

**FHWA Virginia Division/FTA Region III Review Documentation  
in support of the  
FHWA/FTA PLANNING FINDING  
and approval of the  
COMMONWEALTH OF VIRGINIA'S FY2024-FY2027 STATEWIDE  
TRANSPORTATION IMPROVEMENT PROGRAM**

**Introduction and General Comments:**

In order to approve the Statewide Transportation Improvement Program (STIP), which includes the Metropolitan Planning Organizations' (MPO) Transportation Improvement Programs (TIP) included directly or by reference in the STIP, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) must make a finding (i.e., a Federal Planning Finding) that the STIP is based on a statewide transportation planning process that meets or substantially meets the requirements of 23 USC 134 and 135, 49 USC 5303 – 5305, and 23 CFR 450 subparts A, B, and C (see 23 CFR 450.220(b) and 23 USC 135(g)). As part of the Federal Planning Finding, in accordance with 23 CFR 450.330(a), FHWA and FTA must make a finding that each TIP is consistent with metropolitan transportation plan produced by the continuing and comprehensive transportation process carried on cooperatively by the MPOs, the State(s), and the public transit operator(s) in accordance with 23 USC 134 and 49 USC 5303.

**Commendable efforts:**

We want to express our appreciation to the Virginia Department of Transportation (VDOT), Virginia Department of Rail and Public Transportation (VDRPT), the MPOs and Planning District Commissions (PDCs) for your work to cooperatively develop and deliver the updated STIP and the supporting transportation plans and programs required by Federal statute and regulations for the expenditure of Federal funds and that responds to the challenging expectations and performance metrics related to the safety, accessibility, and mobility for Virginia's metropolitan and rural communities.

We want to also recognize the continued and strengthened coordination between the various Divisions within VDOT Central Office (e.g. Transportation and Mobility Planning, Federal Programs Management, Office of Intermodal Planning and Investment, Civil Rights, Environment, Structure and Bridge, Operations, Safety, Traffic Engineering, Maintenance, etc.) and VDOT District Offices who serve as important stewards that provide assistance and oversight of programs and projects and also help serve as a critical connection with Virginia's MPOs to ensure a documented, prioritized, accountable and measurable metropolitan and statewide program that is consistent with the joint Federal planning and programming regulations.

FHWA and FTA want to acknowledge the Hampton Roads Transportation Planning Organization (HRTPO) the Richmond Metropolitan Planning Organization (Plan RVA), and the Fredericksburg Area Metropolitan Planning Organization (FAMPO) for their significant contributions to the field of best practices related to military and transportation planning, project scoring, climate change, transit planning/micro-transit, and efforts to enhance virtual public involvement and environmental justice (EJ).

For the MPO planning partners along the I-81 corridor that include Winchester-Frederick County MPO, Blacksburg-Christiansburg-Montgomery Area MPO, Harrisonburg-Rockingham MPO, Staunton-Augusta-Waynesboro MPO, Charlottesville-Albemarle MPO, and Roanoke Valley MPO, there is national interest in freight and goods movement and a serious need to address issues related to truck parking and land-use. We appreciate your focus on this important topic and your participation in the 2022 I-81 Corridor Truck Parking Roundtable. Your contributions, along with our partners at the Central Virginia MPO, Danville MPO, and Tri-Cities MPO in planning for complete streets and trails, transit planning, EJ, and efforts to enhance public engagement and reconnect communities is also noteworthy.

FHWA and FTA greatly appreciate the opportunities to connect and dialogue through our Virginia Association of MPOs, VDOT/OIPI quarterly meetings with MPOs, and monthly meetings with VDOT District offices.

We thank OIPI's efforts to deliver a full Performance Period Progress Report and Baseline Performance Period Report and for the delivery of an updated State Freight Plan.

## **Recommendations: Observations and Comments**

### **I. Title VI/Nondiscrimination Complaint Procedures**

#### **Observation and Comments:**

MPOs and State DOTs self-certify compliance with Civil Rights statutes that include the protected characteristics of race, color, national origin, sex, age, and disability (23 CFR 450.336). The self-certification statement also includes 49 USC 5332, which applies to employment and business opportunity and is in addition to Title VI of the Civil Rights Act of 1964 (49 USC 5332(f)). Pursuant to 49 U.S.C. 5332(b), "A person may not be excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving financial assistance under this chapter because of race, color, religion, national origin, sex, disability, or age."

Regarding complaint procedures, the USDOT Order 1000.12C (The USDOT Title VI Program), Chapter 2, Sect. 5(a), requires that "Each OA shall follow the *External Civil Rights Complaint Processing Manual* for all Title VI complaints received and all investigations initiated at the OA's discretion based on other indicators of possible noncompliance with Title VI." The

USDOT *External Civil Rights Complaint Processing Manual* (DOT Order 1000.18) provides that any individual, or his or her representative, who believes that he or she or any specific class of persons has been subjected to discrimination or retaliation prohibited by any civil rights authority based on such characteristics as *race, color, sex, age, national origin, religion, or disability* may file a complaint with DOT.

During our review of the submitted MPO and PDC Title VI/Nondiscrimination Program Compliance review reports, many MPOs and PDCs received corrective actions from VDOT requiring them to change their complaint procedures language to comply with FHWA's *Questions and Answers for Complaints Alleging Violations of Title VI of the Civil Rights Act of 1964*. In at least one instance, the reason for the corrective action appears to be that the MPO's complaint procedures listed protected characteristics (i.e., age, sex, disability) that were not included in FHWA's *Questions and Answers for Complaints Alleging Violations of Title VI of the Civil Rights Act of 1964*. To address the corrective action, the MPO appeared to have modified their complaint statement and removed protected characteristics associated with age, sex, and disability to comply with FHWA's *Questions and Answers for Complaints Alleging Violations of Title VI of the Civil Rights Act of 1964*.

### **Recommendation:**

Civil Rights include protection from unlawful discrimination, and it is the responsibility of recipients that receive Federal funds to inform any individual who believes they have been subjected to discrimination or retaliation prohibited by any Civil Rights statute, based on such characteristics as race, color, national origin, sex, age, or disability that they may file a complaint and the procedures for filing a complaint.

FTA recommends that MPOs and PDCs review their Title VI and Nondiscrimination complaint procedures so that appropriate language is included to ensure that any individual who believes they've been discriminated against based on such characteristics as *race, color, national origin, or sex, age, or disability* may file a complaint, and clarify which Law or Statute provides those protections so complaints may be properly addressed. FHWA will incorporate the observation into the Civil Rights Program Assessment of VDOT's civil rights program that will commence in November.

## **II. Title VI/Nondiscrimination Compliance Review Reports**

### **Observation and Comments:**

MPOs sign certification statements pursuant to 23 CFR 450.336, and MPOs and PDCs sign USDOT Order 1050.2A (Title VI/Nondiscrimination Assurance) pursuant to 49 CFR part 21 and as required under FHWA Title VI Program regulations (23 CFR 200.5(p)). The signed certification statements and assurances include compliance with Civil Rights statutes and authorities (e.g., the Americans with Disabilities Act of 1990 (disability), Section 504 of the

Rehabilitation Act of 1973 (disability), the Age Discrimination Act of 1975 (age), Title VI of the Civil Rights Act of 1964 (race color, national origin (LEP)), 23 USC 324 (sex), etc.) and serve to support that the planning and program development process is done thru a process that is non-discriminatory.

The VDOT's quadrennial Title VI/Nondiscrimination Program Compliance reviews of MPOs and PDCs, pursuant to 23 CFR 200.9(b)(7), support the VDOT and MPO certification statements and assurances to FHWA and FTA that the metropolitan and statewide transportation planning and programming process is conducted in a manner that is consistent with Civil Rights statutes, authorities, and regulations. Following advice from FHWA, VDOT removed the EJ/LEP, Section 504 of the Rehabilitation Act of 1973, 23 U.S.C. 324, and the Age Discrimination Act of 1975 as topic areas from the sub-recipient Title VI/Nondiscrimination Program review template used to conduct Civil Rights reviews of MPOs and PDCs. That is reflected in the submittal. Subsequently, VDOT developed and submitted new procedures to support the monitoring of ADA and Section 504, and stated that in regards to the Age Discrimination Act of 1975, 23 USC 324, and Environmental Justice (E.O. 12898), they did not have any "information about the required compliance for these regulations."

#### **Recommendation:**

In accordance with 23 CFR 200.7, FHWA's Title VI policy is to ensure compliance with Title VI of the Civil Rights Act of 1964; 49 CFR part 21; and related statutes and regulations. FTA recommends that VDOT update the current Title VI/Nondiscrimination template used to conduct nondiscrimination compliance reviews to include topic areas such as Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, 23 USC 324, and EJ/LEP, or develop separate templates covering these topic areas to enhance and guide your Title VI/Nondiscrimination Program compliance reviews of sub-recipients. FHWA will incorporate the observation into the Civil Rights Program Assessment of VDOT's civil rights program that will commence in November.

### **III. HRPDC and Title VI/Nondiscrimination Compliance**

#### **Observation and Comments:**

The Hampton Roads Planning District Commission (HRPDC) serves as the fiscal agent and provides staffing to support transportation planning related activities and programs of the Hampton Roads Transportation Planning Organization (HRTPO/MPO) and the HRPDC. As the fiscal agent and sub-recipient of Federal funds – including FTA and FHWA planning and research funds, the HRPDC signed a Standard Title VI/Nondiscrimination Assurance (USDOT Order 1050.2a).

Regarding programs and activities, "programs and activities" mean all the operations of any entity receiving DOT financial assistance, as described in 49 CFR § 21.23(e). The Civil Rights

Restoration Act of 1987 clarifies the definition of “programs and activities” covered by the nondiscrimination provisions of Title VI and other civil rights statutes (Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended, and the Age Discrimination Act of 1975). Under the act, discrimination is prohibited throughout an entire agency or institution, if any part of that agency or institution receives Federal financial assistance. Title VI applies to discrimination throughout an agency, not just to actions involving the Federally assisted program. Therefore, if an agency receives any Federal financial assistance for any program or activity the entire agency is required to comply with Title VI, not just that particular program or activity.

On March 29-31, 2016, FHWA and FTA conducted a quadrennial Federal Certification Review of the HRTPO’s structure and regional planning and programming process. During the review, we found that “there was no person responsible for ensuring nondiscrimination at the Hampton Roads Planning District Commission (HRPDC).” In the Federal Certification Review report, FHWA and FTA recommended that the VDOT Hampton Roads District Office conduct a Title VI/Nondiscrimination Program compliance review of the HRPDC and that the HRPDC identify a person to ensure nondiscrimination. VDOT conducted the compliance review on September 27, 2017 and elected not to issue a compliance report or respond to FHWA’s request to issue a report. Following the 2016 Federal Certification Review, HRPDC designated one of their staff members to ensure nondiscrimination.

On September 23-24, 2020, the FHWA and FTA conducted a quadrennial Federal Certification Review of the HRTPO’s structure and regional planning and programming process. Again, FHWA and FTA recommended in the report that the VDOT Hampton Roads District Office conduct a Title VI/Nondiscrimination Program compliance review of the HRPDC. The compliance review was conducted on February 9, 2021. FHWA again requested that VDOT issue a compliance report based on the compliance review. A compliance report was delivered on February 14, 2023, and HRPDC staff have been working to respond to the findings contained in the report.

During both Title VI/Nondiscrimination compliance reviews of the HRPDC, staff from the FHWA was present and observed and grew concerned about HRPDC leadership involvement to influence the responses and/or outcome of the Civil Rights compliance review. For example, during the 2017 compliance review, the HRPDC leadership indicated that they had a Title VI Plan. During the 2021 compliance review, the HRTPO/HRPDC Civil Rights Program Manager indicated that there was no Title VI Plan.

Finally, on April 26, 2023, the former HRTPO/HRPDC Civil Rights Program Manager sent a letter documenting numerous concerns regarding the manner in which Civil Rights matters were handled.

**Recommendation:**

As the primary recipient administering Federal funds to VDOT's subrecipients, VDOT is ultimately responsible for the compliance status of their subrecipients. FHWA have encouraged VDOT to conduct additional compliance reviews of their subrecipients when concerns have been identified to ensure the Title VI/Nondiscrimination requirements are being met. FTA recommends VDOT undertake efforts to not only verify the current status of their subrecipients, but also undertake a proactive and guidance driven approach to supporting the efforts of their subrecipients to be in compliance with the Title VI and other Civil Rights and Nondiscrimination requirements. FHWA will incorporate the observation into the Civil Rights Program Assessment of VDOT's civil rights program that will commence in November.

#### **IV. Freight Planning and Programming**

##### **Observations and Comments:**

On March 23, 2021, Virginia formally established and held its first meeting of Virginia's Freight Advisory Committee (FAC). With Virginia being one of a growing number of states to formally establish a Freight Advisory Committee, 49 USC 70201 (c) requires minimum core responsibilities. These included:

- Advise the State on freight-related priorities, issues, projects, and funding needs;
- Serve as a forum for discussion for State transportation decisions affecting freight mobility;
- Communicate and coordinate regional priorities with other organizations (i.e., MPOs, local planning, tribal, State DOT, etc.)
- Promote the sharing of information between the private and public sectors on freight issues; and
- Participate in the development of the State Freight Plan of the State, including by providing advice regarding the development of the Freight Investment Plan.

In addition to formally establishing a FAC, on January 13, 2022, the Office of Intermodal Planning and Investment submitted an updated *VTRANS: Virginia's Transportation Plan* and Freight Element (Virginia Freight Plan). The FHWA reviewed Virginia's Freight Plan and found that it contains all elements required by 49 U.S.C. § 70202. The State had, therefore, met the prerequisite in 23 U.S.C. § 167(h)(4) that it develop a State Freight Plan in accordance with 49 U.S.C. § 70202 before it may obligate funds apportioned to the State under 23 U.S.C. § 104(b)(5), and the State could obligate such funds for projects that meet all National Highway Freight Program ("NHFP") eligibility requirements described in 23 U.S.C. § 167, and all other applicable Federal requirements.

In September, 2023, the State submitted a proposed Amendment to its Freight Investment Plan. The Plan currently in effect was approved in August, 2022.

##### **Recommendation:**

To obligate NHFP funds, projects must be identified in a freight investment plan included in a freight plan that is in effect in the State. (23 U.S.C. 167(h)(5)(A)). During FHWA's review of Virginia's proposed Amendment to its Freight Investment Plan, we found that NHFP funds were previously obligated on several of the projects that were proposed for addition to the Freight Investment Plan. As these projects were not part of a freight investment plan that was in effect at the time of obligation, obligation of those funds was not permissible under 23 U.S.C. 167(h)(5)(A). FHWA will respond to this matter and provide direction regarding obligated NHFP funds in separate correspondence.

FHWA is also seeking confirmation from the State, in consultation with the FAC, regarding that minimum core responsibilities contained in 49 USC 70201 (c) have been met or a timeline for having a structure in place that meets the requirements has been established.

#### **Additional Observations and Areas for Improvement:**

- The Federal Planning Finding for the FY2021-FY2024 STIP identified the need for discussion on how the program is achieving transit asset management and safety performance targets. While the FY2024-2027 STIP does better address how projects included address transit asset management and safety performance targets, greater detail should be provided in the next STIP update on how much transportation investment is going toward meeting these performance targets. These features should be part of the next STIP update or sooner to address compliance under 23 CFR 450.218(q).
- As part of the next STIP update, VDOT in coordination with VDRPT, should consider reassessing the cut-off date for projects for the next STIP cycle. Currently, the cut-off for projects included in the FY2024-2027 STIP was January 2023, which may not have allowed adequate time for transit agencies to fully program their funding sources and the current "rollover" process may have inadvertently excluded certain transit investments. Additionally, FTA should be included in the rollover process for the next STIP update.
- As the VA Governor approves the MPO TIPs through the incorporation of the MPO TIPs into the VA STIP, as part of the next STIP update, VDOT in coordination with VDRPT, should ensure that information presented in the MPO TIPs are current and accurate prior to being included in the VA STIP. VDOT and VDRPT should reach out to the MPO if they come across information or funding values that seem out of ordinary. Several MPOs' TIPs included sections that were not relevant to the development of the current TIP. There was one typo in a funding amount for a transit project that would have signification financial implication if it was not a typo.
- Ongoing, VDOT and DRPT should ensure that the MPOs and public transit agencies are following the requirements outlined in 23 CFR § 450.334 (b) when developing their Annual List of Obligated Projects.

- Ongoing, VDOT should ensure that the MPOs keep their website up to date, by confirming the most current version of the MPOs' Federally required planning documents are uploaded on the MPOs' websites. The Federal Team found that multiple MPOs did not upload to their website the most current version of their Annual Listing of Obligated Projects, some have not been posted in years, and one MPO did not upload their current TIP.
- As part of the next STIP update, VDOT and VDRPT should ensure that the various Federal funding sources are validated to ensure accuracy of intended expenditures consistent with 23 CFR 450.218(i)(3).
- For the next update to the STIP, consideration should be given to address transit in the "How to Read the STIP" included as Appendix A. As currently formatted and presented, the 'how to' guide is firmly for highway-related investments and is not done for transit.