

Environmental Protection Agency

§210.1

shall set forth in its decision a statement of the reasons or bases for its action. The Environmental Appeals Board's decision shall be the final order in the proceeding.

(c) In those cases where the Environmental Appeals Board determines that it should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Environmental Appeals Board, in its discretion, may withhold final action pending the receipt of such additional information or views, or may remand the case to the administrative law judge.

[57 FR 5345, Feb. 13, 1992]

§209.34 Reconsideration.

Within five (5) days after service of the Environmental Appeals Board's decision, any party may file a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. Petitions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Petitions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator's pursuant to §209.3(k) and in which the Administrator has issued the final order. Any petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the administrative law judge or the Environmental Appeals Board. Any party desiring to oppose a petition shall file an answer thereto within five (5) days after service of the petition. The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order.

[57 FR 5345, Feb. 13, 1992]

§209.35 Conclusion of hearing.

(a) If no appeal has been taken from the administrative law judge's decision before the period for taking an appeal under §209.31 has expired, and the period for review by the Environmental Appeals Board on its own motion under

§209.30 has expired, and the Environmental Appeals Board does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(b) If an appeal of the administrative law judge's decision is taken under §209.31, or if, in the absence of such appeal, the Environmental Appeals Board moves to review the decision of the administrative law judge under §209.32, the hearing will be deemed to have ended upon the rendering of a final decision by the Environmental Appeals Board.

[57 FR 5346, Feb. 13, 1992]

§209.36 Judicial review.

(a) The Administrator hereby designates the general counsel, Environmental Protection Agency as the officer upon whom copy of any petition for judicial review shall be served. That officer shall be responsible for filing in the court the record on which the order of the Environmental Appeals Board is based.

(b) Before forwarding the record to the court, the Agency shall advise the petitioner of the costs of preparing it and as soon as payment to cover fees is made shall forward the record to the court.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5346, Feb. 13, 1992]

PART 210—PRIOR NOTICE OF CITIZEN SUITS

Sec.

210.1 Purpose.

210.2 Service of notice.

210.3 Contents of notice.

AUTHORITY: Sec. 12, Noise Control Act, (Pub. L. 92-574, 86 Stat. 1234).

SOURCE: 39 FR 36011, Oct. 7, 1974, unless otherwise noted.

§210.1 Purpose.

Section 12 of the Noise Control Act authorizes any person to commence a civil action on his own behalf to enforce the Act or to enforce certain requirements promulgated pursuant to the Act. The purpose of this part is to prescribe procedures governing the manner of giving notices as required by

§210.2

40 CFR Ch. I (7-1-08 Edition)

subsection 12(b) of the Act (Pub. L. 92-574, 86 Stat. 1234) as a prerequisite to the commencement of such actions.

§210.2 Service of notice.

(a) Notice of intent to file suit pursuant to section 12(a)(1) of the Act shall be served upon an alleged violator of a noise control requirement issued under the Act in the following manner:

(1) If the alleged violator is a private individual or a corporation, service of notice shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the owner or managing agent of the equipment, plant, facility, vehicle, or activity alleged to be in violation. A copy of the notice shall be mailed to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the region in which such violation is alleged to have occurred; and in the case of a violation of a noise control requirement under section 611 of the Federal Aviation Act, to the Administrator of the Federal Aviation Administration, and the Regional Administrator of the Federal Aviation Administration for the region in which such violation is alleged to have occurred. If the alleged violator is a corporation, a copy of such notice also shall be mailed to the registered agent, if any, of such corporation in the State in which such violation is alleged to have occurred.

(2) If the alleged violator is a State or local government entity, service of notice shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the head of such agency. A copy of such notice shall be mailed to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the region in which such violation is alleged to have occurred; and in the case of a violation of a noise control requirement under section 611 of the Federal Aviation Act, to the Administrator of the Federal Aviation Administration, and the Regional Administrator of the Federal Aviation Administration for the region in which such violation is alleged to have occurred.

(3) If the alleged violator is a Federal agency, service of notice shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the head of such agency. A copy of such notice shall be mailed to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the region in which such violation is alleged to have occurred, the Attorney General of the United States; and in the case of a violation of a noise control requirement under section 611 of the Federal Aviation Act, to the Administrator of the Federal Aviation Administration, and the Regional Administrator of the Federal Aviation Administration for the region in which such violation is alleged to have occurred.

(b) Service of notice of intent to file suit pursuant to section 12(a)(2)(A) of the Act shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the Administrator, Environmental Protection Agency, Washington, DC 20460. A copy of such notice shall be mailed to the Attorney General of the United States.

(c) Service of notice of intent to file suit pursuant to section 12(a)(2)(B) of the Act shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the Administrator, Federal Aviation Administration, Washington, DC. A copy of such notice shall be mailed to the Attorney General of the United States, and to the Administrator of the Environmental Protection Agency.

(d) Notice given in accordance with the provisions of this part shall be deemed to have been served on the date of receipt. If service was accomplished by mail, the date of receipt will be deemed to be the date noted on the return receipt card.

§210.3 Contents of notice.

(a) *Violation of noise control requirement.* Notice regarding an alleged violation of a noise control requirement shall include sufficient information to permit the recipient to identify the specific standard or regulation alleged

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