

MEMORANDUM

n-96-01  
II-A-654

11 MAY 1982

Subject: Noise Office Regulatory Phase-out Actions

From: Kathleen M. Bennett  
Assistant Administrator for  
Air, Noise and Radiation

To: Anne M. Gorsuch  
Administrator

*Agree  
to withdraw  
for summer  
etc*  
*Spill  
for  
for  
for*  
*John*  
*for*

On May 7, Joe Foran met with John Ropes and Chuck Elkins of my staff to discuss my recommendation to withdraw:

1. The proposed property line noise standards for interstate rail carriers;
2. The proposed Interstate Rail Carrier noise emission standard for refrigeration cars; and
3. The proposed amendments to the test procedure for the existing motorcycle and motorcycle exhaust system noise emission regulations.

Joe requested that we briefly summarize for you the rationale for these actions; detailed discussions are presented in the attendant action memorandums.

As a preface to this summary, you will recall that we plan to close the Noise Office by September 30, 1982. In my memo to you of October 17th, 1981, I delineated our phase-out plan which included the withdrawal of four proposed noise regulations and the removal of six products from the Agency's list of major noise sources. The above recommended actions are part of this "phase-out" plan.

Interstate Rail Carrier:

In June of 1977 the American Association of Railroads (AAR) filed suit seeking further protection, through Federal preemption under Section 17 of the Noise Control Act, from a possible multiplicity of different State

and local noise standards and regulations. The court agreed with the AAR and directed the Agency to issue additional regulations for railroad "equipment and facilities."

On August 7, 1979 we published proposed standards for railroad property line noise limits and limits on noise emissions from three specific railyard noise sources, including refrigerator cars. On January 4, 1980 we promulgated final regulations for locomotive load cell test stands, switcher locomotives, retarders and car coupling operations.

As a result of negotiations between the EPA, the AAR, and the State of Illinois, an intervenor in the case, a settlement was agreed upon. On November 12, 1981 a joint petition was filed with the court to dismiss the case and relieve the Agency of the obligation to promulgate additional railroad noise regulations. On November 24, the Court dismissed the case, thereby terminating any obligation to go forward with the promulgation of the railyard property line and refrigeration car noise regulations.

The withdrawal of these two proposed regulations is in keeping with the Court order. Further, their withdrawal will remove the potential capital cost burden of \$293 million and an associated annualized cost of \$32 million on the industry and users.

Motorcycle Test Amendment:

The Motorcycle Test Amendment was intended to strengthen the Anti-tampering provisions of the motorcycle noise regulation. It would have required manufacturers to remove all "easily removable" noise attenuating components from exhaust systems before conducting the required noise measurements. It was hoped that this requirement would encourage manufacturers to incorporate permanently fixed noise attenuating components. My reassessment

of this proposal and subsequently available information have led me to conclude that:

- (a) existing Anti-tampering requirements in the regulation, that prohibit removal or disabling of noise control features, are adequate.
- (b) the proposed amendment (resulting in redesign and retooling) would impose an unnecessary economic burden on manufacturers and users of motorcycles.
- (c) there is a potential conflict with U.S. Forest Service off-road motorcycle maintenance requirements that would preclude the use of permanently fixed muffler components.

Consequently, I have recommend this action be withdrawn. Our review of the docket comments and discussions with interested parties indicates this withdrawal action would be met with wide spread approval since this action would not adversely affect the existing motorcycle noise regulation.

Other Pending Actions:

Soon to follow are five other noise regulatory actions which are key to our phase-out program. They are complimentary to pending legislation in Congress. The House bill (HR 3071) would continue EPA's regulatory authority for the major contributors to construction site and transportation noise. The Senate bill (S 1204) would retain regulatory authority only for Interstate Motor and Rail Carriers.

The recommended noise regulatory actions are not expected to produce negative public reaction nor be controversial. In fact, they should avert the criticism being raised by State and local governments that EPA will leave preemptive, unenforced rules on the books. Further, several of these regulatory actions will remove potential economic burdens on the industry.

BA

These actions are:

1. Rescission of the Garbage Truck noise regulation - now in Red Border;
2. Revision of Major Noise Identification Reports to withdraw the following products from the list of identified major noise sources: pavement breakers, rock drills, power lawnmowers, truck transport refrigeration units, buses, and wheel and crawler tractors - now in Steering Committee;
3. Withdrawal of the proposed rules for Special Local Determinations for Interstate Rail Carriers and Interstate Motor Carriers - now in Steering Committee;
4. Removal of reporting and record keeping requirements for existing noise regulations and the introduction of self-certification compliance in lieu of existing production verification testing requirements - now in development; and
5. Modification of the existing Interstate Motor Carrier regulation to align it with the existing Medium and Heavy Truck noise standards - now in development.

Summary:

It is imperative that we respond promptly to these ONAC regulatory initiatives in order to permit completion before the dissipation of all institutional memory occurs. The ONAC staff has been reduced to 20 from an original contingent of 92. Regulatory business that is unfinished as of September 30 will remain unfinished, leaving the Agency in a risky legal position, and in a most difficult position to complete such actions at a later date.

Completion of the above actions will relieve the Agency of the obligation to promulgate future noise regulations. Five regulations will remain on the books. Two will be enforced by the Department of Transportation and three will be subject to the self-certification compliance procedures soon to be recommended to you:

The two regulations enforced by DOT are:

- o Interstate Motor Carriers
- o Interstate Rail Carriers

The three regulations subject to self-certification compliance are:

- o Medium and Heavy Trucks
- o Motorcycles
- o Portable Air Compressors

*Conclusion:*

*If we may be allowed prompt action on these pending regulatory proposals I have every reason to believe we will be able to phase out the noise program on a timely basis and non-controversial basis.*

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*May 11/82*  
*John Ropes*  
*Chuck Elkins*  
*Joe Foran*  
*Michael...*  
*...*  
*...*

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*Handwritten notes:*  
By a committee of the Federal Government...  
which... regulations...  
... will be able to plan...  
... and...

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