

Alaska Department of Transportation & Public Facilities

**Categorical Exclusion (CE)
Assignment Compliance Review
(23 U.S.C. 326)**

Corrective Action Plan

May 13, 2013



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INTRODUCTION

Purpose

The purpose of this Corrective Action Plan is to address the specific findings outlined in the Federal Highway Administration (FHWA) February 2013 *Categorical Exclusion (CE) Assignment Compliance Review Final Report* (2013 Final Report). The report was a result of the FHWA Compliance Review per the *Memorandum of Understanding between Federal Highway Administration, Alaska Division and the Alaska Department of Transportation and Public Facilities, State Assumption of Responsibility for Categorical Exclusions* (6004 MOU), executed on September 22, 2009. In December 2011 the FHWA initiated this Compliance Review with interviews and project file reviews conducted in two Alaska Department of Transportation and Public Facilities (DOT&PF) region offices and two DOT&PF Statewide offices. Prior to completion of the 2013 Final Report, the 6004 MOU was revised and renewed on September 20, 2012. On December 27, 2012 FHWA submitted the draft report to DOT&PF for review and comment. DOT&PF provided draft report comments on January 28, 2013, and FHWA issued the 2013 Final Report on March 14, 2013.

Background

Pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Section 6004, codified in 23 U.S.C. 326, DOT&PF has assumed the Secretary of Transportation's authorities and responsibilities for determining if a transportation project qualifies for a Categorical Exclusion (CE), under 23 CFR 771.117. The 6004 MOU outlines the specific terms that describe the roles and responsibilities under the CE Assignment.

The original, September 22, 2009, 6004 MOU (Stipulation IV(F)(5)) established that a CE Assignment Compliance Review in Alaska will take place at least every 12 months. FHWA conducted the first compliance review in March of 2010 and the second in February and March of 2011. The third and final compliance review was conducted in December of 2011, and the resulting 2013 Final Report was transmitted to DOT&PF on March 14, 2013. The intent of this Corrective Action Plan to address those findings made by FHWA during the third compliance review of the State's 6004 program, which was initiated in December 2011.

DOT&PF would like to note the renewed 6004 MOU dated September 20, 2012 contains different language regarding CE Assignment Compliance Reviews. Furthermore, DOT&PF has implemented new procedures since the Compliance Review was conducted in December 2011.

Due to the lengthy period of time between the beginning of the third Compliance Review in December 2011 and the issuance of the Final Report by FHWA on March 14, 2013, the results of the Final Report are of limited utility to the DOT&PF. For future Compliance Reviews, DOT&PF urges FHWA to produce more timely final reports to allow for prompt and meaningful improvements to the 6004 Program. DOT&PF is committed to a successful 6004 Program.

2010-2013 FINDINGS AND ASSOCIATED CORRECTIVE ACTIONS

FHWA defines a finding as “a statement pertaining to compliance with a regulation, statute, FHWA guidance, policy, or procedures, DOT&PF procedures, or the Section 6004 MOU” (2013 FWA Final Report, p. 9).

In the 2013 Final Report, no new findings resulted from the 2013 Compliance Review, one finding remains open from the 2011 Compliance Review, and two findings remain open from the 2010 Compliance Review. The number of new findings has decreased for each compliance review report issued by FHWA. The number of open findings from previous compliance review reports has also decreased. The following table illustrates this decrease in findings.

FHWA Final Report Year	New Findings	Open Findings from Previous Compliance Reviews
2010	38	-
2011	8	6
2013	0	3

In the 2013 Final Report, it appears as though FHWA considers these findings “open” because particular corrective actions were not implemented by DOT&PF. However, FHWA acknowledges that other corrective actions have occurred to reduce the risk of the finding, but does not appear to have considered these corrective actions when assessing whether a finding should remain open, or whether a finding should be downgraded to an observation or closed. DOT&PF believes that none of the three open findings identified in the 2013 Final Report meet the FHWA definition of a “finding” as noted above, and they should no longer be considered “open” because a particular corrective action was not implemented.

The following section of this Corrective Action Plan will outline the findings made by FHWA, prior Compliance Review findings updates, and the corrective actions that DOT&PF has implemented. This will demonstrate that specific actions have occurred to alleviate the risk pertaining to compliance with a regulation, statute, FHWA guidance, policy, or procedures, DOT&PF procedures, or the Section 6004 MOU.

Findings that Remain Open from the 2011 Compliance Review

2011 FHWA Final Report Finding (1)

The MOU requires the State to provide to the FHWA evidence that the CE processing and any other environmental responsibilities assigned under the MOU have been completed. At the time the MOU was executed, FHWA and DOT&PF agreed to utilize the PIS for the State to provide evidence that all responsibilities for an assigned CE project were completed. The 2010 Final Report indicated that the use of the PIS for this purpose was confusing at times, and the DOT&PF corrective action plan indicated the State would revise the PIS.

According to information provided in interviews, the PIS form has not been revised and SEO staff acknowledge that the use of the PIS form for this purpose is not the answer. SEO staff described a long term solution involving the development of an electronic documentation and tracking system. The staff member also recognized that DOT&PF would need to develop a short term corrective action until the electronic tracking system becomes available. The State should identify a more reliable way to provide accurate information on the approval status of an assigned project. The reason why the DOT&PF staff has not revised the PIS form or notification process may be because they have not fully developed a solution to best provide evidence to FHWA of their completed assigned projects. The effect is that there may still be some confusion, at the time of a request for authority to proceed, that an assigned project approval is complete. In addition, another effect is that this deficiency means the State is not in compliance with the State's procedures. The DOT&PF must revise the current form and/or procedures to address this recognized deficiency. The DOT&PF should propose a revised notification process and procedure as a corrective action. The Team recommends that the DOT&PF propose a short-term corrective action within 90 days while the development of an electronic system is pursued.

2011 DOT&PF Corrective Action (1)

Effective November 1, 2011, DOT&PF will implement a new procedure for informing FHWA of environmental document approval that does not rely on the Project Information Sheet (PIS) as the sole method of verifying completion of the environmental process. This new procedure will become effective November 1, 2011, and remain in effect until September 30, 2013 when it is anticipated that an electronic document management system will be available to DOT&PF. This new procedure provides identification of the applicable PCE under which a document is approved on the PIS form, and a copy of the environmental document approval email or signature page to FHWA along with the PIS form submission. It is anticipated that a prototype of the electronic document management system will be available for DOT&PF use by September 30, 2012 and that a final version of the electronic document management system will be in place by September 30, 2013. The implementation of an electronic document management system will greatly increase the accuracy of environmental document approval reporting.

2013 FHWA Final Report Finding Update (1)

Based on an interview with staff, DOT&PF staff had drafted a process for implementing the interim procedures but were not yet using the interim procedure that requires staff to attach to the new PIS either the signature page of the CE Documentation Form or the approval email from the SEO to the region that verifies the completion of the environmental process. REM interviews confirmed this. The SEO staff indicated that they had scheduled a statewide teleconference to discuss this process. The Review Team was also told that the SEO staff was trying to revise the PIS but that it had not yet been finalized because it was still in internal review. As of November 28, 2012 the draft of the revised PIS was still undergoing internal review. FHWA was provided a courtesy copy of the circulation email.

The SEO should have implemented its interim procedure for ensuring that FHWA has been properly notified of environmental document approvals for projects. The reason for the delay in the implementation is unknown. The effect is that there may still be some confusion, at the time of a request for authority to proceed, that an assigned project approval is complete. In addition, another effect is that this deficiency means the State is not in compliance with the State's procedures. The DOT&PF must revise the current form and/or procedures to address this recognized deficiency. For corrective action the DOT&PF should implement their interim procedure within 120 days or propose an alternative procedure and a schedule for implementation within 60 days. FHWA considers this finding still open.

2013 DOT&PF Corrective Action Update (1)

DOT&PF recommends that the finding described in the 2013 Final Report has been successfully addressed and this finding should be closed.

Due to circumstances outside of DOT&PF's control, DOT&PF does not anticipate an electronic document management system will be available for use in the near future and rescinds the 2011 DOT&PF Corrective Action Plan sections that refer to the adoption of an electronic document management system.

The DOT&PF recognizes the delays in revising the PIS form as an interim corrective action; however, the PIS form is not an environmental form and revisions of the PIS form are not conducted under DOT&PF Statewide Environmental Office (SEO) authority. As a standard practice, DOT&PF will not provide FHWA signature pages or approval emails along with the PIS forms and rescinds the 2011 DOT&PF Corrective Action sections that refer to such actions. The certification contained on the PIS form is sufficient "evidence that the CE processing and any other environmental responsibilities" have been completed per the 6004 MOU (MOU Reference II(B)(3)(c)).

DOT&PF maintains records of all environmental approvals, available for FHWA review upon request and submits quarterly (now semiannual) reports to FHWA listing all 6004 CE approvals occurring during the report period. These actions provide additional "evidence that the CE processing and any other environmental responsibilities" have been completed per the 6004 MOU (MOU Reference II(B)(3)(c), IV(F)(1)).

Therefore, as a corrective action to this finding, the DOT&PF continues to propose a revised PIS form that includes a space for the Regional Environmental Manager to certify the environmental document approval date and applicable programmatic approval. This revised PIS form and instructions were transmitted to FHWA on May 10, 2013, for FHWA review and approval. DOT&PF SEO will provide additional training to the Regional Environmental Managers on how to correctly implement the revised PIS, upon FHWA approval of the PIS form. DOT&PF believes that the approval of the revised PIS form and instructions, along with the current recordkeeping and reporting practices, adequately address the concern identified in the finding from the 2011 Compliance Review.

Findings that Remain Open from the 2010 Compliance Review

2010 FHWA Final Report Finding (2)

Twenty-two (22) of 102 files did not provide sufficient evidence that the projects are in compliance with all federal laws and regulations. Five (5) files (3 projects) did not contain sufficient evidence to verify compliance with Section 4(f). DOT&PF relied on questionable or inappropriate determinations made by FHWA that a project had no potential to effect historic properties in 16 of the 22 instances. In two (2) of the 22 cases, it appeared that DOT&PF made questionable or inappropriate determinations that a project had no potential to effect historic properties. Project files should contain evidence that projects comply with all federal laws and regulations. The causes for the reliance on questionable or incorrect determinations made by FHWA may be attributable to a belief that the decision had been made and does not need to be revisited. The causes for lacking sufficient evidence for the Section 4(f) compliance and inappropriate determinations under Section 106 may be due to lack of a precise understanding of the requirements and how to apply them in a given situation. The effects of these instances are an increased risk that a compliance requirement will be missed during NEPA. This may result in damage to protected resources, loss of public trust and credibility with other agencies.

2010 DOT&PF Corrective Action (2)

The program review did not identify specific concerns, particularly in the project spreadsheet for “106 finding appropriate”. This lack of specifics made it difficult to propose corrective actions directed at the specific concerns, rather than to the overall Section 106 process. One (1) issue that may have occurred involved documentation of historic property boundaries. This is being addressed during reviews of cultural resource reports and Section 106 initiation and finding letters.

The SEO will work with the Regions to develop a list of core courses to be added to a training program for the environmental staff. Section 4(f) training needs to be offered routinely to the Regions, the SEO has identified Section 4(f) as a core course in our initial development of a training plan for DOT&PF environmental staff.

2011 FHWA Final Report Finding Update (2)

Six (6) of 46 files did not provide sufficient evidence that the projects are in compliance with all federal laws and regulations. Two (2) project files did not contain sufficient evidence to verify compliance with Section 4(f). In three (3) of the six (6) instances the project files failed to provide clear evidence of compliance with Section 106. Project files should contain evidence that projects comply with all federal laws and regulations. The causes for lacking sufficient evidence for the Section 4(f) compliance and Section 106 compliance may be due to lack of a precise understanding of the requirements and how to apply them in a given situation. The effects of these instances are an increased risk that a compliance requirement will be missed during the NEPA project development process. This may result in damage to protected resources, loss of public trust and credibility with other agencies. The corrective action could entail instituting a comprehensive training program that provides for continuing availability of courses in Section 106 and Section 4(f).

2011 DOT&PF Corrective Action Update (2)

DOT&PF is currently developing a comprehensive training plan for all staff members that participate in the environmental review process. This will include Section 4(f), Section 106, and NEPA training offered by both DOT&PF and FHWA. The training plan is expected to be completed by March 31, 2012. Additionally, DOT&PF has started the process to revise the Environmental Procedures Manual which involves updating all chapters to reflect current laws and regulations. It is anticipated that the revised Environmental Procedures Manual will be completed by September 30, 2013. Through teleconferences, meetings in the regions with environmental staff, and through email responses to questions the SEO staff are also currently working to provide guidance and advice to regional staff on how to comply with all federal laws and regulations, as well as how to adequately document such compliance.

2013 FHWA Final Report Finding Update (2)

We learned through SEO staff interviews that the comprehensive training plan and its implementation tasked in the Corrective Action Plan was incomplete, but was proceeding according to schedule at that time. They indicated they had drafted a comprehensive training plan for environmental analysts and that the next step was to finalize the draft with the State's technology transfer and research group.

Regarding the State's proposed corrective action related to updating procedures, subsequent to our review, three chapters of the new 6004 Environmental Procedures Manual (Overview, COA, and CEs), which included an updated CE documentation form, were submitted to the FHWA for review and comment on December 21, 2011; comments were provided from FHWA on January 9, 2012; and the chapters were approved for use via a Chief Engineer Directive effective December 3, 2012. Review of the DOT&PF's website confirmed this approval. Training of the Regional Environmental Managers (REMs) and some staff on the new procedures was provided on December 5-6, 2012; the FHWA attended these sessions.

We recognize the substantial accomplishment of advancing the development of the 6004 Environmental Procedures Manual; however, because the comprehensive training plan is yet unfinished, FHWA considers this finding to be open.

2013 DOT&PF Corrective Action Update (2)

DOT&PF recommends that the finding described in the 2013 Final Report has been successfully addressed and this finding should be closed. The lack of a “comprehensive training plan,” a previously proposed corrective action, should not keep this finding open. DOT&PF has implemented numerous other actions that have addressed the findings in the 2010 Compliance Review and subsequent finding updates.

The 2010 finding has been adequately addressed by the numerous training sessions, policy and procedure updates, and person-to-person mentoring activities that have occurred over the past three years. DOT&PF staff have worked hard to:

- Establish the new *Alaska 6004 Program Environmental Procedures Manual* (6004 Manual)
- Implement several chapters of the 6004 Manual
 - Chapter 1 – Environmental Procedures Overview
 - Chapter 2 – Class of Action and 6004 Assignability Determination
 - Chapter 3 – Categorical Exclusions
 - Chapter 6 – Re-evaluations
- Deliver multiple training sessions on each new 6004 Manual chapter
- Hold monthly teleconferences with Regional Environmental Managers and regional environmental staff in which policies, procedures, and regulation changes are topics of informative discussions and training
- Establish the Cultural Resource Team (CRT)

DOT&PF rescinds the portions of the 2011 Corrective Action Plan that mentions adoption of a “comprehensive training plan.” DOT&PF SEO staff will continue to develop and implement procedures, policies, and 6004 Manual chapters to provide clear and consistent guidance to DOT&PF environmental staff, and will continue to provide multiple timely training opportunities for each new chapter that is implemented. Furthermore, DOT&PF SEO staff will continue to provide in-person and electronic mentoring and peer learning opportunities for regional environmental staff. DOT&PF believes that this approach to training adequately addresses the deficiencies identified in the 2010 Compliance Review.

2010 FHWA Final Report Finding (3)

Several different approaches exist among Region and Statewide Offices to maintain project and administrative records pertaining to MOU responsibilities. Reviews of paper and electronic project files in both Regions and Statewide Offices revealed that for an individual project, sometimes the complete record was found in the Region, at other times at the SEO. Occasionally a complete record could be compiled from records found in both the Region and Statewide Offices. Additionally, there appeared to be little attempt to compile non-project administrative records, such as records of training events,

agendas, and actions taken to improve or resolve 6004 program implementation and little attempt to compile those data for later incorporation in a summary report.

2010 DOT&PF Corrective Action (3)

The SEO has advocated for, and continues to strive toward, a consistent project file system. The SEO provided a generic file structure to the Regions shortly after the 6004 MOU was signed, and offered the Regions assistance in uniformly structuring existing files. The SEO will continue to work with the Regions on developing documented guidance for project file structure that would provide environmental staff with a method for determining what information should be retained within the project file. The SEO is working with the Regions on developing a project file checklist for incorporation into each project file to promote complete project file documentation. The SEO has initiated a project file review procedure that promotes consistent project file management. This file review procedure will be incorporated into our 6004 Monitoring Plan that will be developed prior to submittal of the 15-month monitoring report. The SEO will continue to work with the Regions in developing project file structure training.

2011 FHWA Final Report Finding Update (3)

Four (4) project files from two Regions were incomplete. They either lacked an environmental document, lacked a signature for appropriate approval, and/or a lacked of evidence of notice to FHWA of project being excluded. The missing information in Region Office project files was found in project files at the SEO.

The cause of these inconsistencies in project and program records may result from the State's implementation of procedures that are still relatively new and a lack of a standardized checklist to ensure a completed project file contains all necessary records. The effect of inconsistent project recordkeeping and the absence of an overall procedure for retaining records of program implementation have resulted in actions that may not be compliant with the provisions of the MOU. The corrective action is that the State should modify its quality control processes to ensure project files are complete

2011 DOT&PF Corrective Action Update (3)

DOT&PF will have a consultant on board starting October 3, 2011 who will assist in the development of an electronic document management system that will greatly increase the accuracy of environmental approval reporting. It is anticipated that a prototype of the electronic document management system will be available for DOT&PF use by September 30, 2012, and that a final version of the electronic document management system will be in place by September 30, 2013. It is also anticipated that this electronic document management system will greatly increase the accuracy and completeness of files as well as allow for automatic reporting and document sharing with FHWA.

Per the January 31, 2011 Monitoring Plan that outlined the frequency of project file reviews, the SEO staff remains committed to conducting bi-annual file audits within all regions. The SEO conducted file

audits within all three regions between September and October 2010. The SEO has completed a second file audit of Southeast Region and Northern Region September 2011 and will conduct a second file audit of Central Region October 2011. SEO staff will provide region-specific guidance on correct environmental document and project file preparation and provide suggestions to regional staff on how projects files could be improved.

2013 FHWA Final Report Finding Update (3)

Based on an interview with SEO, a consultant was currently developing a work plan and flow chart for an electronic document management system and has provided a status on the implementation of interim procedures. The Review Team learned from the SEO staff interview that two meetings with the consultant had occurred that discussed some general ideas and concepts. SEO indicated that they provided copies of forms to the consultant to be converted into "smart forms" so that information will be digitally recorded and stored. The approach should reduce or eliminate the human errors in filling out paper forms and at the same time, the information would be entered into a searchable data base (sic).

The biannual audits conducted of region 's project files is a continuing practice as confirmed in the SEO and region staff interviews. Based on this audit, we learned SEO gave recommendations to all regions. SEO staff indicated that in general the files looked good, but recommendations were made that the project files contain all the supporting documentation. SEO staff noted that the structure of the files differed among the regions. The Northern and Southeast regions have a file structure that is based on a file checklist. The Central region does not use a file checklist. The result of the audits show that files with a checklist tend to be more complete compared with files lacking the checklist. We were told that the SEO staff was thinking about recommending that all project files contain a file checklist. We learned that the SEO staff continues to believe that performing biannual audits is a best practice.

The Review Team learned from interviews that DOT&PF was making progress toward implementing an electronic document management system and appeared to be on the schedule identified in the 2011 DOT&PF Corrective Action Plan.

We applaud the SEO staff's use of regular project file audits and support the SEO staff recommendation of adopting a standardized project file checklist for all projects. It is of note that the Review Team observed similar project file documentation gaps in this review as were found in the SEO's audits. Based on consultations with the SEO subsequent to our review, we learned that the development of the electronic document management system has been delayed due to circumstances beyond the State's control. We recommend that the DOT&PF propose an interim system to address this finding in a timely manner. Since the implementation of the electronic document management system has not yet occurred, FHWA considers this finding to still be open.

2013 DOT&PF Corrective Action Update (3)

DOT&PF recommends the finding should not remain open because “the implementation of an electronic document management system has not yet occurred.” As mentioned above, DOT&PF will not implement an electronic document management system in the near future and, therefore, rescinds all references to the system in previous DOT&PF Corrective Action Plans.

Even without the use of an electronic document management system, DOT&PF has demonstrated compliance with 6004 MOU stipulations IV(E)(2) and IV(F)(1, 2, 3). DOT&PF SEO staff regularly monitors and checks files for errors. DOT&PF can produce complete project files for FHWA inspection upon request. Therefore, there is no level of risk pertaining to compliance with a regulation, statute, FHWA guidance, policy, or procedures, DOT&PF procedures, or the Section 6004 MOU that warrants this issue being classified as an open finding.

DOT&PF has updated its procedures for processing environmental documents under the 6004 Program since the 2011 FHWA Compliance Review was conducted. Updates include implementation of several new chapters of the 6004 Manual, revision of old forms and creation of new forms, and conducting several training sessions for environmental staff in the regions. DOT&PF SEO staff will continue to conduct semiannual reviews of project files in the regions. DOT&PF SEO staff will also conduct quarterly Quality Assurance/Quality Control reviews of projects approved under the 6004 Program and provide the Regional Environmental Managers with review comments and suggestions for improving the quality of environmental documents. All of these actions demonstrate DOT&PF compliance with the 6004 MOU.

CONCLUSION

The FHWA 2013 Final Report demonstrated that the 6004 Program has drastically improved from its inception, has developed best practices, and is a demonstrated success. DOT&PF staff in the SEO and in the regional offices continue to work together to improve the 6004 Program by collaboratively establishing policies, procedures, and processes that satisfy the requirements of NEPA and the 6004 MOU, while streamlining the environmental approval process and speeding project delivery. DOT&PF continues its commitment to working with FHWA to successfully implement the State’s 6004 program.