

# Proposed Rules

Federal Register

Vol. 89, No. 202

Friday, October 18, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 772

[Docket No. FHWA–2019–0036]

RIN 2125–AF78

#### Procedures for Abatement of Highway Traffic Noise and Construction Noise

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FHWA proposes to revise the Federal regulations on the Procedures for Abatement of Highway Traffic Noise and Construction Noise. The proposed rule would clarify certain definitions, the applicability of this rulemaking, certain analysis requirements, and the eligibility of funds made available under the Highways title of the United States Code (U.S.C.) to provide noise abatement measures and to improve the analytical procedures. The FHWA also proposes changes and clarifications of factors used to determine the effectiveness of noise abatement measures. In addition, the proposed rule would include exemptions to Type I projects and allow screening analysis that would focus on the projects most likely to cause a traffic noise impact to improve efficiency. The proposed rule would make several changes that are intended to increase the pool of eligible participants in the noise study and mitigation decision processes to ensure everyone receives due consideration for impacts and the possibility of receiving abatement on a given project.

**DATES:** Comments must be received on or before December 17, 2024. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) and follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor Room W12–140, Washington, DC 20590.

- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

- *Instructions:* You must include the agency name and docket number or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comments. All comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For technical information: Aileen Varela-Margolles, Office of Natural Environment, (305) 978–7780; for legal information: Lev Gabrielovich, Office of the Chief Counsel, (202) 366–3813, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., ET Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

#### Table of Contents for Supplementary Information

I. Electronic Access and Filing
II. Executive Summary
III. Background
IV. Summary of Key Proposed Changes
Table: Summary of Key Proposed Changes
V. Section-by-Section Discussion
Section 772.1 Purpose
Section 772.3 Definitions
Section 772.5 Applicability
Type I Projects
Project Exemptions
Type II Projects
Type III Projects
State Noise Policy
Effective Date
Section 772.7 Traffic Noise Prediction
TNM Version
Clarifications
Noise Screening Process
Section 772.9 Analysis of Traffic Noise Impacts
Section 772.11 Analysis of Traffic Noise Abatement
Engineering Effectiveness
Acoustic Effectiveness
Cost Effectiveness
Consideration of Viewpoints

#### Optional Factors

Date of Public Knowledge  
 Section 772.13 Construction Noise  
 Section 772.15 Documentation and Reporting  
 Section 772.17 Information for Local Officials  
 Section 772.19 Federal Participation  
 Table 1 to Part 772—Traffic Noise Impact Criteria

#### VI. Regulatory Analyses and Notices

#### I. Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at [www.regulations.gov](http://www.regulations.gov) using the docket number listed above. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register’s website at: [www.federalregister.gov](http://www.federalregister.gov) and the U.S. Government Publishing Office’s website at: [www.GovInfo.gov](http://www.GovInfo.gov).

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the location specified in the **ADDRESSES** section. Comments received after the comment closing date will be filed in the docket and considered to the extent practicable. In addition to late comments, we will continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after the close of the comment period and after DOT has had the opportunity to review the comments submitted.

#### II. Executive Summary

The FHWA proposes to update the Federal Procedures for Abatement of Highway Traffic Noise and Construction Noise in 23 CFR part 772 (part 772) to clarify the responsibilities under the “applicability” section of this part to various State department of transportation (State DOT) and non-State DOT recipients of apportioned or discretionary funding, provide additional flexibility for State DOTs, improve consistency in the implementation of part 772, increase options for abatement that is best suited to a particular project and community,

and create a more equitable process for considering the affected public's preference when making noise abatement decisions. The proposed rule would make changes to how and when noise impacts are considered, the funding mechanisms available for noise abatement, the methods for consideration of benefitted receptor's desires, the Date of Public Knowledge as currently defined in § 772.5, and recommendations for considering construction noise in ways that are intended to increase the pool of eligible participants in the noise study and mitigation decision processes to promote equitable consideration for impacts and the possibility of receiving abatement on a given project. The proposed changes would allow all recipients to expedite project delivery while maintaining protections for human health and the environment by continuing to provide for analyzing, considering, minimizing, and mitigating noise impacts.

The FHWA proposes to reorganize part 772 to improve its clarity in response to stakeholder feedback on the existing regulation. The proposed changes fall into three categories: (1) those that are intended to better balance

the needs of receptors (noise-sensitive lands and buildings) adjacent to the project with the needs of recipients; (2) those that are intended to improve the compliance process and focus work effort on projects that are likely to alter the existing noise environment; and (3) those that will allow for the timely adoption of new technology in noise analyses.

The proposed rule includes several key changes that have the potential to alter how recipients conduct noise analyses and how the public receives consideration for noise abatement. The FHWA is proposing to redefine how projects are categorized, what areas of and around a project must be considered for noise analysis, adding exemptions to Type I projects, and allowing project-level screening. This would allow recipients to focus analysis and mitigation efforts on projects and areas that have, or are likely to have, noise impacts. When projects must undergo noise analyses, FHWA is proposing to update the method for adopting new versions of the Traffic Noise Model. In considering traffic noise impacts, the proposed rule would include changes to the levels that are considered an impact. When impacts

are identified and abatement must be considered, FHWA is proposing to improve the process for considering abatement by consolidating requirements; allowing for the use of innovative mitigation measures; allowing for the consideration of non-acoustical benefits of mitigation; seeking comment on third-party funding options; updating how property owners' and residents' viewpoints are solicited, counted, and considered; defaulting to replacing existing mitigation in-kind; and including provisions for reestablishing a Date of Public Knowledge. These proposed changes would increase community opportunities to participate in decisionmaking and potentially to obtain noise mitigation for impacts. The proposed rule also includes some updates to the consideration of construction noise when such noise is present at a single location for a long time. Finally, FHWA is proposing to allow additional flexibility for all effective abatement measures to be eligible for Federal participation. The FHWA requests comments on the proposed changes.

KEY PROPOSED CHANGES TO PART 772

Topic area	Description of proposed change	Existing regulatory section(s)	Proposed regulatory section(s)
Reorganization .....	Reorganizing the existing regulation to better match the project development process from beginning to end.	All sections, except § 772.17.	All sections, except § 772.17.
Applicability and responsibilities.	Clarifying what parts of this rulemaking apply only to State DOTs and which parts apply to all recipients receiving FHWA funding and/or approvals for a project.	All sections, except § 772.1.	All sections, except § 772.1.
Project Types .....	Better aligning work effort to likely results (e.g., focusing noise analysis on projects likely to have noise impacts) by: <ul style="list-style-type: none"> <li>• Introducing exempt projects</li> <li>• Introducing screenings to determine likelihood of impacts</li> <li>• Updating what constitutes the analysis area</li> </ul>	§ 772.5, § 772.7 .....	§ 772.3, § 772.5, § 772.7.
Traffic noise prediction .....	Including legacy periods and grace periods, and providing for use of updated versions of the Traffic Noise Model (TNM) via FEDERAL REGISTER notice.	§ 772.9 .....	§ 772.7.
Consideration of adjacent receptors.	Establishing criteria and processes for resetting the Date of Public Knowledge and reanalyzing a project area for new receptors. Establishing a default wherein public viewpoints are weighed equally and are the final decision point regarding State DOT-proposed mitigation measures.	§ 772.5, § 772.13 .....	§ 772.9, § 772.11.
Traffic noise impacts .....	Updating the criteria for a noise impact to balance research and commonly used State criteria.	§ 772.5, § 772.11, Table 1—Noise Abatement Criteria. § 772.13 .....	§ 772.3, § 772.9, Table 1—Noise Impact Criteria. § 772.11.
Analysis of traffic noise abatement.	Consolidating the analysis of feasibility and reasonableness of abatement measures, and replacing these terms with effective noise abatement or effectiveness. Establishing a default decision of in-kind replacement of noise mitigation that is impacted by a project. Clarify the process and allow for equitable allocation of resources and benefits.	§ 772.13 .....	§ 772.11.
Consideration of other abatement measures.	Updating Federal participation to allow funding noise abatement measures that are effective and consistent with FHWA's national policy for environmental mitigation in 23 CFR 771.105(e) and allow more flexibility in abatement options. Proposing three options for third-party prohibitions, restrictions, or allowance thereof.	§ 772.13, § 772.15 .....	§ 772.11, § 772.19.

III. Background

Legal Authority

The FHWA developed the noise regulation as required by section 136 of the Federal-Aid Highway Act of 1970

(codified at 23 U.S.C. 109(i)). The part 772 regulation applies to a highway or multimodal construction project that requires FHWA approval regardless of funding sources, or is funded with Federal-aid highway funds. See 23 CFR

772.7(a). The regulation requires a recipient to investigate traffic noise impacts in areas adjacent to a federally-funded or approved project for the construction of a highway on a new location or a significant change to an

existing highway. If the recipient identifies noise related impacts, it must consider noise abatement. See 23 CFR 772.11 and 772.13. The recipient must incorporate all feasible and reasonable noise abatement into the project design. See 23 CFR 772.13(h). The FHWA last updated the noise regulation in 2010, with an effective date of July 13, 2011 (75 FR 39820, July 13, 2010).

*Statement of the Problem*

The FHWA has received ongoing feedback from State DOTs, other transportation stakeholders and practitioners, and the public related to the implementation of the noise regulation since 2011. The feedback includes comments suggesting that some requirements in the existing regulation are ambiguous and unclear while others are too prescriptive. The existing regulations also allow for different interpretations of some requirements. As a result, noise impact and abatement decisions can vary significantly from State to State. Interpretations of some requirements can also result in inequitable outcomes regarding the construction or provision of noise abatement in communities. One example of documented feedback is a report sponsored by FHWA and the American Association of State Highway and Transportation Officials (AASHTO) summarizing findings from a Traffic Noise Practitioners Summit held in October 2015.<sup>1</sup> Another example is a listening session sponsored by FHWA and AASHTO in March 2019; comments from the listening session are summarized and posted in the docket for this rulemaking.

The proposed changes are intended to address stakeholder concerns with the existing regulation and would strike a balance between retaining flexibility for States while improving consistency and

equitable implementation of the regulation for the public. The FHWA has identified several areas where the existing regulation could be improved to better serve the public. For example, FHWA proposes to offer additional flexibilities on the type of non-barrier mitigation measures allowed. Proposed improvements would better balance the recipient’s flexibilities in addressing highway noise issues and continue to protect noise sensitive receptors, such as homes and schools, near projects. For more information see the Section-by-Section discussion below.

The proposed rule would support FHWA’s goals and objectives of encouraging infrastructure investment while protecting the environment. The proposed rule also would advance the policy goals of three Executive orders (E.O.). Section 1 of E.O. 13990 on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (86 FR 7037, Jan. 25, 2021) states the Administration’s policy of listening to the science and improving public health and protecting the environment. The proposed rule, which is informed by scenario modeling and statistical data analysis, would help to protect the public from the introduction of new unhealthy levels of noise and would provide for the use of data and science to analyze existing conditions and make determinations on noise impacts and abatement. The E.O. 14008 on Tackling the Climate Crisis at Home and Abroad (86 FR 7619, Feb. 1, 2021) reiterates the importance of protecting public health and delivering environmental justice. The proposed rule, when applied to individual projects, would have the potential to lead to noise analysis and noise abatement measures that could promote environmental justice by protecting human health through the

provision of noise mitigation and spurring economic opportunity through mobility. In the same manner, the proposed rule would carry out E.O. 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009, January 25, 2021), as amended by E.O. 14091 on Further Advancing Racial Equity and Support for Underserved Communities Through The Federal Government (88 FR 10825, February 16, 2023), by introducing new ways for recipients to consider impacts and mitigation in a way that best fits a given community. See the IV. Summary of Key Proposed Changes and V. Section-by-Section Discussion below.

The overarching goal of the proposed changes is to develop a clear and concise regulation that satisfies statutory requirements, improves the analytical process and subsequent decisionmaking, and continues to help protect the public’s health, welfare, and livability. The FHWA proposes updates to all sections of the existing regulation. The FHWA is soliciting comments on all of the proposed changes, and expressly seeks comment on specific provisions below. Additional information on these proposed changes follows in IV. Summary of Key Proposed Changes. More details on these and other changes can be found in V. Section-by-Section Discussion of this NPRM.

**IV. Summary of Key Proposed Changes**

The FHWA proposes to reorganize the sections of the existing regulation to better match the workflow of a noise analysis during the project development process from beginning to end. The Derivation Table lists the proposed section numbers and names next to the existing section numbers.

DERIVATION TABLE TO COMPARE PROPOSED AND EXISTING PART 772

Proposed section(s)	Existing section(s)
§ 772.1 Purpose .....	§§ 772.1 and 772.3.
§ 772.3 Definitions .....	§ 772.5.
§ 772.5 Applicability .....	§ 772.7.
§ 772.7 Traffic Noise Prediction .....	§ 772.9.
§ 772.9 Analysis of Traffic Noise Impacts .....	§ 772.11.
§ 772.11 Analysis of Traffic Noise Abatement .....	§ 772.13.
§ 772.13 Construction Noise .....	§ 772.19.
§ 772.15 Documentation and Reporting .....	§§ 772.13, 772.11, and 772.19.
§ 772.17 Information for Local Officials .....	§ 772.17.
§ 772.19 Federal Participation .....	§ 772.15.

The FHWA proposes to substitute the term “State DOT” for “highway agency”

in certain sections of part 772 to reflect current usage and clarify what actions

are the exclusive responsibility of a State DOT rather than the responsibility

<sup>1</sup> AASHTO Center for Environmental Excellence, Traffic Noise Practitioners Summit White Paper,

and Noise Roadmap (February 22, 2016), available

at: <https://environment.transportation.org/past-event/2015-traffic-noise-practitioners-summit/>.

of other non-State DOT recipients of FHWA funds or approvals. The term “recipient” is newly added to part 772 when the section’s requirements and responsibilities belong to any entity with a project that is subject to this part.

The term recipient is inclusive of State DOTs, unless otherwise denoted by “non-State DOT recipient”.

The FHWA is proposing 10 key changes to this regulation, as summarized in the table below,

Summary of Key Proposed Changes. Details on the reorganization of content and proposed changes within individual sections are described in the V. Section-by-Section Discussion.

SUMMARY OF KEY PROPOSED CHANGES

Section (as proposed) and topic	Proposed change	Purpose of change
<i>What we are proposing to change?</i>	<i>What are we proposing to change it to/replace it with?</i>	<i>Why are we proposing to change this?</i>
Project area requiring analysis—Noise analysis area § 772.3 Definitions § 772.5 Applicability § 772.9 Analysis of traffic noise impacts	We propose to use the project area where design year traffic may contribute to noise impacts from the project.	To focus analysis and work effort on areas most likely to be affected by the project based on traffic changes and construction work, and to ensure full consideration of community impacts.
Type I project definitions and required analyses ..... § 772.5 Applicability § 772.7 Traffic Noise Prediction	These proposed changes would: (1) identify Type I projects that could be exempt from noise analysis because these projects are expected to have minimal or no noise impacts; and (2) allow project screenings to determine whether impacts are likely before a full analysis with field measurements and modeling is undertaken.	To introduce additional flexibility to improve the analytical process by better aligning the analysis effort to the likelihood of potential impacts and successful construction of abatement, while still providing the necessary information to the public regarding project impacts as part of FHWA National Environmental Policy Act (NEPA) process.
Definitions of impacts ..... § 772.3 Definitions § 772.9 Analysis of Traffic Noise Impacts § 772.11 Analysis of Traffic Noise Abatement Table 1 Noise Impact Criteria	We propose to change the definitions of substantial changes in noise levels by: changing substantial decrease as contained in the acoustic effectiveness criterion to be at least 5 dB(A) but not more than 10 dB(A); and changing the substantial increase criterion, by capping the maximum allowable increase, beyond which an impact will occur, at 10 dB(A) and maintaining the current floor value of 5 dB(A), below which a noise impact because of a substantial increase does not occur. We also propose to remove the requirement to set an approach level of at least 1 dB(A), and incorporate it into table 1 by reducing the Noise Impact Criteria by 1 dB(A) for all Activity Categories. For all criteria, State DOTs would continue to have the option to define more stringent (lower) values.	To better align the definitions of substantial decrease and substantial increase to be the same range of values which is a more logical approach and will also result in additional communities being considered for mitigation compared to the current rule. To update the impact values in table 1 in order to remove the requirement for State DOTs to select an approach criteria.
TNM software updates and releases ..... § 772.7 Traffic Noise Prediction	We propose to provide for usage of legacy data from ongoing projects and grace periods for beginning to use new releases of TNM in noise analyses.	To ensure a smooth transition to future updates of FHWA’s TNM and to provide certainty to State DOTs and noise analysis practitioners on when the new model should be used for noise analyses.
Date of Public Knowledge ..... § 772.9 Analysis of Traffic Noise Impacts § 772.11 Analysis of Traffic Noise Abatement	We propose to provide circumstances under which the Date of Public Knowledge must be reset.	To ensure that the public obtains full consideration for potential impacts and abatement in cases where project design changes will alter the noise environment from what was previously analyzed in NEPA; and to ensure that the public is considered for impacts and abatement in cases where projects do not proceed in a timely manner after the completion of NEPA. This change consistent with NEPA reevaluation policies.
Mitigation Options ..... § 772.9 Analysis of Traffic Noise Impacts § 772.11 Analysis of Traffic Noise Abatement	We propose to allow for any effective mitigation measures, or combination measures, to be eligible for Federal-aid funding provided they meet the requirements established in this rulemaking and in the given State DOT Noise Policy. We propose to include an additional optional effectiveness factor, to allow for noise mitigation that also provides other environmental and social benefits.	To expand options for State DOTs to consider more cost- and acoustically-effective mitigation options such that mitigation is provided more often, is more effective at reducing noise, can enhance the environment, and can do so using the limited available funding.
Analysis process ..... § 772.11 Analysis of Traffic Noise Abatement	We propose to combine “feasibility” and “reasonableness” determinations using the term “effectiveness.” We propose to establish that existing noise barriers that are disturbed by a new project can be eligible for Federal-aid funds for in-kind or improved replacement without necessitating additional analyses.	To consolidate and clarify the traffic noise abatement analysis process so that it is easier to understand for the public; and to maintain existing mitigation that benefits a community.
Public Involvement ..... § 772.11 Analysis of Traffic Noise Abatement: Consideration of Viewpoints	We propose to consider renters and owners as having equal votes during mitigation decisionmaking; to make mitigation decisions based on a simple majority of returned ballots; and to limit the use of a minimum response rate requirement by State DOTs.	To increase the public’s awareness of and influence on final mitigation decisions.
Third Party Funding ..... § 772.11 Analysis of Traffic Noise Abatement	We propose three options to consider third party funding. Proposed option three would remove the prohibition on complete funding of noise abatement by a third party while retaining the ban on partial funding.	To ensure equitable allocation of resources and benefits and financial prudence for cost effective abatement measures.

SUMMARY OF KEY PROPOSED CHANGES—Continued

Section (as proposed) and topic	Proposed change	Purpose of change
<i>What we are proposing to change?</i>	<i>What are we proposing to change it to/replace it with?</i>	<i>Why are we proposing to change this?</i>
Quantitative Analysis of Construction Noise ..... § 772.19 Construction Noise	We propose to include a new section stating that State DOTs should conduct quantitative construction noise analyses in cases where the public has expressed concern about the issue, or where the State DOT believes that construction noise is likely to impact the quality of life of nearby residents.	To ensure the public receives proper consideration for construction noise mitigation measures.

The FHWA also proposes to clarify the timeline for implementation of the final rule, including preparation and use of State DOT noise policies. The FHWA anticipates the effective date will be 30 days after publication of the final rule, consistent with the Administrative Procedure Act, 5 U.S.C. 553(d). To implement the final rule, FHWA proposes that a State DOT would be required to develop its noise policy in accordance with the final rule and submit its proposed policy to FHWA, or self-certify its approval of its policy, within 6 months following the effective date of the final rule. The State DOT would be required to implement the new noise policy within 12 months of the effective date of the final rule and apply the policy uniformly and consistently statewide. Recipients within the State would follow and implement their respective State DOT's noise policy on the same schedule as the State DOT. This would allow sufficient time for States to develop, finalize, and publish their policies.

The FHWA is proposing that States adopt new noise policy within 6 months and implement within 12 months of a final rule. The FHWA encourages States to implement the many improvements in the final rule by incorporating them in a new noise policy as expeditiously as practicable. A State's failure to revise a noise policy in accordance with the final rule could prevent FHWA Division Office from reviewing proposed projects in the State for noise impacts and to implement abatement measures to mitigate impacts in a timely manner. If a State does not revise its noise policy, the FHWA Division Office would be unable to determine whether a project's noise analysis complies with the final rule. Since all environmental commitments for effective noise abatement must be included in the plans, specifications and estimates before FHWA releases a project for construction, a State's failure to implement a revised noise policy within 12 months could result in a delay in FHWA's approval of highway projects within the State.

Projects for which traffic noise prediction activities are initiated 12 months after the effective date of the final rule, or initiated after approval of the State's noise policy, whichever occurs first, would need to be developed in accordance with this part. The recipients of Federal funding may also choose to apply this regulation to any project at any stage after approval of the State's noise policy.

Commenters are encouraged to comment on the feasibility of this timeline and the proposed approaches to the noise policy development and approval process described in V. Section-by-Section Discussion under § 772.5 Applicability.

**V. Section-by-Section Discussion**

The following paragraphs describe the proposed changes within each section of the regulation as proposed to be reorganized. We also explain where we are proposing to combine existing sections.

*Section 772.1 Purpose*

The FHWA proposes to reorganize the existing regulation to better match the workflow of a noise analysis during the project development process from beginning to end. The proposed reorganization includes consolidating the existing § 772.1 Purpose and § 772.3 Noise Standards sections into a single § 772.1 Purpose section. By consolidating these sections, proposed § 772.1(a) would describe the purpose of providing noise standards and would remove repetitive information that is found in proposed § 772.1(b) regarding what constitutes noise standards.

The proposed changes also would include three clarifications of existing requirements in §§ 772.1 and 772.3. The first would clarify that this rulemaking applies to both highway traffic noise and construction noise by replacing the phrase "procedures for noise studies and noise abatement measures" with "highway traffic and construction noise standards" in proposed § 772.1(a). The second would clarify that this rulemaking provides both "noise impact and abatement criteria" by adding the

words "impact and" in § 772.1(b). The final change would correct the reference to 23 U.S.C. 109(i) in existing § 772.3.

*Section 772.3 Definitions*

Renumbered § 772.3, as proposed, would add, revise, combine, and remove several definitions. For the reasons discussed below, FHWA proposes to add new definitions for the following eight terms: *Cost average*; *Exempt project*; *Noise analysis area*; *Noise Impact Criteria*; *Noise policy*; *Receiver*; *Recipient*; and *State DOT*. The FHWA proposes to rename *Noise reduction design goal* to *Noise reduction requirement* and revise the definition. The FHWA also proposes to revise the following terms in the existing regulation: *Benefitted receptor*; *Impacted receptor*; *Permitted*; *Receptor*; *Statement of likelihood*; *Substantial noise increase*; *Traffic noise impacts*; *Type I project*; *Type II project*; and *Type III project*. The FHWA proposes to combine the terms *Multifamily dwelling* and *Residence* into the single term *Residence*. Finally, FHWA proposes to remove the terms *Date of public knowledge*; *Feasibility*; *L<sub>10</sub>*; *Reasonableness*; and *Substantial construction*. These changes would provide clarity and make these definitions easier to understand or in line with the state of practice. Some of these changes (e.g., benefitted receptor, impacted receptor, and noise reduction requirement) would allow State DOTs more flexibility to mitigate noise impacts in a community and in a context sensitive manner. We discuss the proposed changes in alphabetical order consistent with the regulation. We do not discuss existing definitions that would remain unchanged.

*Benefitted receptor*. The FHWA proposes to simplify this definition. Under the existing rule, a benefitted receptor is a receptor with a "noise reduction at or above the minimum threshold of 5 dB(A), but not to exceed the highway agency's reasonableness design goal." Under this proposed rule, a benefitted receptor would include any receptor that achieves the noise reduction requirement criterion as defined by a State DOT. Thus, this

definition would align with the noise reduction requirement rather than have multiple criteria. A defined threshold that is consistently applied would support fairness in decisionmaking and more equitable outcomes.

*Cost average.* Existing § 772.13(k) allows a State DOT, on Type I or Type II projects, the option to cost average noise abatement among benefitted receptors within a project, if certain criteria are met. State DOTs are familiar with this concept in noise abatement, and FHWA proposes to add the definition to § 772.3 to facilitate implementation by recipients.

*Date of public knowledge.* The FHWA is proposing to remove this definition, as it is described and used entirely in proposed § 772.11 Analysis of traffic noise abatement.

*Exempt project.* The FHWA proposes to add this new definition for Type I projects that are not expected to have noise impacts and are thus exempt from noise analysis and consideration of abatement under proposed § 772.5(c).

*Feasibility.* The FHWA is proposing to remove this term and definition from the rule. The concepts and criteria that are under feasibility in the existing regulation would be covered under the consideration of effective noise abatement described in proposed § 772.11(e).

*Impacted receptor.* The FHWA proposes to modify this definition for clarity, by replacing “[t]he recipient” with “[a] receptor” that has a traffic noise impact.

*L<sub>10</sub>.* The FHWA proposes to remove this definition and noise metric to reflect existing practice. All State DOTs now use the L<sub>EQ</sub> noise metric.

*Multifamily dwelling.* The FHWA proposes to remove this definition by combining it with the more general term *Residence*. The descriptions in both of these terms are repetitive and can be covered by the more general of the two. The regulatory provision in the existing definition of *multifamily dwelling*, requiring that each residence in a multifamily structure be counted as one receptor when determining impacted and benefitted receptors, was moved to proposed § 772.7(d).

*Noise analysis area.* The FHWA proposes to add this new definition to identify the areas within or beyond the project limits that may have noise impacts. This would allow project sponsors to focus analysis on the areas that may have noise impacts. Currently, if a project is determined to be a Type I project, then the entire project area as defined in the environmental document is required to be analyzed, per paragraph (8) under the definition of

Type I project in existing § 772.5. The proposed approach to determining the noise analysis area would provide flexibility and avoid establishing a distance for study based on other factors that may not be appropriate for noise analyses. Use of TNM is the recommended method for determining the extent of impacts from a specific highway. Impacts may be contained within the project area, but may also extend beyond the project limits. The FHWA is seeking comments on the new definition of *noise analysis area* from the entire project to the areas that are most likely to have a noise impact from the roadway.

*Noise Impact Criteria.* The FHWA proposes to add this definition to reflect the proposed change of the title of table 1 from “Noise Abatement Criteria” to “Noise Impact Criteria.” The term *Noise Impact Criteria*, proposed to mean the values in table 1 or lower (more stringent) values as specified in a State noise policy, would better reflect that the sound levels in the table are the levels at which noise impacts are considered to occur. Analysis of abatement would occur after the identification of traffic noise impacts. This approach was made clear in footnote 2 to Table 1 in the current regulation.

*Noise policy.* The FHWA proposes to add this new definition to clarify what constitutes a State noise policy. A State may title its noise policy by other names, but this definition and the associated regulatory text would aid State DOTs in fulfilling the requirements.

*Noise reduction requirement.* The FHWA proposes to rename the existing term *Noise Reduction Design Goal* to the more accurate *Noise Reduction Requirement*, to reflect existing practice. The FHWA also proposes to align the noise reduction requirement with the acoustic effectiveness standard in § 772.11(e). Under the current rule, highway agencies analyze feasibility by achieving at least a 5 dB(A) highway traffic noise reduction at impacted receptors, then analyze which receptors are considered benefitted, and then finally analyze how many benefitted receptors achieve the reasonableness acoustic criterion (‘noise reduction design goal’) of at least 7 dB(A). To clarify the standard, FHWA proposes that the acoustic feasibility, benefitted receptor, and noise reduction design goal be consolidated into a single ‘effectiveness’ criterion for acoustics entitled the ‘noise reduction requirement.’ This value would be at least 5 dB(A) but not more than 10 dB(A) at the given number of receptors

as defined in a State noise policy. In addition, FHWA proposes to add the flexibility of allowing a combination of abatement measures to achieve the specified noise reduction rather than a single measure. Accordingly, as proposed, the *Noise reduction requirement* would mean any measure, or combination of measures, that mitigates noise impacts to receptors by reducing design year noise levels by 5 to 10 dB(A) as defined in a State noise policy.

*Permitted.* The FHWA proposes to revise this definition such that a definite commitment to develop land can be evidenced not only by the issuance of a building permit, but also by the equivalent. This would address situations for which a building permit is not applicable to that type of development. For example, projects in government jurisdictions that do not use building permits for certain types of developments, such as mobile homes, would be considered for impacts and abatement, as long as the jurisdiction can prove a commitment. This proposed change reflects common practice and addresses a gap in the existing rule.

*Reasonableness.* The FHWA is proposing to remove this term and definition from part 772. The concepts and criteria that are under reasonableness in the existing regulation would be covered under the consideration of effective noise abatement described in § 772.11(e).

*Receiver.* The FHWA proposes to add this new definition to clarify that this term refers to a modeling object inside TNM. The proposed definition also would clarify that a modeled receiver can represent one or more real-world receptors, provided that they share a common noise environment.

*Receptor.* The FHWA proposes to modify this definition to mean a real-world location only. The concept of “representative” locations in a noise model is described in the definition of the term *Receiver*. Receptors are modeled using the Receiver input object in TNM.

*Recipient.* The FHWA proposes to add this new definition to clarify requirements and responsibilities belong to any entity with a project that is subject to this part. A recipient means an entity that receives a Federal award directly or via a pass-through entity from FHWA. The project can be funded with apportioned or discretionary funding, or subject to an FHWA approval action. A recipient can be a State, regional, county, or local government or other project sponsor such as a grant recipient undertaking a highway project. For the purposes of 23

CFR part 772, recipients do not include federally recognized Tribes.

*Residence.* The FHWA proposes to combine this definition with the current definition of *Multifamily dwelling*, as previously discussed.

*State department of transportation.* The FHWA proposes to add this new definition to clarify what actions are the exclusive responsibility of a State DOT rather than the responsibility of other non-State DOT recipients.

*Statement of likelihood.* The FHWA proposes to replace the phrase “feasibility and reasonableness analysis” in the definition with “impact and abatement analysis” to reflect the replacement of the feasibility and reasonableness concepts with the proposed effective noise abatement criteria described in § 772.11(e).

*Substantial construction.* The FHWA proposes to remove this definition, as it is described entirely in § 772.13.

*Substantial noise increase.* The FHWA proposes to change the definition of substantial noise increase from a level between 5 and 15 dB(A) to between 5 and 10 dB(A) in the design year over the existing noise level as defined in a State noise policy. The FHWA believes that setting the substantial increase to between 5 and 10 dB(A) would provide clarity for what constitutes a “substantial increase” in noise level. A 10 dB(A) increase is perceived as a doubling in loudness, and will have a noticeable impact on people living, working, or playing in the near-road environment. Noise increases above 10 dB(A) are rare and infrequent. For example, a 10 dB(A) noise increase can be caused by 10-fold increase in traffic volume. An increase of 15 dB(A) can be caused by 31-fold increase in traffic volume, based on the logarithmic scale of the decibel unit of measurement. These changes consider what is mathematically defensible and understandable to the public; what is recommended by research conducted into the health-impacts and speech interference from noise; and what is an achievable reduction using current technology. The FHWA proposes to retain the flexibility for a State DOT to choose the criteria in its noise policy within the given range. This proposed change in definition also would be better aligned with the proposed noise reduction requirement of 5 to 10 dB(A), discussed in § 772.11. The FHWA is seeking comments on the proposed change to *substantial noise increase*.

*Traffic noise impacts.* The FHWA proposes to revise this definition to incorporate proposed changes in the regulation, specifically the title change of table 1 to part 772 from Noise

Abatement Criteria to Noise Impact Criteria, and to remove the term and concept of an “approach” level, the value of which is incorporated directly into table 1. States would retain the option to define a lower impact criteria than the values in table 1. The proposed definition otherwise would remain the same, in that it would describe that there are two ways in which a traffic noise impact may occur—either when design year build condition noise levels: (1) meet or exceed the criteria listed in table 1; or (2) create a substantial noise increase over existing levels.

*Type I project.* The FHWA proposes to simplify the definition of Type I project and move the specific examples to § 772.5.

*Type II project.* The FHWA proposes to revise the existing definition by adding a clause to clarify for the public that a Type II project is a retrofit noise abatement project on an existing highway in the absence of an associated highway project.

*Type III project.* The FHWA proposes to revise the existing definition by adding a sentence to clarify that a Type III project is not likely to change the noise environment.

The FHWA is not proposing any changes to the following existing definitions: *Common noise environment*, *Design year*, *Existing noise levels*, *Impacted receptor*, *LEQ*, *Noise barrier*, and *Property owner*.

#### Section 772.5 Applicability

This section is proposed to be renumbered and revised to include the detailed descriptions of Project Types that are found in the existing Definitions section, introduce the new concept of exempt projects, and describe the State DOT noise policies and minimum criteria for inclusion in such policies.

The FHWA proposes to clarify in renumbered § 772.5(a)(1) that the proposed rule applies to any highway project or multimodal project that requires FHWA approval, regardless of funding sources, or that is funded with Federal-aid highway funds.

#### Type I Projects

The FHWA proposes to move the list of example projects that are currently found in the Definitions section to renumbered § 772.5. The FHWA proposes in § 772.5(b) to organize the list of Type I projects into four broad categories that would cover all of the project types under the existing definition of the term “Type I project”: (1) construction of a roadway on a new location; (2) substantial physical alteration of an existing highway; (3) a substantial change in the operations of

an existing highway when those changes are because of the proposed highway project; and (4) other projects which may cause a traffic noise impact during regular operation. The list of Type I projects in proposed § 772.5(b) would not be exclusive.

Proposed § 772.5(b)(3) would explicitly describe a substantial change in operations for clarity, where it is currently implied by the example project types listed as being primarily work on an existing alignment. These projects include restriping existing pavement to add an auxiliary lane or through traffic lane, including for a high occupancy vehicle (HOV) lane, high occupancy toll (HOT) lane, bus lane, or truck climbing lane; and the addition of a new or a substantial alteration of a weigh station, rest area, ride-share lot, or toll plaza. The FHWA proposes to move “except for when the auxiliary lane is a turn lane” from paragraph (4) of the existing definition of a “Type I project” to the proposed project exemptions in proposed § 772.5(c)(1) for clarity. In proposed § 772.5(b)(3)(v), FHWA would add an explanation to describe “substantial alteration” from existing Analysis and Abatement Guidance (2011)<sup>2</sup> and to account for the projects that are eligible for assistance under title 23, including projects funded by discretionary grants under title 23 or administered as if Federal-aid projects under chapter 1 of title 23.

In addition, projects proposing to use apportioned funding or discretionary grants under title 23, or projects that are administered as if they are Federal-aid projects under chapter 1 of title 23, to build noise abatement on existing roadways, should be subject to the same requirements of a Type I projects because the acoustic performance of the noise abatement measure can only be predicted and analyzed by performing a noise analysis. Such projects would include changing the pavement surface or building noise barriers in the roadway right-of-way.

Projects proposing to use Federal-aid funds to build independent noise abatement on existing roadways are Type II projects and can only obtain the FHWA funding and approval by being part of an approved Type II program priority list. On the other hand, projects proposing to use discretionary grant funding to build independent noise abatement on existing roadways must follow the eligibility requirements of the

<sup>2</sup> FHWA, “Analysis and Abatement Guidance” (FHWA-HEP-10-025) (June 2010; revised December 2010), available at: [https://www.fhwa.dot.gov/environment/noise/regulations\\_and\\_guidance/analysis\\_and\\_abatement\\_guidance/](https://www.fhwa.dot.gov/environment/noise/regulations_and_guidance/analysis_and_abatement_guidance/).

given grant program and are not necessarily Type II projects.

New § 772.5(b)(4) would add “other projects which may cause a traffic noise impact during regular operation” to the list of Type I projects. Generally, if a project results in a new noise source, the State DOT should consider a noise analysis for the project. The proposed rule would not preclude a State DOT from performing a noise analysis for a project that does not strictly meet the Type I or Type II criteria, but may result in a new noise source.

**Project Exemptions**

The FHWA proposes in new § 772.5(c) to introduce a new “exempt project” category. The exempt projects

would be those projects that would otherwise be considered as Type I based on their scope of work but are not likely to change the noise environment. Projects unlikely to change the noise environment would not require analysis of traffic noise impacts or abatement as in the case of Type III projects. Proposed project exemptions include clarifications of project parameters that currently are described in guidance.

The table below lists proposed Type I projects that could be exempt, with references to the proposed regulation. The FHWA conducted research and modeling analysis to support the proposed exemptions. The research report, titled “23 CFR 772 NPRM

Analysis: Analysis to Support Potential Type I Exempt Projects,” is available for review in the docket.

The FHWA seeks comments on whether to include exemptions in this regulation for assessment of noise impacts, on the exempt projects in proposed § 772.5(c), and on other projects that should be considered for exemption from analysis of traffic noise impacts with appropriate justification.

**Type I Projects and Corresponding Proposed Exemptions**

If a Type I project meets the description in the first column, then a proposed exemption is listed in the second column.

Type I project	Proposed exemption to Type I project
The addition of a new or substantial alteration of a toll plaza § 772.5(b)(3)(v).	The addition of, or conversion to, an all-electronic toll plaza where vehicles do not stop or accelerate away. § 772.5(c)(1)(i)
The addition of an auxiliary lane, whether added by construction or restriping § 772.5(b)(3)(ii) and (iv).	An auxiliary lane when it is a turn lane or less than 2,500 feet in length and thus does not function as a through lane. § 772.5(c)(1)(ii)
The addition of a through traffic lane(s), whether added by construction or restriping § 772.5(b)(3)(i) and (iv).	The addition of a through traffic lane when: <ul style="list-style-type: none"> <li>• Design speed limit is 35 mph or less; and</li> <li>• Vehicular restrictions would cause the volume of traffic using these lanes to be much lower than the main lanes, including autos-only, bus-only, and no trucks allowed. § 772.5(c)(iii)</li> </ul>
Substantial Vertical Alteration § 772.5(b)(2)(ii) ....	A substantial vertical alteration when such alteration results in a newly blocked line of sight between the area and the receptor, such as moving a roadway into a cut. § 772.5(c)(1)(iv)

**Type II Projects**

Proposed § 772.5(d) is intended to provide more clarity to the public that a State would need to develop a Type II noise program in order to use Federal-aid funds when considering noise abatement on existing highways in the absence of a new highway project. This is the case under the existing regulation and it would be the case under the proposed rule. A State’s participation in the development and implementation of a Type II program is and would continue to be optional. A State also retains the right to use their own funding for such abatement in the absence of an FHWA-approved Type II noise program.

**Type III Projects**

Proposed § 772.5(e) provides that a State DOT is not required to complete a noise analysis or consider abatement measures for a Type III project, which is a Federal or Federal-aid highway project that does not meet the classifications of a Type I or Type II project. The Definitions section of the existing regulation describes Type III projects and states that they do not require a noise analysis. The proposed definition in § 772.3 would define Type III projects as ones that are not likely to change the noise environment, and

would move the existing provision that a State DOT is not required to complete a noise analysis or consider abatement measures from the existing Definition to proposed § 772.5(e).

**State Noise Policy**

The FHWA is considering changes to the noise policy development and approval process and is requesting comments on three proposed options for § 772.5(f), including the advantages and disadvantages of each. Commenters are also welcome to submit additional options, variations of the proposed options, or a combination of these options. After considering comments received, FHWA may include any of the options, or a variation or combination of the options, in the final rule. For all options, FHWA proposes to include the minimum requirements for the information that must be included in a State DOT noise policy in § 772.5(g). The FHWA seeks comment on the provided criteria and any other criteria not addressed that FHWA should consider.

Option (1) reflects current practices that were established to ensure compliance with the standards developed under 23 U.S.C. 109(h). This option would ensure that projects where FHWA has approval authority would meet the FHWA noise standards. It

provides for FHWA review and approval of State noise policies. Under this option, State DOTs would be required to develop a noise policy in conformance with part 772 and apply the policy uniformly and consistently statewide. The State DOT would be required to submit its proposed State policy to FHWA within 6 months of the effective date of the final rule for FHWA review and approval. The FHWA would review the State noise policy in a timely manner, and the State DOT would be required to implement the new noise policy within 12 months of the effective date of the final rule. The criteria provided in § 772.5(g) contain the requirements for a State noise policy to support State DOT development and FHWA review of a policy.

Under proposed option (2), a State would self-approve its own noise policy by finding that it meets the set of criteria, provided in proposed § 772.5(g), and thus comply with standards developed under 23 U.S.C. 109(h). Under this option, the State DOT would be required to develop a noise policy in conformance with the regulation. Within 6 months of the effective date of the final rule, the State DOT would develop and self-approve its State policy according to FHWA criteria for noise policies. The State DOT would submit the self-approved noise policy to

FHWA and will post it on the State DOT's public website to ensure public access. The State DOT would be required to implement the new noise policy within 12 months of the effective date of the final rule and apply the policy uniformly and consistently statewide.

Under proposed option (3), a State DOT could opt to self-approve the State noise policy or to submit it for FHWA review and approval. The State DOT would be required to develop a noise policy in conformance with the final rule. Within 6 months of the effective date of the final rule, the State DOT would either (1) submit its noise policy for FHWA review and approval, or (2) self-approve its own noise policy by finding that it meets the set of criteria provided in proposed § 772.5(g), submit the self-approved noise policy to FHWA, and publish it on the State DOT's public website to ensure public access. The State DOT would be required to implement the new noise policy within 12 months of the effective date of the final rule and apply the policy uniformly and consistently statewide, regardless of which approval option the State chooses.

#### Effective Date

Proposed § 772.5(h) includes new text explaining that projects for which traffic noise prediction activities are initiated 12 months after the effective date of a final rule, or initiated after approval of the State's noise policy, whichever occurs first, must be developed in accordance with this part. The State DOT may choose to apply the final rule to any project at any stage after approval of the State's noise policy pursuant to § 772.5(f).

#### Section 772.7 Traffic Noise Prediction

In renumbered § 772.7, FHWA proposes to change the reference to FHWA TNM version, and the process to announce and apply the use of new versions of the noise model in proposed § 772.7(a); make several clarifications in proposed § 772.7(c) and (d); and add a noise screening process to reduce regulatory and analysis burden for projects that are unlikely to cause impacts in proposed § 772.7(e).

#### Traffic Noise Model Version

In proposed § 772.7(a), FHWA proposes to delete the current reference to a specific TNM version. Though the TNM will continue to be the required model for noise prediction, instead of specifying a version of TNM in the regulation, FHWA proposes to require the use of the latest version of the model, or any other model FHWA

determines to be consistent with the TNM's methodology. The FHWA also proposes to establish a process to announce each updated required version of TNM by publishing a notice of availability in the **Federal Register**.

To allow more implementation flexibility, FHWA intends to provide a grace period after the release of a new or major updated version of TNM. The length of the grace period would depend on the level and extent of the changes, but it would be a minimum of 6 months to a maximum of 2 years. The FHWA would announce the length of the grace period in the same **Federal Register** notice of availability that announces the model release. The FHWA believes that providing a variable grace period to incorporate use for the new model is important to address the needs of each release situation. For example, if the new version of the model requires additional data collection, then a longer grace period might be necessary to accommodate this effort before requiring its use. The FHWA believes a maximum 2-year grace period would allow States ample time to prepare for the implementation of the new version of the model.

The FHWA is also proposing that any highway project for which traffic noise prediction activities have been initiated using the previous version of the TNM before or during the grace period can continue without switching to the new model. The new model must be used any time traffic noise prediction (*i.e.*, modeling activities) are started after the end of the grace period. The FHWA believes this process will provide a smooth transition to the adoption of each version of TNM, provide more certainty to the States, and minimize any interruption to project schedules.

#### Clarifications

The FHWA is also proposing clarifications in § 772.7(c) concerning the use of traffic characteristics that would yield the worst traffic noise impact. Currently, the rule requires, when predicting noise levels and assessing noise impacts, the use of "traffic characteristics that would yield the worst traffic noise impact for the design year. . . .". The FHWA is proposing to clarify these requirements for Type I and Type II projects. Type I project analyses would continue to use the design year; however, since there is no design year for a Type II project, those analyses would use the worst noise hour for the existing year resulting from the combination of natural and mechanical sources and human activity usually present in a particular area, per the definition of *Existing noise levels*.

This clarification reflects the existing practice and makes the language in the rule more precise. Consistent with current policy, State DOTs should continue to use the operating speed to determine the existing worst noise hour if it is determined to be consistently higher than the posted speed limit.<sup>3</sup> The FHWA is seeking comment on whether it would be beneficial to include a new definition for the term '*Worst Noise Hour*' and whether this definition should incorporate the existing guidance regarding the use of operating speeds for vehicles.

The FHWA also proposes to consolidate and move instructions regarding the calculation and placement of receptors, which is currently found under the descriptions of each Activity Category in § 772.11. Because we are proposing to remove those detailed descriptions from the text, the relevant portions were summarized and moved to § 772.7(d). The text continues to state that each State DOT must define a method to calculate and place non-residential receptors and apply it consistently statewide. Proposed § 772.7(d) also includes regulatory text providing that for residential land uses, each single-family structure and each dwelling unit in a multifamily structure would be counted as one receptor when determining impacted and benefitted receptors. We proposed moving similar language from the Definitions section when we combined the definitions of *multifamily dwelling* and *residence*. The text does not reflect a new requirement, and is part of the proposed reorganization.

#### Noise Screening Process

The FHWA proposes in § 772.7(e) to add an optional traffic noise screening process to allow State DOTs to determine whether a project is likely to cause traffic noise impacts before conducting a detailed noise analysis. If a project passes the traffic noise screening outlined in proposed § 772.7(e), the State DOT could document the results and no further analysis would be required. Traffic noise screening would reduce unnecessary analysis conducted for projects that do not cause any meaningful noise impacts.

The FHWA proposes that traffic noise screening would involve modeling a worst-case scenario with a simplified TNM run using a FHWA-approved tool such as FHWA's Traffic Noise Screening

<sup>3</sup> FHWA, Analysis and Abatement Guidance (December 2010), available at: [https://www.fhwa.dot.gov/environment/noise/regulations\\_and\\_guidance/analysis\\_and\\_abatement\\_guidance/](https://www.fhwa.dot.gov/environment/noise/regulations_and_guidance/analysis_and_abatement_guidance/).

Tool,<sup>4</sup> rather than the usual requirements of detailed TNM object inputs and model validation. Currently, the use of particular screening tools is allowed through their inclusion in a State noise policy that is submitted for FHWA review and approval. Because of the simplified inputs associated with a screening analysis, it is expected that results will vary somewhat from a detailed analysis conducted using TNM. In order to minimize any other additional sources of variance between a detailed TNM analysis and the screening, the screening tool should be such that it can replicate TNM results when the modeled conditions are the same. The FHWA's Traffic Noise Screening Tool will replicate TNM results within 0.1 dB when the modeled conditions are the same. If a State DOT chooses to use its own screening tool; the decision to do so, the name of the tool, and a description of the tool would need to be included in the noise policy; and the tool also would need to replicate TNM results within 0.1 dB in order to be deemed compliant with the requirements. Allowing an absolute difference between a screening tool and TNM of no more than 0.1 dB would minimize variations that are not caused by inherent issues with the underlying simplifications involved with screening. Simple geometries can be computed in TNM and the results can be directly used in a screening tool with results scaled to account for different volumes using the same equations that are used by TNM; therefore, there is no need for a tolerance greater than 0.1 dB for consistency with TNM. This variation would be the test used in determining whether a given screening tool is allowed for use on projects. The FHWA seeks feedback on the allowable variation of 0.1 dB between TNM and a given screening tool.

A State DOT would be required to conduct the screening analysis on the entire noise analysis area for the project. The same model or tool used to determine noise levels for the existing year also would be required to be used to analyze noise levels in the design year for the build condition, consistent with current practice in the use of TNM. State DOTs also could choose to analyze the design year for the no-build condition using the aforementioned screening methods.

A traffic noise screening analysis would be required to include the following parameters, if applicable:

existing noise level, facility type, length of facility, number of lanes in each travel direction, lane width, roadway design capacity, vehicle fleet mix, speed, roadway grade, type of ground between roadway and receiver, land (urban/suburban/rural) areas, Noise Impact Criteria Activity Category, and distance of nearest receiver from the roadway. The FHWA requests comments on the proposed screening parameters and on other screening parameters that should be considered.

Type I projects with complex attributes are not appropriate for screening analysis and would be required to apply the provisions in proposed § 772.9. Complex attributes include: the construction of a roadway on a new location; ground elevation changes because of hills, valleys, and other undulations greater than three feet that do not correlate to the grade change in the roadway (*e.g.*, the roadway will continue at its current elevation regardless of the surrounding terrain); large areas of trees that fully obscure the line of sight between the roadway and the source; intervening buildings, barriers, or other substantial structures; intervening ground with multiple ground types (*e.g.*, water, pavement, grass, etc.); or where the horizontal deviation between any roadway segment of the project and a straight line approximation of the entire length of the roadway project is greater than 25 degrees (*i.e.*, a curvy road).

The FHWA proposes that detailed traffic noise analysis as described in § 772.9 would not be required if both of the following screening conditions are satisfied: first, if the result of screening is at least 5 dB less than the Noise Impact Criteria for the appropriate activity category, and second, if the result of screening does not exceed the substantial noise increase criteria determined in a State noise policy. The screening threshold of 5 dB below the Noise Impact Criteria represents a safety factor that accounts for expected variation between a detailed model such as TNM and a simplified model such as the Traffic Noise Screening Tool. A 5 dB safety factor is not needed for the State DOT's substantial noise increase criteria because any over or under predictions in the existing condition are expected to cancel with any over or under predictions for the future condition. For more information, the technical report titled, "23 CFR 772 NPRM Analysis: Traffic Noise Screening Process" is available for review in the docket.

The FHWA seeks comments on whether it should allow project screening and the proposed screening parameters.

#### Section 772.9 Analysis of Traffic Noise Impacts

The FHWA is proposing multiple changes to the process of analyzing traffic noise impacts in renumbered § 772.9. Related proposed changes can be found in § 772.3 and Table 1 to Part 772—Noise Impact Criteria.

To improve readability, FHWA is proposing to reorganize this section to better align with the order of activities in the project development process. The FHWA removed the detailed description of the Activity Categories from this section to avoid duplication of descriptions provided in table 1 to part 772.

As described in proposed § 772.3, FHWA proposes to clarify that the *noise analysis area* in § 772.9(a)(1) can be within or slightly beyond the project limits, to only include areas that have the potential for noise impacts. Under the current definition of a Type I project (§ 772.3, Type I project, paragraph 8), a project must be analyzed for traffic noise impacts for the entire project area as defined in the environmental document. This change would better align the necessary analysis with the likelihood of impacts and abatement, while still protecting the near-road receptors from traffic noise impacts that may be caused by, or increased by, the proposed project.

The FHWA proposes to clarify what constitutes "validation of the noise model" in proposed § 772.9(a)(3) by incorporating longstanding guidance<sup>5</sup> that the existing noise level and predicted noise level for the existing condition are within  $\pm 3$  dB(A).

Part of determining whether there is a noise impact involves comparing predicted noise levels against the values in table 1 for a given land use and activity category. Currently, State DOTs must define an 'approach criteria' as a value at least 1 dB below the corresponding value in table 1. The FHWA proposes to remove the requirement in current § 772.11(e) for State DOTs to establish an approach level to be used when determining a traffic noise impact. As mentioned in § 772.3 Definitions and described in table 1, instead of requiring an approach level of at least 1 dB(A) less than the Noise Impact Criteria listed in table 1 to part 772, FHWA proposes to reduce the Noise Impact Criteria values in table 1 by 1 dB(A) below current levels. The purpose of this change is to integrate the most commonly used approach level of

<sup>4</sup> FHWA, Traffic Noise Screening Tool, software and User's Guide (September 2021), available at: [https://www.fhwa.dot.gov/environment/noise/traffic\\_noise\\_model/](https://www.fhwa.dot.gov/environment/noise/traffic_noise_model/).

<sup>5</sup> FHWA, Analysis and Abatement Guidance (December 2010), available at: [https://www.fhwa.dot.gov/environment/noise/regulations\\_and\\_guidance/analysis\\_and\\_abatement\\_guidance/](https://www.fhwa.dot.gov/environment/noise/regulations_and_guidance/analysis_and_abatement_guidance/).

1 dB(A) less than the values in current table 1, and simplify the regulation by not requiring States to take an additional step to apply an approach level. States would retain the same flexibility by continuing to have the option to define a more stringent (lower) impact level than the values in table 1 in their State noise policy.

#### *Section 772.11 Analysis of Traffic Noise Abatement*

The FHWA is proposing several changes to renumbered § 772.11, including providing new flexibilities for noise abatement measures and moving the reporting requirements to a new section, § 772.15 Documentation and Reporting.

The FHWA is proposing to require in § 772.11(a) that abatement measures must be considered and evaluated for effectiveness (*i.e.*, replacing feasibility and reasonableness in current § 772.13(d)). The FHWA would continue to require “primary consideration to exterior areas where frequent human use occurs” (in current § 772.11(b)), in proposed § 772.11(a)(1). The FHWA intends to maintain its longstanding policy that noise abatement measures remain effective in perpetuity<sup>6</sup> and proposes to codify in proposed § 772.11(a)(2) what is currently provided in guidance.

State DOTs have requested clear direction on how to address replacement of noise barriers. The FHWA is proposing new language in § 772.11(b) regarding how to address projects where there is already existing noise abatement from a previous project. Current FHWA guidance discusses how a State should consider existing abatement, including whether it should be enhanced to provide the appropriate level of protection for the most recent traffic volumes and worst noise hour. However, the guidance does not discuss what to do in the event that the existing abatement must be removed to accommodate features of a new highway project. Some State DOTs have taken the lead in addressing this issue by requiring that the abatement be rebuilt and, if possible, improved upon, at a new location. To this end, FHWA proposes to include language in the rule to address this issue consistent with existing State DOT practice and longstanding FHWA policy that abatement should provide a substantial reduction in noise levels<sup>7</sup> and provide

that abatement in perpetuity.<sup>8</sup> Specifically, FHWA proposes in § 772.11(b) that an existing noise abatement measure that is affected or removed because of a highway project must be replaced to provide noise abatement equal to or better than what was present before. The FHWA believes that this proposed language could ensure that affected communities would continue to receive at least the same level of noise reduction even with the removal of the existing noise abatement. The proposed language also includes exceptions to the provision when the abatement is no longer desired or the land use is no longer sensitive to noise. The FHWA is seeking comment on whether this proposed clarification on the replacement of noise abatement would aid State DOTs in planning and conducting their highway noise analyses.

The primary change to this section is that FHWA proposes in § 772.11(c) through (e) to simplify the analysis of traffic noise abatement by consolidating the existing “feasibility” and “reasonableness” evaluation requirements into one single “effectiveness” assessment based on four criteria—(1) engineering effectiveness (*i.e.*, constructability and maintenance), (2) acoustic effectiveness, (3) cost effectiveness, and (4) consideration of viewpoints. Each of these criteria is described below. As proposed in § 772.11(c), each State DOT would be expected to describe what constitutes effective abatement in its noise policy, in compliance with the parameters defined in § 772.11(e). All abatement effectiveness factors would be required to be achieved in order for a noise abatement measure to be deemed effective.

#### Engineering Effectiveness

Engineering effectiveness would have the same description as existing § 772.13(d)(1)(ii) under feasibility.

#### Acoustic Effectiveness

Acoustic effectiveness would combine the acoustic feasibility factor described in existing § 772.13(d)(1)(i) and the reasonableness factor of a noise reduction design goal described in existing § 772.13(d)(2)(iii) into a single assessment.

The FHWA is proposing to rename the “noise reduction design goal” in existing § 772.13(d)(2)(iii) as the “noise

reduction requirement” to more accurately reflect that achieving this reduction remains a requirement for Federal participation in the noise abatement measure(s).

The current noise reduction design goal for an abatement measure to be considered reasonable is at least 7 dB(A) but not more than 10 dB(A), as defined in a State noise policy and applied uniformly and consistently statewide. However, abatement is considered feasible under the current rule at a minimum 5 dB(A) reduction. Similarly, most State DOTs consider a receptor to be benefited if it receives a noise reduction of at least 5 dB(A).

The noise reduction requirement is included in the determination of acoustic effectiveness in proposed § 772.11(e)(2). To determine acoustic effectiveness, FHWA is proposing to allow States to define a noise reduction requirement in the State noise policy of at least 5 dB(A) but not more than 10 dB(A). This means that an abatement measure would need to achieve a noise reduction of at least the State’s noise reduction requirement, from 5 dB(A) to 10 dB(A), to be eligible for Federal funding.

The intent of this proposed change is to eliminate confusion over the varying values in the definitions and to allow more flexibility to States in determining acoustic effectiveness for effective abatement measures. The FHWA has received feedback from State DOTs that retaining flexibility is an important part of the noise program, and this proposal seeks to retain that flexibility while also providing clear direction on abatement requirements.

The FHWA requests comment on the proposed noise reduction requirement within the range of at least 5 dB(A) but not more than 10 dB(A) for acoustic effectiveness. The FHWA also solicits input and justification on other ranges to define acoustic effectiveness.

The second step in determining acoustic effectiveness is to analyze whether the noise abatement measure provides the required noise reduction at a sufficient number or percentage of impacted receptors. The FHWA is proposing to continue to allow State DOTs to choose from the most common options currently in use by State DOTs. The proposed options are: a simple majority of impacted receptors, two or more impacted receptors, or a combination of these two criteria. For example, by using a combination of the criteria, a State DOT could consider noise abatement to be ineffective if there is only an isolated receptor in the given area, and also that noise abatement must provide the required reduction to a

<sup>6</sup> FHWA, Analysis and Abatement Guidance (December 2010), available at: [https://www.fhwa.dot.gov/environment/noise/regulations\\_and\\_guidance/analysis\\_and\\_abatement\\_guidance/](https://www.fhwa.dot.gov/environment/noise/regulations_and_guidance/analysis_and_abatement_guidance/).

<sup>7</sup> FHWA, Analysis and Abatement Guidance (December 2010), available at: [https://www.fhwa.dot.gov/environment/noise/regulations\\_and\\_guidance/analysis\\_and\\_abatement\\_guidance/](https://www.fhwa.dot.gov/environment/noise/regulations_and_guidance/analysis_and_abatement_guidance/).

[www.fhwa.dot.gov/environment/noise/regulations\\_and\\_guidance/analysis\\_and\\_abatement\\_guidance/](https://www.fhwa.dot.gov/environment/noise/regulations_and_guidance/analysis_and_abatement_guidance/).

<sup>8</sup> FHWA, Analysis and Abatement Guidance (December 2010), available at: [https://www.fhwa.dot.gov/environment/noise/regulations\\_and\\_guidance/analysis\\_and\\_abatement\\_guidance/](https://www.fhwa.dot.gov/environment/noise/regulations_and_guidance/analysis_and_abatement_guidance/).

simple majority of the impacted receptors. The State would be required to define and explain the basis for the determination in their noise policy, which also is required under the current regulation.

#### Cost Effectiveness

Cost effectiveness as proposed would have a similar description as existing § 772.13(d)(2)(ii) under reasonableness. The FHWA proposes to clarify that cost criteria may be determined for each type of abatement a State DOT intends to use, recognizing that different abatement measures may have different costs associated with them. Cost effectiveness can be based on the cost of a measure or based on the quantity of material for that measure and the cost of that material. Should FHWA define criteria for considering the cost effectiveness of non-barrier (*i.e.*, not walls or berms) abatement measures? Or should FHWA provide some basic parameters and allow States to define how other abatement measures will be analyzed for cost effectiveness? The FHWA requests comments and examples to inform our consideration of these questions and the proposed cost effectiveness provisions.

The FHWA also seeks comment on whether geographic cost allowances and cost averaging should be retained in the regulation in proposed § 772.11(e)(3)(i) and (ii).

The FHWA is proposing to amend the provision on third party funding of noise abatement measures. Currently, § 772.13(j) prohibits any third-party funding that is necessary to make otherwise infeasible or unreasonable measures feasible and/or reasonable (replaced by the term “effective” in the proposed rule). Third parties are any entities other than the recipients of funds designated under title 23 U.S.C. An element in determining the reasonableness of noise abatement measures involves relative cost effectiveness by comparing the cost of abatement measures on a project to a baseline cost reasonableness value. Third party funding of some of a measure’s costs could have the effect of making the cost to construct the measure on a project fall below the baseline value, and thus be considered cost-effective, and therefore make the remainder of the cost eligible for Federal-aid funding.

Prior to the current rule, under FHWA guidance, it was permissible for third-party funding to pay for the difference between the actual costs and the baseline value (partial funding) of noise abatement measures, provided it was done in a non-discriminatory manner. The current rule changed the standard

in stating “FHWA’s position that, in order to comply with the requirements of title VI and the Executive order on Environmental Justice (E.O. 12898), it is only acceptable to permit third party funding . . . if the noise abatement measure would be considered feasible and/or reasonable without the additional funding.” Title VI and the E.O. 12898 requires fair treatment of minority and low income populations in bearing the burdens and realizing the benefits of federally funded activities. The E.O. 13985 specifically states that Agencies must recognize and work to redress inequities in policies and programs that serve as barriers to equal opportunity and should allocate resources to address the historic failure to invest sufficiently, justly, and equally in underserved communities, as well as individuals from those communities. Because these concerns do not arise with third party funding of functional and aesthetic enhancements of measures already determined effective, funding of such enhancements is currently acceptable. The effect of the provision in current § 772.13(j) was to ban both partial and complete third-party funding of noise abatement measures which are determined to be cost ineffective.

The purpose of the prohibition in the current regulation is to protect the Federal investment in the project by funding construction of only cost-effective measures, and to ensure that interests desiring otherwise cost ineffective measures do not gain an unfair advantage in the allocation of scarce infrastructure resources on Federal-aid funded projects. Consistent with title VI, E.O. 12898, and E.O. 13985, the prohibition also ensures minority and low-income persons are not denied benefits such as construction of a noise abatement measure that others may realize as part of a Federal-aid highway project. But the scope of the current prohibition may not be appropriate to achieve these purposes without resulting in unintended negative consequences. It is clear that third party funding of a portion of the cost of an ineffective noise abatement measure, which had been allowed under previous FHWA guidance, has the potential to result in imprudent and unfair allocation of resources and benefits on Federal-aid projects, and the current rule appropriately prohibits such funding. Where no Federal, or State, resources are involved because a measure is funded entirely by a third party; however, neither environmental or financial fairness in allocation of public benefits and burdens, nor financial prudence issues, are

implicated. Where no person is burdened or denied public benefits by the complete funding of additional benefits by third parties, those additional resources in the form of third party donations should be allowed to be used on a project to maximize limited public investment in infrastructure. The current rule, thus, may have gone beyond what is needed to ensure non-discriminatory treatment.

The FHWA is proposing three options for third-party funding in this rulemaking at § 772.11(e)(3)(iii). While we have included one option (Option 3) in the proposed regulatory text, we may include any of the options discussed, or a variation of any of the options based on comments received, in a final rule. Proposed Option 1 would make only a conforming change from the concept of feasible and reasonable to effective. This option would continue the current prohibition on any third-party funding that is necessary to make otherwise ineffective measures effective, and would continue to allow third party funding of enhancements.

Proposed Option 2 would continue the current prohibition on any third party funding that is necessary to make otherwise ineffective measures effective, and would continue to allow third party funding of enhancements. It would add a provision to allow donation of costs for utility relocation by a non-receptor utility and donation of real property by a non-receptor third party, needed to construct a noise abatement measure, consistent with 23 U.S.C. 323. According to 23 U.S.C. 323, donation of real property to be acquired in connection with a project, funds, materials, and services is permitted, notwithstanding any other law, the value of which is credited to the State’s share of project costs. The proposed rule would also allow the donation of real property and allow the value of such to be credited to the State’s share of the project costs, consistent with 23 U.S.C. 323. A utility or landowner which is also a noise sensitive receptor would not be allowed to donate costs for utility relocation or real property because they could gain an advantage by donating what amounts to partial funding of abatement measures. The effect of the change would be to enhance funding flexibility and broaden the pool of resources available for a project. A State would not be required to allow such donations.

Proposed Option 3, which appears in the regulatory text of the proposed rule, would remove the current prohibition insofar as it bans complete funding of ineffective noise abatement measures by third parties, while retaining the ban on

partial funding that is necessary to make otherwise ineffective measures effective. Where a third party pays for the entire cost of otherwise cost ineffective measures, neither of the Government's concerns, Federal funding or fairness, financial and environmental, is implicated. In the context of the gap between resources and needs for infrastructure development, and increasingly dense development leading to a greater potential for noise impacts, if a neighborhood, for example, wishes to pay all costs associated with construction of a noise barrier that is not cost effective under State standards, but meets other effectiveness criteria, then the State should retain the flexibility to accommodate the request and accept the donation. In accepting such a donation, the State would not be committing scarce Federal funds to otherwise ineffective measures or putting other receptors at a disadvantage. In contrast, where there is an offer of only partial funding of measures, enough to make the barrier cost effective but not for the entire cost, funds would be committed to ineffective measures, to the potential disadvantage of other receptors on the project and of receptors on and beneficiaries of other projects. The effect of the change would be to enhance funding flexibility and broaden the pool of resources available for a project. A State would not be required to allow such donations.

For noise abatement measures funded by third parties under Option 3, the value of the donation could not be credited to the non-Federal share of the project funding. Since the construction cost of the measure being greater than the baseline cost effectiveness value, the measure would be ineligible for Federal-aid funding, and could only be constructed because it was funded by a third-party donation. Because the measure would be ineligible for Federal funding, it would not be necessary for implementation of the project and, therefore, would not meet the cost allowability requirements of the Federal cost principles under 2 CFR part 200, subpart E, and may not be credited to the non-Federal share of the project funding.<sup>9</sup> The FHWA seeks comment on these three options, and any other options suggested by commenters.

#### Consideration of the Viewpoints of the Property Owners and Residents of the Benefitted Receptors

Proposed § 772.11(e)(4) has a similar description as existing § 772.13(d)(2)(i) under reasonableness. The FHWA is proposing to clarify its longstanding policy that only residents and property owners at benefitting receptors can make a determination on desirability of noise abatement on a public right-of-way. There have been situations where a homeowner's association or other entity has sought to speak for all residents in the association, and we want to clarify that the viewpoints of residents and property owners must be considered individually and not as an association. The State DOT must consider tenants and renters in addition to property owners when analyzing noise abatement, which clarifies FHWA existing policy. Some State noise policies have considered tenants and renters unequally to property owners, such as with different weighting, and FHWA seeks comment on how to encourage equal access to the process when State DOTs are analyzing traffic noise abatement. Equal weighting is particularly important to ensure equitable consideration for underserved populations.

The FHWA is also proposing to streamline and standardize the viewpoint criteria by proposing that a simple majority of respondents must desire abatement for it to be constructed. We are proposing this change in an effort to simplify the process and to better align the viewpoint criteria to public expectations of voting and subsequent decisionmaking.

The FHWA proposes that a State DOT cannot demand a minimum response as to whether to construct a noise abatement measure, unless there are two or more outreach efforts to directly contact the benefitted receptors and obtain their viewpoints. This change is to reflect the current guidance in the online FHWA Highway Traffic Noise Frequently Asked Questions<sup>10</sup> (FAQ G.7) and to address the issues regarding low response rates to noise abatement surveys, and sporadic meeting attendance on non-major, non-controversial projects. The State DOT would be required to document requirements for outreach efforts, and where necessary a minimum response

rate, in the State noise policy and apply the requirements uniformly statewide.

#### Optional Factors

The FHWA is proposing in § 772.11(e)(5) a new optional factor for added flexibility in determining the effectiveness of noise abatement measures. New § 772.11(e)(5)(vii) would provide a new consideration of whether a noise abatement measure would provide some added, incidental benefit to receptors from other environmental or social impacts. For example, historically marginalized communities may have impacts from past highway projects, but may not have received abatement at the time. Considering this optional factor in noise abatement could support environmental justice and community enhancement. In addition, research has shown that some noise walls may have air quality benefits,<sup>11</sup> which supports human health. In both cases, a State DOT would include its use of this optional factor in its noise policy and would describe by how much the cost effectiveness criterion of a given mitigation measure would increase when the optional factor is in use. For example, the optional factor could state: "communities that predate the highway", or "low-income communities will be analyzed using \$45,000 per benefitted receptor"; whereas other receptors would only be considered using a "\$40,000 per benefitted receptor" criteria. In addition, this optional factor could be expanded and combined; for example, if a mitigation measure is being evaluated for a low-income community, using the previous example, it could cost up to \$45,000 per benefitted receptor. If the given measure also provides some air quality benefits, it could then be written into the State noise policy that that measure could cost up to \$48,000 per benefitted receptor. In addition, the newly proposed optional factor could be combined with other, existing optional reasonableness factors, too. This additive potential of the optional factors could be used by State DOTs to increase the possibility of providing noise mitigation where it is needed most. The costs and situations in the previous examples are simply for illustrative purposes and should not be taken as guidance as to how much mitigation measures should cost. Actual costs and

<sup>9</sup> FHWA, Federal-Aid Guidance Non-Federal Matching Requirements (May 2019), available at: [https://www.fhwa.dot.gov/legisregs/directives/policy/memofmr\\_tapered20190515.htm](https://www.fhwa.dot.gov/legisregs/directives/policy/memofmr_tapered20190515.htm).

<sup>10</sup> FHWA, Noise Policy FAQs—Frequently Asked Questions (May 2012), available at: [https://www.fhwa.dot.gov/environment/noise/regulations\\_and\\_guidance/faq\\_nois.cfm](https://www.fhwa.dot.gov/environment/noise/regulations_and_guidance/faq_nois.cfm).

<sup>11</sup> U.S. Environmental Protection Agency, Recommendations for Constructing Roadside Vegetation Barriers to Improve Near-road Air Quality (August 2016), available at: [https://www.epa.gov/sites/default/files/2016-08/documents/recommendations\\_for\\_constructing\\_roadside\\_vegetation\\_barriers\\_to\\_improve\\_near-road\\_air\\_quality.pdf](https://www.epa.gov/sites/default/files/2016-08/documents/recommendations_for_constructing_roadside_vegetation_barriers_to_improve_near-road_air_quality.pdf).

increases from using the optional factor will vary and be defined by each State DOT that chooses to use it.

By including this optional factor, States may add flexibility to increase the allowable cost of abatement as defined by cost effectiveness, and not restrict or take away from current requirements or add new requirements. Optional factors could not be used alone to determine effectiveness, and should not inhibit noise abatement that is otherwise considered effective. The FHWA seeks comment on the optional factors, particularly the new optional factor, and whether FHWA should consider any other factors for inclusion in this area.

#### Date of Public Knowledge

The FHWA proposes to move the definition of the term “date of public knowledge” in current § 772.5 to describe the date for establishing the date of public knowledge in proposed § 772.11(f), and to add Supplemental Environmental Impact Statement (EIS) to the list of environmental documents the approval of which constitutes the date of public knowledge.

Proposed § 772.11(f)(1) and (2) were moved and revised from current § 772.11(c)(2)(vii)(C) to use terminology consistent with the proposed rule for State DOT, environmental document, and technical noise memorandum. Proposed § 772.11(d)(3) clarifies that any lands permitted for noise-sensitive development before the date of public knowledge must be considered for potential impacts and abatement.

In proposed § 772.11(g), FHWA added clarifications that the date of public knowledge would be updated under certain conditions: (1) if it has been more than 5 years since the existing date of public knowledge was established or last updated; or (2) the State DOT finds that a change in highway design or operations results in a change in noise impacts. These clarifications seek to ensure fairness and equitable access to information for the public about upcoming projects and possible changes to the noise environment.

The FHWA is proposing 5 years as the duration because the traffic data used in noise analysis that is older than 5 years introduces higher risk in the analysis of safety, operations, and engineering acceptability, and in turn, affects the accuracy of noise analysis. Within this time period, some areas would see significant change in travel patterns and conditions, which may warrant a reconsideration of whether the technical assumptions that formed the basis of FHWA’s prior approval are still valid. In addition, this timeframe would allow for one Long-Range Transportation Plan

update for most metropolitan planning organizations (MPO). See 23 U.S.C. 134(i)(1). Therefore, to account for the project development process (*i.e.*, planning, preliminary design, environmental analysis, final design, right-of-way acquisition, and construction) and to minimize the need to revise an analysis that was started at the end of the MPO modeling cycle, the proposed rule would clarify that the date of public knowledge may need to be updated if the traffic data used in the State DOT’s noise analysis is more than 5 years old.

The second condition is when a project has completed NEPA but it is determined during a NEPA re-evaluation that a change in the proposed highway design or operations would change the noise environment in a way that changes impacts or results in new impacts that were not evaluated in the original categorical exclusion (CE) or environmental document. When such project design changes occur, FHWA aims to clarify when the date of public knowledge may be reset, when impacts must be reconsidered, and when new land use developments must be included in the updated analyses and considered for traffic noise impacts and abatement. The FHWA is considering defining a value for a design change that results in noise impacts to be within the range of 1.5 to 3 dB. The FHWA requests comment on the value within that range to consider a change in highway design or operations that result in traffic noise impacts.

Under both conditions, the entire noise analysis area would be eligible for screening to determine the likelihood that the noise level has changed from what was analyzed in the original NEPA document, in order to determine whether a full reanalysis is necessary. Any new noise-sensitive development and lands permitted for noise-sensitive development between the previously established and updated date of public knowledge for the project must be considered for potential impacts and abatement. The updated Date of Public Knowledge would be established based on the most recent NEPA approval for the highway project, environmental reevaluation, or a supplemental NEPA review and approval.

The FHWA seeks comments on the proposed changes to the date of public knowledge.

Related to the analysis of noise abatement, FHWA is also seeking comments on the following two items in § 772.19 and table 1 of this NPRM.

#### 1. Request for Comments on Analysis of Non-Barrier Abatement

The current regulation focused provisions on barrier abatement. Proposed § 772.19 would include more flexibilities to consider non-barrier abatement measures. Examples may include measures that require ongoing maintenance or replacement, such as quiet pavements, measures on private property, such as insulation, or measures subject to reanalysis and revision, such as speed restrictions. In order to assess the effectiveness of non-barrier abatement measures, FHWA is seeking comment on ways that non-barrier abatement can be evaluated for eligibility.

#### 2. Request for Comments on Abatement Process for Extremely Noise Sensitive Land Uses

Activity Category A lands are very noise sensitive, and preserving their serenity and quietness is essential (*e.g.*, the Tomb of the Unknown Soldier at the Arlington National Cemetery). The current regulation has a lower impact criteria for these land uses; however, they are evaluated for abatement using the same process as other, less sensitive activities and land uses. The FHWA is seeking comment on whether Activity Category A lands in table 1 should have a different process for considering noise abatement, and how this process should be implemented. This process should ensure that noise abatement would be more likely because of the exceedingly noise sensitive nature of this land use category.

#### Section 772.13 Construction Noise

Proposed § 772.13 includes the requirements of existing § 772.19, renumbered as § 772.13(b) with new provisions concerning quantitative analysis of certain construction projects in § 772.13(a) and clarification that it would be optional to analyze construction for Type III projects in § 772.13(c).

Construction noise can be disruptive to human activities. When construction noise continues for a long time at a single location, it can create long-term impacts by disrupting sleep, concentration at work or school, or increasing stress to adjacent receptors who may have no recourse to avoid or minimize such noise impacts. Calculation of construction noise levels is usually not necessary for highway traffic noise analyses. The decision to develop a detailed construction noise analysis usually results from a combination of factors including the scale and scope of the project along with

public concern about construction noise. The FHWA is proposing, in § 772.13(a), to clarify when quantitative analysis should be conducted on certain long-term and/or high impact construction projects and thus encourage the use of construction noise abatement techniques on these projects. The FHWA provides resources for these analyses in the form of the Roadway Construction Noise Model, and the Construction Noise Handbook located on our website ([https://www.fhwa.dot.gov/environment/noise/construction\\_noise/](https://www.fhwa.dot.gov/environment/noise/construction_noise/)). The FHWA affirms that State DOTs should continue to consider construction noise qualitatively for most projects, but proposes to clarify that a State DOT should consider construction noise in a quantitative analysis where severe highway construction noise impacts are likely to occur.

The FHWA also seeks comment on how to better consider abatement options for long-term construction projects. State DOTs may incorporate low-cost, easy-to-implement measures into project plans and specifications (e.g., work-hour limits, equipment muffler requirements, location of haul roads, elimination of “tail gate banging”, ambient sensitive back-up alarms, community rapport, and complaint mechanisms). Additional ideas for abatement techniques are described in FHWA Construction Noise Handbook. Under the proposed rule, States and contractors would continue to have the option to formulate and implement their own ideas too.

Finally, FHWA proposes in § 772.13(c) that for Type III projects, a State DOT may choose to perform the analyses required for Type I and II projects under § 772.13(b).

#### *Section 772.15 Documentation and Reporting*

The FHWA proposes to consolidate all of the documentation and reporting requirements in a new section, § 772.15 Documentation and Reporting. These requirements appear in various sections of the existing regulation, mostly under § 772.11 Analysis of Noise Abatement, as well as under § 772.9 Analysis of Traffic Noise Impacts and § 772.13 Construction Noise. This new section would contain all information and requirements related to how a noise analysis is documented and what information a State is required to keep on noise abatement measures for the triennial noise abatement inventory.

The FHWA proposes § 772.15(a) and (b) to clarify documentation requirements for technical noise memos

that are considered current state of the practice.

The FHWA proposes several revisions to current § 772.13(g) for clarity, and to move the provision to proposed § 772.15(c).

The FHWA proposes to move current § 772.13(h) to proposed § 772.15(d) and to replace the terms “feasible and reasonable” with “effective” to be consistent with this proposed rule. This provision is consistent with the statute 23 U.S.C. 109(i).

For completeness of the reporting section, FHWA proposes in § 772.15(e) to include the provision in current § 772.19(c) and proposed § 772.13(a)(3) to incorporate construction noise abatement measures in plans and specifications.

The FHWA proposes to reorganize the Abatement Measure Reporting requirements in § 772.15(f), into a list format to clearly identify required information. We also propose adding ‘if applicable’ after certain items in the list for cases where the reported abatement measure is not a barrier (i.e., not a noise wall or a berm). Materials or features typically used for walls or berms are also listed.

The FHWA seeks comments on the reorganization of provisions into a new Documentation and Reporting section.

#### *Section 772.17 Information for Local Officials*

The FHWA is proposing minor changes to this section by simplifying the discussion of the requirements to remove repetitious language. This section describes the information a State DOT must provide to local officials within whose jurisdiction a highway project is located.

In § 772.17(a)(2), FHWA proposes to remove mention of “approach” for consistency with proposed changes in § 772.9 and table 1 to part 772 to incorporate approach level into table 1. Instead, a State DOT would base the distance on future noise levels that meet the Noise Impact Criteria for each Activity Category in table 1.

The FHWA proposes to move the provision regarding use of noise contours for land use planning from current § 772.9(c) to proposed § 772.17(c), as it is more relevant to this section.

#### *Section 772.19 Federal Participation*

The FHWA proposes to renumber existing § 772.15 as proposed § 772.19 and amend its provisions. The FHWA would like to encourage States to consider the most acoustically and cost-effective noise abatement measures, and to promote the use of new technologies

that could result in lower noise levels and cost savings. The FHWA proposes that State DOTs could use a combination of measures to develop effective noise abatement so long as they are all properly maintained to provide the intended noise reduction. This proposed change could also help advance equity initiatives. For example, if a State DOT is proposing to build a noise wall, but the given benefited community feels that this would divide it or otherwise disconnect it from the surrounding areas, the State DOT could opt to propose quiet pavements instead, so long as the pavement provided the same acoustical benefit as the wall would have, and the State DOT agreed to maintain it to a lifespan equal to that of the wall. Further, through the use of a combination of measures, the State DOT could propose some acoustic benefit from a quiet pavement, and some acoustic benefit from a lower-height, less visually intrusive, wall to achieve the overall noise reduction goals of that State DOT. The FHWA requests comments on this new approach to determine Federal participation.

In proposed § 772.19(b)(3), FHWA proposes to clarify the provision on previous determinations of an abatement measure, as the current regulation uses feasible and reasonable as a basis and the proposed rule uses effective as a basis.

The FHWA also invites comments on whether the list of allowable noise abatement measures should be retained or if other effective measures should be added to the list in proposed § 772.19(c), and why.

The FHWA proposes to add a new § 772.19(d) to explain which measures are not eligible noise abatement, codifying FHWA’s longstanding policy and guidance. Proposed § 772.19(d)(1) would be moved from current § 772.15(c)(1) and the term “landscaping” would be replaced with “vegetation.” The FHWA’s Highway Traffic Noise: Analysis and Abatement Guidance (2011) describes that FHWA does not consider the planting of vegetation to be a highway traffic noise abatement measure. For example, a 200-foot width of dense vegetation can reduce noise by 10 decibels; but it is almost impossible to plant enough vegetation to achieve sufficient noise reductions. The planting of trees and shrubs provides psychological benefits, visual screening, privacy, or aesthetic treatment, but is not highway traffic noise abatement.

Proposed § 772.19(d)(2) and (3) are also from FHWA’s Highway Traffic Noise: Analysis and Abatement

Guidance, which states that FHWA highway traffic noise regulations limit use of Federal funds to reducing traffic noise impacts and providing highway traffic noise abatement benefits. Monetary compensation accomplishes neither of these requirements.

*Table 1 to Part 772—Traffic Noise Impact Criteria*

The FHWA is proposing multiple changes to table 1. Related changes can also be found in §§ 772.3 and 772.9.

The FHWA proposes to rename table 1 “Traffic Noise Impact Criteria” to better reflect that the noise levels are impact rather than abatement criteria, as further explained in footnote 1 to table 1.

The FHWA proposes to remove the  $L_{10}(h)$  noise metric. Currently, States may choose to use either  $L_{EQ}(h)$  or  $L_{10}(h)$  but not both on a project to determine noise impacts. All States have chosen to use  $L_{EQ}(h)$ , as identified in their noise policies. The FHWA requests comments on the decision to remove the  $L_{10}(h)$  noise metric.

The FHWA is proposing to consolidate the activity categories in table 1 from seven to four categories. Category A would remain the same. New activity category “B” would merge former categories B, C, and E, and include noise-sensitive land uses where people learn, live, play, work, or worship. New activity category “C” would merge former categories F and G, and include sites that are not noise-sensitive, such as noise generating land uses, undeveloped and unpermitted land uses, and vacant and derelict structures. Impact and abatement analysis would not be needed for proposed Activity Category C sites, but the presence of these lands should be disclosed in the environmental document as lands that are not noise sensitive; and sound levels should be reported in accordance with § 772.17. Category D would remain a subset of certain Activity Category B public non-residential land uses where noise-sensitive activities only occur indoors, and which may be eligible for either outdoor or indoor noise abatement. Residential land uses would remain ineligible for consideration of interior noise abatement measures. The FHWA seeks comment on whether to include residential land uses under Activity Category D. Example land uses for each activity description are provided in table 1.

The footnotes were also updated to account for the other changes to table 1. We have added proposed Footnote 2 to make clear that lands that are subject to other agencies’ regulations would be

able to consider impacts and require abatement using different methods than under this regulation. This change was made to clarify existing practice. In addition, FHWA proposes to move the provision in existing § 772.11(c)(2)(i) that requires State DOTs to submit justifications for approval of an Activity Category A designation to footnote 3 to table 1. Proposed Footnote 4 is the same as current Footnote 3. Proposed Footnote 5 clarifies that Activity Category C does not require analysis of noise impacts. The FHWA proposes to move the provision in existing § 772.11(c)(2)(iv) regarding requirements for indoor analysis of Activity Category D to proposed Footnote 6. The FHWA also proposes to move the provisions in existing § 772.11(c)(2)(iii) through (v) that require State DOTs to “adopt a standard practice for analyzing these land use facilities that is consistent and uniformly applied statewide” to footnote 7 to table 1.

As previously described, the values in table 1 are also updated to be 1 dB below current levels by updating the values in table 1 to integrate the most commonly used ‘Approach level’ criteria of 1 dB(A) less than the values in table 1 (per the existing § 772.11(e)). The purpose of this change is to simplify the regulation by not requiring States to take an additional step to apply an approach level. States would retain the option to define lower impact criteria and table 1 would continue to serve as a ceiling. States would continue to retain the same regulatory flexibility. This change is also discussed in § 772.3 Definitions and § 772.9 Analysis of traffic noise impacts. This proposed change would simplify the regulation by removing a requirement for States to choose an approach level, would incorporate that level into the existing table 1, and would retain a State’s flexibility to choose a lower impact level in its State noise policy.

The FHWA is seeking comments on the proposed changes to table 1 pursuant to 23 U.S.C. 109(i) to develop standards for highway noise levels compatible with different land uses.

## VI. Regulatory Analyses and Notices

*Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Policies and Procedures for Rulemaking*

The FHWA has considered the impacts of this rulemaking under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as amended by E.O. 14094 (“Modernizing Regulatory Review”), and DOT’s

regulatory policies and procedures. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) has determined that this rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866. Accordingly, OMB has not reviewed it under that E.O.

Based on the estimated economic impacts of this proposed rule as summarized in the next section of this preamble and discussed in detail in the supporting statement on the economic analysis, the proposed rule would not have an annual effect on the economy of \$200 million or more. The FHWA anticipates that the proposed rule would not adversely affect, in a material way, any sector of the economy, productivity, competition, or jobs. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. The proposed rule may raise novel legal or policy issues arising out of the President’s priorities.

This section of the NPRM summarizes the estimated costs, cost savings, and acknowledges potential benefits resulting from the proposed rule. Details of the economic analysis are set forth in a supporting statement accessible in the rulemaking docket (FHWA–2019–0036).

The FHWA currently lacks complete data and information needed to quantify all of the costs, cost savings, and benefits from this proposed rule. Cost savings resulting from this proposed rule that can currently be quantified are estimated to be \$2.2 million per year at both 3 percent and 7 percent discount rates, measured in 2019 dollars. The FHWA does not anticipate the proposed rule resulting in any additional quantifiable benefits. The FHWA requests data and information that could inform the economic analysis for this rulemaking, including any estimates of resulting costs, cost savings, and benefits at the final rule stage.

The changes in the proposed rule would result in cost savings because of the streamlining and alignment of various processes between FHWA and State DOTs. The FHWA; however, lacks the data and information on the current time burdens of these processes and the reductions in these burdens that would result from the proposed rule. As discussed in the supporting statement on the economic analysis, FHWA obtained some information by sending a questionnaire to division offices asking about the frequency of different types of construction projects and project-level noise analyses, and about the time burden for FHWA and State DOT

employees for a typical project-level noise analysis and for noise policy approval. Given the information available, FHWA discusses some economic impacts of the proposed changes on a qualitative basis only in the NPRM and requests information from commenters to inform the economic analysis. If useful information is received from this request, FHWA will consider quantifying additional impacts in the economic analysis of the final rule.

The FHWA evaluated the proposed changes to the Applicability section (proposed § 772.5) and determined that these changes would result in cost savings because of the introduction of a project exemption process. For the proposed project exemption process, FHWA evaluated data from division offices and then assumed an annual total of two Type I projects per State would receive an exemption and thus not need to conduct a project-level noise analysis. Multiplying this value of two projects by the total number of States (52, including the District of Columbia and Puerto Rico) resulted in a total annual number of 104 Type I projects that would receive an exemption and thus would not need to conduct a project-level noise analysis.

Next, based on information on the hours needed at the Federal and State levels to complete a project-level noise analysis, FHWA estimated an average cost per project-level noise analysis of \$1,138 for FHWA employees and \$20,335 for State DOT employees. Multiplying this total cost by the estimated number of 104 avoided project-level noise analyses per year results in a total annual cost savings of \$118,387 for FHWA employees and \$2.1 million for State DOT employees. These annual cost savings result in total 10-year cost savings of \$1.2 million for FHWA employees and \$21.1 million for State DOT employees on an undiscounted basis and in 2019 dollars.

The proposed rule also would make changes to the noise policy approval process and proposes three options for these changes. The FHWA assumed that the effort spent by State DOT employees would not be affected by the rule changes, but that there would be reductions in the effort spent by FHWA employees for two of the three proposed options. The first proposed option, which is reflected in the proposed rule, would require FHWA approval of State noise approval policies and would not result in any changes from the status quo in terms of labor by FHWA employees. The second proposed option would allow a State to self-approve its noise policy, and FHWA assumes that

this option would result in a reduction of 100 percent of the labor spent by FHWA employees for this process. The third proposed option would allow a State to choose between self-approving its noise policy or having FHWA conduct the review and approval. The FHWA assumes that this option would result in a reduction of 50 percent of the labor spent by FHWA employees for this process, based on the assumption that half of the States would choose to self-approve their respective noise policies.

The potential cost savings of the three proposed options for changes to the noise policy approval process range from \$0 (for proposed option 1) to \$367,187 (for proposed option 2) in total over the 10-year analysis period. Because FHWA has not identified a preferred option, FHWA does not include any cost savings for changes to the noise policy approval process in the estimated cost savings for this proposed rule. If the final rule reflects proposed option 2 or proposed option 3; however, FHWA would expect cost savings associated with changes to the noise policy approval process.

The proposed changes to § 772.7 on Traffic Noise Prediction would result in cost savings because of the introduction of a project screening process that would reduce the number of noise analyses being conducted. Because the screening process is new, FHWA does not have any data or information that can be used to estimate the percentage of project-level noise analyses likely to be avoided because of project screening. The FHWA requests information on the project screening process and the percentage of projects likely to be screened out because of this process to inform the analysis, and possible quantification, of these cost savings at the final rule stage.

The proposed changes to the Traffic Noise Prediction section are also expected to result in cost savings because of changes that would allow the use of an updated TNM following FHWA's publication of a **Federal Register** notice, rather than upon completion of a longer rulemaking process by revising the reference to a specific model in the Code of Federal Regulations (see existing § 772.9(a)). The FHWA, however, lacks the data and information needed to quantify this cost savings. The FHWA discusses this cost savings only in qualitative terms at the NPRM stage.

The proposed changes to the Analysis of Traffic Noise Impacts section (proposed § 772.9) is expected to result in cost savings to States because of the simplification of Activity Categories and their application to various land uses.

The FHWA, however, lacks the data and information needed to quantify this cost savings at this time. The FHWA requests information on the potential cost savings because of the simplification of Activity Categories to inform the analysis, including possible quantification, of these cost savings at the final rule stage.

The proposed changes to the Analysis of Traffic Noise Impacts section also could result in increased costs to States because they include reducing the substantial maximum noise increase criterion from 15 dB to 10 dB. The part of a project-level noise analysis that is affected by this change is the initial determination of impacts, which is a less time-consuming part of the overall effort than consideration of potential abatement measures. Roughly 50 percent of States already utilize a 10 dB or less substantial noise increase criterion in a State noise policy. This change also only affects new alignments, and data collected from division offices suggests that new alignments are relatively infrequent, with States having less than one new alignment project per year on average. Given these various factors, FHWA believes that any cost associated with this change would be minimal. The FHWA requests information on the potential costs to States because of reducing the substantial maximum noise increase criterion from 15 dB to 10 dB to inform the analysis, and possible quantification, of these cost estimates at the final rule stage.

The proposed change to the Analysis of Traffic Noise Abatement section (proposed § 772.11) would result in cost savings to States by combining the current criteria of reasonableness and feasibility into a single effectiveness criterion. The FHWA, however, lacks data and information on how this proposed change is likely to affect State DOT employee time spent on a project-level noise analysis. The FHWA requests information on the potential cost savings resulting from the combining of the reasonableness and feasibility criteria into a single effectiveness criterion to inform the analysis, and possible quantification, of these expected cost savings at the final rule stage.

The proposed changes to the Construction Noise section provide that a State DOT should conduct quantitative analysis of impacts on any projects where severe highway construction noise impacts are likely to occur because of the projects' scale and scope, or when the public has raised serious concerns about construction noise. These analyses would encourage

the use of construction noise abatement techniques on these projects. The FHWA believes the proposed changes reflect current practice. Therefore, FHWA does not expect any costs or cost savings to result from them. The FHWA requests comments and information about any possible costs or cost savings about the construction noise provision.

The proposed changes to the Information for Local Officials section (proposed § 772.17) are intended to simplify the discussion of the requirements and to remove repetitious language. The FHWA does not expect any costs or cost savings to result from these minor language revisions.

The proposed changes to the Federal Participation section (proposed § 772.19) encourage States to consider the most acoustically and cost-effective noise abatement measures, and to promote the use of new technologies that could result in lower noise levels and cost savings. This section also notes that Federal-aid funds may participate in the costs of noise abatement measures or a combination of measures up to the Federal share payable on the Federal-aid highway on which the project is located. The changes in this section could result in cost savings, but FHWA currently lacks the data and information that would be needed to estimate potential cost savings. The FHWA discusses these potential cost savings on a qualitative basis and requests information that may facilitate a quantification of these expected cost savings at the final rule stage.

The proposed changes to Table 1 to Part 772—Traffic Noise Impact Criteria could result in cost savings. Changes include the reduction of Noise Impact Criteria by 1dB(A) below the current levels, thus reducing the need for a State to define an ‘Approach Criteria’ in their Noise Policy, and making this a completely optional task, where it is a requirement under the existing regulation. In addition, table 1 no longer includes the L<sub>10</sub> noise metric. This would not result in any changes because no State uses the L<sub>10</sub> metric, all States use L<sub>EQ</sub>. The proposed changes to table 1 also include consolidation of the existing Activity Categories into broader conceptual categories with examples listed. This should allow a State to more easily make a determination of which Activity Category, and impact criteria, applies to any given land use, thus reducing consultation time with FHWA. Other changes to table 1 include renaming the table and adding explanatory footnotes of content that used to be in the body of the rule; no costs or savings are expected from these changes. Given the lack of information

on the cost savings that the changes to table 1 would achieve, FHWA discusses these potential cost savings on a qualitative basis. Again, FHWA requests information that may facilitate a quantification of these cost savings at the final rule stage.

The proposed rule does not result in any currently quantifiable costs or benefits, only cost savings. The proposed rule generates total 10-year cost savings of \$19.1 million or \$15.7 million in 2019 dollars at discount rates of 3 percent or 7 percent, respectively. On an annualized basis, the proposed rule results in \$2.2 million in cost savings at both 3 percent and 7 percent discount rates, again in 2019 dollars. Roughly 95 percent of the cost savings generated by the proposed rule accrue to State DOTs, and the remaining roughly 5 percent accrues to FHWA. Additional details on the estimated cost savings of this proposed rule can be found in the economic analysis.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this proposed rule on small entities and has determined that the action is not anticipated to have a significant economic impact on a substantial number of small entities. The proposed rule affects only States, and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the Regulatory Flexibility Act does not apply, and FHWA certifies that the action will not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act of 1995*

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub L. 104–4, 109 Stat. 48, March 22, 1995) as it will not result in the expenditure by State, local, Tribal governments, in the aggregate, or by the private sector, of \$168 million or more in any one year (2 U.S.C. 1532 *et seq.*). In addition, the definition of “Federal Mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

#### *Executive Order 13132 (Federalism)*

This proposed rule has been analyzed in accordance with the principles and criteria contained in E.O. 13132 dated

August 4, 1999, and FHWA has determined that this action would not have a substantial direct effect of sufficient federalism implications on the States. The FHWA has also determined that this action would not preempt any State law or regulation or affect the States’ ability to discharge traditional State government functions.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed rule does not contain new collection of information requirements for the purposes of the PRA. The OMB has approved a collection of information for the Noise Barriers Inventory Request (OMB Control No. 2125–0645) referenced in § 772.15(f).

#### *National Environmental Policy Act*

The FHWA has analyzed this proposed rule for the purpose of the NEPA of 1969, as amended (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the quality of the environment and meets the criteria for the CE at 23 CFR 771.117(c)(20), which applies to the promulgation of rules and regulations. Categorically excluded actions meet the criteria for CEs under the Council on Environmental Quality regulations under 23 CFR 771.117(a) and normally do not require any further NEPA approvals by FHWA. The FHWA does not anticipate any adverse impacts from this proposed rule.

#### *Executive Order 13175 (Tribal Consultation)*

The FHWA has analyzed this proposed rule under E.O. 13175, dated November 6, 2000, and believes that the action would not have substantial direct effects on one or more Indian Tribes; would not impose substantial direct compliance costs on Indian Tribal governments; and would not preempt Tribal laws. Therefore, a Tribal summary impact statement is not required.

#### *Executive Order 12898 (Environmental Justice)*

The E.O. 12898 requires that each Federal Agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities

and low-income populations. The FHWA has determined that this proposed rule does not raise any environmental justice issues.

#### Regulation Identification Number

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### Rulemaking Summary, 5 U.S.C. 553(b)(4)

As required by 5 U.S.C. 553(b)(4), a summary of this rulemaking can be found in the Abstract section of the Department's Unified Agenda entry for this rulemaking at [<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2125-AF78>].

#### List of Subjects in 23 CFR Part 772

Grant programs—transportation, Highways and roads, Noise control, Reporting and recordkeeping requirements.

**Kristin R. White,**

*Acting Administrator, Federal Highway Administration.*

In consideration of the foregoing, FHWA proposes to revise 23 CFR part 772 to read as follows:

### PART 772—PROCEDURES FOR ABATEMENT OF HIGHWAY TRAFFIC NOISE AND CONSTRUCTION NOISE

Sec.

- 772.1 Purpose.
- 772.3 Definitions.
- 772.5 Applicability.
- 772.7 Traffic noise prediction.
- 772.9 Analysis of traffic noise impacts.
- 772.11 Analysis of traffic noise abatement.
- 772.13 Construction noise.
- 772.15 Documentation and reporting.
- 772.17 Information for local officials.
- 772.19 Federal participation.
- Table 1 to Part 772—Traffic Noise Impact Criteria

**Authority:** 23 U.S.C. 109(h) and (i); 42 U.S.C. 4331 and 4332; sec. 339(b), Pub. L. 104–59, 109 Stat. 568, 605; 49 CFR 1.48(b).

#### § 772.1 Purpose.

(a) To provide highway traffic and construction noise standards to help protect the public's health, welfare, and livability in the planning, design, construction, and operation of highways pursuant to title 23 of the U.S. Code.

(b) The highway traffic noise prediction requirements, noise analyses, noise impact and abatement criteria,

and requirements for informing local officials in this part constitute the noise standards mandated by 23 U.S.C. 109(i). All highway projects which are developed in conformance with this part shall be deemed to be in accordance with FHWA noise standards.

#### § 772.3 Definitions.

**Benefitted receptor.** The recipient of an abatement measure that receives a noise reduction at or above the noise reduction requirement.

**Common noise environment.** A group of receptors within the same Activity Category in table 1 to this part that are exposed to similar noise sources and levels; traffic volumes, traffic mix, and speed; and topographic features. Generally, common noise environments occur between two secondary noise sources, such as interchanges, intersections, and crossroads.

**Cost average.** Arithmetic average cost of abatement among benefitted receptors for an entire project.

**Design year.** The future year used to estimate the probable traffic volume for which a highway is designed.

**Exempt project.** A Federal or Federal-aid highway project that meets the classifications of a Type I project but is expected to have no noise impact and is thus exempt from traffic noise and abatement analysis.

**Existing noise levels.** The worst noise hour resulting from the combination of natural and mechanical sources and human activity usually present in a particular area.

**Impacted Receptor.** A receptor that has a traffic noise impact.

**$L_{EQ}$ .** The equivalent steady-state sound level in a stated period of time that contains the same acoustic energy as the time-varying sound level during the same time period.  $L_{EQ}(h)$  is the hourly value of  $L_{EQ}$ .

**Noise analysis area.** The area within and beyond the project limits that has Type I project characteristics and that requires a noise analysis. The noise analysis area shall completely encompass the area where alterations and construction will occur, and shall also include any area beyond the construction limits where design year traffic may contribute to noise impacts from the project.

**Noise barrier.** A physical obstruction that is constructed between the highway noise source and the noise sensitive receptor(s) that lowers the noise level, including standalone noise walls, noise berms (earth or other material), and combination berm/wall systems.

**Noise Impact Criteria.** The values in table 1 to this part or lower values as specified in a State noise policy.

**Noise policy.** The State-specific document or documents containing the State DOT's approach to noise analyses in compliance with this part, including by describing statewide processes for project-level noise analysis, and defining any State-specific options available in this part.

**Noise reduction requirement.** Any measure, or combination of measures, that mitigates noise impacts to receptors by reducing design year noise levels by 5 to 10 dB(A) as defined in the State DOT's noise policy.

**Permitted.** A definite commitment to develop land with an approved specific design of land use activities as evidenced by the issuance of a building permit, or the equivalent in cases where a building permit is not applicable to that type of development.

**Property owner.** An individual or group of individuals that holds a title, deed, or other legal documentation of ownership of a property or a residence.

**Receiver.** A representative location of a noise sensitive area(s) in traffic or construction noise models, for any of the land uses listed in table 1 to this part. A receiver may represent multiple receptors if they share a common noise environment.

**Receptor.** A discrete, real-world location of a noise sensitive area(s), for any of the land uses listed in table 1 to this part.

**Recipient.** A recipient means an entity that receives a Federal award directly or via a pass-through entity from the Federal Highway Administration. The award can be apportioned or discretionary funding, or an approval action. For the purposes of the part, recipients do not include federally recognized Tribes.

**Residence.** A dwelling unit, which is either a single-family structure or each dwelling unit in a multifamily structure.

**State Department of Transportation.** A department or agency maintained in conformity with 23 U.S.C. 302 and charged under State law with the responsibility for highway construction (as defined in 23 U.S.C. 101); and that is authorized by the laws of the State to make final decisions in all matters relating to, and to enter into, all contracts and agreements for projects and activities to fulfill the duties imposed by title 23 of the U.S. Code, this title, and other applicable Federal laws and regulations.

**Statement of likelihood.** A statement provided in the Categorical Exclusion (CE), the Finding of No Significant Impact (FONSI), the Record of Decision

(ROD), or the Supplemental Environmental Impact Statement (EIS) based on the noise impact and abatement analysis completed at the time the environmental document is being approved.

*Substantial noise increase.* An increase in noise levels of between 5 and 10 dB(A), as specified in the State DOT's noise policy, in the design year over the existing noise level.

*Traffic noise impacts.* Design year build condition noise levels that meet or exceed the Noise Impact Criteria listed in table 1 to this part; and/or design year build condition noise levels that create a substantial noise increase over existing noise levels.

*Type I project.* A Federal or Federal-aid highway project likely to cause traffic noise impacts during regular operation of the facility in the design year.

*Type II project.* A Federal or Federal-aid highway project for retrofit noise abatement on an existing highway in the absence of an associated highway project, when such a project makes use of apportioned funding sources from FHWA. Projects utilizing discretionary grant funds are not considered Type II projects.

*Type III project.* A Federal or Federal-aid highway project that does not meet the classifications of a Type I or Type II project. A Type III project is not likely to change the noise environment.

#### § 772.5 Applicability.

(a) This part applies to all Federal or Federal-aid Highway Projects authorized under title 23 of the U.S. Code. Therefore, this part applies to:

(1) Any highway project or multimodal project that requires FHWA approval regardless of funding sources, or is funded with Federal-aid highway funds; and

(2) All Type I projects, unless this part specifically indicates that a section only applies to Type II or Type III projects.

(b) A Type I project includes:

(1) The construction of a roadway on a new location.

(2) The substantial physical alteration of an existing roadway, including:

(i) *Substantial horizontal alteration.* A project that halves the distance between the traffic noise source and the closest receptor between the existing condition to the future build condition.

(ii) *Substantial vertical alteration.* A project that removes shielding, thereby exposing the line-of-sight between the receptor and the traffic noise source. This is done by either altering the vertical alignment of the highway or by altering the topography between the highway traffic noise source and the receptor.

(iii) *Substantial abatement alteration.* A project that results in the alteration of the existing highway surface, through the installation of a different pavement surface, or of the existing right-of-way, through the installation of a noise barrier, for the purpose of providing noise abatement to existing communities along existing roadways; when such projects are funded by discretionary grants under title 23 of the U.S. Code or administered as if Federal-aid projects under 23 U.S.C. chapter 1.

(3) A substantial change in the operations of an existing roadway because of the project, including:

(i) The addition of a through-traffic lane(s). This includes the addition of a through-traffic lane that functions as a High Occupancy Toll (HOV) lane, High Occupancy Toll (HOT) lane, bus lane, or truck climbing lane.

(ii) The addition of an auxiliary lane.

(iii) The addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange.

(iv) Restriping existing pavement for the purpose of adding a through-traffic lane or an auxiliary lane.

(v) The addition of a new or substantial alteration of a weigh station, rest area, ride-share lot or toll plaza. A substantial alteration may include increased capacity for overnight parking, or relocation of parking facilities closer to noise sensitive land uses.

(4) Other projects which may cause a traffic noise impact during regular operation.

(c) Type I projects that are not likely to change the noise environment during regular operation of the facility in the design year may be exempted from analysis.

(1) The following projects are exempted Type I projects:

(i) The addition of, or conversion to, an all-electronic toll plaza where vehicles do not stop or accelerate away.

(ii) An auxiliary lane when it is a turn lane or less than 2,500 feet in length, and thus does not function as a through lane.

(iii) The addition of a through traffic lane when:

(A) Design speed limit is 35 mph or less; and

(B) Vehicular restrictions that would cause the volume of traffic using these lanes to be much lower than the main lanes, including autos-only, bus-only, no trucks allowed.

(iv) A substantial vertical alteration when such alteration results in a newly blocked line of sight between the roadway and the receptor, such as moving a roadway into a cut.

(2) Any project that would otherwise qualify as exempt, which could involve unusual circumstances, is a Type I project.

(3) The recipient, in its discretion, may choose to determine impacts and consider abatement for any project that would otherwise qualify as exempt.

(d) The development and implementation of Type II projects are not mandatory requirements of 23 U.S.C. 109(i).

(1) For a Type II project to be eligible for Federal-aid funding, the State DOT must develop and implement a Type II program in accordance with § 772.17(b). Participation in the Type II program is optional.

(2) If a State DOT chooses to participate in a Type II program, the State DOT shall develop a priority system, based on a variety of factors, to rank the projects in the program. This priority system shall be submitted to and approved by FHWA before the State DOT is allowed to use Federal-aid funds for a project in the program. The State DOT shall reanalyze the priority system on a regular interval, not to exceed 5 years.

(e) For a Type III project, a recipient is not required to complete a noise analysis or consider abatement measures.

(f) The State DOT shall develop a noise policy in conformance with this part within 6 months of [EFFECTIVE DATE OF FINAL RULE]. The State DOT shall implement the approved noise policy upon approval or within 12 months of [EFFECTIVE DATE OF FINAL RULE], whichever comes first, and shall apply the policy uniformly and consistently statewide.

(1) Non-State DOT recipients and all subrecipients carrying out a project funded by a discretionary grant under title 23 of the U.S. Code, or administered as if a Federal-aid project under 23 U.S.C. chapter 1, must use their State DOT's FHWA-approved noise policy for highway traffic and construction noise analysis to comply with the requirements of this part. Multi-State regional recipients will apply the State DOT noise policy that corresponds with the roadway's location, this may result in two or more policies applying to a single project if it crosses multiple State borders.

(2) [Reserved]

(g) The State DOT noise policy must define and include the following criteria:

(1) Noise Impact Criteria in table 1 to this part or lower values that would be applied consistently statewide. State whether the State DOT will use the values in table 1 to this part to

determine the presence of noise impacts, or if they will use lower values. If using lower values, define these.

(2) Substantial noise increase criterion between 5 and 10 dB(A). Noise levels above the defined threshold are a noise impact.

(3) The noise model and tools used for noise analysis and whether they are consistent with and conform to the requirements listed in § 772.7.

(4) Method to calculate and place non-residential receptors and definition of worst noise hour.

(5) The procedure on the rounding of results.

(6) Evaluation criteria for abatement options, including what constitutes effective abatement, and the basis for determination, described under § 772.11(e).

(7) Procedures for providing project information to local officials.

(8) If the State participates in a Type II program, the factors for a priority system.

(9) Methods for considering construction noise impacts and abatement.

(h) Projects for which traffic noise prediction activities are initiated by [1 YEAR AFTER EFFECTIVE DATE OF FINAL RULE], or initiated after approval of the State's noise policy, whichever occurs first, shall be developed in accordance with this part. The State DOT may also choose to apply this part to any project at any stage after approval of the State's noise policy.

#### § 772.7 Traffic noise prediction.

(a) Any analysis required by this part must use the latest version of FHWA Traffic Noise Model (TNM); or any other model determined by FHWA to be consistent with the methodology of TNM.

(1) FHWA will announce the availability of a new or updated version of the TNM by publishing a **Federal Register** notice, which will also specify a grace period to facilitate the transition to its use.

(2) Projects for which traffic noise prediction activities have been initiated under the previous version of the model can be completed under the previous version.

(3) Except as provided in paragraph (a)(2) of this section, a recipient must use the latest version of TNM on any new analysis as described in § 772.11 beginning after the last day of the grace period specified in a **Federal Register** notice announcing the availability of that version.

(b) A recipient shall use average pavement type in TNM for future noise level prediction unless recipient

substantiates the use of a different pavement type and obtains FHWA approval.

(c) In predicting noise levels and assessing noise impacts, a recipient shall use the following traffic characteristics that would yield the worst traffic noise impact:

(1) For Type I projects, the worst traffic-noise hour for the design year.

(2) For Type II projects, the worst noise hour, as defined in § 772.3 for existing noise levels.

(d) State DOTs shall define and include a statewide method for calculating and placing receptors in non-residential land uses in their noise policy. For residential land uses, each single-family structure and each dwelling unit in a multifamily structure shall be counted as one receptor when determining impacted and benefitted receptors.

(e) A recipient may screen projects to determine the likelihood of traffic noise impacts. If traffic noise screening is used, the following provisions apply.

(1) TNM, or any other model or tool determined by FHWA as compliant with the methodology of TNM for screening purposes, shall be used for traffic noise screening to determine the likelihood of traffic noise impacts. A screening tool that produces the same results as TNM for the same model inputs within 0.1 dB will be considered compliant.

(2) A recipient shall conduct the screening analysis on the entire noise analysis area for the project. The same model or tool used to determine the existing condition shall also be used to analyze the design year condition(s).

(3) A screening analysis shall include the following parameters, if applicable:

- (i) Existing noise level;
- (ii) Facility type;
- (iii) Length of facility;
- (iv) Number of lanes in each travel direction;
- (v) Lane width;
- (vi) Roadway design capacity;
- (vii) Vehicle fleet mix;
- (viii) Speed;
- (ix) Roadway grade;
- (x) Type of ground between roadway and receiver;
- (xi) Land (urban/suburban/rural) areas;
- (xii) Noise Impact Criteria Activity Category; and
- (xiii) Distance of nearest receiver from the roadway.

(4) The screening analysis may also include additional appropriate parameters.

(5) Type I projects with complex attributes are not appropriate for screening analysis and the recipient shall apply the provisions in § 772.9. Complex attributes include:

(i) The construction of a roadway on a new location;

(ii) Ground elevation changes because of hills, valleys, and other undulations greater than 3 feet that do not correlate to the grade change in the roadway;

(iii) Large areas of trees that fully obscure the line of sight between the roadway and the source;

(iv) Intervening buildings, barriers, or other substantial structures;

(v) Intervening ground with multiple ground types (e.g., water, pavement, grass, etc.); or

(vi) Where the deviation between any roadway segment and a straight-line approximation of the roadway is greater than 25 degrees.

(6) Detailed traffic noise analysis as described in § 772.9 is not required if both of the following screening conditions are satisfied:

(i) If the result of screening is at least 5 dB less than the Noise Impact Criteria in table 1 to this part for the appropriate activity category; and

(ii) If the result of screening does not exceed the substantial noise increase criteria determined in the State DOT noise policy.

#### § 772.9 Analysis of traffic noise impacts.

The recipient shall determine and analyze expected traffic noise impacts for all Type I and II projects.

(a) The analysis of traffic noise impacts shall include:

(1) Identification of the noise analysis area to determine all traffic noise impacts.

(2) Identification of existing land uses and activities that may be affected by noise from the highway, including undeveloped land that is determined to be permitted.

(3) Validation of the noise model with field measurement of noise levels using an ANSI Type I or Type II integrating sound level meter. The model is validated if existing highway traffic noise level and predicted highway traffic noise level for the existing condition are within  $+/- 3$  dB(A).

(b) A recipient shall complete a traffic noise analysis for each alternative under detailed study and each Activity Category listed in table 1 to this part that is present in the noise analysis area.

(1) For projects on new alignments, determine existing noise levels by field measurements, and predict design year traffic noise levels using an FHWA-approved noise model.

(2) For projects on existing alignments, predict existing and design year traffic noise levels using an FHWA-approved noise model.

(c) In determining traffic noise impacts, a recipient shall give primary

consideration to exterior areas where frequent human use occurs.

(1) For Type I projects, traffic noise impacts shall be determined for the design year for the build alternative. Traffic noise impacts shall be determined by analyzing whether there is a substantial noise increase, or noise levels in exceedance of the Noise Impact Criteria in table 1 to this part.

(2) For Type II projects, traffic noise impacts shall be determined from current year conditions.

**§ 772.11 Analysis of traffic noise abatement.**

(a) When traffic noise impacts are identified, noise abatement measures that reduce traffic noise impacts shall be considered and evaluated for effectiveness.

(1) In abating traffic noise impacts, a recipient shall give primary consideration to exterior areas where frequent human use occurs.

(2) With the exception of noise insulation, the recipient shall maintain the noise abatement measure in perpetuity.

(b) Any existing noise abatement measure that is affected, up to and including removal, because of a new Type I, II, or III project shall be replaced to provide noise abatement equal to or better than what was present before, unless:

(1) The public no longer desires such abatement according to paragraph (d)(4) of this section; or

(2) The land use has changed to a non-sensitive activity, as defined in table 1 to this part, Activity Category C.

(c) Each State DOT shall develop, and describe in its noise policy, what constitutes effective abatement under paragraph (e) of this section.

(d) The analysis of traffic noise abatement shall include the recipient's determination of the effectiveness of implementing the abatement measure(s).

(e) All four required factors described in this paragraph for effective noise abatement shall be met in order for a noise abatement measure to be deemed effective. Effectiveness includes:

(1) *Engineering effectiveness.* The recipient shall make a determination that it is possible to design, construct, and maintain the abatement measure. Factors to consider include safety, barrier height, topography, drainage, utilities, maintenance of the abatement measure, and access to adjacent properties.

(2) *Acoustic effectiveness.* When noise abatement measure(s) are being considered, a recipient shall achieve a noise reduction requirement of at least 5 to 10 dB(A), as defined in its State

noise policy. The State DOT shall explain the basis for the determination of its noise reduction requirement in its noise policy. Receptors that achieve this reduction are considered benefitted. The State DOT shall define whether this reduction must be achieved by a simple majority of impacted receptors, for two or more impacted receptors, or a combination of these two criteria, and explain the basis for this determination in its noise policy.

(3) *Cost effectiveness.* Each State DOT shall determine, and obtain FHWA approval for, the allowable cost or equivalent quantity of abatement by determining a baseline cost effectiveness value. The State DOT may determine a separate baseline cost effectiveness value for each type of abatement measure. The State DOT shall reanalyze the baseline cost effectiveness value on a regular interval, not to exceed 5 years.

(i) A State DOT has the option of justifying, for FHWA approval, different cost effectiveness values for particular geographic areas within the State, however, the State DOT must use the same cost effectiveness/construction cost ratio statewide.

(ii) A recipient has the option to cost average noise abatement among common noise environments if no single common noise environment exceeds two times the State DOT's cost effectiveness criteria and collectively all common noise environments being averaged do not exceed the State DOT's baseline cost effectiveness value.

(iii) Partial funding of a noise abatement measure by a third party is not allowed on a Federal or Federal-aid Type I or Type II project if the funding is required for the measures to be considered cost effective, except donation of utility relocation services by a non-receptor utility and of real property by a non-receptor third party, needed to construct a noise abatement measure, are acceptable. Funding of the entire cost of a noise abatement measure by any third party is allowed on a Federal or Federal-aid Type I or Type II project regardless of the measure's cost effectiveness. Discretionary grants under title 23 of the U.S. Code are not considered third party funding sources. Third party donation of the cost of functional enhancements, such as absorptive treatment and access doors, or of aesthetic enhancements, to a noise abatement measure already determined effective is acceptable.

(4) *Consideration of the viewpoints of the property owners and residents of the benefitted receptors.* The recipient shall solicit the viewpoints of all of the benefitted receptors and document a

decision on either desiring or not desiring the noise abatement measure. The recipient shall consider tenants or renters equally when analyzing noise abatement. Only the residents and property owners at benefitted receptors can make a determination on desirability of noise abatement on Federal highway right-of-way. A simple majority of respondents must desire the abatement for it to be constructed.

(i) The State DOT shall not require a minimum response rate as to whether to construct an abatement measure, unless there are two or more outreach efforts to directly contact the benefitted receptors and obtain their viewpoints.

(ii) The State DOT shall document requirements for outreach efforts, and where necessary a minimum response rate, in the State noise policy and apply the requirements uniformly statewide.

(5) *Optional factors.* A State DOT can also include optional factors in its noise policy and apply them to projects. The following optional factors can only be used to increase the allowable cost of abatement as defined in paragraph (e)(3) of this section:

(i) Date of development.

(ii) Length of time receptors have been exposed to highway traffic noise impacts.

(iii) Exposure to higher absolute highway traffic noise levels.

(iv) Changes between existing and future build conditions.

(v) Percentage of mixed zoning development.

(vi) Use of noise compatible planning concepts by the local government.

(vii) Whether the abatement provides additional environmental or social benefits.

(f) The date of public knowledge provides local officials and the community an official notice that this project is approved and under active development. It is first established on the date of approval of the CE, FONSI, ROD, or Supplemental EIS, as described in part 771 of this chapter.

(1) If undeveloped land is not permitted for development by the date of public knowledge, the recipient shall determine noise levels in accordance with § 772.7 and document the results in the project's environmental document and technical noise memorandum.

(2) Federal participation in noise abatement measures will not be considered for lands that are not permitted by the date of public knowledge.

(3) Any lands permitted for noise-sensitive development before the date of public knowledge must be considered for potential impacts from the project,

and if such impacts occur, must be considered for noise abatement.

(g) The date of public knowledge will be updated when project-based assumptions or data become out-of-date. As such, it will be reset under the following conditions:

(1) If more than 5 years has elapsed since the date of public knowledge was established or last updated and the project has not initiated construction; or

(2) If a recipient identifies a design or operational change that results in a change in noise impacts to a receptor during a reevaluation pursuant to § 772.129 of this chapter.

(h) If the date of public knowledge is reset in accordance with paragraph (g) of this section, then all noise-sensitive development in the noise analysis area, including noise-sensitive development that was built or permitted since the date of public knowledge was previously established, must be evaluated for noise impacts and abatement in accordance with this part.

#### § 772.13 Construction noise.

(a) For any project where severe highway construction noise impacts are likely to occur because of the scale and scope of the project, or when the public has expressed serious concern about construction noise, the recipient should conduct quantitative analysis of impacts as early in the project development process as the information is available.

(b) For all Type I and II projects, a recipient shall:

(1) Identify land uses or activities that may be affected by noise from construction of the project. The identification is to be performed during the project development studies.

(2) Determine the specific monitoring and mitigation measures that are needed to minimize or eliminate adverse construction noise impacts to the community. This determination shall include a weighing of the social, economic, and environmental benefits and adverse effects of the abatement measures.

(3) Incorporate the needed abatement measures in the plans and specifications.

(c) For Type III projects, a recipient may choose to perform analyses as described in paragraph (b) of this section.

#### § 772.15 Documentation and reporting.

(a) The recipient shall document in the technical noise memorandum the noise levels for the existing and design year build conditions for all activity categories described in table 1 to this part, consistent with § 772.9.

(b) The technical noise memorandum, including for design-build projects,

shall document all considered and proposed noise abatement measures for inclusion in the project's environmental document. Final design of design-build noise abatement measures shall be based on the preliminary noise abatement design developed in the technical noise memo. Noise abatement measures shall be considered, developed, and constructed in accordance with this standard and in conformance with the provisions of § 636.109 of this chapter.

(c) Before adoption of a CE, FONSI, or ROD, the environmental document shall include a Statement of Likelihood regarding noise impacts and abatement. For the NEPA reviews, this analysis shall be completed to the extent that design information on the alternative(s) under study in the environmental document is available at the time the environmental document is completed.

(1) The Statement of Likelihood shall identify:

(i) All locations where noise impacts are predicted to occur.

(ii) All locations with noise abatement that is preliminarily effective, including a physical description of the abatement being proposed.

(iii) All locations with impacts that have no effective noise abatement alternative.

(2) The Statement of Likelihood shall also indicate that the determination of effective traffic noise abatement in accordance with § 772.11 may change because of changes in the project design after approval of the environmental document; and that the final determination on the construction of the abatement measure(s) is made during the completion of the project's final design and public involvement processes.

(d) FHWA and recipients will not approve project plans and specifications unless all environmental commitments for effective traffic noise abatement, determined in accordance with § 772.11, are incorporated into the plans and specifications to reduce the noise impact on existing activities, developed lands, or undeveloped lands for which development is permitted.

(e) Recipients shall also incorporate any selected construction noise abatement measures in the plans and specifications.

(f) Each State DOT shall maintain an inventory of all constructed noise abatement measures, including those built by other recipients in its borders. These other recipients shall submit their information to their State DOT at the end of construction for their project. FHWA will collect this information from the State DOT in accordance with

OMB's Information Collection requirements. The inventory shall include the following parameters:

(1) Location (State, county, city, route).

(2) Type of abatement.

(3) Year of construction.

(4) Cost (overall cost, unit cost per/sq. ft.).

(5) Average height (if applicable).

(6) Total length (if applicable).

(7) Total area (if applicable).

(8) Material(s) used.

(i) For noise walls, these are typically: precast concrete, block, cast in place concrete, brick, metal, wood, fiberglass, plastic (transparent, opaque, other), or combination of two or more materials.

(ii) For berms, these are typically: earth, rubble, and/or leftover construction materials.

(9) Features (for noise walls, these are typically: absorptive or reflective surface texture; or features such as overlaps, or maintenance access doorways).

(10) Foundation (For noise barriers, these are typically: ground mounted or on structure).

(11) Average insertion loss/noise reduction as reported by the model in the noise analysis.

(12) Land use(s) and activity category(ies) protected.

(13) Project type (Type I, Type II, and optional project types such as State-funded, county-funded, tollway/turnpike-funded, other, or unknown).

#### § 772.17 Information for local officials.

(a) To minimize future traffic noise impacts on currently undeveloped lands of Type I projects, a recipient shall inform local officials within whose jurisdiction the highway project is located, of:

(1) Noise compatible planning concepts;

(2) The distance from the edge of the nearest travel lane of the highway improvement to the point at which future noise levels meet the Noise Impact Criteria for each Activity Category in table 1 to this part, for undeveloped lands or properties within the project limits; and

(3) Non-eligibility for Federal-aid participation of a Type II project as described in § 772.19(b).

(b) If a State DOT chooses to participate in a Type II noise program, the State DOT shall have a statewide outreach program to inform local officials and the public of the items in paragraphs (a)(1) through (3) of this section.

(c) FHWA TNM noise contours, or any other model or tool determined by FHWA as compliant with the

methodology of FHWA TNM, may be used for land use planning to comply with paragraphs (a)(1) through (3) of this section.

**§ 772.19 Federal participation.**

(a) *Type I and Type II projects.* Title 23 of the U.S. Code funds may be used for noise abatement measures when:

(1) Traffic noise impacts have been identified; and

(2) Abatement measures have been determined to be effective pursuant to § 772.11(e).

(b) *Type II projects.* (1) No funds made available out of the Highway Trust Fund may be used to construct Type II noise barriers, as defined by this part if such noise barriers were not part of a project approved by FHWA before November 28, 1995.

(2) Title 23 of the U.S. Code funds are available for Type II projects along lands that were developed or were under substantial construction before approval of the acquisition of the rights-of-ways for, or construction of, the existing highway.

(3) FHWA will not approve a noise abatement measure for a location where

a previous determination of such a measure was:

(i) Not “feasible and reasonable” for a Type I project prior to the effective date of this part.

(ii) Not “effective” for a Type I project under this part.

(c) *Eligible noise abatement measures.* Federal-aid funds may participate in the costs of noise abatement measures or a combination of measures up to the Federal share payable on the Federal-aid highway on which the project is located, and based on other applicable program requirements. The measures or combination of measures which may be incorporated into a Type I or Type II project to reduce traffic noise impacts include, but are not limited to:

(1) Construction of noise barriers, including acquisition of property rights, either within or outside the highway right-of-way.

(2) Traffic management measures including, but not limited to, traffic control devices and signing for prohibition of certain vehicle types, time-use restrictions for certain vehicle types, modified speed limits, and exclusive lane designations.

(3) Alteration of horizontal and vertical alignments.

(4) Acquisition of real property or interests therein (predominantly unimproved property) to serve as a buffer zone to preempt development which would be adversely impacted by traffic noise. This measure may be included in Type I projects only.

(5) Noise insulation of Activity Category D land use facilities listed in table 1 to this part. Post-installation maintenance and operational costs for noise insulation are not eligible for Federal-aid funding.

(d) *Ineligible noise abatement measures.* Federal-aid funds may not participate in the costs of the following measures:

(1) Modifying the vegetation in an area of land alone.

(2) Payment or compensation for a highway traffic noise impact through the purchase of a noise easement from a property owner.

(3) Monetary compensation to a property owner in lieu of noise abatement.

**TABLE 1 TO PART 772—TRAFFIC NOISE IMPACT CRITERIA**  
[Hourly A-weighted sound level decibels (dB(A))]

Activity category	Activity criteria (L <sub>EQ</sub> (h)) <sup>1</sup>	Evaluation location	Activity description <sup>2</sup>
A <sup>3</sup> .....	56	Exterior .....	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B <sup>4,7</sup> .....	66	Exterior .....	Noise-sensitive land uses where people learn, live, play, work, or worship, and where reduced noise levels are necessary for the land use to serve its intended purpose. Examples include but are not limited to: active sport areas, amphitheatres, auditoriums, campgrounds, cemeteries, day care centers, hospitals, hotels, libraries, medical facilities, motels, offices, parks, picnic areas, places of worship, playgrounds, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, recreation areas, residential areas, section 4(f) sites, schools, television studios, trails, and trail crossings.
C <sup>5</sup> .....	.....	.....	Non-noise sensitive land uses: noise generating land uses, undeveloped and unpermitted land uses, or vacant and derelict structures. Examples of non-noise sensitive land uses include agriculture, airports, bus yards, emergency services, industrial, logging, maintenance facilities, manufacturing, mining, rail yards, retail facilities, shipyards, utilities (water resources, water treatment, electrical), and warehousing.
D <sup>6,7</sup> .....	51	Interior .....	A subset of certain Activity Category B public, non-residential land uses where noise sensitive activities occur only indoors. Examples include but are not limited to: auditoriums, day care centers, hospitals, libraries, medical facilities, places of worship, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, schools, and television studios.

<sup>1</sup> The L<sub>EQ</sub>(h) Activity Criteria values are for impact determination only, and are not design standards for noise abatement measures.

<sup>2</sup> Any of these land uses and Activities may be subject to other laws or rules (such as section 7 of the Endangered Species Act, section 106 of the National Historic Preservation Act, or section 4(f) (23 CFR part 774)); impact and abatement analysis for these specific land uses and activities will be conducted according to applicable regulations, if requested by the oversight agency responsible for implementing the statutory requirements.

<sup>3</sup> Highway agencies shall submit justifications to FHWA on a case-by-case basis for approval of an Activity Category A designation.

<sup>4</sup> Includes undeveloped lands permitted for Activity Category B.

<sup>5</sup> No analysis of noise impacts is required for Activity Category C.

<sup>6</sup> A State DOT shall conduct an indoor analysis after a determination is made that exterior abatement measures will not be effective for non-residential land uses in Activity Category B. In non-residential land uses where no exterior activities are impacted by traffic noise, or where the exterior activities are far from or physically shielded from the roadway such that there is no impact on exterior activities, the State DOT shall use Activity Category D as the basis of determining noise impacts in lieu of Activity Category B.

<sup>7</sup> For Activity Categories B and D, each State DOT shall adopt a standard practice for analyzing these land use facilities that is documented in its noise policy and is applied consistently and uniformly statewide.

[FR Doc. 2024-23751 Filed 10-17-24; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-120137-19]

RIN 1545-BP66

#### Update of Regulations Regarding Payment of Tax by Commercially Acceptable Means; Hearing

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Proposed rule; public hearing

**SUMMARY:** This document provides a notice of public hearing on the proposed rule (REG-120137-19) that was published in the **Federal Register** on Tuesday, July 2, 2024. The proposed regulations relate to the payment of tax by commercially acceptable means and reflect changes to the law made by the Taxpayer First Act that would allow the IRS to directly accept payments of tax by credit or debit card, without having to connect taxpayers to third-party payment processors.

**DATES:** The public hearing is scheduled to be held on December 6, 2024, at 10 a.m. Eastern Time (ET). The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by November 6, 2024. If no outlines are received by November 6, 2024, the public hearing will be cancelled.

**ADDRESSES:** The public hearing is being held in the Auditorium, at the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. Due to security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively testify or attend the hearing by telephone.

Send an outline of topic submissions electronically via the Federal

eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-120137-19). Send paper submissions to CC:PA:01:PR (REG-120137-19), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Crystal Jackson-Kaloz at (202) 317-5191 (not a toll-free number); concerning the submission of requests to testify, the hearing, the access code to attend the hearing by phone, or to be placed on the building access list to attend the public hearing, contact the Publications and Regulations Section at (202) 317-6901 (not a toll-free number), or by email at [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is the notice of proposed rulemaking (REG-120137-19) that was published in the **Federal Register** on Tuesday, July 2, 2024 (89 FR 54746).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by November 6, 2024.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing and via the Federal eRulemaking Portal (<https://www.Regulations.gov>) under the title of Supporting & Related Material. If no outline of the topics to be discussed at the hearing is received by November 6, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notification of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to have your legal name added to the building access list. The subject line of the email must contain the regulation number REG-120137-19 and the language "TESTIFY In Person." For

example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-120137-19.

Individuals who want to testify by telephone at the public hearing must send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-120137-19 and the language "TESTIFY Telephonically." For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-120137-19.

Individuals who want to attend the public hearing in person without testifying must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to have your legal name added to the building access list. The subject line of the email must contain the regulation number REG-120137-19 and the language "ATTEND In Person." For example, the subject line may say: Request to ATTEND In Person for REG-120137-19. Requests to attend the public hearing must be received by 5 p.m. ET on November 29, 2024. The hearing will be made accessible to people with disabilities. Requests for special assistance during the hearing must be received by 5 p.m. ET on November 27, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-120137-19 and the language "ATTEND Hearing Telephonically." For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-120137-19. Requests to attend the public hearing must be received by 5 p.m. ET on November 29, 2024.

Any questions regarding speaking at or attending the public hearing may also be emailed to [publichearings@irs.gov](mailto:publichearings@irs.gov).

#### Regina L. Johnson,

*Federal Register Liaison, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2024-23972 Filed 10-17-24; 8:45 am]

BILLING CODE 4830-01-P