NOISE CONTROL ACTIVITIES OF THE
STATE OF CALIFORNIA

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Abstract. This paper deals primarily with state activity in the field of noise control. It covers motor vehicle noise, aircraft noise, noise and land use planning, and includes a discussion of what areas for future state legislation are left uncovered by federal preemption under the Noise Control Act of 1972. With regard to motor vehicle noise, California has been enforcing existing state laws that pertain both to sellers of new vehicles and to operators of all vehicles. The enactment of the Noise Control Act raises questions as to the continued legality of the existing new vehicle laws. California's aircraft noise regulations went into effect in December 1972. As a practical matter, full enforcement must await the satisfactory performance of the monitoring systems, none of which have been fully approved. The airlines have sued the state to invalidate the regulations. The outcome may well depend on the decision of the United States Supreme Court in Burbank v. Lockheed, that court's first aircraft noise regulation case, which was scheduled to be argued in February 1973.

In discussing the noise control activities of the State of California I will devote primary attention to vehicle noise and to airport and aircraft noise, with brief mention of land use planning requirements with respect to noise.

1. Vehicular noise

California has six different types of laws aimed at reducing vehicular noise: (a) objective on the road limits, (b) objective new vehicle limits; (c) traditional subjective limits, (d) muffler certification, (e) tire certification, and (f) off-road vehicle regulation.

I will say a little about each of these, with particular reference to the issue of preemption by the Federal Noise Control Act of 1972.

A. Vehicle Code Sections 23130 and 23130.5 provide on-the-road vehicle noise limits similar to speed limits. These sections may be enforced by police departments, sheriffs, or the California Highway Patrol. The noise measurements must be made in accord with regulations adopted by the Highway Patrol (Title 13, Calif. Admin. Code., §§ 1040 et seq.). There have been problems with noise measurement in urban areas which the Highway Patrol is attempting to resolve through revision of its regulations. As a result of legislation enacted in 1971 (Calif. Legis. Stats. 1971, c. 1256) and a subsequent study by Wyle Laboratories, the Highway Patrol has proposed regulations which will be the subject of public hearings. These proposed regulations attempt to adapt the law to urban enforcement by providing for measurement at closer than 50 ft and by adjustments to account for reflecting surfaces.

The Federal Noise Control Act has two provisions relating to vehicular noise. Section 6 relates to products generally, including motor vehicles. Section 18 covers interstate motor carriers. The Section 6 preemption provision specifically allows state
and local control of environmental noise through the ‘licensing, regulation, or restriction of the use, operation, or movement’ of a product (NCA, § 6 (e)). As such, Section 6 imposes no constraints on the operational requirements that are contained within Vehicle Code Sections 23130 and 23130.5. Section 18 contains a broader pre-emptive provision, preemption for interstate motor carriers essentially all standards not identical to the federal ones, though the Administrator may in effect grant waivers for state or local regulations necessitated by local conditions which are not in conflict with the federal regulations (NCA § 18 (c)). Depending on the stringency of the Federal standards, this unfortunate provision may cause difficulties for operational control of interstate motor carriers in California.

B. Vehicle Code Section 27160 provides that new motor vehicles may not be sold in California if they exceed stated noise limits which progressively diminish through 1988. This provision will help in the long run by requiring the manufacturers to design quiet into new vehicles. It is not a short-term solution, nor does it cope with the problem of illegal modification or of deterioration subsequent to manufacture. This section is enforced by the Highway Patrol.

Again Sections 6 and 18 of the Noise Control Act have a bearing. As to Section 6, covering vehicles other than interstate motor carriers, legislation is being introduced in Sacramento to amend Section 27160 so as to forbid the ‘licensing’ as well as the ‘sale’ of vehicles in violation of the section. This phraseology will prevent Section 6 pre-emption since such licensing for operation was specifically inserted into the Noise Control Act by its author, Senator Tunney, to reserve such authority to states. As to Section 18 and interstate motor carriers, legislation is being introduced in the California Legislature to make the best of this provision by automatically incorporating the Federal regulations into California law, enabling state and local enforcement of the Federal provisions.

C. Vehicle Code Sections 27150 and 27151 are the traditional, non-objective means of vehicular noise regulation. Section 27150 requires that every motor vehicle used on or off highways (which includes city streets) shall be equipped with an adequate muffler in constant operation and properly maintained to prevent any excessive or unusual noise. No muffler or exhaust system shall be equipped with a cutout, bypass, or similar device. Exceptions are made for specified organized racing conditions. Vehicle Code Section 27151 bans modification of exhaust systems in a manner which will amplify or increase the noise above that emitted by the originally installed muffler. No person shall operate a motor vehicle with an exhaust system so modified.

Since these are operational statutes, there is no Section 6 preemption problem. Since there are no ‘standards’ involved in these statutes to be preempted, it would be difficult for an interstate motor carrier to assert Section 18 preemption.

D. Vehicle Code Sections 27150.1 and 27150.7 provide for the Highway Patrol’s certification of motor vehicle exhaust systems based on noise. The new regulations