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 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: _____
Production date: _____

Test Results—Frequency, Mean Attenuation, and Standard Deviation

125 _____
250 _____
500 _____
1000 _____
2000 _____
3150 _____
4000 _____
6300 _____
8000 _____
Noise Reduction Rating: _____

If replacement hearing protector was necessary to conduct test, reason for replacement:

This report is submitted under sections 8 and 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 here 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 of company)

_____

(Authorized representative of test laboratory)

[44 FR 56139, Sept. 28, 1979. Redesignated at 47 FR 57717, Dec. 28, 1982]