

**NEPA Re-Evaluation Joint Guidance for
Federal Highway Administration (FHWA), Federal Railroad Administration (FRA),
& Federal Transit Administration (FTA)
Issued on August 14, 2019**

The National Environmental Policy Act (NEPA) requires Federal agencies to consider and disclose the environmental impacts of their proposed actions as part of their decisionmaking. Sometimes there are changes to the proposed action, new information or circumstances, or there is a lapse of time between preparation of the environmental document and implementation of the action. This may trigger the need to revisit the NEPA analysis if there is a remaining Federal action. The Federal Highway Administration, Federal Transit Administration, and Federal Railroad Administration (the Agencies) joint NEPA regulations (23 CFR part 771) contain a process in 23 CFR 771.129 for re-evaluating environmental documents or decisions to determine whether the original document or decision remains valid, or a supplemental or new analysis (e.g., supplemental environmental impact statement (EIS) or environmental assessment (EA)) is needed. The Agencies have developed this guidance to provide clarity and consistency to the re-evaluation process consistent with their regulations. This guidance document is not legally binding in its own right and conformity with this document (as distinct from existing statutes and regulations cited in this document) is voluntary only.

1. What is a re-evaluation?

A re-evaluation is a review conducted by the Agency¹ of any proposed change in an action, affected environment, anticipated impact, applicable requirements, or mitigation measure as they relate to the environmental document or decision. The purpose of a re-evaluation is to determine whether an environmental document or decision remains valid for Agency decisionmaking. A re-evaluation is a continuation of the project development process, though it does not necessarily re-open the NEPA decision. However, it does not serve as the supplemental analysis or supplemental documentation under 23 CFR 771.130.

The re-evaluation can occur at any point after completion of the project's environmental document (for example, draft or final EIS) or decision (for example, issuance of a record of decision (ROD), combined final EIS/ROD, finding of no significant impact (FONSI), or CE determination), but only to the extent there are remaining Federal approvals for the project. The re-evaluation should be concise and tailored to the change in circumstances. If the Agency determines, based on the re-evaluation, there are changes that make the existing environmental document or decision no longer valid for Agency decisionmaking, the Agency will decide the nature and scope of the supplemental analysis and documentation needed.

¹ Here and in the following questions, the "Agencies or the Agency" means FHWA, FTA, FRA, or a State transportation agency with authority to conduct NEPA reviews under 23 U.S.C. 327. With respect to categorical exclusion (CE) determinations, it would also include State transportation agencies with authority to make CE determinations under 23 U.S.C. 326 (CE Assignment) or 23 CFR 771.117(g) (programmatic CE agreements).

2. When is a written re-evaluation triggered for EISs?

For EISs, there are two circumstances that require a written re-evaluation:

- 1) When an acceptable final EIS is not received by the Agency within three years from the date of the draft EIS circulation (23 CFR 771.129(a)); and
- 2) When the project sponsor requests further approvals if major steps to advance the project (for example, authority to acquire a significant portion of right-of-way or to undertake final design) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major Agency approval or grant (23 CFR 771.129(b)).

3. When is a re-evaluation consultation required?

After the NEPA decision has been rendered (that is, a final EIS/ROD, ROD, FONSI or CE determination), applicants must consult with the appropriate Agency prior to requesting any major approvals or grants to determine if the document or CE designation remains valid for the action. While this type of re-evaluation does not have to be in writing, it is best practice to document its determination.

4. Who is responsible for determining whether a re-evaluation is required?

The lead Federal Agency is responsible for determining whether the conditions for re-evaluation have been met or there is a need for supplemental documentation (23 CFR 771.129 and 771.130). The Agency should coordinate with the project sponsor in making that determination. The project sponsor is responsible for providing the Agency with relevant information regarding project changes or new circumstances that could affect the validity of the environmental document or decision (23 CFR 771.109).²

5. What information is needed for a re-evaluation?

The Agency determines the information and level of documentation needed for the re-evaluation. The project sponsor should contact the Agency to discuss the information needs. The analysis and documentation in a re-evaluation should focus on and be commensurate with the situation triggering a re-evaluation. For example, if no substantial changes to surrounding circumstances or analysis have occurred since the approval of the environmental document or decision, then the analysis and documentation should be minimal (for example, verbal exchange with memo to the file, e-mail, etc.).³ If the re-evaluation is triggered because of a change in conditions, the analysis and documentation should:

² Where there is no project sponsor, the Agency is responsible for developing any required re-evaluation.

³ Subject to the written re-evaluation requirements in 23 CFR 771.129(a)-(b).

- Clearly document the change that triggers the re-evaluation (for example, changes in project scope, design, affected environment, impacts, mitigation, or applicable requirements) and the reason for or circumstances causing the proposed change.
- Document the changes in environmental impacts or mitigation (as applicable) and describe how the impact will be different from what was previously described.
- Determine whether the original environmental decision remains valid after comprehensively considering the changes.

6. What formats are available for written re-evaluations?

There is no required format for written re-evaluations. Documentation may be simple, such as a checklist, an e-mail exchange between the Agency and project sponsor, or a memorandum to the project file. Usually for the simplest and least environmentally intrusive projects, a re-evaluation may be done verbally, followed by documentation to the project file.

For more complex or controversial projects, additional analysis may be warranted for the Agency to determine if the original environmental document remains valid. Field reviews, additional environmental studies (as necessary), and coordination with other agencies should be undertaken as appropriate to analyze any new impacts or issues. In these complex situations, the results could be included in a multi-page technical memorandum complete with attachments.

Regardless of the format of the re-evaluation, it should be concise and document whether the original environmental document or decision remains valid.

7. Do re-evaluations require public involvement?

No, re-evaluations generally do not require public involvement. However, public involvement may be required in situations where there are changes to the project or circumstances that involve other environmental review laws that have their own public involvement requirements (for example, Section 4(f) (23 U.S.C. 138/49 U.S.C. 303) requirements and Section 106 of the National Historic Preservation Act).

Although re-evaluations generally do not require public involvement, the Agency, in consultation with the project sponsor, may determine that some form of public involvement is appropriate. Note that re-evaluation documentation is treated as part of the project file and may be made available consistent with the Freedom of Information Act.

8. Should consultation with Federal resource agencies occur as part of a re-evaluation?

The changes or circumstances that trigger a re-evaluation may require additional consultation with Federal resource agencies. The Agency will determine on a case-by-case basis whether consultation is warranted based on the context of the re-evaluation, type of project, the anticipated changes, or the environmental impacts. However, cooperating agencies under NEPA should be notified if there are changes to environmental issues under their jurisdiction or special expertise.