must be labeled according to this sub-
part, and must comply with the La-
beled Values of mean attenuation.

(b) A manufacturer must take into
account both product variability and
test-to-test variability when labeling
his devices in order to meet the re-
quirements of paragraph (a) of this sec-
tion. A specific category is considered
when the attenuation value at the test-
ed one-third octave band is equal to or
greater than the Labeled Value, or
mean attenuation value, stated in the
supporting information required by
§211.204-4, for that tested frequency.
The attenuation value must be deter-
mined according to the test procedures
of §211.206. The Noise Reduction Rating
for the label must be calculated using
the Labeled Values of mean attenu-
ation that will be included in the
supporting information required by
§211.204-4.

§211.212–1 Test request.

(a) The Administrator will request
all testing under this section by means
of a test request addressed to the
manufacturer.

(b) The test request will be signed by
the Assistant Administrator for En-
forcement or his designee. The test re-
quest will be delivered by an EPA En-
forcement Officer or sent by certified
mail to the plant manager or other re-
sponsible official as designated by the
manufacturer.

(c) In the test request, the Adminis-
trator must specify the following:
(1) The hearing protector category
selected for testing;
(2) The manufacturer’s plant or stor-
age facility from which the protectors
must be selected;
(3) The selection procedure the
manufacturer will use to select test
protectors;
(4) The test facility where the
manufacturer is required to have the
protectors tested;
(5) The number of protectors to be
forwarded to the designated test facil-
ity and the number of those protectors
which must be tested by the facility;
(6) The time period allowed for the
manufacturer to initiate testing; and
(7) Any other information that will
be necessary to conduct testing under
this section.

(d) The test request may provide for
situations in which the selected cat-
cegory is unavailable for testing. It may
include an alternative category to be
selected for testing in the event that
protectors of the first specified cat-
egory are not available because the
protectors are not being manufactured
at the specified plant, at the specified
time, and are not being stored at the
specified plant or storage facility.

(e)(1) Any testing conducted by the
manufacturer under a test request
must commence within the period
specified within the test request. The
Administrator may extend the time pe-
riod on request by the manufacturer, if
a test facility is not available to con-
duct 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 re-
quest must be accompanied by a satis-
factory justification.

(f) Failure to comply with any of the
requirements of this section will not be
considered a violation of these regula-
tions if conditions and circumstances
outside the control of the manufac-
turer render it impossible for him to
comply. These conditions and cir-
cumstances include, but are not lim-
ited to, the temporary unavailability
of equipment and personnel needed to
conduct the required tests. The manu-
facturer bears the burden of estab-
lishing the presence of the conditions
and circumstances.

§211.212–2 Test hearing protector se-
lection.

(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.

(47 FR 57717, Dec. 28, 1982)

§ 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 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.