

Question: The FHWA/FTA National Environmental Policy Act (NEPA) regulations at 23 CFR 771.129 requires highway agencies to consult with FHWA to determine if NEPA documents and decisions remain valid, in a process known as “re-evaluation.” Does the final noise rule (23 CFR 772) automatically require re-evaluations of NEPA decisions and associated noise analyses approved before July 13, 2011?

Answer:

No. The final noise rule does not automatically trigger the requirement to re-evaluate final NEPA decisions and noise analyses before the final rule’s effective date (July 13, 2011).

However, 23 CFR 771.129 requires the highway agency to consult with FHWA after approval of any Record of Decision, Finding of No Significant Impact or Categorical Exclusion determination, before the highway agency requests any subsequent major approvals or grants from FHWA. Examples of such approvals include, but are not limited to: approval to acquire right-of-way; final design and construction funding. During this consultation, the FHWA in consultation with the highway agency will determine if the previous NEPA decision and documentation remain valid OR that additional analysis is required. (For a more detailed overview of the FHWA re-evaluation process, please see the two-part article in the FHWA Environmental Quarterly Spring and Summer 2009 issues, Volume 5, Issues 2 and 3. The articles can be viewed and downloaded free of charge at the FHWA Resource Center website at <http://www.fhwa.dot.gov/resourcecenter/teams/environment/publications.cfm>)

During the consultation, the highway agency and FHWA will discuss changes to laws and regulations that have gone into effect after the NEPA decision, along with any changes in the project design, scope, location and the affected environment.

On or after July 13, 2011, prior to requesting any post-NEPA major approvals from FHWA, the highway agency should consult with the FHWA to determine if the amended noise regulation affects the previous NEPA decision, and what, if any, additional analysis may be required. The results of the consultation should be documented in a memorandum to the file if no additional analysis is required.

Question: Can you provide an example of a re-evaluation of the NEPA decision that would not require a revised or new noise analysis on or after July 13, 2011?

Answer: Yes. Most projects that were not subject to the requirements of the previous FHWA Noise Standard will not be subject to the amended rule unless changes to the project location, design concept or scope have occurred. Example: In August 2011, a highway agency requests FHWA approval of the Plans, Specifications and Estimates (PS&E) for a project that did not require a noise analysis under the previous noise regulation; that is, the project was not a Type I or Type II project under the previous noise rule. During consultation, the FHWA and SHA will review the applicability section of the final rule (23 CFR 772.7). If they agree that the project

currently described in the PS&E package is not a Type I or Type II project under the amended rule, then the amended rule will not apply. If there are no other changes that require additional analysis, the re-evaluation process will conclude with a memorandum to the project file summarizing the consultation. It will state that requirements of the amended FHWA Noise Standard at 23 CFR 772 do not apply to the project because it is not a Type I or Type II project (that is, under the amended final rule, it is a Type III project). No further noise analysis is required prior to the request for PS&E approval.

Question: A Type I project received its final NEPA approval in 2008. What are the re-evaluation requirements for FHWA approvals requested on or after July 13, 2011? Will a new noise study need to be prepared?

Answer: The highway agency should consult with FHWA to determine what additional analysis and documentation is needed. During the consultation, the FHWA in consultation with the highway agency will determine if the previous noise study documentation can be efficiently updated to reflect changes in the noise regulation and State noise policy and the applicability of the changes to the undertaking. In some cases, a noise study addendum may be recommended. Any new or updated noise study documentation will verify whether the project is subject to the amended FHWA Noise Standard, examine the project design, location and scope, the surrounding land uses, and existing and future (design year) noise levels. Using the revised Noise Abatement Criteria (Table 1 of 23 CFR 772) and the revised highway agency Noise Policy, any traffic noise impacts will be identified or confirmed. If new or changes in impacts will occur, the highway agency may need to update the noise abatement analysis, using its revised State Noise Policy. In consultation with highway agencies, the FHWA may determine that additional public involvement, including solicitation of the views of affected residents and property owners, may be needed. In re-visiting noise abatement decisions, highway agencies and Division Offices should take a flexible but quantifiable and well-documented approach, especially during the transition to full implementation of the final rule. (See page 38 of the FHWA Highway Traffic Noise Analysis and Abatement Guidance, issued with the final rule.)

Question: Our Division Office expects that the highway agency will have several high priority projects ready for construction bids in the summer of 2011. Will technical assistance be available to address noise during NEPA re-evaluations?

Answer: Yes. To assist with the implementation of the final noise rule, FHWA Headquarters and Resource Center specialists have been assigned to each Division Office. These specialists, along with Headquarters Project Development Specialists from the Office of Project Development and Environmental Review, will be available to provide both general and project-specific noise and NEPA technical assistance.