



October 28, 2009

Air and Radiation Docket and Information Center
EPA Labeling Regulation
Docket Number EPA–HQ–OAR–2003–0024
Environmental Protection Agency
EPA Docket Center
Mailcode 28221T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460

Re: 40CFR211 Subpart B, Hearing Protector Labeling

Docket Officer:

The American Industrial Hygiene Association (AIHA) wishes to commend the Environmental Protection Agency (EPA) on efforts to update the referenced regulation, and we wish to express our appreciation for the opportunity to comment on the proposed rule (EPA–HQ–OAR–2003–0024; FRL–8934–9 RIN 2060–A025, published in the Federal Register on August 5, 2009).

As the premier association of occupational and environmental health and safety professionals, AIHA members serve on the front line of worker health and safety. AIHA members, as well as employees and employers, rely on federal and state rules, regulations, standards and guidelines to improve health and safety in the workplace. The proposed rule bears directly on that aspect of our mission.

Comments on this proposed rule were compiled by the AIHA Noise Committee, whose members are actively engaged in regulatory compliance, management, and oversight of noise and other hearing protector issues.

AIHA appreciates the opportunity to work with EPA to help achieve the mutual goal of protecting American workers and we look forward to further opportunities to work with the agency on this and similar issues and regulatory priorities.

General Comments

We applaud the Agency for the overall approach to de-emphasizing the single number rating. Research and experience indicate that hearing protection device (HPD) performance is highly variable for a variety of reasons, and leading users to an understanding that HPD performance will vary by reporting a range of values on the label is a positive step. The range-of-values approach may be challenging to implement from a compliance and selection aspect, but we feel that this complexity is manageable and will be secondary to the important communication of performance variability.

We agree with EPA that selection of ANSI S12.6-2008 Method A is the best source of data on which to base the labeled values. While Method B may be a better indicator of field performance, as it assesses issues such as ease of use, ergonomics, and clarity of instruction, we feel that Method A is a better assessment of the capability of the device under test to block sound. Method A data is the best choice to drive the label values.

We are concerned throughout the proposal with the application of the term “active” in reference to a type of HPD. In common hearing conservation use and in the definitions section of the proposal (211.203d), this term refers to wave-cancellation or noise cancellation technology, but it appears to be used here (211.203u2) as a catch-all for all electronic devices. Unique terms for reference to wave-cancellation as opposed to other electronic devices would be appropriate.

We have concerns regarding the described method for HPD evaluation in impulse noise. The test method described may well be the best approach, but to our knowledge has not been proven effective – or for that matter, functional. We are unaware of any published research indicating how repeatable this process may be. We suggest retaining it in the rule as written (or as a direct reference to the pending ANSI S12.42-200x standard), but with the caveat that the process be revisited in a fixed time frame to assess its viability.

We are in support of provision of as much information as feasible on HPD performance to users. If possible, we would prefer a simpler primary label than that illustrated in the proposal, with details provided on a secondary basis at manufacturers’ websites.

We are unclear on EPA’s enforcement position. We would prefer to see enforcement guidelines spelled out in the rule, indicating the steps EPA plans to take to ensure compliance on an on-going basis.

Specific Comments

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| 211.203c | This definition implies use of an anthropomorphic head. Other sections in the proposal allow use of a “block” style fixture with pinnae and ear canals, but not in the shape of a human head. Clarification in the definition would be appropriate. |
| 211.203dd | Refers to the Noise Reduction Rating (NRR) as a single value. The new label proposal indicates otherwise. |
| 211.203 nn and oo | The definition of REAT appears to be duplicated. |
| 211.203ccc | Can the term “trial” be used for impulse assessments? If so, use of the term “subject” may not be appropriate. |
| 211.204 i, j and k | We would anticipate the development of devices that will not neatly fall into the categories listed here, and may cross categories. Active devices that provide impulse protection may be an example. Would the label address all possible applications, with four performance bars to reflect passive, active, passive impulse, and active impulse protection levels? It is clear that the primary label could become cluttered and confusing. |

211.204 section 5 Suggest revising the table for clarification as follows.

C-A Spectral Balance	Passive Performance		Active Performance		Total Performance	
	20 th percentile	80 th percentile	20 th percentile	80 th percentile	20 th percentile	80 th percentile
-1 dB	21.0	27.0	-1.0	0.0	20.0	27.0
2 dB	14.0	21.0	0.7	0.0	14.7	21.0
6 dB	9.0	15.0	6.2	7.5	15.2	22.5
13 dB	5.0	10.0	12.5	14.0	17.5	24.0

211.204 section 6 There appears to be an incongruity between the low peak values in Tables 1 and 2. We suggest using 133 dB as the low reference. We also have questions about the tables; are these examples representative of actual data? If so, is it necessary to even express a range?

211.206 section 1b5i The procedure used to determine ear canal size in ANSI S12.6-2008 is approximate at best, and we question the usefulness of this information, here and elsewhere.

211.206 section 2 Reference to the 1995 (revised in 2004) version of ANSI S12.42 is inappropriate here. We expect that a revised version of this standard will be issued well before the rule is final, and suggest using the updated reference, with clarification and exclusion as appropriate, to replace much of this language.

211.206 section 3a3 If test of product randomly selected from production lots is of significance here, it should be required in all tests.

211.206 section 3c6 This appears to indicate that HPD will be evaluated for performance in impulse noise based on one test signal. We are not certain that this is sufficient.

211.209-1 b We are uncertain why EPA needs production records and recommend this item be struck from the rule.

211.211-2 Given the hundreds of different types of HPD currently being manufactured, the multiplicity of new tests that may be conducted under different scenarios (impulse, etc.), and the limited available testing resources, we question whether a 2 ½ year window is sufficient for manufacturers to retest and re-label all their devices. Page 39166 of the Federal Register posting reflects testing resources, and as we interpret it, there is one NVLAP accredited laboratory that is not associated with a specific manufacturer or the government. It is unlikely that this single lab

will have the capacity to test all devices manufactured and equally unlikely that government laboratories will be made available for private, for-profit testing.

211.211-3


While we feel that a regular retest requirement is appropriate, we feel that a five-year window may be too restrictive. We suggest consideration of a seven or ten year window.

CONCLUSION

AIHA appreciates the opportunity to work with EPA to help achieve the mutual goal of protecting American workers and we look forward to further opportunities to work with the agency on this and similar issues and regulatory priorities.

If AIHA can be of any further assistance, please contact us. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Cathy L. Cole". The signature is written in a cursive, flowing style.

Cathy L. Cole, CIH, CSP
AIHA President