



U. S. DEPARTMENT  
OF TRANSPORTATION

Pennsylvania Division

228 Walnut Street, Room 508  
Harrisburg, PA 17101-1720

Federal Highway  
Administration

DEC 12 2007

In reply refer to:  
HOP-PA

Pennsylvania - Interstate System  
Reconstruction and Rehabilitation  
Pilot Program, Response to I-80  
Application

Mr. Allen D. Biehler  
Secretary of Transportation  
Commonwealth of Pennsylvania  
Harrisburg, Pennsylvania

Dear Mr. Biehler:

Enclosed is a memorandum from Mr. King Gee, FHWA Associate Administrator for Infrastructure, which responds to your application of October 13, 2007 to toll Interstate 80 under the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRPP). As stated in the memorandum, the application does not contain all of the information required for a Phase 1 provisional acceptance and at this time no slot in the ISRPP is reserved for your proposal. Please revise your proposal to address the comments attached to Mr. King's letter if you intend to pursue this proposal further. You may contact Dave Cough at 221-3411 if you have questions or concerns about this response.

Sincerely yours,

David C. Lawton  
Acting Division Administrator

Enclosure

(Similar letter sent to Mr. Joseph G. Brimmeier, Chief Executive Officer, PA Turnpike Commission)

**MOVING THE  
AMERICAN  
ECONOMY**





# Memorandum

Subject: **ACTION:** Pennsylvania – Interstate System  
Reconstruction and Rehabilitation Pilot Program,  
Response to I-80 Application

Date: December 12, 2007

From:   
King W. Gee  
Associate Administrator for Infrastructure

In Reply  
Refer To: HIF-1

To: David C. Lawton  
Acting Division Administrator  
Harrisburg, PA

This memorandum is in response to the Pennsylvania Turnpike Commission (PTC) and Pennsylvania Department of Transportation (PennDOT) October 13 joint application to toll I-80 under the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP).

The ISRRPP, as established in Section 1216(b) of the Transportation Equity Act for the 21st Century (TEA-21), includes specific eligibility and selection criteria that must be met prior to any potential approval being given. In reviewing the application, we conducted a thorough technical analysis of the application's merits based on the statutory criteria in TEA-21.

ISRRPP guidance published in the *Federal Register* on February 10, 1999 (64 Fed. Reg. 6734), established a two-phase approval process: Phase I "provisional" and Phase II "full." The provisional approval may be granted upon a determination by the FHWA that all applicable criteria in Section 1216(b) have been met, and a full approval when all of the environmental requirements have been completed. In the past, the FHWA has also granted what is known as a "conditional provisional approval." This approval is used to hold a slot in the ISRRPP for a particular project prior to the satisfaction of all elements for a Phase I provisional approval. The decision to grant a conditional provisional approval is based upon the FHWA's determination that the State is likely to meet all the statutory criteria for a provisional approval, the State is committed to advancing the project, and that the project is a good candidate for a pilot project under the ISRRPP. To date, the FHWA has granted two conditional provisional approvals. However, these approvals were granted at a time when there was not any actual or expected competition for the slots in the program. Any actual or expected competition for the third and final slot may affect the FHWA's decision to grant future conditional provisional approvals.

At this time, the application does not contain all of the information required for a Phase I provisional acceptance, as specified in our guidance, or a conditional provisional approval.



A detailed list of those items that need to be addressed is attached to this memorandum. Selection and eligibility criteria references from TEA-21 are provided in the attachment. These items must be addressed prior to completing a final review of the application. Upon receipt of these items, we will continue our review of the application. Following our technical review of all application and supplemental materials, a determination will be made on the eligibility to toll I-80 under the ISRRPP.

Additionally, it has been brought to my attention that there may be some confusion concerning the status of the application. Please clarify to PennDOT and PTC that their application has not been approved and that the FHWA is conducting a thorough technical review of the application prior to any decision regarding the application. As part of our technical review, PennDOT and PTC must address the issues identified in the attachment.

Please stress to PennDOT and PTC that we are not approving or denying their application at this time. Additionally, the FHWA is not, at this time, granting a conditional provisional approval to their application that would reserve a slot in the ISRRPP for their project. Please feel free to contact me or Mr. Dwight Horne, of my staff, at (202) 366-5530, should you have any questions or concerns about this memorandum.

Attachment

**Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP)  
Pennsylvania I-80 Application**

Additional Items Required to Address the Eligibility and Selection Criteria:

*The Secretary shall establish and implement an Interstate System reconstruction and rehabilitation pilot program ... for the purpose of reconstructing and rehabilitating Interstate highway corridors that could not otherwise be adequately maintained or functionally improved without the collection of tolls.*

- TEA-21, section 1216(b)(1)

- The application does not sufficiently describe the planned reconstruction and rehabilitation project. The application does mention that the State needs \$136 million per year in order to meet projected needs and that the Pennsylvania Turnpike Commission (PTC) intends to use \$1.1 billion in revenue bonds to fund improvements. The application should detail the specific improvements that are planned. The application should also address the estimated cost of these improvements along with the proposed schedule for rehabilitation and reconstruction.
- Section 6.9 of the Lease and Funding Agreement requires the establishment of an operating standard providing that the PTC will maintain the “physical characteristics” of the facility at a level comparable to the quality of such characteristics as of the conversion date. How does this reconcile with the required reconstruction and rehabilitation requirements of the ISRRPP?
- What do sections 6.10(d) and 9.16 of the Lease and Funding Agreement mean that the Capital Improvement Program will only include those projects required by the FHWA as a condition to conversion? It is not FHWA’s role to establish the necessary level of improvements. Instead, our role is to assess proposed improvements and make a determination as to whether such proposed improvements comply with relevant statutory requirements. The ISRRPP is intended to enable the State to conduct needed reconstruction and rehabilitation that could not otherwise be accomplished without the collection of tolls. The application must demonstrate that the facility needs or will need reconstruction or rehabilitation in order to qualify for tolling under this pilot program. As a result, we will need to see a proposed capital improvement schedule with a substantially greater degree of specificity than has been provided in order to move forward with our review of the application.

*The facility has a sufficient intensity of use, age, or condition to warrant the collection of tolls.*

- TEA-21, section 1216(b)(4)(B)

- Please provide a copy of the September 2007 “State of Interstate 80” report published by the Pennsylvania Department of Transportation (PennDOT) that is referred to in the application.

*In the case of a facility that affects a metropolitan area, an assurance that the metropolitan planning organization ... has been consulted concerning the placement and amount of tolls on the facility.*

- TEA-21, section 1216(b)(3)(B)

- The application must present evidence of direct consultation with all affected MPOs regarding the project. Such consultation must include a discussion of the placement and amount of tolls on the facility.

*An analysis demonstrating that the facility could not be maintained or improved to meet current or future needs....*

-TEA-21, section 1216(b)(3)(C)

- Without a more definitive analysis of the current and future needs and the proposed improvements, it is not possible to determine compliance with this requirement. We are aware that in recent years PennDOT has transferred Interstate Maintenance (IM) funds to other Federal-aid programs, rescinded IM funds, and currently maintains a large balance of unobligated IM funds. Please provide the rationale for these transfers, rescissions, and this unobligated balance, along with the detailed needs on I-80.
  - Specifically, in 2003 one transfer of \$75 million was made, and in 2002, two transfers totaling \$180 million were made to other Program categories.
  - In response to FHWA's June 20, 2007 rescission notice (N 4510.647), PennDOT's rescission was made up almost entirely of IM funds. That total rescission amount was \$38,922,796.00. Of that amount, \$38,609,946.57 in IM funds were rescinded, which represents over 99% of the State's total rescission.
  - PennDOT's current unobligated balance of IM funds is over \$310 million.

*A schedule and finance plan for the reconstruction or rehabilitation of the facility using toll revenues.*

- TEA-21, section 1216(b)(3)(D)(ii)

- Please submit the proposed or contemplated project schedule and finance plan for reconstruction and rehabilitation of I-80.
- Please submit the projected toll revenues as well as the toll implementation schedule.

*The State plan for implementing tolls on the facility takes into account the interests of local, regional, and interstate travelers.*

- TEA-21, section 1216(b)(4)(C)

- Please provide further details explaining how the toll implementation plan takes into account the interests of local, regional, and interstate travelers.

*The State plan for reconstruction or rehabilitation of the facility using toll revenues is reasonable.*

- TEA-21, section 1216(b)(4)(D)

- The lease agreement does not stipulate the amount of the annual lease payment however we have seen various figures in newspaper articles ranging up to \$400 million. Please provide the amount of the payments and explain how the PTC can maintain the required lease payments and still meet the reconstruction and rehabilitation needs of I-80. Please provide the amount of the lease payments with the schedule and finance plan requested above.
- How can the PTC issue \$610 million in bonds in 2009 for I-80 when section 12.1 of the lease agreement caps the PTC's annual bond issuance for the entire Turnpike System at \$600 million?

### **Other Items**

- Please reconcile the statement made in the application that the toll revenue will only be used for I-80 with section 9.5 of the lease agreement, which provides that toll revenues will be used for the entire Turnpike System.
- Does section 9.5 of the lease agreement contemplate the use of I-80 toll revenues to pay debt that is not related to I-80 improvements and maintenance and operating expenses?

- Please explain how the amounts of any payments from the PTC to PennDOT made using I-80 toll revenues were derived and are properly considered operating costs?