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SENATE

REPORT
No. 97-110

AUTHORIZATIONS FOR THE NOISE CONTROL ACT OF 1972

MAY 15, 1981.—Ordered to be printed

Filed under authority of the order of the Senate of MAY 13
(legislative day APRIL 27), 1981

Mr. GORTON, from the Committee on Environment and Public
Works, submitted the following

REPORT

[To accompany S. 1204]

The Committee on Environment and Public Works reports an original bill (S.1204), to authorize appropriations for the Noise Control Act of 1972 for fiscal year 1982 and for other purposes, and recommends that the bill do pass.

GENERAL STATEMENT

In 1972, the Congress enacted the Noise Control Act of 1972, establishing a Federal regulatory presence in an area which had theretofore been within the exclusive control of States and their political subdivisions. The Noise Control Act authorized the Federal Government to adopt a comprehensive regulatory program for products generally, as well as two other specific sources of noise: railroads and interstate motor carriers.

In addition to authorizing regulations of noise emissions themselves, the 1972 Act permits Federal activity in related fields, including labelling, recordkeeping, and reporting.

In 1979, the Noise Control Act was amended by adding the Quiet Communities Act, a non-regulatory program emphasizing the role of State and local governments in controlling noise. The Quiet Communities Act established a program of research, technical assistance and discretionary grants to support State and local efforts. The 1978 law has proven to be quite successful. It may well be the most popular program administered by the Environmental Protection Agency.

Despite the enactment of the Quiet Communities Act, the ability of State and local governments to deal with noise has been severely

constrained by a 1977 court decision, *Association of American Railroads v. Costle*, 562 F. 2d 1310. In that case, the Court of Appeals for the District of Columbia held that noise provisions of Section 17 of the Act, which deal with railroads, were preemptive of State and local governments. A consequence of this decision was a later District Court opinion (*Consolidated Rail Corporation v. City of Dover*, 450 F. Supp. 966 (1978)) invalidating a local ordinance attempting to control noise emissions from a rail yard. The District Court held that the local ordinance was preempted, even though in the absence of the Noise Control Act it would have been a legitimate exercise of the State's police power, subject to the limitations of the Constitution's commerce clause. The combined effect of these two decisions has been to chill the exercise of State and local control over noise, despite the intent of the two Acts that these units of government play a substantial role.

When the revised 1982 budget was submitted to the Congress, the Administration requested a substantial reduction of funding for the noise control program of the Environmental Protection Agency. The budget justification explained this proposed reduction as follows:

In 1982 we are revising our policy with respect to the Federal effort to reduce noise exposure. We plan to phase out the EPA noise control program by the end of 1982. This decision results from our determination that the benefits of noise control are highly localized and that the function of noise control can be adequately carried out at the State and local level without the presence of a Federal program.

In both 1981 and 1982, activities are being structured to achieve a prompt but orderly phase-out of current program activities. This will be done in such a way so as to transfer the knowledge and experience EPA has gained to the State and local programs. This orderly phase-out of present activities is essential if we are to facilitate an effective assumption of noise control responsibilities by State and local noise programs.

During its consideration of the Administration budget, the Committee approved the requested reduction and informally committed itself to immediate repeal of the Federal noise regulatory program. This bill fulfills that earlier commitment.

DESCRIPTION OF BILL

The reported bill proposes that the Federal regulatory program for noise be eliminated entirely except for two areas—railroads and interstate motor carriers—and that the regulation of even these two be made discretionary. If this bill is enacted, the Federal Government will be regulating two, and only two, fields of noise; it is possible that even in those areas there will be no Federal activity if the Administrator of the Environmental Protection Agency decides such regulation is unwise.

This regulatory retrenchment is accompanied by a retrenchment of preemption. The previous law had been held by a federal court to be expansive in its regulation and expansive in its preemption.

Whether the decision in *Association of American Railroads v. Castle* was a correct construction of the law or not, the Committee proposes to alter the law and that construction with this bill. Regulation will extend to only two of many fields, and even then it will be discretionary. The Federal Government is not occupying these two fields, even if the decision is made to regulate some activities within them. On the contrary, the basic responsibility for noise regulation is to rest with State and local governments, as it did prior to 1972.

Although the basic responsibility for noise control would lie with State and local governments, there are some constraints or limitations which they cannot impose. Therefore, if a system is to be truly comprehensive, the Federal Government must be free to regulate some activities in order to complement the States. This bill provides such authority, if the Administrator chooses to exercise it.

This is not to say that the authority of this bill must, of necessity, be exercised. Decisions are to be made on a case-by-case basis. The presumption is that noise is to be regulated by State or local governments, subject to the restraints of the Commerce Clause. But in the area of interstate rail or motor carrier transportation, the Federal Government may choose to regulate. When it does, the freedom of State and local governments would be restricted.

In the absence of a conflicting Federal requirement in the exercise of this bill's discretionary authority, State and local governments remain free to impose specific noise limitation requirements on rail and interstate motor carrier equipment and activities. Not only is this power returned to the State and local governments, but the full and complete power to regulate products generally is returned. Noise from garbage trucks, lawnmowers, motorcycles and the like, which were previously regulated pursuant to Section 6, is the exclusive responsibility of States and their political subdivisions.

If the Administrator exercises the discretion and regulates a specific device or activity, the State and local governments would be preempted as to that same device or activity. For example, if the Federal Government regulates noise emissions from tires used on interstate motor carriers, State or local governments would be precluded from also regulating such tires. But they would not be precluded from regulating the exhaust systems, refrigeration units, idle noise emissions or other noise sources on or in trucks.

The approach of this bill reflects that laid down by the U.S. Supreme Court in *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1977). Unless the Federal Government is regulating—or has made an affirmative determination to not regulate—a particular activity or device, the State or local government is free to do so. In those instances where the Federal Government chooses to exercise the authority of this Act, State or local requirements are void to the extent that they are in actual conflict. In the case where the alleged conflict is the failure to exercise the full extent of this Act's authority, the inaction must be such that it takes on the character of a ruling or comparable determination.

Because this regulatory system is discretionary, the bill does not increase the amount of money requested by the Administrator for the regulatory program. If Administration officials choose to exercise this authority, a request for additional funding must be made.

Until such a request is received, the proper course is to adhere to the original submission.

Although the amount of money allocated to the regulatory program remains the same as that requested by the Administration, the Committee did add \$1 million to the overall authorization, increasing it to \$3.3 million.

The Administration's request had contemplated a complete elimination of the functions of the Quiet Communities Act. Given the success and popularity of this program, the Committee concluded that it should continue, albeit at a reduced level of activity. To maintain the integrity of the overall budget limits, however, the \$1 million increase in this program area was offset by a decrease in another, the Toxic Substances Control Act.

SECTION-BY SECTION ANALYSIS

Section 1: Section 1 repeals sections 6 and 8 of the Noise Control Act of 1972. Section 6 of the Act authorizes the Administrator of the Environmental Protection Agency to establish noise emission standards for products distributed in commerce. Section 8 of the Act authorizes the Administrator to establish labelling requirements.

Section 2: Section 2 changes the title of the Noise Control Act to the "Quiet Communities Act."

Section 3: Section 3 strikes "deal with major noise sources" as it appears in section 2(a)(3) of the Noise Control Act thus eliminating the implication that the Federal government is authorized to regulate products for the purpose of minimizing noise emissions. In its place, language authorizing technical and other assistance is substituted.

Section 4: Section 4 strikes the phrase "to authorize the establishment of Federal noise emission standards for products distributed in the commerce, and", also for the purpose of eliminating Federal regulation of products. The phrase "and to assure that railroad and motor carrier equipment and operational noise emissions are controlled adequately by either State or Federal regulation" is added.

Section 5: Section 5 amends section 3(2) of the Noise Control Act by eliminating the reference to section 11(e).

Section 6: Section 6 eliminates certain definitions which were included in the Act to facilitate the noise regulation products. These terms are "product", "ultimate purchaser", "new products", "Manufacturer", "commerce", and "distribute in commerce".

Section 7: Section 7 amends section 4(b) by eliminating the reference to section 6.

Section 8: Section 8 eliminates the reference in section 12(f) to repealed provisions of section 10.

Section 9: Section 9 repeals the detailed prohibitions contained in section 10 of the Act and substitutes a new, more general prohibition incorporating in broad terms the specific prohibitions contained in the earlier provision.

Section 10: Section 10 conforms the enforcement provisions of the Noise Control Act, which are contained in section 11, to changes made by this bill.

Section 11: Section 11 strikes the reference in section 13 of the Act to "6 or section 8" and substitutes "17 or section 18".

Section 12: Section 12 deletes the reference in section 14(b)(2) to sections 6, 7, and 8 of the Noise Control Act.

Section 13: Section 13 conforms the reference in section 16(a) of the Act to reflect the repeal of sections 6 and 8.

Section 14: Section 14 repeals section 17 of the Noise Control Act of 1972. Section 17 then enacts a new provision. Subsection (a) maintains in force those regulations which have been promulgated dealing with interstate railroads and equipment, whether they were established under section 17, section 6, or some other provision of the Act. The newly established regulatory program is discretionary.

Section 15: Section 15 repeals section 18 of the Noise Control Act of 1972. Section 15 then enacts a new provision. Subsection (a) maintains in force those regulations which have been promulgated dealing with interstate motor carriers and equipment, whether they were established under section 18, section 6, or some other provision of the Act.

The newly established regulatory program is discretionary.

Section 16: Section 16 establishes the fiscal year 1982 authorization at \$3,300,000. No less than \$1 million of this is for operation of those programs established pursuant to the Quiet Communities Act of 1972.

ROLLCALL VOTES

Section 133 of the Legislative Reorganization Act of 1970 and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

There were no rollcall votes taken during consideration of this bill. The bill was ordered reported by a unanimous voice vote.

EVALUATION OF REGULATORY IMPACTS

In compliance with paragraph 5 of Rule XXIX of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill.

The reported bill reduces the regulatory authority provided by existing law.

COST OF LEGISLATION

Section 252(a)(1) of the Legislative Reorganization Act of 1970 requires publication in the report of Committee's estimate of the costs of the reported legislation, together with estimates prepared by any Federal agency.

This bill provides an authorization of \$3.3 million for fiscal year 1982.

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office.

That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 15, 1981.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S.
Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for the Quiet Communities Act. Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, MAY 15, 1981

1. Bill number: S.1204.
2. Bill title: Quiet Communities Act.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, May 13, 1981.
4. Bill purpose: This bill authorizes the appropriation of \$3.3 million to the Environmental Protection Agency (EPA) for fiscal year 1982 to carry out the provisions of the Noise Control Act of 1972. In addition, the bill transfers most federal regulatory functions to state and local governments, eliminates EPA's authority to require noise labeling of products or to promulgate noise emission standards for products distributed in commerce, and replaces the mandatory railroad and motor carrier noise programs with comparable discretionary programs. The 1981 appropriation to date for these activities is \$13.0 million; the Administration's requested funding level is \$2.3 million in 1982 and such sums as may be necessary in 1983.

5. Cost estimate:

[By fiscal years, in millions of dollars]

Authorization level:	
1982	3.3
1983	
1984	
1985	
1986	
Estimated outlays:	
1982	2.5
1983	0.7
1984	0.1
1985	
1986	

The costs of this bill fall within budget function 300.

6. Basis of estimate: The authorization level is that stated in the bill. The authorized amount is assumed to be appropriated by the start of the fiscal year. Outlays are estimated based on information provided by the agency and on historical spending patterns.

7. Estimate comparison: None.

8. Previous CBO estimate: On May 14, 1981, the Congressional Budget Office prepared a cost estimate for H.R. 3071, the House companion bill. That bill authorized appropriations of \$7.3 million in each of fiscal years 1982 and 1983.

9. Estimate prepared by: Anne E. Hoffman.
 10. Estimate approved by: C. G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with Section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

【NOISE CONTROL ACT OF 1972】

SHORT TITLE

SECTION 1. This Act may be cited as the 【“Noise Control Act of 1972”】 *Quiet Communities Act*.

FINDINGS AND POLICY

SEC. 2. (a) The Congress finds—

(1) that inadequately controlled noise presents a growing danger to the health and welfare of the Nation's population, particularly in urban areas;

(2) that the major sources of noise include transportation vehicles and equipment, machinery, appliances, and other products in commerce; and

(3) that, while primary responsibility for control of noise rests with State and local governments, Federal action is essential to 【deal with major noise sources in commerce control of which require national uniformity of treatment】 *promote effective State and local programs and provide Federal research, demonstration, planning, technical and other assistance for such programs.*

(b) The Congress declares that it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare. To that end, it is the purpose of this Act to establish a means for effective coordination of Federal research and activities in noise control, 【to authorize the establishment of Federal noise emission standards for products distributed in commerce, and】 *to provide information to the public respecting the noise emission and noise reduction characteristics of such products【.】, and to assure that railroad and motor carrier equipment and operational noise emissions are controlled adequately by either State or Federal regulation.*

DEFINITIONS

SEC. 3. For purposes of this Act:

(1) The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) The term “person” means an individual, corporation, partnership, or association, and (except as provided in 【sections 11(e) and】 *Section 12(a)*) includes any officer, employee, department, agency,

or instrumentality of the United States, a State, or any political subdivision of a State.

[(3) The term "product" means any manufactured article or goods or component thereof; except that such term does not include—

[(A) any aircraft, aircraft engine, propeller, or appliance, as such terms are defined in section 101 of the Federal Aviation Act of 1958; or

[(B) (i) any military weapons or equipment which are designed for combat use; (ii) any rockets or equipment which are designed for research, experimental, or developmental work to be performed by the National Aeronautics and Space Administration; or (iii) to the extent provided by regulations of the Administrator, any other machinery or equipment designed for use in experimental work done by or for the Federal Government.

[(4) The term "ultimate purchaser" means the first person who in good faith purchases a product for purposes other than resale.

[(5) The term "new product" means (A) a product the equitable or legal title of which has never been transferred to an ultimate purchaser, or (B) a product which is imported or offered for importation into the United States and which is manufactured after the effective date of a regulation under section 6 or section 8 which would have been applicable to such product had it been manufactured in the United States.

[(6) The term "manufacturer" means any person engaged in the manufacturing or assembling of new products, or the importing of new products for resale, or who acts for, and is controlled by, any such person in connection with the distribution of such products.

[(7) the term "commerce" means trade, traffic, commerce, or transportation—

[(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

[(8) The term "distribute in commerce" means sell in, offer for sale in, or introduce or deliver for introduction into, commerce.]

(9) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virginia Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(10) The term "Federal agency" means an executive agency (as defined in section 105 of title 5, United States Code) and includes the United States Postal Service.

(11) The term "environmental noise" means the intensity, duration, and the character of sounds from all sources.

FEDERAL PROGRAMS

Sec. 4. (a) The Congress authorizes and directs that Federal agencies shall, to the fullest extent consistent with their authority under Federal laws administered by them, carry out the programs within their control in such a manner as to further the policy declared in section 2(b).

(b) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal 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, shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements. The President may exempt any single activity or facility, including noise emission sources or classes thereof, of any department, agency, or instrumentality in the executive branch from compliance with any such requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption [, other than for those products referred to in section 3(3)(B) of this Act,] may be granted from the requirements of sections [6,] 17, and 18 of this Act. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption.

(c)(1) The Administrator shall coordinate the programs of all Federal agencies relating to noise research and noise control. Each Federal agency shall, upon request, furnish to the Administrator such information as he may reasonably require to determine the nature, scope, and results of the noise-research and noise-control programs of the agency.

(2) Each Federal agency shall consult with the Administrator in prescribing standards or regulations respecting noise. If at any time the Administrator has reason to believe that a standard or regulation, or any proposed standard or regulation, of any Federal agency respecting noise does not protect the public health and welfare to the extent he believes to be required and feasible, he may request such agency to review and report to him on the advisability of revising such standard or regulation to provide such protection. Any such request may be published in the Federal Register and shall be accompanied by a detailed statement of the information on which it is based. Such agency shall complete the requested review and report to the Administrator within such time as the Administrator specifies in the request, but such time specified may not be less than ninety days from the date the request was made. The report shall be published in the Federal Register and shall be accompanied by a detailed statement of the findings and conclusions of the agency respecting the revision of its standard or regulation. With respect to the Federal Aviation Administration, section 611 of the Federal Aviation Act of 1958 (as amended by section 7 of this Act) shall apply in lieu of this paragraph.

(3) On the basis of regular consultation with appropriate Federal agencies, the Administrator shall compile and publish, from time

to time, a report on the status and progress of Federal activities relating to noise research and noise control. This report shall describe the noise-control programs of each Federal agency and assess the contributions of those programs to the Federal Government's overall efforts to control noise.

IDENTIFICATION OF MAJOR NOISE SOURCES; NOISE CRITERIA AND CONTROL TECHNOLOGY

SEC. 5. (a)(1) The Administrator shall, after consultation with appropriate Federal agencies and within nine months of the date of the enactment of this Act, develop and publish criteria with respect to noise. Such criteria shall reflect the scientific knowledge most useful in indicating the kind and extent of all identifiable effects on the public health or welfare which may be expected from differing quantities and qualities of noise.

(2) The Administrator shall, after consultation with appropriate Federal agencies and within twelve months of the date of the enactment of this Act, publish information on the levels of environmental noise the attainment and maintenance of which in defined areas under various conditions are requisite to protect the public health and welfare with an adequate margin of safety.

(b) The administrator shall, after consultation with appropriate Federal agencies, compile and publish a report or series of reports (1) identifying products (or classes of products) which in his judgment are major sources of noise, and (2) giving information on techniques for control of noise from such products, including available data on the technology, costs, and alternative methods of noise control. The first such report shall be published not later than eighteen months after the date of enactment of this Act.

(c) The Administrator shall from time to time review and, as appropriate, revise or supplement any criteria or reports published under this section.

(d) Any report (or revision thereof) under subsection (b)(1) identifying major noise sources shall be published in the Federal Register. The publication or revision under this section of any criteria or information on control techniques shall be announced in the Federal Register, and copies shall be made available to the general public.

NOISE EMISSION STANDARDS FOR PRODUCTS DISTRIBUTED IN COMMERCE

[SEC. 6. (a)(1) The Administrator shall publish proposed regulations, meeting the requirements of subsection (c), for each product—

[(A) which is identified (or is part of a class identified) in any report published under section 5(b)(1) as a major source of noise,

[(B) for which, in his judgment, noise emission standards are feasible, and

[(C) which falls in one of the following categories:

[(i) Construction equipment.

[(ii) Transportation equipment (including recreational vehicles and related equipment).

[(iii) Any motor or engine (including any equipment of which an engine or motor is an integral part).

[(iv) Electrical or electronic equipment.

[(2)(A) Initial proposed regulations under paragraph (1) shall be published not later than eighteen months after the date of enactment of this Act, and shall apply to any product described in paragraph (1) which is identified (or is a part of a class identified) as a major source of noise in any report published under section 5(b)(1) on or before the date of publication of such initial proposed regulations.

[(B) In the case of any product described in paragraph (1) which is identified (or is part of a class identified) as a major source of noise in a report published under section 5(b)(1) after publication of the initial proposed regulations under subparagraph (A) of this paragraph, regulations under paragraph (1) for such product shall be proposed and published by the administrator not later than eighteen months after such report is published.

[(3) After proposed regulations respecting a product have been published under paragraph (2) the Administrator shall, unless in his judgment noise emission standards are not feasible for such product, prescribe regulations, meeting the requirements of subsection (c), for such product—

[(A) not earlier than six months after publication of such proposed regulations, and

[(B) not later than—

[(i) twenty-four months after the date of enactment of this act, in the case of a product subject to proposed regulations published under paragraph (2)(A), or

[(ii) in the case of any other product, twenty-four months after the publication of the report under section 5(b)(1) identifying it (or a class of products of which it is a part) as a major source of noise.

[(b) The Administrator may publish proposed regulations, meeting the requirements of subsection (c), for any product for which he is not required by subsection (a) to prescribe regulations but for which, in his judgment, noise emission standards are feasible and are requisite to protect the public health and welfare. Not earlier than six months after the date of publication of such proposed regulations respecting such product, he may prescribe regulations, meeting the requirements of subsection (c), for such product.

[(c)(1) Any regulation prescribed under subsection (a) or (b) of this section (and any revision thereof) respecting a product shall include a noise emission standard which shall set limits on noise emissions from such product and shall be a standard which in the Administrator's judgment, based on criteria published under section 5, is requisite to protect the public health and welfare, taking into account the magnitude and conditions of use of such product (alone or in combination with other noise sources) the degree of noise reduction achievable through the application of the best available technology, and the cost of compliance. In establishing such a standard for any product, the Administrator shall give appropriate consideration to standards under other laws designed to safeguard the health and welfare of persons, including any standards under the National Traffic and Motor Vehicle Safety Act of 1966, the Clean Air Act, and the Federal Water Pollution Control

Act. Any such noise emission standards shall be a performance standard. In addition, any regulation under subsection (a) or (b) (and any revision thereof) may contain testing procedures necessary to assure compliance with the emission standard in such regulation, and may contain provisions respecting instructions of the manufacturer for the maintenance, use, or repair of the product.

[(2) After publication of any proposed regulations under this section, the Administrator shall allow interested persons an opportunity to participate in rulemaking in accordance with the first sentence of section 553(c) of title 5, United States Code.

[(3) The Administrator may revise any regulation prescribed by him under this section by (A) publication of proposed revised regulations, and (B) the promulgation, not earlier than six months after the date of such publication, of regulations making the revision; except that a revision which makes only technical or clerical corrections in a regulation under this section may be promulgated earlier than six months after such date if the Administrator finds that such earlier promulgation is in the public interest.

[(d)(1) On and after the effective date of any regulation prescribed under subsection (a) or (b) of this section, the manufacturer of each new product to which such regulation applies shall warrant to the ultimate purchaser and each subsequent purchaser that such product is designed, built, and equipped so as to conform at the time of sale with such regulation.

[(2) Any cost obligation of any dealer incurred as a result of any requirement imposed by paragraph (1) of this subsection shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

[(3) If a manufacturer includes in any advertisement a statement respecting the cost or value of noise emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Clean Air Act.

[(e)(1) No State or political subdivision thereof may adopt or enforce—

[(A) with respect to any new product for which a regulation has been prescribed by the Administrator under this section, any law or regulation which sets a limit on noise emissions from such new product and which is not identical to such regulation of the Administrator; or

[(B) with respect to any component incorporated into such new product by the manufacturer of such product, any law or regulation setting a limit on noise emissions from such component when so incorporated.

[(2) Subject to sections 17 and 18, nothing in this section precludes or denies the right of any State or political subdivision thereof to establish and enforce controls on environmental noise (or one or more sources thereof) through the licensing, regulation, or restriction of the use, operation, or movement of any product or combination of products.

[(f) At any time after the promulgation of regulations respecting a product under this section, a State of political subdivision thereof may petition the Administrator to revise such standard on the grounds that a more stringent standard under subsection (c) of this section is necessary to protect the public health and welfare. The Administration shall publish notice of receipt of such petition in the Federal Register and shall within ninety days of receipt of such petition respond by (1) publication of proposed revised regulations in accordance with subsection (c)(3) of this section, or (2) publication in the Federal Register of a decision not to publish such proposed revised regulations at that time, together with a detailed explanation for such decision.]

AIRCRAFT NOISE STANDARDS

SEC. 7. (a) The Administrator, after consultation with appropriate Federal, State, and local agencies and interested persons, shall conduct a study of the (1) adequacy of Federal Aviation Administration flight and operational noise controls; (2) adequacy of noise emission standards on new and existing aircraft, together with recommendations on the retrofitting and phaseout of existing aircraft; (3) implications of identifying and achieving levels of cumulative noise exposure around airports; and (4) additional measures available to airport operators and local governments to control aircraft noise. He shall report on such study to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committees on Commerce and Public Works of the Senate within nine months after the date of the enactment of this Act.

(b) Section 611 of the Federal Aviation Act of 1958 (49 U.S.C. 1431) is amended to read as follows:

"CONTROL AND ABATEMENT OF AIRCRAFT NOISE AND SONIC BOOM

"Sec. 611. (a) For purposes of this section:

"(1) The term 'FAA' means Administrator of the Federal Aviation Administration.

"(2) The term 'EPA' means the Administrator of the Environmental Protection Agency.

"(b)(1) In order to afford present and future relief and protection to the public health and welfare from aircraft noise and sonic boom, the FAA, after consultation with the Secretary of Transportation and with EPA, shall prescribe and amend standards for the measurement of aircraft noise and sonic boom and shall prescribe and amend such regulations as the FAA may find necessary to provide for the control and abatement of aircraft noise and sonic boom, including the application of such standards and regulations in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by this title. No exemption with respect to any standard or regulation under this section may be granted under any provision of this Act unless the FAA shall have consulted with EPA before such exemption is granted, except that if the FAA determines that safety in air commerce or air transportation requires that such an exemption be granted before EPA can be consulted, the FAA shall consult with EPA as soon as practicable after the exemption is granted.

"(2) The FAA shall not issue an original type certificate under section 603(a) of this Act for any aircraft for which substantial noise abatement can be achieved by prescribing standards and regulations in accordance with this section, unless he shall have prescribed standards and regulations in accordance with this section which apply to such aircraft and which protect the public from aircraft noise and sonic boom, consistent with the considerations listed in subsection (d).

"(c)(1) Not earlier than the date of submission of the report required by section 7(a) of the Noise Control Act of 1972, EPA shall submit to the FAA proposed regulations to provide such control and abatement of aircraft noise and sonic boom (including control and abatement through the exercise of any of the FAA's regulatory authority over air commerce or transportation or over aircraft or airport operations) as EPA determines is necessary to protect the public health and welfare. The FAA shall consider such proposed regulations submitted by EPA under this paragraph and shall, within thirty days of the date of its submission to the FAA, publish the proposed regulations in a notice of proposed rulemaking. Within sixty days after such publication, the FAA shall commence a hearing at which interested persons shall be afforded an opportunity for oral (as well as written) presentations of data, views, and arguments. Within ninety days after the conclusion of such hearing and after consultation with EPA, the FAA shall—

"(A) in accordance with subsection (b), prescribe regulations (i) substantially as they were submitted by EPA, or (ii) which are a modification of the proposed regulations submitted by EPA, or

"(B) publish in the Federal Register a notice that it is not prescribing any regulation in response to EPA's submission of proposed regulations, together with a detailed explanation providing reasons for the decision not to prescribe such regulations, and a detailed analysis of and response to all documentation or other information submitted by the Environmental Protection Agency with such proposed regulations. [Section 611(c)(1) amended by PL 95-609, November 8, 1978.]

"(2) If EPA has reason to believe that the FAA's action with respect to a regulation proposed by EPA under paragraph (1)(A)(ii) or (1)(B) of this subsection does not protect the public health and welfare from aircraft noise or sonic boom, consistent with the considerations listed in subsection (d) of this section, EPA shall consult with the FAA and may request the FAA to review, and report to EPA on, the advisability of prescribing the regulation originally proposed by EPA. Any such request shall be published in the Federal Register and shall include a detailed statement of the information on which it is based. The FAA shall complete the review requested and shall report to EPA within such time as EPA specifies in the request, but such time specified may not be less than ninety days from the date the request was made. The FAA's report shall be accompanied by a detailed statement of the FAA's findings and the reasons for the FAA's conclusions; shall identify any statement filed pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 with respect to such action of the FAA under paragraph (1) of this subsection; and shall specify whether (and where) such statements are available for public inspection. The

FAA's report shall be published in the Federal Register, except in a case in which EPA's request proposed specific action to be taken by the FAA, and the FAA's report indicates such action will be taken.

"(3) If, in the case of a matter described in paragraph (2) of this subsection with respect to which no statement is required to be filed under such section 102(2)(C), the report of the FAA indicates that the proposed regulation originally submitted by EPA should not be made, then EPA may request the FAA to file a supplemental report, which shall be published in the Federal Register within such a period as EPA may specify (but such time specified shall not be less than ninety days from the date the request was made), and which shall contain a comparison of (A) the environmental effects including those which cannot be avoided) of the action actually taken by the FAA in response to EPA's proposed regulations, and (B) EPA's proposed regulations.

"(d) In prescribing and amending standards and regulations under this section, the FAA shall—

"(1) consider relevant available data relating to aircraft noise and sonic boom, including the results of research, development, testing, and evaluation activities conducted pursuant to this Act and the Department of Transportation Act;

"(2) consult with such Federal, State, and interstate agencies as he deems appropriate;

"(3) consider whether any proposed standard or regulation is consistent with the highest degree of safety in air commerce or air transportation in the public interest;

"(4) consider whether any proposed standard or regulation is economically reasonable, technologically practicable; and appropriate for the particular type of aircraft, aircraft engine, appliance, or certificate to which it will apply; and

"(5) consider the extent to which such standard or regulation will contribute to carrying out the purposes of this section.

"(e) In any action to amend, modify, suspend, or revoke a certificate in which violation of aircraft noise or sonic boom standards or regulations is at issue, the certificate holder shall have the same notice and appeal rights as are contained in section 609, and in any appeal to the National Transportation Safety Board, the Board may amend, modify, or reverse the order of the FAA if it finds that control of abatement of aircraft noise or sonic boom and the public health and welfare do not require the affirmation of such order, or that such order is not consistent with safety in air commerce or air transportation."

(c) All—

(1) standards, rules, and regulations prescribed under section 611 of the Federal Aviation Act of 1958, and

(2) exemptions, granted under any provision of the Federal Aviation Act of 1958, with respect to such standards, rules, and regulations,

which are in effect on the date of the enactment of this Act, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Administrator of the Federal Aviation Administration in the exercise of any authority vested in him, by a court of competent jurisdiction, or by operation of law.

[LABELING]

[Sec. 8. (a) The Administrator shall by regulation designate any product (or class thereof)—

[(1) which emits noise capable of adversely affecting the public health or welfare; or

[(2) which is sold wholly or in part on the basis of its effectiveness in reducing noise.

[(b) For each product (or class thereof) designated under subsection (a) the Administrator shall by regulation require that notice be given to the prospective user of the level of the noise the product emits, or of its effectiveness in reducing noise, as the case may be. Such regulations shall specify (1) whether such notice shall be affixed to the product or to the outside of its container, or to both, at the time of its sale to the ultimate purchaser or whether such notice shall be given to the prospective user in some other manner, (2) the form of the notice, and (3) the methods and units of measurements to be used. Sections 6(c)(2) shall apply to the prescribing of any regulation under this section.

[(c) This section does not prevent any State or political subdivision thereof from regulating product labeling or information respecting products in any way not in conflict with regulations prescribed by the Administrator under this section.]

IMPORTS

Sec. 9. The Secretary of the Treasury shall, in consultation with the Administrator, issue regulations to carry out the provisions of this Act with respect to new products imported or offered for importation.

PROHIBITED ACTS

Sec. 10 [(a) Except as otherwise provided in subsection [(b), the following acts or the causing thereof are prohibited:

[(1) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 6 which is applicable to such product, except in conformity with such regulation.

[(2)(A) The removal or rendering inoperative by any person, other than for purpose of maintenance, repair, or replacement, of any device or element of design incorporated into any product in compliance with regulations under section 6, prior to its sale or delivery to the ultimate purchaser or while it is in use, or (B) the use of a product after such device or element of design has been removed or rendered inoperative by any person.

[(3) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 8(b) (requiring information respecting noise) which is applicable to such product, except in conformity with such regulation.

[(4) The removal by any person of any notice affixed to a product or container pursuant to regulations prescribed under section 8(b), prior to sale of the product to the ultimate purchaser.

[(5) The importation into the United States by any person of any new product in violation of a regulation prescribed under section 9 which is applicable to such product.

[(6) The failure or refusal by any person to comply with any requirement of section 11(d) or 13(a) or regulations prescribed under section 13(a), 17, or 18.

[(b)(1) For the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security, the Administrator may exempt for a specified period of time any product, or class thereof, from paragraphs (1), (2), (3), and (5) of subsection (a), upon such terms and conditions as he may find necessary to protect the public health or welfare.

[(2) Paragraphs (1), (2), (3), and (4) of subsection (a) shall not apply with respect to any product which is manufactured solely for use outside any State and which (and the container of which) is labeled or otherwise marked to show that it is manufactured solely for use outside any State; except that such paragraphs shall apply to such product if it is in fact distributed in commerce for use in any State.] *The failure or refusal of any person to comply with any requirement of regulations prescribed under sections 13, 17 or 18 is prohibited.*

ENFORCEMENT

Sec. 11. (a)(1) Any person who willfully or knowingly violates [paragraph (1), (3), (5), or (6) of subsection (a) of] section 10 of this Act shall be punished by a fine or not more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who violates [paragraph (1), (3), (5), or (6) of subsection (a), of] Section 10 of this Act shall be subject to a civil penalty not to exceed \$10,000 per day of such violation.

(b) For the purpose of this section, each day of violation of [any paragraph of] section 10[a] shall constitute a separate violation of that section.

(c) The district courts of the United States shall have jurisdiction of actions brought by and in the name of the United States to restrain any violation of section 10[a] of this Act.

(d)(1) Whenever any person is in violation of section 10[a] of this Act, the Administrator may issue an order specifying such relief as he determines is necessary to protect the public health and welfare.

(2) Any order under this subsection shall be issued only after notice and opportunity for a hearing in accordance with section 554 of title 5 of the United States Code.

(e) The term "persons," as used in this section, does not include a department, agency, or instrumentality of the United States.

CITIZEN SUITS

SEC. 12. (a) Except as provided in subsection (b), any person (other than the United States) may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any noise control requirement as defined in subsection (e), or

(2) against—

(A) the Administrator of the Environmental Protection Agency where there is alleged a failure of such Administrator to perform any act or duty under this Act which is not discretionary with such Administrator, or

(B) the Administrator of the Federal Aviation Administration where there is alleged a failure of such Administrator to perform any act or duty under section 611 of the Federal Aviation Act of 1958 which is not discretionary with such Administrator.

The district courts of the United States shall have jurisdiction, without regard to the amount in controversy, to restrain such person from violating such noise control requirement or to order such Administrator to perform such act or duty, as the case may be.

(b) No action may be commenced—

(1) under subsection (a)(1)—

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator of the Environmental Protection Agency (and to the Federal Aviation Administrator in the case of a violation of a noise control requirement under such section 611) and (ii) to any alleged violator of such requirement, or

(B) if an Administrator has commenced and is diligently prosecuting a civil action to require compliance with the noise control requirement, but in any such action in a court of the United States any person may intervene as a matter of right, or

(2) under subsection (a)(2) prior to sixty days after the plaintiff has given notice to the defendant that he will commence such action.

Notice under this subsection shall be given in such manner as the Administrator of the Environmental Protection Agency shall prescribe by regulation.

(c) In an action under this section, the Administrator of the Environmental Protection Agency, if not a party, may intervene as a matter of right. In an action under this section respecting a noise control requirement under section 611 of the Federal Aviation Act of 1958, the Administrator of the Federal Aviation Administration, if not a party, may also intervene as a matter of right.

(d) The court in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any noise control requirement or to seek any other relief (including relief against an Administrator).

(f) For purposes of this section, the term "noise control requirement" means [paragraph (1), (2), (3), (4), or (5) of section 10(a), or a standard, rule, or regulation issued under section 17 or 18 of this Act or under 611] a standard, rule, or regulation under section 17 or 18 of this Act or section 611 of the Federal Aviation Act of 1958.

RECORDS, REPORTS, AND INFORMATION

Sec. 13. (a) Each manufacturer of a product to which regulations under section [6 or section 8] 17 or section 18 apply shall—

(1) establish and maintain such records, make such reports, provide such information, and make such tests, as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this Act.

(2) upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to such information and the results of such tests and to copy such records, and

(3) to the extent required by regulations of the Administrator, make products coming off the assembly line or otherwise in the hands of the manufacturer available for testing by the Administrator.

(b)(1) All information obtained by the Administrator or his representatives pursuant to subsection (a) of this section, which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other Federal officers or employees, in whose possession it shall remain confidential, or when relevant to the matter in controversy in any proceeding under this Act.

(2) Nothing in this subsection shall authorize the withholding of information by the Administrator, or by any officers or employees under his control, from the duly authorized committees of the Congress.

(c) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

QUIET COMMUNITIES, RESEARCH, PUBLIC INFORMATION

Sec. 14. To promote the development of effective State and local noise control programs, to provide an adequate Federal noise control research program designed to meet the objectives of this Act, the Administrator shall, in cooperation with other Federal agencies

and through the use of grants, contracts, and direct Federal actions—

(a) 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 for noise control, through the use of materials for school curricula, volunteer organizations, radio and television programs, publication, and other means;

(b) conduct or finance research directly or with any public or private organization or any person on the effects, measurement, and control of noise, including but not limited to—

(1) investigation of the psychological and physiological effects of noise on humans and the effects of noise on domestic animals, wildlife, and property, and the determination of dose/response relationships suitable for use in decision-making, with special emphasis on the nonauditory effects of noise;

(2) investigation, development, and demonstration of noise control technology for products [subject to possible regulation under sections 6, 7, and 8 of this Act];

(3) investigation, development, and demonstration of monitoring equipment and other technology especially suited for use by State and local noise control programs;

(4) investigation of the economic impact of noise on property and human activities; and

(5) investigation and demonstration of the use of economic incentives (including emission charges) in the control of noise;

(c) administer a nationwide Quiet Communities Program, which shall include, but not be limited to—

(1) grants to States, local governments, and authorized regional planning agencies for the purpose of—

(A) identifying and determining the nature and extent of the noise problem within the subject jurisdiction;

(B) planning, developing, and establishing a noise control capacity in such jurisdiction, including purchasing initial equipment;

(C) developing abatement plans for areas around major transportation facilities (including airports, highways, and rail yards) and other major stationary sources of noise, and, where appropriate, for the facility or source itself; and,

(D) evaluating techniques for controlling noise (including institutional arrangements) and demonstrating the best available techniques in such jurisdiction;

(2) purchase of monitoring and other equipment for loan to State and local noise control programs to meet special needs or assist in the beginning implementation of a noise control program or project;

(3) development and implementation of a quality assurance program for equipment and monitoring procedures of State and local noise control programs to help communities assure that their data collection activities are accurate;

(4) conduct of studies and demonstrations to determine the resource and personnel needs of States and local governments required for the establishment and implementation of effective noise abatement and control programs; and

(5) development of educational and training materials and programs, including national and regional workshops, to support State and local noise abatement and control programs; except that no actions, plans or programs hereunder shall be inconsistent with existing Federal authority under this Act to regulate sources of noise in interstate commerce;

(d) develop and implement a national noise environmental assessment program to identify trends in noise exposure and response, ambient levels, and compliance data and to determine otherwise the effectiveness of noise abatement actions through the collection of physical, social, and human response data;

(e) establish regional technical assistance centers which use the capabilities of university and private organizations to assist State and local noise control programs;

(f) provide technical assistance to State and local governments to facilitate their development and enforcement of noise control, including direct onsite assistance of agency or other personnel with technical expertise, and preparation of model State or local legislation for noise control; and

(g) provide for the maximum use in programs assisted under this section of senior citizens and persons eligible for participation in programs under the Older Americans Act.

DEVELOPMENT OF LOW-NOISE-EMISSION PRODUCTS

Sec. 15. (a) For the purpose of this section:

(1) The term "Committee" means the Low-Noise-Emission Product Advisory Committee.

(2) The term "Federal Government" includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia.

(3) The term "low-noise-emission product" means any product which emits noise in amounts significantly below the levels specified in noise emission standards under regulations applicable under section 6 at the time of procurement to that type of product.

(4) The term "retail price" means (A) the maximum statutory price applicable to any type of product; or (B) in any case where there is no applicable maximum statutory price, the most recent procurement price paid for any type of product.

(b)(1) The Administrator shall determine which products qualify as low-noise-emission products in accordance with the provisions of this section.

(2) The Administrator shall certify any product—

(A) for which a certification application has been filed in accordance with paragraph (5)(A) of this subsection;

(B) which is a low-noise-emission product as determined by the Administrator; and

(C) which he determines is suitable for use as a substitute for a type of product at that time in use by agencies of the Federal Government.

(3) The Administrator may establish a Low-Noise-Emission Product Advisory Committee to assist him in determining which products qualify as low-noise-emission products for purposes of this section. The Committee shall include the Administrator or his designee, a representative of the National Bureau of Standards, and representatives of such other Federal agencies and private individuals as the Administrator may deem necessary from time to time. Any member of the Committee not employed on a full-time basis by the United States may receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day such member is engaged upon work of the Committee. Each member of the Committee shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(4) Certification under this section shall be effective for a period of one year from the date of issuance.

(5)(A) Any person seeking to have a class or model of product certified under this section shall file a certification application in accordance with regulations prescribed by the Administrator.

(B) The Administrator shall publish in the Federal Register a notice of each application received.

(C) The Administrator shall make determinations for the purpose of this section in accordance with procedures prescribed by him by regulations.

(D) The Administrator shall conduct whatever investigation is necessary, including actual inspection of the product at a place designated in regulations prescribed under subparagraph (A).

(E) The Administrator shall receive and evaluate written comments and documents from interested persons in support of, or in opposition to, certification of the class or model of product under consideration.

(F) Within ninety days after the receipt of a properly filed certification application the Administrator shall determine whether such product is a low-noise-emission product for purposes of this section. If the Administrator determines that such product is a low-noise-emission product, then within one hundred and eighty days of such determination the Administrator shall reach a decision as to whether such product is a suitable substitute for any class or classes of products presently being purchased by the Federal Government for use by its agencies.

(G) Immediately upon making any determination or decision under subparagraph (F), the Administrator shall publish in the Federal Register notice of such determination or decision, including reason therefor.

(c)(1) Certified low-noise-emission products shall be acquired by purchase or lease by the Federal Government for use by the Federal Government in lieu of other products if the Administrator of General Services determines that such certified products have procurement costs which are no more than 125 per centum of the retail price of the least expensive type of product for which they are certified substitutes.

(2) Data relied upon by the Administrator in determining that a product is a certified low-noise-emission product shall be incorporated in any contract for the procurement of such product.

(d) The procuring agency shall be required to purchase available certified low-noise-emission products which are eligible for purchase to the extent they are available before purchasing any other products for which any low-noise-emission product is a certified substitute. In making purchasing selections between competing eligible certified low-noise-emission products, the procuring agency shall give priority to any class or model which does not require extensive periodic maintenance to retain its low-noise-emission qualities or which does not involve operating costs significantly in excess of those products for which it is a certified substitute.

(e) For the purpose of procuring certified low-noise-emission products any statutory price limitations shall be waived.

(f) The Administrator shall, from time to time as he deems appropriate, test the emissions of noise from certified low-noise-emission products purchased by the Federal Government. If at any time he finds that the noise-emission levels exceed the levels on which certification under this section was based, the Administrator shall give the supplier of such product written notice of this finding, issue public notice of it, and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Administrator, he may order the supplier to show cause why the product involved should be eligible for recertification.

(g) There are authorized to be appropriated for paying additional amounts for products pursuant to, and for carrying out the provisions of, this section, \$1,000,000 for the fiscal year ending June 30, 1973, and \$2,000,000 for each of the two succeeding fiscal years, \$2,200,000 for the fiscal year ending June 30, 1976, \$550,000 for the transition period of July 1, 1976, through September 30, 1976, and \$2,420,000 for the fiscal year ending September 30, 1977.

(h) The Administrator shall promulgate the procedures required to implement this section within one hundred and eighty days after the date of enactment of this Act.

JUDICIAL REVIEW; WITNESSES

SEC. 16. (a) A petition for review of action of the Administrator of the Environmental Protection Agency in promulgating any standard or regulation under section [6, 17, or 18 of this Act of any labeling regulation under section 8] *17 or 18* of this Act may be filed only in the United States Court of Appeals for the District of Columbia Circuit, and a petition for review of action of the Administrator of the Federal Aviation Administration in promulgating any standard or regulation under section 611 of the Federal Aviation Act of 1958 may be filed only in such court. Any such petition shall be filed within ninety days from the date of such promulgation, or after such date if such petition is based solely on grounds arising after such ninetieth day. Action of either Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement.

(b) If a party seeking review under this Act applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and was not available at the time of the proceeding before the Administrator of such Agency or Administration (as the case may be), the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before such Administrator, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. Such Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, and his recommendations, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(c) With respect to relief pending review of an action by either Administrator, no stay of an agency action may be granted unless the reviewing court determines that the party seeking such stay is (1) likely to prevail on the merits in the review proceeding and (2) will suffer irreparable harm pending such proceeding.

(d) For the purpose of obtaining information to carry out this Act, the Administrator of the Environmental Protection Agency may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpoena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

[RAILROAD NOISE EMISSION STANDARDS]

[Sec. 17. (a)(1) Within nine months after the date of enactment of this Act, the Administrator shall publish proposed noise emission regulations for surface carriers engaged in interstate commerce by railroad. Such proposed regulations shall include noise emission standards setting such limits on noise emissions resulting from operation of the equipment and facilities of surface carriers engaged in interstate commerce by railroad which reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 6 of this Act.

(2) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 16 of this Act, the Administrator shall promulgate final regulations. Such regulations may be reviewed, from time to time, in accordance with this subsection.

[(3) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.]

[(4) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.]

[(b) The Secretary of Transportation, after consultation with the Administrator, shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Safety Appliance Acts, the Interstate Commerce Act, and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 10, 11, 12, and 16 of this Act.]

[(c)(1) Subject to paragraph (2) but notwithstanding any other provisions of this Act, after the effective date of a regulation under this section applicable to noise emissions resulting from the operation of any equipment or facility of a surface carrier engaged in interstate commerce by railroad, no State or political subdivision thereof may adopt or enforce any standard applicable to noise emissions resulting from the operation of the same equipment or facility of such carrier unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section.]

[(2) Nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels or environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product if the Administrator, after consultation with the Secretary of Transportation, determines that such standard, control, license, regulation, or restrict is necessitated by special local conditions and is not in conflict with regulations promulgated under this section.]

[(d) The terms "carrier" and "railroad" as used in this section shall have the same meaning as such terms have under the first section of the Act of February 17, 1911 (45 U.S.C. 22).]

"RAILROAD NOISE"

SEC. 17. (a)(1) Regulations of interstate railroads and equipment in existence shall continue until specifically repealed or amended.

(2) After the enactment of this section, the Administrator may promulgate additional regulations establishing standards and requirements for the design, construction, and maintenance of rail equipment or devices or controls and regulations establishing restrictions on interstate railroad operations and activities along specific rail lines or specific centers of activity, including but not limited to switching and marshalling yards, for the purpose of minimizing or eliminating the environmental noise emissions from such equipment or activities. Such standards, controls, limits, require-

ments or regulations, if any, shall reflect the degree of noise reduction available through the application of best available technology, taking into account the costs of compliance.

(3) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 16 of this Act, the Administrator shall promulgate final regulations. Such regulations may be revised, from time to time, in accordance with this subsection.

(4) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

(5) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b) The Secretary of Transportation, after consultation with the Administrator, shall promulgate regulations to assure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of the powers and duties of enforcement and inspection authorized by the Safety Appliance Acts, the Interstate Commerce Act, and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 10, 11, 12, and 16 of this Act.

(c)(1) Nothing in this section shall diminish the right of a State or political subdivision thereof to establish and enforce standards, controls, limits, restrictions, or other requirements on environmental noise, including those from rail equipment and operations, in the absence of a Federal requirement pursuant to this section, or a Federal decision that no Federal, State or local requirement is appropriate, on a specific class of equipment or operations.

(2) Nothing contained herein shall preclude a State or political subdivision thereof from adopting and enforcing a Federal standard, control, limit, restriction, or other requirement promulgated under this section.

(3) Any person adversely affected by a State or local requirement, or the Administrator, may demonstrate by a preponderance of the evidence the existence of a conflict between the requirement of a State or political subdivision thereof and that of the Federal Government.

(d) The terms "carrier" and "railroad" as used in this section shall have the same meaning as such terms have under the first section of the Act of February 17, 1911 (45 U.S.C. 22).

[MOTOR CARRIER NOISE EMISSION STANDARDS]

[Sec. 18. (a)(1) Within nine months after the date of enactment of this Act, the Administrator shall publish proposed noise emission regulations for motor carriers engaged in interstate commerce. Such proposed regulations shall include noise emission standards setting such limits on noise emissions resulting from operation of motor carriers engaged in interstate commerce which reflect the

degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 6 of this Act.

[(2) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 16 of this Act, the Administrator shall promulgate final regulations. Such regulations may be revised from time to time, in accordance with this subsection.

[(3) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

[(4) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

[(b) The Secretary of Transportation, after consultation with the Administrator, shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Interstate Commerce Act and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 10, 11, 12, and 16 of this Act.

[(c)(1) Subject to paragraph (2) of this subsection but notwithstanding any other provision of this Act, after the effective date of a regulation under this section applicable to noise emissions resulting from the operation of any motor carrier engaged in interstate commerce, no State or political subdivision thereof may adopt or enforce any standard applicable to the same operation of such motor carrier, unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section.

[(2) Nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product if the Administrator, after consultation with the Secretary of Transportation, determines that such standard, control, license, regulation, or restriction is necessitated by special local conditions and is not in conflict with regulations promulgated under this section.

[(3) For purposes of this section, the term "motor carrier" includes a common carrier by motor vehicle, a contract carrier by motor vehicle, and a private carrier of property by motor vehicle as those terms are defined by paragraphs (14), (15), and (17) of section 203(a) of the Interstate Commerce Act (49 U.S.C. 303(a)).]

MOTOR CARRIER NOISE

Sec. 18. (a)(1) Regulations of interstate motor carriers and equipment in existence shall continue until specifically repealed or amended.

(2) After the date of enactment of this section, the Administrator may promulgate additional regulations establishing standards and requirements for the design, construction and maintenance of motor carrier equipment or devices or controls and regulations establishing restrictions on motor carrier operations and activities for the purpose of minimizing or eliminating the environmental noise emissions from such equipment activities. Such standards, controls, limits, requirements or regulations, if any, shall reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance.

(3) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 16 of this Act, the Administrator shall promulgate final regulations. Such regulations may be revised from time to time, in accordance with this subsection.

(4) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

(5) Any new regulation or revision thereof promulgated after enactment of this section shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b) The Secretary of Transportation, after consultation with the Administrator shall promulgate regulations to assure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Interstate Commerce Act and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 10, 11, 12, and 16 of this Act.

(c)(1) Nothing in this section shall diminish the right of a State or political subdivision thereof to establish and enforce standards, controls, limits, restrictions, or other requirements on environmental noise, including those from motor carrier equipment and operations, in the absence of a Federal requirement pursuant to this section, or a Federal decision that no Federal, State or local requirement is appropriate, on a specific class of equipment or operations.

(2) Nothing contained herein shall preclude a State or political subdivision thereof from adopting and enforcing a Federal standard, control, limit, restriction, or other requirement promulgated under this section.

(3) Any person adversely affected by a State or local requirement, or the Administrator, may demonstrate by a preponderance of the evidence the existence of conflict between the requirement of a State or political subdivision thereof and that of the Federal government.

(d) For purposes of this section, the term "motor carrier" includes a common carrier by motor vehicle, a contract carrier by motor vehicle, and a private carrier of property by motor vehicle as those terms are defined by paragraphs (14), (15), and (17) of section 203(a) of the Interstate Commerce Act (49 U.S.C. 303(a)).

AUTHORIZATION OF APPROPRIATIONS

Sec. 19. There are authorized to be appropriated to carry out this Act (other than for research and development) **[\$15,000,000 for the fiscal year ending September 30, 1979] "3,300,000 for fiscal year 1982."**

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