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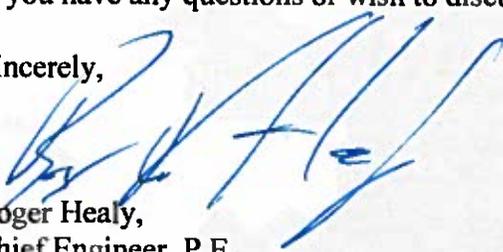
Sandra Garcia-Aline, Division Administrator
Federal Highway Administration
Alaska Division, Room 851
P.O. Box 21648
709 West 9th Street
Juneau, Alaska 99802

Dear Ms. Garcia-Aline,

The Alaska Department of Transportation and Public Facilities (ADOT&PF) hereby submits the 30 Month CE Delegation Performance Report pursuant to the renewed Memorandum of Understanding (MOU) between ADOT&PF and the Federal Highway Administration (FHWA) Alaska Division regarding State assumption of responsibilities under 23 U.S.C 326.

If you have any questions or wish to discuss this further do not hesitate to call me.

Sincerely,


Roger Healy,
Chief Engineer, P.E.

Enclosures: 30 Month CE Delegation Performance Report, April 2015

cc (electronic):

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Alaska Department of Transportation & Public Facilities

Categorical Exclusion (CE) Assignment 30 Month CE Delegation Performance Report (23 U.S.C. 326)

April 2015



**Prepared by: Amy Sumner, Statewide NEPA Manager
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Background

On September 20, 2012, the Alaska Department of Transportation (DOT&PF) and the Federal Highway Administration (FHWA) renewed the Memorandum of Understanding (MOU), pursuant to 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 actions designated as a categorical exclusion (CE) by the USDOT Secretary, as specified in 23 CFR 771.117, and meets the definition of a CE as provided in 40 CFR 1508.4. Under the MOU, the DOT&PF was also delegated the FHWA's responsibilities for certain consultations with 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 11th Amendment sovereign immunity against actions brought by its citizens in federal court for delegated CE determinations. The DOT&PF program to administer the provisions of the MOU is known as the 6004 Program.

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 15th month (December 2013) and the 30th month (March 2015) of the MOU. 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.

The DOT&PF submitted the 15th Month Performance Report on February 3, 2014, covering the period from September 20, 2012 to December 31, 2013. This report is the 30th Month Performance Report, covering the period from January 1, 2014 to March 31, 2015. The DOT&PF intends to meet with the FHWA Alaska Division Office to discuss the findings of this 30th Month Performance Report.

Purpose

The primary objective of the 30th 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 summary of recent changes made in administering the 6004 Program (Section I)
- A statistical summary of the CE and Section 4(f) determinations for which the DOT&PF has assumed responsibility (Section II).
- A statistical summary of the 6004 Program's processing times for the DOT&PF Statewide Environmental Office's project approvals (Section III).
- A summary of DOT&PF's quality control efforts, a statistical summary of internal review findings that identify areas for improvement, and improvement measures taken (Section IV).
- 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 V).

- Recommendations that the DOT&PF believes could improve implementation of the MOU (Section VI).

I. 6004 Program Changes

Since the end of the 15 month reporting period, regulatory and policy changes affected the implementation of the 6004 Program. The FHWA promulgated regulations that created new CE categories and annulled the categories in 23 CFR 771.117(d)(1), (d)(2) and (d)(3). In addition, the FHWA Alaska Division issued a Clarification Letter on August 28, 2014, providing FHWA's interpretation of certain scopes of work involving roadway realignments and roundabouts that fall within CEs found in 23 CFR 771.117 and can be assigned to the State under the MOU.

The Statewide Environmental Office (SEO), working with FHWA where appropriate, developed or modified internal policies and guidance necessary to implement these changes within the 6004 Program. These include:

- Guidance for reclassifying projects previously assigned under 23 CFR 771.117(d)(1), (d)(2) and (d)(3) under the new FHWA regulations;
- Guidance for coordinating with the FHWA the assignment of previously excluded projects under the new regulations and FHWA guidance;
- Revised internal Programmatic Categorical Exclusion (PCE) Approvals delegating to the Regional Environmental Managers authority to approve certain CEs under the 6004 MOU.

Pending items necessary to implement regulatory changes within the 6004 Program in process are:

- Update the *6004 Program Environmental Procedures Manual*, Chapters 2 (Class of Action and 6004 Assignability Determination), Chapter 3 (Categorical Exclusions) and Chapter 6 (Re-evaluations).
- Establish a process to verify that the conditions in 23 CFR 771.117(e) have been met for actions approved under 23 CFR 771.117(c)(26), (c)(27) or (c)(28).

In addition, work completed for on-going administration of the 6004 Program included:

- Issuing the *6004 Program Environmental Procedures Manual*, Chapter 16 – Water Quality.
- Issuing forms for documenting Section 4(f) *De Minimis* Impact Findings and Programmatic Evaluations.
- Entering into a Programmatic Agreement (PA) with the FHWA and the Alaska State Historic Preservation Officer (SHPO) for implementing Section 106 of the National Historic Preservation Act for Federal Aid Highway Program projects.

In November 2014, the DOT&PF instituted a change in Regional boundaries. The largest change was the expansion of the Southeast Region to include the majority of the coastal communities along the Gulf of Alaska, with the newly expanded region renamed as the Southcoast Region.

The manner in which these changes have improved the efficiency and quality of the 6004 Program are discussed in detail in Section V, as well as throughout this report.

II. Statistical Summary from Quarterly/Semi-Annual Reports

Stipulation IV(F)(1) of the MOU requires that reports be provided to the FHWA on all CE and Section 4(f) determinations made by the DOT&PF. The DOT&PF fulfilled this stipulation as required by the MOU to date. All reports are available on the DOT&PF website at: <http://www.dot.state.ak.us/stwddes/desenviron/resources/6004.shtml>

This section provides a statistical summary of the information previously provided to FHWA under Stipulation IV(F)(1), and includes data for the entire 30-month reporting period (September 20, 2012 – March 31, 2015) unless otherwise noted. During this time, DOT&PF has assumed responsibility for and approved 564 CE determinations and re-evaluations of CEs under the MOU. The number of approvals per quarter is shown in Figure 1.

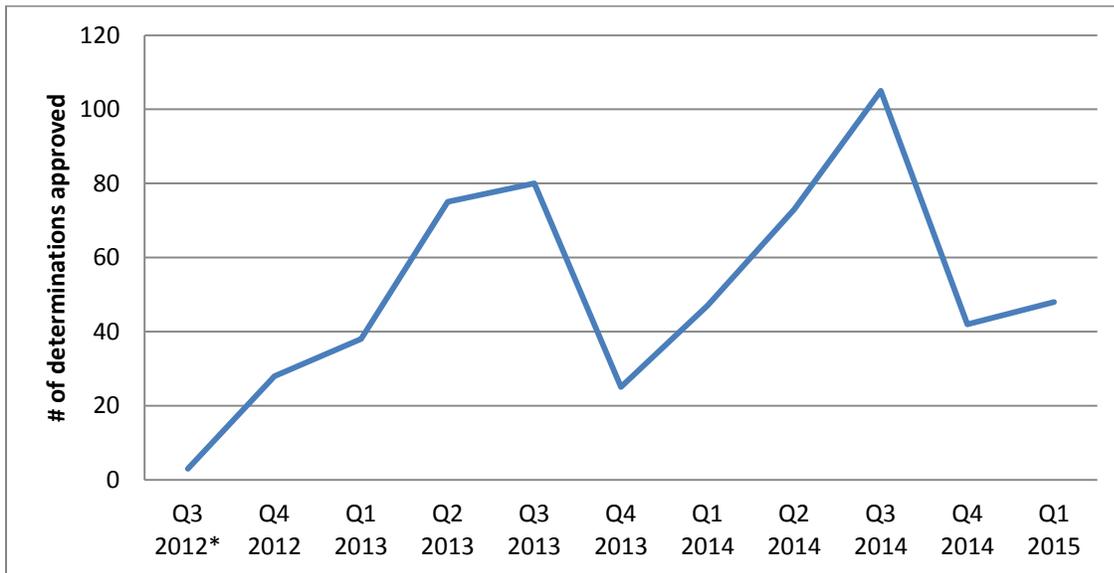


Figure 1. Number of determinations (CEs and re-evaluations) approved, by quarter, under the MOU during this 30-month reporting period (9/20/2012 – 3/31/2015). The number reported for the third quarter of 2012 (Q3 2012) only accounts for those approvals occurring on or after 9/20/2012.

The DOT&PF has three Regional Environmental Offices (Regions) and a Statewide Environmental Office (SEO). During the development of the original MOU, the DOT&PF developed an internal DOT&PF programmatic agreement mirroring previously approved programmatic agreements between the FHWA and the DOT&PF. These programmatic agreement approvals, as described in the *6004 Program Environmental Procedures Manual*, allow the Regional Environmental Manager (REM) to approve certain CE determinations for Regional projects, or the Statewide Environmental Manager for Statewide projects.

The majority (91%, or 524 of 564) of CE determinations and re-evaluations approved by the DOT&PF within this reporting period have met the requirements of this internal programmatic agreement and are referred to as Programmatic Categorical Exclusions (PCEs) (Figure 2).

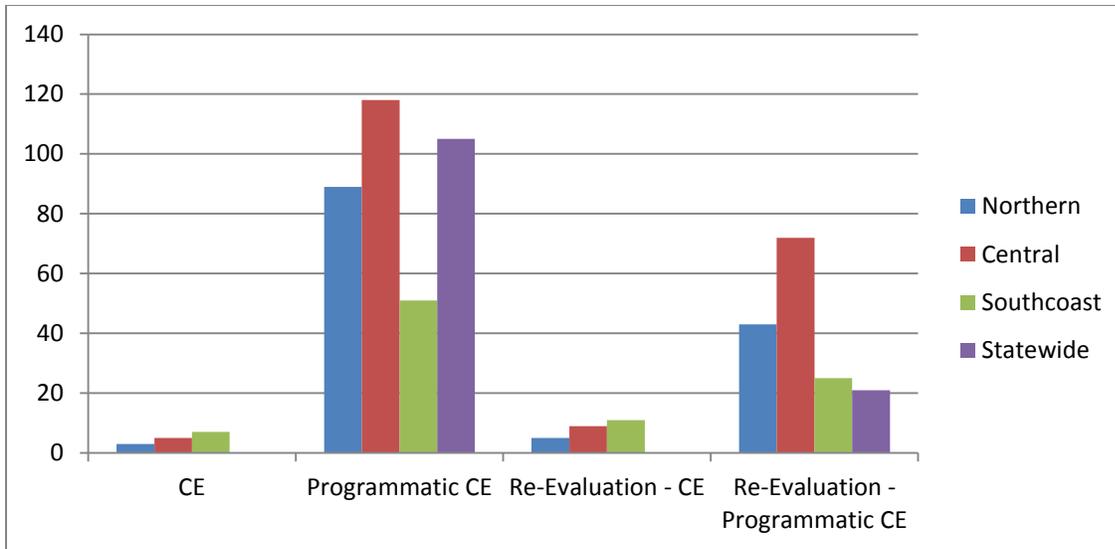


Figure 2. Number and type of determinations produced in each of the three Regions and SEO during this 30-month reporting period (9/20/2012 – 3/31/2015). CEs and re-evaluations of CEs are approved by the NEPA Program Managers in the SEO. Programmatic CEs (or PCEs) and re-evaluations of PCEs are approved by the REMs for Regional projects and the Statewide Environmental Manager for Statewide projects. Data presented here for the Southcoast Region includes the determinations made by the former Southeast Region prior to the Regional boundary changes.

As evidenced in Figure 3, the majority of determinations approved by the DOT&PF under the MOU were classified under 23 CFR 771.117(d)(1), (c)(1), and (c)(8):

- (d)(1) *Modernization of a highway* – (28.7 %)
- (c)(1) *Activities which do not involve or lead directly to construction* – (27.3 %)
- (c)(8) *Installation of fencing, signs, pavement markers* – (14.3 %)

However, it should be noted that FHWA regulations promulgated on November 5, 2014 affected the distribution of CE classifications, as the CE categories (d)(1), (d)(2) and (d)(3) were no longer available and projects that would have been formerly classified in these categories were classified under new CE categories.

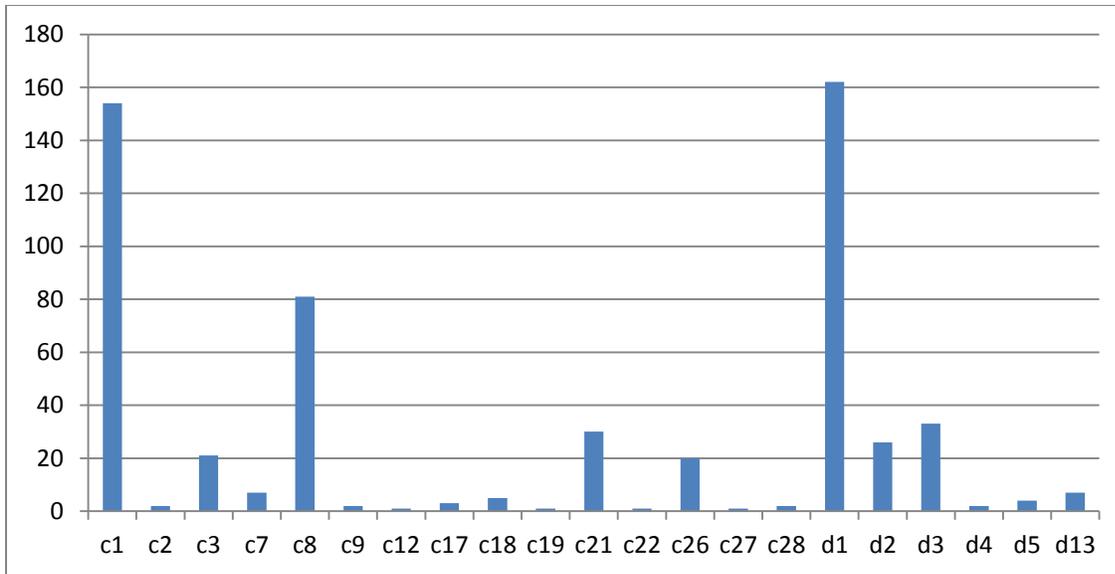


Figure 3. The number of determinations (CEs and re-evaluations) by category in 23 CFR 771.117 approved under the MOU during this 30-month reporting period (9/20-2012 – 3/31/2015). The c-listed activities are (c)(1) – (c)(30) and d-listed activities are (d)(1) – (d)(13). If the category is not shown, no CE or re-evaluations were approved in that category. Categories (c)(22) and (c)(23) were available starting February 15, 2014, but no CEs were approved under these categories. Categories (c)(24) – (c)(30) and (d)(13) were available starting November 5, 2014; and (d)(1) – (d)(3) were reserved and no longer available after November 5, 2014. Due to this regulatory change, the CE approvals shown for projects classified under (d)(1) – (d)(3) were approved prior to November 5, 2014, and CE approvals for projects classified under (c)(24) – (c)(30) were approved after November 5, 2014.

DOT&PF has the additional responsibility to determine the potential Section 4(f) impacts of those projects delegated under the MOU. As required in Stipulation IV(F)(1), DOT&PF provides a list of projects where a Section 4(f) approval was required and the type of approval used (*de minimis* impact finding, programmatic approval or individual evaluation) in each semiannual report to FHWA. Per Stipulation III(D)(2), any project requiring an individual Section 4(f) evaluation is excluded from assignment to the State. No individual Section 4(f) determinations were identified during the 30 month reporting period.

Since the 2012 renewal of the MOU, there were three projects where DOT&PF made Section 4(f) *de minimis* impact findings. No programmatic Section 4(f) determinations were made. Less than one percent of the projects approved under the MOU during this 30 month reporting period required Section 4(f) determinations.

III. 6004 Program Processing Times

The SEO tracks data in a 6004 Reporting Database to calculate the timeframes to complete the various steps in the 6004 Program approval process.

Time Required for Approving Class of Actions

The time required for the SEO's approval of a Class of Action (COA) is determined by the time elapsed between the date the SEO received the *Categorical Exclusion (CE) Class of Action Consultation Form* and the date that SEO approved the COA. On average, SEO approved COAs within two calendar days. However, COA approvals for c-listed activities average one calendar day, whereas d-listed activities average just over three days. For the new CE categories, COA

approvals average one day. The processing time for COA approvals is further discussed in Section V – *Quality & Timeliness Discussions*.

Time Required for Statewide Environmental Office Approval of CE Determinations

The time required for the SEO's approval of a CE determination is determined by the time elapsed between the date the SEO received the CE determination and the date SEO approved the determination. On average, the SEO approved CE determinations one calendar day after the document was received during this reporting period. The average approval time is not different for c-listed and d-listed activities (about a day). For the new CE categories, CE approvals average three days. The maximum timeframe for any of SEO's approvals was 7 calendar days. These averages include the review and revision process, which occurs between submission of the document and document approval. The processing time for CE approvals is further discussed in Section V – *Quality & Timeliness Discussions*.

IV. Areas for Improvement and the DOT&PF Improvement Measures Taken:

Summary of Quality Control Efforts:

The SEO changed its Quality Control (QC) process since the renewal of the MOU in 2012, and these new procedures are consistent with the requirements of Stipulation IV(E) of the MOU. However, the DOT&PF *CE Assignment MOU Monitoring Plan* required by Stipulation IV(E)(4) needs updating to reflect these recent changes. The 2010 *Monitoring Plan* is available on the DOT&PF website at: <http://www.dot.state.ak.us/stwddes/desenviron/resources/6004.shtml>

To summarize DOT&PF's current QC process, each PCE must be reviewed by someone who was not the preparer as well as the Regional Environmental Manager (REM), who must review the PCE prior approving it. This ensures two reviews occur for each PCE before final approval.

Additionally, the SEO staff reviews the majority of assigned CEs, including PCE determinations approved by the REMs. This is to ensure that the CE was classified correctly and that the *CE Documentation Form* was prepared correctly. Those CE determinations that require SEO staff approval must have errors corrected prior to signature by the NEPA Program Manager.

The SEO discontinued use of the *CE/PCE Quality Control Form* for documenting errors identified during the SEO's Review. This form was replaced by a QA/QC Microsoft Access Database, which is used to compile review comments and classify each comment by risk-level and type of error.

Risk levels are defined as follows:

- **High Risk** – The impact significance cannot be clearly determined from the environmental document provided.
- **Caution** – The document meets the requirements for a PCE, but the document/determination appears weak to the reviewing Statewide NEPA Program Manager, such as not consulting with a resource agency, or not field verifying online information for wetlands or other resources covered in a PCE.
- **Information** – The document contains non-critical typos, organizational, or formatting issues.

Error types include: incomplete information, conflicting statement, insufficient justification, and other.

Effective May 2013, information regarding errors identified during the SEO's review of PCE determinations are provided to the REM through internal Quarterly QA/QC Reports generated using the database. The Quarterly QA/QC Report provides the REM a way to quickly assess trends in the types of errors occurring in PCEs approved by the Regions. Though the QA/QC Reports are generated quarterly, the REMs are immediately notified of any high-risk errors such as an error in CE classification or an error in use of the programmatic agreement. This process allows the SEO to work with the REMs to immediately rectify more serious errors within PCE determinations, while still providing them with a tool to identify and correct reoccurring lower risk errors.

During this 30-month reporting period, the SEO reviewed 99 percent of determinations approved under the MOU, resulting in a total of 570 reviews. The total number of reviews differs from the total number of determinations approved as some determinations were reviewed multiple times while others may not have been reviewed.

The majority (73.5 %) of SEO's reviews did not identify errors or concerns. Only 26.5 percent (151 of 570) of the reviews identified errors or other concerns in the documentation. These reviews resulted in a total of 319 comments of varying risk level and error types (Table 1). Keep in mind that each review can result in multiple comments, and multiple comments may reference the same error throughout a document.

Information and Caution comments encompass 93 percent of the total comments; High Risk comments are 7 percent of the total. The 22 High Risk comments were generated by 15 separate projects. The majority of High Risk comments are due to "incomplete information" error types (see Table 1). High Risk comments tend to involve Section 106 (23%) and Section 4(f)/6(f) (18%).

The SEO has documentation that 18 of the High Risk errors have been resolved; this includes those that occurred on determinations approved by the SEO and in the Regions. The SEO and REM are in the process of resolving the remaining four High Risk items.

In resolving High Risk items, the NEPA Program Managers worked with the REMs to identify and implement appropriate corrective action. Where the High Risk errors involved the Section 106 process, the Statewide Cultural Resource Manager and the Region's Professionally Qualified Individual (PQI) were included in the resolution process, as needed. Since High Risk errors are concentrated in Section 106 and Section 4(f) processes, the DOT&PF is seeking opportunities to provide additional training and guidance in these areas.

Table 1. The number of comments during this 30-month reporting period (9/20/2012 – 3/31/2015) by risk level and error type

Risk Level/Error Type	Number of Comments
High Risk	22
Conflicting Statement	2
Incomplete Information	18
Other	2
Caution	143
Conflicting Statement	27
Incomplete Information	70
Insufficient Justification	6
Other	40
Information	154
Conflicting Statement	49
Incomplete Information	41
Insufficient Justification	7
Other	57
Grand Total	319

In addition to the QA/QC of individual project documents, the SEO staff also conducted an internal process review of projects assigned under the MOU. This audit was performed to fulfill the State’s requirements per *MOU Stipulation IV.E.2 (State quality control)* requiring the State to “monitor its process relating to project determination, environmental analysis, and project file documentation.”

This process review focused on projects from each of the three Regions and Statewide that had multiple classes of action or multiple CEs or re-evaluations processed between January 1, 2012 and November 30, 2013. This process review was intended to ensure that when conducting a class of action determination or re-evaluating projects:

1. The projects were classified correctly under 23 CFR 771, properly assigned under the MOU, and the classification was included on the correct environmental forms;
2. The scope and project activity descriptions were consistent between the Class of Action, the CE, and associated documents [e.g. scoping, Section 106, and Section 4(f)]; and,
3. The appropriate re-evaluation process and environmental documentation forms were used.

In addition, for each of these projects, the Section 106 and Section 4(f) documentation was reviewed to ensure:

1. The Section 106 information attached to the CE is appropriate for public viewing, and
2. The Regions are following Section 4(f) consultation procedures and that the SEO’s determinations are appropriate.

This audit involved a total of 24 projects across the three Regions and Statewide. Eight projects were identified as being at risk for environmental documentation process non-compliance per the 6004 Program Environmental Procedures Manual, federal regulations and the MOU. The audit findings closely reflect the same problems identified during our QA/QC process, therefore these

items are being addressed with the REMs as part of that process as previously discussed. The Statewide Environmental Manager transmitted the findings of the internal audit to the REMs in September 2014.

The DOT&PF has entered into a PA with the FHWA and the SHPO for implementing Section 106 of the National Historic Preservation Act for Federal Aid Highway Program. As required under this Agreement, the SEO provided training on the implementation of the Section 106 PA and hosted the National Highway Institute (NHI) Beyond Compliance: Historic Preservation in Transportation Project Development training (see Table 2). In addition, the SEO issued the “Cultural Resources Confidentiality Guidelines” to ensure protection of sensitive information regarding cultural resources. This guidance can be found on the Statewide Environmental Office Historic Properties website at <http://dot.alaska.gov/stwddes/desenviron/resources/historicproperties.shtml>.

DOT&PF developed a *6004 Program Environmental Procedures Manual* chapter to provide guidance on the Section 4(f) process and provided training to the Regions regarding the updated procedures. The chapter was issued with training in September 2013. DOT&PF also hosted the NHI Section 4(f) training in each of the Regions in April 2014 (see Table 2). The SEO also created a Section 4(f) Process Quick Reference Chart to help Environmental Staff walk through the Section 4(f) consultation process. The quick reference chart is located on the DOT&PF environmental training website and was provided as part of the webinar training.

Summary of Training Efforts:

In the reporting period, the SEO produced six chapters of the Alaska *6004 Program Environmental Procedures Manual* and delivered multiple on-line training sessions on each of these chapters.

The SEO continued to hold monthly teleconferences with the Regional REMs and their staff to discuss policies, procedures, and regulation changes. In addition, SEO staff continued to attend Design Status Meetings in order to provide regional staff time to discuss project specific or overall process questions and concerns in-person.

The SEO hosted three Statewide Environmental Conferences: December 2012 in Fairbanks, February 2014 in Anchorage, and March 2015 in Juneau. Statewide Environmental Conferences are conferences attended by staff from all Regions, the SEO, FHWA Alaska Division, and invited state and federal resource agencies. Agenda items include training, procedure and regulation updates, and 6004 Program implementation updates.

The SEO finalized the DOT&PF *Environmental Training Program Plan* in October 2014, which details the training opportunities the SEO intends to provide to environmental staff. The SEO provided FHWA Alaska Division Office a draft of the plan on October 22, 2013, and the final plan on October 2, 2014. The final *Environmental Training Program Plan*, as well as a selection of training slides, presentations, and handouts, is posted on the DOT&PF environmental training website at <http://www.dot.state.ak.us/stwddes/desenviron/resources/training.shtml>.

Table 2. Training offered to DOT&PF Environmental staff during the 30-month period.

Date	Training
12/5-6/2012	DOT&PF Statewide Environmental Summit - Fairbanks
3/28/2013	Chapters 2 (Class of Action) and 3 (CEs) - 6004 Program Environmental Procedures Manual
4/4/2013	Chapter 6 (Re-evaluations) – 6004 Program Environmental Procedures Manual
4/22/2013 (Juneau)	
4/24/2013 (Fairbanks)	FHWA – Improving the Quality of Environmental Documents
4/25/2013 (Anchorage)	
6/4/2013	TRB Webinar – Expedited Planning and Environmental Review Process
6/24-27/2013	International Conference on Ecology and Transportation
7/15/2013 (Juneau)	
7/17/2013 (Fairbanks)	FHWA Places of Traditional Religious and Cultural Importance Workshop
7/18/2013 (Anchorage)	
9/23-25/2013	CBJ WESPAK Wetland Function and Values Workshop - Juneau
9/26/2013	Chapter 9 (Section 4(f)/6(f)) – 6004 Program Environmental Procedures Manual
2/11-12/2014	DOT&PF Statewide Environmental Summit - Anchorage
4/22-23/2014 (Juneau)	
4/24-25/2014 (Anchorage)	NHI – Applying Section 4(f): Putting Policy into Practice
4/29-30/2014 (Fairbanks)	
4/29-5/1/2014 (Anchorage)	NHI – NEPA and the Transportation Decision-Making Process
5/12-15/2014 (Juneau)	Wetlands Delineation Training
10/21/2014 (Anchorage)	Section 106 PA Implementation Training
11/4-6/2014 (Anchorage)	NHI – Highway Traffic Noise
11/19-20/2014 (Anchorage)	NHI – Fundamentals of Environmental Justice
2/24-26/2015 (JNU/ANC/FBKS)	NHI – Beyond Compliance: Historic Preservation in Transportation Project Development
3/11-12/2015	DOT&PF Statewide Environmental Summit - Juneau

V. Quality & Timeliness Discussions

As part of the *FHWA Monitoring Review of SAFETEA-LU Section 6004 Categorical Exclusion Assignments* document¹, six quality measures and one timeliness measure are qualitatively evaluated to assess the efficiency and productivity of the 6004 Program. 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.

¹ <http://www.fhwa.dot.gov/hep/guidance/superseded/6004stateassumpt.cfm>

For the qualitative evaluation of these measures, the DOT&PF relies on data from the 6004 Reporting and QA/QC Databases, program reviews, and the issues that have become apparent since the renewed MOU was signed.

Discussion:

The Quality and Timeliness Measures have been met by the following 6004 Program accomplishments:

Resolution of All Findings from the FHWA CE Assignment Compliance Reviews

Stipulation IV(F)(5) of the renewed MOU requires the FHWA to conduct a CE Assignment Compliance Review at least every 18 months to verify DOT&PF's compliance with the Section 6004 MOU, evaluate the State's performance in carrying out the procedures established for CE assignment, and to evaluate the effectiveness of those procedures in achieving compliance. FHWA's CE Assignment Compliance Review under the renewed MOU occurred in January 2015. The SEO was able to review and comment on FHWA's draft report following the compliance review that detailed FHWA's findings, observations, and recommendations to improve the efficiency and effectiveness of the program. The final FHWA program review report has not been issued to DOT&PF.

The scope of the FHWA program review focused on the DOT&PF's use of the Project Information Document (PID) to fulfill the requirement found in Stipulation II.B.3.c of the MOU, requiring "as part of any request for FHWA authorization for funding and any other action, the State will provide to the FHWA evidence that the CE processing and any other environmental responsibilities assigned under this agreement have been completed in accordance with this MOU" (2015 FHWA Draft Report, p. 6).

According to the draft report, the FHWA Review Team concluded the DOT&PF is substantially in compliance with the MOU. The FHWA program review identified only one finding, which is defined as "a statement pertaining to the compliance with a regulation, statute, FHWA guidance, policy or procedures, DOT&PF procedures, or the 326 MOU" (2015 FHWA Draft Report, p. 11). When the FHWA's final program report is received, DOT&PF will develop a *Corrective Action Plan* to address the finding identified during the compliance review.

DOT&PF is confident that we can resolve this finding, given our successful record of resolving findings identified in FHWA compliance reviews. As shown in Table 3, DOT&PF has resolved all of FHWA's findings from the previous three program reviews conducted under the original MOU. This accomplishment demonstrates DOT&PF is administering a quality program which complies with the requirements of NEPA, 23 CFR 771.117, and the MOU. All of FHWA's compliance review reports and the DOT&PF Corrective Action Plans can be found on DOT&PF's website.

Table 3. The number of new and open findings identified during each FHWA Compliance Review.

FHWA Final Report Year	New Findings	Open Findings from Previous Reviews
2010	38	--
2011	8	6
2013	0	3
2015 (draft)	1	0

Implementation of the 6004 Program Environmental Procedures Manual and Associated Forms

SEO implemented a separate *6004 Program Environmental Procedures Manual* that is being developed concurrently with a Procedures Manual for non-assigned projects. To date, six chapters of the *6004 Program Environmental Procedures Manual* have been approved (see Table 4).

Table 4. Chapters issued for the *6004 Program Environmental Procedures Manual*

Chapter	Date Issued
Chapt. 1 – Environmental Procedures Overview	December 2012
Chapt. 2 – Class of Action and 6004 Assignability	December 2012
Chapt. 3 – Categorical Exclusions	December 2012
Chapt. 6 – Reevaluations	March 2013
Chapt. 9 – Section 4(f) and 6(f)	September 2013
Chapt. 16 – Water Quality	February 2015

In addition to implementing a *6004 Program Environmental Procedures Manual*, the SEO issued revised and new forms associated with the 6004 Program procedures. The *Class of Action Consultation Form*, the *Categorical Exclusion Documentation Form*, and the *Environmental Re-evaluation Form* were revised to reduce documentation errors and ensure that sufficient analysis has been completed.

The SEO adopted two new forms for documenting CEs and Re-evaluations: an Expedited CE form and an Expedited Re-evaluation Form. These forms allow certain projects to be approved through an expedited process when certain conditions are met, as described in the *6004 Program Environmental Procedures Manual*. These procedures and forms were developed to improve DOT&PF’s method of documenting these decisions. This expedited process and associated forms have subsequently been adopted by the FHWA Alaska Division for processing non-assigned projects.

The *Class of Action Consultation Form*, the *Categorical Exclusion Documentation Form*, the *Environmental Re-evaluation Form*, and the expedited forms are available on the DOT&PF Document Preparation webpage at:

<http://dot.alaska.gov/stwddes/desenviron/resources/docprep.shtml>

The SEO also adopted forms for Section 4(f) *De Minimis* Impact Findings and Programmatic Evaluations. The purpose of these forms is to standardize documentation and ensure compliance with the Section 4(f) regulations. These forms are available on the DOT&PF Section 4(f)/6(f) Resources webpage at: <http://www.dot.state.ak.us/stwddes/desenviron/resources/section4f.shtml>

Class of Action Processing Times and Appropriateness of Approvals

The processing time for the Class of Action is determined by the time elapsed between the date the SEO received the *Categorical Exclusion Class of Action Consultation Form* and the date that SEO approved the COA. The overall average time for the SEO to approve the *Class of Action Consultation Form* was two calendar days under the renewed MOU, which is an improvement from the overall time it for the SEO to approve the *Class of Action Consultation Form* under the original MOU. In addition, there is now no appreciable difference in the time it takes to process activities on the c and d list, as there once was (Table 5)

Table 5. A comparison of the average processing time for Class of Action (COA) approvals under the original and renewed MOU. This is broken into the overall average processing time for all COA approvals; the processing time for COAs for c-list and d-list actions, which include the new CEs on each list; and the processing time for new CEs (includes c22-c30 and d13 only).

Average Time for Approval (calendar days)	ORIGINAL MOU	RENEWED MOU
	9/22/2009 – 9/19/2012	9/20/2012 – 3/31/2015
Overall	7.7	2.0
C-list Actions	2.9	1.2
D-list Actions	13.2	3.4
New CEs		1.1

During the latter half of this reporting period, FHWA promulgated new regulations that created several new CE categories and annulled the use of categories in 23 CFR 771.117(d)(1-3). In addition to this regulatory change, the FHWA Alaska Division issued a clarification letter on August 28, 2014 which outlined certain scopes of realignments and roundabouts can be assigned to the State under the MOU. These changes created challenges including interpretation of the new CE categories, reassessment of projects previously categorized under 23 CFR 771.117(d)(1-3), and reassessment of previously excluded projects under the new regulations and guidance for potential assignment.

In order to ensure efficient COA processing and appropriateness of COA approvals, the SEO issued guidance and procedures to address these challenges, and worked with FHWA Alaska Division where needed to develop such guidance. The SEO specifically consulted with the FHWA Alaska Division to obtain clarification on interpretation of the new CE categories, and how the new designated CEs would impact projects; reclassifying projects formerly classified as (d)(1), (d)(2) and (d)(3); and conditions set forth in 23 CFR 771.117(e) and to determine a reassessment process for projects previously excluded from CE assumption. Also, the FHWA recognized SEO’s efforts to collaborate with the Division Office as a successful practice in administering the 6004 Program (2015 FHWA Draft Report, p. 15)

The SEO also worked closely with the REMs prior to the submission of the *Class of Action Consultation Form* to ensure that enough information was provided to make appropriate determinations under the new CE categories. The Statewide Environmental Program Manager also directed NEPA Program Managers to collaborate on COA and Assignability determinations

on projects being categorized under the new CEs and FHWA clarification letter to ensure appropriateness of COA approvals.

In November 2014, SEO issued guidance for reclassifying assigned projects formerly categorized under 23 CFR 771.117(d)(1-3). The SEO developed this guidance after informal discussions with the FHWA Alaska Division to ensure consistency for assigned and non-assigned projects. Projects that did not have an approved CE by the effective date of the regulatory change were required to be re-classified. To facilitate reclassifying assigned projects, the SEO provided the REMs with a list of the projects for which reclassification was required.

In December 2014, the SEO issued guidance for reassessing previously excluded projects for assignment under the new regulations and guidance. This guidance allowed for previously excluded projects that did not have an approved CE by the effective date of the regulatory change to be reassessed for assignability. Any previously excluded project with an approved CE could not be reassessed until FHWA determined a new CE is needed. The SEO notified FHWA of any determination that a previously excluded project is assignable under the new regulations and guidance.

Even with these changes, the processing time for COA approvals did not appear greatly affected. The average processing time of COA approvals under the new CE categories was close to the processing time for c-list actions (Table 6). However, this metric does not account for the consultation discussions that may have occurred between the REMs and the NEPA Managers prior to the submission of the *Class of Action Consultation Form* for approval. For these new categories, the fact that the COA could be approved quickly upon receipt of the *Class of Action Consultation Form* may demonstrate the effectiveness of the consultations that took place prior to COA submission.

In addition, based on information in the QA/QC Database and from the internal audit, there have not been any identified errors in the classification of CEs. As such, the DOT&PF believes it continues to successfully make appropriate and timely decisions on Class of Actions.

Improved Project Tracking and Reporting

The SEO discontinued use of the Section 6004 monitoring tracking spreadsheet and replaced it with the 6004 Reporting Microsoft Access Database. The database allows the SEO to easily generate and analyze program data and produce reports to satisfy Stipulation IV(F)(1) of the MOU. Under the previous MOU, SEO reported to FHWA on a quarterly basis, which changed to semi-annual reporting under the renewed MOU. When reporting quarterly, the SEO averaged 3 to 4 hours of effort per report. Though the reports under Stipulation IV(F)(1) now cover a longer reporting period, the level of effort in producing the reports has not drastically changed. The FHWA recognized SEO's new tracking system as a best practice in administering the 6004 Program (2015 FHWA Draft Report, p. 15).

Success of QA/QC Procedures and Minimal High Risk Errors

DOT&PF met the quality control requirements listed in Stipulation (IV)(E) of the MOU during this 30-month reporting period. For example, the QA/QC Database drastically improved the ease and time in which it takes to generate internal QA/QC Reports and analyze QA/QC data for reporting to FHWA. Summarizing QC process findings in reports to FHWA took the SEO staff three weeks under former procedures, since individual *CE/PCE Quality Control Forms* had to be manually compiled into a single spreadsheet and comments categorized by the type of error in order to summarize the types of errors being identified during the SEO's review. With the QA/QC Database, review comments for all projects are compiled in a single location, and are categorized by risk and error type as they are entered. The database can be used to instantly generate a report from this data.

According to the Quality Control data, the SEO reviewed 99 percent of all determinations approved during this 30-month reporting period. SEO conducted 570 QA/QC reviews, as some of the determinations were reviewed more than once. Only 26.5 percent (151 of 570) of SEO's reviews reported errors with the documentation, which is an improvement from the 28.8 percent reported in the 15 and 30 month reports submitted under the prior MOU.

Only 3 percent of all reviews (15 of 570) conducted this reporting period identified high risk errors. The SEO has documentation that 18 of the 22 High Risk errors were resolved, and the remaining High Risk error is in the process of being resolved. As such, the DOT&PF believes the established QC procedure is successful in identifying and resolving any High Risk concerns and has improved the quality of the documentation to ensure that CE determinations have been made appropriately; based on legal, factual information at the time of approval; and in compliance with NEPA and other state and federal regulations.

The FHWA recognized SEO's new QA/QC procedures as a successful practice in implementing the 6004 Program (2015 FHWA Draft Report, p. 15).

DOT&PF Environmental Staff

DOT&PF met the staffing requirements listed in Stipulation (IV)(D) of the MOU during this 30 month reporting period. However, the SEO has undergone some staff changes. A NEPA Program Manager was promoted to the Statewide Environmental Manager position, responsible for administering the CE delegation program under the MOU. As a result, a NEPA Program Manager position was vacant for a time, but was filled on March 3, 2014. Having full staffing of the three NEPA Program Manager positions is essential since each NEPA Program Manager is dedicated to working with a specific Region for projects that are assigned under the MOU. The SEO staff reporting to the Statewide Environmental Manager now consists of two Environmental Resource Specialists (storm water and historical resources), two Environmental Program Managers (storm water and historical resources), and three NEPA Program Managers. In regards to Regional staff, one of the three Regional Environmental Managers (REMs) was newly promoted during the first half of this reporting period. Since then, the individuals serving in these positions have been constant. The SEO provided mentoring and training to the newest REM during the transition.

Perceived Time Savings for Processing Assigned CEs

The DOT&PF continues to be satisfied with the perceived time savings experienced as a result of the CE delegation. The SEO approves about 9 percent of all assigned CEs. The other 91 percent are approved in the Regions under the Programmatic Categorical Exclusion approvals, which delegate the REMs authority to approve certain CEs under the 6004 MOU. The SEO does not track the processing time for CEs approved in the Regions, only those approved in the Statewide Environmental office.

The processing time for the CE is determined by the time elapsed between the date the SEO received the *Categorical Exclusion (CE) Documentation Form* and the date that SEO approved the CE. Under the renewed MOU, all CE determinations being approved by the SEO are approved the same or next day the document is received. This is an improvement from the average approval time under the prior MOU. In addition, approval time is no longer appreciably different for c-listed and d-listed activities (Table 6). This demonstrates that the SEO and the Regions have improved the efficiency in processing CE determinations that do not meet internal programmatic agreements.

Table 6. A comparison of the average processing time for non-programmatic CE approvals under the original and renewed MOU. This is broken into the overall average processing time for all non-programmatic CE approvals; the processing time for non-programmatic for c-list and d-list actions, which include the new CEs on each list; and the processing time for new CEs (includes c22-c30 and d13 only).

Average Time for Approval (calendar days)	ORIGINAL MOU	RENEWED MOU
	9/22/2009 – 9/19/2012	9/20/2012 – 3/31/2015
Overall	8.6	1.0
C-list Actions	6.6	1.2
D-list Actions	10.5	0.9
New CEs		3.0

While the SEO does not track the Region’s processing time for CE approvals, the Regions conceivably gain additional time savings when approving assigned CEs under the internal Programmatic Categorical Exclusion Approvals. However, this process was affected during the latter half of this reporting period when FHWA’s new regulations created new CE categories.

The SEO issued guidance that clarified that REMs may approve CEs for projects classified under the new CE categories using only Programmatic Approval 2, outlined in the October 2012 Chief Engineer’s Directive. The REMs could not use Programmatic Approval 1 as it applied only to specified c-listed categories, which did not include the new categories in 23 CFR 771.117(c).

While this did not provide for expedited processing of any projects classified under the new CE categories, clarifying that Approval 2 would be appropriate to use if the conditions were met did maintain some of the perceived time savings in the Region. Those CEs for projects classified under the new CE that were processed by the NEPA Managers had a longer than usual processing time (Table 6).

Processing was improved when the Chief Engineer issued the revised Programmatic Categorical Exclusion Approvals on March 4, 2015. The revised Programmatic Categorical Exclusion approvals better accommodate the new CE categories by utilizing impacts-based criteria for the approvals and allowing all c-listed categories, under certain conditions, to be approved under Programmatic Approval 1 and the expedited procedures as described in the *6004 Program Environmental Procedures Manual*. The revised Programmatic Categorical Exclusion approvals are available on the DOT&PF webpage at: http://www.dot.state.ak.us/stwddes/dcspubs/assets/pdf/directives/attach/2015/030415_catx_attach.pdf

Perceived Time Savings for the FHWA Alaska Division Environmental Staff

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. The MOU allows the DOT&PF to approve CEs for the majority of projects that fall under 23 CFR 771.117 (c) or (d) without FHWA review and approval. Since the beginning of the program, about 85 percent of COA Forms that passed through our office were for assigned projects and about 15 percent were for non-assigned projects (Figure 4).

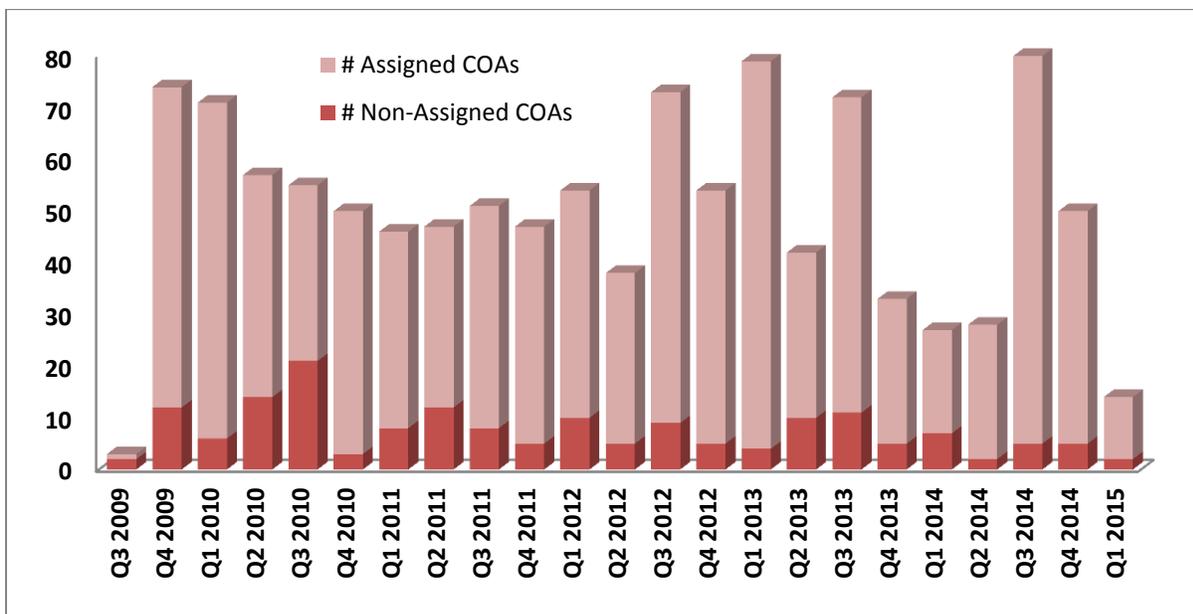


Figure 4. The number of project Class of Action (COAs) consultations determined to encompass assigned and non-assigned actions under the 6004 Program since the original MOU became effective on Sept. 22, 2009 by quarter.

Under new regulations and guidance issued in 2014, many previously excluded actions could now potentially be assigned to the state under the 6004 Program. For example, ferry vessel and terminal projects, realignments, and roundabouts account for 59 percent of projects that were previously excluded but could now potentially be assigned (Figure 5). In addition, those 6 percent of projects that were not specifically listed on the c or d-list prior to the regulation change may now fit under 23 CFR 771.117(c)(22) or (c)(23). This estimate is based on the number of previously excluded projects that would now be assignable under the new regulations and FHWA guidance. The number of projects assigned under the 6004 Program is estimated to increase by at least 9 percent in the future due to the new regulations and guidance. It is

conceivable that there will be a correlated decrease in the FHWA Alaska Division Office’s CE determination workload under the new regulations and guidance.

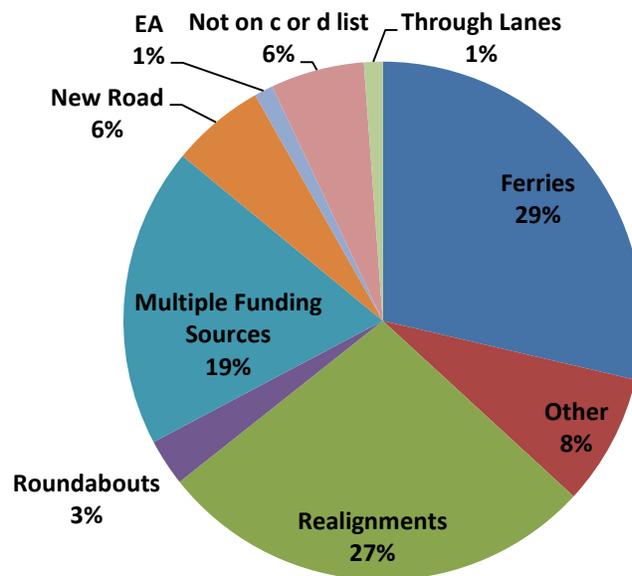


Figure 5. The frequency of non-assigned activities since the original MOU became effective on Sept. 22, 2009.

By continuing to administer the 6004 Program, the DOT&PF recognizes that we allow the FHWA Alaska Division Office to devote more time and resources to larger more complex issues, such as Environmental Assessments (EAs), Environmental Impact Statements (EISs), and program matters. For example, the DOT&PF and FHWA mutually benefitted from FHWA staff’s ability to work on the Section 106 Programmatic Agreement for the Federal-Aid Highway Program, which became effective in October 2014.

VI. Recommendations

At this time, the DOT&PF intends to continue administering the CE delegation through renewal of the MOU, which is required in September 2015. After discussions with FHWA staff, the DOT&PF intends to propose the following changes in the MOU:

- State assumption of formal consultation under Section 7 of the Endangered Species Act
- State assumption of projects with multiple sources of federal funding

DOT&PF also recognizes that the mandated regulatory changes under the Moving Ahead for Progress in the 21st Century Act (MAP – 21) will continue to greatly impact the 6004 Program’s administration due to the expansion of activities listed in paragraphs 23 CFR 771 (c) and (d), which is anticipated to correspond with an increase in the number and types of projects that can be approved under the MOU. The SEO looks forward to working with the FHWA Alaska Division Office in determining the best way to adapt our policies and procedures to accommodate these changes.