As of April 2021

Memorandum of Understanding

Delaware Department of Transportation (DelDOT), Wilmington Area Planning Council (WILMAPCO), Dover/Kent County MPO (DKCMPO), Salisbury/Wicomico MPO (SWMPO), Sussex County, 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.

- **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 equally when compared to other factors before a federal decision is made. There are three classes of action that define the level of documentation required in the NEPA process: 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.

- **Regionally Significant- A** project means a transportation project (other than projects that may be grouped in the TIP and/or STIP or exempt projects as defined in EPA's transportation conformity regulations (40 CFR part 93, subpart A)) that is on a facility that serves regional transportation needs (such as access to and from the area outside the region; major activity centers in the region; major planned developments such as new retail malls, sports complexes, or employment centers; or transportation terminals) and would normally be included in the modeling of the metropolitan area's transportation network regardless of Federal Funding dollars. At a minimum, this includes all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

- **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 Funding Federal-aid Highways Publication for more information.

  2. Cost increase revisions above the Administrative Modification threshold necessitated by funding received as a result of the FHWA August Redistribution late in the fiscal year.[1] New projects as a result of August Redistribution will need to receive approval to be processed as an Administrative Modification by all planning partners (MPOs, FHWA/FTA, and DelDOT).

  3. Revisions necessitated by funding awarded to Delaware from Federal agencies, such as Federal Lands, U.S. Army Corps of Engineers, etc., that are 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.

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[1] The State must validate they have met all the requirements in the Notice for August Redistribution.

b. **Examples:** Administrative modifications include the following:
   - Minor revision to a project description and scope[2] (e.g., adding a paving location, extending a turn lane, extending sidewalk, adding a guardrail or striping location not included in original project scope).
   - Minor change to the source of funds (such that adding or changing CMAQ and/or NHFP funds no matter the minimum threshold)[3]
   - Change in the project lead agency;
   - Changing of a project or project phase from non-participating to participating, provided all Federal-aid requirements are met;
   - Advancement of a project phase from year two, three, or four of the STIP/TIP as long as the project's completion year does not trigger the need for a new conformity analysis;
   - Revisions as defined in 'Special Circumstance' definition in the previous section;
   - Addition of projects due to a State Declared Emergency;
   - 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;
   - A change in the name of the project (scope, funding years and amounts, etc. must remain the same).
   - Adding Child projects to a Related Project.
   - Adding an individually listed project on a group project page due to exceeding the $10 million threshold.

c. **Grouped Projects** - Administrative modifications are **required** for Grouped Projects **when** 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;
   - **Basic Requirements:**
     - Projects not considered to be of appropriate scale for individual identification in each program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. (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 update to summarize grouped project changes. See Section VI-a-iii for more information.
     - Any project exceeding $10 million should be listed individually on the group page with an accompanying funding table (much like child/parent projects).

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[2] Revisions to a project description and/or scope may also require a NEPA reevaluation.

[3] DelDOT and MPOs must annually agree upon recommended use of federal funds for Surface Transportation Block Grant (STBG) Program Population over 200,000, STBG Population 5K to 200K, STBG Transportation Alternative Program, CMAQ, FTA Urbanized Area (5307), and FTA Elderly and Persons with Disabilities (5310) for the upcoming fiscal year. DelDOT will notify MPOs of recommended use of funding through letter provided to MPOs prior to August 1 for approval by the MPOs. Documentation shall accompany the letter detailing elements of grouped projects.

- **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.

- Bike/Ped Program- Includes the following examples of eligible work: Planning, design, and construction of pedestrian and bicycle facilities, transit access, park and ride facilities, traffic calming, and other non-motorized transportation projects.
- 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.

d. **Related Projects** - Child Projects are authorized under a separate state and federal project number, however are part of the overall project budget and authorization of the larger Parent Project.
    - **Basic Requirements:** When it is in the best interest of the state to create a Child Project the Department will identify the Child Project on the project description page of the Parent Project and in the funding tables. This can be done during the during the normal CTP/STIP development cycle or as an Administrative Modification to the CTP/STIP.

IV. Amendments

a. An Amendment means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that involves a major change to a project included in a metropolitan transportation plan, TIP, or STIP, including the addition or deletion of a project or a major change in 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 or changing the number of stations in the case of fixed guideway transit projects). Changes to projects that are included only for illustrative purposes do not require an amendment. An amendment is a revision that requires public review and comment and a redemonstration of fiscal constraint. If an amendment involves "non-exempt" projects in nonattainment and maintenance areas, a conformity determination is required. **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 administrative 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[4]. For example:
        - Length of the project
        - Number of through lanes,
        - Change in project termini
        - Change in access control

[4] Revisions to a project description and/or scope may also require a NEPA reevaluation.

- 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.)

vi. A name change that reflects a scope change (changes to termini, purpose and need, etc. also trigger an amendment).

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 to existing projects in the STIP that are 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. DelDOT 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 modification to the TIP may be referred to their MPO Committees.

ii. **DelDOT 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 DelDOT's website describing modification.** The letter will describe the project changes to show how it meets the administrative modification criteria.

iii. **For grouped projects**, DelDOT will send a biannual 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 within 5 business days

v. If DelDOT requires an emergency Administrative Modification, the MPOs and FHWA/FTA must be consulted and approval shall be documented in writing.

b. For Amendments:

i. The amendment process follows the MPO's bylaws for Council action. DelDOT will send a completed MPO amendment form to the MPO a minimum of 10 business days prior to PAC and/or TAC committee meetings for their review and approval before the MPO's Council approves the amendment. The MPO is responsible for providing timely notification to DelDOT of action taken and assuring that the amendment process and public involvement procedures have been followed.

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

ii. The MPO will forward each approved TIP amendment to DelDOT. DelDOT will forward the approved TIP amendment or STIP amendment to FHWA and FTA for Federal approval. DelDOT will include a statement describing the STIP's fiscal constraint status and if conformity requirements have been met.

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

iv. If DelDOT requires an emergency Amendment approval (see State Declared Emergency above), the MPOs and FHWA/FTA must be consulted and approval shall be documented in writing.

VII. Dispute Resolution

If a question arises on the interpretation of the definition OR the proper execution/processing of an administrative modification or amendment, DelDOT, 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.

4/28/21

Nicole Majeski, Secretary Date
Delaware Department of Transportation

04/26/21

Tigist Zegeye, Executive Director Date
Date
WILMAPCO

4/27/21

Marilyn Smith, Executive Director

Dover/Kent County MPO

4.28.21

Keith Hall, Chief Date
Salisbury/Wicomico County MPO

5/7/2021

Todd Lawson, Administrator *Date*
Sussex County

Concurrence Line:

DOUGLAS S. ATKIN

Digitally signed by DOUGLAS S. ATKIN
Date: 2021.05.07 13:44:22 -04'00'

Douglas S. Atkin Date
Division Administrator, FHWA

Theresa "Terry" Garcia Crews

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Date: 2021.05.10 15:52:55 -04'00'

Terry Garcia Crews Date
Regional Administrator, FTA