

23 USC §326 CE Assignment MOU Monitoring Plan  
Federal Highway Administration, Alaska Division and the Alaska Department of  
Transportation

FHWA Alaska Division and DOT&PF SAFETEA-LU Section 6004 Categorical Exclusion  
Delegation Process & Monitoring Agreement

The Federal Highway Administration Alaska Division Office (FHWA) and the Alaska Department of Transportation and Public Facilities (DOT&PF) signed a Memorandum of Understanding (MOU) on September 22, 2009 to assign certain types of categorical exclusion projects to ADOT&PF review and approval. As stipulated in the MOU, FHWA and ADOT&PF shall cooperate in monitoring performance pursuant to the MOU, and each party shall modify its practices as needed to assure quality performance. Monitoring by the FHWA and the ADOT&PF will include consideration of the technical competency and organizational capacity of the ADOT&PF, as well as the ADOT&PF's performance of its Categorical Exclusion (CE) processing functions. Performance considerations will include, without limitation, the quality and consistency of the ADOT&PF's project determinations, adequacy and capability of the resources applied by the ADOT&PF, and the quality and consistency of the ADOT&PF's administration of its responsibilities under the MOU. The primary objective of this 6004 MOU monitoring plan is to determine whether the ADOT&PF is adequately performing the CE decision-making role that, in the absence of the MOU, is carried out by the FHWA. A second purpose is to obtain information on the environmental results of the ADOT&PF's assumption of CE and other environmental responsibilities, so that the FHWA can assess the overall effectiveness of the CE assignment program. The FHWA can undertake monitoring efforts whenever the Division deems appropriate. Minimum frequencies are established by the applicable Section 6004 MOU (Stipulation IV(F)(5-6)).

**STATE PERFORMANCE REQUIREMENTS**

A. Processing Projects Assigned under the MOU

1. Applicability: Under MOU, any project that is listed in 23 CFR 771.117 (c) or 23 CFR 771.117 (d) that conforms to the provisions of 23 CFR 771.117(a) and after an assessment pursuant to 23 CFR 771.117(b) for unusual circumstances where the result is a determination that a CE classification is proper can be processed under the terms and conditions of the MOU.
2. Preparation: The ADOT&PF Region Environmental staff or consultants prepare the CE Documentation Form. The record keeping should be thorough and complete and should include all appropriate correspondence, clearance letters, and determinations. These records may be retained in either electronic or paper format. The Statewide Environmental Office recommends that the Region Environmental staff bind the document by staple, three ring binder, comb, or by some other method to make it easy to replace pages if needed. At a minimum, project documentation (including all appropriate correspondence, clearance letters, and determinations) should be placed within a file folder. This will allow the project information to be easily located and information added to the file as necessary.
3. Review: The documentation for each project proposed as a CE must be reviewed by a competent reviewer who is not the individual who prepared the documentation. A record of this review, including who performed the review and the date it occurred, must be recorded and included with the project documentation.
4. Approval: For those projects that fall under the Internal Programmatic Agreement that was signed April 2009, the approval or determination that the proposed project is properly classified as a CE under the provisions of the MOU will be made by the ADOT&PF Region Environmental Manager (REM), with a concurrence by the Statewide NEPA Manager. The name of the

individual approving the CE, the date of the approval, and the statement that the approval was made according to the provisions of the MOU must be included with the project documentation.

For those projects that do not fall under the April 2009 Internal Programmatic Agreement, the approval or determination that the proposed project is properly classified as a CE under the provisions of the MOU will be made by the Statewide NEPA Manager. The name of the individual approving the CE, the date of the approval, and the statement that the approval was made according to the provisions of the MOU must be included with the project documentation.

5. Archive & Records Retention: The ADOT&PF Region Environmental staff will provide a hard copy, or a digital copy in Portable Document Format (PDF), of the completed CE Documentation Form and all relevant clearance memos, determinations, correspondence and technical studies to the Statewide NEPA Manager. The Statewide NEPA Manager will: (1) digitally archive the CE Documentation Form and all relevant documentation on the Statewide Environmental Office server; (2) record the CE processing information on the Statewide Environmental Office server (tracking database) with those CE's completed under the September 22, 2009 MOU; and (3) report all completed CE projects on a quarterly basis to the FHWA Alaska Division Office. The Statewide Environmental Office staff will keep a copy of all federally funded CE documents completed under the MOU for a period of no less than 3 years from the signature date.

The ADOT&PF Region Environmental staff will maintain a hard copy of the completed CE Documentation Form and all relevant clearance memos, determinations, correspondence and technical studies. These files are to be stored in a central filing area and accessible to all staff, FHWA, or the public upon request. The Region Environmental staff will keep a copy of all federally funded CE documents completed under the MOU for a period of no less than 3 years from the signature date.

Once an eDocs data management system becomes available, the ADOT&PF Environmental staff (Region and Statewide) will archive all completed CE Documentation Forms and supporting documentation using this system. The electronic document management system will be located on the Statewide Environmental Office server and remotely accessible to each of the Regions.

Records will be available for inspection by FHWA at any time.

6. Statewide Environmental Office Process Review: The Statewide Environmental Office staff will periodically review federally funded projects that have been assigned to the State under the MOU.

It is intended that during these reviews the Statewide Environmental Office will review both the statewide and region environmental files, including but not limited to, the CE Documentation Form (and the associated project file) for projects that have been completed pursuant to the MOU. The process reviews will occur at a frequency of no less than twice every year for each of the three regional offices to ensure that:

- a. The projects reviewed were classified correctly under the MOU.
- b. The CE Documentation Form was filled out correctly, signed and dated, and all applicable mitigation commitments have been documented.
- c. The purpose and need statements and activity descriptions are clearly written and accurately describe the intended work.
- d. The project files contain all relevant clearance memos, determinations, correspondence, consultation, and technical studies that were necessary to support decisions.

The Statewide Environmental Office will maintain the Statewide Environmental Audit Form, which will be used to document errors or omissions within the project files during regional project file reviews.

Should the Statewide Environmental Office find any classification errors per statement 6(a) during the process review, they will immediately notify the REM and the FHWA Alaska Division office and they will reclassify the project appropriately. Any errors discovered that pertain to parts 6(b), 6(c) and 6(d) will be documented on the completed Statewide Environmental Audit Form and a copy provided to the REM. The Statewide Environmental Office will then provide recommendations to the REM to remedy the errors or project files. The Statewide Environmental Office will also recommend methods to ensure that these errors are not repeated on future projects.

7. Section 4(f) Impacts: If a FHWA funded project that is processed under the MOU requires either a de minimis or Programmatic 4(f) evaluation, the Statewide Environmental Office must review and concur in writing with the de minimis or Programmatic 4(f) determination prior to the approval of the CE Documentation Form. If the Statewide Environmental Office determines legal review is needed, the Statewide Environmental Office will contact the Attorney General office for guidance and legal sufficiency review of the 4(f) evaluation and determination.
8. Native American Consultation: Per Stipulation II(B)(1) of the MOU, for any FHWA funded project that is processed under the MOU that requires formal government-to-government consultation with Native American tribes as described in 36 CFR 800.16(m), the REM, through the Statewide NEPA Manager, will provide the FHWA Alaska Division Office with the appropriate documentation and information necessary for the Native American consultation. The FHWA Alaska Division Office will be responsible for conducting the Native American consultation. The ADOT&PF may assist the FHWA in consultation according to the terms of any Native American consultation agreements executed with federally-recognized tribes.

**B. Excluded projects: determination and documentation**

1. Applicability: Under the September 22, 2009 MOU between FHWA and DOT&PF, any project that is not listed in 23 CFR 771.117(c) or 23 CFR 771.117(d) is excluded from assignment according to the provisions of the September 22, 2009 MOU and must be processed according to the procedures listed in this section and approved by FHWA.
2. Preparation: The ADOT&PF Region Environmental staff will complete and submit the Class of Action Form through the REM to the Statewide NEPA Manager. The Statewide NEPA Manager will review the Class of Action Form and reply to the REM indicating the reason for the project exclusion with a copy sent to the FHWA Alaska Division Office. The REM will then coordinate with the FHWA Alaska Division Office to determine the appropriate class of action for the project. The Region Environmental staff or consultants will then prepare the appropriate level of environmental document. The Statewide Environmental Office recommends that the Region Environmental staff bind the document by staple, three ring binder, comb, or by some other method to make it easy to replace pages if needed. At a minimum, project files should be placed within a file folder. This will allow the project information to be easily located and information added to the file as necessary.
3. Review: The CE is reviewed, signed and dated by a competent reviewer who was not the preparer. Additionally, the REM will review, sign and date the CE Documentation Form on the line titled "Approved by".
4. Approval: The REM will send either a hard copy or an electronic (PDF format) version of the complete CE Documentation Form to the appropriate FHWA Alaska Division Office Area Engineer, who will review the document and provide the final signature. The FHWA Area Engineer will review the CE Documentation Form and sign and date as the final approver.

5. Archive & Records Retention: After the CE Documentation Form has been signed, the FHWA Alaska Division Office will provide a final hard copy of the completed CE document and any relevant clearance memos, determinations, correspondence, and technical studies to the REM. DOT&PF Regional Environmental staff will archive the CE document and all relevant documentation and keep a copy for a period of no less than 3 years from the signature date.

C. Statewide Quality Control

The ADOT&PF Statewide Environmental Office staff will review those federally funded *completed* CE Documentation Forms and any relevant clearance memos, determinations, correspondence and technical studies that are submitted to the office pursuant to the MOU. The Statewide Environmental Office staff will perform a review of all CE Documentation Forms prior to approval of or concurrence with the determination. To ensure that the Statewide Environmental reviews are thorough and consistent the Statewide Office will:

1. Verify that the scope provided in the Class of Action Form is the scope evaluated within the CE Documentation Form.
2. Review the provided clearance memos, determinations, correspondence and technical studies and compare this information to determinations made in the CE Documentation Form.
3. Verify that the CE Documentation Form was filled out correctly, signed and dated; all applicable mitigation and environmental commitments have been recorded; and that the completion date has been entered into the statewide tracking system.
4. Any recommendations or corrections will be documented in the CE Quality Control Form and a copy provided to the REM and the Statewide Environmental Manager.
5. The signed CE Documentation Form is scanned and sent back to the REM. All determinations made by the Statewide NEPA Manager will be provided to the other Statewide NEPA Managers as well as the Statewide Environmental Manager.

The Statewide Environmental Office staff will maintain the CE Quality Control Form, which will be used to record errors found during the quality control review process. When the Statewide Environmental Office staff complete a CE Quality Control Form for a specific project, then this form along with any corresponding comments provided by the REM, will be placed in the project file.

Should the Statewide Environmental Office staff find any errors during the quality control review process, they will notify the REM and provide an opportunity to discuss the findings. The Statewide Environmental Office will provide recommendations to the REM on ways to remedy the errors or project files. The Statewide Environmental Office will also recommend methods to ensure that these errors are not repeated on future projects.

Upon completion of the quality control process the Region and the Statewide Environmental Office staff will file the approved CE Documentation Form and any clearance memos, determinations, correspondence or technical studies provided into the project file.

D. MOU Performance Monitoring and Quality Assurance

1. Quarterly Submittal to FHWA of CE Determinations  
DOT&PF Statewide Environmental Office will compile a list of all the CE determinations that have occurred during the last calendar year quarter and submit to FHWA within 15 days of the Quarter ending (Qtr 1 – September 30, 2009, Qtr 2 – December 31, 2009, Qtr 3 – March 31, 2010, Qtr 4 – June 30, 2010). DOT&PF will use the Section 6004 Categorical Exclusions Quarterly Report Template.

2. State CE Performance Report (15-Month Report)

The Statewide Environmental Office will compile and write a report summarizing DOT&PF's performance with the MOU. The report will summarize the results documented on the CE Quality Control form identify areas where improvement is needed and what measures DOT&PF is taking to implement improvements. The report will include actions taken by DOT&PF that resulted from quality control efforts. The report will be submitted within 30 or 45 days of the conclusion of the 15th and 30th month from the start of the MOU (December 31, 2010 and March 31, 2012). Following the submission of both reports, DOT&PF Statewide Environmental Office will schedule a follow up meeting with FHWA to discuss the reports, the State's performance of the September 22, 2009 MOU, and FHWA's monitoring activities.

3. Maintain Project Records

The DOT&PF Regional Environmental staff will provide a hard copy or a PDF digital copy of the completed CE Documentation Form and all relevant clearance memos, determinations, correspondence and technical studies to the Statewide 6004 NEPA Manager. The Statewide Environmental Office staff will digitally archive the CE document and all relevant documentation. The Statewide Environmental Office staff will keep a copy of all federally funded CE documents completed under the MOU for a period of no less than 3 years from the signature date.

The Region Environmental staff will maintain project files for all federally funded CE documents completed within the region. The project files must include the completed CE Documentation Form and all relevant clearance memos, determinations, correspondence and technical studies used to assist with determinations. Records will be available for inspection by FHWA at any time.

4. Quality & Timeliness Monitoring

The *FHWA Monitoring Reviews of SAFETEA-LU Section 6004 Categorical Exclusion Assignments* guidance document lists seven key performance measures, six quality measures and one timeliness measure for FHWA to evaluate the adequacy of the performance of ADOT&PF and the responsibilities established under the MOU as listed here:

a. Quality Measures

- i. CE decisions are appropriately and timely documented.
- ii. CE decisions are factually and legally supportable at the time the decision is made.
- iii. CE decision-making procedures comply with NEPA (40 CFR 1500-1508), 23 CFR 771.117, and the MOU.
- iv. DOT&PF has met staffing and quality control requirements of the MOU.
- v. DOT&PF has complied with other Federal and State legal requirements.
- vi. DOT&PF has complied with recordkeeping requirements.

b. Timeliness Measures

- i. The CE assignment reduces the time required for processing assigned CEs.

The ADOT&PF will use the CE Quality Control Form to monitor the quality measures listed above and the information recorded within the Statewide tracking spreadsheet to monitor the timeliness measure. As baseline information for the timeliness measure does not currently exist, the ADOT&PF will qualitatively evaluate the effects of the MOU's delegation on the CE process.

When requested by the FHWA, the ADOT&PF will provide a summary report of the quality and timeliness measures to the FHWA Alaska Division Office.

5. FHWA Data-Gathering & Monitoring

As suggested in the *FHWA Monitoring Reviews of SAFETEA-LU Section 6004 Categorical Exclusion Assignments* guidance document, FHWA may conduct the following monitoring activities:

- Evaluate projects assigned under the MOU.
- Evaluate program level data on items specified in the MOU.
- Review the quarterly reports submitted by DOT&PF per the MOU Stipulation IV(F)(1).
- Confirm the CE Process is operating in accordance with the MOU.
- Assess DOT&PF's staff capability.
- Randomly select CE Projects processed under the MOU and review for appropriate documentation and performance.
- Conduct interviews with DOT&PF project managers and environmental staff (both at the regions and in the Statewide Environmental Office).
- Review agency and public complaints and DOT&PF's responses to complaints.
- Coordinate with the FHWA Area Engineers to identify any FHWA staff concerns about CE decisions.
- Conduct field reviews of selected MOU CE projects to assess whether the type and scope of impacts are consistent with the CE document.
- Determine how well DOT&PF met the quality and timeliness measures.
- Additional follow-up on the above steps as necessary.