

Guidelines for State and Local Governments on the  
Filing and Processing of Applications for Preemption  
Waiver Determinations under Section 17 (c) (2) of the  
Noise Control Act of 1972

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Section 1. Introduction

These guidelines are to act as a supplement to the provisions of Subpart D of 40 CFR 201, which contain the detailed delineation of the United States Environmental Protection Agency's view of the preemptive effect of the Interstate Railroad Noise Emission Regulation and establish the basis upon which determinations for waivers of preemption with respect to that regulation will be made by the Agency.

The guidelines set out below contain the procedures to be followed by State and local governments in filing, and by the EPA in processing applications for waiver of preemption. Included are procedural requirements as to where applications must be filed and what information must be included in supporting statements necessary for the Administrator of the EPA to make a determination, as well as procedures delineating the manner in which the decision process will be conducted for all applications submitted to the Agency.

It is important that State and local governments follow the requirements of and utilize the guidance provided by both these guidelines and the procedures of Subpart D of 40 CFR 201 in addressing any questions or issues associated with the preemptive aspects of the EPA's Interstate Railroad Noise Emission Regulation.

Section 2. Definitions

(a) The definitions of 40 CFR 201, Subpart D, Section 201.30 are applicable to these guidelines.

(b) Deputy Assistant Administrator for Noise Abatement and Control.

An official of the Environmental Protection Agency designated by and acting for the Administrator in making determinations under 40 CFR 201, Subpart D.

(c) Assistant Administrator for Air and Waste Management.

An official of the Environmental Protection Agency designated by and acting for the Administrator in making determinations under 40 CFR 201, Subpart D.

Section 3. Filing of Applications

(a) An application for a determination by the Administrator approving the adoption or enforcement of a regulation which is preempted according to 40 CFR 201, Subpart D, Section 201.32 may be submitted only by any State or local governmental office or agency which has the authority to adopt or enforce such regulation.

(b) All requests, applications, submittals and other communications to the Administrator pursuant to the procedures of 40 CFR 201, Subpart D shall be submitted and addressed to the appropriate Regional Office of the Environmental Protection Agency. All such correspondence shall be filed in triplicate.

Addresses for all EPA Regional Offices are:

U. S. EPA Regional Administrator  
Attention: Noise Office, Special Local Determinations

- (1) Region I, Environmental Protection Agency, Room 2303,  
John F. Kennedy Federal Building, Boston, Massachusetts  
02203. (Connecticut, Maine, Massachusetts, New Hampshire,  
Rhode Island and Vermont).
- (2) Region II, Environmental Protection Agency, Room 847,  
26 Federal Plaza, New York, New York 10007. (New  
Jersey, New York, Puerto Rico, and the Virgin Islands).
- (3) Region III, Environmental Protection Agency, Curtis  
Building, Sixth and Walnut Street, Philadelphia,  
Pennsylvania 19106. (Delaware, Maryland, Pennsylvania,  
Virginia, West Virginia, and the District of Columbia).
- (4) Region IV, Environmental Protection Agency, Suite  
300, 1421 Peachtree Street, N. E., Atlanta, Georgia  
30309. (Alabama, Florida, Georgia, Kentucky, Missis-  
sippi, North Carolina, South Carolina, and Tennessee).
- (5) Region V, Environmental Protection Agency, One North  
Wacker Drive, Chicago, Illinois 60606. (Illinois,  
Indiana, Michigan, Minnesota, Ohio, and Wisconsin).
- (6) Region VI, Environmental Protection Agency, Room 1125,  
1600 Patterson Street, Dallas, Texas 75201. (Arkansas,  
Louisiana, New Mexico, Oklahoma, and Texas).
- (7) Region VII, Environmental Protection Agency, 1735  
Baltimore Avenue, Kansas City, Missouri 64108.  
(Iowa, Kansas, Missouri, and Nebraska).

- (8) Region VIII, Environmental Protection Agency, Lincoln Tower, 1860 Lincoln Street, Denver, Colorado 80203. (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming).
- (9) Region IX, Environmental Protection Agency, 100 California Street, San Francisco, California 94111. (Arizona, California, Hawaii, Nevada, American Samoa, Guam, Trust Territories of Pacific Islands, and Wake Island).
- (10) Region X, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101. (Alaska, Idaho, Oregon, and Washington).

(c) Each application under 40 CFR 201, Subpart D shall include a supporting statement designed to establish that the State or local standard, control, license, regulation or restriction in question is necessitated by special local conditions and is not in conflict with the Federal interstate rail carrier noise emission regulations. The following information shall be included in each supporting statement:

- (1) The name and address of the state or local government agency or office making the request; the name of the official heading that agency or office; and the name, address, and phone number of the principal contact person regarding the request.
- (2) The complete text of the regulation sought to be established or enforced.

(3) Information to permit the Agency to fully assess the nature of the local noise problem which the State or local regulation is attempting to solve. Information which applicants are encouraged to provide includes the following:

(i) A detailed description of the geographical area for which a determination is being requested. Included should be an accurate, up-to-date map indicating the boundaries of the area concerned, and capable of reasonably accurate scaling for the determination of distances; identification of the positions or boundaries of all affected noise sources and any land areas or locations for which classification as noise receivers is appropriate relative to the request; a description of the approximate heights of buildings, walls, barriers, or embankments adjacent to identified noise sources or receivers; and a description of any unusual topographical or climatological conditions which render the area concerned more or less sensitive to noise.

ii) A detailed description of the applicable zoning laws of the area concerned, including zoning exceptions whose identification is appropriate relative to the request, either as noise sources or receivers.

(iii) A detailed description, within the area concerned, of the population impacted by the affected rail carrier noise sources during both daytime (7am - 10pm) and nighttime (10pm - 7am) hours. Included shall be the size and approximate distribution of such impacted population and the nature of the associated land use, such as residential, commercial, industrial, or recreational.

- (4) A detailed statement of the nature and extent of the special local condition which is alleged to necessitate the adoption or enforcement of the State or local regulation. This should include references to information submitted under paragraph (3) of this subsection.
- (5) Information to provide the Agency with a full understanding of the type of rail carrier equipment and/or facilities to which the regulation would apply and the nature of the rail carrier operations

involved. Information which applicants are encouraged to provide includes the following, as appropriate:

(i) The types of locomotives affected by the local regulation (diesel-electric, electric, gas turbine, freight, passenger, or switchers).

(ii) Whether auxiliary equipment on locomotives or railcars, such as air conditioning, refrigeration, or auxiliary power units, is affected.

(iii) Whether facilities such as marshalling yards, humping yards, or maintenance shops are affected.

(iv) The nature and frequency of the operations of the equipment and facilities affected and the times at which such operations occur, such as: the volume flow per hour (trains/hour) as a function of the time of day; the speeds of the trains; the average train length; the number and type of locomotives operating within affected facilities; the type of operations taking place within affected facilities and the time of day at which such operations occur.

- (6) A description of alternative means of compliance available to affected interstate rail carriers; including information as to the technical availability of and the costs associated with each alternative means; and detailed data indicating to what extent each alternative means will achieve compliance with the local regulation. Where an alternative means of compliance involves an operator-oriented requirement, a description must be included describing how an operator of regulated equipment can be expected to know what mode of operation will satisfy the requirement.
- (7) Information or data indicating to what extent full compliance with the local regulation either necessarily or optionally involves the abatement of noise from sources other than interstate rail carrier equipment or facilities.
- (8) A description of any alternative means of solving the local noise problem available to the jurisdiction making the application which do not involve the noise abatement of Federally regulated equipment or facilities, and a discussion of the reasons why these means are inadequate or impractical.
- (9) A one page summary of the particular application which the EPA can publish in the Federal Register according to Section 4(c) of these guidelines.



Such summary shall include a description of: (1) the regulation sought to be established or enforced, (2) the particular local noise problem requiring action, and (3) the rail carrier equipment, facilities, and operations to which the regulation would be applicable.

(10) Other suggested information which applicants are encouraged to provide includes the following:

(i) Information as to the number and nature of recorded complaints received from the population within the area concerned relative to noise generated by affected rail carrier equipment or facilities.

(ii) A description of the benefits expected to result from compliance with the State or local regulation. This information should include the number of people whose exposure to noise is expected to be reduced with such exposure expressed in terms of equivalent sound levels (Leq), day-night equivalent sound levels (Ldn), or some other generally accepted means of measuring population exposure to noise; and the degree of such reduction

relative to the approximate distribution of the benefitted population throughout the area concerned. Other benefits to the health and welfare of the impacted population may also be presented.

(d) Information and data presented in the supporting statement(s) shall be referenced by giving the source from or procedure by which such information or data was derived. All noise measurements shall include a description of the methodology used in obtaining such measurements.

(e) Each supporting statement shall include a certification as to the accuracy and validity of its contents and shall be signed by the official who heads the State or local agency or office submitting the application.

(f) With each application the applicant shall provide the Agency with evidence that it has published in a newspaper of general circulation within its jurisdiction, notice of its intent to file an application with the EPA for a special local determination under 40 CFR 201, Subpart D. Such notice shall include a description of: (1) the regulation sought to be established or enforced, (2) the particular local noise problem requiring action, and (3) the railroad equipment, facilities, or operations to which the regulation would be applicable.

#### Section 4. Processing of Applications

(a) The Regional Administrator with whom applications are filed will review each application and will return any application which lacks any information required by Section 3. The Regional Administrator will also consult informally with the corresponding regional office of the

Department of Transportation and the applicant to assure wherever necessary that other related transportation regulations concerning safety or the routing of hazardous materials have been properly considered. The Regional Administrator will forward to the Deputy Assistant Administrator for Noise Abatement and Control all applications which he adjudges to contain the required information under Section 3. In addition, where he deems appropriate, the Regional Administrator may also prepare and forward recommended determinations concerning individual applications.

(b) The Deputy Assistant Administrator for Noise Abatement and Control will upon receipt of an application make an initial decision as to whether the proposed State or local action is preempted according to 40 CFR 201, Subpart D, Section 201.32.

(1) The procedures in subsections (c) - (f) of this section will be followed with respect to any application which is determined by the Deputy Assistant Administrator to relate to the adoption or enforcement of a preempted regulation.

(2) The Deputy Assistant Administrator will return to the applicant any application which by his determination relates to a regulation which is not preempted, and will take no further action on such application.

(c) The EPA will publish in the Federal Register each application which is determined by the Deputy Assistant Administrator to relate to the adoption or enforcement of a preempted regulation.

(d) Following publication of each application under subsection (c) of this section, interested persons will be given an opportunity to file written comments for a period of not less than 30 days as to whether the Administrator should approve or disapprove such application.

(e) As soon as practicable after the close of the period allowed for comments under subsection (d) of this section, the Deputy Assistant Administrator will consider the comments received and consult with the Secretary of Transportation or his delegate.

(f) The Deputy Assistant Administrator, after consultation with the Secretary of Transportation or his delegate, will, within 180 days of the Agency's receipt of an application, issue a final determination approving or disapproving the application or any part thereof, and will publish such determination in the Federal Register along with an explanation of the basis for his determination. Subject to subsection (g), such determination will constitute final agency action on the application.

(g) The applicant or any affected interstate rail carrier may request that the Assistant Administrator for Air and Waste Management review the final determination of the Deputy Assistant Administrator published under subsection (f).

- (1) Any such request must be filed in writing and must be received by the Assistant Administrator for Air and Waste Management within 30 days after publication of the notice in the Federal Register under subsection (f).
- (2) After receipt of a request for review, which was submitted in a timely manner, the Assistant Administrator for Air and Waste Management will consult informally with the Secretary of Transportation or his delegate and will either affirm the decision of the Deputy Assistant Administrator, or overrule such decision, or refer the matter back to the Deputy Assistant Administrator for further consideration.
- (3) Any determination of the Deputy Assistant Administrator after reconsideration under paragraph (g) (2) will be subject to the notice requirement of subsection (f) and the right of appeal under subsection (g).
- (4) Any decision by the Assistant Administrator affirming or overruling a determination of the Deputy Assistant Administrator will constitute final agency action on the application.