

§ 771.137

FONSI is prepared, the final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document constitutes adoption of any Administration findings and determinations that are contained therein. The Administration's approval of an environmental document constitutes its finding of compliance with the report requirements of 23 U.S.C. 128.

[52 FR 32660, Aug. 28, 1987, as amended at 74 FR 12530, Mar. 24, 2009]

§ 771.137 International actions.

(a) The requirements of this part apply to:

(1) Administration actions significantly affecting the environment of a foreign nation not participating in the action or not otherwise involved in the action.

(2) Administration actions outside the U.S., its territories, and possessions which significantly affect natural resources of global importance designated for protection by the President or by international agreement.

(b) If communication with a foreign government concerning environmental studies or documentation is anticipated, the Administration shall coordinate such communication with the Department of State through the Office of the Secretary of Transportation.

§ 771.139 Limitations on actions.

Notices announcing decisions by the Administration or by other Federal agencies on a transportation project may be published in the FEDERAL REGISTER indicating that such decisions are final within the meaning of 23 U.S.C. 139(*l*). Claims arising under Federal law seeking judicial review of any such decisions are barred unless filed within 180 days after publication of the notice. This 180-day time period does not lengthen any shorter time period for seeking judicial review that otherwise is established by the Federal law under which judicial review is allowed.⁶

⁶The FHWA published a detailed discussion of US DOT's interpretation of 23 U.S.C. 139(*l*), together with information applicable to FHWA projects about implementation proce-

23 CFR Ch. I (4–1–10 Edition)

This provision does not create any right of judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

[74 FR 12530, Mar. 24, 2009]

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

Sec.

- 772.1 Purpose.
- 772.3 Noise standards.
- 772.5 Definitions.
- 772.7 Applicability.
- 772.9 Analysis of traffic noise impacts and abatement measures.
- 772.11 Noise abatement.
- 772.13 Federal participation.
- 772.15 Information for local officials.
- 772.17 Traffic noise prediction.
- 772.19 Construction noise.

TABLE 1 TO PART 772—NOISE ABATEMENT CRITERIA

APPENDIX A TO PART 772—NATIONAL REFERENCE ENERGY MEAN EMISSION LEVELS AS A FUNCTION OF SPEED

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

SOURCE: 47 FR 29654, July 8, 1982; 47 FR 33956, Aug. 5, 1982, unless otherwise noted.

§ 772.1 Purpose.

To provide procedures for noise studies and noise abatement measures to help protect the public health and welfare, to supply noise abatement criteria, and to establish requirements for information to be given to local officials for use in the planning and design of highways approved pursuant to title 23 U.S.C.

§ 772.3 Noise standards.

The highway traffic noise prediction requirements, noise analyses, noise abatement criteria, and requirements

dures for 23 U.S.C. 139(*l*), in appendix E to the “SAFETEA-LU Environmental Review Process: Final Guidance,” dated November 15, 2006. The implementation procedures in appendix E apply only to FHWA projects. The section 6002 guidance, including appendix E, is available at <http://www.fhwa.dot.gov/>, or in hard copy by request.

Federal Highway Administration, DOT

§ 772.11

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

§ 772.5 Definitions.

(a) *Design year*. The future year used to estimate the probable traffic volume for which a highway is designed. A time, 10 to 20 years, from the start of construction is usually used.

(b) *Existing noise levels*. The noise, resulting from the natural and mechanical sources and human activity, considered to be usually present in a particular area.

(c) L_{10} . The sound level that is exceeded 10 percent of the time (the 90th percentile) for the period under consideration.

(d) $L_{10}(h)$. The hourly value of L_{10} .

(e) *Leq*—the equivalent steady-state sound level which in a stated period of time contains the same acoustic energy as the time-varying sound level during the same time period.

(f) *Leq(h)*. The hourly value of *Leq*.

(g) *Traffic noise impacts*. Impacts which occur when the predicted traffic noise levels approach or exceed the noise abatement criteria (Table 1), or when the predicted traffic noise levels substantially exceed the existing noise levels.

(h) *Type I projects*. A proposed Federal or Federal-aid highway project for the construction of a highway on new location or the physical alteration of an existing highway which significantly changes either the horizontal or vertical alignment or increases the number of through-traffic lanes.

(i) *Type II projects*. A proposed Federal or Federal-aid highway project for noise abatement on an existing highway.

§ 772.7 Applicability.

(a) *Type I projects*. This regulation applies to all Type I projects unless it is specifically indicated that a section applies only to Type II projects.

(b) *Type II projects*. The development and implementation of Type II projects are not mandatory requirements of 23

U.S.C. 109(i) and are, therefore, not required by this regulation. When Type II projects are proposed for Federal-aid highway participation at the option of the highway agency, the provisions of §§ 772.9(c), 772.13, and 772.19 of this regulation shall apply.

§ 772.9 Analysis of traffic noise impacts and abatement measures.

(a) The highway agency shall determine and analyze expected traffic noise impacts and alternative noise abatement measures to mitigate these impacts, giving weight to the benefits and cost of abatement, and to the overall social, economic and environmental effects.

(b) The traffic noise analysis shall include the following for each alternative under detailed study:

(1) Identification of existing activities, developed lands, and undeveloped lands for which development is planned, designed and programmed, which may be affected by noise from the highway;

(2) Prediction of traffic noise levels;

(3) Determination of existing noise levels;

(4) Determination of traffic noise impacts; and

(5) Examination and evaluation of alternative noise abatement measures for reducing or eliminating the noise impacts.

(c) Highway agencies proposing to use Federal-aid highway funds for Type II projects shall perform a noise analysis of sufficient scope to provide information needed to make the determination required by § 772.13(a) of this chapter.

§ 772.11 Noise abatement.

(a) In determining and abating traffic noise impacts, primary consideration is to be given to exterior areas. Abatement will usually be necessary only where frequent human use occurs and a lowered noise level would be of benefit.

(b) In those situations where there are no exterior activities to be affected by the traffic noise, or where the exterior activities are far from or physically shielded from the roadway in a manner that prevents an impact on exterior activities, the interior criterion