

# **Alaska Department of Transportation & Public Facilities**

## **Categorical Exclusion (CE) Assignment 15 Month CE Delegation Performance Report (23 U.S.C. 326)**

**January 2011**



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## **Background**

On September 22, 2009, the Alaska Department of Transportation (DOT&PF) and the Federal Highway Administration (FHWA) signed a Memorandum of Understanding (MOU), 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. Through this MOU the FHWA assigned, and the DOT&PF assumed, the responsibility for determining whether a proposed federal-aid action is within a category of action designated as a categorical exclusion (CE) by the USDOT Secretary, as specified in 23 CFR 771.117(a - d), and meets the definition of a CE as provided in 40 CFR 1508.4. Under the MOU, DOT&PF was also delegated the FHWA's responsibilities for consultation with all federal resource agencies and for compliance with all applicable federal regulations.

For the CE determinations delegated under the MOU, the State of Alaska assumed the legal responsibility for its NEPA decisions, and it is subject to federal court jurisdiction. The State of Alaska waived its 11<sup>th</sup> Amendment sovereign immunity against actions brought by its citizens in federal court for delegated CE determinations. Stipulation IV(F)(2) of the MOU requires the DOT&PF to submit to the FHWA reports summarizing its performance under the MOU at the conclusion of the 15<sup>th</sup> month and the 30<sup>th</sup> month of the MOU. For the DOT&PF, the 15<sup>th</sup> month is December 2010 and the 30<sup>th</sup> month will be March 2012. The reports are required to

- Identify any areas where improvement is needed and what measures the DOT&PF is taking to implement these measures.
- Summarize actions taken by the DOT&PF as part of its quality control efforts as described in Stipulation IV.

This report, submitted on January 31, 2011, is the 15<sup>th</sup> Month Performance Report. In February 2011, the DOT&PF will meet with the FHWA Alaska Division Office to discuss the findings of this 15<sup>th</sup> Month Performance Report; the DOT&PF's performance administering the responsibilities delegated to it under the MOU; and the result of the FHWA's monitoring activities.

## **Purpose**

The primary objective of the 15<sup>th</sup> Month Performance Report is to provide the FHWA with a summary of the DOT&PF's performance administering the CE authorities and responsibilities delegated to it under the MOU. This report will provide the following information:

- A statistical summary of the CE determinations that the DOT&PF has assumed responsibility (Section I).
- Areas for improvement and the DOT&PF proposed improvement measures taken (Section II).
- A qualitative discussion of the DOT&PF's performance of the six quality measures, and the one timeliness measure described in the MOU Monitoring Plan (Section III).
- Recommendations that the DOT&PF believes could improve the MOU (Section IV).

Included in the appendix of this 15<sup>th</sup> Month Performance Report is the required DOT&PF *CE Assignment MOU Monitoring Plan*.

## I. Statistical Summary from Quarterly Reports

Stipulation IV(F)(1) of the MOU requires that the DOT&PF provides a quarterly summary report to the FHWA on all CE determinations made by the DOT&PF during that previous quarter. Information provided in these quarterly summary reports includes the project name, state and federal-aid numbers (when available), CE classification, region, and the CE approval date. The DOT&PF has met this stipulation for every quarter of the MOU to date except for the initial quarter, which only had one completed project. The direction at the time was to include this project into the next full quarter, but after a conversation with FHWA this one project was reported in a late quarterly report. All of the quarterly reports are available on the DOT&PF website at

<http://www.dot.state.ak.us/stwddes/desenviron/resources/6004.shtml>

Through December 31, 2010, DOT&PF has assumed responsibility for and approved 183 CE determinations or re-evaluation of CEs under the MOU.

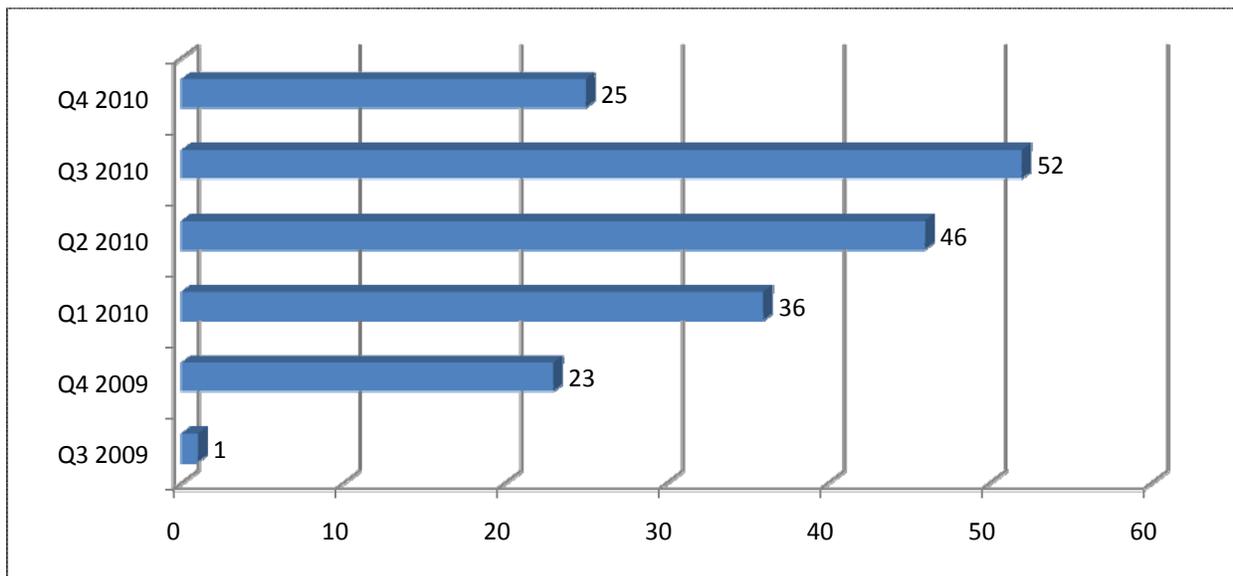


Figure 1. Number of CEs approved under the MOU.

Figure 1 above demonstrates that, with the exception of Quarter 3 of 2009, the DOT&PF has completed on average 36 CEs per quarter. Quarter 3 of 2009 had significantly lower numbers of CE determinations due to the signature of the MOU late in that quarter. The second and third quarters of 2010 had significantly higher numbers due to the additional projects that were part of the American Recovery and Reinvestment Act (ARRA) of 2009.

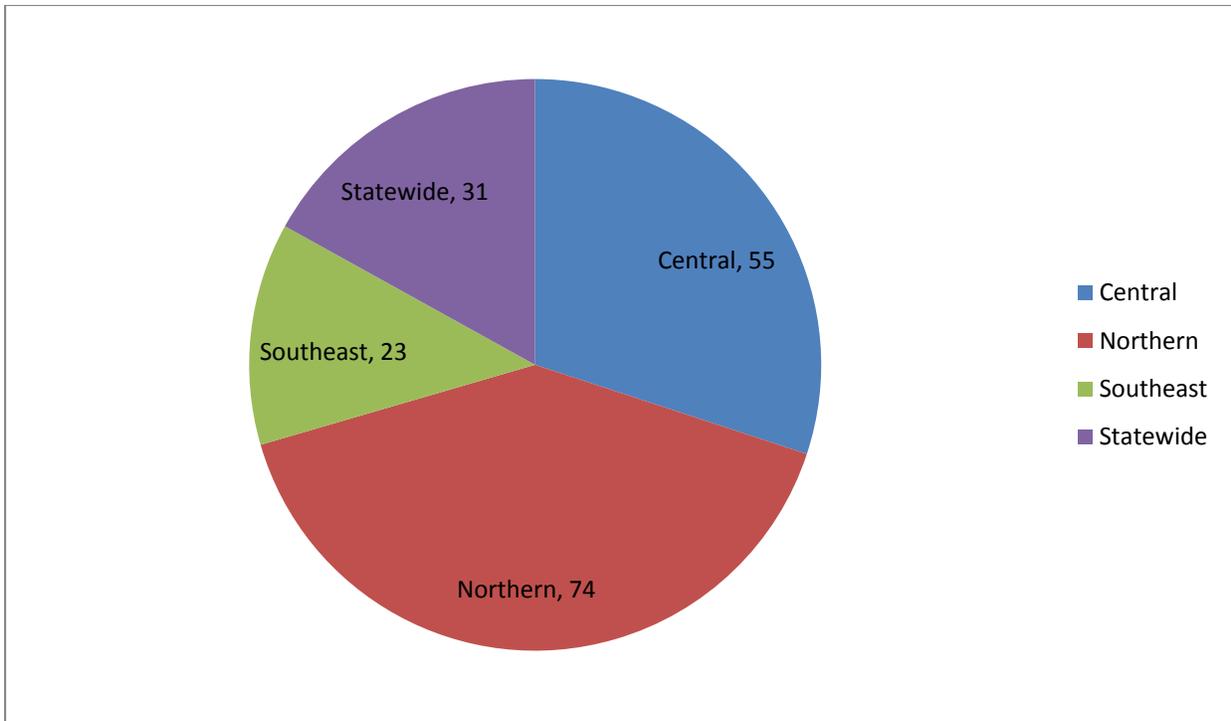


Figure 2. Number of CEs produced in each of the three Regions and the Statewide Environmental Office

The DOT&PF has three regional environmental offices (regions) and a statewide environmental office. During the development of the MOU, the DOT&PF developed an internal DOT&PF programmatic agreement that mirrors the previously approved programmatic agreements between the FHWA and the DOT&PF. These programmatic agreement approvals, as described in Chapter 5 of the *Alaska Environmental Procedures Manual*, allow for certain CE determinations to be approved by the Regional Environmental Manager (REM), and then reviewed by either the statewide environmental office, or the FHWA, for concurrence that the activity is consistent with the conditions of the appropriate programmatic agreement. The majority (78.5%) of CE determinations that have been approved by the DOT&PF under the MOU have met the requirements of this internal programmatic agreement and are referred to as Programmatic Categorical Exclusions (PCEs). Figure 2 shows a comparison of the total number of CE determinations completed by each of the three regions and the statewide environmental office since implementation of the MOU on September 22, 2009.

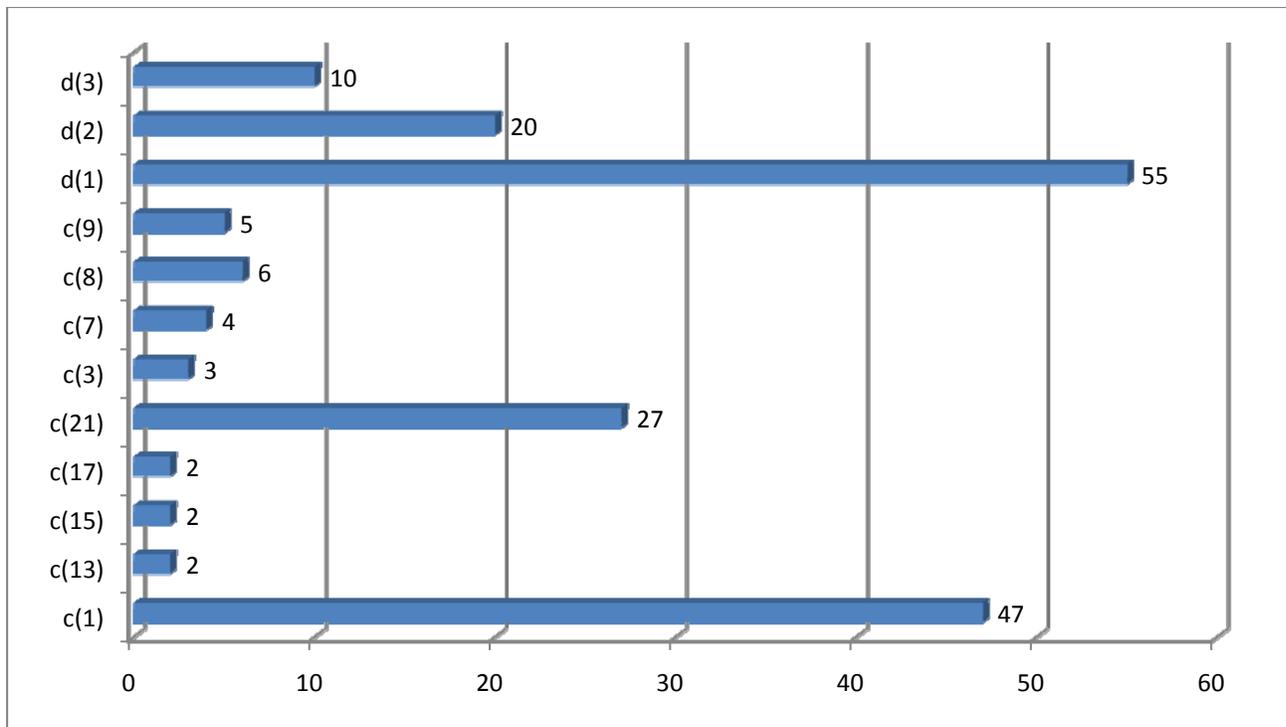


Figure 3. Categories of CEs approved by DOT&PF.

Figure 3 shows the categories of CE classifications for the projects approved by the DOT&PF under the MOU. As evidenced in Figure 3, 30% (55 of 183) of the CEs have been 23 CFR 771.117 (d)(1) projects including all of the highway modernization projects such as resurfacing, restoration, rehabilitation, and the addition of shoulders or auxiliary lanes. Other types of projects that were frequently approved by the DOT&PF under the MOU included,

- activities that do not lead directly to construction, such as planning and research projects (c)(1) (25.8%)
- deployment of electronics, photonics, communications or information processing projects (c)(21) (14.8%)
- highway safety or traffic operation projects (d)(2) (10.9 %)
- bridge rehabilitation, reconstruction or replacement projects (d)(3) (5.5 %)
- fencing, signing or signal projects (c)(8) (3.3 %)

Additional responsibilities assigned to the DOT&PF under the MOU included the responsibility of the DOT&PF to determine the potential Section 4(f) impacts of those projects delegated under the MOU. Per the MOU Stipulation III(D)(2), the FHWA and the DOT&PF would exclude from assignment to the DOT&PF, any projects that would require an individual Section 4(f) evaluation. There have not been any individual Section 4(f) determinations identified during the first 15 months of implementing the MOU. Since signing the MOU, the DOT&PF reviewed two programmatic Section 4(f) determinations during re-evaluations of CEs approved prior to the MOU.

Type of Section 4(f) Determination	Number
Programmatic 4(f)	2
<i>De minimis</i> 4(f)	0

**Table 1 – Section 4(f) Determinations**

The statewide environmental office has been consulted on several projects regarding the potential constructive use of adjacent Section 4(f) resources. There has not been a determination of constructive use to date. No *de minimis* Section 4(f) determinations were made during the first 15 months of implementing the MOU. The information provided within Table 1, demonstrates that only 2 of the 183 projects (1.1%) that the DOT&PF has processed under the MOU, have required Section 4(f) impact determinations.

## **II. Areas for Improvement and the DOT&PF Improvement Measures Taken:**

### **Summary of Quality Control Efforts**

The statewide environmental office has carried out a Quality Control (QC) process consistent with the requirements of Stipulation IV(E) of the MOU, and the State Performance Requirements (outlined in sections A and C) of the *CE Assignment MOU Monitoring Plan* (attached appendix). To summarize the DOT&PF QC efforts, each delegated CE must be reviewed by someone who was not the preparer of the CE. Additionally, the Regional Environmental Manager for each region must approve the CE and cannot be the reviewer. This insures that two reviews take place for each CE before final approval.

Additionally, the statewide environmental office staff reviews every assigned CE, including PCE determinations approved by the regions, to ensure that the CE was classified correctly, and that the *Categorical Exclusion Documentation Form* was prepared correctly. Any errors that are discovered by the statewide environmental office staff during the QC review are relayed to the REM. Those CE determinations that require the statewide environmental office staff approval are required to have any errors corrected prior to signature by the statewide environmental office. Errors within PCE determinations that are approved by the REM are only required to be corrected at the time of statewide environmental office staff concurrence if there is an error in CE classification or an error in use of the programmatic agreement.

The QC process includes efforts by the statewide environmental office to notify and work with the REMs to rectify errors found during the QC process at the time of the statewide environmental office approval or concurrence. The statewide environmental office provides the REM a copy of the *CE Quality Control Form* that documents any errors within the *Categorical Exclusion Documentation Form* that is discovered during the statewide environmental office review. Table 3 summarizes the most common QC issues that have occurred since implementation of the MOU (September 22, 2009), along with the corrective actions that were taken to rectify the errors.

Quality Control Issue	Number of Occurrences	Resolution of Issue
<p><b><u>General errors:</u></b></p> <ul style="list-style-type: none"> <li>• illegible figures</li> <li>• incorrect box checked</li> <li>• conflicting statements</li> <li>• supporting documentation not attached as indicated</li> <li>• incomplete fields</li> <li>• outdated regulatory reference</li> <li>• resource impacts unclear</li> </ul>	103	Notification of the error was provided to the REMs. Those projects that required the approval of the Statewide Environmental Office staff were required to have these errors corrected prior to approval. 6 CE determinations were corrected prior to approval. Additional training is necessary to assist the regions in reducing these errors.
<p><b><u>Insufficient justification:</u></b></p>	77	There were 77 instances where the <i>Categorical Exclusion Documentation Form</i> lacked sufficient justification for a resource impact determination that was made. Notification of the error was provided to the REMs. Those projects that required the approval of the Statewide Environmental Office staff were required to have these errors corrected prior to approval. There were 3 instances where the CE was corrected prior to approval.
<p><b><u>Section 106:</u></b></p> <ul style="list-style-type: none"> <li>• inaccurate no potential call</li> <li>• lack of Statewide Environmental Staff concurrence</li> <li>• wrong box checked</li> <li>• insufficient justification</li> <li>• conflicting statements</li> </ul>	16	There were 6 of the 16 instances where there were conflicting statements within the <i>Categorical Exclusion Documentation Form</i> . There were 5 of 16 instances where there was insufficient justification for the determination regarding historic resources. Notification of the error was provided to the REMs. Those projects that required the approval of the Statewide Environmental Office staff were required to have these errors corrected prior to approval. There was 1 instance where the error was corrected.
<p><b><u>Lacking an adequate need statement:</u></b></p>	5	Notification of the error was provided to the REMs. Those projects that required the approval of the Statewide Environmental Office staff were required to have these errors corrected prior to approval. Additional training is necessary to assist the regions in reducing these errors.
<p><b><u>Illegible signatures:</u></b></p>	2	The Statewide Environmental Office did not require an amendment or re-submittal of the CE. However, the Statewide Environmental Office did notify the REM and provided guidance that the CE approval signatures must be legible.

<b><u>PCE box checked incorrectly:</u></b> A CE was either incorrectly identified as a PCE, or a PCE was not correctly identified.	2	1 of the 2 instances of this error involved unidentified resources that kept the project from qualifying for use of the programmatic agreement. The other instance involved a failure to recognize resource thresholds that exceeded the conditions of the programmatic agreement. Notification of the error was provided to the REM, and the CE was corrected prior to approval.
<b><u>Purpose and need not clearly defined:</u></b>	1	Notification of the error was provided to the REMs. Those projects that required the approval of the Statewide Environmental Office staff were required to have these errors corrected prior to approval. Additional training is necessary to assist the regions in reducing these errors.
<b><u>Project description is unclear:</u></b>	1	Notification of the error was provided to the REMs. Those projects that required the approval of the Statewide Environmental Office staff were required to have these errors corrected prior to approval of the CE.
<b><u>Preparer and approver were the same person:</u></b>	1	There was 1 instance where the preparer and the person approving the document were the same person. This instance occurred because the REM was out of the office at the time the document was ready for approval. Notification of the error was provided to the REM.
<b><u>No approved class of action on file:</u></b>	1	There was 1 instance where there was no documented class of action on file. There was some confusion early on in the implementation of the MOU as some projects were provided a class of action by FHWA prior to the assignment. With the use of the <i>Class of Action Form</i> this error has not recurred.

**Table 3 – CE QC Issues and Resolutions**

Overall, the QC process has been very effective, resulting in progressively fewer errors in the CE documents since the signing of the MOU. Errors in CE determinations that require the approval of the statewide environmental office have been corrected prior to approval of the document. Reported errors in the PCE determinations that are approved by the regions have not been consistently corrected by the regions. The statewide environmental office is only aware of a few instances where the regions have corrected PCE errors discovered as a result of the statewide environmental office QC process. Additional training is necessary to assist the regions in reducing errors in the documentation.

The statewide environmental office staff has conducted one internal process review of federally funded projects assigned to the DOT&PF under the MOU. This process review examined both statewide and region environmental project files. The process review evaluated if the projects were classified correctly under the MOU; the *Categorical Exclusion Documentation Form* was filled out correctly; all applicable mitigation commitments had been documented; and the purpose and need statements and activity descriptions were clearly written and accurately described the intended work. The review was also intended to ensure that the project files contain

all relevant clearance memos, determinations, correspondence, consultation, and technical studies that were necessary to support decisions.

### Summary of Training Efforts

The statewide environmental office staff attended and participated in the National Highway Institute (NHI) NEPA training sessions that were conducted in each of the three regions over the last year. During these three day sessions there was time allotted to discuss the CE delegation process. This discussion was led by one of the members of the statewide environmental office. The statewide environmental office also provided group training to the regional project management and environmental staff on the following dates:

Date	Type of Training	Notes on Training
6/25/09 – 7/15/09	Instruction on the Assumption of CEs from the FHWA under the MOU - In person	Joint training was provided by the DOT&PF statewide environmental office and the FHWA staff to each of the three regions regarding the upcoming MOU, CE Procedures and forms, and exclusions to the MOU. The training focused on what the new requirements were with the MOU.
10/15/09 – 10/23/09	In person discussions	Provided in person instruction to each of the three regional environmental staff regarding the <i>Categorical Exclusion Documentation Form</i> and some of the changes and what statewide would be looking for during reviews.

**Table 2 – CE Delegation Training**

Training slides, presentations, and handouts such as the revised *Categorical Exclusion Documentation Form*, have all been posted on the DOT&PF environmental website. In addition to training, the statewide environmental office staff also provided regular sessions within the regions to discuss project specific questions, issues, or overall process questions. These sessions were intended to provide the regional environmental staff additional time with the statewide environmental office staff to allow the regional staff to meet and discuss projects or process questions. Usually these sessions coincided with a bi-monthly Design Status Meeting within the regions. While these sessions were typically informal, they were very beneficial and productive at getting all involved acquainted with the MOU and CE procedures.

### III. Quality & Timeliness Discussions

As part of the *FHWA Monitoring Review of SAFETEA-LU Section 6004 Categorical Exclusion Assignments* document, six quality measures and one timeliness measure are being qualitatively evaluated to help determine the efficiency and productivity of the Section 6004 delegation. These measures are

#### Quality Measures

- CE decisions are appropriately and timely documented
- CE decisions are factually and legally supportable at the time the decision is made

- CE decision-making procedures comply with NEPA, 23 CFR 771.117, and the MOU
- DOT&PF has met staffing and quality control requirements of the MOU
- DOT&PF has complied with other state and federal legal requirements
- DOT&PF has complied with recordkeeping requirements

### **Timeliness Measure**

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

For the qualitative evaluation of the Quality Measures, the DOT&PF is relying on the DOT&PF *Quality Control Form*, the Section 6004 monitoring tracking spreadsheet, and on the issues that have become apparent since the MOU was signed. Unfortunately, there was no baseline information for the quality of the CEs prior to the MOU as no quality measures were recorded by either the DOT&PF or the FHWA Alaska Division Office. As a general qualitative assessment, the DOT&PF feels that the overall quality of the CE documents has notably improved as a result of the CE Delegation and the QC efforts. This statement is based on re-evaluations of *Categorical Exclusion Documentation Forms* that were approved by the FHWA prior to the MOU. As a result of these re-evaluations, the DOT&PF has seen improvement in the overall quality of CE Documents prepared under the MOU.

Prior to the approval of the MOU, the FHWA Alaska Division Office was responsible for conducting QC efforts per the February 5, 2008 *Programmatic Categorical Exclusion Agreement for Use on Federal-Aid Highway Projects in Alaska* and the August 15, 2001 *Advanced NEPA Approval for Certain "C" List Categorical Exclusions between DOT&PF and FHWA Alaska Division*. However, these QC efforts appeared to be infrequent and were conducted on a small percentage of projects. The DOT&PF's QC efforts under the MOU have been inclusive of all 6004 CE projects approved, and as a result the overall quality of the CEs has improved (based on re-evaluations of FHWA approved CEs). Specifically, the DOT&PF feels that generally the CEs processed under the MOU have provided clearer purpose and need sections, better defined project descriptions, are more consistently answering the questions on the *Categorical Exclusion Documentation Form*, and have improved the Section 106 determinations.

### **Quality Measures**

1. During the initial implementation of the CE delegation the DOT&PF developed and instituted the use of the *Categorical Exclusion (CE) Class of Action Consultation Form* and developed a procedure for determining class of actions. This process has greatly reduced the confusion and lack of documented class of action determinations within the project files. This process and form have also eliminated the amount of projects that were improperly classified. Based on information gathered during the first 15 months of the CE delegation, the average amount of time it takes for the Statewide Environmental Office review and approval of the *Categorical Exclusion (CE) Class of Action Consultation Form*, including obtaining additional project information by the Statewide Environmental staff, has been 5.5 calendar days. During the first 15 months under the MOU there were 213 class of action determinations made by the statewide environmental office. There were only 8 class of

action determinations that required additional information to confirm the determination, which resulted in a review time of more than 30 calendar days.

Based on the *CE Quality Control Forms*, there have not been any errors in the classification of CEs. As such, the DOT&PF feels that it has been successful in making appropriate decisions on CE projects.

2. Based on the DOT&PF *CE Quality Control Forms* and the DOT&PF tracking spreadsheet, only 53 of the 183 projects (28.9 %) approved had reported errors of some sort with the *Categorical Exclusion Documentation Form*. Those CE determinations that were approved by the statewide environmental office staff were successfully updated to reflect accurate information. A few of those PCE determinations that were approved by the regions, and obtained statewide environmental office staff concurrence, have been updated. As such, the DOT&PF feels that the CE determinations have been made appropriately and based on legal, factual information at the time of approval.
3. The DOT&PF feels that all decision-making in regards to which projects are CEs has been in accordance with 23 CFR 771.117 and the MOU, with the exception of 2 instances (1.1%). There was an instance where an Environmental Assessment (EA) or Environmental Impact Statement (EIS) type project was submitted as a CE class of action determination. In this instance the FHWA formally excluded the project from the CE delegation in a letter. In the second instance the DOT&PF approved a re-evaluation of a FHWA CE that should have been excluded under the MOU when it was initially submitted.

There were additional projects where the initial decision was that the project was delegated to the DOT&PF only to have this decision reversed prior to the signature of the environmental document. This issue occurred early during the implementation of the MOU as there was some confusion as to where roundabouts and re-alignments fall within 23 CFR 771.117.

Overall, the DOT&PF feels that the determinations and decisions made have been done appropriately. When questions have arisen, the statewide environmental office has consulted with the FHWA Alaska Division office to determine the appropriate level of environmental documentation under NEPA.

4. DOT&PF feels that they have met the staffing and quality control requirements listed in Stipulation (IV)(D) of the MOU. Bill Ballard, and now Ben White, have been the Statewide Environmental Managers responsible for administering the CE delegation program under the MOU. Bill Ballard with the help of statewide environmental office staff assisted in the drafting of the MOU, DOT&PF guidance and procedures, and the *Categorical Exclusion Documentation Form*. Ben White has been the final QC for the statewide environmental office since June 2010. The statewide environmental office staff, which consists of two Environmental Resource Specialists (storm water and historical resources), three NEPA Managers, two Environmental Program Managers (storm water and historical resources), and the Statewide Environmental Manager, has experienced some turnover as a result of retirements throughout the duration of the MOU. One NEPA Manager and the Statewide Environmental Manager retired within seven months after the implementation of the MOU.

These vacancies have considerably increased the workload on the remaining staff. Reporting requirements under the MOU have only increased the workload of the statewide environmental office staff. The statewide environmental office QC efforts have not diminished. These vacancies at the statewide environmental office have resulted in a reduced amount of time available for developing and providing formal training.

Two of the three Regional Environmental Managers have been constant throughout the CE Delegation process. The one new Region Environmental Manager, since the implementation of the MOU, has been trained on the procedures and responsibilities prescribed by the MOU. The statewide environmental office has provided ongoing mentoring to this REM. Since being trained, the newest REM has reduced the amount of QC issues on many of the CE determinations approved by the region.

5. Based on the DOT&PF *Quality Control Forms*, the DOT&PF has not had any issues complying with any other federal or state legal requirements.
6. The statewide environmental office has worked with the three regional offices to review and recommend ways to improve project files. The statewide environmental office has implemented a process by which statewide and regional project files will be reviewed for consistency and completeness. All CEs completed since September 2009 have the final CE and all associated documentation stored within a central project file at each of the regional offices. During the review of the regional project files any missing information, incomplete documentation, or other file issues are documented and reported to the REM during a close-out meeting.

The statewide environmental office maintains both a paper and an electronic project file. The electronic project files are centrally located on a server that is accessible to all statewide environmental office staff.

### **Timeliness Measure**

For evaluating the one timeliness measure, the DOT&PF considered three factors qualitatively.

- the qualitative time savings associated with the DOT&PF approving the CEs instead of the FHWA,
  - the amount of additional staffing hours required from the DOT&PF, and
  - the potential time savings for the FHWA Alaska Division environmental staff.
1. For context in evaluating time savings, it is worth noting that the amount of time required for CE approval by the DOT&PF varies. The statewide environmental office has tracked the review time and approval dates as part of the CE delegation. This is the amount of time it takes from receipt of the document until final approval or concurrence. Certain DOT&PF approved c-listed CE determinations (projects that do not lead directly to construction for example) are reviewed and approved the same day or the day after they are submitted. However, there were 13 out of the 98 c-listed CE determinations that required the development of a *Categorical Exclusion Documentation Form*, or at least Section 106 consultation, which resulted in an extended review and approval time. This made the average

review time 8.5 calendar days for every c-listed CE submitted to the statewide environmental office. For d-listed CEs (those activities that require the development of a *Categorical Exclusion Documentation Form*), the average review time is 13.3 calendar days. This review time also includes the time necessary for the regions to address any comments provided in the *CE Quality Control Form* for each CE.

The MOU allows the DOT&PF to approve a majority of the CEs that fall under 23 CFR 771.117 (c) or (d) without FHWA review and approval. Prior to the CE delegation, the FHWA Alaska Division office performed the review and approval process of more *Categorical Exclusion Documentation Forms* than under the current MOU CE delegation. This FHWA review and approval process continues for those CE determinations that have been excluded from the MOU. The CE delegation does appear to save the DOT&PF time in obtaining approval for those CEs approved under the MOU. The significance of these time savings has not been quantified as FHWA processed CE timeframes are not known to DOT&PF at this time. Overall, the DOT&PF has been satisfied with the perceived time savings experienced as a result of the CE delegation MOU.

2. By administering the MOU, the DOT&PF has undertaken considerably more staffing hours and administrative duties than it had previously. The DOT&PF environmental staff (both statewide and regional) has noticed some increase in their workload as a result of the CE delegation. Additional administrative duties that the statewide environmental office has undertaken include the QC efforts for every CE that is approved, coordinating with FHWA on program reviews, report compilation (quarterly, 15-month, FHWA program review report response, monitoring plan, etc.), and coordination with the REMs on determining the appropriate category of CE for all assigned projects. It is estimated that the statewide environmental office spends approximately 30-60 minutes for the reporting of each CE approved under the MOU. For 183 CEs, this would result in approximately 90-180 hours of administrative effort. Additionally, the statewide environmental office averages around 3-4 hours of effort per quarterly report. As five quarterly reports have been submitted so far, this roughly equates to another 15-20 hours of effort. Overall, the DOT&PF expends an approximate extra 260 hours per year performing the administrative responsibilities delegated to it with the CE Delegation MOU. Additionally, prior to the signing of the MOU, the DOT&PF estimates that the statewide environmental office personnel spent well over 300 hours of time preparing the MOU and the associated guidance materials, procedures and *Categorical Exclusion Documentation Form*.

Overall, by signing the MOU, the DOT&PF has taken on additional duties and has expended additional time administering these duties. However, the DOT&PF feels that the additional time and effort has been worthwhile, due to the improved quality of the CEs and the perceived time savings that have resulted from not requiring FHWA approval on the majority of the CE documents processed.

3. When pursuing the CE delegation the DOT&PF also hoped that the FHWA Alaska Division office would be able to expend more effort on Environmental Assessment (EA) and Environmental Impact Statement (EIS) projects in the state. No data currently exists to support or refute this idea, but it is a potential time savings benefit that could be associated

with the CE Delegation. The DOT&PF would be interested in hearing from the FHWA Alaska Division office whether this has been a beneficial time savings that has resulted from the CE Delegation MOU regarding FHWA processing of EAs and EISs.

#### **IV. Recommendations**

At this time, the DOT&PF intends to continue administering the CE delegation per the terms of the existing MOU. In the future, the DOT&PF would like to consider adding all CE projects to the terms of the MOU, specifically those projects that include individual Section 4(f) evaluations, roundabouts, minor realignments, Alaska Marine Highway System (AMHS) projects that have historically been developed using CEs, and the “addition of through travel lanes.” DOT&PF recommends that the best option of accomplishing this task would be to amend the list of projects in Attachment 3 to the August 19, 2009 letter from FHWA to DOT&PF. DOT&PF will be working on formalizing a request to the FHWA Alaska Division Office for approval.

The DOT&PF understands that there are potential difficulties associated with adding these types of projects to the MOU, as these types of projects by definition are not an activity defined in 23 CFR 771.117, and therefore these types of projects must meet more stringent conditions and require more discretion on the part of the decision makers. The DOT&PF realizes that these conditions or contingencies would need to be clarified in the MOU before the DOT&PF could be delegated the responsibility to make these determinations. Based on the DOT&PF’s experience drafting the MOU, the DOT&PF realizes that the Council on Environmental Quality (CEQ) has reservations about delegating these types of CE projects to the states, and that amending the MOU to include these types of projects would likely be a time consuming process. However, based on the DOT&PF’s current performance administering the terms of the MOU and on the DOT&PF’s experience and familiarity with the scopes and impacts of past CE projects that included these actions, DOT&PF is confident in effectively administering these types of decisions in the future and that the time and effort required to obtain this authority would be valuable time well spent. The DOT&PF is not requesting an amendment to the MOU at this time, but may request the addition of these types of projects as part of a future renewal of the MOU in 2012.

The DOT&PF feels that at this time the MOU has been beneficial to the processing of federal-aid projects within the State of Alaska. The process has provided DOT&PF the ability to assume responsibility for certain categorical exclusions and has allowed the FHWA Alaska Division Office to devote more time and resources to other larger more complex issues.