

Memorandum of Understanding

Delaware Department of Transportation (DelDOT), Wilmington Area Planning Council (WILMAPCO), Dover/Kent County MPO, Salisbury/Wicomico MPO, FHWA and FTA
Revision Procedures for Federally Participating Projects for the
Statewide Transportation Improvement Program (STIP)
and the Transportation Improvement Programs (TIP)

I. Purpose

As permitted by 23 CFR 450.216(n) and in accordance with Title 23, this agreement establishes procedures for processing Administrative Modifications and Amendments to the Statewide Transportation Improvement Program (STIP), and Metropolitan Planning Organization's Transportation Improvement Programs (TIPs).

II. Definitions

- **Capital Transportation Program (CTP)** – DelDOT's 6-year statewide intermodal program of transportation projects.
- **Natural Disaster or Catastrophic Failure** –
 - Natural disaster – A sudden and unusual occurrence, including but not limited to intense rainfall, floods, hurricanes, tornadoes, tidal waves, landslides, volcanoes, or earthquake which cause serious damage.
 - Catastrophic Failure – The sudden failure of a major element or segment of the transportation system due to an external cause.
- **National Environmental Policy Act (NEPA)** – Established a national environmental policy requiring that any project using federal funding or requiring federal approval, including transportation projects, examine the effects of proposed and alternative choices on the environment before a federal decision is made. The NEPA processing/classification options are: Categorical Exclusion, Environmental Assessment, and Environment Impact Statement.
- **Obligation Plan** - A four-year listing of federally funded projects summarized from the first four years of the CTP showing the State project number, FHWA/FTA program code and name, project title, and FHWA/FTA funds to be obligated and the planned spend in each of the four years.
- **Obligation Status Report** - A monthly report, prepared by DelDOT, showing the cumulative changes made to Year 1 of the Obligation Plan to maintain a financially constrained STIP.

- **Special Circumstance Provision** – A provision that allows STIP/TIP revisions which meet one or more of the following criteria to be processed as administrative modifications:
 1. Revisions necessitated by FHWA funds allocated during the fiscal year. Allocations are highway program fund categories that do not have a legislatively mandated distribution formula or funds subject to special limitations. Distributions of funds may be made at any time during the fiscal year. See current version of FHWA Financing Federal-aid Highways Publication for more information.
 2. Revisions necessitated by funding received as a result of the FHWA August Redistribution late in the fiscal year.
 3. Revisions necessitated by funding awarded to Delaware from other Federal agencies, such as Federal Lands, U.S. Army Corps of Engineers, etc., that was received with little advanced notification and that must be obligated in the current federal fiscal year.
 4. Revisions necessitated by release of federal funding during the fiscal year which will lapse if not obligated in that fiscal year. Funds recorded as '*will expire or lapse*' by fiscal year on FHWA's W10A - Status of Funds Report. For example, DelDOT reviews inactive projects on a regular basis, and unexpended funds that were distributed in past years that are de-obligated may fall into the expired or lapse category. DelDOT will reprogram these funds for eligible work on eligible projects. These actions would not have been identified in the STIP/TIP.
- **State Declared Emergency** – An emergency action/project declared by the Governor or DelDOT Secretary.
- **Statewide Transportation Improvement Program (STIP)** - A federally required, staged, multi-year, statewide intermodal program of transportation projects which is consistent with the statewide long-range plan, metropolitan transportation plans, TIPs, and Metropolitan Planning Organizations (MPO) processes. The STIP is the first four years of DelDOT's CTP.
- **Transportation Improvement Program (TIP)** - A four year, prioritized listing/program of transportation projects developed and formally adopted by a MPO, and is consistent with the metropolitan transportation plan.

III. Administrative Modifications

- a. Administrative modifications are revisions that do not require public review and comments, re-demonstration of fiscal constraint, or a conformity determination as long as projects are not identified as 'regionally significant'. These do not require federal approval, provided expedited project selection procedures have been adopted in accordance with 23 CFR 450.330 and the required interagency consultation or coordination is accomplished and documented.
- b. **Examples:** Administrative modifications include the following:
 - i. Minor revision to a project description and scope (e.g., adding a paving location, extending a turn lane, extending sidewalk, adding a guardrail or striping location not included in original project scope). However, any revision also needs to meet the dollar amounts shown in Section V;

- ii. Minor change to the source of funds (federal, state, local, private);
- iii. Change in the project lead agency;
- iv. Changing of a project or project phase from non-participating to participating, provided all Federal-aid requirements are met;
- v. Advancement of a project phase from year two, three, or four of the STIP/TIP as long as the project's completion year trigger the need for a new conformity analysis;
- vi. Revisions as defined in 'Special Circumstance' definition in the previous section;
- vii. Addition of projects due to a State Declared Emergency;
- viii. Funding changes in the project or project phase meeting the criteria in Section V, Tables 1 and 2. The total project cost (and not the phase total) is the basis for determining if the cost change (increase) requires an administrative modification vs. amendment.

NOTE: There are different criteria for FHWA versus FTA projects;

- ix. Projects/Programs that require federally approved annual work plans including: Statewide Planning & Research (SPR); MPO's Unified Planning Work Programs (UPWP); Disadvantaged Business Enterprise (DBE) Program; On-the-Job Training (OJT) Program; Summer Transportation Institute Program; Recreational Trails; and DelDOT's Education and Training Program.
- c. **Grouped Projects** - Administrative modifications are **not required** for Grouped Projects **unless** a Statewide Program's (see list in section III-c-ii below) current year annual funding shown in the STIP/TIP has been fully utilized and additional funds are being advanced from year two, three, or four of the STIP;

i. Basic Requirements:

- Projects not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area (per 23 CFR 450.216(j));
- For air quality non-attainment/maintenance areas, only those projects that are exempt from the Environmental Protection Agency's transportation conformity requirements(40 CFR part 93) may be grouped;
- Projects eligible for NEPA's Categorical Exclusion (CE) classification. If a project cannot qualify for a CE or be considered exempt from air quality conformity, per the Environmental Protection Agency's transportation conformity regulation (40 CFR part 93), then it must be individually listed;
- DelDOT will produce an annual report to summarize grouped project changes. See Section VI-a-iii for more information.

ii. Eligible Group Categories (to be included under CTP's Statewide Programs):

NOTE: 1) New activities within a grouped program can be added as part of a program agreement (e.g., Bridge Program Agreement) – separate from this MOU; and 2) New groups can be added with agreement from all parties of this MOU.

- Bridge Preservation/Management (Construction & Maintenance Program) - Group would include bridge projects such as: inspection, painting, bridge or drainage structure rehabilitation, reconstruction or replacement when said work is on or adjacent to the same alignment, seal/replace/reconstruction of joints, deck overlays, painting, cathodic protection, debris removal, retrofit of fracture critical members and fatigue prone details, some concrete repairs, and minor rehabilitation as well.

- Federal Lands Highway (Construction Program) – Group would include projects funded and/or administered by the Federal Lands Highway Division.
- Paving and Rehabilitation (Construction & Maintenance Program) – Includes the following examples of eligible work: Any corrective, restorative, resurfacing, or rehabilitative/reconstruction of highway pavement which extends the service life of the pavement; retrofitting of dowel bars; and shoulder pulling and wedging for pavement edge drop-off mitigation.
- Preventive Maintenance (Maintenance Program) – Includes the following examples of eligible work: preventative maintenance of fixed routes and paratransit vehicles.
- Rail (Construction Program) – Includes projects for rail/highway grade crossing improvements, regardless of funding source. Examples include: improvements to warning devices, crossing surfaces, construction of grade separation to replace existing at-grade railroad crossings at the same location.
- Recreational Trails (Construction Program) – Includes projects funded and advanced as part of the recreational trails program through the Delaware Department of Natural Resources and Environmental Control (DNREC).
- Safety/ITS/Operational Improvements (Construction Program) – Includes safety improvement projects such as: those qualifying for HEP/HSIP funding, shoulder improvements, increasing sight distance, traffic control devices, guardrails, median barriers, pavement resurfacing/rehabilitation, pavement marking, fencing, lighting improvements, intersection channelization/signalization/reconfiguration projects, traffic calming, improvements to crossovers or clear zones, addition/extension of turn lanes, extension of acceleration/deceleration lanes, minor drainage improvements, etc. Group also includes improvements to and modernization of rest areas, toll facilities, and weigh stations; ITS activities; or traffic operations improvement projects; etc.
- Surface Transportation Block Grant (STBG) Transportation Alternatives, Scenic Byway, Other Non-Traditional Transportation (Construction Program) – Includes projects with scopes of work eligible for funding under the STBG Transportation Alternatives program, regardless of funding source. Examples include: construction of interpretive pull-offs and overlooks; rehabilitation/restoration/reconstruction of historic buildings; tourist and welcome centers; transportation museums; pedestrian/bicycle facilities (separate from the roadway); parking facilities; wildflower plantings.
- Traffic and Safety Operations (Maintenance Program) – Includes the following eligible activities: signs, traffic signals, pavement markings and markers, guardrail, replacement/preventive maintenance of roadway lighting, maintenance/replacement/upgrade of traffic calming devices, etc.

IV. Amendments

- a. An Amendment is a revision to a TIP or STIP that involves a major change to a project. Major changes can be the addition or deletion of a project, a significant change to project cost, project/project phase initiation dates, or a major change in design concept or design scope (e.g., changing project termini or the number of through traffic lanes). An amendment requires public review and comment, redemonstration of fiscal constraint, or a conformity determination (for TIPs or isolated rural areas involving non-exempt projects in nonattainment and maintenance areas). **Amendments require Federal approval.**
- b. **Examples: Actions that require amendments include:**
 - i. Adding a new project to the TIP or STIP. *(Any changes to the STIP beyond the four-year period are considered for information purposes alone and do not require a Federal action; however, any advancement of a project from beyond the four years of the STIP would require an amendment).*
 - ii. Deleting an existing project from the current TIP or STIP. (Any changes to the STIP beyond the four-year period are considered for information purposes alone and do not require a Federal action);
 - iii. Adding or deleting a project phase for a regionally significant, non-exempt project that triggers a conformity analysis and determination;
 - iv. Funding changes greater than those allowable under modifications outlined in Section V. The total project cost (and not the phase total) is the basis for determining if the cost change (increase) requires an administrative modification vs. amendment.
 - v. Significant revision to a project description or scope. For example:
 - Length of the project
 - Number of through lanes,
 - Change in project termini
 - Change in access control
 - Change in type of work (e.g., from resurfacing to new construction, pavement overlay to bridge rehabilitation, creating a conflict with the environmental document, etc.)

V. FHWA and FTA Administrative Modification and Amendments Cost Thresholds and Project Change Criteria

Table 1. FHWA (Highway Projects) Project Cost STIP/TIP Revision Criteria

STIP TOTAL PROJECT COST ESTIMATE	ADMINISTRATIVE MODIFICATION CRITERIA	AMENDMENT CRITERIA
\$0 to \$3M	Increase is greater than or equal to \$250,000 but less than \$1.5M	Increase is greater than or equal to \$1.5M
\$3M to \$5M	Increase is greater than or equal to \$250,000 but less than \$2M	Increase is greater than or equal to \$2M
\$5M+	Increase is greater than or equal to \$250,000 but less than \$3.5M	Increase is greater than or equal to \$3.5M

Note: An administrative modification, or other documentation, is not needed for cost changes less than \$250,000.

Table 2. FTA (Transit Projects) Project Cost & Change STIP/TIP Revision Criteria

STIP PROJECT TYPE	ADMINISTRATIVE MODIFICATION CRITERIA	AMENDMENT CRITERIA
RURAL AREAS	Increase is less than or equal to \$1M	Increase is greater than \$1M
URBANIZED AREAS	Increase is less than or equal to \$2M	Increase is greater than \$2M

VI. Procedures

a. For Administrative Modifications:

- i. DeIDOT will notify the MPO Executive Directors, Sussex County Administrator, FHWA, and FTA of the changes as defined below. The MPO Executive Directors and Sussex Co. Administrator shall have five (5) business days to respond (in writing via email or letter) to the Secretary of Transportation requesting additional information or a more formal review. At the discretion of the MPO Executive Director, any requested administrative change to the TIP may be referred to their Technical Advisory Committee (TAC) and/or Council.
- ii. **DeIDOT will e-mail a letter and the updated STIP page to the applicable MPO and/or Sussex County, FHWA, and FTA and attach it to the current STIP posted on DeIDOT's website describing modification.** The letter will describe the project changes to show how it meets the administrative modification criteria.
- iii. **For grouped projects**, DeIDOT will send an annual report to the MPOs, FHWA, and FTA **prior to August 1** listing the administrative modification changes. This will be done as part of the CTP development process.
- iv. FHWA/FTA reserves the right to disallow an administrative modification action if it is found to be inconsistent with this procedure.

b. For Amendments:

- i. The MPO will forward each approved TIP amendment will be forwarded to DeIDOT. DeIDOT will forward any TIP amendment from the MPO or STIP amendment to FHWA and FTA for Federal approval. DeIDOT will include a statement describing the STIP's fiscal constraint status and if conformity requirements have been met.

Once approved by FHWA and FTA, the amendment will be incorporated into DeIDOT's STIP. DeIDOT will assure that the amendment process and the public involvement procedures have been followed.

- ii. The amendment process follows the MPO's usual TAC, Public Advisory Committee (PAC) and Council process for action. DeIDOT will send a completed MPO amendment form to the MPO a minimum of fourteen (14) days prior to the TAC meeting for their review and approval before the MPO's Council approves the amendment. The MPO is responsible for providing timely notification to DeIDOT of action taken and assuring that the amendment process and public involvement procedures have been followed.

- iii. The MPO will coordinate its public involvement process with the statewide public involvement process wherever possible.
- iv. WILMAPCO and Dover/Kent MPO's TIP amendment process requires an advertisement, a 30-day public comment period, and a response. The Salisbury/Wicomico MPO requires a 15-day public comment period.
- v. DeIDOT's Division of Finance will advise the Sussex County Administrator by letter of any amendments and place a notice in the appropriate newspaper(s).

VII. Dispute Resolution

If a question arises on the interpretation of the definition OR the proper execution/processing of an administrative modification or amendment, DeIDOT, MPOs, FHWA and FTA will consult with each other to resolve the question. If after consultation, the parties still disagree on a particular item, the final decision rests with the FTA for transit projects and FHWA for highway projects.

We, the undersigned, agree to use the above procedures to revise the STIP and the MPOs' TIP.


 5/17/16
Date
Jennifer Cohan, Secretary
Delaware Department of Transportation


Date
Tigist Zegeye, Executive Director
WILMAPCO

 5/19/16
Date
Rich Vetter, Executive Director
Dover/Kent County MPO

 5/24/16
Date
Keith Hall, Chief
Salisbury/Wicomico County MPO

Concurrence Line:

 5/20/16
Date
Mary Ridgeway, P.E.,
Division Administrator, FHWA

 5-16-16
Date
Terry Garcia Crews
Regional Administrator, FTA

Draft - DE STIP/TIP Revision Procedures Decision Tree (corresponds with MOU)

