

Title: Re-Evaluations and Supplemental Documents
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Issued by the Office of Planning and Environment (TPE)

### **1. Purpose**

This document provides guidance on re-evaluations and supplemental documents. The purpose of a re-evaluation is to determine whether a completed environmental document or decision requires supplemental analysis.

### **2. Applicability/Scope**

This guidance applies to the re-evaluation and supplementation of National Environmental Policy Act (NEPA) analyses and decisions, as described in 23 CFR 771.129 and 771.130. This document addresses categorical exclusions (CEs); environmental assessments (EAs); environmental impact statements (EISs); findings of no significant impact (FONSI)s; records of decision (RODs); combined final environmental impact statement (FEIS)/RODs; stand-alone environmental studies; and supplemental EISs and EAs.

### **3. Responsibilities**

The FTA Regional Administrator, or designee, in coordination with the project sponsor, is responsible for determining the need for a re-evaluation and/or supplemental documentation. This includes informing co-lead agencies of the re-evaluation, determining whether supplemental analysis is necessary, and documenting all decisions. The Regional Administrator has discretion for the timing and scope of a re-evaluation<sup>1</sup> and supplemental document.

Regional staff, working closely with the project sponsor, will identify and review all the project changes (specifically, their environmental implications) and, together with the Regional Counsel, will evaluate the impact of the proposed changes.

The project sponsor has a responsibility to inform the Regional Office of all project changes that could result in new significant environmental effects.

### **4. Standard Procedures for Re-evaluations**

**4.1. Definition.** A re-evaluation is an independent review by FTA of any proposed change in an action, affected environment, anticipated impact, or mitigation measure. It is a continuation of the project development process and can occur at any point after completion of the project's environmental document. A re-evaluation may be done via consultation or in writing; however, all re-evaluations should be documented in the project file.

**4.2. When a re-evaluation is triggered.** There are three circumstances that trigger a re-evaluation:

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<sup>1</sup> Except when required by 23 CFR 771.129.

**4.2.1. Changes to the project (implicit within 23 CFR 771.129).** This applies to all completed environmental documents or decisions. Project changes can occur at any time in project development.<sup>2</sup> Possible project changes may include, but are not limited to: changes in project engineering/design and construction (e.g., shifting a project footprint, adjusting visual elements of a facility, or changing the timing of construction); changes to the environmental setting/circumstances (e.g., designation of a new threatened or endangered species, changes in laws and regulations, or availability of new information); or changes to environmental commitments – avoidance, minimization, and/or mitigation (e.g., replacing an identified mitigation activity with a different one or discovering that a mitigation activity is not feasible).

**4.2.2. Project sponsor requests award or other project approval (23 CFR 771.129(c)).**

After the environmental review process is complete, the project sponsor must consult with FTA prior to requesting any grant award or other approval of the project (e.g., moving into engineering/design, acquisition, or construction). Grant awards and amendments sometimes, but not always, signify changes to the project that may require a re-evaluation. Under 23 CFR 771.129(c), the project sponsor must consult with FTA to determine whether the approved environmental document or CE designation remains valid. When FTA reviews a grant application and awards a grant, FTA is affirming the environmental documentation/findings associated with that grant award is valid.

**4.2.3. Three-year time period has passed (23 CFR 771.129(a) and (b)).** This applies to EISs *only*.

- **DEIS.** This section applies when a project sponsor has not submitted an acceptable FEIS to FTA within three years of the DEIS publication and the project sponsor is actively seeking to move forward with the project. Under this scenario, the project sponsor in concert with FTA must prepare a written re-evaluation. Based on the re-evaluation, Regional staff would decide whether the analysis in the DEIS appropriately reflects the environmental effects and, if it does not, whether to supplement the DEIS or prepare a new DEIS. The FEIS may document this decision.
- **FEIS.** This applies when no major steps have been taken on the project within three years after approval of its FEIS, FEIS supplement, or last major FTA approval (e.g., award of a grant) and the project sponsor is actively seeking to move forward with a project. A written re-evaluation of the FEIS is required. The project sponsor or FTA may draft it; FTA needs to adopt the final document as an agency document. The re-evaluation should consider the entire project and all current environmental requirements to determine whether the existing FEIS remains valid.

**4.3. Documenting a re-evaluation.** The Regional Office should document the re-evaluation in the project file; the written format is at the Regional Administrator's discretion. Documentation should be commensurate with the project change and associated environmental impacts, potential for controversy, and length of time since the last environmental action. Documentation can be simple, like an email exchange or a memo to the project file, or comprehensive, like a multi-page technical memo complete with attachments.

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<sup>2</sup> Changes prior to publication of an EA or DEIS should be included in the analysis and not trigger a re-evaluation.

For the simplest and least environmentally intrusive projects (e.g., CEs), re-evaluations should succinctly verify whether the scope of the project remains essentially the same, address any changes to the project and resulting impacts to natural, cultural, or social resources, and determine whether the prior environmental document remains valid.

For more complex or controversial projects, additional analysis may be required to support a conclusion that there are no new significant impacts and that the prior environmental document remains valid for the requested action or next phase of the project. These additional analyses may be incorporated by reference into the re-evaluation documentation or the supplemental document, if one is appropriate.

Based on the project change and associated impacts, the following additional points should guide the documentation:

- It should explain why the re-evaluation was done. Changes in setting, circumstance, or design should be clearly articulated and contrasted with the original project. The purpose and need of the proposed change should also be clear.
- It should focus on the project changes and whether the changes affect the environmental impacts, as identified in the original environmental document.<sup>3</sup>
- It may include tables, maps, charts, and graphics to communicate the changes.
- It should not include aspects unaffected by the project changes. Other project information/details can be incorporated by reference or briefly summarized if needed.
- It should include a specific FTA determination. This determination may be in a separate document and attached to the re-evaluation or FTA may “concur” (via a concurrence signature line) on a re-evaluation document prepared by the project sponsor.

**4.4. Outcomes of a re-evaluation.** There are three possible outcomes for a re-evaluation:

- **Decision not to prepare a supplemental document.** The decision not to prepare a supplemental document is a determination that the previous document/finding (CE determination, EA/FONSI, EIS/ROD) is still valid;
- **Preparation of a supplemental EIS.** (See Section 5.2); or
- **Preparation of a supplemental EA.** (See Section 5.3).

**4.5. Re-evaluation of a CE.** Because CEs are so prevalent, they are subject to the greatest number of re-evaluations. However, their re-evaluations are the least complex and documentation may be minimal. A re-evaluation of a CE should include a brief project description, provide a clear reason for proposed change, identify the proposed changes and potential environmental impacts, and state why the CE designation remains valid. A re-evaluation of a CE that determines the CE designation is no longer valid would result in either a new CE, an EA, or an EIS, depending on the circumstances with the particular project.

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<sup>3</sup> Consider both the intensity and type of impacts. That is, would the changes cause impacts that are different in kind or in magnitude from those contemplated in the prior NEPA finding?

- 4.6. Packaging of re-evaluations.** To the extent possible, and to avoid segmentation, Regional staff should consolidate project changes into as few re-evaluations as possible. In packaging re-evaluations, it matters less where project changes are occurring along a project alignment than when the need for the change is known. Additionally, each re-evaluation should consider the cumulative effects of any previous re-evaluation.
- 4.7. Public circulation of a re-evaluation.** A re-evaluation does not require public circulation.<sup>4</sup> It is generally treated as part of the project file. The Regional Office may circulate the re-evaluation or rely upon the project sponsor's public involvement process, if warranted (e.g., for a controversial project), though this is rare.<sup>5</sup>
- 4.8. Agency consultation.** While there is no regulatory requirement for FTA to coordinate with other agencies during a re-evaluation, it is good practice and may expedite project delivery. Depending on the affected environmental resource, Regional staff and the project sponsor should identify the applicable cooperating and participating agencies to the original environmental document to determine who should be consulted during the re-evaluation process. For example, if a re-evaluation involves new or additional impacts to wetlands, then coordination with the U.S. Army Corps of Engineers would be appropriate.
- 4.9. FTA oversight of mitigation commitments (post-NEPA).** Changes to mitigation commitments are like any other project change. They require a re-evaluation to assess their effects (capture the change to the commitment and assess its impact) and should follow the re-evaluation process described above. FTA may need to monitor mitigation commitments, beyond its general oversight of the project, if provided for by the environmental document or an agreement signed by FTA, such as a programmatic agreement, memorandum of understanding, etc. For more information, see Grants A to Z SOP, TPM C.1.6., Environmental Mitigation Monitoring.
- 4.10. Legal considerations.** The courts view a re-evaluation as a legitimate tool for determining whether an existing environmental document needs to be supplemented. A re-evaluation is not a supplemental environmental document (i.e., supplemental EIS or EA). If a supplemental document is required, a re-evaluation cannot be used. Although there is no required format for a re-evaluation, the Region should complete it in accordance with FTA's procedures, it must take a "hard look" at any changed circumstances or new information, and it must be completed prior to a project decision being made. The Regional Counsel should be consulted throughout the process and additional consultation with the Office of Chief Counsel may be warranted in preparing a re-evaluation if the Region anticipates litigation.
- 4.11. Limitation on Claims notices.** FTA provides notice via the *Federal Register* of final environmental actions, including certain re-evaluations. This starts the 150-day period (i.e., the "statute of limitations") during which someone can bring a lawsuit against FTA to challenge the environmental compliance of the project. The action for which FTA provides notice is a FTA determination that neither a supplemental EIS nor a supplemental EA is necessary. The

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<sup>4</sup> Note that public involvement requirements of related laws (e.g., Section 4(f), Section 106, etc.) still apply.

<sup>5</sup> For example, a shift in alignment for the Sugar House Streetcar in the Salt Lake City area affected many property owners. The re-evaluation was posted on the project sponsor's website with a notice mailed to property owners.

Limitation on Claims notice lists the supporting documentation. If FTA publishes a Limitation on Claims notice, then the re-evaluation is often in the form of a technical memorandum. The notice does not alter or extend the limitation period for project decisions previously published in the *Federal Register* (i.e., the notice does not open the entire project for legal claims). If a Limitation on Claims notice is done for a re-evaluation, FTA's policy is to provide the referenced document and supporting documents to the public via FTA's or the project sponsor's website. (See SOP No. 15 for more information.)

## 5. Standard Procedures for Supplemental Documents

**5.1. Supplemental documentation.** When a re-evaluation indicates supplemental review is warranted due to significant, or potentially significant, new impacts, the Regional Office and project sponsor should prepare a supplemental EIS or EA. Supplemental documents should focus on the impacts of the new information. Impact areas or project elements that are unchanged do not need to be addressed in the supplemental document, but instead can be incorporated by reference. When a supplemental EIS or EA is prepared, the milestone information must be captured on the Federal Permitting Dashboard under the original project or as a new project, as applicable.

- **Supplemental EIS (40 CFR 1502.9(c)(4)).** Regional staff and the project sponsor must prepare, circulate, and file a supplement to an EIS in the same fashion as a draft and FEIS, though scoping is not required. The supplemental EIS should focus on the environmental impacts that have changed because of the project changes.
- **Supplemental EA (23 CFR 771.130(c)).** A supplemental EA should focus solely on the project change. A supplemental EA can supplement a previous EA, FEIS, or other supplemental document. Findings should be included in the project file.

### **5.2. When a supplemental EIS is triggered (23 CFR 771.130).**

- A supplemental EIS is needed when (1) changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS; or (2) new information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.
- A supplemental EIS is not necessary when the changes to the proposed action, new information, or new circumstances result in a lessening of adverse environmental impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS.

**5.3. When a supplemental EA is triggered (23 CFR 771.130(c)).** When the Region is uncertain of the significance of new impacts, it may choose to do a supplemental EA. Either the result will be a determination that the new impacts are not significant and do not warrant a supplemental EIS or new EIS, or that the new impacts are significant and require a supplemental EIS. These findings should be documented in an amended decision document.

**5.4. Supplemental EIS vs. initiating a new environmental review process.**

- For projects where a DEIS was published prior to the enactment of SAFETEA-LU, and a FEIS has not been published, a new environmental review process should be initiated as opposed to publishing a Supplemental EIS due to the amount of time that has passed.
- Where substantial time has passed since publication of a FEIS, FEIS supplemental analysis, or ROD, a new environmental review process should be initiated rather than continued from an older project. Due to changes to FTA’s environmental review process in recent years, the project may be eligible for a lower class of action or may be streamlined in other ways.
- FTA should avoid publishing an environmental document or issuing a decision when the agency is aware that imminent changes to the project warrant supplemental analysis. This will likely save time and reduce confusion.

**5.5. Decision documents.** The chart below presents the outcomes resulting from Supplemental EISs and EAs depending on the class of action and timing of the supplemental analysis.

Initial Class of Action	Timing of Supplemental	Type of Supplemental Document	Next Step/ Decision document
EIS	Supplemental document required after DEIS, before FEIS	supplemental DEIS	Prepare FEIS/ROD
		supplemental EA	
	Supplemental document required after ROD	supplemental EA	Amend the ROD with language finding no significant impact*
		supplemental DEIS	Prepare supplemental FEIS/amended ROD
	Supplemental document required after FEIS, before ROD (in those rare circumstances where no combined FEIS/ROD)	supplemental DEIS	Prepare supplemental FEIS/ROD
supplemental EA		Issue a ROD with language finding no significant impact*	
EA	Supplemental document after EA is published, before FONSI	supplemental EA	Prepare FONSI*
	Supplemental document after FONSI is published	supplemental EA	Amend FONSI*

*\* This assumes that FTA finds there are no significant environmental impacts from the changes evaluated in the supplemental EA. Were FTA to find significant environmental impacts through*

*the supplemental EA, FTA would need to complete a supplemental DEIS and supplemental FEIS/ROD.*

**5.6. Content of an amended FONSI or ROD.** To maintain transparency of FTA’s NEPA determinations, FTA’s practice is to prepare amended decision documents that incorporate the supplemental analysis and record all of FTA’s determinations for the project in one location. Addendums or supplements to RODs or FONSIs are not a recommended FTA practice because they do not give the public one place to look for findings and mitigation commitments.

- An amended FONSI or ROD should state:
  - It amends the prior FONSI or ROD issued on the project;
  - Decisions/determinations included in the prior FONSI or ROD are unaltered, except where the amended FONSI or ROD expressly alters them based on the limited environmental review contained in the supplemental document; and
  - If an earlier FONSI or ROD was included in a prior Limitation on Claims notice, the previous limitation is unaltered by the amended FONSI or ROD, except regarding the new information.
  
- Amended FONSIs or RODs should clearly distinguish between new determinations/decisions, including mitigation commitments, and previous findings that remain unaltered by the supplemental environmental analysis. The Amended FONSI or ROD signature date must be recorded in the Federal Permitting Dashboard within 10 days of signature, pursuant to USDOT’s *Federal Permitting Dashboard Reporting Standard* (Dec. 2018) (internal only).

**5.7. Sample language.** The language below should be sufficient for most amended decision documents. The intent here is to tell the story of the environmental review process. If there are multiple supplemental documents or re-evaluations, those should also be included in the amended decision document. Regional staff should modify this sample language when there are unique project circumstances.

*The Federal Transit Administration (FTA) issued a [decision document] based on the [original environmental document] in [month/year]. The decisions and findings in this Amended [decision document] are based on and incorporate by reference to the limited supplemental environmental review contained in the [supplemental environmental analysis, month/year] and [other supplemental documents as appropriate]. The decisions and findings made in the [month/year] [decision document] remain in effect, except where this Amended [decision document] expressly alters them, as described in Section [name/number] below. Therefore, the limitation on claims that may be brought against the project remains in effect, as published in the Federal Register on [month, day, year].*

Environmental decision documents may be found on [FTA’s public website](#).

**5.8. Limitation on Claims notices.** FTA provides notice of the amended FONSI/ROD via the *Federal Register*. FTA will note the “final agency action” (i.e., amended FONSI or ROD), and will identify any supporting documentation, including the supplemental EIS or EA. The notice does not alter or extend the limitation period for project decisions previously published in the *Federal Register*

(i.e., the amended FONSI/ROD limitation notice does not open the entire project for legal claims). FTA's policy is to provide the referenced document and associated documents to the public on either FTA's or the project sponsor's website. (See SOP No. 15 for more information.)

## 6. References

- FTA's Environmental Impact and Related Procedures, [23 CFR 771.129](#) and [771.130](#)
- National Environmental Policy Act, [42 U.S.C. Sections 4321-4347](#)
- CEQ regulations implementing NEPA, [40 CFR Part 1502.9](#)
- FTA's Project Management Oversight regulations, [49 CFR part 633](#)
- [FAQs about NEPA Re-evaluations in The Environmental Quarterly](#) (FHWA, 2009)
- FHWA Technical Advisory T6640.8a, [Section XI: Reevaluations](#)
- FTA Order 1100.50D, [Delegations of Authority](#)
- [Joint Guidance FHWA/Caltrans NEPA Consultation/Re-evaluation Guidance](#) (FHWA/Caltrans 2007)
- [Re-Evaluations of NEPA Documents](#) (Requested by AASHTO Standing Committee on Environment, 2008)
- USDOT Federal Permitting Dashboard Reporting Standard (2018), internal—FTA only

APPROVAL: \_\_\_\_\_



Megan W. Blum  
Director, Office of Environmental Programs

DATE: \_\_\_\_\_

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