

6. Re-evaluations

- 6.1. Introduction
- 6.2. Circumstances Requiring a Re-evaluation
- 6.3. Consultation
- 6.4. Types of Re-evaluations
- 6.5. When the Originally Documented Determination is No Longer Valid
- 6.6. Project Segmentation
- 6.7. Projects Started Prior to the Original 6004 MOU
- 6.8. Additional Resources

Chapter Abbreviations/Acronyms

ATP – Authority to Proceed	EIS - Environmental Impact Statement
CE – Categorical Exclusion	FHWA – Federal Highway Administration
CFR – Code of Federal Regulations	NEPA – National Environmental Policy Act
COA – Class of Action	REM – Regional Environmental Manager
DOT&PF – Department of Transportation & Public Facilities	
EA – Environmental Assessment	

6.1. Introduction

Re-evaluations provide a mechanism to perform a post-approval review of a project’s environmental documentation. Re-evaluations may occur multiple times as the project advances through the development phases. Re-evaluations are addressed in [23 CFR 771.129](#) and in [FHWA Technical Advisory T6640.8A section XI](#).

This chapter discusses the following:

- purpose of a re-evaluation
- circumstances that trigger a re-evaluation
- the two different types of re-evaluations used at DOT&PF
- what to do if the original environmental document is no longer valid

This chapter covers re-evaluations on projects funded by the FHWA and that have not been assigned to the state 6004 program.

6.1.1. Purpose

The purpose of a re-evaluation is to determine if the original environmental document or decision is still valid. Re-evaluations apply to all classes of environmental documents but it is important to note that re-evaluations are not NEPA decision documents. Determining the appropriateness of a re-evaluation depends upon the type of environmental document and specific circumstances.

As part of the re-evaluation process the Regional Environmental Manager (REM) is required to assess the extent of any project changes that are not described in the originally approved NEPA decision document. Changes may include items listed in Table 6.1.

When a circumstance triggers the need for a re-evaluation (see Section 6.2), the REM should review the original environmental document and assess all potential changes listed in Table 6.1.

**Table 6.1.
Examples of changes**

Project design	Affected environment
Project Scope	Environmental impacts
Laws	Permit modification or requirement for new permit(s)
Environmental commitments and mitigation measures	Regulations

Re-evaluations help to ensure project compliance with all applicable laws and regulations prior to a project advancing to the next major phase. A re-evaluation may include additional environmental studies and documentation, consultation with agencies, and public involvement to show that the original NEPA decision document remains valid. A re-evaluation may update or confirm analysis that had previously been performed, or new studies may be required.

If during the course of a re-evaluation it is determined that there are increased or additional impacts because of changes, then a new environmental document may be needed. For example, on occasion, changes in project design result in a fundamentally new scope from the scope evaluated in the original NEPA decision document; in these instances, a new environmental document will be required. Sometimes so much time has lapsed since the original NEPA decision, a new NEPA decision document will be needed.

It is important to remember that you are not able to *re-evaluate* something that was not evaluated as part of the original environmental document. At the end of this chapter there are several links to additional information on re-evaluations.

6.2. Circumstances Requiring a Re-evaluation

After an environmental document is approved, a re-evaluation is necessary under the following circumstances:

- If the project has been inactive for more than three years and is being advanced. The FHWA regulations have specific requirements for the written re-evaluation of EISs.
 - FHWA regulations ([23 CFR 771.129\[a\]](#)) require that a written evaluation of the draft EIS be prepared if an acceptable final EIS is not submitted within three years from the date of the draft EIS circulation. This evaluation determines whether or not a supplement to the draft EIS or a new draft EIS is needed.
 - FHWA regulations ([23 CFR 771.129\[b\]](#)) require a written evaluation of the final EIS 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, specification 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.
- Prior to obtaining an Authority to Proceed (ATP) from FHWA [for a change in project scope](#).
- Prior to requesting any major approvals or grants [\[23 CFR 771.129\(c\)\]](#).
 - The major approvals are Final Design, Right-of-Way Appraise and Acquire, and Construction.

- If there is new information regarding project impacts, design, scope, environmental commitments and mitigation measures, or other facets of the project that may change the environmental consequences of the project. This includes changes that may occur during construction.
- If there are changes to laws or regulations that potentially affect the conclusions of the original environmental document.

6.2.1. Scope Changes Requiring a New Environmental Document

Re-evaluations are typically not appropriate when a substantial change of project scope occurs. Substantial changes to a project's scope will generally require a new environmental document. However, if the change in scope results in a reduction of environmental impacts without causing other impacts then it may be possible to use a re-evaluation.

6.2.2. Example Situations

Several example situations are presented below. Keep in mind that a consultation must occur between the REM and the FHWA Area Engineer to determine whether a re-evaluation is appropriate.

Examples of when a re-evaluation is appropriate:

- After conducting a more comprehensive culvert survey the project manager determines that instead of replacing 20 culverts, only 10 need replacing. This change could be described in a re-evaluation as the change would not result in any new or increased impacts.
- Additional wetlands will be impacted as a result of the need to widen the paved area in several locations along a project corridor. If the original environmental document included an analysis of these adjacent wetlands, a re-evaluation could be used to document the revised wetland impacts. The re-evaluation would describe the additional impacted wetlands and the associated agency coordination.

Examples of when a new environmental document is needed:

- The project managers have decided to add an additional travel lane to the project, changing the roadway from two lanes to three or four lanes of travel. The additional travel lanes were not analyzed in the environmental document.
- The project termini have changed to include additional areas. In most situations such as this, a new environmental document is needed because resources in the new areas were not evaluated in the original environmental document.

6.3. Consultation

The REM consults with the FHWA and Area Engineer before beginning work on a re-evaluation ([23 CFR 771.129\(c\)](#)). The consultation process ensures that the REM and the FHWA agree on the need for and the type of re-evaluation necessary. This consultation will also ensure that the possible need for a new environmental document is considered.

The consultation can be by phone or email. If there are no changes to the project and it is simply advancing to the next funding phase then a brief email will be acceptable along with the Expedited Re-evaluation Form (see Section 6.4.1), documenting the consultation. If there are changes to the project the REM and the FHWA Area Engineer should discuss the types of changes and determine the best course of action. They should consider the possible need for a new environmental document.

6.4. Types of Re-evaluations

FHWA regulations (23 CFR 771.129) refer to “consultations” and “written” re-evaluations to establish whether or not approved environmental document remains valid. The two types of re-evaluations used at DOT&PF are referred to as “expedited” and “form-documented.” The REM should review all requests for major project actions to determine whether an expedited re-evaluation or a form-documented re-evaluation is required.

As described in 6.3, the REM needs to consult with the FHWA Area Engineer on all projects, before beginning work on a re-evaluation to determine the type of re-evaluation needed.

6.4.1. Expedited Re-evaluations

An expedited re-evaluation can generally be used for active projects advancing to the next major project phase when there are no major changes to the project or the affected environment. Expedited re-evaluations let the project advance efficiently while ensuring the validity of the environmental document is evaluated. FHWA regulations (23 CFR 771.129) refer to “consultations” and DOT&PF uses expedited re-evaluations to document these re-evaluation consultations to establish whether or not approved environmental document remains valid.

When a circumstance occurs that triggers the need for a re-evaluation (see Section 6.2) the REM should review the original environmental document and assess all of the potential changes listed in Table 6.1.

Expedited re-evaluations are often conducted when:

- Less than three years have passed since 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; and
- Modifications to the project do not result in a change in the environmental consequences, environmental commitments or mitigation measures.

An expedited re-evaluation can also be used on all CE projects that did not originally require a [CE Documentation Form](#), or were processed using an [Expedited CE Form](#), as long as there are no major project changes.

An expedited re-evaluation is typically not appropriate when modifications increase project impacts (see Section 6.3.2).

Any major modifications, especially those resulting in increased impacts, require either a form-documented re-evaluation or a new environmental document, depending upon the specific circumstances.

Approval Process

The REM consults with the FHWA Area Engineer about project changes and whether an expedited re-evaluation is appropriate. If the REM approved the original project under a Programmatic Approval and such an approval still applies, the REM approves the expedited re-evaluation. The REM provides a copy of the written approval to the FHWA Area Engineer. A copy of the approval must be placed in the project file.

If the original project did not qualify under a Programmatic Approval, the FHWA Area Engineer approves the expedited re-evaluation. The FHWA Area Engineer provides a copy of the written approval to the REM and includes a copy in the project file.

An [Expedited Re-evaluation Form](#) documents re-evaluations that qualify for this type of approval. This form is required for all expedited re-evaluation approvals.

6.4.2. Form-documented Re-evaluations

A form-documented re-evaluation is a tool to formally and systematically review all of the environmental consequence categories to ensure that the conclusions reached in the original environmental document are still valid. FHWA regulations (23 CFR 771.129) refer to “written” re-evaluations and DOT&PF uses the Re-evaluation Form to document these re-evaluations.

Form-documented re-evaluations are required for 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.
- Project impacts have increased substantially since the approval of the environmental document,.

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 CE Documentation Form may be appropriate.

Format and Content

A [Re-evaluation Form](#) is used to document the changes outlined in Table 6.1 and any new information identified since approval of the environmental document. The Re-evaluation Form is modeled after the CE Documentation Form and involves a review of all of the originally analyzed environmental consequences.

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

Approval Process

When the Re-evaluation Form is completed and the Engineering Manager has reviewed it, the Environmental Impact Analyst sends it to the REM for review and approval.

If the project continues to qualify under a Programmatic Approval, the REM approves the Re-evaluation Form and sends a copy to the FHWA Area Engineer. A copy of the approved form must be placed in the project file.

If the project does not qualify under a Programmatic Approval, the REM signs and forwards the Re-evaluation Form to the FHWA Area Engineer for approval. The FHWA Area Engineer approves the form and provides a copy to the REM. Place a copy of the approved form in the project file.

6.5. When a New Environmental Document is Required

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

In these situations, the REM should consult with the FHWA Environmental Program Manager and Area Engineer to determine the appropriate course of action. A new Class of Action (COA) determination is needed prior to the preparation of a new environmental document (see Chapter 2).

6.6. Project Phasing

The re-evaluation must consider the entire project that was approved in the original environmental document. This includes portions in design, in construction, and those portions already constructed – not just the portion for which approval/authorization is being requested. Linear projects divided into “phases” for design and construction after environmental approval must be reviewed in their entirety. All portions of the project should be reviewed for any project changes, as described in Table 6.1.

The re-evaluation needs to analyze “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, and

- the original proposed mitigation has been properly implemented.

The REM must make sure that the re-evaluations are coordinated with the design and construction managers of each “phase”.

6.7. Projects Started Prior to the Original 6004 MOU

If the environmental documentation for a project (e.g. Class of Action) was started prior to the signing of the original 6004 MOU on September 22, 2009, it should be evaluated for possible inclusion in the 6004 program. The REM must consult with the Statewide NEPA Manager in writing to determine whether the project should be assigned under the 6004 MOU. These projects will need to go through the Class of Action process (see Chapter 2) and a determination will be made on 6004 assignment and the type of environmental document needed.

6.8. Additional Resources

FHWA FAQs About NEPA Re-evaluations: [Part 1](#) [Part 2](#)

[AASHTO Re-evaluations of NEPA Documents](#)

The March 2008 AASHTO publication on this topic provides an interesting overview of re-evaluation practices across other state DOTs. There are also several summaries of court cases relating to the differing legal interpretations of the use of re-evaluations to satisfy NEPA requirements. The court cases provide some justification for producing a new environmental document for any project with the potential for controversy or external scrutiny when there are changes to a project or if there has been a substantial lapse of time.