

## 6. Re-evaluations

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### **Chapter Abbreviations/Acronyms**

<b>ATP</b> – Authority to Proceed	<b>EIS</b> - Environmental Impact Statement
<b>CE</b> – Categorical Exclusion	<b>FHWA</b> – Federal Highway Administration
<b>CFR</b> – Code of Federal Regulations	<b>NEPA</b> – National Environmental Policy Act
<b>COA</b> – Class of Action	<b>REM</b> – Regional Environmental Manager
<b>DOT&amp;PF</b> – Department of Transportation & Public Facilities	
<b>EA</b> – 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](#). FHWA regulations at [23 CFR 771.129\(c\)](#) establish the requirement for a re-evaluation of a Categorical Exclusion (CE) approval prior to each project funding approval.

To ensure compliance and consistency DOT&PF has developed the processes outlined in this chapter for handling re-evaluations based on guidance provided by FHWA and practices employed by other state transportation departments.

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- what to do if the original environmental document is no longer valid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 only covers re-evaluations on projects classified as a CE and assigned to the State under the 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 are not environmental documents. The Regional Environmental Manager (REM) is required to assess the extent of any project changes that are not described in the approved environmental document. Changes may include items listed in Table 6.1.

**Table 6.1.  
Examples of changes to a project**

Project design	Affected environment
Scope	Environmental impacts
Environmental consequences	Permit modification
Environmental commitments and mitigation measures	Regulations

When a circumstance occurs triggering 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.

Re-evaluations help to ensure project compliance with all applicable laws and regulations prior to a project advancing to the next phase. A re-evaluation may include additional environmental studies and documentation to show that the original CE determination remains valid.

Keep in mind that re-evaluations are not NEPA documents. If during the course of completing a re-evaluation it is determined that there are increased or additional impacts because of project changes, then a new environmental document may be needed. A re-evaluation can be used to update or confirm analysis that has already been performed.

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. If project changes result in totally new impacts or the need for a new analysis of a resource, then a new environmental document may be needed. 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 [\[23 CFR 771.129\(a\) and \(b\)\]](#).
- Prior to obtaining the next Authority to Proceed (ATP) from FHWA [\[23 CFR 771.129\(b\)\]](#). (More information on ATP authorizations can be found in the DOT&PF Preconstruction Manual [PM 4.20.1.2](#))
- Prior to requesting any major approvals or grants [\[23 CFR 771.129\(c\)\]](#).
- 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 any 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 change of project scope occurs. Changes to a project's scope will generally require a new environmental document. Specifically, if a scope change results in new environmental impacts not analyzed in the original environmental document then a new environmental document is needed. 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 NEPA Manager 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 a new bike path to a pavement rehabilitation project. Analysis in the original environmental document only extended to the limits of the existing pavement. Since the resources in the bike path area were not evaluated in the original environmental document, a new document is needed.
- 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 Statewide NEPA Manager before beginning work on a re-evaluation ([23 CFR 771.129\(c\)](#)). The consultation process ensures that the project still meets the eligibility requirements of the 6004 Program. It also ensures that the REM and the Statewide NEPA Manager agree on the need for and the type of re-evaluation necessary.

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 Statewide NEPA Manager should discuss the types of changes and determine the best course of action. They should consider the criteria for meeting 6004 eligibility, programmatic categorical exclusion criteria and the possible need for a new environmental document, as they may be relevant to the situation.

## 6.4. Types of Re-evaluations

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 Statewide NEPA Manager before beginning work on a re-evaluation to determine the type of re-evaluation needed.

When a Programmatic Approval applies to the project, the REM has approval authority for the re-evaluation (see Chapter 3 section 3.4). When this does not apply to the project, the Statewide NEPA Manager has approval authority for the re-evaluation. This applies to both expedited and form-documented re-evaluations.

### 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 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.

Expedited re-evaluations are conducted when:

- Less than three years have passed since there has been a major step to advance the project; and
- Less than three years have passed since the environmental document has been approved; 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 projects that did not originally require a CE Documentation 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). 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.

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**

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 Statewide NEPA Manager. A copy of the approval must be placed in the project file.

If the original project did not qualify under a Programmatic Approval, the Statewide NEPA Manager approves the expedited re-evaluation. The REM consults with the Statewide NEPA Manager about project changes and whether an expedited re-evaluation is appropriate. The Statewide NEPA Manager 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.

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

- Three or more years have passed since the approval of the environmental document, or the most recent re-evaluation, and the project is advancing to the next major step [23 CFR 771.129(b)].
- Modifications to the project result in a change in the environmental consequences, environmental commitments or mitigation measures.
- Project impacts have increased since the approval of the environmental document, or the most recent re-evaluation.

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 CE. 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 CE 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 Statewide NEPA Manager. 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 Statewide NEPA Manager for approval. The Statewide NEPA Manager 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 CE Documentation Form 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 CE determination no longer valid.

In these situations, the REM should consult with the Statewide NEPA Manager 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 Segmentation**

The re-evaluation must consider the entire project that was approved in the original environmental document (see FHWA segmentation criteria in [23 CFR 771.111\(f\)](#)). 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 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. A re-evaluation is not appropriate for these projects.

## 6.8. Additional Resources

[Expedited Re-evaluation Form](#)

[Re-evaluation Form](#)

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.