

Environmental Protection Agency

§ 211.102

to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation and the full name, address, and telephone number of the person giving notice.

(b) *Failure to act.* Notice regarding an alleged failure of the Administrator of the Environmental Protection Agency to perform any act or duty under the Noise Control Act which is not discretionary with such Administrator or notice regarding an alleged failure of the Administrator of the Federal Aviation Administration to perform any act or duty under section 611 of the Federal Aviation Act which is not discretionary with such Administrator shall identify the statutory provision which requires such act or creates such duty, shall describe with reasonable specificity the action taken or not taken by such Administrator which is alleged to constitute a failure to perform such act or duty, and shall state the full name, address, and telephone number of the person giving the notice.

(c) *Identification of Counsel.* The notice shall state the name, address, and telephone number of the legal counsel, if any, representing the person giving the notice.

PART 211—PRODUCT NOISE LABELING

Subpart A—General Provisions

- Sec.
- 211.101 Applicability.
 - 211.102 Definitions.
 - 211.103 Number and gender.
 - 211.104 Label content.
 - 211.105 Label format.
 - 211.106 Graphical requirements.
 - 211.107 Label type and location.
 - 211.108 Sample label.
 - 211.109 Inspection and monitoring.
 - 211.110 Exemptions.
 - 211.110-1 Testing exemption.
 - 211.110-2 National security exemptions.
 - 211.110-3 Export exemptions.
 - 211.111 Testing by the Administrator.

Subpart B—Hearing Protective Devices

- 211.201 Applicability.
- 211.202 Effective date.
- 211.203 Definitions.

- 211.204 Hearing protector labeling requirements.
 - 211.204-1 Information content of primary label.
 - 211.204-2 Primary label size, print and color.
 - 211.204-3 Label location and type.
 - 211.204-4 Supporting information.
- 211.205 Special claims.
- 211.206 Methods for measurement of sound attenuation.
 - 211.206-1 Real ear method.
 - 211.206-2 Alternative test data.
 - 211.206-3—211.206-10 Alternative test methods. [Reserved]
- 211.207 Computation of the noise reduction rating (NRR).
- 211.208 Export provisions.
- 211.210 Requirements.
 - 211.210-1 General requirements.
 - 211.210-2 Labeling requirements.
- 211.211 Compliance with labeling requirement.
- 211.212 Compliance audit testing.
 - 211.212-1 Test request.
 - 211.212-2 Test hearing protector selection.
 - 211.212-3 Test hearing protector preparation.
 - 211.212-4 Testing procedures.
 - 211.212-5 Reporting of test results.
 - 211.212-6 Determination of compliance.
 - 211.212-7 Continued compliance testing.
 - 211.212-8 Relabeling requirements.
- 211.213 Remedial orders for violations of these regulations.
- 211.214 Removal of label.

APPENDIX A TO PART 211—COMPLIANCE AUDIT TESTING REPORT

SOURCE: 44 FR 56127, Sept. 28, 1979, unless otherwise noted.

Subpart A—General Provisions

AUTHORITY: Sec. 8, Noise Control Act of 1972, (42 U.S.C. 4907), and other authority as specified.

§ 211.101 Applicability.

The provisions of subpart A apply to all products for which regulations are published under part 211 and manufactured after the effective date of this regulation, unless they are made inapplicable by product-specific regulations.

§ 211.102 Definitions.

(a) All terms that are not defined in this subpart will have the meaning given them in the Act.

(b) *Act* means the Noise Control Act of 1972 (Pub. L. 92-574, 86 Stat. 1234).

(c) *Administrator* means the Administrator of the Environmental Protection

§211.103

Agency or his authorized representative.

(d) *Agency* means the United States Environmental Protection Agency.

(e) *Acoustic descriptor* means the numeric, symbolic, or narrative information describing a product's acoustic properties as they are determined according to the test methodology that the Agency prescribes.

(f) *Export exemption* means an exemption from the prohibitions of section 10(a) (3) and (4) of the Act; this type of exemption is granted by statute under section 10(b)(2) of the Act for the purpose of exporting regulated products.

(g) *National security exemption* means an exemption from the prohibitions of section 10(a) (3) and (5) of the Act, which may be granted under section 10(b)(1) of the Act in cases involving national security.

(h) *Product* means any noise-producing or noise-reducing product for which regulations have been promulgated under part 211; the term includes "test product".

(i) *Regulations published under this part* means all subparts to part 211.

(j) *Testing exemption* means an exemption from the prohibitions of section 10(a) (1), (2), (3), and (5) of the Act, which may be granted under section 10(b)(1) of the Act for research, investigations, studies, demonstrations, or training, but not for national security.

(k) *Test product* means any product that must be tested according to regulations published under part 211.

§211.103 Number and gender.

In this part, words in the singular will be understood to include the plural, and words in the masculine gender will be understood to include the feminine, and vice versa, as the case may require.

40 CFR Ch. I (7-1-15 Edition)

§211.104 Label content.

The following data and information must be on the label of all products for which regulations have been published under this part:

(a) The term "Noise Rating" if the product produces noise, or the term "Noise Reduction Rating" if the product reduces noise;

(b) The acoustic rating descriptor that is determined according to procedures specified in the regulations that will be published under this part;

(c) Comparative acoustic rating information, which EPA will specify in the regulations published under this part;

(d) A product manufacturer identification consisting of: (1) The Company name, and (2) The City and State of the principal office;

(e) A product model number or type identification;

(f) The phrase "Federal law prohibits removal of this label prior to purchase";

(g) The U.S. Environmental Protection Agency logo, as shown in Figure 1;

(h) The phrase "Label Required by U.S. EPA regulation 40 CFR part 211, subpart ____."



FIGURE 1

§211.105 Label format.

(a) Unless specified otherwise in other regulations published under this part, the format of the label must be as shown in Figure 2. The label must include all data and information required under §211.104.

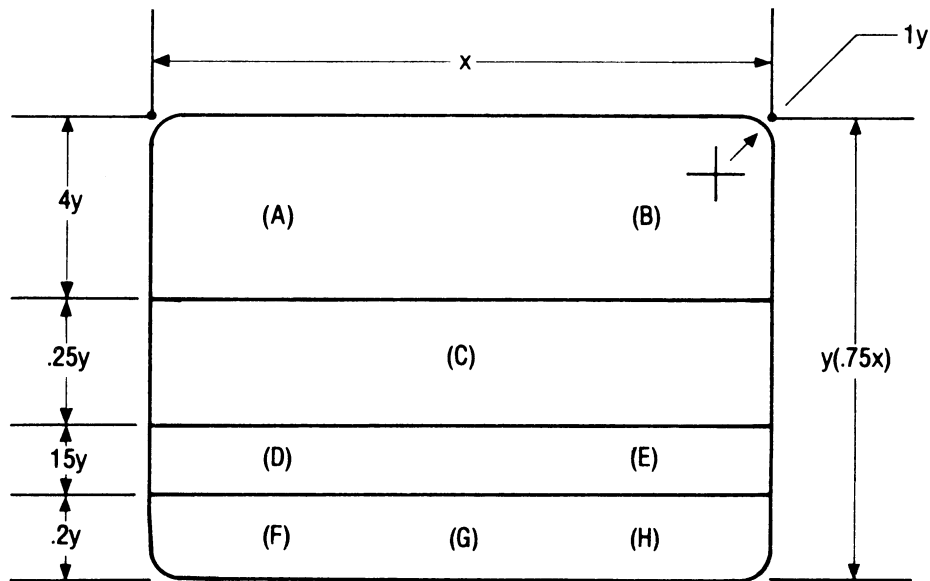


FIGURE - 2

(b) Unless EPA specifies otherwise in regulations published under this part, the required data and information specified in §211.104 (a) through (h) must be located in the following areas of the prescribed label (see Figure 2 of this section):

- (1) Section 211.104 (a)—Area A.
- (2) Section 211.104 (b)—Area B.
- (3) Section 211.104 (c)—Area C.
- (4) Section 211.104 (d)—Area D.
- (5) Section 211.104 (e)—Area E.
- (6) Section 211.104 (f)—Area F.
- (7) Section 211.104 (g)—Area G.
- (8) Section 211.104 (h)—Area H.

§211.106 Graphical requirements.

(a) *Color.* Unless EPA requires otherwise, the product manufacturer or supplier must determine the colors used for the label background, borders, and all included letters, numerals, and figures. However, the colors on the label must contrast sufficiently with each other and with any information or ma-

terial surrounding the label so that the label and the information within it are clearly visible and legible.

(b) *Label Size.* The prescribed label must be sized as specified in regulations published under this part.

(c) *Character Style.* Except when specified otherwise in this part, all letters and numerals that appear on the prescribed label must be Helvetica Medium.

(d) *Character Size.* All letters and numerals that appear on the prescribed label must be sized as specified in regulations published under this part.

§211.107 Label type and location.

The prescribed label must be of the type and in the location specified in regulations published under this part.

§211.108 Sample label.

Examples of labels conforming to the requirements of §§211.104, 211.105, and 211.106 are presented in Figure 3.

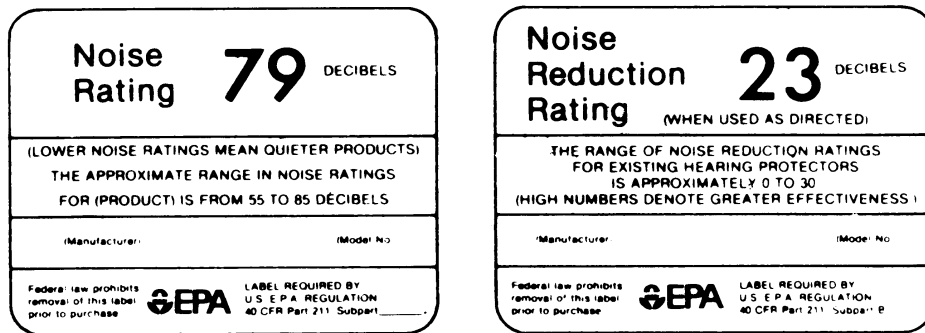


Figure - 3

§211.109 Inspection and monitoring.

(a) Any inspecting or monitoring activities that EPA conducts under this part with respect to the requirements set out in regulations published under this part, will be for the purpose of determining:

- (1) Whether test products are being selected and prepared for testing in accordance with the provisions of the regulations;
- (2) Whether test product testing is being conducted according to the provisions of those regulations; and
- (3) Whether products that are being produced and distributed into commerce comply with the provisions of those regulations.

(b) The Director of the Noise Enforcement Division may request that a manufacturer who is subject to this part admit an EPA Enforcement Officer during operating hours to any of the following:

- (1) Any facility or site where any product to be distributed into commerce is manufactured, assembled, or stored;
- (2) Any facility or site where the manufacturer performed or performs any tests conducted under this part or any procedures or activities connected with those tests;
- (3) Any facility or site where any test product is located.

(c)(1) Once an EPA Enforcement Officer has been admitted to a facility or site, that officer will not be authorized to do more than the following:

(i) Inspect and monitor the manufacture and assembly, selection, storage, preconditioning, noise testing, and maintenance of test products, and to verify the correlation or calibration of test equipment;

(ii) Inspect products before they are distributed in commerce;

(iii) Inspect and make copies of any records, reports, documents, or information that the manufacturer must maintain or provide to the Administrator under the Act or under any provision of this part;

(iv) Inspect and photograph any part or aspect of any product and any components used in manufacturing the product that is reasonably related to the purpose of this entry; and

(v) Obtain from those in charge of the facility or site any reasonable assistance that he may request to enable him to carry out any function listed in this section.

(2) The provisions of this section apply whether the facility or site is owned or controlled by the manufacturer, or by someone who acts for the manufacturer.

(d) For the purposes of this section:

(1) An "EPA Enforcement Officer" is an employee of the EPA Office of Enforcement. When he arrives at a facility or site, he must display the credentials that identify him as an employee of the EPA and a letter signed by the Director of the Noise Enforcement Division designating him to make the inspection.

Environmental Protection Agency

§211.111

(2) Where test product storage areas or facilities are concerned, "operating hours" means all times during which personnel, other than custodial personnel, are at work in the vicinity of the area or facility and have access to it.

(3) Where other facilities or areas are concerned, "operating hours" means all times during which products are being manufactured or assembled; or all times during which products are being tested or maintained; or records are being compiled; or when any other procedure or activity related to labeling, selective enforcement auditing, or product manufacture or assembly being carried out.

(4) "Reasonable assistance" means providing timely and unobstructed access to test products or to products and records that are required by this part, and the means for copying those records or the opportunity to test the test products.

(e) The manufacturer must admit an EPA Enforcement Officer who presents a warrant authorizing entry to a facility or site. If the EPA officer does not have the warrant, he may enter a facility or site only if the manufacturer consents.

(1) It is not a violation of this regulation or the Act if anyone refuses to allow an officer without a warrant to enter the site.

(2) The Administrator or his designee may proceed *ex parte* (without the other party's knowledge) to obtain a warrant whether or not the manufacturer has refused entry to an EPA Enforcement Officer.

(Secs. 11 and 13, Pub. L. 92-574, 86 Stat. 1242, 1244 (42 U.S.C. 4910, 4912))

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

§211.110 Exemptions.

§211.110-1 Testing exemption.

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the produce itself, shall be exempt from the prohibitions of sections 10(a), (1), (2), (3), and (5) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of section 11(d) of the Act, any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

[47 FR 57716, Dec. 28, 1982]

§211.110-2 National security exemptions.

(a) A new product which is produced to conform with specifications developed by national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of sections 10(a), (1), (2), (3), and (5) of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of section 11(d) of the Act, any national security exemption shall be void ab initio with respect to each new product, originally intended for a national security agency, but distributed in commerce for other uses.

[47 FR 57716, Dec. 28, 1982]

§211.110-3 Export exemptions.

(a) A new product intended solely for export, and which has satisfied the requirements of other applicable regulations of this part, will be exempt from the prohibitions of section 10(a) (3) and (4) of the Act.

(b) Requests for an export exemption are not required.

(c) For purposes of section 11(d) of the Noise Control Act, the Administrator may consider any export exemption under section 10(b)(2) void from the beginning if a new product, intended only for export, is distributed in commerce in the United States.

(Sec. 10(b)(2), Pub. L. 92-574, 86 Stat. 1242 (42 U.S.C. 4909(b)(2)))

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

§211.111 Testing by the Administrator.

(a)(1) To determine whether products conform to applicable regulations under this part, the Administrator may require that any product that is to be

§211.201

40 CFR Ch. I (7–1–15 Edition)

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