



## NEPA Re-evaluations and Environmental Commitments April 2019



Re-evaluations are a continuation of the NEPA process and are necessary at certain key points during project development to establish that the NEPA document, determination, and project decision remain valid for the subsequent federal action. Re-evaluations are required on all federal-aid projects prior to a request for federal action (right-of-way [ROW] or construction funds) when there has been a long time lag or changes in; project scope, resource identification, impacts or mitigation [23 CFR 771.129(c)]. A re-evaluation is not a new determination, but a validation of the previously made determination.

### Re-evaluation Requirements

A re-evaluation assesses project documentation to determine if the previously completed evaluation is still valid, or if factors such as changes in project scope, design, proposed mitigation measures, the affected environment, the effect of any new laws or regulations (including listing of new species under the Endangered Species Act), and/or unusual circumstances exist that require further documentation. The project complexity and length of time that has transpired since the original evaluation was prepared are important considerations when preparing a re-evaluation.

There are three possible outcomes to the re-evaluation process:

1. The re-evaluation results in a conclusion that the original documentation is still valid and no change to that documentation is required (a “no change re-evaluation”).
2. Details of the project or circumstances have changed, but the original finding is still valid. In this case, the project documentation is updated to reflect the changes and accurately describe the project, affected environment, and compliance with legal requirements.
3. Substantial changes to the factors described above or a conclusion that the original documentation is no longer valid. Appropriate further steps must be taken; this will likely include the preparation of a new environmental evaluation.

There are additional requirements regarding re-evaluation of EISs and preparation of supplemental EISs, see 23 CFR 771.129 and 771.130 for the details relating to these special cases.

**Note:** A valid NEPA approval and re-evaluation must be entered into OTIS when an ITD funding authorization request (2101) is sent to ITD HQ for construction funding. Prior to submitting the 2101, the Project Manager shall confirm with the Environmental Planner that the NEPA approval is still valid. The NEPA approval and re-evaluation shall be included in the ProjectWise file for the project; the dates of these actions are included in the 2101.

### Phased or Corridor Projects

Projects are often divided into smaller phases for funding and/or construction purposes. The re-evaluation for the various phases considers the entire project addressed in the original environmental document. The re-evaluation mentions which section(s) of the project is (are) now being advanced to ROW or construction. Care should be taken in regard to describing the project (entire scope of work addressed in the environmental clearance) versus the construction phase being considered.

To perform the re-evaluation, the project team reviews current ROW or construction plans for that phase to ensure that no significant changes have occurred; it might be necessary to conduct field reviews,

additional studies, and agency coordination. The results are included in the re-evaluation documentation. Any additional public involvement that has occurred since the final environmental document was approved should also be included in the re-evaluation.

### Changes in Construction

Changes during construction are coordinated by the District Environmental Planner with documentation recorded in the ProjectWise that properly addresses the issues that arise during the course of a construction project. Once a project receives federal authorization for construction, it has moved beyond the project development stage unless substantial changes are introduced to the project and components of the project development process have to be revisited.

### Submittal and Approval of Re-evaluations

The project team documents and describes all efforts to re-evaluate the project. The re-evaluation is prepared by the project team and submitted by the District Environmental Planner to the Headquarters (HQ) Environmental Planner for review. The re-evaluation is then submitted to the Environmental Services Manager for review and approval<sup>1</sup>. A copy of the re-evaluation and the approval are placed in ProjectWise.

Re-evaluations documenting changes that result in the project becoming ineligible for ITD HQ approval under the terms of the Programmatic CE Agreement shall be submitted to FHWA for approval. All CE determinations will remain valid if there are no changes to the project, environment, or laws or regulations affecting the determination.

If the District Environmental Planner determines that this is “a no change” re-evaluation, it does not require any further approval action by FHWA or ITD HQ Environmental. The District Environmental Planner sends an email to the Project Manager stating that there are no changes to the current approved environmental document and it is still valid. The HQ Environmental Planner and Environmental Manager<sup>2</sup> are copied on the email so that OTIS can be updated. The email is then saved in the project file on ProjectWise before ROW and/or construction funds can be obligated.

**Note:** If the original determination has changed (e.g. c(3) to c(8) or EA to CE), then a new document will be needed to document the change in classification. If the CE was determined as a (c)(26), (c)(27) or (c)(28) CE and through re-evaluation it is determined that the project no longer qualifies under the provisions of these sections or that the constraint criteria under 23 CFR 771.117(e) are now exceeded then a new CE must be prepared as the new CE could change from a c-list CE to a d-list or other class of action.

---

<sup>1</sup> The re-evaluation is submitted for review at the same level as the original environmental document/determination.

- Re-evaluations of determinations approved by FHWA will be submitted to FHWA.
- Re-evaluations of determinations made under the terms of the FHWA/ITD PCE Agreement will be submitted to ITD HQ Environmental.

<sup>2</sup> If FHWA was the original approver, then the FHWA Engineer would be copied in addition to these people.

### **Environmental Commitments**

Environmental Commitments are project-specific mitigation measures as well as identified permit conditions that are to be included in the final contract documents, the Plans, Specifications and Estimate (PS&E). Project-specific mitigation measures (special provisions) should be limited to those not included in ITD standard specifications. Project specific mitigation measures are developed through environmental analysis, as outlined in permits (beyond general conditions) or agreed upon with other agencies through consultation such as Section 7, Section 106 or Section 4(f) (de minimis determinations or “use exceptions”).

### **Agreement and Effective Date**

ITD and FHWA agree to implement these procedures effective as of April 1, 2019 and they will remain valid for a term not to exceed 5 years from that date. This Agreement may be modified or revised at any time agreed upon by both parties, and may be terminated at any time by either party upon 30 days’ notice.



---

Wendy Terlizzi  
Environmental Services Manager  
Idaho Transportation Department



---

Brent Inghram  
Environmental Program Manager  
Federal Highway Administration