

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

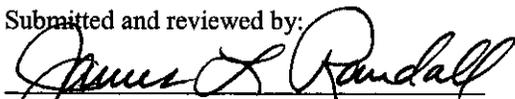
The Texas Transportation Commission (commission) finds it necessary to propose amendments to §§15.70-15.76, relating to international bridges, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §§15.70-15.76 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:


Director, Transportation Planning
and Programming Division

Recommended by:


Executive Director

110539 MAY 25 06

Minute
Number

Date
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §§15.70 - 15.76, concerning international bridges.

4

5 EXPLANATION OF PROPOSED AMENDMENTS

6 The proposed amendments are necessary to implement the
7 provisions of House Bill 1653, 78th Legislature, Regular Session,
8 2003; add, revise or eliminate certain terms and definitions;
9 update statutory references; clarify existing information;
10 modify requirements for public involvement; and allow for a
11 comparison of competing applications.

12

13 The amendments to §15.70 incorporate a new provision enacted by
14 House Bill 1653, which amended Transportation Code, §201.612, to
15 permit an entity that is authorized to construct a new
16 international bridge to enter into the approval process with the
17 Texas Transportation Commission (commission) and the United
18 States simultaneously. This represents a change from the
19 existing process whereby an applicant obtained commission
20 approval prior to requesting approval from the United States.
21 Section 15.70 is further amended to update relevant statutory
22 references.

23

24 Section 15.71 is amended to add the definitions of a competing
25 bridge applicant and a district office, change the term "study

1 sector" to "study area," and remove the definition of the Texas-
2 Mexico Toll Bridge Study. The definition of competing bridge
3 applicant is necessary to address the situation where two or
4 more entities may be interested in constructing a new
5 international bridge in the same area. The definition of
6 district office is necessary to properly identify the specific
7 location where applicants may obtain information. In this
8 section, and throughout the amended rules, the term "study
9 sector" is being replaced by the term "study area" in order to
10 bring the application process up to current transportation
11 planning analysis methods. Similarly, the definition of, and
12 all references to, the Texas-Mexico Toll Bridge Study (Study)
13 are being removed because it is no longer used as a basis for
14 analyzing international bridges.

15
16 The first sentence of §15.72 is being removed as it is
17 duplicative of a statement found in §15.70. The amendments to
18 this section also include additional language to assist
19 potential applicants with information-gathering related to the
20 application process by directing them to their local department
21 district office and the Transportation Planning and Programming
22 Division.

23
24 The amendments to §15.73 set forth the process for addressing
25 competing applications, clarify the requirements related to

1 environmental documentation and public involvement, establish
2 new guidelines for notification of public officials, and remove
3 all references to the Study and sector as previously described.

4

5 Section 15.73(3)(A) is amended to clarify that an applicant must
6 comply with the department's administrative rules pertaining to
7 Environmental Policy and must obtain all environmental approvals
8 required for the project. These changes are necessary to
9 address confusion regarding the type of environmental
10 documentation that is required for international bridge projects
11 and to ensure consistency in the environmental review process.

12

13 Section 15.73(3)(B) has been amended to align the public
14 involvement requirements related to international bridge
15 applications with the public involvement requirements found in
16 the department's administrative rules pertaining to
17 Environmental Policy. This change is necessary to address
18 confusion regarding the public involvement process and to ensure
19 that members of the public, competing bridge applicants, and
20 local officials have adequate notice of the hearing or meeting
21 and an opportunity to comment on the proposed project or provide
22 information as appropriate.

23

24 In addition, the amendments to paragraph (3)(B) of §15.73 set
25 forth the information that an applicant must include in the

1 notices of public hearings and meetings. Specifically, new
2 paragraph (3)(B)(i) requires a statement that the applicant
3 intends to submit an international bridge application to the
4 commission. New paragraph (3)(B)(ii) requires a description of
5 the project, including design and location information. New
6 paragraph (3)(B)(iii) requires an instruction to competing
7 bridge applicants that they have 60 days from the date the
8 notice is published to provide the applicant with design,
9 financial, and social and environmental information on the
10 competing project.

11
12 New §15.73(3)(C) requires the applicant to send a copy of the
13 notice described in §15.73(3)(B) to the county judges and city
14 mayors within a certain geographic area.

15
16 New §15.73(4) is added to set forth the procedures to be
17 followed when two or more applicants compete for approval of the
18 construction of a new international bridge in the same study
19 area. The amendments require an applicant to address the impact
20 of competing projects and demonstrate how its submittal is
21 superior to the other projects.

22
23 New §15.73(4)(A) describes the method by which the applicant
24 will provide an analysis of its project compared against
25 competing projects. The amendments require the applicant to

1 analyze its project as a stand-alone project and then analyze
2 its project against competing projects, demonstrating the
3 superiority of one project by comparing the impacts on cost
4 benefits, project viability, design, and social and
5 environmental impacts.

6
7 Finally, new §15.73(4)(B) provides that the applicant will not
8 be required to analyze a competing project if the competing
9 bridge applicant does not provide data to the applicant
10 necessary to perform the analysis on a competing project.

11
12 Appendix A, which describes the Texas Mexico border sectors
13 identified in the Study, has been deleted since the Study is no
14 longer used as a basis for analyzing international bridges.

15
16 The amendment to §15.74 removes a reference to an organizational
17 position no longer used by the department.

18
19 The amendments to §15.75 eliminate references to obsolete state
20 agency titles, and the section is revised to reflect current
21 titles. In addition, new subsection (b)(4) of §15.75 is added
22 to clarify that the commission, as part of its analysis of the
23 application, will consider information pertaining to competing
24 bridges, information timely submitted by competing bridge
25 applicants as well as any other information provided by the

1 department.

2
3 In §15.76, all references to the Study and sector are being
4 removed as previously described. New subsection (e)(3) of
5 §15.76 is added to reflect language in Transportation Code,
6 §201.612, and provides that applications not approved by the
7 commission must be withdrawn from consideration for approval by
8 the United States.

9

10 FISCAL NOTE

11 James Bass, Chief Financial Officer, has determined that for
12 each of the first five years the amendments as proposed are in
13 effect, there will be no fiscal implications for state or local
14 governments as a result of enforcing or administering the
15 amendments. There are no anticipated economic costs for persons
16 required to comply with the sections as proposed.

17

18 Mr. James Randall, Director, Transportation Planning and
19 Programming, has certified that there will be no significant
20 impact on local economies or overall employment as a result of
21 enforcing or administering the amendments.

22

23 PUBLIC BENEFIT

24 Mr. Randall has also determined that for each year of the first
25 five years the sections are in effect, the public benefit

1 anticipated as a result of enforcing or administering the
2 amendments will be an improved and more effective international
3 bridge application process. There will be no adverse economic
4 effect on small businesses.

5

6 SUBMITTAL OF COMMENTS

7 Written comments on the proposed amendments to §§15.70 - 15.76
8 may be submitted to James Randall, Director, Transportation
9 Planning and Programming, Texas Department of Transportation,
10 125 East 11th Street, Austin, Texas 78701-2483. The deadline
11 for receipt of comments is 5:00 p.m. on July 10, 2006.

12

13 STATUTORY AUTHORITY

14 The amendments are proposed under Transportation Code, §201.101,
15 which provides the commission with the authority to establish
16 rules for the conduct of the work of the department, and more
17 specifically, Transportation Code, §201.612, which authorizes
18 the commission to adopt rules to administer that section.

19

20 CROSS REFERENCE TO STATUTE

21 Transportation Code, §201.612.

1 SUBCHAPTER G. INTERNATIONAL BRIDGES

2 §15.70. Purpose. Transportation Code, §201.612 provides [~~Texas~~
3 ~~Civil Statutes, Article 6674v-8, provide~~] that a political
4 subdivision or private entity authorized to construct or finance
5 the construction of a bridge over the Rio Grande must obtain
6 approval from [e~~f~~] the Texas Transportation Commission and the
7 United States [~~for the construction of the bridge before~~
8 ~~requesting approval from the federal government~~] under
9 Subchapter IV, Chapter 11, Title 33, United States Code, for the
10 construction of the bridge. Transportation Code, §201.612
11 directs the department to allow an applicant to concurrently
12 seek approval from the commission and the United States. This
13 subchapter [~~undesignated head~~] prescribes the procedures and
14 conditions by which a political subdivision or private entity
15 may obtain the approval of the commission.

16
17 §15.71. Definitions. The following words and terms, when used
18 in this subchapter [~~undesignated head~~], shall have the following
19 meanings, unless the context clearly indicates otherwise.

20 (1) Applicant--A political subdivision or private entity
21 authorized by law to construct or finance the construction of a
22 bridge over the Rio Grande.

23 (2) Commission--The Texas Transportation Commission.

1 (3) Competing bridge applicant--An applicant whose
2 project will compete for traffic and revenue and may have
3 social, environmental, traffic congestion, and mobility impact
4 on the study area.

5 (4) [~~3~~] Department--The Texas Department of
6 Transportation.

7 (5) District office--One of the 25 geographical areas,
8 managed by a district engineer, in which the department conducts
9 its primary work activities.

10 (6) [~~4~~] Metropolitan planning organization--An
11 organization designated in certain urbanized areas to carry out
12 the transportation planning process as required by Title 23,
13 United States Code, §134.

14 (7) [~~5~~] Project--The construction or the financing of
15 the construction of a bridge over the Rio Grande.

16 (8) [~~6~~] Study area-- [~~Study sector~~ ~~The affected area~~
17 ~~of the proposed bridge as defined in the Texas Mexico Toll~~
18 ~~Bridge Study, Research Report Number 1976,~~] The [~~this~~] area on
19 [~~will encompass~~] both sides of the Texas-Mexico border affected
20 by the proposed bridge.

21 ~~[(7) Texas Mexico Toll Bridge Study Research Report~~
22 ~~Number 1976, Center for Transportation Research, Bureau of~~
23 ~~Engineering Research, The University of Texas at Austin, April~~

1 ~~1994, this study may be obtained by writing Center for~~
2 ~~Transportation Research Library, 3208 Red River, Suite 200,~~
3 ~~Austin, Texas 78705, and paying a reproduction fee.]~~

4
5 §15.72. New Bridge. [~~A political subdivision or private entity~~
6 ~~that desires to construct or finance the construction of a~~
7 ~~bridge over the Rio Grande must obtain approval from the~~
8 ~~commission for the construction of the bridge before requesting~~
9 ~~approval from the federal government under Subchapter IV,~~
10 ~~Chapter 11, Title 33, United States Code.] To obtain commission
11 ~~[such]~~ approval for a project, the political subdivision or
12 private entity must submit an application and comply with all
13 requirements and conditions imposed by this subchapter [~~these~~
14 ~~sections~~]. Prior to submitting an application to the
15 department, applicants are encouraged to confer with their local
16 department district office. The applicant should direct
17 questions regarding the application and approval process, as
18 well as questions relating to the respective roles and
19 responsibilities of the applicant and the department, to the
20 Transportation Planning and Programming Division (TPP).~~

21
22 §15.73. Preliminary Studies. Prior to submitting an application
23 to the department for the approval of a project, an applicant

1 shall conduct a study of the design, financial feasibility, and
2 [the] social and environmental impact of the project, including
3 the effect of any competing applications.

4 (1) Design. The applicant shall provide a preliminary
5 design geometric layout certified by a registered professional
6 engineer to be in accordance with standards and criteria from
7 appropriate design manuals applicable at the date of
8 application. The layout must identify:

9 (A) horizontal and vertical alignments and cross-slope
10 data of the proposed structure showing overall structure length,
11 width, spans, span length, and type of construction, along with
12 dimensions, where applicable, of:

13 (i) lane width;

14 (ii) curb width;

15 (iii) sidewalks;

16 (iv) shoulder width;

17 (v) calculated minimum vertical clearance over other
18 roadways and waterways; and

19 (vi) toll booths and miscellaneous appurtenances;

20 (B) geometric termini locations along with inspection
21 stations and queue lanes where applicable;

22 (C) the location and preliminary layout of approach
23 roadways and intersections on both sides of the border with

1 changes necessitated by the project to existing facilities on
2 both sides of the border; and

3 (D) the location and layout of any other accommodation
4 of buildings or appurtenances deemed necessary by the applicant
5 and any law or regulation governing the operation and
6 maintenance of port of entry operations.

7 (2) Financial feasibility study. An applicant shall
8 conduct a feasibility study to determine the financial viability
9 of the project. The study shall include the following
10 information.

11 (A) A financial overview of the project, which shall
12 include:

13 (i) summary cost estimates for the planning, design,
14 construction, operation, and maintenance of the project; and

15 (ii) a statement of all financing requirements for
16 the project and sources of all financing.

17 (B) A project construction schedule identifying the
18 timing, amount, and source of all cash required to pay for all
19 construction costs.

20 (C) An analysis of the expected financing period of the
21 project, such period to be the greater of 10 years or the time
22 taken to fully pay any and all liabilities incurred for the
23 planning, design, construction, operation, and maintenance of

1 the project plus the time taken to fully pay any and all
2 liability refunding, renegotiations, conversions, and
3 extensions.

4 (i) An applicant that issues or contemplates issuing
5 any form of liability with a term longer than one year within
6 three years of the date of application shall consider a portion
7 of that liability as incurred for the planning, design,
8 construction, operation, and maintenance of the project unless
9 the applicant demonstrates otherwise to the satisfaction of the
10 commission in the financial feasibility study. A liability not
11 less than the cost of construction and not more than the costs
12 of planning, design, and construction shall be considered in the
13 financial feasibility study as if it had been incurred directly
14 for the project.

15 (ii) The term of any liability amount determined in
16 clause (i) of this subparagraph shall be the longest term of any
17 liabilities issued or contemplated by the applicant within three
18 years of the application date plus the time taken to fully pay
19 any and all liability refundings, renegotiations, conversions,
20 and extensions.

21 (D) A detailed analysis of costs over the expected
22 financing period of the project, which shall include:

23 (i) costs of operations by reasonable expense

1 categories for each year; and

2 (ii) costs of maintenance for each year, such costs
3 identifying each major system, structure, and component of the
4 project that is subject to wear or deterioration, and the
5 analysis of such costs stating both the cost and the expected
6 frequency of inspection, repair, renewal, rehabilitation, and/or
7 replacement required to keep the project in like-new condition.

8 (E) A pro forma analysis based on cash basis accounting
9 for each year of planning, design, construction, and the
10 expected financing period of the project showing:

11 (i) anticipated cash receipts, sources of cash
12 receipts, and rates charged to achieve those cash receipts;

13 (ii) anticipated cash disbursements;

14 (iii) anticipated cash balances;

15 (iv) cash used to meet the requirements of any bond
16 sinking fund and loan or liability amortization payment.

17 (F) A description of the methods used in preparing the
18 financial feasibility study, the assumptions contained in the
19 study, and persons and entities responsible for the preparation
20 of the study.

21 (G) An analysis of the need for the project and
22 potential impact on traffic congestion and mobility, [~~including~~
23 ~~identification of the Texas Mexico Toll Bridge Study sector, as~~

1 ~~described in Appendix A of paragraph (4) of this section, in~~
2 ~~which the project is located,] and:~~

3 (i) average annual daily traffic (AADT) in the study
4 area [~~sector~~] for major arterials and controlled access roadways
5 for both sides of the border for five years preceding the date
6 of the application;

7 (ii) data from any existing international bridge or
8 other international crossing in the study area [~~sector and~~
9 ~~adjacent sectors~~] indicating AADT for the five preceding years;

10 (iii) data from any existing international bridge or
11 other international crossing in the study area [~~sector and the~~
12 ~~adjacent sectors~~] indicating average delay time for traffic
13 seeking to use any international bridge or other international
14 crossing for the five preceding years;

15 (iv) projected AADT for the proposed bridge and other
16 crossings in the study area [~~sector and adjacent sectors~~] 20
17 years after completion (projections shall be based on the
18 current department travel demand model, and the process used to
19 make the projections shall be clearly identified and submitted
20 with the data);

21 (v) a comparison of the project with other similar
22 projects already in operation; and

23 (vi) a projection of changes in the free flow of

1 trade caused by the project.

2 (3) Social and environmental impact. An applicant shall
3 conduct a study of the social and environmental impact of the
4 project [~~consistent with the spirit and intent of the National~~
5 ~~Environmental Policy Act (NEPA), Title 42, United States Code,~~
6 ~~§§4321 et seq., and Title 23, United States Code, §109(h),]~~ and
7 shall provide for public involvement and notice to local
8 officials.

9 (A) Environmental documentation. An applicant shall
10 comply with the requirements in Chapter 2 of this title
11 (relating to Environmental Policy) and shall obtain the
12 environmental approvals required for the project. In addition
13 to any approval required by a federal agency, the applicant
14 shall obtain the department's approval of the form and content
15 of an environmental document prepared under subchapters A and C
16 of Chapter 2 of this title.

17 [~~(i) An applicant shall prepare an environmental~~
18 ~~assessment or an environmental impact statement in accordance~~
19 ~~with NEPA.]~~

20 [~~(ii) The form and content of an environmental~~
21 ~~assessment or environmental impact statement prepared by an~~
22 ~~applicant must be approved by the department.]~~

23 (B) Public involvement. An applicant shall comply with

1 the public involvement requirements in Chapter 2 of this title
2 that apply to paragraph (3) (A) of this subsection. Notices of
3 public meetings and public hearings must include [An applicant
4 shall provide for public involvement by]:

5 (i) a statement that the applicant intends to submit
6 an international bridge application to the commission [holding
7 one or more public meetings];

8 (ii) a description of the proposed bridge, including
9 a description of the design and adjacent facilities and
10 identification of the area to be served [publishing a notice of
11 the public meeting in local newspapers having a general
12 circulation not less than 10 days before each public meeting];
13 and

14 (iii) instructions that competing bridge applicants
15 may submit information pertaining to the design, financial
16 feasibility, and social and environmental impact of a competing
17 project to the applicant no later than 60 days after the date of
18 the notice [notifying the department in writing not less than 10
19 days in advance of each public meeting].

20 (C) Notice to local officials [Reeerd]. The applicant
21 shall send a copy of the notice described in paragraph (3) (B) of
22 this subsection by first class mail to the county judge of each
23 county within 150 miles of the location of the project and the

1 mayor of each municipality within 50 miles of the location of
2 the project [~~An applicant shall provide the department a summary~~
3 ~~of all public meetings held under this section. The summary and~~
4 ~~analysis for each public meeting shall include:~~].

5 [~~(i) a summary of the meeting;~~]

6 [~~(ii) a summary of comments received, and the~~
7 ~~response to and analysis of comments; and]~~

8 [~~(iii) a summary of the proposed changes in project~~
9 ~~location and design planned as a result of comments.]~~

10 [~~(D) Revision to environmental document. An applicant~~
11 ~~shall revise the environmental document for the project to~~
12 ~~address any issues or concerns identified during the public~~
13 ~~involvement process.]~~

14 (4) Analysis of competing applications. An applicant
15 shall address the impact of competing projects (if any) and
16 demonstrate how its submittal is superior to that of any
17 competing bridge applicant.

18 (A) The applicant's preliminary study analysis shall be
19 performed depicting any competing projects. The applicant shall
20 perform an analysis demonstrating the applicant's project as a
21 stand-alone project and, if there is a competing project, an
22 analysis showing both the applicant's project and any competing
23 projects. The analysis reflecting the competing projects must

1 demonstrate how design, traffic, financial, social, and
 2 environmental impacts are affected by the competing projects and
 3 shall include the rationale for how one project is superior
 4 based on these impacts, for example, cost benefits, project
 5 viability, better design, and less adverse social and
 6 environmental impacts.

7 (B) The applicant will not be required to include an
 8 analysis of the competing project unless the competing bridge
 9 applicant provides the information described in paragraph
 10 (3) (B) (iii) of this subsection by the deadline specified in that
 11 paragraph.

12 ~~[(4) Sectors. The following Appendix A describes the~~
 13 ~~sectors identified in the Texas Mexico Toll Bridge Study.]~~

14 [Figure: 43 TAC §15.73(4)]

Texas-Mexico border sectors					
Sector	Sector Name	Eastern Boundary	Western Boundary	Existing Binational Entry Systems	Proposed Binational Entry Systems
1	Gulf of Mexico	Gulf of Mexico	Palmito Hill Road	None	None
2	Brownsville/ Matamoros	Palmito Hill Road	Flor de Mayo Road	1. Gateway 2. B&M	1. Port of Brownsville 2. Los Tomates 3. Flor de Mayo
3	Los Indios	Flor de Mayo Road	Extension of FM 491	Los Indios	None
4	Eastern Valley/ Rio Bravo	Extension of FM 491	Extension of FM 1423	Progreso	Donna/Rio Bravo
5	Central Valley/ Reynosa	Extension of FM 1423	Extension of FM 886	1. Hidalgo/Reynosa 2. Los Ebanos Ferry	1. Pharr/Reynosa 2. Anzalduas 3. Mission 4. Los Ebanos
6	Western Valley	Extension of FM 886	Western city limits of Roma	1. Rio Grande City/ Camargo 2. Roma/Miguel Alemán	None
7	Lake Falcon	Western city limits of Roma	Eastern city limits of Laredo	Lake Falcon Dam	None
8	Laredo/Nuevo Laredo	Eastern city limits of Laredo	Colombia Bridge	1. Laredo Bridge #1 2. Laredo Bridge #2	Laredo Bridge #3

NOTE: Additions underlined
 Deletions in []
 OGC: 05/17/06 11:57 AM

Exhibit B

				3.-Colombia	
9	Guerrero	Colombia-Bridge	Eastern city limits of Eagle Pass/Piedras Negras	None	None
10	Eagle Pass/ Piedras Negras	Eastern city limits of Eagle Pass	Western city limits of Eagle Pass	Eagle Pass/ Piedras Negras #1	Eagle Pass/ Piedras Negras #2a and #2b
11	Quemado	Western city limits of Eagle Pass	Eastern city limits of Eagle Pass	None	None
12	Del Rio/Ciudad Aeuña	Eastern city limits of Del Rio	Western city limits of Del Rio	Del Rio/Ciudad Aeuña	None
13	La Linda	Western city limits of Del Rio	East boundary of Big Bend National Park	La Linda Bridge	None
14	Big Bend National Park	Big Bend National Park east boundary	Big Bend National Park west boundary	1-Boquillas Ferry 2-Santa Elena Ferry	None
15	Terlingua	Big Bend National Park west boundary	Eastern boundary of Presidio	None	None
16	Presidio/Ojinaga	Eastern city limits of Presidio	Western city limits of Presidio	Presidio/Ojinaga	None
17	Ft. Hancock/ El Provenir	Western city limits of Presidio	Fabens Bridge	Ft. Hancock/El Provenir	None
18	El Paso/Ciudad Juárez	Fabens Bridge	Texas/Chihuahua/ New Mexico tri-state border	1-Fabens 2-Ysleta 3.BOTA 4-GNB 5-PDN	1- Fabens Replacement 2- Socorro 3- BOTA Replacement

1

2 §15.74. Application. To secure approval of a project, an
 3 applicant must file an application and 20 copies of the
 4 application with the department's [deputy] executive director
 5 [~~for transportation planning and development~~] or his or her
 6 designee who shall serve as department liaison for the project.
 7 The application shall be in a form prescribed by the department,
 8 and must include [~~be accompanied by~~]:

9

(1) a description of the applicant, including:

10

(A) form of organization under the laws of this state;

11 and

12

(B) history of operations and/or business conducted;

13

(2) a definition of major financial, operating, and

1 business policies of the applicant that will affect operations
2 or the conduct of business, including:

3 (A) key operating conditions; and

4 (B) compliance with existing federal, state, and local
5 laws and regulations;

6 (3) the preliminary study completed in accordance with
7 §15.73 of this subchapter [~~title~~] (relating to Preliminary
8 Studies); and

9 (4) any written commitments from the appropriate federal
10 jurisdictions of the United Mexican States to provide adequate
11 roadway connections to the bridge, and similar commitments from
12 state and municipal transportation agencies for any state
13 highway or local street infrastructure necessary to make the
14 bridge fully operational.

15

16 §15.75. Department Action.

17 (a) Coordination.

18 (1) Upon the receipt of a complete application, the
19 department will submit a copy of the application and request
20 views and comments from the:

21 (A) Department of Public Safety of the State of Texas;

22 (B) Texas Commission on Environmental Quality [~~Natural~~
23 ~~Resource Conservation Commission~~];

1 (C) Texas Historical Commission;
2 (D) Department of Agriculture;
3 (E) Texas Alcoholic Beverage Commission;
4 [~~(F) Texas Department of Commerce;~~]
5 (F) [~~(G)~~] Office of the Governor;
6 (G) [~~(H)~~] any other state agency the department
7 determines is appropriate considering the nature of the project;
8 and
9 (H) [~~(I)~~] any entity which may be significantly
10 affected by the project.

11 (2) The department will also seek the advice of the local
12 metropolitan planning organization, if any, as to whether the
13 project will be consistent with the regional transportation
14 plan.

15 (3) The department will allow an agency or entity 20 days
16 from the date the agency or entity receives a copy of the
17 application for the submission of views and comments under this
18 subsection.

19 (b) Process and analysis of application.

20 (1) The department reserves the right to return, or hold,
21 pending corrections submitted by the applicant, an application
22 that the department determines is not in full compliance with
23 the requirements of §15.74 of this subchapter [~~title~~] (relating

1 to Application). The department, when returning an application,
2 will identify in writing all areas deemed to be deficient.

3 (2) The department and the commission will not perform
4 work to recast, redraw, calculate, construct, reconstruct, or
5 otherwise produce any element of the preliminary study which is
6 not adequately presented by the applicant.

7 (3) The commission may consider missing, ambiguous,
8 uncertain, or unclear elements in the financial feasibility
9 study as tending to the conclusion that the project has
10 substantial speculative elements in its financing and should not
11 be approved.

12 (4) The commission will consider the impact of a
13 competing bridge, whether proposed, approved, or constructed.
14 The commission will consider information provided by a competing
15 bridge applicant only to the extent the competing bridge
16 applicant timely submitted the information to the applicant
17 under §15.73 of this subchapter. The commission will consider
18 any other information provided by the department.

19 (c) Public hearing. If the department finds that the
20 application meets the requirements of this section [~~§15.74 of~~
21 ~~this title (relating to Application)~~], it shall notify the
22 applicant of its findings, forward a copy of the findings to the
23 Office of the Governor, and shall conduct a public hearing to

1 receive public comment on the project. A public hearing held by
2 the department under this subsection shall be conducted by the
3 executive director of the department or the director's designee
4 in accordance with §1.5 of this title (relating to Public
5 Hearings). Any persons, including, but not limited to, official
6 representatives of a county, municipality, metropolitan planning
7 organization, or other governmental entity, and any individual,
8 group, or association may provide comment.

9 (d) Report to commission. Subsequent to the public
10 hearing, the department will submit the application together
11 with its findings and recommendations to the commission for
12 appropriate action. The department will consider the views and
13 comments received under subsection (a) of this section prior to
14 making its findings and recommendations.

15

16 §15.76. Commission Action.

17 (a) Commission analysis.

18 [~~(1)~~] The commission may consider the advice of the staff
19 of the department and consultants that the commission may choose
20 regarding the sufficiency of the information, the probable
21 accuracy of projections, the anticipated financial condition of
22 the application and the project, the impact of the project on
23 the economy and free trade, and any other information the

1 commission determines appropriate.

2 ~~[(2) The commission may use the Texas Mexico Toll Bridge~~
3 ~~Study as the initial basis for evaluating the demand, impact on~~
4 ~~the economy and the potential impact on the free flow of trade~~
5 ~~anticipated by the project. An applicant may submit additional~~
6 ~~information which supports, amplifies, or rebuts data in the~~
7 ~~Texas Mexico Toll Bridge Study in the applicant's feasibility~~
8 ~~study.]~~

9 (b) Comments and commitments of other entities. Prior to
10 granting approval of a project, the commission shall consider,
11 but is not bound by:

12 (1) the nature and extent of any commitments from Mexican
13 authorities provided in accordance with §15.74(4) of this
14 subchapter [~~title~~] (relating to Application); and

15 (2) the views and comments of an agency or entity listed
16 in §15.75 of this subchapter [~~title~~] (relating to Department
17 Action).

18 (c) Project requirements. The commission will not approve
19 a project unless it finds that:

20 (1) the project will provide for all reasonable and
21 feasible measures to avoid, minimize, or mitigate for adverse
22 environmental impacts;

23 (2) the project is consistent with the state

1 transportation plan and, if appropriate, with the regional
2 transportation plan developed by a metropolitan planning
3 organization having jurisdiction over the project; and

4 (3) the future transportation infrastructure, at the time
5 of the bridge operations, on both sides of the border will be of
6 sufficient capacity to support the new structure.

7 (d) Financial requirements. The commission will not
8 approve a project if it finds that the project's financial
9 prospects over the expected financing period of the project are
10 likely to categorize the project as being of less than
11 investment quality due to one or more of the following
12 conditions:

13 (1) the project has more than minimal speculative
14 elements in its prospective finances;

15 (2) the financial future of the project cannot be
16 considered as well assured;

17 (3) protection of any lenders or bond holders is not well
18 safeguarded over the expected financing period of the project;
19 or

20 (4) the project will probably cause negative impacts on
21 the economy or the free flow of trade that are greater than any
22 probable positive impacts in the study area [~~Texas-Mexico Toll~~
23 ~~Bridge Study sector where the project is located and adjacent~~

1 sectors].

2 (e) Final action.

3 (1) Approval or disapproval of the project shall be by
4 written order of the commission, and shall include the
5 rationale, findings, and conclusions on which approval or
6 disapproval is based.

7 (2) The commission will approve or disapprove the
8 application within 120 days of the date of receipt of a complete
9 application. If an application is returned under §15.75 of this
10 subchapter [~~title relating to Department Action~~], the
11 commission will approve or disapprove the application within 120
12 days of the date that re-submitted complete application has been
13 received by the department.

14 (3) If the commission does not approve the application,
15 the applicant shall withdraw the request for approval from the
16 United States.

17 (4) The department will provide written notification of
18 the commission's action to the applicant and the Office of the
19 Governor.

20