

§211.212-2

40 CFR Ch. I (7-1-00 Edition)

a test facility is not available to conduct the testing.

(2) The manufacturer must complete the required testing within one week following commencement of the testing.

(3) The manufacturer will be allowed 1 calendar week to send test hearing protectors from the assembly plant to the testing facility. The Administrator may approve more time based upon a request by the manufacturer. The request must be accompanied by a satisfactory justification.

(f) Failure to comply with any of the requirements of this section will not be considered a violation of these regulations if conditions and circumstances outside the control of the manufacturer render it impossible for him to comply. These conditions and circumstances include, but are not limited to, the temporary unavailability of equipment and personnel needed to conduct the required tests. The manufacturer bears the burden of establishing the presence of the conditions and circumstances.

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

[44 FR 56139, Sept. 28, 1979, as amended at 45 FR 8275, Feb. 6, 1980; 47 FR 57717, Dec. 28, 1982]

§211.212-2 Test hearing protector selection.

(a) The test request will specify the number of test protectors which will be selected for testing from the number of protectors delivered to the test facility in accordance with §211.212-1(c)(5). The remainder may be used as replacement protectors if replacement is necessary. The test request will also specify that the protectors be selected from the next batch scheduled for production after receipt of the test request.

(b) If random selection is specified, it must be achieved by sequentially numbering all the protectors in the group and then using a table of random numbers to select the test hearing protectors. The manufacturer may use an alternative random selection plan when it is approved by the Administrator.

(c) Each test protector of the category selected for testing must have been assembled, by the manufacturer, for distribution in commerce using the

manufacturer's normal production process.

(d) At their discretion, EPA Enforcement Officers, rather than the manufacturer, may select the protectors designated in the test request.

(e) The manufacturer must keep on hand the test protectors designated for testing until such time as the category is determined to be in compliance. Hearing protectors actually tested and found to be in compliance with these regulations may be distributed 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 45 FR 8275, Feb. 6, 1980]

§211.212-3 Test hearing protector preparation.

The manufacturer must select the test hearing protector according to §211.212-2 before the official test, and must comply with the test protector preparation requirements described in this subpart:

(a) A test hearing protector selected according to §211.212-2 must not be tested, modified, or adjusted in any manner before the official test unless the adjustments, modifications and/or tests are part of the manufacturer's prescribed manufacturing and inspection procedures.

(b) Quality controls, testing, assembly or selection procedures must not be, used on the completed protector or any portion of the protector, including parts, that will not normally be used during the production and assembly of all other protectors of that category to be distributed in commerce.

[47 FR 57717, Dec. 28, 1982]

§211.212-4 Testing procedures.

(a) The manufacturer must conduct one valid test according to the test procedures specified in §211.206 for each hearing protector selected for testing under §211.212-2.

(b) The manufacturer must not repair or adjust the test hearing protectors once compliance testing has been initiated. In the event a hearing protector is unable to complete the test, the manufacturer may replace the protector. Any replacement protector will

Environmental Protection Agency

§211.212-7

be of the same category as the protector being replaced. It will be selected from the remaining designated test protectors and will be subject to all the provisions of these regulations. Any replacement and the reason for replacement must be reported in the compliance audit test report.

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

§211.212-5 Reporting of test results.

(a)(1) The manufacturer must submit to the Administrator a copy of the Compliance Audit Test report for all testing conducted under §211.212. It must be submitted within 5 days after completion of testing. A suggested compliance audit test report form is included as appendix B.

(2) The manufacturer must provide the following test information:

- (i) Category identification;
- (ii) Production date, and model of hearing protector;
- (iii) The name and location of the test facility used;
- (iv) The completed data sheet in the form specified for all tests including, for each invalid test, the reason for invalidation; and
- (v) The reason for the replacement where a replacement protector was necessary.

(3) The manufacturer must provide the following statement and endorsement:

This report is submitted under section 8 and section 13 of the Noise Control Act of 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 requirements 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