results of the test conducted under the test request show that:

(1) The mean attenuation value, at each one-third octave band center frequency as determined from the Compliance Audit Test values plus 3 dB(A), is equal to or greater than the mean attenuation value at the same one-third octave band as stated in the Supporting Information required by §211.204-4; and

(2) The Noise Reduction Rating, when calculated from the mean attenuation values determined by Compliance Audit Testing, equals or exceeds the Noise Reduction Rating as stated on the label required by §211.204.

(b) If a category is not in compliance, as determined in paragraph (a) of this section, the manufacturer must satisfy the continued testing requirements of §211.212-7, and the relabeling require-

ments of §211.212-8 before further distributing hearing protectors of that category in commerce.

(Sec. 13, Pub. L. 92-574, 86 Stat. 1244 (42 U.S.C. 4912))

[44 FR 56139, Sept. 28, 1979, as amended at 47 FR 57717, Dec. 28, 1982]

§211.212-7 Continued compliance testing.

If a category is not in compliance as determined under §211.212-6, the manufacturer must satisfy the requirements of paragraph (a) or (b) of this section.

(a) The manufacturer must continue to conduct additional tests until the mean attenuation values from the last test at each octave band equal or exceed the lowest attenuation values obtained from all previous compliance tests.

(b) Upon approval by the Administrator, the manufacturer may relabel at a lower level in compliance with §211.212-8 in lieu of testing under paragraph (a) of this section. The manufacturer must obtain approval by showing that the relabeled values adequately take into account results achieved from the Compliance Audit Testing and product variability. The Administrator is to exercise his discretion in light of factors including the prior compliance record of the manufacturer, the adequacy of the proposed new labeling value, the amount of deviation of test results from the labeled values, and any other relevant information.

(c) When the manufacturer can show that the non-compliance under §211.212-6 was caused by a quality control failure and that the failure has been remedied, he may, with the Administrator's approval, conduct an additional test and relabel using the mean attenuation values no higher than those obtained in that test.

(d) The manufacturer may request a hearing on the issue of whether the compliance audit testing was conducted properly and whether the criteria for non-compliance in §211.212-6 have been met; and the appropriateness or scope of a continued testing order. In the event that a hearing is requested, the hearing shall begin no later than 15 days after the date on which the Administrator received the hearing request. Neither the request