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publication of the limitations on claims notice by FHWA or FTA. Claims arising under Federal law seeking judicial review of any such decisions are time barred unless filed within 2 years after the date of publication of the limitations on claims notice by FRA. These time periods do not lengthen any shorter time period for seeking judicial review that otherwise is established by the Federal law under which judicial review is allowed.⁵ 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.

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

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TABLE 1 TO PART 772—NOISE ABATEMENT CRITERIA

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

SOURCE: 75 FR 39834, July 13, 2010, unless otherwise noted.

§ 772.1 Purpose.

To provide procedures for noise studies and noise abatement measures to help protect the public's health, welfare and livability, to supply noise abatement criteria, and to establish requirements for information to be given to local officials for use in the planning

⁵The FHWA published a detailed discussion of the Department's interpretation of 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.

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 for informing local officials in this regulation constitute the noise standards mandated by 23 U.S.C. 109(1). All highway projects which are developed in conformance with this regulation shall be deemed to be in accordance with the FHWA noise standards.

§ 772.5 Definitions.

Benefited receptor. The recipient of an abatement measure that receives a noise reduction at or above the minimum threshold of 5 dB(A), but not to exceed the highway agency's reasonableness design goal.

Common Noise Environment. A group of receptors within the same Activity Category in Table 1 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, cross-roads.

Date of public knowledge. The date of approval of the Categorical Exclusion (CE), the Finding of No Significant Impact (FONSI), or the Record of Decision (ROD), as defined in 23 CFR part 771.

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

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.

Feasibility. The combination of acoustical and engineering factors considered in the evaluation of a noise abatement measure.

Impacted Receptor. The recipient that has a traffic noise impact.

L10. The sound level that is exceeded 10 percent of the time (the 90th percentile) for the period under consideration, with L10(h) being the hourly value of L10.

Leq. The equivalent steady-state sound level which in a stated period of

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time contains the same acoustic energy as the time-varying sound level during the same time period, with $Leq(h)$ being the hourly value of Leq .

Multifamily dwelling. A residential structure containing more than one residence. Each residence in a multifamily dwelling shall be counted as one receptor when determining impacted and benefited receptors.

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 stand alone noise walls, noise berms (earth or other material), and combination berm/wall systems.

Noise reduction design goal. The optimum desired dB(A) noise reduction determined from calculating the difference between future build noise levels with abatement, to future build noise levels without abatement. The noise reduction design goal shall be at least 7 dB(A), but not more than 10 dB(A).

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.

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.

Reasonableness. The combination of social, economic, and environmental factors considered in the evaluation of a noise abatement measure.

Receptor. A discrete or representative location of a noise sensitive area(s), for any of the land uses listed in Table 1.

Residence. A dwelling unit. Either a single family residence or each dwelling unit in a multifamily dwelling.

Statement of likelihood. A statement provided in the environmental clearance document based on the feasibility and reasonableness analysis completed at the time the environmental document is being approved.

Substantial construction. The granting of a building permit, prior to right-of-way acquisition or construction approval for the highway.

Substantial noise increase. One of two types of highway traffic noise impacts. For a Type I project, an increase in

noise levels of 5 to 15 dB(A) in the design year over the existing noise level.

Traffic noise impacts. Design year build condition noise levels that approach or exceed the NAC listed in Table 1 for the future build condition; or design year build condition noise levels that create a substantial noise increase over existing noise levels.

Type I project. (1) The construction of a highway on new location; or,

(2) The physical alteration of an existing highway where there is either:

(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; or,

(ii) Substantial Vertical Alteration. A project that removes shielding therefore 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; or,

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

(4) The addition of an auxiliary lane, except for when the auxiliary lane is a turn lane; or,

(5) The addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange; or,

(6) Restriping existing pavement for the purpose of adding a through-traffic lane or an auxiliary lane; or,

(7) The addition of a new or substantial alteration of a weigh station, rest stop, ride-share lot or toll plaza.

(8) If a project is determined to be a Type I project under this definition then the entire project area as defined in the environmental document is a Type I project.

Type II project. A Federal or Federal-aid highway project for noise abatement on an existing highway. For a Type II project to be eligible for Federal-aid funding, the highway agency must develop and implement a Type II

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program in accordance with section 772.7(e).

Type III project. A Federal or Federal-aid highway project that does not meet the classifications of a Type I or Type II project. Type III projects do not require a noise analysis.

§ 772.7 Applicability.

(a) This regulation applies to all Federal or Federal-aid Highway Projects authorized under title 23, United States Code. Therefore, this regulation applies to any highway project or multimodal project that:

- (1) Requires FHWA approval regardless of funding sources, or
- (2) Is funded with Federal-aid highway funds.

(b) In order to obtain FHWA approval, the highway agency shall develop noise policies in conformance with this regulation and shall apply these policies uniformly and consistently statewide.

(c) This regulation applies to all Type I projects unless the regulation specifically indicates that a section only applies to Type II or Type III projects.

(d) The development and implementation of Type II projects are not mandatory requirements of section 109(i) of title 23, United States Code.

(e) If a highway agency chooses to participate in a Type II program, the highway agency 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 highway agency is allowed to use Federal-aid funds for a project in the program. The highway agency shall re-analyze the priority system on a regular interval, not to exceed 5 years.

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

§ 772.9 Traffic noise prediction.

(a) Any analysis required by this subpart must use the FHWA Traffic Noise Model (TNM), which is described in "FHWA Traffic Noise Model" Report No. FHWA-PD-96-010, including Revision No. 1, dated April 14, 2004, or any other model determined by the FHWA

to be consistent with the methodology of the FHWA TNM. These publications are incorporated by reference in accordance with section 552(a) of title 5, U.S.C. and part 51 of title 1, CFR, and are on file at the National Archives and Record Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. These documents are available for copying and inspection at the Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, as provided in part 7 of title 49, CFR. These documents are also available on the FHWA's Traffic Noise Model Web site at the following URL: <http://www.fhwa.dot.gov/environment/noise/index.htm>.

(b) Average pavement type shall be used in the FHWA TNM for future noise level prediction unless a highway agency substantiates the use of a different pavement type for approval by the FHWA.

(c) Noise contour lines may be used for project alternative screening or for land use planning to comply with § 772.17 of this part, but shall not be used for determining highway traffic noise impacts.

(d) In predicting noise levels and assessing noise impacts, traffic characteristics that would yield the worst traffic noise impact for the design year shall be used.

§ 772.11 Analysis of traffic noise impacts.

(a) The highway agency shall determine and analyze expected traffic noise impacts.

(1) For projects on new alignments, determine traffic noise impacts by field measurements.

(2) For projects on existing alignments, predict existing and design year traffic noise impacts.

(b) In determining traffic noise impacts, a highway agency shall give primary consideration to exterior areas where frequent human use occurs.

(c) A traffic noise analysis shall be completed for:

- (1) Each alternative under detailed study;

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(2) Each Activity Category of the NAC listed in Table 1 that is present in the study area;

(i) *Activity Category A.* This activity category includes the exterior impact criteria for 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 for the area to continue to serve its intended purpose. Highway agencies shall submit justifications to the FHWA on a case-by-case basis for approval of an Activity Category A designation.

(ii) *Activity Category B.* This activity category includes the exterior impact criteria for single-family and multi-family residences.

(iii) *Activity Category C.* This activity category includes the exterior impact criteria for a variety of land use facilities. Each highway agency shall adopt a standard practice for analyzing these land use facilities that is consistent and uniformly applied statewide.

(iv) *Activity Category D.* This activity category includes the interior impact criteria for certain land use facilities listed in Activity Category C that may have interior uses. A highway agency shall conduct an indoor analysis after a determination is made that exterior abatement measures will not be feasible and reasonable. An indoor analysis shall only be done after exhausting all outdoor analysis options. In situations where no exterior activities are 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 highway agency shall use Activity Category D as the basis of determining noise impacts. Each highway agency shall adopt a standard practice for analyzing these land use facilities that is consistent and uniformly applied statewide.

(v) *Activity Category E.* This activity category includes the exterior impact criteria for developed lands that are less sensitive to highway noise. Each highway agency shall adopt a standard practice for analyzing these land use facilities that is consistent and uniformly applied statewide.

(vi) *Activity Category F.* This activity category includes developed lands that are not sensitive to highway traffic noise. There is no impact criteria for the land use facilities in this activity category and no analysis of noise impacts is required.

(vii) *Activity Category G.* This activity includes undeveloped lands.

(A) A highway agency shall determine if undeveloped land is permitted for development. The milestone and its associated date for acknowledging when undeveloped land is considered permitted shall be the date of issuance of a building permit by the local jurisdiction or by the appropriate governing entity.

(B) If undeveloped land is determined to be permitted, then the highway agency shall assign the land to the appropriate Activity Category and analyze it in the same manner as developed lands in that Activity Category.

(C) If undeveloped land is not permitted for development by the date of public knowledge, the highway agency shall determine noise levels in accordance with 772.17(a) and document the results in the project's environmental clearance documents and noise analysis documents. Federal participation in noise abatement measures will not be considered for lands that are not permitted by the date of public knowledge.

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

(1) Identification of existing activities, developed lands, and undeveloped lands, which may be affected by noise from the highway;

(2) For projects on new or existing alignments, validate predicted noise level through comparison between measured and predicted levels;

(3) Measurement of noise levels. Use an ANSI Type I or Type II integrating sound level meter;

(4) Identification of project limits to determine all traffic noise impacts for the design year for the build alternative. For Type II projects, traffic noise impacts shall be determined from current year conditions;

(e) Highway agencies shall establish an approach level to be used when determining a traffic noise impact. The approach level shall be at least 1 dB(A)

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less than the Noise Abatement Criteria for Activity Categories A to E listed in Table 1 to part 772;

(f) Highway agencies shall define substantial noise increase between 5 dB(A) to 15 dB(A) over existing noise levels. The substantial noise increase criterion is independent of the absolute noise level.

(g) A highway agency proposing to use Federal-aid highway funds for a Type II project shall perform a noise analysis in accordance with § 772.11 of this part in order to provide information needed to make the determination required by § 772.13(a) of this part.

§ 772.13 Analysis of noise abatement.

(a) When traffic noise impacts are identified, noise abatement shall be considered and evaluated for feasibility and reasonableness. The highway agency shall determine and analyze alternative noise abatement measures to abate identified impacts by giving weight to the benefits and costs of abatement and the overall social, economic, and environmental effects by using feasible and reasonable noise abatement measures for decision-making.

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

(c) If a noise impact is identified, a highway agency shall consider abatement measures. The abatement measures listed in § 772.15(c) of this part are eligible for Federal funding.

(1) At a minimum, the highway agency shall consider noise abatement in the form of a noise barrier.

(2) If a highway agency chooses to use absorptive treatments as a functional enhancement, the highway agency shall adopt a standard practice for using absorptive treatment that is consistent and uniformly applied statewide.

(d) *Examination and evaluation of feasible and reasonable noise abatement measures for reducing the traffic noise impacts.* Each highway agency, with FHWA approval, shall develop feasibility and reasonableness factors.

(1) *Feasibility:* (i) Achievement of at least a 5 dB(A) highway traffic noise reduction at impacted receptors. The

highway agency shall define, and receive FHWA approval for, the number of receptors that must achieve this reduction for the noise abatement measure to be acoustically feasible and explain the basis for this determination; and

(ii) Determination that it is possible to design and construct the noise abatement measure. Factors to consider are safety, barrier height, topography, drainage, utilities, and maintenance of the abatement measure, maintenance access to adjacent properties, and access to adjacent properties (i.e. arterial widening projects).

(2) *Reasonableness:*—(i) *Consideration of the viewpoints of the property owners and residents of the benefited receptors.* The highway agency shall solicit the viewpoints of all of the benefited receptors and obtain enough responses to document a decision on either desiring or not desiring the noise abatement measure. The highway agency shall define, and receive FHWA approval for, the number of receptors that are needed to constitute a decision and explain the basis for this determination.

(ii) *Cost effectiveness of the highway traffic noise abatement measures.* Each highway agency shall determine, and receive FHWA approval for, the allowable cost of abatement by determining a baseline cost reasonableness value. This determination may include the actual construction cost of noise abatement, cost per square foot of abatement, the maximum square footage of abatement/benefited receptor and either the cost/benefited receptor or cost/benefited receptor/dB(A) reduction. The highway agency shall re-analyze the allowable cost for abatement on a regular interval, not to exceed 5 years. A highway agency has the option of justifying, for FHWA approval, different cost allowances for a particular geographic area(s) within the State, however, the highway agency must use the same cost reasonableness/construction cost ratio statewide.

(iii) *Noise reduction design goals for highway traffic noise abatement measures.* When noise abatement measure(s) are being considered, a highway agency shall achieve a noise reduction design goal. The highway agency shall define,

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and receive FHWA approval for, the design goal of at least 7 dB(A) but not more than 10 dB(A), and shall define the number of benefited receptors that must achieve this design goal and explain the basis for this determination.

(iv) The reasonableness factors listed in § 772.13(d)(5)(i), (ii) and (iii), must collectively be achieved in order for a noise abatement measure to be deemed reasonable. Failure to achieve § 772.13(d)(5)(i), (ii) or (iii), will result in the noise abatement measure being deemed not reasonable.

(v) In addition to the required reasonableness factors listed in § 772.13(d)(5)(i), (ii), and (iii), a highway agency has the option to also include the following reasonableness factors: Date of development, length of time receivers have been exposed to highway traffic noise impacts, exposure to higher absolute highway traffic noise levels, changes between existing and future build conditions, percentage of mixed zoning development, and use of noise compatible planning concepts by the local government. No single optional reasonableness factor can be used to determine reasonableness.

(e) Assessment of Benefited Receptors. Each highway agency shall define the threshold for the noise reduction which determines a benefited receptor as at or above the 5 dB(A), but not to exceed the highway agency's reasonableness design goal.

(f) *Abatement measure reporting:* Each highway agency shall maintain an inventory of all constructed noise abatement measures. The inventory shall include the following parameters: type of abatement; cost (overall cost, unit cost per/sq. ft.); average height; length; area; location (State, county, city, route); year of construction; average insertion loss/noise reduction as reported by the model in the noise analysis; NAC category(s) protected; material(s) used (precast concrete, berm, block, cast in place concrete, brick, metal, wood, fiberglass, combination, plastic (transparent, opaque, other); features (absorptive, reflective, surface texture); foundation (ground mounted, on structure); project type (Type I, Type II, and optional project types such as State funded, county funded, tollway/turnpike funded, other, un-

known). The FHWA will collect this information, in accordance with OMB's Information Collection requirements.

(g) Before adoption of a CE, FONSI, or ROD, the highway agency shall identify:

(1) Noise abatement measures which are feasible and reasonable, and which are likely to be incorporated in the project; and

(2) Noise impacts for which no noise abatement measures are feasible and reasonable.

(3) *Documentation of highway traffic noise abatement:* The environmental document shall identify locations where noise impacts are predicted to occur, where noise abatement is feasible and reasonable, and locations with impacts that have no feasible or reasonable noise abatement alternative. For environmental clearance, 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 clearance document is completed. A statement of likelihood shall be included in the environmental document since feasibility and reasonableness determinations may change due to changes in project design after approval of the environmental document. The statement of likelihood shall include the preliminary location and physical description of noise abatement measures determined feasible and reasonable in the preliminary analysis. The statement of likelihood shall also indicate that final recommendations on the construction of an abatement measure(s) is determined during the completion of the project's final design and the public involvement processes.

(h) The FHWA will not approve project plans and specifications unless feasible and reasonable noise abatement measures 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.

(i) For design-build projects, the preliminary technical noise study shall document all considered and proposed noise abatement measures for inclusion in the NEPA document. Final design of design-build noise abatement measures

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shall be based on the preliminary noise abatement design developed in the technical noise analysis. Noise abatement measures shall be considered, developed, and constructed in accordance with this standard and in conformance with the provisions of 40 CFR 1506.5(c) and 23 CFR 636.109.

(j) Third party funding is not allowed on a Federal or Federal-aid Type I or Type II project if the noise abatement measure would require the additional funding from the third party to be considered feasible and/or reasonable. Third party funding is acceptable on a Federal or Federal-aid highway Type I or Type II project to make functional enhancements, such as absorptive treatment and access doors or aesthetic enhancements, to a noise abatement measure already determined feasible and reasonable.

(k) On a Type I or Type II projects, a highway agency has the option to cost average noise abatement among benefited receptors within common noise environments if no single common noise environment exceeds two times the highway agency's cost reasonableness criteria and collectively all common noise environments being averaged do not exceed the highway agency's cost reasonableness criteria.

§ 772.15 Federal participation.

(a) *Type I and Type II projects.* Federal 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 feasible and reasonable pursuant to § 772.13(d) of this chapter.

(b) *For 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 regulation, if such noise barriers were not part of a project approved by the FHWA before the November 28, 1995.

(2) Federal funds are available for Type II noise barriers 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 noise abatement measures for locations where such measures were previously determined not to be feasible and reasonable for a Type I project.

(c) *Noise abatement measures.* The following noise abatement measures may be considered for incorporation into a Type I or Type II project to reduce traffic noise impacts. The costs of such measures may be included in Federal-aid participating project costs with the Federal share being the same as that for the system on which the project is located.

(1) Construction of noise barriers, including acquisition of property rights, either within or outside the highway right-of-way. Landscaping is not a viable noise abatement measure.

(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. Post-installation maintenance and operational costs for noise insulation are not eligible for Federal-aid funding.

§ 772.17 Information for local officials.

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

(1) Noise compatible planning concepts;

(2) The best estimation of the future design year noise levels at various distances from the edge of the nearest travel lane of the highway improvement where the future noise levels meet the highway agency's definition of "approach" for undeveloped lands or

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properties within the project limits. At a minimum, identify the distance to the exterior noise abatement criteria in Table 1;

(3) Non-eligibility for Federal-aid participation for a Type II project as described in § 772.15(b).

(b) If a highway agency chooses to participate in a Type II noise program or to use the date of development as one of the factors in determining the reasonableness of a Type I noise abatement measure, the highway agency shall have a statewide outreach program to inform local officials and the public of the items in § 772.17(a)(1) through (3).

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For all Type I and II projects, a highway agency shall:

(a) 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.

(b) Determine the measures that are needed in the plans and specifications to minimize or eliminate adverse construction noise impacts to the community. This determination shall include a weighing of the benefits achieved and the overall adverse social, economic, and environmental effects and costs of the abatement measures.

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

TABLE 1 TO PART 772—NOISE ABATEMENT CRITERIA
[Hourly A-Weighted Sound Level __ decibels (dB(A))¹]

Activity category	Activity Leq(h)	Criteria ² L10(h)	Evaluation location	Activity description
A	57	60	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 ³	67	70	Exterior	Residential.
C ³	67	70	Exterior	Active sport areas, amphitheaters, auditoriums, campgrounds, cemeteries, day care centers, hospitals, libraries, medical facilities, parks, picnic areas, places of worship, playgrounds, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, recreation areas, Section 4(f) sites, schools, television studios, trails, and trail crossings.
D	52	55	Interior	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.
E ³	72	75	Exterior	Hotels, motels, offices, restaurants/bars, and other developed lands, properties or activities not included in A–D or F.
F	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.
G	Undeveloped lands that are not permitted.

¹ Either Leq(h) or L10(h) (but not both) may be used on a project.

² The Leq(h) and L10(h) Activity Criteria values are for impact determination only, and are not design standards for noise abatement measures.

³ Includes undeveloped lands permitted for this activity category.

PART 773—SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM APPLICATION REQUIREMENTS AND TERMINATION

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