



U.S. Department
of Transportation
**Federal Highway
Administration**

Alaska Division

February 25, 2013

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In Reply Refer To:
CIVL 10

Mr. Dennis Good
Civil Rights Program Manager
Alaska Department of Transportation and Public Facilities
P.O. Box 96900
Anchorage, AK 99519-6900

Dear Mr. Good:

We have received your letter of February 13, 2013 requesting guidance on strategies to bolster your waiver rescission request.

In your letter, you suggest requesting a program exemption pursuant to 49 CFR 26.15(a). This section of the regulations contemplates situations in which a recipient's ability to comply with a specific provision of the regulations is impracticable because of an exceptional circumstance not contemplated within the rule. A request for a rescission of a waiver that was granted by the U.S. Secretary of Transportation based upon disparity study data would not rise to the level of an exceptional circumstance. Such situations are contemplated within the rule and must be addressed through a documented change in the data that supported the original waiver request showing the waiver is no longer necessary.

Because your waiver was granted on the premise of overutilization of non-minority, women-owned construction firms, the only way to rescind the waiver is to demonstrate that the overutilization no longer exists. Despite the anecdotal evidence that has been provided, a rescission will only be granted based on data.

At this juncture, it appears that the data required to support a rescission request may not be available until the Disparity Study is completed in September 2013; understanding, of course, that there is no guarantee that the data presented in that study will support such request.

At any time, however, if the DOT&PF can demonstrate that non-minority, women-owned construction firms are no longer being overutilized, please provide that information as soon as possible. This office is committed to working with our Headquarters Office of Civil Rights to ensure an expeditious review of this data. In the meantime, please let us know if there is anything we can do to further support your staff.