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DRAFT

MEMORANDUM

SUBJECT: Noise Program Delegations
FROM: Jennifer Joy Wilson
Assistant Administrator
for External Affairs
TO: Kathy Petruccelli
Director, Management and
Organization Division

Attached are several revisions to the delegations for the "Noise Control Act of 1972," contained in the Agency Delegations Manual.

These revisions, with indicated exceptions, would transfer the delegated authorities from the Assistant Administrator for External Affairs to the Assistant Administrator for Air and Radiation. Since the "Civil Judicial Enforcement Actions" delegation only involves the Office of Enforcement and Compliance Monitoring and does not pertain to the Office of Air and Radiation or External Affairs responsibilities, it has not been revised. Three new proposed delegations are included that would specifically assign responsibility for federal programs, aircraft noise, and public information and education, to the Assistant Administrator for External Affairs. When the proposed changes are complete these three items would be the only noise program responsibilities remaining in the Office of External Affairs.

Please initiate these changes and circulate through "green border" for review. If you need additional information relative to this request, please contact Don Franklin of my staff on 382-5078.

Attachments

DELEGATIONS

NOISE CONTROL ACT11-1. Inspections and Information Gathering1. AUTHORITY.

a. To have access to information and results of tests; to copy documents pursuant to the Noise Control Act; and to obtain warrants for the purpose of performing inspections or information gathering.

b. To require manufacturers of products, to which regulations under Section 6 or Section 8 of the Noise Control Act apply, to maintain records, make reports and tests, and provide information.

c. To carry out or require the carrying out of any other inspection and information gathering activities authorized by the Noise Control Act.

d. To designate representatives of the Administrator to perform the functions contained in subparagraphs 1.a, 1.b, and 1.c.

2. TO WHOM DELEGATED. The Assistant Administrator for ~~External Affairs~~ ^{AIR AND RADIATION}, Regional Administrators, and the Assistant Administrator for Enforcement and Compliance Monitoring.

3. LIMITATIONS.

a. The Assistant Administrator for ~~External Affairs~~ ^{AIR AND RADIATION} and the Assistant Administrator for Enforcement and Compliance Monitoring must notify the appropriate Regional Administrator before exercising the authority under subparagraph 1.a.

b. The Assistant Administrator for ~~External Affairs~~ ^{AIR AND RADIATION} and the Regional Administrators must consult with the Assistant Administrator for Enforcement and Compliance Monitoring or his designee prior to obtaining warrants.

4. REDELEGATION AUTHORITY. This authority may be redelegated.

5. ADDITIONAL REFERENCES. 40 CFR 204, 205, 211; Section 13(a) of the Noise Control Act.

DELEGATIONS

NOISE CONTROL ACT11-2. Testing by Agency

1. AUTHORITY. To require manufacturers of products, to which regulations under Section 6 or Section 8 of the Noise Control Act apply, to make products in the hands of the manufacturer available for testing and to conduct such testing pursuant to Section 13(a) of the Noise Control Act.
2. TO WHOM DELEGATED. Assistant Administrator for ~~External Affairs~~ ^{AIR AND RADIATION}.
3. REDELEGATION AUTHORITY. This authority may be redelegated.
4. ADDITIONAL REFERENCES. 40 CFR 204, 205, 211.

DELEGATIONS

NOISE CONTROL ACT11-3. Product Exemptions

1. AUTHORITY. To exempt any product or class of products for purposes of research, investigations, studies, demonstrations, training, or national security from the prohibitions of Sections 10(a)(1)-(3) and (5) pursuant to Section 10(b)(1) of the Noise Control Act.
2. TO WHOM DELEGATED. Assistant Administrator for ~~External Affairs~~ **AIR AND RADIATION**.
3. REDELEGATION AUTHORITY. This authority may be redelegated.
4. ADDITIONAL REFERENCES. 40 CFR 204, 205, 211.

DELEGATIONS

NOISE CONTROL ACT11-4. New Products and Labeling Regulations

1. AUTHORITY. To implement enforcement provisions of new products and labeling regulations pursuant to Section 6 and Section 8 of the Noise Control Act.
2. TO WHOM DELEGATED. Assistant Administrator for ~~External Affairs~~ ^{AIR AND RADIATION}.
3. REDELEGATION AUTHORITY. This authority may be redelegated.
4. ADDITIONAL REFERENCES. 40 CFR 204, 205, 211.

DELEGATIONS

NOISE CONTROL ACT11-5. Administrative Orders

1. AUTHORITY. To initiate proceedings under the Noise Control Act for the issuance of orders specifying the relief determined necessary to protect the public health and welfare whenever any person is in violation of the Act.
2. TO WHOM DELEGATED. Assistant Administrator for ~~External Affairs~~ ^{AIR AND RADIATION} and Regional Administrators.
3. LIMITATIONS.
 - a. Regional Administrators must consult with the Assistant Administrator for Enforcement and Compliance Monitoring or his designee and the Assistant Administrator for ~~External Affairs~~ or his designee before exercising the above authority. ^{AIR AND RADIATION}
 - b. The Assistant Administrator for ~~External Affairs~~ ^{AIR AND RADIATION} may exercise these authorities in multi-Regional cases or cases of national significance. In addition, the Assistant Administrator for External Affairs must consult in advance with the Assistant Administrator for Enforcement and Compliance Monitoring or his designee and must notify any affected Regional Administrators or their designees when exercising the above authority.
 - c. The Assistant Administrator for ~~External Affairs~~ ^{AIR AND RADIATION} Enforcement and Compliance Monitoring and the Assistant Administrator for ~~External Affairs~~ may waive their respective consultation requirements by memorandum.
4. REDELEGATION AUTHORITY. This authority may be redelegated.
5. ADDITIONAL REFERENCES. Sections 10(a) and 11(d)(1) of the Noise Control Act.

DELEGATIONS

NOISE CONTROL ACT11-6-A. Civil Judicial Enforcement Actions

1. AUTHORITY. To request the Attorney General to appear and represent the Agency in any civil enforcement actions and to intervene in any civil enforcement actions instituted under the Noise Control Act (NCA); to request the Attorney General to decline to prosecute a previously referred civil enforcement action; to determine that the Attorney General has failed or refused to appear and represent the Agency in any NCA civil enforcement action; to appear and represent the Agency in any such action where the Attorney General has refused or failed to appear and represent the Agency; to request the Attorney General to initiate an appeal of such an action and represent the Agency in such an appeal; and to initiate such an appeal and represent the Agency when the Attorney General fails to do so.
2. TO WHOM DELEGATED. Assistant Administrator for Enforcement and Compliance Monitoring and the General Counsel.
3. LIMITATIONS.
 - a. The Assistant Administrator for Enforcement and Compliance Monitoring must notify the Assistant Administrator for External Affairs and the appropriate Regional Administrator when a case is referred to the Department of Justice and when an appeal is formally initiated.
 - b. The General Counsel may only exercise this authority in regard to appeals.
 - c. Any exercise of the appeal authority will be done jointly by the General Counsel and the Assistant Administrator for Enforcement and Compliance Monitoring.
4. REDELEGATION AUTHORITY. This authority may be redelegated.
5. ADDITIONAL REFERENCES.
 - a. Memorandum of Understanding between the Agency and the Department of Justice, June 1977; Sections 11(c)-(d) of the Noise Control Act.
 - b. See the Chapter 11 delegation entitled "Emergency TRO's" for Regional Administrators' authority to make direct referrals of requests for emergency NCA Temporary Restraining Orders.

DELEGATIONS

NOISE CONTROL ACT11-6-C. Settlement or Concurrence in Settlement of
Civil Judicial Enforcement Actions

1. AUTHORITY. To settle or exercise the Agency's concurrence in the settlement of civil judicial enforcement actions under the Noise Control Act (NCA); to amend a consent decree issued under NCA; and to request the Attorney General to amend a consent decree issued under NCA.
2. TO WHOM DELEGATED. Assistant Administrator for Enforcement and Compliance Monitoring.
3. LIMITATIONS. The Assistant Administrator for Enforcement and Compliance Monitoring must consult with the Agency official that initiated the case (that is, either the Assistant Administrator for ~~External Affairs~~ or the appropriate Regional Administrator or designees) before exercising this authority.
4. REDELEGATION AUTHORITY. This authority may be redelegated.

AIR AND RADIATION

DELEGATIONS

NOISE CONTROL ACT11-6-D. Emergency TRO's

1. AUTHORITY. To refer requests for emergency Temporary Restraining Orders under the Noise Control Act to the Department of Justice and to the appropriate United States Attorney.
2. TO WHOM DELEGATED. Regional Administrators and the Assistant Administrator for Enforcement and Compliance Monitoring.
3. LIMITATIONS.
 - a. The Regional Administrators must notify the Assistant Administrator for Enforcement and Compliance Monitoring or his designee and the Assistant Administrator for ~~External Affairs~~ or his designee when exercising this authority. AIR AND RADIATION
 - b. The Assistant Administrator for Enforcement and Compliance Monitoring must notify the appropriate Regional Administrator or his designee and the Assistant Administrator for ~~External Affairs~~ or his designee when exercising this authority. AIR AND RADIATION
4. REDELEGATION AUTHORITY. This authority may only be redelegated to on scene coordinators.
5. ADDITIONAL REFERENCES.
 - a. Memorandum of Understanding between the Agency and the Department of Justice, June 1977; Section 11(c)-(d) of the Noise Control Act.
 - b. For referral of other civil actions under the Noise Control Act, see the Chapter 11 delegation entitled "Civil Judicial Enforcement Actions."

DELEGATIONS

NOISE CONTROL ACT11-7. Subpoenas and Oaths

1. AUTHORITY. To issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and to administer oaths pursuant to the Noise Control Act.
2. TO WHOM DELEGATED. Assistant Administrator for Enforcement and Compliance Monitoring and Assistant Administrator for ~~External Affairs~~ AIR AND RADIATION.
3. LIMITATIONS. The Assistant Administrator for ~~External Affairs~~ AIR AND RADIATION must consult with the Assistant Administrator for Enforcement and Compliance Monitoring prior to issuing subpoenas.
4. REDELEGATION AUTHORITY. This authority may be redelegated.
5. ADDITIONAL REFERENCES. Section 16(a) of the Noise Control Act.

DELEGATIONS

NOISE CONTROL ACT11-8. Low-Noise-Emission Product (LNEP)
Certification Process1. AUTHORITY.

a. To determine whether a product is a Low-Noise-Emission Product (LNEP) pursuant to Section 15(b)(5)(F) of the Noise Control Act of 1972.

b. To decide whether a LNEP is a suitable substitute for any class of product presently being purchased by the Federal government pursuant to Section 15(b)(5)(F) of the Noise Control Act.

c. To certify any product which qualifies in accordance with Section 15(b)(2)(A-C) pursuant to Section 15(b)(2) of the Noise Control Act.

d. To revoke LNEP determinations and product certifications pursuant to Section 15(b)(5)(C) of the Noise Control Act.

e. To recertify products pursuant to Sections 15(b)(5)(C) and 15(f) of the Noise Control Act.

2. TO WHOM DELEGATED. Assistant Administrator for ~~External Affairs~~ ^{AIR AND RADIATION}

3. REDELEGATION AUTHORITY. This authority may be redelegated.

DELEGATIONS

NOISE CONTROL ACT11-9. Post Certification Testing

1. AUTHORITY. To test, pursuant to Section 15(f) of the Noise Control Act, certified low-noise-emission products purchased by the Federal government to determine if noise emissions from those products exceed the levels on which certification was based.
2. TO WHOM DELEGATED. Assistant Administrator for ~~External Affairs~~ AIR AND RADIATION
3. REDELEGATION AUTHORITY. This authority may be redelegated.

DELEGATIONS

NOISE CONTROL ACT11-10. Noise Control Program Grants and
Cooperative Agreements

1. AUTHORITY. To approve financial assistance, through grants and/or cooperative agreements, to States, local governments, and authorized regional planning agencies for the purposes authorized by Section 14(c) of the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978, and to institutions of higher learning for the operation of technical assistance centers and for the other nonresearch activities authorized by Section 14 of the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978.

2. TO WHOM DELEGATED.

3. THE ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION.
 b, a. The Assistant Administrator for External Affairs;
 c, b. The Assistant Administrator for Research and Development; and
 d, e. Regional Administrators.

3. LIMITATIONS.

a. The authority delegated to the Assistant Administrator for Research and Development is limited to multi-disciplinary training assistance under Section 14(c)(5) initiated by ORD or training assistance initiated by an office other than the primary holder of training grant authority.

b. The authority delegated to the Regional Administrators is limited to the approval of financial assistance under Sections 14(c)(1)(A), 14(c)(1)(B), 14(e) and 14(f).

^{c, a}
^{d, a} The Assistant Administrator for ^{AIR AND RADIATION} ~~External Affairs~~ retains authority for additional approvals in all areas for projects having significant national impact.

4. REDELEGATION AUTHORITY. This authority may be redelegated.

The authority delegated to the Assistant Administrator for External Affairs is limited to the approval of financial assistance under sections 14(a) and 14(c)(5).

NOISE CONTROL ACT

11-11. Federal Programs

1. AUTHORITY.

- a. To implement a federal facilities program dealing with other Federal agencies to ensure that each department, agency, or instrumentality of the government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the emission of noise, complies with all environmental noise abatement and control requirements pursuant to Section 4(a) and (b)(1)(2) of the Noise Control Act.
- b. To consult with and review the standards and regulations dealing with noise abatement and control proposed by each Federal agency pursuant to Section 4(c)(2)(3) of the Noise Control Act.

2. TO WHOM DELEGATED. Assistant Administrator for External Affairs.

3. REDELEGATION AUTHORITY. This authority may be redelegated.

4. ADDITIONAL REFERENCES. Sections 4(a)(b)(1)(2) and (c)(2)(3) of the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978 and Section 611 of the Federal Aviation Act of 1958, as amended.

NOISE CONTROL ACT11-12. Control and Abatement of Aircraft
Noise and Sonic Boom

1. AUTHORITY. To consult with the Federal Aviation Administration (FAA) on standards and measurement of aircraft noise and sonic boom and the regulations necessary to provide for the control of such noise and sonic boom. Additionally, to consult with the FAA relative to any exemption with respect to any standard or regulation dealing with aviation noise issued under the provisions of Section 611 of the Federal Aviation Act of 1958, as amended by Section 7(b) of the Noise Control Act of 1972.
2. TO WHOM DELEGATED. Assistant Administrator for External Affairs.
3. REDELEGATION AUTHORITY. This authority may be redelegated.
4. ADDITIONAL REFERENCES. Section 7 of the Noise Control Act of 1972 and Section 611 of the Federal Aviation Act of 1958, as amended.

NOISE CONTROL ACT

11-13. Public Information and Education

1. AUTHORITY. To develop and disseminate information and educational materials to all segments of the public on the public health and other effects of noise and the most effective means of noise control, through the use of materials for school curricula, volunteer organizations, radio and television programs, publication and other means pursuant to Section 14(a) and (c)(5) of the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978.

2. TO WHOM DELEGATED. Assistant Administrator of External Affairs.

3. REDELEGATION AUTHORITY. This authority may be redelegated.

4. ADDITIONAL REFERENCES. Section 14(a) and 14 (c)(5) of the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978.