

6. Re-evaluation

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6.1. Introduction

Re-evaluation is a post-approval review of a project's environmental documentation to determine if the conclusions of the original environmental document remain valid. Re-evaluations are required by Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) regulations ([23 Code of Federal Regulations \[CFR\] 771.129](#)) to determine whether a new environmental document or whether a supplemental environmental document is required. Re-evaluations may occur multiple times on a project as it advances from environmental review through to construction.

FHWA regulations in [23 CFR 771.129](#) set forth the requirements and a timeframe for written evaluations of Environmental Impact Statements (EISs) and for consultation procedures for all classes of environmental documentation: Categorical Exclusions (CEs), Findings of No Significant Impact (FONSI), and Draft, Final, and Supplemental EISs. The text of the regulation is below:

§ 23 CFR 771.129 Re-evaluations.

(a) A written evaluation of the draft EIS will be prepared by the applicant in cooperation with the Administration if an acceptable final EIS is not submitted to the Administration within 3 years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether or not a supplement to the draft EIS or a new draft EIS is needed.

(b) A written evaluation of the final EIS will be required before further approvals may be granted if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications, and

estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major Administration approval or grant.

(c) After approval of the ROD, FONSI, or CE designation, the applicant shall consult with the Administrator prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested Administration action. These consultations will be documented when determined necessary by the Administration.

A re-evaluation is not a NEPA document. It is an evaluation of the validity of a project environmental document and decision. In addition, re-evaluations ensure project compliance with all applicable laws and regulations prior to a project advancing to the next major phase.

In order to determine if the original NEPA document and decision remain valid, a re-evaluation must verify that the original NEPA document is complete and considered all laws, regulations, executive orders and directives presently required for a NEPA document. Based upon that review, a re-evaluation may:

- Conduct studies or analyses not required at the time of the original NEPA document
- Update or confirm previously performed analyses, or
- Require additional
 - environmental studies and documentation
 - consultation with agencies
 - public involvement

If during the course of preparing a re-evaluation it is determined that there are increased, new or previously unevaluated impacts due to project changes, it may be necessary to prepare a new environmental document. There are only two possible outcomes of the re-evaluation effort, as determined in the re-evaluation document: the environmental document and decision either remains valid; or, the environmental document and decision is no longer valid.

6.2. Circumstances Requiring a Re-evaluation

Four circumstances require a re-evaluation:

- Three or more years have passed since the approval of the environmental decision document, or approval of the last major step to advance the project, and the project is advancing to the next major step ([23 CFR 771.129\(b\)](#)). This includes if three years have passed since the issuance of a Draft EIS without the submittal of a Final EIS.
- Modifications to the project result in an appreciable change (see Section 6.2.1, Appreciable Project Changes) in the environmental consequences, environmental commitments, or mitigation measures.
- Changes to laws or regulations potentially affect the conclusions of the original environmental document.
- The project, or a phase of the project, is proceeding to the next major federal approval (final design, right of way acquisition, construction) ([23 CFR 771.129\(c\)](#)).

Depending on the specific circumstances surrounding the re-evaluation, field review and additional environmental studies may be required.

A re-evaluation may be required when appreciable changes occur during any phase of a project, including during construction. Appreciable changes to a project during construction (see Section 6.2.1, Appreciable Project Changes) must be included in the analysis to determine whether the original environmental document and decision remain valid when considering the potential cumulative effects of the project changes.

When a project is re-evaluated, the entire project evaluated in the original NEPA document must be reviewed. The re-evaluation should focus on any appreciable changes to the project, its setting, impacts, or new environmental issues that have emerged since approval of the original environmental document.

6.2.1. Appreciable Project Changes

Common examples of appreciable project changes include:

- Changes in project engineering/design
- Changes to project limits

- Changes in scope
- Changes in environmental setting or circumstances, including changes in laws and regulations
- Changes in the nature and severity of environmental impacts
- Changes to environmental commitments, including avoidance, minimization, and/or mitigation

Appreciable project changes may require field review and additional analyses to evaluate the environmental implications of the change. An appreciable project change during construction may necessitate the halting of construction in certain areas. Additional analyses may be presented in the re-evaluation document to demonstrate the validity of the original environmental document.

6.2.2. Three-year Time Period for an EIS

In accordance with [23 CFR 771.129\(a\)](#), a written evaluation of a Draft EIS is required if the Final EIS is not submitted within 3 years of the circulation of the Draft EIS. Similarly, under [23 CFR 771.129\(b\)](#), a written evaluation of a Final or Supplemental EIS is required if major steps to advance the project (e.g., authority to undertake final design, acquire right-of-way, or approve plans, specifications, and estimates) have not occurred within 3 years of the approval of the Final EIS, Supplemental EIS, or the last major FHWA approval. The purpose of the written evaluation is to determine whether the EIS remains valid or whether a new or supplemental EIS is required.

6.2.3. Project Proceeding to Next Major Step

Following the approval of a CE, FONSI, or ROD, FHWA regulations ([23 CFR 771.129\(c\)](#)) require a consultation prior to requesting any major approvals (e.g., final design, right-of-way acquisition, or construction) to establish whether the approved environmental document or CE designation remains valid for the requested action. The regulations also require all consultations be documented when determined necessary by the Administration. Under the NEPA Assignment Program (see Chapter 1, Environmental Procedures Overview), this consultation occurs with the NEPA Program Manager rather than with the FHWA. Consultation is documented as described in Section 6.3, Consultation, and Section 6.4, Project Phasing, below.

6.3. Consultation

The Regional Environmental Manager (REM) consults with the NEPA Program Manager before beginning work on a project re-evaluation. The consultation process ensures that the REM and the NEPA Program Manager agree on the reason for and the type of re-evaluation. This consultation will also ensure that the possible need for a new environmental document is considered.

The consultation can be by phone or email, and may be documented within the email transmitting the re-evaluation form. If consultation is occurring because of changes to the project, the REM and NEPA Program Manager should discuss the types of project changes and determine the best course of action, including the possible need for a form-documented re-evaluation or a new environmental document.

6.4. Project Phasing

On large projects that are phased for construction, the re-evaluation should focus its analysis on the continuing validity of the original environmental document by considering whether the proposed action is accurately examined in the overall project as approved in the original document. The analysis must consider not only the project phase or portion for which the approval or authorization is being requested, but also those portions in design, in construction, and those portions already constructed. Linear projects divided into phases for design and construction after environmental approval must be considered in their entirety. All portions of the project will be reviewed for any appreciable project changes.

The re-evaluation will include analysis of all phases of project development, including those phases already constructed or currently under construction, in enough detail to determine whether:

- Unexpected environmental impacts occurred as a result of the construction that may influence future project decisions
- Unexpected impacts occurred that should be mitigated during future phases of the project
- Previous construction mitigation achieved the expected results
- Any proposed mitigation measures were implemented

The REM will ensure that the re-evaluations are coordinated with the design and construction managers of each project phase.

6.5. Re-evaluation Documentation

The Alaska Department of Transportation and Public Facilities (DOT&PF) uses two types of re-evaluations:

- Expedited Re-evaluation
- Form-Documented Re-evaluation

The REM should review all requests for Authority to Proceed (ATP) for major approvals to assess whether an expedited or a form-documented re-evaluation is required. See the [Alaska Highway Preconstruction Manual](#) 4.20.1.2 for additional information on the ATP.

As described in Section 6.3, Consultation, REM consultation with the Statewide NEPA Manager is required before beginning work on a re-evaluation in order to determine the type of re-evaluation needed. All questions in the re-evaluation should be answered from the perspective of reporting the changes from the original environmental document.

If NEPA was completed under a different project number (i.e., a primary or parent project), the re-evaluation document must include references to the original environmental document project number and the current project (i.e., the ancillary or child project) that is being re-evaluated.

6.5.1. Expedited Re-evaluations

An expedited re-evaluation is a tool that allows efficient project advancement while ensuring and documenting the validity of the environmental document and decision.

Expedited re-evaluations are conducted when:

- Less than three years have passed since approval of the NEPA decision document
- The project is advancing to the next major step
- Modifications to the project do not result in a change in the environmental consequences, environmental commitments, or mitigation measures

An expedited re-evaluation is typically not appropriate when project changes result in increased environmental impacts. Any major project changes, especially those resulting in increased or new

environmental impacts, require either a form-documented re-evaluation or a new environmental document, depending upon the specific circumstances.

An [Expedited Re-evaluation Approval Form](#) documents re-evaluations that qualify for this type of approval. This form is required for all expedited re-evaluation approvals. The analysis in the Expedited Re-evaluation Form should focus on the impacts of the changed aspects of the project. This is presented in a written format, rather than a checklist.

Approval Process

The same position that approved the original document is authorized to approve the re-evaluation, except where a CE no longer meets the conditions of a programmatic approval.

If the environmental document being re-evaluated was a CE project approved under a Programmatic Approval and such an approval still applies, the REM is authorized to approve the expedited re-evaluation. The REM emails a copy of the written approval to the NEPA Program Manager, and includes a copy in the region project file.

When no Programmatic Approval applies, the NEPA Program Manager has approval authority for the CE re-evaluation. The REM reviews the form for content accuracy, signs and forwards it to the NEPA Program Manager for approval. The NEPA Program Manager signs *Expedited Re-evaluation Approval Form*, and provides a copy of the approved form to the REM to include in the region project file.

If the environmental document being re-evaluated is a FONSI, the Statewide Environmental Program Manager is authorized to sign an approved *Expedited Re-evaluation Approval Form* or delegate signature authority to the NEPA Program Manager. A copy of the approved form is provided to the REM to include in the region project file. If the environmental document being re-evaluated is a ROD, the Statewide Environmental Program Manager is authorized to sign an approved *Expedited Re-evaluation Approval Form*.

6.5.2. Form-Documented Re-evaluations

A form-documented re-evaluation is a tool to formally and systematically review all of the environmental consequence categories and commitments to ensure that the conclusions reached in the original environmental document and decision are still valid. The [Environmental Re-evaluation Form](#) is used to document these re-evaluations.

Form-documented re-evaluations are required in the following circumstances:

- Three or more years have passed since the approval of the NEPA decision document, or approval of the last major step to advance the project, and the project is advancing to the next major step ([23 CFR 771.129\(b\)](#)). This includes if three years have passed since the issuance of a draft EIS without the submittal of a final EIS.
- Modifications to the project result in a change in the environmental consequences, environmental commitments, or mitigation measures.

A form-documented re-evaluation may not be appropriate when there are multiple modifications to a project that affect the environmental consequences, environmental commitments, or mitigation measures. In such circumstances, a new [Categorical Exclusion Documentation Form](#) or other NEPA decision document may be appropriate.

Format and Content

The *Environmental Re-evaluation Form* is used to document the changes and any new information identified since approval of the environmental document. The *Environmental Re-evaluation Form* documents the review of all originally analyzed environmental resources and consequences, and any subsequent ones.

The *Environmental Re-evaluation Form* should include an analysis of all project changes since the original environmental document approval, not only changes since the most recent re-evaluation. The REM must ensure completion of necessary field reviews, additional environmental studies, and coordination with other agencies, as appropriate, to address any new impacts or issues. The results of additional analyses and coordination are documented in the form and appendices.

Approval Process

The same position that approved the original document is authorized to approve the re-evaluation, except where a CE no longer meets the conditions of a Programmatic Approval.

When the *Environmental Re-evaluation Form* is complete, the Environmental Impact Analyst signs the document as the preparer, and provides it to the Engineering Manager for review and signature. The

Engineering Manager- reviewed form is then provided to the REM for review and approval.

The NEPA Program Manager will work with the REM to resolve any concerns identified in the QC review.

If the environmental document being re-evaluated was a CE project approved under a Programmatic Approval and such an approval still applies, the REM is authorized to approve the *Environmental Re-evaluation Form*. The REM emails a copy of the written approval to the NEPA Program Manager, and includes a copy in the region project file.

When no Programmatic Approval applies, the NEPA Program Manager has approval authority for the CE re-evaluation. The REM reviews the form for content accuracy, then signs and forwards it to the NEPA Program Manager for approval. The NEPA Program Manager signs the *Environmental Re-evaluation Form*, and provides a copy of the approved form to the REM to include in the region project file.

If the environmental document being re-evaluated is a FONSI or ROD, The Statewide Environmental Program Manager is authorized to sign an approved *Environmental Re-evaluation Form* or delegate FONSI signature authority to the NEPA Program Manager. A copy of the approved form is provided to the REM to include in the region project file.

6.6. When a New Environmental Document Is Required

In some cases a re-evaluation may reveal the need for a new environmental document. This occurs if there have been appreciable changes to the project that make the original environmental determination no longer valid.

In these situations, the REM should consult with the NEPA Program Manager to determine the appropriate course of action. A new Class of Action determination may be required prior to the preparation of a new environmental document (see Chapter 2, Class of Action Determination).

6.7. Re-Evaluation Quality Control (QC) Review

The NEPA Program Manager selectively conducts a QC review of submitted re-evaluation documentation.

The QC review confirms that:

- The original environmental document remains valid
- The document meets the conditions of the appropriate Programmatic Approval, if applicable

Technical Appendix

DOT&PF re-evaluation and expedited re-evaluation forms are available on the [Statewide Environmental Office Resources webpage](#).

FHWA 2009 FAQs about NEPA Re-evaluations: [Part 1](#) and [Part 2](#). These FAQs are not regulation or formal FHWA guidance, but provide useful advice on re-evaluations.

In 2008, AASHTO published [Re-evaluations of NEPA Documents](#), which provides an overview of re-evaluation practices across state DOTs. It includes several court cases summaries relating to the differing legal interpretations of the use of re-evaluations to satisfy NEPA requirements.