



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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OFFICE OF  
AIR, NOISE, AND RADIATION

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MEMORANDUM

SUBJECT: Status of S&RD Phase-Out

FROM: Kenneth E. Faith  
Acting Director  
Standards & Regulations Division

TO: John M. Ropas  
Acting Director  
Office of Noise Control

Listed below is the phase-out status of each regulatory activity in S&RD. There are a number of legal obligations which we must address in order to effect an orderly close-out. You asked that we try and provide you with a schedule of completion. Unfortunately, we have a number of actions that will require a decision by our top management before we can provide you an explicit schedule. In these cases I have considered the time and staff required to complete the action once a decision is made.

Legal Obligations

A. Wheel and Crawler Tractors. This rule was proposed in July of 1977.

1. Under the present Act the Administrator has no legal option but to promulgate a final rule. The final rule package has been complete for approximately three years. However, it has been management's decision to hold up promulgation.

2. If either the House or Senate revisions to the Act are adopted, the Agency will no longer have authority to issue this regulation.

3. Phase-Out Status. All documentation and official files for this rulemaking have been catalogued and packaged for the archives. We no longer have any staff sufficiently knowledgeable to complete this rulemaking action nor do we have adequate funding or on-line contractor support.

4. Disposition. In the absence of a change in legislation, the Administrator must promulgate this rule.

B. Buses. This rule was proposed in September of 1977.

1. Under the present Act the Administrator has no legal option but to promulgate the final rule. The final rule package cleared Agency Red Border review in June of 1980 and was sent to the Administrator for signature. On January 19, 1981 the package was returned by the Administrator to the program office with a request that a review be made of other non-regulatory options. Under the law, the Administrator does not have discretionary authority to consider options other than regulation once a product has been identified under Section 5(b)(1) as a "major source of noise."

2. Under the Senate version the Agency could remain committed to promulgate this final regulation, but revised to address only those buses that are used in interstate commerce.

3. Under the House version the Agency will remain committed to promulgate this final regulation.

4. Phase-Out Status. All documentation and official files for this rulemaking have been catalogued and packaged for the archives. Management decided to defer any further activity on the final rule package until the new Administrator was in place. The Project Officer for this rule is no longer on board. The "yet-to-be" negotiated LOE contract could provide adequate technical support if we are not required to perform a Regulatory Impact Analysis per Executive Order 12291.

5. Disposition. The Agency will continue to have a legal responsibility to promulgate this regulation, in some form, unless the Noise Control Act is abolished. In light of Executive Order 12291, a new Regulatory Impact Analysis will probably be required. To promulgate this rule will require a minimum staff of 1.5 person years, per year, for a period of 12 to 24 months from date of decision. Extramural funding of approximately \$250,000 is estimated for the RIA. This regulatory activity must be brought to the attention of the AA since even with possible Congressional revisions, the Administrator is still required to promulgate.

C. Motorcycles. The final noise emission regulation was promulgated in December of 1980. At the same time, a technical amendment was proposed that would alter the compliance testing procedure.

1. Under the present Act the Administration has authority to withdraw the proposed amendment. We sent forward to the Acting Assistant Administrator in July of 1981 our recommendations that a decision concerning the "technical amendment" be deferred until the uncertainties of the noise program are resolved.

2. Under the Senate version of the Act, the Agency's authority to issue the motorcycle regulation would be removed and the existing regulation and proposed testing amendment would be revoked.

3. Under the House version, the regulation would remain in force and the Agency would need to make a decision regarding the technical amendment.

4. Phase-Out Status. All documents and official files for this rulemaking have been catalogued and packaged for the archives. The project officer for this rule is no longer on staff. We have an active contractor for motorcycles with approximately \$49K available funding.

5. Disposition. The Assistant Administrator should consider withdrawing the proposed technical amendment. At present, EPA has in hand insufficient evidence and data to counter recent industry opposition to this test requirement for two-cycle motorcycles. Withdrawal should not adversely affect the existing regulation. The withdrawal can be effected with a Federal Register Notice that can be completed within 30 days of decision. Action should be taken promptly before the last knowledgeable staff member departs.

D. Medium and Heavy Trucks. This regulation was promulgated in April 1976. It is a two-stage standard with original effective dates of January 1978 and January 1982. The 1982 effective date was deferred to 1983 in January of this year. In response to industry requests and a request from the President's Commission on Regulatory Review, we have recently completed a reassessment of the 80 dB, 1983 requirement. Based on this reassessment, the Administrator indicated she wished to issue a further three-year deferral of the 80 dB standard to 1986. The deferral notice has cleared the AA and was sent to OMB for review on September 3.

1. The deferral notice should not be affected by any of the Congressional revisions.

2. The deferral notice commits the Agency to revisit, prior to January 1, 1986, the question of withdrawing the 80 dB standard.

3. Because this regulation will remain in effect regardless of any known Congressional revisions to the Act, and since it does have a yet-to-be-met effective date, we need a decision as to whether we need to carry out the EO 12291 cost/benefit analysis.

4. Phase-Out Status. The files and documentation for this rule are presently being catalogued and packaged for the archives. Completion is expected by November 1, 1981. This program has a Docket Analysis contractor with approximately \$35K of unexpended funds. There is also budgeted for FY 82, \$173K for a "Post Regulation Analysis." The contract for this work has not yet been awarded. The Program Manager for this action is still on board, but is expected to depart on or about October 1, 1981.

5. Disposition. Obtain immediate decision regarding EO 12291 Regulatory Impact Analysis (RIA). We should argue strongly that existing cost effective analysis is adequate. There is no budget for RIA in FY 82 and approximately \$200K would be required; funds budgeted for the post regulatory analysis could be reprogrammed to cover this. RIA will require approximately 18 months from initiation to completion and one person year/year of EPA staff; we will not have knowledgeable staff available.

E. Railroads. The Agency is under Court Order to issue more extensive (preemptive) standards for both rail equipment and facilities. In partial compliance with the Court Order, the Agency issued final noise emission standards for various specific railroad noise sources in January of 1980. In final fulfillment of the Court Order, the Agency proposed facility emission (property line) noise standards in April of 1979. The final standards have not yet been promulgated. On September 30, 1980, the Agency issued a Federal Register Notice of intent to promulgate the facility emission standard and additional source standards. The Notice requested public comment.

1. The Court's interpretation of Section 17 of the present Act requires the Administrator to issue further noise emission regulations for rail equipment facilities, or show that the standards issued to date are sufficiently preemptive of State and local regulations to afford the protection Congress intended for the industry.

2. The Senate version to the Act amends Section 17 and permits the Administrator to exercise discretion in the issuance of rail noise emission standards. Consequently, this revision would permit the Administrator to decide that no further regulation is necessary and the Agency could avoid promulgation of the property line or additional source standards.

3. The House version of the Act leaves Section 17 unchanged from the existing Act. Thus the legal obligations stated above, remain with the Administrator.

4. Phase-Out Status. The cataloguing and packaging of all files and records for this regulatory activity will be completed by November 1, 1981. The technical support contract for this action remains open, however, there are no funds remaining in the contract. The principal Project Officer for this regulatory action has departed ONAC and only the Program Manager is presently available.

5. Disposition. We are presently seeking to negotiate a settlement with the rail industry that would obviate the need to issue any further regulations. Should this settlement succeed, the only remaining action would be to publish notice of its resolution in the Federal Register. This can be accomplished with existing staff within 30 days of agreement by the Court to dismiss the suit. If negotiations do not succeed, the Agency is required to promulgate further regulations. The Agency will need to make available approximately 1.5 person years per year for a period of approximately 30 months. In addition, extramural funding

of approximately \$300K will be necessary if the Agency is required to conduct further analyses attendant to additional source standards. This latter action would certainly cause the Agency to miss the Court imposed due date of November 26, 1981. Thus a further time extension from the Court would be needed.

F. Garbage Trucks (Truck Mounted Solid Waste Compactors). This regulation became effective October 1, 1980. In February, 1981 the Agency suspended enforcement for a period of six months or until a technical problem, concerning compliance testing, had been resolved. Although the technical problem was resolved by May of 1981, the DAA elected to postpone the issuance of an amendment to the regulation until the new AA was on board. The Agency is also in litigation on this regulation, the charges being "vicarious liability" and "authority to impose useful life requirements." However, the Court has agreed to defer arguments pending resolution of the compliance testing problem.

1. Under the existing Act the garbage truck regulation will remain in effect. The Agency must resolve the technical problems, associated with the compliance testing requirements, brought to its attention by manufacturers back in February of 1981. The Agency must also make a decision on the suspension of enforcement.

2. Under both the Senate and House revisions to the Noise Control Act, this regulation would be revoked in its entirety and thus no further action would be required.

3. Phase-Out Status. All records and official files attendant to this rulemaking action have been catalogued and packaged for archiving. A draft amendment to this regulation was prepared and submitted to the DAA in May of 1981. The package was not sent forward to the Administrator. Project Officer and Program Manager for this rulemaking have both departed the Agency. This rulemaking action has no open technical support contracts.

4. Disposition. The technical amendment resolving the compliance testing problem should be issued regardless of whether the Act remains as-is or is revised. In the latter case there is the likelihood that State or local governments may adopt the Federal rule as written. Without the amendment, the industry would continue to be confronted with unnecessary testing costs. The FR notice would also state the Agency intentions regarding its suspension of enforcement and possibly the approach it would take to resolve the litigation. The amendment could be completed within 30 days of the decision to issue provided the decision is made prior to the departure of the now Acting Division Director. No significant contractor support will be required.

G. Hearing Protector Labeling. This regulation was promulgated in September of 1979 with an effective date of September 27, 1980. The regulation requires that the label on hearing protectors contain "comparative range" noise

attenuation information. The final rule obligates the Agency to provide the industry updated "comparative range" information within 18 months after promulgation, based on industry's compliance verification reports. This action would be a technical amendment to the final regulation and can be effected by a Federal Register Notice; this is not a formal rulemaking action.

1. Under the existing act the labeling regulation will remain in effect even though the Agency has suspended recordkeeping and reporting requirements. Consequently, the Agency is obliged to issue the technical amendment within the committed timeframe.

2. Under both the House and Senate revisions of the Act, Section 3 - Product Noise Labeling would be eliminated, thus removing the Agency's authority to require product labeling and the Agency's obligation.

3. Phase-Out Status. All records and files attendant to this rulemaking action have been catalogued and packaged for shipment to the archives. The Program Manager and principal Project Officer for this activity are no longer on staff. Docket contractor support remains available with approximately \$10.0K unspent.

4. Disposition. If the Act remains as is, the Agency is obliged to issue an amendment by way of a Federal Register Notice, which provides industry with updated Noise Reduction Ratings for their comparative range statement on the label. Approximately 3 person months will be required to review the compliance verification reports, extract the needed data, and prepare the necessary Federal Register Notice. If either the House or Senate revision of the Act are adopted, Section 8 will be eliminated. Consequently, the Hearing Protector Labeling Regulation will automatically be revoked and no further rulemaking action would be required. In this latter event the Safety Equipment Institute (SEI) has formally expressed a desire to adopt the Federal labeling requirements as an industry voluntary program. Some minimal effort (one person month) would be required to effect a "formal" transfer.

H. Low Noise Emission Products (LNEP). In 1975 the Agency promulgated the procedures that must be followed in order to have the Administrator certify a product as a "low noise emission product." The Act directs the Administrator to establish LNEP levels for each product for which noise emission regulations have been established. To date, the criteria and rationale attendant to the establishment of LNEP levels have not been published. However, LNEP levels have been established and promulgated as part of the rulemaking for motorcycles and garbage trucks. The Portable Air Compressor Regulation and the Medium and Heavy Truck Regulation do not have designated LNEP levels. The LNEP rulemaking package was essentially completed two years ago. However, it was not sent forward because of differences of opinion within ONAC concerning the LNEP levels for Medium and Heavy Trucks. This is not a major rulemaking and there are no costs of compliance.

1. Under the existing Act the Administrator is directed to establish LNEP levels for all products regulated by the Federal Government. Consequently, the Agency is obliged to issue levels for Portable Air Compressors and Medium and Heavy Trucks.

2. Both the Senate and House revisions of the Act retain the LNEP requirement. However, because both remove EPA's authority to regulate construction equipment, the LNEP level for Portable Air Compressors would not be required.

3. Phase-Out Status. All records and official files for this rulemaking have been catalogued and packaged for the archives. The Project Officer for this action is no longer on staff and there is no current contract in support of this activity.

4. Disposition. The review, upgrading and completion of the LNEP regulatory package, would require approximately one person year of EPA staff effort. No significant contract support would be required. Publication of the LNEP criteria for both medium and heavy trucks and portable air compressors could be effected within twelve months from date of decision. No significant savings in time will result if portable air compressors are eliminated from consideration.

I. Major Noise Source Identification. Four products, Truck Transport Refrigeration Units, Power Lawnmowers, Pavement Breakers and Rock Drills were identified by the Administrator as major sources of noise, under Section 5(b)(1) of the Act during the 1975 - 1977 timeframe. The Act requires the Administrator to propose noise emission standards for all products so identified. This is not discretionary on the part of the Administrator once he has formally made an identification.

1. Under the current Act the Administrator has no legal option but to propose noise emission standards for these products.

2. The Senate revision to the Act removes EPA's authority to regulate these products. Consequently, no further action on the part of the Administrator would be required.

3. The House revision removes EPA's authority to regulate pavement breakers, rock drills, and power lawnmowers. However, as presently written, the Agency may remain obligated to promulgate regulations for refrigeration units because of their integral relationship with trucks.

4. Phase-Out Status. All files and official records including the results of all previous technical studies for these products have been catalogued and packaged for the archives. Project Officers for the lawnmower and truck transport refrigeration unit are no longer on staff. The Project Officer for Pavement Breakers and Rock Drills is presently on staff and the technical support contract for these latter two products is currently active, although out of funds.

5. Disposition. The Administrator is required to propose regulations for these products unless she finds they are no longer major sources of noise and thus can issue a de-identification notice. However, such notice has the potential for precluding State and local governments from taking any future action at their level since the Federal Government will have officially determined that these products are not major sources of environmental noise. This could result in litigation between State and local governments and the Federal Government. General Counsel will need to give us an opinion on this issue. Under the Senate revision no further action will be required since these identifications will automatically be revoked. Under the House revision the Agency may be required to propose regulations for truck transport refrigeration units. General Counsel's opinion on this item is also needed. Under the existing Act, we would require approximately four person years per year of staff effort over a period of two years to propose noise emission standards for these products. Contractual support effort of approximately \$350K would be required to upgrade technical studies. Under Executive Order 12291 the Agency would also be required to conduct regulatory impact analyses for each proposed rulemaking action. We estimate an additional cost of approximately \$200K per regulation for a total of \$600K.

J. Interstate Motor Carrier (IMC). This regulation was promulgated in 1975 under authority of Section 18. The regulation established "in-use" emission levels for all motor vehicles having GVWR greater than 10,000 lbs. These early levels are not consistent with those now required for medium and heavy trucks and would, in fact, permit very significant degradation of the 83 dB truck. Thus, we have two Federal regulations with one capable of nullifying the benefits of the other. It has always been the intent to bring the IMC regulation into concert with the new truck regulations.

1. Under the existing Act the potential for conflict between the IMC and new truck regulation remains.
2. Under the Senate revision, the regulation of new trucks will fall under Section 18. The conflict and confusion between the two regulations can be greatly increased.
3. The House revision poses the same difficulties as the existing Act.
4. Phase-out Status. All records and files will be catalogued and packaged for the archives by October 1, 1981. The Project Officer and Program Manager for this action is expected to depart ONAC on or about October 1. Technical support is available through the on-going truck docket contractor.



5. Disposition. The alignment of the IMC regulation with the new truck regulation may be considered a "major" rulemaking. The action would require an EO 12291 analysis. Staff requirements are estimated at 1.5 person years per year for 24 months. Extramural funding of approximately \$250K is estimated for the RIA.

K. Non-Regulation Actions.

1. Phase-out activities for all pre-regulatory studies will be complete by October 1, 1982 with all records and files catalogued and packaged for the archivists.

2. Phase-out of S&RD computer models is expected to be complete by October 1, 1982. This activity can be expedited if we forego complete documentation for models not critical to existing regulations. The project officer for this action will depart ONAC on September 21. Contractor support is available with approximately \$ ~~51.2K~~ available thru FY 82.

3. Post Regulatory Analysis of the new truck regulation is scheduled for FY 82 with funding of \$173K. Proposals for this study have been received but contract not yet awarded. These funds may be required for EO 12291 analysis as stated in paragraph D above.