

# TxDOT ENV Standard Operating Procedure

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Subject: Re-evaluations and Continuous Activity Determinations

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**Approval Authority:** FHWA, ENV

**Effective Date:** April 29, 2011

**Review Authority:** ENV

**Revision:** 0

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## **Department Policy and Procedures Manuals & Document References:**

This Standard Operating Procedure (SOP)

Standard of Uniformity for Re-evaluations

23 CFR §771.129

43 TAC §2.13 Re-evaluation

AASHTO. 2008. Reevaluations of NEPA Documents. NCHRP Project 25-25. Task 28. March.

Guidance for Preparing and Processing Environmental and Section 4(f) Documents. FHWA Technical Advisory T6640.8A. October 30, 1987. (See section XI).

Smith, Lamar and Deborah Suci-Smith. 2010. FAQs about the FHWA Reevaluation Requirements. FHWA - Resource Center. February 8.

## **Purpose:**

Establish procedure and documentation for a re-evaluation.

## **Summary:**

A re-evaluation is required when changes to the project or its surroundings have occurred since the original environmental approval, when no major steps to advance the project occur for three years, or when an acceptable final EIS is not submitted to the FHWA within 3 years from the date of the draft EIS circulation. TxDOT must consult with FHWA before requesting approval to establish whether the approved environmental document remains valid. This consultation takes the form of a memo, meeting, or separate document.

## **Personnel:**

District environmental staff or other project sponsor, ENV staff, FHWA

## **Detailed Procedures:**



1. **Continuous Activity.** If right of way acquisition, utility adjustments, plans, specifications, and estimate (PS&E), and other routine project activities have occurred, the project is considered continuous. If subsections of a project have been let for construction, this is also evidence of continuous activity.
  - a. If continuous activity has taken place on a project and there are no changes in design, right of way, land use or impacts, ENV notifies FHWA that activity has been continuous with a Notice of Continuous Activity (NCA). For an NCA, a memorandum can be prepared that includes a project history, status of right of way acquisition, changes in USACE permit requirements, etc. There is no FHWA approval of the action.
  - b. If the project can not be so classified, go to Step 2.
2. **Re-evaluations.** If there has not been continuous activity on a project, a re-evaluation is required.
  - a. If there are no changes in design, land use, right of way or impacts, a letter to FHWA is appropriate.
  - b. If there are changes in design, land use, right of way, or impacts, a longer document, or re-evaluation report, may be required (see **Table 1** for further guidance from FHWA).
  - c. If a project has been inactive for a substantial period of time, a re-evaluation may not be appropriate. In such cases, it may be necessary to prepare a new environmental document.
3. **Types of Re-evaluations:**
  - a. Categorical Exclusion (CE) Re-evaluation: Not usually necessary because CE projects are usually constructed and completed within three years of approval. However, if there are changes in design, right of way requirements, or land use or environmental issues at any time, a re-evaluation is necessary.
  - b. Finding of No Significant Impact (FONSI) Re-evaluation: If the project has not advanced (right of way, detailed design work, etc.) within three years of the FONSI, documentation must be prepared to demonstrate that continuous activity has or has not taken place on a project since environmental clearance. Any changes to design, right of way requirements, or environmental impacts must be evaluated. The level of documentation is contingent upon the magnitude of the changes. The district must consult with ENV to determine the level of documentation. After any additional resource agency coordination and/or public



involvement that may be required, the re-evaluation is approved by FHWA or ENV.

- c. **Draft EIS (DEIS) Re-evaluation:** If an acceptable FEIS is not received by FHWA within 3 years from the date of the DEIS, a written evaluation is required to determine whether there have been changes in the project or its surroundings or new information which would require a supplement to the DEIS or a new DEIS (23 CFR 771.129(a); T6640.8a).
  - d. **FEIS Re-evaluation:** Usually conducted to demonstrate that continuous activity has taken place on a project since FHWA/ENV approval and to identify and evaluate any changes that may have occurred in design, right of way requirements, or environmental effects since the previous approval. However, if more than 3 years have passed since approval of an EIS, a re-evaluation is required, even if there have been no changes. ENV reviews and approves re-evaluation documents for state and locally funded projects, and FHWA approves re-evaluations for federally-funded projects.
4. **District responsibility.** The district is responsible for keeping track of approval dates and submitting either an NCA or re-evaluation every three years. Regardless of the type of document, if there has been continuous activity, the district should submit an NCA stating that there have been no changes to the design, right of way, or land use or environmental impacts. For further information regarding procedures for re-evaluation, see **Table 1** below.
  5. **Regulatory changes and current standards.** While a change in the law alone may not prompt a written re-evaluation of a project, if a written re-evaluation is performed, it should address any information that would be covered under current standards that was not discussed in the original document. For example, the re-evaluation may need to include a new indirect and cumulative impacts discussion or update the discussion of impacts to listed species.
  6. **Re-evaluation Format.** Regardless of the document type, the re-evaluation should discuss how the changes affect the previous analysis and identify whether a new and comprehensive analysis of the entire project is needed.
    - a. **Written Re-evaluation:** While there is no federal format for re-evaluations, TxDOT uses a supplemental EA-type format. Refer to the Standard of Uniformity (SOU) for Re-evaluations for guidance on the format and content of re-evaluations.
    - b. **Consultation or Correspondence Re-evaluation:**
      - Project re-evaluations may be included on the agenda of quarterly or other regularly scheduled meetings between TxDOT and FHWA. TxDOT prepares



a list of the projects to be addressed at the meeting, any project changes are discussed in detail, and TxDOT recommends whether or not a written re-evaluation should be submitted to FHWA or if a supplemental study or NEPA document is needed for each project. When FHWA concurs that project changes do not require a written re-evaluation, the meeting minutes reflect both this concurrence and TxDOT's rationale. The meeting notes are provided to the FHWA Division Office and included in the project file.

- One-on-one option: after considering the scope/size of issue(s) or change(s) and reviewing the currently approved NEPA document, the project sponsor may choose to complete a one-on-one correspondence re-evaluation.
  - The project sponsor contacts ENV to initiate consultation and provides ENV sufficient information about the project changes to be effectively communicated to FHWA.
  - ENV will either schedule a conference call with FHWA or send an email to FHWA. The consultation (conference call or email) shall involve, as appropriate, project sponsor, ENV-PD and subject matter experts, and FHWA.
  - It may be appropriate for electronic versions of supporting figures or other documentation to be circulated with the email or prior to the conference call.
  - The project changes shall be presented during the consultation and any discussions should occur as necessary. Notes during conference calls shall be maintained by ENV in the project file.
  - At the end of consultation, FHWA shall indicate either 1) the consequences of changes are unclear and a written re-evaluation should be prepared or 2) the FONSI or other previous NEPA decision remains valid and additional analysis is not required; in this case, a memo to TxDOT ENV is required, describing the changes and verifying that no additional impacts would result (memo must demonstrate that an analysis of potential impacts has occurred).
  - Email exchanges shall be included in appropriate project files to document FHWA's decision.
  - After a conference call, ENV shall distribute the call notes to all representatives for inclusion with appropriate project files and to document FHWA's decision.

7. **Review.** ENV may require that the re-evaluation be coordinated with resource agencies.



**Table 1. FHWA Re-evaluation and Consultation Guidelines**

<b>Approval type</b>	<b>Time limit</b>	<b>Changes in design?</b>	<b>Affects original determination?</b>	<b>Call it a...</b>	<b>Concur or Approval line?</b>	<b>Attach updated documentation?</b>
CE	< 3 y	No	No	See note <sup>1</sup>	No	No
CE	> 3 y	No	No	NCA <sup>2,3</sup>	No	No
CE	None	No	Yes <sup>4</sup>	See note <sup>5</sup>	Yes	Yes
CE	None	Yes	No	CE (Re-eval)	Yes	Yes
CE	None	Yes	Yes <sup>6</sup>	See note <sup>5</sup>	Yes	Yes
FONSI	< 3 y	No	No	See note <sup>1</sup>	No	No
FONSI	> 3 y	No	No	NCA <sup>2,3</sup>	No	No
FONSI	None	No	Yes <sup>4</sup>	See note <sup>5</sup>	Yes	Yes
FONSI	None	Yes	No	FONSI (Re-eval)	Yes	Yes
FONSI	None	Yes	Yes <sup>6</sup>	See note <sup>5</sup>	Yes	Yes
FEIS	< 3 y	No	No	NCA	No	No
FEIS	< 3 y	No	Yes <sup>4</sup>	See note <sup>5</sup>	Yes	Yes
FEIS	< 3 y	Yes	No	FEIS (Re-eval)	Yes	Yes
FEIS	< 3 y	Yes	Yes <sup>6</sup>	See note <sup>5</sup>	Yes	Yes
FEIS	> 3 y	No	No	FEIS (Re-eval)	Yes	Yes
FEIS	> 3 y	No	Yes <sup>4</sup>	See note <sup>5</sup>	Yes	Yes
FEIS	> 3 y	Yes	No	FEIS (Re-eval)	Yes	Yes
FEIS	> 3 y	Yes	Yes <sup>6</sup>	See note <sup>5</sup>	Yes	Yes

<sup>1</sup> FHWA and ENV agreed to a 3 year time frame for written Notice of Continuous Activity (NCA) on May 25, 1999.

<sup>2</sup> In non-attainment areas, include updated air quality language in the NCA letter.

<sup>3</sup> In Transportation Management Areas, include updated Congestion Management System language in the NCA letter.

<sup>4</sup> Changes other than design may affect the previous determination. This can include, but is not limited to new discoveries, environmental laws, regulations, policies, and Threatened and Endangered species listings, and changes or updates in attainment status or conformity language.

<sup>5</sup> New request should be titled appropriately, i.e. EA, DEIS, CE (Re-eval), FONSI (Re-eval), FEIS (Re-eval), SEIS.

<sup>6</sup> Includes design changes and/or changes included in note<sup>4</sup>.

