

MEMORANDUM OF UNDERSTANDING

Lehigh Valley Transportation Study's Procedures for 2019-2022 Transportation Improvement Program Revisions

Purpose

This Memorandum of Understanding (MOU) between the Pennsylvania Department of Transportation (PennDOT), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA) establishes procedures to be used in the Commonwealth of Pennsylvania for processing revisions to the 2019-2022 Statewide Transportation Improvement Program (STIP). The STIP is the aggregation of the Metropolitan Planning Organization (MPO) and Rural Planning Organization (RPO) Transportation Improvement Programs (TIPs), including the Interstate Management (IM) Program and other statewide managed programs (Statewide Programs).

What is a Statewide Transportation Improvement Program (STIP) and a Transportation Improvement Program (TIP)?

The STIP is the official transportation improvement program document mandated by federal statute (23 CFR § 450.218) and recognized by FHWA and FTA. The STIP includes a list of projects to be implemented over a four-year period as well as all supporting documentation by federal statute. The STIP includes regional TIPs developed by the Planning Partners (MPOs and RPOs) and Statewide Programs developed by PennDOT. Statewide Programs are coordinated initiatives, projects or funds that are managed by PennDOT's Central Office on a statewide basis. Examples of Statewide Programs include but are not limited to the Secretary of Transportation's SPIKE, the Rapid Bridge Replacement (RBR) Project developed via a Public Private Partnership (P3), Highway Safety Improvement Program (HSIP) set-aside, Highway-Rail Grade Crossing Safety (RRX), Surface Transportation Block Grant Program set-aside (TAP) funds, Green-Light-Go (GLG), Automated Red Light Enforcement (ARLE), Multi-modal (MTF), Recreational (Rec) Trails, and Keystone Corridor projects. The Interstate Management Program will remain its own individual program and includes prioritized statewide interstate projects. The Commonwealth's Twelve Year Program (TYP), required by state law, includes the STIP/TIPs in first four-year period.

How and When is a STIP/TIP Developed?

For more information on the development of the STIP/TIP, see *Pennsylvania's 2019 Transportation Program General and Procedural Guidance* dated July 31, 2017 (attached).

STIP/TIP Administration

FHWA and FTA will only authorize projects and approve grants for projects that are programmed in the current approved STIP. If LVTS, LANTA, or PennDOT wishes to proceed with a federally funded project not programmed on the TIP, a revision must be made.

The federal statewide and metropolitan planning regulations contained in 23 CFR § 450 govern the provisions for revisions of the STIP and individual MPO TIPs. The intent of this federal regulation is to acknowledge the relative significance, importance, and/or complexity of individual programming actions. If necessary, 23 CFR § 450.328 permits the use of alternative procedures by the cooperating parties to effectively manage actions encountered during a given

MEMORANDUM OF UNDERSTANDING

TIP cycle. Cooperating parties include PennDOT, MPOs, RPOs, FHWA, FTA, and transit agencies. Any alternative procedures must be agreed upon, and documented in the TIP.

TIP revisions must be consistent with LVTS's Long Range Transportation Plan (LRTP). In addition, TIP revisions must support Pennsylvania's Transportation Performance Measures and Targets as well as the PennDOT's Connects policy. Pennsylvania's Transportation Investment Plan is PennDOT's ongoing assessments, target settings, and re-evaluations of data associated with the STIP/TIP investment decisions, ensuring that each dollar invested is being directed to meet strategic decisions, and that enhances the overall performance of the Commonwealth's transportation system. The Investment Plan establishes regional targets which were set with a continued focus on maintaining assets with the following priorities: Bridges on the National Highway System (NHS), Roadway conditions on the NHS, Bridges on the balance of the system, and Roadway conditions on the balance of the system.

TIP revisions must correspond to the adopted provisions of LVTS's Public Participation Plan (PPP). A PPP is a documented broad-based public involvement process that describes how LVTS will involve and engage the public in the transportation planning process to ensure that comments, concerns, or issues of the public and interested parties are identified and addressed in the development of transportation plans and programs. A reasonable opportunity for public review and comment shall be provided for significant revisions to the TIP.

If a revision adds a project, deletes a project, or impacts the schedule or scope of work of an air quality significant project in a nonattainment or maintenance area, a new air quality conformity determination will be required if deemed appropriate by the PennDOT Air Quality Interagency Consultation Group (ICG). If a new conformity determination is deemed necessary, an amendment to the region's LRTP shall also be developed and approved by the MPO/RPO. The modified conformity determination would then be based on the amended LRTP conformity analysis and public involvement procedures consistent with the region's PPP shall be required.

A LRTP lapse occurs when LVTS has not updated their LRTP in accordance with the cycles defined in the federal planning regulations [23 CFR § 450.324 (c)]. If LVTS's LRTP lapses because the LRTP has not been updated in accordance with the planning cycle defined in the federal planning regulations, then the provisions of this MOU will not be utilized for LVTS. During a LRTP lapse, all TIP revisions within LVTS's jurisdiction will be treated as an amendment and require federal approval. There will be no administrative modifications for LVTS until their LRTP is in compliance with the federal planning regulation.

If a TIP revision occurs based on FHWA August Redistribution that adds, advances, or adjusts federal funding for a project, LVTS will be notified of the Administrative Modification by PennDOT.

Pennsylvania STIP/TIP Revisions

In accordance with the federal transportation planning regulations [23 CFR § 450], revisions to the TIP will be handled as an **Amendment** or an **Administrative Modification** based on agreed upon procedures detailed below.

An **Amendment** is a revision that adds a new project, deletes an existing project, or involves a major change to an existing project included in a TIP that:

- Affects air quality conformity regardless of the cost of the project or the funding source;
- Adds a new project, deletes a project that utilizes federal funds, or federalizes a project that previously was 100% state and/or locally funded. A new project is a

MEMORANDUM OF UNDERSTANDING

project that is not programmed in the current TIP, and does not have previous obligations from a prior TIP. Federally-funded Statewide Program projects are excluded from this provision;

- Adds a new phase(s) to an existing project, deletes a project phase(s), increases or decreases a project phase(s) that utilizes federal funds where the revision exceeds the following thresholds:
 - \$2 million
- Involves a change in the scope of work to a project(s) that would:
 - Result in an air quality conformity reevaluation
 - Result in a revised total project estimate that exceeds the thresholds established between PennDOT and LVTS (not to exceed any federally-funded threshold contained in this MOU)
 - Results in a change in the scope of work on any federally-funded project that is significant enough to essentially constitute a new project
- During an LVTS LRTP lapse, all TIP revisions within that planning region will be treated as amendments and the below administrative modifications will not be utilized (or be in effect).

Approval by LVTS is required for **Amendments**. LVTS must then request PennDOT Central Office approval using the e-STIP process. A Fiscal Constraint Chart (FCC) must be provided that depicts the transfer of funds from one source to another, demonstrating fiscal constraint. The FCC summarizes the before, requested adjustments, after changes, and detailed comments explaining the reason for the adjustment(s), and provides any Program Management Committee (PMC) materials that may have been prepared, along with an updated TIP. PennDOT's Central Office will review, approve, and forward to the appropriate federal agency for review and approval, with a courtesy copy to the other federal agency. An eSTIP submission shall include:

- Fiscal Constraint Chart with remarks
- Pdf copy of the TIP
- Supporting materials to explain the reasoning, cause, and/or justification for the amendment revision, as needed, such as PMC items.

The initial submission and approval process of the federally-funded Statewide Program or increases/decreases exceeding the thresholds above will be considered an amendment (subsequent placement of these individual projects or line items on the LVTS TIP will be considered an administrative modification). In the case of Statewide Programs, including the IM Program and other federally-funded statewide programs, approval by PennDOT's Program Management Committee (PMC) and FHWA is required.

An **Administrative Modification** is a minor revision to a TIP that:

- Shifts federally-funded projects, a federally-funded project phase(s), or federal funds to existing federally-funded projects or a federally-funded project phase(s) in the approved TIP and must maintain year-to-year TIP fiscal constraint requirements;
- Adds a project from a funding initiative or line item that utilizes 100 percent state or non-federal funding; or regional TIP placement of the federally-funded Statewide Program;
- Adds a project for emergency repairs to roadways or bridges, except those involving substantial, functional, location, or capacity changes;
- Draws down or returns funding from an existing TIP reserve line item and does not exceed the threshold established in the MOU between PennDOT and LVTS. A reserve line item holds funds that are not dedicated to a specific project(s) and may be used to cover cost increases or add an additional project phase(s) to an existing project;

MEMORANDUM OF UNDERSTANDING

- Adds federal or state capital funds from low-bid savings, de-obligations, release of encumbrances, or savings on programmed phases to another programmed project phase or line item but does not exceed the above thresholds.

Administrative Modifications do not affect air quality conformity nor involve a significant change in the scope of work to a project(s) that would trigger an air quality conformity re-evaluation; does not add a new federally-funded project or delete a federally-funded project; does not exceed the threshold established in the MOU between PennDOT and LVTS, or the threshold established by this MOU (as detailed in the Amendment Section); and does not result in a change in scope, on any federally-funded project that is significant enough to essentially constitute a new project. A change in scope is a substantial alteration to the original intent or function of a programmed project.

Administrative Modifications do not require federal approval. PennDOT and LVTS will work cooperatively to address and respond to any FHWA and/or FTA comment(s). FHWA and FTA reserve the right to question any administrative action that is not consistent with federal regulations or with this MOU where federal funds are being utilized.

All revisions, amendments, and administrative modifications shall be identified, numbered, and grouped as one action on a FCC demonstrating both project and program fiscal constraint. The identified grouping of projects (the entire revision action) will require review and/or approval by the Cooperating Parties. In the case that a project phase is pushed out of the TIP period, LVTS will demonstrate, through an FCC, fiscal balance of the subject project phase on the second period of their LRTP.

Transit Statewide Managed Funds

Projects funded by FTA programs and delivered via Governor's apportionment are selected by PennDOT pursuant to the Pennsylvania State Management Plan approved by the FTA. These projects should be programmed within the TIP of the urbanized area where the project is located.

Fiscal Constraint

Demonstration that TIP fiscal constraint is maintained takes place through a FCC. Real time versions of the STIP/TIP are available to FHWA and FTA through PennDOT's Multimodal Project Management System (MPMS).

All revisions must maintain year-to-year fiscal constraint [23 CFR § 450.326 (g), (j) & (k)] for each of the four years of the TIP. All revisions shall account for year of expenditure, and maintain the estimated total cost of the project or project phase within the time-period [i.e., fiscal year(s)] contemplated for completion of the project, which may extend beyond the four years of the TIP. The arbitrary reduction of the overall cost of a project, or project phase(s), shall not be utilized for the advancement of another project.

STIP/TIP Financial Reporting

At the end of each quarter, PennDOT will provide each Planning Partner with a STIP/TIP Financial report of actual federal obligations and state encumbrances for highway/bridge and transit programs in their region. At the end of the federal fiscal year (FFY), the PennDOT Progress Report can be used by LVTS as the basis for compiling information to meet the federal annual listing of obligated project requirement [23 CFR § 450.334]. The STIP/TIP Financial

MEMORANDUM OF UNDERSTANDING

Report provided to FHWA and FTA will also include the FHWA Planning Performance Measure – “percent of STIP/TIP projects advanced per year” on a Statewide and Planning Partner basis. A summary report detailing this information will be provided no later than 30 days after the end of a FFY.

STIP/TIP Transportation Performance Management

In accordance with 23 CFR § 450.326 (c), PennDOT and LVTS will ensure TIP revisions promote progress toward achievement of performance targets.

MPO/RPO TIP Revision Procedures

As LVTS’s TIP is adopted, their MOU with PennDOT will be included with the TIP documentation. The MOU will clarify how the LVTS will address all TIP revisions. **In all cases, LVTS revision procedures will be developed under the guidance umbrella of this document.** If LVTS elects to set more stringent procedures, then FHWA and FTA will adhere to those more restrictive procedures.

This document will serve as the basis for PennDOT when addressing federally-funded Statewide Program TIP revisions.

This Memorandum of Understanding will begin October 1, 2018, and remain in effect until September 30, 2020, unless revised or terminated. Furthermore, it is agreed that this MOU will be reaffirmed every two years.

We, the undersigned hereby agree to the above procedures and principles.

Mr. Larry S. Shifflet, Director
Center for Program Development and Management
Pennsylvania Department of Transportation

Date

Mr. Michael Rebert, P.E., Chair
Lehigh Valley Transportation Study

Date

Ms. Becky A. Bradley, AICP, Executive Director
Lehigh Valley Planning Commission

Date

Mr. Owen O’Neil, Executive Director
Lehigh and Northampton Transportation Authority

Date