

§211.212-8

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

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 for a hearing, nor the fact that a hearing is in progress, shall affect the responsibility of the manufacturer to commence and continue testing required by the Administrator pursuant to paragraph (a) of this section.

(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]

§211.212-8 Relabeling requirements.

(a) Any manufacturer who is found to not conform with §211.212-6, and who has met the requirement of §211.212-7, must relabel all protectors of the specified category already in his possession

according to §211.211 before distributing them in commerce. The manufacturer shall relabel at values no greater than any mean attenuation values received from Compliance Audit Testing. Any manufacturer who proceeds with §211.212-7(a) or (b) must relabel his product line with the lowest mean attenuation value at each octave band received from testing; or he may take into account product variability under §211.211(b) and label with a lower mean attenuation value than the worst case values obtained from Compliance Audit Testing.

(b) [Reserved]

(Sec. 10(a)(3), Pub. L. 92-574, 86 Stat. 1242 (42 U.S.C. 4909(a)(3)))

§211.213 Remedial orders for violations of these regulations.

(a) The Administrator may issue an order under section 11(d)(1) of the Act when any person is in violation of these regulations.

(b) A remedial order will be issued only after the violator has been notified of the violation and given an opportunity for a hearing according to section 554 of title 5 of the United States Code.

(c) All costs associated with a remedial order shall be borne by the violator.

(Sec. 11(d) Pub. L. 92-574, 86 Stat. 1243 (42 U.S.C. 4910(d)))

§211.214 Removal of label.

Section 10(a)(4) of the Act prohibits any person from removing, prior to sale, any label required by this subpart, by either physical removal or defacing or any other physical act making the label and its contents not accessible to the ultimate purchaser prior to sale.

(Sec. 10(a)(4), Pub. L. 92-574, 86 Stat. 1242 (42 U.S.C. 4909(a)(4)))

**APPENDIX A TO PART 211—COMPLIANCE
AUDIT TESTING REPORT**

Data Sheet

Company name: _____
Address: _____
Test laboratory: _____
Address: _____
Model number of hearing protector: _____
Category designation: _____