

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

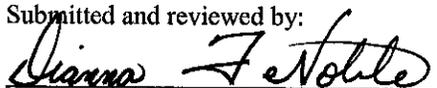
The Texas Transportation Commission (commission) finds it necessary to propose repeal of §§2.1-2.4, §§2.40 – 2.43, §§2.45 – 2.47, §2.49, and §2.50, relating to environmental policy, codified under Title 43, Texas Administrative Code, Chapter 2, Subchapters A and C, and to propose new §§2.1 – 2.20 relating to environmental policy, to be codified under Title 43, Texas Administrative Code, Chapter 2, Subchapter A.

The preamble and the proposed repeals and new sections, attached to this minute order as Exhibits A - D, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the repeal of §§2.1-2.4, §§2.40 – 2.43, §§2.45 – 2.47, §2.49, and §2.50, and the new §§2.1 – 2.20 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, Environmental Affairs Division

Recommended by:



Executive Director

110692 SEP 28 06

Minute Number	Date Passed
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1 the provisions have been reorganized to make them easier to use.

2

3 The reorganization also facilitates the department's
4 implementation of federal law. Later in the preamble it
5 describes how the rules implement the Safe, Accountable,
6 Flexible, Efficient Transportation Equity Act: A Legacy for
7 Users (P.L. 109-059) (SAFETEA-LU). There are numerous new
8 requirements concerning processing an environmental impact
9 statement including the preparation of a coordination plan. The
10 proposed sections on coordination with other agencies and on
11 public participation provide logical places to add the new
12 requirements.

13

14 The new sections implement new law, including SAFETEA-LU, as
15 described later in this preamble. In some instances there are
16 additional changes, compared to the repealed rules, and those
17 changes are described later in this preamble. The new sections
18 implement the requirements concerning environmental processing
19 for a federal-aid project in 23 C.F.R. part 771, and satisfy
20 Transportation Code, §201.604, that the department provide by
21 rule for the environmental review of the department's
22 transportation projects that are not subject to review under the
23 National Environmental Policy Act.

24

25 New §2.1, General; Emergency Action Procedures, includes

1 subsections on policy, applicability, the definition of
2 "transportation project," purpose, other applicable
3 environmental law, and emergency action procedures, that
4 consolidate and restate the provisions in the repealed rules.
5 Subsection (d) specifies that the environmental processing for a
6 project must also comply with the requirements in Subchapter C
7 if applicable. This is a reference to the rules remaining in
8 Subchapter C that are not proposed for repeal in this
9 rulemaking. Subsection (f) specifies that the meaning of
10 "district" is broad as used in the new rules. Sometimes a
11 project sponsor will not be the district within whose
12 geographical boundaries the project lies. For example, the
13 department office responsible for an airport project is the
14 aviation division. Continuing with the example, when the rules
15 specify that the "district" shall take certain actions
16 concerning the project, it shall mean the aviation division.

17
18 New §2.2, Definitions, defines terms used in the chapter. In
19 many instances the definitions are the same compared to the
20 repealed rules. The terms "action" and "maintenance action" are
21 deleted because the new rules do not use them. The section
22 includes new terms, for example, "EIS," "de minimis," "need and
23 purpose," "preliminary design," and "transportation
24 enhancement." The terms were added so that the reader may more
25 easily understand the rules, or to define new terms not in the

1 repeals.

2

3 New §2.3, Federal-Aid Transportation Project, restates the
4 requirements in repealed §2.42. Subsections (c) and (e) add new
5 provisions, and allow the department to implement portions of
6 SAFETEA-LU. New subsection (c) recognizes that the Federal
7 Highway Administration (FHWA) and the department may enter into
8 a memorandum of agreement under 23 U.S.C §139, §326, or §327,
9 under which FHWA delegates to a state transportation agency the
10 authority to issue approvals of environmental documents and take
11 other actions. Subsection (c)(2) specifies that wherever in
12 Chapter 2 it specifies that FHWA may issue an approval or take
13 an action, the environmental division may issue the approval or
14 take the action if FHWA has delegated appropriate authority to
15 the department. New subsection (e) authorizes the department to
16 request that FHWA publish in the *Federal Register* a notice that
17 a permit, license, or approval is final, and notice of
18 limitations of claims for judicial review under 23 U.S.C.
19 §139(1).

20

21 New §2.4, Project Coordination, restates the duties of the
22 district and environmental division on exchanging information
23 concerning a project with other governmental agencies (called
24 "coordination"). This section, and the following new sections,
25 also implement SAFETEA-LU. The law establishes new requirements

1 for environmental processing that apply to a federal-aid project
2 that is classified as an environmental impact statement (EIS)
3 project. 23 U.S.C. §139. New §2.4(a) defines a "participating
4 agency" as any agency, department, or other unit of federal,
5 state, local, or Indian tribal government, that may have an
6 interest in a project. A "cooperating agency" is a
7 participating agency that is a federal agency that either has
8 jurisdiction by law or has special expertise with respect to any
9 environmental issue. 40 C.F.R. §1501.6. The new rules use the
10 same terms to prevent confusion when interpreting federal rules
11 and department rules.

12
13 New §2.5, Public Involvement, restates the requirements for
14 public involvement concerning a project. There are also new
15 provisions. Subsection (e) concerns public involvement for an
16 EIS project or supplemental environmental impact statement
17 (SEIS) project. Subsection (e)(1) concerns the applicability of
18 the provisions in the subsection that implement Section 6002 of
19 SAFETEA-LU (23 U.S.C. §139). For a federal-aid project, the
20 SAFETEA-LU requirements apply if the original notice of intent
21 (NOI) was published in the *Federal Register* after August 10,
22 2005. (The effective date of SAFETEA-LU was August 11, 2005.)
23 For purposes of consistency, for a state project, the
24 requirements apply if the original NOI was published in the

1 *Texas Register* after August 10, 2005. Subsection (e)(9)
2 concerns additional requirements for notice of availability of a
3 final environmental impact statement (FEIS) for a Trans-Texas
4 Corridor project. This implements House Bill 2702, 79th
5 Legislature, Regular Session, 2005 (HB 2702), and new
6 Transportation Code, §227.004(b).

7
8 New §2.6, Public Involvement-Meeting with Affected Property
9 Owners, restates the requirements for this type of public
10 involvement.

11
12 New §2.7, Public Involvement-Public Meeting, restates the
13 requirements for this type of public involvement.

14
15 New §2.8, Public Involvement-Opportunity for Public Hearing,
16 restates the requirements for this type of public involvement.

17
18 New §2.9, Public Involvement-Public Hearing, restates the
19 requirements for this type of public involvement. Subsection
20 (b) lists the type of projects for which a public hearing is
21 mandatory. This includes a project that requires the taking of
22 public land designated and used as a park, recreation area,
23 wildlife refuge, historic site, or scientific area, as covered
24 in Parks and Wildlife Code, §§26.001 et seq, or requires the

1 taking of private land designated and used as an historic site.
2 The state public hearing requirement applies whether or not
3 there is a finding the taking is de minimis under federal law.
4 See, SAFETEA-LU and 23 U.S.C §128. Subsection (d)(2) concerns
5 the publication of notice of a public hearing. The requirement
6 has been changed because "newspaper" is now plural. If the
7 dominant language spoken by the local population affected by a
8 transportation project is other than English, then the district
9 should publish notice both in a newspaper in English, and in
10 another newspaper in the local language. If the dominant local
11 language is English then publishing the notice in one newspaper
12 is sufficient. Also, the requirements have been changed
13 slightly for a project that requires the taking of public land
14 designated and used as a park, recreation area, wildlife refuge,
15 historic site, or scientific area. The requirements now track
16 exactly the requirements in Parks & Wildlife Code, §26.002, to
17 ensure that the department complies with the statutory
18 requirements.

19
20 New §2.10, Categorical Exclusion (CE), restates the
21 environmental review requirements for a project classified as a
22 categorical exclusion. Subsection (a)(2) states that the
23 section does not apply to the purchase of an option to acquire
24 real property. The section also does not apply to the exercise
25 of an option or other early or advance acquisition of right-of-

1 way. The subsection also adds a cross reference to new
2 provisions in §2.17 concerning Special Right-of-Way Acquisition
3 on this subject. The new provisions are discussed later in this
4 preamble. Subsection (c)(2)(Y) adds a new example of a blanket
5 CE: utility installations along or across a transportation
6 corridor. The department's programmatic agreement with FHWA
7 concerning the processing of CE projects identifies this type of
8 work as a blanket CE.

9
10 New §2.11, Environmental Assessment (EA), restates the
11 environmental review requirements for a project classified as
12 requiring an environmental assessment.

13
14 New §2.12, Environmental Impact Statement (EIS), restates the
15 environmental review requirements for a project classified as
16 requiring an environmental impact statement. Subsection (e)(1)
17 concerning the preparation of the draft environmental impact
18 statement (DEIS) includes a new provision on developing the
19 preferred alternative to a higher level of detail. This
20 implements SAFETEA-LU. 23 U.S.C. §139(f)(4). Subsection (e)(2)
21 adds new requirements for preparation of a DEIS for a Trans-
22 Texas Corridor project. This implements HB 2702, and new
23 Transportation Code, §227.004(a).

1

2 New §2.13, Reevaluation, restates the environmental review
3 requirements for when a project must undergo a reevaluation.
4 Subsection (e) concerning a notice of continuous activity is a
5 new provision that reflects existing department practice. For a
6 project that is not complete, the district must submit to the
7 environmental division a report showing why a reevaluation is
8 not needed.

9

10 New §2.14, Supplemental Environmental Assessment, authorizes the
11 department to prepare a supplemental environmental assessment.
12 The new section requires the preparation of a supplemental EA
13 when there are changes to the project that were not evaluated in
14 the EA, or when there is new information or circumstances that
15 were not evaluated in the EA. The scope of the supplemental
16 document may be limited to the changes, rather than a scope that
17 focuses on the entire project as required for a reevaluation.
18 The new section is similar to a provision for a supplemental
19 environmental impact statement (SEIS) that provides if the
20 department is uncertain of the significance of new impacts, the
21 department shall develop appropriate environmental studies,
22 including an EA, to assess the impacts of the changes, new
23 information, or new circumstances. See repealed §2.43(h)(4),
24 and new §2.15(d). The department believes it is appropriate to
25 use the same procedure for a project classified as an EA. The

1 department believes this is an efficient use of department
2 resources to focus on the known changes and prepare a thorough
3 review of those changes. The scope of a supplemental EA would
4 be limited to changes to the project that were not evaluated in
5 the EA, or new information or circumstances.

6
7 New §2.15, Supplemental Environmental Impact Statement (SEIS),
8 restates the requirements for an SEIS.

9
10 New §2.16, Mitigation, restates the requirements for mitigating
11 the environmental impacts of a project. There are also new
12 provisions. Portions of subsection (b) and subsection (c)
13 implement HB 2702, concerning new Transportation Code, §201.617,
14 and the repeal of Transportation Code, §201.6061. HB 2702
15 requires that before the department acquires by purchase or
16 condemnation real property to mitigate an adverse environmental
17 impact, the department shall, if authorized by the applicable
18 regulatory authority, offer to purchase a conservation easement
19 from the owner of the real property.

20
21 New §2.17, Special Right-of-Way Acquisition, restates the
22 requirements concerning the acquisition of right-of-way under
23 certain circumstances. There are also several new provisions.
24 Subsection (c) implements Senate Bill 1273, 79th Legislature,
25 Regular Session, 2005 (SB 1273), and new Natural Resources Code,

1 \$183.057. The law concerns the acquisition of private land
2 encumbered by an agricultural conservation easement purchased in
3 accordance with Natural Resources Code, Chapter 183. The
4 department may review, and if appropriate, approve the
5 acquisition. The department interprets the statutory
6 requirement to hold a public hearing as being satisfied by a
7 public hearing held under §2.9 of this subchapter (relating to
8 Public Participation-Public Hearing). The department may at a
9 hearing approve the findings required under the statute.
10
11 Subsection (e) concerns early and advance acquisitions.
12 Subsection (e)(1) specifies the method for making a CE analysis
13 for early and advance acquisitions is under the standards set
14 forth in this subsection. The department shall identify
15 environmental issues, and identify any environmental liabilities
16 associated with the acquisition. The department believes this
17 level of analysis is reasonable, which is less stringent than
18 the analysis required under §2.10 concerning Categorical
19 Exclusion (CE), because the subsection also provides an early or
20 advance acquisition shall not influence the final environmental
21 decision regarding the build, no-build decision, or a decision
22 regarding the project alignment. However, certain early or
23 advance acquisitions would have a significant impact even if

1 they do not influence the final environmental decision on a
2 project. Accordingly, the proposed subsection also provides
3 that the department shall not make an early or advance
4 acquisition for protective buying that requires relocation, or
5 for the taking of public land or an historic site. An early or
6 advance acquisition that is a hardship acquisition (that is, at
7 the request of the landowner), protective buying (other than
8 requiring a relocation), or a donation should not itself have a
9 significant impact. The last sentence in subsection (e)(1)
10 clarifies that a categorical exclusion analysis (to support an
11 early or advance acquisition) is not required for a
12 transportation project for which there is an approved
13 environmental document. Subsection (e) applies to acquisitions
14 of right-of-way before the environmental document is issued for
15 the project. Subsection (e) does not apply if the environmental
16 document has been issued. Subsection (e)(2) concerns the
17 department's acquisition of an option to purchase real property
18 (as authorized under Transportation Code, §202.112) and the
19 exercise of the option. The department may purchase an option
20 if the department conducts a site assessment and determines that
21 the property does not appear to contain significant
22 contamination of hazardous materials, or other potential
23 environmental concerns. A CE analysis under §2.10 is not

1 required because the purchase of an option will not have
2 significant impacts on the environment, and the purchase will
3 not influence the final environmental decision on a project.
4 The subsection also specifies that the exercise of an option is
5 a type of early or advance acquisition, and the requirements of
6 subsection (e)(1) apply to the exercise.

7
8 New §2.18, Maintenance Projects and Programs, restates the
9 requirements concerning the environmental approval for
10 maintenance projects and programs. A provision was added to
11 clarify that the environmental division reviews, and if
12 appropriate, approves a maintenance program.

13
14 New §2.19, Rail Transportation Project, restates the
15 requirements concerning the environmental approval for a rail
16 transportation project.

17
18 New §2.20, Public or Private Entity Receiving Financial
19 Assistance from the Department for a Project, restates the
20 environmental processing requirements for such projects.
21 Subsections (c) and (d) list the information the entity must
22 submit to the department. These requirements were changed
23 slightly so that they match the parallel requirements in §2.3(d)
24 (relating to Federal-Aid Project) to avoid confusion.

1

2 FISCAL NOTE

3 James Bass, Chief Financial Officer, has determined that for
4 each of the first five years the repeals and new sections as
5 proposed are in effect, there could be fiscal implications for
6 state or local governments as a result of enforcing or
7 administering the repeals and new sections. However, the fiscal
8 impact cannot be quantified.

9

10 To a great extent the proposed sections restate the requirements
11 in the repealed sections, and so there should be no fiscal
12 implications. However, the proposed sections add some new
13 provisions meant to implement new law. For a federal-aid
14 project the department must comply with SAFETEA-LU, including
15 the preparation of a coordination plan for an EIS project. The
16 department will expend resources, either hiring a consultant to
17 prepare a plan, or using staff resources to prepare a plan. In
18 every case, staff resources will be used to review the plan.
19 But the purpose of preparing a plan, beyond complying with
20 federal law, is to make the environmental review process more
21 orderly and efficient. The department has not yet prepared a
22 coordination plan, so it is difficult to predict whether a plan
23 will lead to a net increase in consuming state resources, or a
24 net decrease.

25

1 The proposed sections implement portions of HB 2702. For a
2 Trans-Texas Corridor project, the department must include
3 additional analyses in a DEIS and FEIS, and must give additional
4 notice of a FEIS, as required by Transportation Code, §227.004.
5 The costs to implement these provisions should not significantly
6 increase the costs of environmental processing. The sections
7 also implement new Transportation Code, §210.617, requiring the
8 department to offer first to purchase a conservation easement
9 from the owner of real property prior to acquiring the property
10 by purchase or condemnation. It is difficult to predict whether
11 the additional procedure, or the acquisitions, will cause a net
12 increase or decrease in use of state resources.

13
14 The new sections implement SB 1273 concerning the acquisition of
15 private land encumbered by an agricultural conservation easement
16 purchased in accordance with Natural Resources Code, Chapter
17 183. The department does not yet have experience with a project
18 that required the purchase of encumbered property, and it is
19 difficult to predict how often this will occur. Accordingly,
20 there is no history upon which to estimate the fiscal
21 implications.

22
23 The new sections also authorize the department to supplement an
24 EA when there are changes to the project not evaluated in the
25 EA, or when new information or circumstances relevant to

1 environmental concerns arise that were not evaluated in the EA.
2 The scope of a supplemental EA may be limited to reviewing the
3 effects of the changes, and so this may reduce the costs of
4 environmental processing, compared to if the department had
5 prepared a new EA that reviewed the entire project. It is
6 difficult to predict how often the department may prepare a
7 supplemental EA and how much resources may be saved.

8

9 The new sections may also have a fiscal impact on local
10 governments, but here too the impact cannot be quantified. A
11 local government that sponsors a transportation project must
12 comply with the new sections if the project is within the
13 applicability provisions of the rules. It is just as difficult
14 to quantify the impacts of the new laws on local government as
15 it is to quantify the impacts on state resources.

16

17 There is no anticipated increase in state or local revenues as a
18 result of the repeals or new sections.

19

20 Dianna Noble, P.E., Director, Environmental Division, has
21 certified that there will be no significant impact on local
22 economies or overall employment as a result of enforcing or
23 administering the repeals and new sections.

24

1 PUBLIC BENEFIT

2 Ms. Noble has also determined that for each year of the first
3 five years the repeals and new sections are in effect, the
4 public benefit anticipated as a result of enforcing or
5 administering the repeals and new sections will be the
6 procedures for environmental processing will be easier to
7 understand. This should help both staff and the public to track
8 compliance with environmental processing requirements, and
9 should encourage public participation.

10

11 The new sections implement SAFETEA-LU so that Texas continues to
12 be eligible for federal funding for transportation projects.
13 The sections also implement certain provisions in SAFETEA-LU
14 under which FHWA may delegate authority to a state to issue
15 approvals of projects.

16

17 The new sections ensure the department complies with state law.
18 The new sections implement HB 2702 concerning environmental
19 processing of Trans-Texas Corridor projects. The proposed
20 sections implement HB 2702 and SB 1273 which change how the
21 department acquires right of way. This will further protect
22 private land.

23

24 The new sections also apply to other governmental entities that
25 are the sponsor of a transportation project that is within the

1 applicability provisions of the new sections. The fiscal note
2 earlier in this preamble explained it is difficult to predict
3 the additional costs and benefits local governments will incur
4 as a result of complying with the new sections.

5
6 There will be no adverse economic effect on small businesses.
7 The new sections do not apply to small businesses.

8
9 COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW
10 The department determined that this rulemaking action relates to
11 actions subject to the Texas Coastal Management Program (CMP)
12 under the Coastal Coordination Act of 1991, as amended (Natural
13 Resources Code, §§33.201 et seq.), because it concerns the
14 department's rules on the preparation of an environmental
15 document for a transportation project. The department reviewed
16 this action for consistency with the CMP goals and policies
17 under the rules of the Coastal Coordination Council and
18 determined that the action is consistent with applicable CMP
19 goals and policies.

20
21 A CMP goal applicable to this rulemaking is that the use or
22 taking of public land shall comply with Parks and Wildlife Code,
23 Chapter 26. 31 TAC §501.29. The rulemaking is consistent with
24 this goal because proposed new §2.17, concerning Special Right-
25 of-Way Acquisition, implements the statutory requirements.

1 Another CMP goal applicable to this rulemaking is that
2 transportation projects shall comply with certain practices
3 concerning the siting of a project to lessen the impacts on
4 coastal natural resources. 31 TAC §501.31. The rulemaking
5 reorganizes the rules to make them easier to use, and in some
6 instances implements new state or federal law. There are no
7 proposed changes to §2.48, concerning Coastal Management
8 Program, that relates to transportation projects within the
9 coastal boundary. In sum, the proposed repeals and new sections
10 concern the method by which to evaluate the environmental
11 impacts of a transportation project, and do not dictate the
12 siting of a project. A copy of the rulemaking will be submitted
13 to the Coastal Coordination Council for the council's comments
14 on the consistency of the proposed rulemaking with the CMP. The
15 department requests that the public give comment on whether the
16 proposed rulemaking is consistent with the CMP.

17

18 PUBLIC HEARING

19 Pursuant to the Administrative Procedure Act, Government Code,
20 Chapter 2001, the Texas Department of Transportation will
21 conduct a public hearing to receive comments concerning the
22 proposed rules. The public hearing will be held at 9:00 a.m. on
23 November 9, 2006, in the first floor hearing room of the Dewitt
24 C. Greer State Highway Building, 125 East 11th Street, Austin,
25 Texas and will be conducted in accordance with the procedures

1 specified in 43 TAC §1.5. Those desiring to make comments or
2 presentations may register starting at 8:30 a.m. Any interested
3 persons may appear and offer comments, either orally or in
4 writing; however, questioning of those making presentations will
5 be reserved exclusively to the presiding officer as may be
6 necessary to ensure a complete record. While any person with
7 pertinent comments will be granted an opportunity to present
8 them during the course of the hearing, the presiding officer
9 reserves the right to restrict testimony in terms of time and
10 repetitive content. Organizations, associations, or groups are
11 encouraged to present their commonly held views and identical or
12 similar comments through a representative member when possible.
13 Comments on the proposed text should include appropriate
14 citations to sections, subsections, paragraphs, etc. for proper
15 reference. Any suggestions or requests for alternative language
16 or other revisions to the proposed text should be submitted in
17 written form. Presentations must remain pertinent to the issues
18 being discussed. A person may not assign a portion of his or
19 her time to another speaker. Persons with disabilities who plan
20 to attend this meeting and who may need auxiliary aids or
21 services such as interpreters for persons who are deaf or
22 hearing impaired, readers, large print or Braille, are requested
23 to contact Randall Dillard, Director, Public Information Office,
24 125 East 11th Street, Austin, Texas 78701-2483, 512/463-8588 at
25 least two working days prior to the hearing so that appropriate

1 services can be provided.

2

3 SUBMITTAL OF COMMENTS

4 Written comments on the proposed repeals and new sections may be
5 submitted to Dianna Noble, P.E., Director, Environmental
6 Division, Texas Department of Transportation, 125 East 11th
7 Street, Austin, Texas 78701-2483. The deadline for receipt of
8 comments is 5:00 p.m. on November 13, 2006.

9

10 STATUTORY AUTHORITY

11 The repeals and new sections are proposed under Transportation
12 Code, §201.101, which provides the Texas Transportation
13 Commission with the authority to establish rules for the conduct
14 of the work of the department, and more specifically,
15 Transportation Code, §91.033, which authorizes the department to
16 adopt rules concerning the environmental processing of a rail
17 project, Transportation Code, §203.022, which requires the
18 department to adopt rules concerning public participation during
19 the environmental processing of certain projects, and
20 Transportation Code, §201.604, which requires the department to
21 adopt rules for the environmental review of transportation
22 projects that are not subject to review under the National
23 Environmental Policy Act.

24

25 CROSS REFERENCE TO STATUTE

- 1 Transportation Code, §91.034, §201.606, §201.607, §201.610,
- 2 §201.617, §203.021, §227.004, §227.027, and §227.028, Parks and
- 3 Wildlife Code, §26.002, and Natural Resources Code, §183.057.

1 entity in which the project is funded in whole or in part by the
2 department; or

3 (C) a transportation project of a private or public
4 entity when the project requires commission or department
5 approval.

6 (2) Transportation project. A transportation project is
7 a highway improvement, rest area, aviation, toll project, public
8 transportation, rail transportation project, ferry landing
9 project, ferry maintenance, transportation enhancement, or a
10 project for the construction or operation of a facility that is
11 a part of the Trans-Texas Corridor. A highway improvement
12 project is a highway construction or maintenance project under
13 one or more of Transportation Code, Chapters 201, 203, 221, 223,
14 227, or 228.

15 (c) Purpose. This subchapter implements the requirements
16 of Transportation Code, §91.033, §91.034, §201.604, §201.607,
17 §201.610, §201.617, §203.021, §203.022, §227.004, §227.013,
18 §227.027, and §227.028. Also, the requirements in this chapter
19 follow the requirements of the National Environmental Policy
20 Act, 42 United States Code §§4321 et seq., 23 United States Code
21 §109(h), and federal rules adopted under those laws. For a
22 federal-aid transportation project, the subchapter sets forth
23 additional requirements the department shall follow in order to

1 comply with the National Environmental Policy Act and federal
2 rules adopted under that law.

3 (d) Additional requirements for certain projects.
4 Subchapter C of this chapter (relating to Additional
5 Requirements for Certain Types of Transportation Projects)
6 prescribes additional environmental requirements for certain
7 types of projects.

8 (e) Other applicable environmental law. For a
9 transportation project, in addition to the requirements in this
10 subchapter and Subchapters B and C of this chapter, the
11 department shall ensure compliance with state and federal law
12 including the Endangered Species Act, 16 United States Code
13 §§1531 et seq.; the Rivers and Harbors Act, 33 United States
14 Code §§401 et seq.; the Federal Water Pollution Act (commonly
15 known as the Clean Water Act), 33 United States Code §§1251 et
16 seq.; 33 Code of Federal Regulations Parts 114 through 115; the
17 Safe Drinking Water Act, 42 United States Code §§300f et seq. ;
18 Section 106 of the National Historic Preservation Act, 36 Code
19 of Federal Regulations Part 800.

20 (f) Processing by district or other office. When this
21 subchapter and Subchapters B or C of this chapter requires that
22 a district undertake certain actions, another office of the
23 department shall take the actions if the other office controls

1 processing of the project. The Aviation Division may control
2 the processing of an aviation project. The Transportation
3 Planning and Programming Division may control the processing of
4 a railroad project. The Texas Turnpike Authority Division may
5 control the processing of a toll project. This subsection only
6 concerns the processing of a project, and does not confer
7 authority on a district or other office to issue approval of an
8 environmental document.

9 (g) Roles of department and other entities. For a project
10 by a private or public entity, the entity shall submit a written
11 proposal to the department for a determination of the respective
12 roles and responsibilities of the entity and the department
13 under this subchapter. The department shall determine and issue
14 in writing the respective roles and responsibilities of the
15 entity and the department.

16 (h) Emergency action procedures and compliance with other
17 regulations.

18 (1) Any request for deviations from the procedures in
19 this subchapter because of emergency circumstances will be
20 handled on a case by case basis. Emergency circumstances will
21 include natural disasters, such as floods, hurricanes, tidal
22 waves, earthquakes, severe storms, landslides, or catastrophic
23 failures from any cause.

1 (2) All applicable state and federal emergency
2 environmental permitting and approval processes will be
3 followed.

4 (3) The work shall be limited to those actions directly
5 related to public health and safety and to further minimize loss
6 of public infrastructure.

7 (4) The project files shall contain copies of all
8 coordination and approvals obtained.

9
10 §2.2. Definitions. The following words and terms, when used in
11 this subchapter and Subchapters B and C of this chapter shall
12 have the following meanings, unless the context clearly
13 indicates otherwise.

14 (1) Affected local government--The governing body of a
15 county or municipality in which a project is located.

16 (2) Affected public official--An elected official of a
17 county or municipality in which a project is located, or a
18 member of the United States Congress or the Texas Legislature in
19 whose district a project is located.

20 (3) Agency--A state or federal governmental body having
21 jurisdiction over environmental issues related to transportation
22 facility development.

23 (4) Aviation project--The construction, enlargement,

1 repair, or planning of an airport or air navigational facility
2 as part of the aviation facilities development program.

3 (5) Beneficial use project--The productive and positive
4 use of dredged material as proposed by the U.S. Army Corps of
5 Engineers.

6 (6) Best management practices--Practices that are
7 determined to be the most efficient, practical, and cost
8 effective measures to guide a particular activity or address a
9 particular problem.

10 (7) CE--Categorical Exclusion. The definition and
11 processing of a CE is in §2.10 of this subchapter (relating to
12 Categorical Exclusion (CE)).

13 (8) Certification of the public involvement process--The
14 written verification from a district stating that the
15 requirements to afford an opportunity for a public hearing, or
16 the requirements for a public hearing, as specified in this
17 subchapter, have been met.

18 (9) Commission--The Texas Transportation Commission.

19 (10) Conversion--An approval by the commission to convert
20 a non-tolled segment of the state highway system to a toll
21 project.

22 (11) Coordination plan--A plan for organizing and
23 managing public and agency participation in and comment on the

1 environmental review process for a project that requires an EIS.

2 (12) DEIS--Draft Environmental Impact Statement. The
3 definition and processing of a DEIS is in §2.12 of this
4 subchapter, subsection (e) (relating to DEIS).

5 (13) De minimis impact--An impact on a publicly owned
6 park, recreation area, wildlife refuge, or waterfowl refuge that
7 does not adversely affect the activities, features, and
8 attributes of that property, or an impact to an historic site
9 that will have no adverse affect to that site.

10 (14) Department--The Texas Department of Transportation.

11 (15) Disposal plan--An operationally suitable method for
12 the placement of dredged material that avoids or minimizes
13 adverse environmental impacts.

14 (16) District--One of the 25 geographical districts into
15 which the department is divided. Under §2.1(f) of this
16 subchapter (relating to Processing by district or other office)
17 other department divisions may satisfy the environmental
18 processing requirements to be completed by a "district."

19 (17) EA--Environmental Assessment. The definition and
20 processing of an EA is in §2.11 of this subchapter (relating to
21 Environmental Assessment (EA)).

22 (18) EIS--Environmental Impact Statement. The definition
23 and processing of an EIS is in §2.12 of this subchapter

1 (relating to Environmental Impact Statement (EIS)).

2 (19) Environmental division--The Environmental Affairs
3 Division of the department.

4 (20) Environmental document--Environmental document
5 includes categorical exclusion documentation, environmental
6 assessments, environmental impact statements, supplemental
7 environmental assessments, and supplemental environmental impact
8 statements. An environmental document incorporates
9 environmental reports, shows coordination and consultation
10 efforts, and shows cost and engineering elements.

11 (21) Environmental permits, issues, and commitments
12 (EPIC)--Any permit, issue, coordination commitment, or
13 mitigation obligation necessary to address, offset, or
14 compensate for social, economic, or environmental impacts of a
15 project, including sole source aquifer coordination, wetland
16 permits, stormwater permits, traffic noise abatement, threatened
17 or endangered species coordination, or archeological permits,
18 and any mitigation or other commitment associated with the
19 project.

20 (22) Environmental studies--The investigations of
21 potential environmental impacts to determine the environmental
22 process to be followed and to assist in the preparation of the
23 environmental document. Environmental studies include studies

1 conducted during transportation planning and project
2 development, and studies conducted to evaluate alternatives.

3 (23) FEIS--Final Environmental Impact Statement. The
4 definition and processing of an FEIS is in §2.12 of this
5 subchapter (relating to Environmental Impact Statement (EIS)).

6 (24) FONSI--Finding of No Significant Impact. The
7 definition and processing of a FONSI is in §2.11 of this
8 subchapter (relating to Environmental Assessment (EA)).

9 (25) Federal interagency coordination team--A group
10 established to review proposed federal development projects
11 related to the Gulf Intracoastal Waterway and whose duties
12 include, among other things, advising on the consistency
13 determinations.

14 (26) Gulf Intracoastal Waterway (GIWW)--The main channel,
15 not including tributaries or branches, of the shallow draft
16 navigation channel running from the Sabine River southward along
17 the Texas coast to the Brownsville Ship Channel near Port
18 Isabel.

19 (27) Gulf Intracoastal Waterway Advisory Committee
20 (GIWAC)--An interagency committee comprised of members appointed
21 by the department to represent state agencies having
22 jurisdiction in the protection of the state's natural, historic,
23 and economic resources. The GIWAC is created for the purpose of

1 advising and assisting the department:

2 (A) in developing a unified method to address problems
3 and recommend solutions for the needs of the GIWW, for the
4 protection of the environment and the state's natural and
5 historic resources affected by the waterway, and for the
6 promotion of the economic welfare of the state's interest in the
7 GIWW;

8 (B) in developing proposals for a disposal plan or a
9 beneficial use project that will address dredged material
10 disposal involving a segment of the GIWW identified by the U.S.
11 Army Corps of Engineers as in need of maintenance dredging; and

12 (C) on the acquisition of disposal sites in an
13 environmentally sensitive and operationally suitable manner.

14 (28) Highway construction project--A highway improvement
15 project involving the construction or reconstruction of a
16 highway.

17 (29) Human environment--Interpreted comprehensively to
18 include the natural and physical environment, and the
19 relationship of people with that environment.

20 (30) Jurisdiction--For purposes of §2.44 of this chapter
21 (relating to Gulf Intracoastal Waterway Projects), the term
22 shall mean:

23 (A) for a city, the area within the incorporated city

1 limits and the extraterritorial jurisdiction of a city; and

2 (B) for a county, any area within the boundaries of
3 that county, excluding incorporated areas and areas within the
4 extraterritorial jurisdiction of a city.

5 (31) MAPO--Meeting with Affected Property Owners. The
6 definition of a MAPO is in §2.6 of this subchapter (relating to
7 Public Involvement--Meeting with Affected Property Owners
8 (MAPO)).

9 (32) Maintenance program--A collection of maintenance
10 work performed singularly or collectively on the state highway
11 system. The following categories have been established as
12 maintenance programs:

13 (A) Bridge maintenance--Activities to repair or perform
14 preventive maintenance on bridges, culverts, retaining walls,
15 and barrier walls.

16 (B) Customer service--Activities related to providing
17 the traveling public with services, including maintaining rest
18 areas, picnic areas, and litter barrels.

19 (C) Debris and spills--Activities related to removing
20 debris from the right of way, including litter, roadway debris,
21 spills, and sweeping.

22 (D) Drainage--Activities related to maintaining
23 drainage systems and slopes on the right of way and within

1 drainage easements, including roadside ditches, slopes,
2 channels, creeks, streams, and rivers.

3 (E) Ferry maintenance--The maintenance and operation of
4 ferries under Transportation Code, §342.001.

5 (F) Maintenance enhancement--Maintenance activities
6 that improve the access to a highway or improve the performance
7 of the highway system such as the installation of turn lanes,
8 turnouts, turn-arounds, driveways, or shoulders.

9 (G) Pavement maintenance--Activities to repair or
10 perform preventive maintenance on pavements, including work
11 performed on the pavement surface, base, sub-base, sub-grade, or
12 embankment.

13 (H) Roadside appurtenances--Activities related to
14 fixtures along the roadways, including signs, delineators,
15 mailboxes, guard rails, attenuators, illumination, and signals.

16 (I) Traffic pavement markings--Activities related to
17 markings on the pavement to control vehicular movement,
18 including installing and removing striping, specialty markings,
19 and pavement markings.

20 (J) Vegetation management--Activities performed to
21 establish and maintain the condition of the roadway and roadside
22 on the state highway right of way, including mowing operations,
23 pest management, revegetation techniques, erosion control,

1 wildflower preservation and propagation, tree and brush trimming
2 and removal, and the preservation of threatened and endangered
3 plant species.

4 (33) NOI--Notice of Intent. The definition and
5 processing of an NOI is in §2.5 of this subchapter, subsection
6 (e) (relating to Public involvement for EIS project or
7 supplemental EIS project).

8 (34) Mitigation--An activity undertaken to avoid or
9 minimize a transportation project's impacts to the environment;
10 to rectify the impacts by repairing, rehabilitating, or
11 restoring the affected environment; to reduce or eliminate the
12 impacts over time by preservation and maintenance; or to
13 compensate for the impacts by replacing or providing for
14 substitute resources or environments.

15 (35) Need and purpose--The transportation issue that a
16 proposed project seeks to address and the justification for the
17 expenditure of public funds.

18 (36) Preliminary design--

19 (A) The portion of design work on a project that
20 supports one or more of the activities listed in clauses (i)
21 through (iv) of this subparagraph.

22 (i) The evaluation of alternative courses of action.

23 (ii) Preparation of information to satisfy EPIC

1 requirements.

2 (iii) Work taken to reduce project risks for the
3 final design and construction phase of the project, including
4 geotechnical investigations, utility surveys, hazardous
5 materials assessments, and other investigations and analyses.

6 (iv) Work taken to document a base case as part of an
7 effort to define the requirements that apply to final design or
8 construction.

9 (B) Preliminary design does not include an activity
10 that is an irreversible commitment of resources that forecloses
11 the implementation of reasonable and prudent alternatives.

12 (37) Public hearing--A formal hearing to receive public
13 input in determining a preferred alternative for, or any changes
14 to, a transportation project.

15 (38) Public involvement--An ongoing phase of the project
16 development process that encourages and solicits public input
17 and provides the public the opportunity to become fully informed
18 regarding project development.

19 (39) Public meeting--An informal meeting that assists in
20 the preparation of environmental documents. A public meeting
21 may be held with local public officials, local, neighborhood, or
22 special interest groups, or the general public, for the purpose
23 of exchanging ideas and collecting input on the need for, and

1 possible alternatives to, a transportation project.

2 (40) Public transportation project--A project that may
3 involve either capital or operational funding for the purchase
4 of rolling stock, capital improvements, and facility
5 renovations, and provision for public transportation services as
6 defined under Transportation Code, Chapters 455, 456, 458, and
7 461.

8 (41) ROD--Record of Decision. The description and
9 processing of a ROD is in §2.12 of this subchapter, subsection
10 (f) (relating to FEIS).

11 (42) SEIS--Supplemental Environmental Impact Statement.
12 The description and processing of an SEIS is in §2.15 of this
13 subchapter (relating to Supplemental Environmental Impact
14 Statement (SEIS)).

15 (43) Significantly--Shall have the same meaning as the
16 term is used and has been interpreted under the National
17 Environmental Policy Act and 40 Code of Federal Regulations
18 §1508.27.

19 (44) State project--A nonfederal-aid transportation
20 project.

21 (45) Supplemental EA--Supplemental Environmental
22 Assessment. The definition and processing of a Supplemental EA
23 is in §2.14 of this subchapter (relating to Supplemental

1 Environmental Assessment (Supplemental EA)).

2 (46) Transportation Enhancement--An activity that is
3 listed under 23 United States Code §101(a)(35), relates to a
4 transportation project, and is eligible for federal funding
5 under 23 United States Code §133. The focus of transportation
6 enhancement activities is to improve the transportation
7 experience in and through local communities.

8 (47) Trans-Texas Corridor--The system of multimodal
9 facilities designated by the commission under Transportation
10 Code, §227.011.

11 (48) Toll project--Has the meaning assigned by
12 Transportation Code, §201.001.

13

14 §2.3. Federal-Aid Transportation Project.

15 (a) Federal-aid transportation project. A federal-aid
16 transportation project is a project that uses federal highway or
17 transit funding, or requires approval by a federal agency, for
18 example, for access to the interstate highway system.

19 (b) Applicable requirements.

20 (1) For a federal-aid transportation project the
21 department shall comply with:

22 (A) this section;

23 (B) this subchapter and Subchapters B and C of this

1 chapter; and

2 (C) the rules of the federal agency from which the
3 department seeks approval of the project that implements the
4 National Environmental Policy Act (For highway projects, the
5 department shall comply with the rules of FHWA located at 23
6 Code of Federal Regulations Part 771.).

7 (2) Aviation projects that utilize federal aviation funds
8 shall comply with Federal Aviation Administration (FAA)
9 procedures established to comply with 42 United States Code
10 §§4321 et seq.

11 (3) Public transportation projects that utilize federal
12 transit or federal highway funds shall comply with paragraph (1)
13 of this subsection.

14 (c) Issuance of approval; delegation of authority.

15 (1) When an approval is required under this section for a
16 highway project the FHWA will issue the approval. However, FHWA
17 and the department have entered into a programmatic agreement
18 that designates certain projects as a CE; if a project is
19 considered a CE under the programmatic agreement then the
20 project is deemed approved by FHWA.

21 (2) If FHWA delegates appropriate authority to the
22 department to issue approval of an environmental document, or
23 the authority to take any other action described in this

1 subchapter and Subchapters B or C of this chapter, then wherever
2 it specifies that FHWA may issue the approval or take the
3 action, the environmental division may issue the approval or
4 take the action.

5 (3) When an approval is required under this section for
6 an aviation project the FAA will issue the approval. When an
7 approval is required under this section for a public
8 transportation project the Federal Transit Administration will
9 issue the approval. When an approval is required under this
10 section for a railroad project that requires the approval of the
11 Surface Transportation Board, the approval will be issued by
12 that board.

13 (d) Projects by other entities.

14 (1) This subsection applies to a transportation project
15 planned and developed by other governmental entities or by
16 private entities that may utilize federal funds or other federal
17 assistance.

18 (2) A developing entity shall submit to the environmental
19 division a written proposal concerning the respective roles and
20 responsibilities of the entity and the department under this
21 section. In response, the environmental division shall issue
22 written instructions on respective roles and responsibilities.

23 (3) The governmental or private entity must obtain the

1 approval of the environmental division of the matters described
2 in this paragraph. If FHWA rules specify a matter requires FHWA
3 approval also, the environmental division shall seek the
4 approval of the FHWA. The environmental division may issue an
5 approval on behalf of FHWA if there is a delegation of authority
6 as described in subsection (c) of this section. Unless the
7 environmental division determines that project specific
8 considerations warrant changes to the roles and
9 responsibilities, the entity shall complete the following
10 activities:

- 11 (A) prepare environmental reports and studies;
- 12 (B) submit appropriate environmental documentation;
- 13 (C) prepare any revision to environmental
14 documentation;
- 15 (D) prepare legal and public notice required in this
16 subchapter;
- 17 (E) conduct public involvement required by this
18 subchapter, including obtaining court reporters for public
19 hearings, and providing accommodations for persons with special
20 communication or physical needs if requested;
- 21 (F) prepare materials to be used at a public meeting or
22 public hearing;
- 23 (G) prepare responses to comments;

1 (H) prepare a summary and analysis, and comment and
2 response report, for a public meeting or public hearing held (If
3 a hearing was held, prepare a certification that it was held in
4 accordance with §2.9 of this subchapter (relating to Public
5 Involvement-Public Hearing), and the Civil Rights Act of 1964
6 and the Civil Rights Restoration Act of 1987);

7 (I) prepare a verbatim transcript of any public hearing
8 and the original certification of the public involvement process
9 as described in this subchapter; and

10 (J) submit documentation showing that all EPIC is
11 complete or will be completed including copies of permits or
12 other approvals required prior to construction.

13 (4) When a governmental or private entity submits for
14 approval to the department an environmental study or related
15 documentation the entity shall provide a number of copies that
16 is sufficient for distribution. The environmental division
17 shall specify the number of copies required.

18 (e) The FHWA may submit for publication in the *Federal*
19 *Register* a notice that a permit, license, or approval is final,
20 and notice of limitation of claims for judicial review under 23
21 United States Code §139(1). If FHWA delegates additional
22 authority to the department, the environmental division may
23 submit the notices for publication.

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§2.4. Project Coordination.

(a) Participating agencies and cooperating agencies. A participating agency is any agency, department, or other unit of federal, state, local, or Indian tribal government, that may have an interest in a project. The district is responsible for inviting and designating participating agencies concerning a project. The environmental division is responsible for inviting and designating participating Indian tribal governments. The district, in consultation with the environmental division, may also designate a participating agency as a cooperating agency under 40 Code of Federal Regulations Part 1501. For a federal-aid project, the FHWA shall designate the participating agencies and cooperating agencies.

(b) District. Unless otherwise provided in Subchapter B of this chapter (relating to Memoranda of Understanding with Natural Resource Agencies), the district responsible for a project shall perform the following coordination activities:

(1) initiate a cooperative development process with local governmental entities in order to assist in the planning of projects;

(2) initiate early coordination with federal and state agencies, and maintain open lines of communication with local or

1 area offices of applicable agencies;

2 (3) continue coordination with federal and state agencies
3 throughout project planning; every reasonable effort shall be
4 made to resolve interagency disagreements;

5 (4) seek input from each affected local community on the
6 aesthetic character of a proposed project, other than
7 transportation projects that involve rehabilitation or
8 resurfacing of a bridge or highway;

9 (5) for an EIS project, make information available to
10 participating agencies and cooperating agencies as early as
11 practicable when preparing environmental studies regarding the
12 environmental and socioeconomic resources located within the
13 project area and the general locations of the alternatives under
14 consideration;

15 (6) for an EIS project, develop a coordination plan under
16 §2.5 of this subchapter (relating to Public Involvement) and, if
17 one has been prepared, send a schedule for the completion of the
18 environmental review process prepared under §2.5 of this
19 subchapter to local or area offices of applicable agencies, and
20 make it available to the public.

21 (c) Environmental division. The environmental division
22 shall perform the coordination activities described in this
23 subsection.

1 (1) Continue coordination with federal and state agencies
2 throughout project planning. Every reasonable effort shall be
3 made to resolve interagency disagreements.

4 (2) Conduct the environmental processing of a project,
5 including any additional interagency contact, coordination,
6 consultation, evaluation, and final approvals.

7 (3) Provide project data and analyses to applicable
8 agencies, including coordination of environmental studies and
9 mitigation proposals with the Texas Commission on Environmental
10 Quality, the Texas Historical Commission, and the Texas Parks
11 and Wildlife Department. The environmental division shall
12 provide project data and analyses no later than 30 days prior to
13 the date the environmental division approves an environmental
14 document. That deadline does not apply if coordination is
15 provided to applicable agencies under memoranda of understanding
16 developed under Transportation Code, §201.607, and Subchapter B
17 of this chapter.

18 (d) Texas Review and Comment System (TRACS).

19 (1) The department shall comply with 1 TAC Chapter 5,
20 Subchapter B, concerning state and local review of federal and
21 state assistance applications.

22 (2) The department shall initiate coordination under
23 TRACS with appropriate regional review agencies (RRA). Types of

1 projects that are exempt from RRA review include those that do
2 not:

3 (A) require additional right of way;

4 (B) change the layout or function of connecting roads
5 or streets or of the facility being improved;

6 (C) adversely affect abutting real property; or

7 (D) otherwise have a substantial social, economic, or
8 environmental impact.

9 (3) The TRACS procedures shall supplement the
10 department's traditional policy of direct coordination with
11 other agencies and local governmental entities.

12

13 §2.5. Public Involvement.

14 (a) Applicability.

15 (1) A reference in this subsection to public involvement
16 means this section and §2.6 of this subchapter (relating to
17 Public Involvement-Meeting with Affected Property Owners (MAPO))
18 through §2.9 of this subchapter (relating to Public Involvement-
19 Public Hearing).

20 (2) The public involvement for a transportation project
21 is based on the project's type, complexity, and level of public
22 concern that is based on environmental issues.

23 (b) Responsible office.

1 (1) The district responsible for a project shall be
2 responsible for conducting public involvement.

3 (2) Each district shall maintain a list of elected public
4 officials, individuals, and groups interested in transportation
5 projects. A district shall provide notification to these
6 individuals and groups of a public meeting and of a public
7 hearing.

8 (c) Public involvement for CE project.

9 (1) The district shall review §2.6 of this subchapter and
10 hold a MAPO if appropriate.

11 (2) The district shall review §2.7 of this subchapter
12 (relating to Public Involvement-Public Meeting) and hold a
13 public meeting if appropriate.

14 (3) The district shall review §2.8 of this subchapter
15 (relating to Public Involvement-Opportunity for Public Hearing)
16 and §2.9 of this subchapter and provide an opportunity for
17 public hearing and hold a public hearing if appropriate.

18 (4) If the district held a public hearing, the district
19 shall publish a notice of availability in local newspapers
20 having general circulation of the availability of the summary
21 and analysis, and the comment and response report of the public
22 hearing, and how to obtain copies of the summary and analysis
23 and comment and response reports. The district shall give the

1 notice of availability to the metropolitan planning
2 organization, and provide the notice to the local media through
3 a press release.

4 (d) Public involvement for EA project or Supplemental EA
5 project.

6 (1) The district shall review §2.7 of this subchapter and
7 hold a public meeting if appropriate.

8 (2) The district shall review §2.8 and §2.9 of this
9 subchapter and provide an opportunity for a public hearing or
10 hold a public hearing if appropriate.

11 (3) If the district held a public hearing, the district
12 shall publish a notice of availability in local newspapers
13 having general circulation of the availability of the summary
14 and analysis, and the comment and response report of the public
15 hearing, and how to obtain copies of the summary and analysis
16 and comment and response reports. The district shall give the
17 notice of availability to the metropolitan planning
18 organization, and provide the notice to the local media through
19 a press release.

20 (4) If a FONSI is issued concerning the transportation
21 project the district shall give notice of availability of the
22 FONSI to the metropolitan planning organization, and to the
23 local media by press release.

1 (e) Public involvement for EIS project or supplemental EIS
2 project.

3 (1) Applicability of certain requirements.

4 (A) Except as provided in subparagraph B of this
5 paragraph, the requirements in this subsection apply to projects
6 that are an EIS project or SEIS project.

7 (B) The requirements in this subsection that implement
8 Section 6002 of the Safe, Accountable, Flexible, Efficient
9 Transportation Equity Act: A Legacy for Users (P.L. 109-
10 059) (SAFETEA-LU) (23 United States Code §139) apply only to
11 certain EIS projects and SEIS projects. The requirements apply
12 to a federal-aid project if the original NOI was published in
13 the *Federal Register* after August 10, 2005. The requirements
14 apply to a state project if the original NOI was published in
15 the *Texas Register* after August 10, 2005.

16 (2) Notice of Intent (NOI).

17 (A) Notice of intent means a notice that an
18 environmental impact statement will be prepared and considered.
19 An NOI is a required form of public involvement. The department
20 shall publish an NOI prior to the preparation of an EIS, and
21 when the department determines it is necessary to supplement a
22 final EIS.

23 (B) The NOI shall:

1 (i) briefly describe the project;

2 (ii) identify known and potential significant impacts
3 on the human environment to the extent known at this stage of
4 project planning;

5 (iii) identify any preliminary alternatives under
6 consideration by the department;

7 (iv) identify the federal approvals anticipated to be
8 necessary for the project;

9 (v) identify whether, when, and where any scoping
10 meetings will be held;

11 (vi) state that the scoping meeting is an opportunity
12 for participating agencies, cooperating agencies, and the public
13 to be involved in defining the need and purpose for the proposed
14 project, and to assist in determining the range of alternatives
15 for consideration in the DEIS;

16 (vii) give a proposed schedule for completion of the
17 environmental review process, if available; and

18 (viii) give the name and address of the designated
19 department employee who can answer questions about the project
20 and the EIS.

21 (C) The district shall prepare a draft NOI. The
22 environmental division shall review and, if appropriate, approve
23 the notice. For a federal-aid project, FHWA shall review and,

1 if appropriate, approve the notice.

2 (D) If the environmental division approves the NOI the
3 environmental division shall submit it for publication in the
4 *Texas Register*. If it is a federal-aid project, the department
5 shall provide a copy of the approved NOI to FHWA for publication
6 in the *Federal Register*. The district shall publish the NOI or
7 a summary in local newspapers.

8 (E) After publication of the NOI the district shall
9 begin the scoping process and prepare the coordination plan
10 under paragraph (3) of this subsection.

11 (3) Coordination plan.

12 (A) A coordination plan is a plan for coordinating
13 public and agency participation in and comment on the
14 environmental review process. As early as practicable in the
15 environmental review process the district responsible for a
16 project shall prepare a plan. The district may develop a
17 coordination plan on a project by project basis.

18 (B) Except as provided in subparagraph (D) of this
19 paragraph, a coordination plan shall provide for:

20 (i) an initial scoping meeting that addresses:

21 (I) a draft need and purpose statement, together
22 with backup materials and a request for comments on it;

23 (II) a draft coordination plan for the entire

1 environmental review process, and a request for comments on it;

2 (III) the range of alternatives, and the known or
3 potential significant impacts (to the extent known at this stage
4 of project planning) to be addressed in the EIS;

5 (IV) a proposed method of alternatives analysis
6 specifying the level of detail for each alternative proposed by
7 the district, and a request for comments;

8 (V) information for issue identification and
9 resolution, including information regarding the environmental
10 and socioeconomic resources located within the project area and
11 the general locations of the alternatives under consideration;
12 and

13 (VI) identification of the potential participating
14 agencies and cooperating agencies;

15 (ii) a second scoping meeting that presents:

16 (I) the approved coordination plan;

17 (II) the range of alternatives based on the
18 approved need and purpose; and

19 (III) the method and level of detail used for the
20 alternatives analysis, after taking into consideration input
21 given during the initial scoping meeting;

22 (iii) a deadline of no less than 45 days for comment
23 on the DEIS from availability of the DEIS (For a federal-aid

1 project, the materials are deemed available upon publication in
2 the *Federal Register* of notice of the public availability of the
3 document. The deadline for all other comment periods is no more
4 than 30 days from availability of the materials on which comment
5 is requested.); and

6 (iv) identification of the participating agencies and
7 cooperating agencies.

8 (C) A coordination plan may include a schedule for
9 completion of the environmental review process for the project.
10 In establishing a schedule, the district shall consider:

11 (i) the responsibilities of participating agencies
12 and cooperating agencies under applicable laws;

13 (ii) resources available to the cooperating agencies;

14 (iii) overall size and complexity of the project;

15 (iv) the overall schedule for and cost of the
16 project; and

17 (v) the sensitivity of the natural and historic
18 resources that could be affected by the project.

19 (D) Scoping meetings are not required for a
20 supplemental EIS.

21 (E) The district shall obtain approval of a
22 coordination plan in accordance with this subparagraph.

23 (i) The district shall submit the draft coordination

1 plan to the environmental division for approval before the
2 initial scoping meeting. For a federal-aid project, the FHWA
3 shall review, and if appropriate, approve the draft coordination
4 plan.

5 (ii) The district shall circulate the approved draft
6 coordination plan to the identified agencies to invite them to
7 become one or both participating agencies and cooperating
8 agencies during the environmental review process, to comment on
9 the draft coordination plan, and to comment on a proposed
10 schedule for the completion of the environmental process if one
11 is available. The district shall consider comments by the
12 agencies concerning purpose and need, the range of alternatives,
13 the method of alternatives analysis and level of detail, and the
14 schedule for completing the environmental review process if
15 available. The district shall circulate the approved draft
16 coordination plan to the public under paragraph (6) of this
17 subsection. The district shall consider comments by the public
18 concerning purpose and need, and the range of alternatives. The
19 district shall allow no less than 30 days for comment on the
20 draft coordination plan and schedule. For an EIS the deadline
21 shall be after the initial scoping meeting and before the second
22 scoping meeting. After the comment period the district shall
23 submit the coordination plan to the environmental division for

1 approval. For a federal-aid project the environmental division
2 shall submit the plan to FHWA for approval.

3 (F) The district shall give a copy of the approved
4 coordination plan, plus any approved schedule for completion of
5 the environmental review process, to the participating agencies
6 and cooperating agencies and shall make it available to the
7 public.

8 (G) A deadline for comment by agencies and the public
9 established in a coordination plan may be changed in accordance
10 with this subparagraph.

11 (i) A deadline may be extended for good cause. The
12 good cause shall be documented in the administrative record for
13 the project. For a federal-aid project, the environmental
14 division shall submit the proposed extended deadline to FHWA for
15 approval.

16 (ii) The district must obtain the concurrence of
17 participating agencies and cooperating agencies to shorten a
18 deadline, and their concurrence shall be documented in the
19 administrative record for the project. For a federal-aid
20 project, the environmental division shall submit the proposed
21 shortening of the deadline to FHWA for approval.

22 (4) Public meeting. The district shall hold at least one
23 public meeting under §2.7 of this subchapter.

1 (5) Notice of availability of DEIS. Notice of
2 availability of the DEIS shall be made under this paragraph
3 after the DEIS is approved under §2.12 of this subchapter,
4 subsection (e) (relating to DEIS).

5 (A) The environmental division shall:

6 (i) publish a notice of availability in the *Texas*
7 *Register* describing a circulation and comment period of no less
8 than 45 days and identifying where comments are to be sent;

9 (ii) for a federal-aid project, provide a copy of the
10 notice of availability to FHWA for publication in the *Federal*
11 *Register*;

12 (iii) transmit the DEIS at no charge to state
13 agencies through the TRACS system, and directly to participating
14 federal agencies and cooperating federal agencies; and

15 (iv) coordinate directly with other governmental
16 entities in accordance with memoranda of understanding under
17 Subchapter B of this chapter, memoranda of agreement, or other
18 formal and informal agreements with those entities.

19 (B) The district shall:

20 (i) publish a notice of availability in local
21 newspapers describing a circulation and comment period of no
22 less than 45 days and identifying where comments are to be sent;
23 and

1 (ii) coordinate directly with local agencies,
2 including the appropriate metropolitan planning organization.

3 (6) Circulation of draft coordination plan, DEIS, and
4 FEIS. This paragraph applies to the circulation of the draft
5 coordination plan when it is approved under this subsection, and
6 to the circulation of the DEIS and FEIS when the respective
7 documents are approved under §2.12 of this subchapter (relating
8 to Environmental Impact Statement (EIS)). The district shall
9 prepare an initial printing of the document in sufficient
10 quantity to meet the request for copies that can be reasonably
11 expected from agencies, organizations, and individuals. Copies
12 shall be provided upon request. The district shall place copies
13 of a draft coordination plan or DEIS in appropriate designated
14 public locations, such as local government offices, libraries,
15 or other public institutions. The district shall transmit the
16 FEIS to a person, organization, or agency that made substantive
17 comments on the DEIS or requested a copy. The environmental
18 division shall give the document to the participating state and
19 federal agencies, and to cooperating agencies. The department
20 may charge a fee not to exceed the cost of reproduction. In the
21 case of a lengthy document, the district or environmental
22 division may provide alternative circulation processes under 40
23 Code of Federal Regulations §1502.19, including the circulation

1 of a summary.

2 (7) Public hearing concerning DEIS. A public hearing
3 concerning the DEIS shall be held under this paragraph after the
4 DEIS is approved under §2.12 of this subchapter, subsection (e)
5 (relating to DEIS).

6 (A) The district shall hold a public hearing for a DEIS
7 highway improvement project in accordance with §2.9 of this
8 subchapter.

9 (B) The district shall make available the DEIS at a
10 designated location for the general public 45 days in advance of
11 the public hearing.

12 (8) Notice of availability of FEIS. Notice of
13 availability shall be made under this paragraph after the FEIS
14 is approved under §2.12 of this subchapter.

15 (A) For a federal-aid project, the environmental
16 division shall provide a copy of the notice of availability of
17 the FEIS to FHWA for publication in the *Federal Register*.

18 (B) The environmental division shall publish a notice
19 of availability of the FEIS in the *Texas Register*. The district
20 shall publish a duplicate notice in local newspapers. The
21 notices shall:

22 (i) include information on obtaining copies; and

23 (ii) state that the public will have no less than 30

1 days following publication of the notice in the *Texas Register*
2 to submit comments, and how the public may submit comments.

3 (C) The environmental division shall coordinate
4 directly with other governmental entities in accordance with
5 memoranda of understanding under Subchapter B of this chapter,
6 memoranda of agreement, or other formal and informal agreements
7 with those entities.

8 (9) Notice of availability of FEIS for project on Trans-
9 Texas Corridor. In addition to the requirements in paragraph
10 (7) of this subsection, after the FEIS for a project on the
11 Trans-Texas corridor is approved under §2.12 of this subchapter,
12 the district shall take the actions described in this paragraph.

13 (1) The district shall post the FEIS on the
14 department's internet website, along with information detailing
15 where a copy may be reviewed or obtained.

16 (2) The district shall notify the following persons
17 that the FEIS is available on the department's website:

18 (A) each state senator and representative who
19 represents any part of the area in which a segment of the
20 project is located; and

21 (B) the commissioners court of each county in which
22 the project is located.

23 (10) Notice of ROD. The environmental division shall

1 publish notice of the ROD in the *Texas Register*. The district
2 shall publish a notice of availability of the ROD in local
3 newspapers.

4 (f) Additional requirements for certain projects. This
5 subsection applies to a project that involves the addition of
6 one or more vehicular lanes to an existing highway, or to the
7 construction of a highway at a new location, following project
8 approval of a CE, or issuance of a FONSI or ROD. Pursuant to
9 Transportation Code, §203.022(a), the district shall give notice
10 of a transportation project to owners of adjacent property, and
11 affected local governments and public officials. The district
12 shall review the requirements in §2.8 and §2.9 of this
13 subchapter and provide an opportunity for public hearing and
14 hold a public hearing if appropriate.

15 (g) After completion of public involvement. Following
16 completion of the public involvement process, the department
17 shall publicize through press releases project specific planning
18 and development decisions in order to keep the public informed
19 of any new or continuing issues. Changes to the project may
20 require additional public involvement.

21 (h) Additional requirements for project affected by
22 significant changes.

23 (1) Pursuant to Transportation Code, §203.022(b), the

1 district shall provide an additional opportunity for public
2 involvement for a project that has received project approval.

3 This subsection applies if:

4 (A) the project involves the addition of one or more
5 vehicular lanes to an existing highway, or to the construction
6 of a highway at a new location; and

7 (B) there are conditions relating to land use, traffic
8 volumes, and traffic patterns that have changed significantly
9 since the project was originally subject to public review and
10 comment.

11 (2) If this subsection applies to a project the district
12 shall conduct public involvement under this paragraph.

13 (A) The district shall provide an opportunity for
14 public hearing under §2.8 of this subchapter.

15 (B) The district shall hold a public hearing under §2.9
16 of this subchapter if the project requires the taking of public
17 land designated and used as a park, recreation area, wildlife
18 refuge, historic site, or scientific area.

19 (3) The subsection does not apply to a public
20 transportation project.

21 (i) Notice of impending construction. Pursuant to
22 Transportation Code, §203.022(c), the district shall send notice
23 of impending construction of a project that involves either the

1 addition of at least one travel lane or construction of a
2 project on new location to landowners abutting the roadway as
3 identified by tax rolls, and to affected local governments and
4 public officials.

5
6 §2.6. Public Involvement-Meeting with Affected Property Owners
7 (MAPO)

8 (a) The district shall hold one or more MAPOs when a
9 project requires detours, a minimal amount of right-of-way
10 acquisition, or temporary construction easements.

11 (b) The district shall hold a MAPO when a minor location or
12 design revision occurs after the environmental document has been
13 approved and the public involvement requirements have been
14 completed.

15 (c) The affected property owners include:

16 (1) property owners adjacent to the project; and

17 (2) other affected property owners (e.g., a business or
18 governmental entity that may be affected).

19 (d) The district shall maintain the administrative record
20 of a MAPO and forward a summary to the environmental division.

21

22 §2.7. Public Involvement-Public Meeting.

23 (a) Meetings with the public and other entities. A

1 district may hold one or more public meetings with local public
2 officials, interested citizens, the general public, and local,
3 neighborhood, or special interest groups for the purpose of
4 exchanging ideas and collecting input on the need for, and
5 possible alternatives to, a project. A public meeting shall be
6 held during the drafting of a DEIS.

7 (b) Requirements for public meeting. If the district
8 elects to hold a public meeting or if this section requires a
9 public meeting, the requirements of this subsection apply.

10 (1) The district shall hold the meeting as early as it
11 determines feasible to assure public input into project
12 planning.

13 (2) The meeting shall provide a free exchange of project
14 views and concerns.

15 (3) The meeting shall be held during project planning and
16 development in order to keep the public informed.

17 (4) The meeting shall be held at a time and place
18 convenient to the public in the vicinity of the project.

19 (5) Notice of a public meeting shall be appropriate for
20 the anticipated audience to maximize attendance.

21 (c) Summary of meeting. Following a public meeting the
22 district shall prepare a written summary of the proceedings,
23 including the comments received, responses to comments, and

1 modifications, if any, to the project resulting from comments.
2 The summary shall be forwarded to the environmental division for
3 review.

4
5 §2.8. Public Involvement-Opportunity for Public Hearing.

6 (a) Opportunity to make request.

7 (1) An opportunity to request a public hearing shall be
8 afforded for a project that requires the acquisition of
9 significant amounts of right of way, substantially changes the
10 layout or function of the connecting roadways or of the facility
11 being improved, adds capacity, has a measurable adverse impact
12 on abutting real property, or otherwise causes a substantial
13 social, economic, or environmental effect, or for which the
14 department determines it is in the public interest.

15 (2) An opportunity to request a public hearing shall be
16 afforded for a project if the results of the environmental
17 studies support a FONSI. However, if deemed appropriate, a
18 public hearing may be held, and affording an opportunity for
19 hearing bypassed.

20 (3) If a public hearing is not required under §2.9 of
21 this subchapter (relating to Public Involvement-Public Hearing),
22 the district may afford an opportunity for public hearing as
23 another form of public involvement.

1 (b) When to provide opportunity. The opportunity to
2 request a public hearing shall be afforded after the
3 environmental division determines the environmental document is
4 technically complete and approves it as a full-disclosure
5 document suitable for public review. For a federal-aid project,
6 FHWA shall review the document and, if appropriate, determine it
7 is technically complete.

8 (c) Procedural requirements.

9 (1) The district shall publish two notices of the
10 opportunity to request a public hearing in local newspapers
11 having general circulation.

12 (A) The first notice shall be published at least 30
13 days in advance of the deadline date set by the district for
14 submission of written requests for holding a public hearing.

15 (B) The second notice shall be published no more than
16 10 nor less than seven days prior to the deadline.

17 (2) If the population that will be affected by the
18 project is predominantly non-English speaking, the notices must
19 also be published in the dominant language in accordance with
20 Presidential Executive Order 13166, Improving Access to Services
21 for Persons with Limited English Proficiency.

22 (3) The district shall also mail notice of the
23 opportunity to request a public hearing to landowners abutting

1 the roadway as identified by tax rolls, and to affected local
2 governments and public officials.

3 (4) No further action shall be taken to hold a public
4 hearing if at the end of the time set for affording an
5 opportunity to request a public hearing no requests are received
6 or the district has addressed the concerns of the persons
7 requesting the public hearing. The district office shall submit
8 a certification of the public involvement process to this effect
9 to the environmental division.

10 (d) Bypass opportunity for hearing. A district is not
11 required to comply with this section if the district elects to
12 hold a public hearing.

13

14 §2.9. Public Involvement-Public Hearing.

15 (a) Purpose. A public hearing is held to present project
16 alternatives and to encourage and solicit public comment. The
17 hearing is held after location and design studies are developed
18 and the environmental document is considered technically
19 complete and approved as a full disclosure document suitable for
20 public review by the environmental division. For a federal-aid
21 project, the public hearing shall be held after FHWA determines
22 the environmental document is considered technically complete
23 and approved as a full disclosure.

1 (b) Public hearing required. A district shall hold a
2 public hearing if one or more of the paragraphs in this
3 subsection apply to the project.

4 (1) A project with substantial public interest or
5 controversy.

6 (2) An EIS project.

7 (3) A high-profile project.

8 (4) A request for hearing is received under §2.8 of this
9 subchapter (relating to Public Involvement—Opportunity for
10 Public Hearing);

11 (5) A project requires the taking of public land
12 designated and used as a park, recreation area, wildlife refuge,
13 historic site or scientific area, as covered in the Parks and
14 Wildlife Code, §§26.001 et seq, or requires the taking of
15 private land designated and used as an historic site. The state
16 public hearing requirement applies whether or not there is a
17 finding the taking is de minimis under federal law.

18 (6) A project requiring a public hearing under
19 Transportation Code, §203.021.

20 (7) An aviation project requiring a residential or
21 commercial relocation.

22 (8) In accordance with Transportation Code, §201.604, at
23 least one individual submits a written request for a hearing

1 before the environmental document is approved, the district is
2 unable to address the concerns of the person, and a public
3 hearing has not already been held concerning the project.

4 (9) A project requires the taking of private land
5 encumbered by an agricultural conservation easement purchased
6 under Natural Resources Code, Chapter 183.

7 (c) Documents available for public inspection. The
8 district shall make available to the public at designated
9 locations for no less than 30 days before a public hearing the
10 maps, drawings, environmental studies and documents concerning
11 the project. For an EIS project the district shall make
12 available the DEIS for 45 days.

13 (d) Notice of public hearing.

14 (1) A notice shall contain the matters listed in this
15 paragraph.

16 (A) Time, date, and location of the hearing.

17 (B) A description of the project termini, need and
18 purpose, improvements, and right of way needs.

19 (C) A reference to maps, drawings, environmental
20 studies and documents, and any other information about the
21 project that is available for public inspection at the
22 designated locations.

23 (D) A reference to the potential for relocation of

1 residences and businesses and the availability of relocation
2 assistance for displaces.

3 (E) A statement that written comments may be presented
4 for a period of 10 days after the hearing.

5 (F) The address where written comments may be
6 submitted.

7 (G) Whether the project encroaches on a floodplain,
8 wetland, or a sole-source aquifer recharge zone.

9 (H) A statement, if applicable, that the project will
10 require the taking of public land designated and used as a park,
11 recreation area, wildlife refuge, historic site, or scientific
12 area, and whether the taking is de minimis under federal law.

13 (I) A statement, if applicable, that the project will
14 require the taking of land protected by an agricultural
15 conservation easement.

16 (J) A statement that provision will be made for persons
17 with special communication or physical needs related to the
18 public hearing if requested.

19 (2) Publication of notice.

20 (A) Except as provided in subparagraph (B) of this
21 paragraph, the district shall publish a notice twice in local
22 newspapers having general circulation. The first notice shall
23 be published at least 30 days before the hearing. The second

1 notice shall be published no more than 10 days nor less than
2 seven days before the hearing.

3 (B) For projects requiring the taking of public land
4 designated and used as a park, recreation area, wildlife refuge,
5 historic site, or scientific area under Parks and Wildlife Code,
6 §26.002, the district shall publish notice under this
7 subparagraph.

8 (i) The notice must be given in writing to the
9 person, organization, department, or agency that has supervision
10 of the land proposed to be used or taken.

11 (ii) The notice must state clearly the proposed
12 program or project and the date and place for the public
13 hearing. The notice must be given at least 30 days before the
14 date for the public hearing.

15 (iii) Notice must also be given to the public by
16 publishing a notice similar to that specified in this section
17 once a week for four consecutive weeks. The last days of
18 publication must not be less than one week or more than two
19 weeks before the date of the hearing. The notice must be
20 published in a newspaper of general circulation, which paper
21 must be published at least six days a week in the county where
22 the land proposed to be used or taken is situated.

23 (iv) If there is no newspaper that qualifies under

1 clause (iii) of this subparagraph, the notice must be published
2 in a qualifying newspaper that is published in any county
3 adjoining the county where the land is situated. If there is no
4 qualifying newspaper published in any adjoining county, then the
5 notice must be published in a qualifying newspaper published in
6 the nearest county to the county where the land is situated. If
7 there is no qualifying daily newspaper published therein, the
8 notice must be published in any newspaper of general circulation
9 published in the political subdivision affected. If no
10 newspaper is published in the political subdivision, the notice
11 must be published in a newspaper published in the political
12 subdivision nearest the political subdivision affected.

13 (3) If the population that will be affected by the
14 project is predominantly non-English speaking, the district
15 shall also publish notice in the dominant language in accordance
16 with Presidential Executive Order 13166, Improving Access to
17 Services for Persons with Limited English Proficiency.

18 (4) The district shall mail notice to landowners abutting
19 the proposed project as identified by tax rolls, affected local
20 governments, and public officials.

21 (e) Public hearing and comment. The district shall make
22 all testimony given at a public hearing a part of the public
23 hearing record. A person or other entity shall submit written

1 comment to the district no later than 10 days after the close of
2 the public hearing.

3 (f) Documentation of public hearing. If the district held
4 a public hearing, the district shall submit to the environmental
5 division for review and approval:

6 (1) two copies each of the verbatim transcript, the
7 public hearing summary and analysis, and the comment and
8 response report;

9 (2) the original certification of the public involvement
10 process signed by the district engineer or his or her designee,
11 containing:

12 (A) general information on the public hearing;

13 (B) a statement regarding consideration of the
14 economic, social, and environmental impacts of the project;

15 (C) a statement regarding consideration of the
16 statutory provisions of the Civil Rights Act of 1964 and the
17 Civil Rights Restoration Act of 1987; and

18 (D) a statement regarding the project's consistency
19 with planning goals and objectives.

20

21 §2.10. Categorical Exclusion (CE).

22 (a) Applicability.

23 (1) This section applies to a transportation project

1 designated by the department as a CE under the section. A CE is
2 a project or associated facilities that do not individually or
3 cumulatively have a significant environmental impact.

4 (2) This section does not apply to the purchase of an
5 option to acquire real property, or to the exercise of an option
6 or other early and advance acquisition of land. The required
7 environmental review for these transactions is specified in
8 §2.17 of this chapter (relating to Special Right-of-Way
9 Acquisition).

10 (b) Restrictions on designation.

11 (1) A CE action directly, indirectly, or cumulatively,
12 shall not:

13 (A) induce significant impacts to planned growth or
14 land use for the area;

15 (B) cause any significant environmental impacts to any
16 natural, cultural, recreational, historic, or other resource;

17 (C) cause any significant impacts to air, noise, or
18 water quality;

19 (D) relocate significant numbers of people; or

20 (E) cause significant impacts on travel patterns.

21 (2) The CE action shall not involve unusual circumstances
22 or lead to:

23 (A) significant environmental impacts;

1 (B) substantial controversy on environmental grounds;

2 (C) significant impact on properties protected under

3 §4(f) of the Department of Transportation Act, (49 United States

4 Code §303) or §106 of the National Historic Preservation Act,

5 (16 United States Code §470f); or

6 (D) inconsistencies with any appropriate federal or

7 state laws, requirements, or administrative determinations

8 relating to the environmental aspects of the action.

9 (c) Blanket CE.

10 (1) The department may determine that a project be

11 processed as a blanket CE, based on department experience that a

12 project is similar to other projects that did not involve

13 significant environmental impacts.

14 (2) Examples of a blanket CE include:

15 (A) an action that does not involve or lead directly to

16 construction, such as planning and technical studies, grants or

17 training and research programs, engineering feasibility studies

18 that either define the elements of a proposed highway

19 improvement project or identify alternatives, so that social,

20 economic, and environmental effects can be assessed for

21 potential impact;

22 (B) construction of bicycle and pedestrian lanes,

23 paths, and facilities consisting of work on an existing road,

1 path, or lane and completely within the footprint of the
2 existing sub-grade course;

3 (C) activities included in the state's "Highway Safety
4 Plan" as required by 23 United States Code §402;

5 (D) landscaping;

6 (E) installation of fencing, signs, pavement markings,
7 small passenger shelters, traffic signals, and railroad warning
8 devices if no substantial land acquisition or traffic disruption
9 will occur;

10 (F) emergency repairs as defined in 23 United States
11 Code §125;

12 (G) acquisition of scenic easements;

13 (H) minor improvements to existing rest areas and truck
14 weigh stations;

15 (I) ridesharing activities;

16 (J) alterations to facilities or vehicles in order to
17 make them accessible for elderly and disabled persons;

18 (K) improvements, regular maintenance, and emergency
19 repairs to existing mechanical, electromechanical, hydraulic,
20 electronic, and manned toll collection facilities;

21 (L) minor expansion of toll plazas and approach aprons;

22 (M) renovation or rehabilitation of airport runways
23 where no additional right of way is required, and where existing

1 rights of way have been previously disturbed;

2 (N) renovation or rehabilitation of airport facilities
3 where no additional right of way is required, and where existing
4 rights of way have been previously disturbed;

5 (O) installation or upgrading of airfield lighting
6 systems, including runway end identification lights, visual
7 approach aids, beacons, and electrical distribution systems;

8 (P) installation of miscellaneous items at airports,
9 including segmented circles, wind or landing direction
10 indicators or measuring devices, or fencing;

11 (Q) grading or removal of obstructions on airport
12 property and erosion control actions with no off-airport
13 impacts;

14 (R) noise compatibility programs for airports;

15 (S) track and railbed maintenance improvements carried
16 out within existing right of way;

17 (T) projects consisting of work classified as a seal
18 coat, overlay, resurfacing, rehabilitation, or restoration done
19 within existing right of way on an existing road completely
20 within the footprint of existing subgrade course;

21 (U) highway traffic operation improvements including
22 the installation of ramp metering control devices and lighting;

23 (V) approval for disposal of excess right of way or for

1 joint or limited use of right of way, if the proposed use does
2 not have significant adverse impacts;

3 (W) installation of noise barriers or alterations to
4 existing publicly owned buildings to provide for noise
5 reduction;

6 (X) installation of infrastructure and systems to
7 support intelligent transportation systems; and

8 (Y) utility installations along or across a
9 transportation corridor.

10 (3) Before a project is approved as a blanket CE the
11 district shall visit the project area and confirm that there are
12 no environmental issues, or that the environmental issues are
13 not significant, and obtain any required permits and approvals.
14 The district shall determine if coordination is required under
15 state or federal law, including the Endangered Species Act,
16 National Historic Preservation Act, Texas Antiquities Code,
17 Clean Water Act, and the Rivers and Harbors Act. If the
18 district identifies environmental issues the project may not be
19 approved as a blanket CE. A project that uses property
20 protected under §4(f) of the Department of Transportation Act,
21 (49 United States Code §303) or §106 of the National Historic
22 Preservation Act, (16 United States Code §470f), or uses public
23 land designated and used as a park, recreation area, wildlife

1 refuge, historic site, or scientific area under Parks and
2 Wildlife Code, §26.002, may not be approved as a blanket CE.

3 (4) The environmental division may determine that the
4 division shall approve a type of project as a blanket CE,
5 including projects listed in paragraph (2) of this subsection.
6 Unless the environmental division has directed it shall approve
7 a type of project as a blanket CE, a district may review and
8 approve a blanket CE.

9 (d) Additional projects that are a CE.

10 (1) A project may meet the criteria for a CE and be
11 approved under the procedure in this subsection. A project
12 approved under this subsection shall not violate the
13 restrictions in subsection (b) of this section.

14 (2) Examples of a CE under this subsection include:

15 (A) modernization of a highway outside of the existing
16 sub-grade by resurfacing, restoration, rehabilitation,
17 reconstruction, adding shoulders, or adding auxiliary lanes such
18 as parking, weaving, turning, or climbing and passing, and
19 correction of substandard curves and intersections;

20 (B) highway safety or traffic operation improvement
21 projects including the installation of ramp metering control
22 devices and lighting;

23 (C) bridge rehabilitation, reconstruction, or

1 replacement, or the construction of grade separation to replace
2 existing at-grade railroad crossings;

3 (D) addition of travel lanes or any added capacity on
4 an existing highway using only existing right of way, after
5 public involvement;

6 (E) transportation corridor fringe parking facilities;

7 (F) construction of new truck weigh stations or rest
8 areas;

9 (G) approvals for changes in access control, with
10 appropriate public involvement;

11 (H) rehabilitation or reconstruction of existing rail
12 and bus buildings and ancillary facilities if only minor amounts
13 of additional land are required and there is not a substantial
14 increase in the number of users;

15 (I) construction of bus transfer facilities (an open
16 area consisting of passenger shelters, boarding areas, kiosks
17 and related street improvements) located in a commercial area or
18 other high activity center in which there is adequate street
19 capacity for projected bus traffic;

20 (J) construction of rail storage, maintenance, or
21 inspection facilities in areas used predominantly for industrial
22 or transportation purposes if the construction is not
23 inconsistent with existing zoning and if there is no significant

1 noise impact on the surrounding community;

2 (K) construction of new or expanded bicycle and
3 pedestrian lanes, paths, and facilities, except a project that
4 is a blanket CE under subsection (c) of this section; and

5 (L) runway extensions requiring minor amounts of
6 additional rights of way, and expansion of airport facilities
7 requiring minor amounts of additional rights of way.

8 (3) A project may be designated as a CE under this
9 subsection only after environmental division approval. The
10 district shall submit documentation showing that the specific
11 conditions or criteria for a CE are satisfied and that
12 significant environmental effects will not result. The district
13 shall submit a descriptive letter, an environmental issues check
14 list, or a brief environmental evaluation. The documentation
15 must show the project does not violate the criteria in
16 subsection (b) of this section. The documentation must show
17 that significant environmental impacts will not result based on
18 the results of an evaluation of the project, and any
19 coordination with resource agencies. All EPICs shall be
20 summarized in the documentation. The EPICs that will be
21 performed during construction shall be included in the plans,
22 specifications, and estimates.

23 (e) The district and the environmental division shall

1 retain documentation in the project file showing a project meets
2 the CE criteria.

3

4 §2.11. Environmental Assessment (EA).

5 (a) Applicability.

6 (1) This section applies to a transportation project when
7 the extent of environmental impacts is not readily discerned.

8 (2) An EA is a public disclosure document that provides
9 sufficient evidence and analysis for determining whether to
10 prepare an EIS or a FONSI, and that describes the need for the
11 project, any alternatives considered, and the extent of
12 environmental impact including direct, indirect, and cumulative
13 impacts. The department shall conduct environmental studies and
14 prepare an EA to determine the nature and extent of
15 environmental impacts, and to provide full disclosure of project
16 impacts to the public.

17 (3) For an aviation project involving any residential or
18 commercial relocations, environmental studies shall be conducted
19 and an EA shall be prepared. For an aviation project that
20 requires an EA, the department shall utilize the format and
21 content requirements of Federal Aviation Administration (FAA)
22 procedures established to comply with 42 United States Code
23 §§4321 et seq.

1 (b) Purpose. The EA shall be prepared as a decision-making
2 document. If the environmental studies show that the impacts
3 are not significant, then the EA shall conclude with a FONSI.
4 If the studies show that the impacts are significant, then the
5 EA shall conclude that an EIS is required.

6 (c) Coordination and consultation.

7 (1) For a project that requires an EA, the department
8 shall, at the earliest appropriate time, begin coordination and
9 consultation with state and federal resource agencies, local
10 political subdivisions, and the public to achieve the following:

11 (A) define the scope of the project;

12 (B) identify and evaluate any alternatives meeting the
13 project's established need and purpose, including evaluation of
14 the no-build alternative;

15 (C) determine potential social, economic, and
16 environmental impact;

17 (D) identify mitigation measures and alternatives that
18 might avoid, minimize, or compensate for adverse environmental
19 impacts; and

20 (E) identify other environmental reviews, permits, and
21 other approvals, as well as consultation requirements that
22 should be done as part of the decision-making studies.

23 (2) The department shall include in the EA the results of

1 review and consultation with regulatory agencies, and a summary
2 of the agency contacts and comments received.

3 (d) Public Involvement. The district and environmental
4 division shall comply with the public involvement requirements
5 in §2.5 of this subchapter (relating to Public Involvement).

6 (e) Change in determination of impact. If the
7 environmental division determines at any point during the
8 environmental studies that the project may have a significant
9 impact on the environment, the environmental division shall
10 direct the district to prepare an EIS.

11 (f) FONSI.

12 (1) Finding of no significant impact means a document
13 issued by the environmental division (or by the FHWA for a
14 federal-aid highway project) that briefly presents the reasons
15 why an action, not otherwise a categorical exclusion, will not
16 have a significant effect on the human environment and for which
17 an environmental impact statement therefore will not be
18 prepared. It shall include the environmental assessment, or a
19 summary of it, and shall note any other environmental documents
20 related to it. If the assessment is included, the finding need
21 not repeat any of the discussion in the assessment, but may
22 incorporate it by reference.

23 (2) The environmental division will review the EA, any

1 proposed mitigation measures, agency consultation and
2 coordination, and if a public hearing was held, the summary and
3 analysis, and the comment and response report. If appropriate,
4 the environmental division shall explain the decision in a
5 written FONSI, including how the EA and other environmental
6 documents, and agency consultation and coordination, affected
7 the decision.

8 (g) Notification of FONSI. The district and environmental
9 division shall give notice of availability of a FONSI in
10 accordance with §2.5 of this subchapter.

11 (h) Additional permits or approvals. After issuance of a
12 FONSI, but before the project is approved for construction
13 letting, the district shall ensure the project has obtained all
14 necessary permits or approvals.

15

16 §2.12. Environmental Impact Statement (EIS)

17 (a) Applicability. This section applies to a
18 transportation project when there are likely to be significant
19 environmental impacts. For an aviation project that requires an
20 EIS, the department shall utilize the format and content
21 requirements of FAA procedures established to comply with 42
22 United States Code §§4321 et seq.

23 (b) EIS. An EIS is a detailed public disclosure document

1 prepared for projects likely to cause significant impacts on the
2 environment. An EIS discusses the need and purpose for the
3 project, evaluates all reasonable alternatives, and discusses
4 why other alternatives were eliminated from detailed study. It
5 summarizes the studies, reviews, and consultations and
6 coordination required by law. It describes the environmental
7 impact of the project, any unavoidable adverse environmental
8 impacts and associated measures to minimize harm, and any
9 irreversible and irretrievable commitments of resources involved
10 if the project is implemented. It describes the department's
11 evaluation of direct, indirect, and cumulative effects of the
12 project. It also lists agencies and resource persons contacted.

13 (c) Processing the EIS.

14 (1) The district shall prepare an EIS, and process the
15 documents in the following nine stages:

16 (A) give notice, that is approved by the environmental
17 division, to FHWA that the department intends to prepare an EIS
18 (The notice shall describe the type of project, termini, length,
19 and general location.);

20 (B) publish a notice of intent and develop a
21 coordination plan under §2.5 of this subchapter (relating to
22 Public Involvement);

23 (C) conduct the required public involvement;

- 1 (D) prepare the draft EIS (DEIS);
- 2 (E) publish the notice of availability of the DEIS;
- 3 (F) conduct the public hearing;
- 4 (G) prepare the final EIS (FEIS);
- 5 (H) publish the notice of availability of the FEIS; and
- 6 (I) prepare the record of decision (ROD).

7 (2) The district shall prepare a supplemental DEIS or
8 supplemental FEIS or both if required by §2.15 of this
9 subchapter (relating to Supplemental Environmental Impact
10 Statement (SEIS)).

11 (d) Public involvement. The district shall comply with the
12 requirements in §2.5 of this subchapter through §2.9 of this
13 subchapter (relating to Public Involvement-Public Hearing) that
14 apply to an EIS, including publishing a notice of intent (NOI),
15 preparing a coordination plan, and holding scoping meetings.
16 The district shall publish the NOI and hold scoping meetings
17 before preparing a DEIS.

18 (e) DEIS.

19 (1) The district shall prepare a DEIS that meets the
20 requirements of this paragraph.

21 (A) It shall contain a clear statement of the need and
22 purpose of the project and the objectives that the proposed
23 action is intended to achieve. These may include achieving a

1 transportation objective identified in an applicable statewide
2 or metropolitan transportation plan, support for land use,
3 economic development, or growth objectives established in
4 applicable federal, state, local, or tribal plans, and serving
5 national defense, national security, or other national
6 objectives, as established in federal laws, plans, or policies.

7 (B) It shall identify all reasonable alternatives
8 satisfying the need and purpose of the project and evaluate them
9 for their associated social, economic, and environmental
10 impacts.

11 (C) The preferred alternative may be developed to a
12 higher level of detail than other alternatives. The higher
13 level detail shall be limited to work necessary for preliminary
14 design. The environmental division shall review, and if
15 appropriate, approve the development of the preferred
16 alternative to a higher level of detail. For a federal-aid
17 project, FHWA shall review, and if appropriate, approve the
18 development of the preferred alternative to a higher level of
19 detail. The development to a higher level of detail shall be
20 approved only if it does not prevent the department from making
21 an impartial decision as to whether to accept another
22 alternative under consideration in the environmental review
23 process.

1 (D) It discusses the elimination of alternatives that
2 do not meet the need and purpose of the project, if applicable.

3 (E) It summarizes the studies, reviews, consultations,
4 and coordination required by law.

5 (F) A preferred alternative may be designated, if
6 appropriate.

7 (2) In accordance with Transportation Code, §227.004, a
8 DEIS for a Trans-Texas Corridor project shall explain each of
9 the matters described in this paragraph.

10 (A) The reasons for the immediate and future needs of
11 the project.

12 (B) The reasonableness of and necessity for the
13 project.

14 (C) The reasons for the immediate and future needs for
15 each mode of transportation in that segment of the project.

16 (D) The reasonableness and necessity for each mode of
17 transportation in that segment of the project.

18 (3) The environmental division shall review the DEIS to
19 determine if it complies with this subsection and other
20 requirements, and if appropriate, approve it for circulation by
21 signing and dating the cover sheet. For a federal-aid project,
22 the FHWA shall review and if appropriate approve the DEIS.

23 (4) The district shall circulate the DEIS in accordance

1 with §2.5(e) of this subchapter.

2 (5) The district and environmental division shall give
3 notice of availability of the DEIS in accordance with §2.5(e) of
4 this subchapter.

5 (6) After the DEIS is circulated, public hearing held,
6 and comments reviewed, the district shall prepare an FEIS or a
7 supplemental DEIS.

8 (f) FEIS.

9 (1) The district shall prepare an FEIS that meets the
10 requirements of this paragraph.

11 (A) The preferred alternative is identified, and all
12 reasonable alternatives considered that satisfy the need and
13 purpose of the project are evaluated.

14 (B) The public hearing record prepared under §2.9(f) of
15 this subchapter, together with a summary of public involvement,
16 is included.

17 (C) The mitigation measures that are to be incorporated
18 as EPIC into the project are described.

19 (D) To the extent possible, compliance with all
20 applicable environmental laws is documented, or there are
21 reasonable assurances that requirements can be met.

22 (E) There is a description of environmental issues and
23 the consultations and other efforts made to resolve interagency

1 disagreements.

2 (2) The environmental division shall review the FEIS. If
3 the FEIS complies with the requirements of this section the
4 director of the environmental division shall indicate approval
5 of the FEIS by signing and dating the cover page. For a
6 federal-aid project, the FHWA shall review and if appropriate
7 approve the FEIS.

8 (3) The district shall circulate the FEIS in accordance
9 with §2.5(e) of this subchapter.

10 (4) The district shall publish notice of the availability
11 of the FEIS in accordance with §2.5(e) of this subchapter.

12 (5) The director of the environmental division shall
13 complete and sign a record of decision (ROD) no sooner than 30
14 days after publication of the availability of the FEIS notice in
15 the *Texas Register*. The ROD will present the basis for the
16 decision, summarize the department's responses to comments
17 received, and summarize any mitigation measures and commitments.
18 For a federal-aid project, the FHWA shall review and if
19 appropriate issue the ROD.

20 (6) The environmental division shall publish notice of
21 the availability of the ROD in accordance with §2.5(e) of this
22 subchapter.

23 (7) Until any required ROD has been signed, no further

1 approvals may be given except for administrative activities
2 taken to secure further project funding.

3

4 §2.13. Reevaluation.

5 (a) Purpose. This section applies to a project after it
6 receives environmental approval when there are subsequent
7 changes or when no major steps to advance the project occur for
8 three years. The section also applies to an EIS project after
9 approval of the DEIS.

10 (b) When required.

11 (1) The district shall prepare a reevaluation for a
12 project with an approved CE, FONSI, DEIS, FEIS, or ROD if one or
13 more of the following occur after the date of the approval of
14 the CE or the issuance of a FONSI or ROD or last major
15 departmental approval:

16 (A) a period of three years has passed without major
17 steps to advance the project, such as authority to undertake
18 final design or acquire significant portions of right of way or
19 approval of the plans, specifications, and estimates (PS&E);

20 (B) there are changes in the project (e.g., right-of-
21 way requirements, design changes, etc.); or

22 (C) there have been regulatory changes (e.g., new
23 threatened or endangered species listed, new executive orders

1 issued, etc.) or changes in the surrounding land use or
2 environment.

3 (2) If the district has not submitted an acceptable FEIS
4 to the environmental division within three years from the date
5 of circulation of the DEIS, the district shall prepare a
6 reevaluation that determines whether a supplement to the DEIS is
7 required.

8 (c) Preparation of reevaluation.

9 (1) A reevaluation shall cover the original limits of the
10 project as presented in the prior approval of the CE or issuance
11 of a FONSI or ROD or last major departmental approval.

12 (2) If the reevaluation shows the changes substantially
13 change the scope of the project or extend the limits of the
14 project, the district shall conduct additional environmental
15 studies and public involvement.

16 (A) For a project determined to be a CE or for which a
17 FONSI was issued, the reevaluation shall either confirm the CE
18 designation, confirm the FONSI designation, or identify changes
19 or impacts that will require the department to conduct
20 additional environmental studies and public involvement.

21 (B) For a project for which a ROD was issued, a
22 reevaluation shall confirm the findings in the ROD or determine
23 that a supplemental environmental impact statement (SEIS) shall

1 be required.

2 (d) Review. The environmental division may require that
3 the reevaluation be coordinated with resource agencies.

4 (e) Bypass reevaluation. The district in consultation with
5 the environmental division may determine to conduct additional
6 environmental studies and public involvement and bypass the
7 preparation of a reevaluation.

8 (f) Notice of continuous activity. If the district has not
9 prepared a reevaluation for a project, then every three years
10 after the date of the approval of the CE or the issuance of a
11 FONSI or ROD for the project, the district shall submit to the
12 environmental division for review and approval a notice of
13 continuous activity. The notice shall discuss the activities
14 that have occurred, and analyze the factors in subsections
15 (b)(1)(B) and (C) of this section.

16

17 §2.14. Supplemental Environmental Assessment (Supplemental EA).

18 (a) Preparation of Supplemental EA.

19 (1) The department may supplement an EA at any time.

20 (2) The department shall supplement an EA when the
21 department determines that:

22 (A) changes to the project would result in
23 environmental impacts that were not evaluated in the EA; or

1 (B) new information or circumstances relevant to
2 environmental concerns bearing on the proposed action or its
3 impacts were not evaluated in the EA.

4 (3) The department is not required to supplement an EA
5 when changes to the project, new information, or new
6 circumstances result in a lessening of adverse impacts evaluated
7 in the EA.

8 (b) Effect of preparation.

9 (1) The preparation of a Supplemental EA does not:

10 (A) prevent the granting of new approvals;

11 (B) require the withdrawal of previous approvals; or

12 (C) require the suspension of project activities for
13 any activity not directly affected by the supplement.

14 (2) If changes at issue are of such magnitude as to
15 require a reassessment of the entire project, or more than a
16 limited portion of the overall project, the department shall
17 suspend any activities that would have an adverse environmental
18 impact or limit the choice of reasonable alternatives, until the
19 Supplemental EA is completed.

20 (c) The department shall develop a Supplemental EA using
21 the same process and format as an original EA.

22

23 §2.15. Supplemental Environmental Impact Statement (SEIS).

1 (a) Preparation of SEIS.

2 (1) The department may supplement a DEIS or FEIS at any
3 time.

4 (2) The department shall supplement an EIS when the
5 department determines that:

6 (A) changes to the project would result in significant
7 environmental impacts that were not evaluated in the EIS; or

8 (B) new information or circumstances relevant to
9 environmental concerns bearing on the proposed action or its
10 impacts would result in significant environmental impacts not
11 evaluated in the EIS.

12 (3) The department is not required to supplement an EIS
13 when:

14 (A) changes to the project, new information, or new
15 circumstances result in a lessening of adverse impacts evaluated
16 in the EIS without causing other environmental impacts that are
17 significant and were not evaluated in the EIS; or

18 (B) the department decides to approve an alternative
19 fully evaluated in the approved FEIS, but not identified as the
20 preferred alternative. If the department approves the
21 alternative the department shall prepare a revised ROD and
22 publish it in the *Texas Register*.

23 (b) Supplemental EIS with limited scope.

1 (1) The department may prepare an SEIS to address issues
2 of limited scope, such as the extent of proposed mitigation, or
3 the evaluation of location or design variations for a limited
4 portion of an overall project unless the criteria in subsection
5 (c) of this section apply.

6 (2) The preparation of an SEIS with a limited scope does
7 not:

8 (A) prevent the granting of new approvals;

9 (B) require the withdrawal of previous approvals; or

10 (C) require the suspension of project activities for
11 any activity not directly affected by the supplement.

12 (c) Suspension of activities. If changes at issue are of
13 such magnitude as to require a reassessment of the entire
14 project, or more than a limited portion of the overall project,
15 the department shall suspend any activities that would have an
16 adverse environmental impact or limit the choice of reasonable
17 alternatives, until the SEIS is completed.

18 (d) Preparation of additional environmental studies. If
19 the department is uncertain of the significance of new impacts,
20 the department shall develop appropriate environmental studies
21 or, if deemed appropriate, a reevaluation or an EA to assess the
22 impacts of the changes, new information, or new circumstances.

23 (e) Processing. The department shall develop an SEIS using

1 the same process and format as an original EIS including
2 publication of an NOI, except that scoping and early
3 coordination are not required. No NOI is required for a
4 supplemental DEIS.

5 (f) Preparation not necessary. If the department
6 determines that an SEIS is not necessary, it shall indicate that
7 determination in the project record.

8

9 §2.16. Mitigation.

10 (a) As part of the environmental studies, the department
11 shall seek to avoid and minimize environmental impacts. If
12 impacts cannot be avoided and efforts to minimize impacts have
13 been exhausted, the department, in consultation with applicable
14 agencies, may propose compensatory mitigation that will be
15 included in the environmental documentation.

16 (b) Compensatory mitigation may include:

17 (1) payment of a fee to a public agency or private entity
18 in lieu of acquiring or agreeing to manage property for the
19 mitigation of an adverse environmental impact as a result of a
20 highway improvement project;

21 (2) participation in a regional habitat conservation plan
22 if the department acquires for a transportation project habitat
23 of one or more species listed as endangered under the Endangered

1 Species Act and the property is within the boundaries of a
2 regional habitat conservation plan;

3 (3) erection of a sound barrier to reduce noise from a
4 road or highway;

5 (4) a contractual agreement with any public or private
6 entity for the management of property owned by the department
7 and used for mitigation purposes;

8 (5) an agreement with the Texas Historical Commission
9 under §2.24 of this chapter (relating to Memorandum of
10 Understanding with the Texas Historical Commission) on
11 appropriate mitigation measures for an adverse effect directly
12 resulting from a transportation project;

13 (6) mitigation for the Trans-Texas Corridor as provided
14 by Transportation Code, §227.028; or

15 (7) the transfer of real property to a public agency or
16 private entity with or without monetary consideration if the
17 property is used or is proposed to be used for mitigation
18 purposes.

19 (c) Before the department acquires by purchase or
20 condemnation real property to mitigate an adverse environmental
21 impact, the department shall, if authorized by the applicable
22 regulatory authority, offer to purchase a conservation easement
23 from the owner of the real property. If the landowner does not

1 accept the offer before the 61st day after the date the offer is
2 made, the department may acquire the property by purchase or
3 condemnation.

4

5 §2.17. Special Right-of-Way Acquisition.

6 (a) Applicability. This section applies when a project
7 includes the acquisition of one or more of certain types of
8 right of way described in this section.

9 (b) Taking of designated public land, or public or private
10 historic site.

11 (1) The environmental division shall approve the use of
12 public land designated and used as a park, recreation area,
13 wildlife refuge, or scientific area, or publicly or privately
14 owned land designated and used as an historic site, only if:

15 (A) there is no feasible or prudent alternative to the
16 use of the land;

17 (B) the project includes all possible planning to
18 minimize harm to the land resulting from such use, including
19 mitigation measures;

20 (C) supporting information demonstrates that there are
21 unique problems or unusual factors involved in the use of
22 alternatives that avoid the land or that the cost, social,
23 economic, and environmental impacts, or community disruption

1 resulting from such alternatives reach extraordinary magnitudes;

2 and

3 (D) supporting information documents that officials
4 having jurisdiction over an acquisition have no jurisdictional
5 opposition to the acquisition and that the proposed mitigation
6 is acceptable to those jurisdictions.

7 (2) When a project is subject to this subsection the
8 district shall hold a public hearing under §2.9 of this
9 subchapter (relating to Public Involvement-Public Hearing).

10 (c) Taking of protected private land.

11 (1) The department may, if appropriate, approve the use
12 of private land encumbered by an agricultural conservation
13 easement purchased under Natural Resources Code, Chapter 183.

14 (2) The environmental division may approve the proposed
15 use if it meets the following requirements.

16 (A) There is no feasible and prudent alternative to the
17 use of land from the property.

18 (B) The project includes all reasonable planning to
19 minimize harm to the land resulting from the use.

20 (3) The department shall make a determination required
21 under this subsection at a properly noticed hearing held under
22 §2.9 of this subchapter.

23 (d) Compliance with other requirements. When a project is

1 subject to one or both subsections (b) or (c) of this section,
2 the department shall also require compliance with all applicable
3 environmental analysis, documentation, and interagency
4 coordination requirements in this subchapter.

5 (e) Early and advance acquisition.

6 (1) The department may conduct a separate environmental
7 review for the early or advance acquisition of property. Early
8 and advance acquisition under 23 Code of Federal Regulations
9 §§710.501-710.505 includes protective buying, hardship
10 acquisition, and real property donations. The department may
11 acquire real property under 23 Code of Federal Regulations
12 Chapter 710, if the department first completes a categorical
13 exclusion analysis. Upon conducting the analysis the department
14 shall use the standards set forth in this subsection and not
15 under §2.10 of this subchapter (relating to Categorical
16 Exclusion (CE)). The department shall identify environmental
17 issues, and identify any environmental liabilities associated
18 with the acquisition. However, the department shall not make an
19 early or advance acquisition if the purchase is for protective
20 buying that requires relocation, requires the taking of public
21 land designated and used as a park, recreation area, wildlife
22 refuge, or scientific area, or requires the taking of an
23 historic site that is publicly or privately owned. Completion

1 of environmental documentation for early and advance acquisition
2 shall apply to the acquisition of a specific parcel only and
3 shall not imply approval of the construction project. The early
4 or advance acquisition shall not influence the final
5 environmental decision regarding the build, no-build decision,
6 or a decision regarding the project alignment. A categorical
7 exclusion analysis is not required for a construction project
8 for which there is an approved environmental document.

9 (2) An option is an agreement by which the owner of a
10 property conveys to the department the right to purchase the
11 property on terms specified in the option. Exercising an option
12 means the acquisition of property pursuant to the option
13 agreement. The department may either acquire an option,
14 exercise an option, or both, before a final decision has been
15 made as to whether the project will be located on that property.
16 The department may purchase an option if the department conducts
17 a site assessment and determines that the property does not
18 appear to contain significant contamination of hazardous
19 materials, or other potential environmental concerns. The
20 purchase of an option does not require a CE determination. The
21 exercise of an option is a type of early and advance acquisition
22 of property, and the requirements of paragraph (1) of this
23 subsection apply to the exercise.

1

2 §2.18. Maintenance Projects and Programs.

3 (a) Projects. For purposes of this section, a project is
4 maintenance work undertaken under a program listed in subsection
5 (b) of this section. The district shall determine whether the
6 level of impacts of a project meets the criteria under §2.10 of
7 this subchapter (relating to Categorical Exclusion (CE)) for a
8 blanket CE. A project that does not meet the criteria for a
9 blanket CE shall be processed under §2.10 of this subchapter for
10 a non-blanket CE or under §2.11 of this subchapter (relating to
11 Environmental Assessment (EA)), as appropriate. All projects,
12 including a project that is a blanket CE, may require permits or
13 approvals under state and federal law.

14 (b) Programs. The following procedures provide for the
15 environmental review and public comment on department
16 maintenance programs.

17 (1) Environmental review.

18 (A) The department will conduct an environmental review
19 of the following maintenance programs:

- 20 (i) bridge maintenance;
21 (ii) customer service;
22 (iii) debris and spills;
23 (iv) drainage;

- 1 (v) ferry maintenance;
2 (vi) maintenance enhancement;
3 (vii) pavement maintenance;
4 (viii) roadside appurtenances;
5 (ix) traffic pavement markings; and
6 (x) vegetation management.

7 (B) The environmental review will consist of:

- 8 (i) a description of the program and its activities;
9 (ii) the department's evaluation of direct and
10 indirect effects of the program;
11 (iii) the department's analysis of program
12 alternatives; and
13 (iv) a description of the department's best
14 management practices and mitigation plans for each maintenance
15 program.

16 (C) The department shall coordinate and analyze each
17 review with appropriate state and federal environmental resource
18 agencies and work with them to develop effective environmental
19 protection measures.

20 (D) The department shall reassess an environmental
21 review at least every five years and if revisions are made,
22 shall coordinate again with appropriate resource agencies.

23 (2) Public involvement.

1 (A) Following the preparation and coordination of an
2 environmental review for a maintenance program, the department
3 shall afford an opportunity for a public hearing through
4 publication of a notice in at least one issue of the *Texas*
5 *Register*. The notice shall be published at least 30 days in
6 advance of the deadline for submission of written requests to
7 hold a public hearing. If a public hearing is requested, the
8 department shall conduct one or more public hearings, to solicit
9 comments from the public on the maintenance program. The
10 hearing shall be held within six months of the department's
11 approval of the environmental reviews prepared for the program.

12 (B) If a public hearing is requested, a public hearing
13 notice shall be published at least 10 days in advance of the
14 hearing in at least one issue of the *Texas Register* and the
15 hearing will be held under §1.5 of this title (relating to
16 Public Hearings).

17 (C) The department shall report to the commission the
18 findings of the environmental review and any public hearings
19 along with the response to comments for each maintenance
20 program.

21 (3) Approval. The environmental division shall review,
22 and if appropriate, approve the environmental document.

23

1 §2.19. Rail Transportation Project.

2 (a) Environmental studies for the acquisition, abandonment,
3 design, construction, lease, maintenance, or operation of a
4 passenger or freight rail facility under Transportation Code,
5 Chapter 91 or Chapter 227 that are subject to 49 United States
6 Code §10901 will be accomplished in accordance with applicable
7 state and federal requirements and, in particular, 49 Code of
8 Federal Regulations Part 1105.

9 (b) Public involvement for a rail transportation project
10 that is subject to 49 United States Code §10901 shall be
11 consistent with applicable state and federal law, particularly
12 49 Code of Federal Regulations Part 1105, this subchapter, and
13 Subchapters B and C of this chapter.

14 (c) Environmental studies and public involvement for the
15 acquisition, abandonment, design, construction, lease,
16 maintenance, or operation of a passenger or freight rail
17 facility, under Transportation Code, Chapters 91 and 227, that
18 are not subject to 49 United States Code §10901 shall be
19 accomplished in accordance with this subchapter and Subchapters
20 B and C of this chapter.

21

22 §2.20. Public or Private Entity Receiving Financial Assistance
23 from the Department for a Project.

1 (a) A public or private entity receiving financial
2 assistance from the department under Chapter 27, Subchapter E
3 (relating to Financial Assistance for Toll Facilities) or
4 developing a project under Chapter 5, Subchapter E (relating to
5 Pass-Through Fares and Tolls) shall comply with this section.

6 (b) When a project uses only state assistance, the entity
7 must comply with all the requirements of this subchapter, except
8 §2.3 of this subchapter (relating to Federal-Aid Transportation
9 Project). When a project uses federal, or both state and
10 federal assistance, the entity must comply with all the
11 requirements of this subchapter.

12 (c) The entity shall initiate the process by writing to the
13 environmental division for a determination of the respective
14 roles and responsibilities of the entity and the department.
15 Unless the environmental division determines that project
16 specific considerations warrant changes to the roles and
17 responsibilities, the entity shall complete the following
18 activities:

- 19 (1) prepare environmental reports and studies;
20 (2) submit appropriate environmental documentation;
21 (3) prepare any revision to environmental documentation;
22 (4) prepare legal and public notice required in this
23 subchapter;

1 (5) conduct public involvement required by this
2 subchapter, including obtaining court reporters for public
3 hearings, and providing accommodations for persons with special
4 communication or physical needs if requested;

5 (6) prepare materials to be used at a public meeting or
6 public hearing;

7 (7) prepare responses to comments;

8 (8) prepare a summary and analysis, and comment and
9 response report, for a public meeting or public hearing held (If
10 a hearing was held, prepare a certification that it was held in
11 accordance with §2.9 of this subchapter (relating to Public
12 Involvement–Public Hearing), and the Civil Rights Act of 1964
13 and the Civil Rights Restoration Act of 1987);

14 (9) prepare a verbatim transcript of any public hearing
15 and the original certification of the public involvement process
16 as described in this subchapter; and

17 (10) submit documentation showing that all EPIC is
18 complete or will be completed including copies of permits or
19 other approvals required prior to construction.

20 (d) When a governmental or private entity submits for
21 approval to the department an environmental study or related
22 documentation, the entity shall provide a number of copies that
23 is sufficient for distribution. The environmental division

1 shall specify the number of copies required.

1 SUBCHAPTER A. COMPREHENSIVE POLICY ON THE ENVIRONMENT

2 §2.1. Purpose. This subchapter sets forth the comprehensive
3 environmental policy established by the Texas Transportation
4 Commission and the Texas Department of Transportation and
5 identifies specific areas of policy direction with
6 implementation guidelines applicable to all department
7 operations, roles, and missions.

8
9 §2.2. Environmental Policy Statement. The commission and the
10 department will protect, preserve and, when practicable, enhance
11 the environment. Particular emphasis will be placed on
12 avoidance, minimization, and compensation for adverse
13 environmental impacts while balancing social and environmental
14 concerns with economic growth. Environmental considerations
15 will be fully integrated into department policies, procedures,
16 and decision-making practices in a systematic, interdisciplinary
17 manner. In implementing this policy, the department recognizes
18 the need for effective communication and encourages coordination
19 with the public, environmental or transportation interest
20 groups, environmental agencies, resource agencies, businesses,
21 communities, and similar entities in the transportation policy
22 setting, planning, and development processes.

23

1 §2.3. Definitions. The following words and terms, when used in
2 this subchapter, shall have the following meanings unless the
3 context clearly indicates otherwise.

4 (1) Commission--The Texas Transportation Commission.

5 (2) Corridor preservation--The protection of a corridor
6 utilizing the coordinated efforts of the involved governmental
7 entities to obtain jurisdiction of or otherwise protect the
8 right-of-way for a planned transportation facility identified
9 through an established planning process.

10 (3) Department--The Texas Department of Transportation.

11 (4) Department's activities--Planning, designing,
12 constructing, maintaining, and operating transportation systems
13 as defined by federal and state statutes, and the administration
14 and support required to ensure that systems are safe,
15 environmentally sound, economical, efficient, aesthetic, user
16 friendly and, where appropriate, multimodal.

17 (5) Documentation--The information contained in the
18 environmental assessment or environmental impact statement.

19 (6) Environment--The human environment that includes the
20 earth's system, which consists of water, air, land, plants,
21 people, and animals and the interrelationships that exist among
22 these, including ecological, socio-economic, and
23 archaeological/cultural resources.

1 (7) Environmental assessment--A concise public disclosure
2 document that briefly provides sufficient evidence and analysis
3 for determining whether to prepare an environmental impact
4 statement or a finding of no significant impact, and that
5 answers such questions as the need for the project, any
6 alternatives considered, and the extent of environmental impact.

7 (8) Environmental consideration--investigation,
8 evaluation, and disposition of environmental issues.

9 (9) Environmental impact statement--A detailed public
10 disclosure document prepared for projects having significant
11 impacts on the environment and that answers such questions as
12 the environmental impact of the project, any unavoidable adverse
13 environmental impacts and associated measures to minimize harm,
14 alternatives to the project, any irreversible and irretrievable
15 commitments of resources involved if the project is implemented,
16 and a listing of agencies and resource persons contacted.

17 (10) Interdisciplinary approach--An approach which will
18 ensure the integrated use of the natural and social sciences in
19 planning and decision-making which may have an impact on the
20 environment, with the end result being that environmental
21 amenities and values are given consideration in decision-making
22 along with social, economic, and technical considerations.

23 (11) Multimodal--The integration of two or more

1 transportation modes to provide for optimization of resources
2 and adequate consumer alternatives.

3 (12) Traffic operations--A diverse set of activities used
4 singularly or in concert to improve traffic flow, navigation,
5 and safety on transportation corridors. Examples include high
6 occupancy vehicle lanes, metered freeway ramp entrances,
7 changeable message signs, rural navigational aids, collision
8 avoidance, altered traffic peak demand, and integration or
9 improvement of public transportation services.

10 (13) Transportation planning--A continuing comprehensive
11 plan to guide the development of transportation facilities that
12 will meet the needs of the traveling public.

13
14 §2.4. Policy Direction and Guidelines. Implementation of
15 policies specified in §2.2 of this title (relating to
16 Environmental Policy Statement) will be consistent with the
17 following guidelines.

18 (1) Communication. The department will:

19 (A) provide an interdisciplinary approach to the
20 department's work through communication, which includes public
21 information and education; early notice to the public;
22 memorandum of understanding; and consultation and coordination
23 with environmental and transportation interest groups,

1 environmental agencies, resource agencies, businesses,
2 communities, and other similar entities;

3 (B) coordinate with a broad range of federal and state
4 environmental, natural resource, and transportation agencies and
5 organizations to accurately assess the current environment and
6 potential environmental issues; and

7 (C) heighten the awareness of all employees toward
8 environmental issues, policy, preservation, and enhancement of
9 the environment through training and similar means.

10 (2) Systems planning. The department will encourage:

11 (A) use of transportation management systems, multimodal
12 systems, interagency activities, and public/private partnerships
13 to achieve innovative, environmentally sensitive solutions to
14 transportation problems;

15 (B) the metropolitan planning organizations and local
16 government to:

17 (i) promote the integration of land use,
18 transportation, and environmental planning; and

19 (ii) take a leadership role in the identification and
20 consideration of environmental concerns during the development
21 of regional transportation plans;

22 (C) the input of environmental/resource agencies, groups,
23 and the public throughout the systems planning stage to ensure

1 full consideration of environmental issues in the development of
2 transportation plans and improvement programs and to allow for
3 environmental enhancement, when practicable; and

4 (D) transportation corridor preservation in order to
5 avoid or minimize future negative social, economic, and
6 environmental impacts.

7 (3) Project development. The department will:

8 (A) take into account all applicable environmental
9 requirements of law and policy in reaching conclusions that
10 reflect the public interest;

11 (B) ensure that a systematic, interdisciplinary, and
12 public approach is used to evaluate social, economic, and
13 environmental impacts, both direct and indirect, associated with
14 the department's transportation projects in accordance with all
15 applicable laws, rules and regulations, including Texas Civil
16 Statutes, Article 6673g, as added by Acts 1991, 72nd
17 Legislature, Chapter 551, Section 17;

18 (C) develop comprehensive environmental documents which
19 address balancing social and other environmental concerns with
20 economic issues;

21 (D) develop comprehensive environmental documents that
22 address measures and techniques to avoid, minimize, or mitigate
23 for adverse environmental impacts and, when practicable,

1 measures and techniques to enhance the environment;

2 (E) objectively evaluate the full range of reasonable
3 transportation alternatives that address existing and projected
4 transportation needs including, but not limited to, the no-build
5 option, traffic operations options, improvements to the existing
6 system, and new construction;

7 (F) individually customize each environmental assessment
8 or environmental impact statement to appropriately address the
9 nature, scope, and complexity of the transportation project; and

10 (G) consolidate environmental considerations into the
11 department's work and improve procedures for thorough and
12 expeditious environmental review and timely decisions on
13 transportation projects.

14 (4) Protection and enhancement. In the planning, design,
15 construction, maintenance, and operation of transportation
16 facilities, the department will:

17 (A) proactively address environmental issues;

18 (B) develop plans, to the extent possible, that consider
19 the transportation system as a whole from an aesthetic
20 perspective;

21 (C) be a leader in identifying and implementing measures
22 to avoid, minimize, or compensate for adverse environmental
23 impacts with emphasis placed on environmental preservation and

1 enhancement;

2 (D) strive to preserve significant historic,
3 archaeological, and natural resources and implement all
4 practicable measures to minimize unavoidable adverse effects;
5 and

6 (E) ensure the use of all reasonable and feasible
7 mitigation measures, state-of-the-art analysis, and technology
8 to minimize noise impacts in accordance with established noise
9 abatement requirements and technology.

10 (5) Administration. The department will:

11 (A) implement a construction phase field study of
12 projects to evaluate the accuracy of the environmental
13 documentation and to address any newly discovered impacts;

14 (B) ensure that environmental commitments made during the
15 planning, location, design, and environmental and public
16 involvement phases of project development are implemented during
17 project construction, maintenance, and operation;

18 (C) support coordinated environmental research and
19 conduct a program of related environmental information
20 dissemination;

21 (D) ensure that all necessary actions are taken to avoid,
22 minimize, or mitigate the adverse effects that may result when
23 the department handles, maintains, uses, stores, safeguards, or

1 transports dangerous chemicals or hazardous materials; and
2 (E) support, when practicable, the implementation of
3 federal and state environmental programs, such as the recycling
4 programs applicable to all department operations, roles, and
5 missions.

REPEALED

1 SUBCHAPTER C. ENVIRONMENTAL REVIEW AND PUBLIC INVOLVEMENT

2 §2.40. Purpose. It is the goal of the department to develop
3 and construct projects that fulfill the transportation needs of
4 the public while being environmentally sensitive. The
5 procedures in this subchapter are provided in order to comply
6 with the spirit of the National Environmental Policy Act, 42
7 United States Code §§4321 et seq., 23 United States Code
8 §109(h), 49 United States Code §101, and the Transportation
9 Code, including §91.033, §201.604, §201.607, §203.021, and
10 §361.103. The sections under this subchapter prescribe the
11 environmental review and public involvement procedures for
12 department transportation projects and for projects of other
13 private or public entities that are funded in whole or in part
14 by the department. These procedures are intended to encourage
15 the public's involvement in transportation projects and to
16 ensure the adequate consideration of environmental impacts
17 related to transportation systems development, and to ensure
18 that environmental impacts are mitigated where feasible.

19
20 §2.41. Definitions. The following words and terms, when used in
21 this subchapter shall have the following meanings, unless the
22 context clearly indicates otherwise.

23 (1) Action--A transportation project that may be

1 regulated by another state or federal agency by law, rules, or
2 regulations.

3 (2) Affected local government--The governing body of a
4 county or municipality in which a project is located.

5 (3) Affected public official--An elected official of a
6 county or municipality in which a project is located, or a
7 member of the United States Congress or the Texas Legislature in
8 whose district a project is located.

9 (4) Agency--A state or federal governmental body having
10 jurisdiction over environmental issues related to transportation
11 facility development.

12 (5) Aviation project--The construction, enlargement,
13 repair, or planning of an airport or air navigational facility
14 as part of the aviation facilities development program.

15 (6) Beneficial use project--The productive and positive
16 use of dredged material as proposed by the United States Army
17 Corps of Engineers.

18 (7) Best management practices--Practices that are
19 determined to be the most efficient, practical, and cost
20 effective measures to guide a particular activity or address a
21 particular problem.

22 (8) Certification of the public involvement process--The
23 written verification from the district stating that the

1 requirements to afford an opportunity for a public hearing, as
2 specified in §2.42 and §2.43(c) of this subchapter, have been
3 met, or stating that the requirements for a public hearing, as
4 specified in §2.42 and §2.43(c) of this subchapter, have been
5 met.

6 (9) Commission--The Texas Transportation Commission.

7 (10) Conversion--An approval by the commission to convert
8 a non-tolled segment of the state highway system to a turnpike
9 project.

10 (11) Department--The Texas Department of Transportation.

11 (12) Disposal plan--An operationally suitable method for
12 the placement of dredged material that avoids or minimizes
13 adverse environmental impacts.

14 (13) District--The Texas Turnpike Authority Division or
15 one of the 25 geographical districts into which the department
16 is divided.

17 (14) Division--The Environmental Affairs Division of the
18 department.

19 (15) Environmental document--A decision-making document
20 that incorporates environmental studies, coordination and
21 consultation efforts, cost, and engineering elements. Documents
22 may include categorical exclusion documentation, environmental
23 assessments, environmental impact statements, reevaluations, and

1 supplemental environmental impact statements.

2 (16) Environmental permits, issues, and commitments
3 (EPIC)--Any permit, issue, coordination commitment, or
4 mitigation obligation necessary to satisfy social, economic, or
5 environmental impacts of a project, including sole source
6 aquifer coordination, wetland permits, stormwater permits,
7 traffic noise abatement, threatened or endangered species
8 coordination, or archeological permits, and any mitigation or
9 other commitment associated with the project.

10 (17) Environmental studies--The investigation of
11 potential environmental impacts, including studies conducted
12 during transportation planning and project development and
13 studies conducted to evaluate alternatives.

14 (18) Federal interagency coordination team--A group
15 established to review proposed federal development projects
16 related to the Gulf Intracoastal Waterway and whose duties
17 include, among other things, advising on the consistency
18 determinations.

19 (19) Gulf Intracoastal Waterway (GIWW)--The main channel,
20 not including tributaries or branches, of the shallow draft
21 navigation channel running from the Sabine River southward along
22 the Texas coast to the Brownsville Ship Channel near Port
23 Isabel.

1 (20) Gulf Intracoastal Waterway Advisory Committee
2 (GIWAC)--An interagency committee made of members appointed by
3 the department to represent state agencies having jurisdiction
4 in the protection of the state's natural, historic, and economic
5 resources. The GIWAC is created for the purpose of advising and
6 assisting the department:

7 (A) in developing a unified method to address problems
8 and recommend solutions for the needs of the GIWW, for the
9 protection of the environment and the state's natural and
10 historic resources affected by the waterway, and for the
11 promotion of the economic welfare of the state's interest in the
12 GIWW;

13 (B) in developing proposals for a disposal plan or a
14 beneficial use project that will address dredged material
15 disposal involving a segment of the GIWW identified by the U.S.
16 Army Corps of Engineers as in need of maintenance dredging; and

17 (C) on the acquisition of disposal sites in an
18 environmentally sensitive and operationally suitable manner.

19 (21) Highway construction project--A highway improvement
20 project involving the construction or reconstruction of a
21 highway.

22 (22) Highway improvement project--A highway construction
23 or maintenance project under Transportation Code, Chapter 201,

1 203, 221, 223, 227, and 361.

2 (23) Human environment--Interpreted comprehensively to
3 include the natural and physical environment, and the
4 relationship of people with that environment.

5 (24) Jurisdiction--For purposes of §2.44 of this
6 subchapter (relating to Gulf Intracoastal Waterway Projects),
7 this term shall mean:

8 (A) for a city, the area within the incorporated city
9 limits and the extraterritorial jurisdiction of a city; and

10 (B) for a county, any area within the boundaries of
11 that county, excluding incorporated areas and areas within the
12 extraterritorial jurisdiction of a city.

13 (25) Maintenance action--A singular activity, performed
14 by state or contract forces, to repair or perform work on a
15 segment of the state highway system.

16 (26) Maintenance program--A collection of maintenance
17 actions performed singularly or collectively on the state
18 highway system. The following categories have been established
19 as maintenance programs.

20 (A) Bridge maintenance--Activities to repair or perform
21 preventive maintenance on bridges, culverts, retaining walls,
22 and barrier walls.

23 (B) Customer service--Activities related to providing

1 the traveling public with services, including maintaining rest
2 areas, picnic areas, and litter barrels.

3 (C) Debris and spills--Activities related to removing
4 debris from the right of way, including litter, roadway debris,
5 spills, and sweeping.

6 (D) Drainage--Activities related to maintaining
7 drainage systems and slopes on the right of way and within
8 drainage easements, including roadside ditches, slopes,
9 channels, creeks, streams, and rivers.

10 (E) Ferry maintenance--The maintenance and operation of
11 ferries under Transportation Code, §342.001.

12 (F) Maintenance enhancement--Maintenance activities
13 that improve the access to a highway or improve the performance
14 of the highway system such as the installation of turn lanes,
15 turnouts, turn-arounds, driveways, or shoulders.

16 (G) Pavement maintenance--Activities to repair or
17 perform preventive maintenance on pavements, including work
18 performed on the pavement surface, base, sub-base, sub-grade, or
19 embankment.

20 (H) Roadside appurtenances--Activities related to
21 fixtures along the roadways, including signs, delineators,
22 mailboxes, guard rails, attenuators, illumination, and signals.

23 (I) Traffic pavement markings--Activities related to

1 markings on the pavement to control vehicular movement,
2 including installing and removing striping, specialty marking,
3 and pavement markings.

4 (J) Vegetation management--Activities performed to
5 establish and maintain the condition of the roadway and roadside
6 on the state highway right of way, including mowing operations,
7 pest management, revegetation techniques, erosion control,
8 wildflowers preservation and propagation, tree and brush
9 trimming and removal, and the preservation of threatened and
10 endangered plant species.

11 (27) Mitigation--An activity undertaken to avoid or
12 minimize a transportation project's impacts to natural or
13 cultural resources; to rectify the impacts by repairing,
14 rehabilitating, or restoring the affected environment; to reduce
15 or eliminate the impact over time by preservation and
16 maintenance operations during the life of the action; or to
17 compensate for the impact by replacing or providing for
18 substitute resources or environments.

19 (28) Public hearing--A formal hearing to receive public
20 input in determining a preferred alternative for or with respect
21 to any changes to a transportation project.

22 (29) Public involvement--An ongoing phase of the project
23 development process that encourages and solicits public input

1 and provides the public the opportunity to become fully informed
2 regarding project development.

3 (30) Public meeting--An informal discussion that may
4 assist in the preparation of environmental documents and may be
5 held with local public officials, interested citizens or the
6 general public, and local, neighborhood, or special interest
7 groups for the purpose of exchanging ideas and collecting input
8 on the need for, and possible alternatives to, a given
9 transportation project.

10 (31) Public transportation project--A project that may
11 involve either capital or operational funding for the purchase
12 of rolling stock, capital improvements, and facility
13 renovations, and provision for public transportation services as
14 defined under Transportation Code, Chapters 455, 456, 458, and
15 461.

16 (32) Purpose and need--The issue that a proposed project
17 or action seeks to address and the justification for the
18 expenditure of public funds.

19 (33) Significantly--Shall have the same meaning as the
20 term is used and has been interpreted under the National
21 Environmental Policy Act and 40 CFR §1508.27.

22 (34) State project--A nonfederal-aid transportation
23 project.

1 (35) Trans-Texas Corridor--The system of multimodal
2 facilities designated by the commission under Transportation
3 Code, §227.011.

4 (36) Transportation project--A highway improvement, rest
5 area, aviation, turnpike, public transportation, or rail
6 transportation project, ferry maintenance, or a project for the
7 construction or operation of a facility that is a part of the
8 Trans-Texas Corridor.

9 (37) Turnpike project--A project described in §27.2 of
10 this title (relating to Definitions).

11

12 §2.42. Federal-Aid Transportation Projects.

13 (a) Environmental studies for transportation projects that
14 utilize federal funds will be accomplished in accordance with
15 applicable state and federal requirements and, in particular, 23
16 Code of Federal Regulations Part 771.

17 (b) For transportation projects planned and developed by
18 other governmental entities or by private entities that may
19 utilize federal funds, the developing entity must initiate the
20 process by writing to the department for a determination of the
21 respective roles and responsibilities of the entity and the
22 department under this section. Unless the department determines
23 that project-specific considerations warrant changes to roles

1 and responsibilities, the governmental or private entity shall
2 obtain the department's concurrence that the following
3 activities were properly conducted under this section:

4 (1) preparation and completion of environmental studies;

5 (2) submission of appropriate documentation (categorical
6 exclusion, environmental assessment, and environmental impact
7 statement, including reevaluation, and supplemental
8 documentation) for departmental and Federal Highway
9 Administration review;

10 (3) preparation of any document revisions;

11 (4) submission to the department of copies of the
12 environmental studies and documentation adequate for
13 distribution;

14 (5) preparation of legal and public notices in accordance
15 with §2.43(c) of this subchapter for department and Federal
16 Highway Administration review and use;

17 (6) arrangements for appropriate public involvement,
18 including court reporters and accommodations for persons with
19 special communication or physical needs related to the public
20 hearing if requested;

21 (7) preparation of public meeting and hearing materials;

22 (8) preparation of any necessary responses to comments;

23 (9) preparation of the public meeting and public hearing

1 summary and analysis, and the comment and response reports, and
2 a signed certification that a hearing has been held in
3 accordance with §2.43 of this subchapter, the Civil Rights Act
4 of 1964, and the Civil Rights Restoration Act of 1987; and

5 (10) submission to the department of documentation
6 showing that all EPIC have been or will be completed, including
7 copies of permits or other approvals required prior to
8 construction.

9 (c) The Federal Highway Administration will issue all final
10 environmental approvals for Categorical Exclusions (CE),
11 approvals for further processing for Environmental Assessments
12 (EA), approvals for the circulation of Draft Environmental
13 Impact Statements (DEIS) and publication of Final Environmental
14 Impact Statement (FEIS), findings of no significant impacts
15 (FONSI), records of decision (ROD), Supplemental Environmental
16 Impact Statements, and Reevaluations, except for approvals under
17 the Categorical Exclusion Programmatic Agreement executed
18 between the Federal Highway Administration (FHWA) and the
19 department. If projects meet the criteria as blanket CEs or
20 Programmatic CEs under that agreement those projects are deemed
21 approved by FHWA and therefore require no formal FHWA action.

22 (d) The Federal Highway Administration will publish notices
23 of intent and notices of availability in the Federal Register.

1 The department will publish records of decision in the Texas
2 Register.

3 (e) Public involvement for transportation projects that
4 utilize federal funds will be consistent with applicable state
5 and federal law, including §2.43(c) of this subchapter.

6 (f) Aviation projects that utilize federal aviation funds
7 will be accomplished in accordance with Federal Aviation
8 Administration (FAA) procedures established to comply with 42
9 United States Code §§4321 et seq.

10 (g) Public transportation projects that utilize federal
11 transit or federal highway funds will be accomplished in
12 accordance with applicable state and federal requirements and,
13 in particular, 23 Code of Federal Regulations Part 771.

14

15 §2.43. Non Federal-Aid Transportation Projects.

16 (a) Environmental studies. Except as provided in §2.42 of
17 this subchapter, environmental studies for transportation
18 projects will be accomplished in accordance with applicable
19 state and federal law including the Endangered Species Act, 16
20 United States Code §§1531 et seq.; the Rivers and Harbors Act,
21 33 United States Code §§401 et seq.; the Federal Water Pollution
22 Act, 33 United States Code §§1251 et seq. (commonly known as the
23 Clean Water Act); 33 Code of Federal Regulations Parts 114

1 through 115; the Safe Drinking Water Act per 42 United States
2 Code §§300f et seq.; Section 106 of the National Historic
3 Preservation Act, 36 Code of Federal Regulations Part 800; and
4 this subchapter.

5 (b) Coordination. Coordination with appropriate agencies,
6 local governmental entities, and the public must play a vital
7 role in project planning and development. District offices and
8 the division will be responsible for initiating early
9 coordination and the continuation of coordination with local
10 governmental entities and applicable agencies throughout project
11 planning. Every reasonable effort must be made to resolve
12 interagency disagreements.

13 (1) Coordination will be achieved in accordance with 1
14 TAC Chapter 5, Subchapter B, concerning state and local review
15 of federal and state assistance applications, also known as
16 TRACS, which are intended, among other things, to foster
17 intergovernmental cooperation and coordination.

18 (2) Coordination under TRACS will be initiated with
19 appropriate regional review agencies (RRA).

20 (3) Types of projects that are exempt from RRA review
21 include those that do not:

22 (A) require additional right of way;

23 (B) change the layout or function of connecting roads

1 or streets or of the facility being improved;

2 (C) adversely affect abutting real property; or

3 (D) otherwise have a substantial social, economic, or
4 environmental impact.

5 (4) The TRACS procedures shall supplement the
6 department's traditional policy of direct coordination with
7 other agencies and local governmental entities.

8 (5) During project coordination, unless otherwise
9 provided in Subchapter B of this chapter (relating to Memorandum
10 of Understanding with Natural Resource Agencies) district
11 offices will be responsible for:

12 (A) initiating a cooperative development process with
13 local governmental entities in order to assist in the planning
14 of projects; and

15 (B) maintaining open lines of communication with local
16 or area offices of applicable agencies.

17 (6) During project coordination the division will be
18 responsible for:

19 (A) the environmental processing of the project,
20 including interagency contacts, coordination, consultation, and
21 approvals; and

22 (B) providing project data and analyses to applicable
23 agencies that includes coordination of environmental studies and

1 mitigation proposals with the Texas Commission on Environmental
2 Quality, Texas Historical Commission, and the Texas Parks and
3 Wildlife Department.

4 (7) Coordination under paragraph (6)(B) of this
5 subsection will be provided to applicable agencies no later than
6 30 days prior to the date the division approves an environmental
7 document that serves as a written report explaining the
8 department's decision regarding a project, thereby assisting in
9 the determination of project impacts and mitigation plans
10 pursuant to Transportation Code, §201.604, unless this
11 coordination is provided for under MOUs developed under
12 Transportation Code, §201.607, and Subchapter B of this chapter.

13 (8) As part of the environmental studies, the department
14 will seek to avoid and minimize environmental impacts. If
15 impacts cannot be avoided and efforts to minimize have been
16 exhausted, the department, in consultation with applicable
17 agencies, may propose compensatory mitigation that will be
18 included in the environmental documentation. Compensatory
19 mitigation may include:

20 (A) payment of a fee to a public agency or private
21 entity in lieu of acquiring or agreeing to manage property for
22 the mitigation of an adverse environmental impact as a result of
23 a highway improvement project under Transportation Code,

1 §201.6061; (B) participation in a regional habitat
2 conservation plan if the department acquires for a
3 transportation project habitat of one or more species listed as
4 endangered under the Endangered Species Act and the property is
5 within the boundaries of a regional habitat conservation plan
6 under Transportation Code, §201.606;

7 (C) erection of a sound barrier to reduce noise from a
8 road or highway under Transportation Code, §201.610;

9 (D) a contractual agreement with any public or private
10 entity for the management of property used for the mitigation of
11 an adverse environmental impact directly resulting from
12 construction or maintenance of a state highway under
13 Transportation Code, §203.004;

14 (E) an agreement with the Texas Historical Commission
15 under §2.24 of this chapter (relating to Memorandum of
16 Understanding with the Texas Historical Commission) on
17 appropriate mitigation measures for an adverse effect directly
18 resulting from a transportation project; or

19 (F) mitigation for the Trans-Texas Corridor as provided
20 by Transportation Code, §227.028.

21 (c) Public involvement. Public involvement will be
22 initiated by the appropriate district office and will depend on
23 and be consistent with the type and complexity of each project.

1 Districts will maintain a list of elected public officials,
2 individuals and groups interested in transportation projects,
3 and will provide notification of public meeting and hearing
4 activities to these individuals and groups.

5 (1) Notifications for public hearings. Notifications for
6 public hearings depend on the type of affected resource.
7 Paragraphs (5) through (9) of this subsection govern public
8 hearing requirements for projects with state or federal funding.
9 If a project requires the taking of public land designated and
10 used as a public park, recreation area, wildlife refuge,
11 historic site, or scientific area, in addition to paragraphs (5)
12 through (9) of this subsection, Parks and Wildlife Code,
13 §§26.001 et seq. and paragraph (5) of this subsection govern
14 public hearing requirements.

15 (2) Meetings with affected property owners. Meetings
16 with affected property owners (MAPO), as one form of public
17 involvement, will be held with individuals owning property
18 adjacent to the project and with other affected property owners
19 (e.g., a business or governmental entity that may be impacted)
20 when projects require:

21 (A) detours, a minimal amount of right-of-way
22 acquisition, or temporary construction easements; or

23 (B) a minor location or design revision after the

1 environmental document has been approved and the public
2 involvement requirements have been completed.

3 (3) Public meetings. Public meetings, another form of
4 public involvement, may be held with local public officials,
5 interested citizens, the general public, and local,
6 neighborhood, or special interest groups for the purpose of
7 exchanging ideas and collecting input on the need for, and
8 possible alternatives to, a given project. Notice of a public
9 meeting will be appropriate for the anticipated audience to
10 maximize attendance. Following the public meeting, the district
11 will prepare a written summary of the proceedings, including the
12 comments received, and responses to comments, as well as
13 modifications, if any, to the project resulting from comments
14 received. This summary will be forwarded to the division for
15 review. Public meetings will be held:

16 (A) as early as the department determines feasible to
17 assure public input into project planning;

18 (B) to provide a free exchange of project views and
19 concerns;

20 (C) during project planning and development in order to
21 keep the public informed;

22 (D) during the drafting of the draft environmental
23 impact statement described in subsection (f) of this section;

1 and

2 (E) at a time and place convenient to the public in the
3 vicinity of the project.

4 (4) Opportunity for a public hearing. If a public
5 hearing is not required under paragraph (5) of this subsection,
6 the district may afford an opportunity for public hearing as
7 another form of public involvement. Opportunities for a public
8 hearing will be afforded for projects that require the
9 acquisition of significant amounts of right of way,
10 substantially change the layout or function of the connecting
11 roadways or of the facility being improved, add capacity, have a
12 measurable adverse impact on abutting real property, or
13 otherwise cause a substantial social, economic, or environmental
14 effect, or for which the department determines it is in the
15 public interest.

16 (A) An opportunity for public hearing will also be
17 afforded for projects if the results of the environmental
18 studies support a finding of no significant impact (FONSI), as
19 discussed in subsections (d) and (e) of this section. The
20 opportunity will be afforded after the environmental document is
21 considered technically complete and is approved by the division
22 as a full-disclosure document suitable for public review.
23 However, if deemed appropriate, the district office may decide

1 to hold a public hearing and bypass affording a public hearing
2 opportunity.

3 (B) Two notices of the opportunity for public hearing
4 will be published in local newspapers having general
5 circulation. The first notice will be published at least 30
6 days in advance of the deadline date set by the district office
7 for submission of written requests for holding a public hearing,
8 and the second notice will be published no more than 10 nor less
9 than seven days prior to the deadline date.

10 (C) If the population that will be affected by the
11 project is predominantly non-English speaking, the notices must
12 also be published in the dominant language in accordance with
13 Presidential Executive Order 13166, Improving Access to Services
14 for Persons with Limited English Proficiency.

15 (D) Notices of the opportunity for public hearing will
16 also be mailed to landowners abutting the roadway as identified
17 by tax rolls, and affected local governments and public
18 officials.

19 (E) No further action will be taken to hold a public
20 hearing if at the end of the time set for affording an
21 opportunity for a public hearing no requests are received or the
22 district has addressed the concerns of the persons requesting
23 the public hearing. The district office will be responsible for

1 submitting a certification of the public involvement process to
2 this effect to the division.

3 (5) Public hearing. A public hearing, as another form of
4 public involvement, will be held to present project alternatives
5 and to encourage and solicit public comment after location and
6 design studies are developed and the environmental document is
7 considered technically complete and approved by the division as
8 a full disclosure document suitable for public review.

9 (A) A public hearing will be held:

10 (i) for projects with substantial public interest or
11 controversy;

12 (ii) for environmental impact statement (EIS)
13 projects;

14 (iii) for high-profile projects;

15 (iv) if a request for hearing is received as
16 discussed in paragraph (4) of this subsection;

17 (v) if a project requires the taking of public land
18 designated and used as a park, recreation area, wildlife refuge,
19 historic site or scientific area, as covered in the Parks and
20 Wildlife Code, §§26.001 et seq.;

21 (vi) if a project requires a public hearing under
22 Transportation Code, §203.021; or

23 (vii) for any aviation project requiring a

1 residential or commercial relocation.

2 (B) The hearing notice will contain at a minimum the
3 following information:

4 (i) time, date, and location of the hearing;

5 (ii) description of the project termini, purpose and
6 need, improvements, and right-of-way needs;

7 (iii) reference to maps, drawings, environmental
8 studies and documents, and any other information about the
9 project that is available for public inspection at the
10 designated locations;

11 (iv) reference to the potential for relocation of
12 residences and businesses and the availability of relocation
13 assistance for displacees;

14 (v) a statement that written comments may be
15 presented for a period of 10 days after the hearing;

16 (vi) the address where written comments may be
17 submitted;

18 (vii) whether the project encroaches on a floodplain,
19 wetland, or a sole-source aquifer recharge zone;

20 (viii) a statement, if applicable, that the project
21 will require the taking of public land designated and used as a
22 park, recreation area, wildlife refuge, historic site, or
23 scientific area; and

1 (ix) a statement that provision will be made for
2 persons with special communication or physical needs related to
3 the public hearing, if requested.

4 (C) Publication requirements for the department's
5 public hearings are provided for in clauses (i) through (iv) of
6 this subparagraph.

7 (i) Except for projects requiring the taking of
8 public land designated and used as a park, recreation area,
9 wildlife refuge, historic site, or scientific area, notice of
10 the public hearing must be published twice in a local newspaper
11 having general circulation, with the first notice published 30
12 days before the hearing, and the second notice, no more than 10
13 days nor less than seven days before the hearing.

14 (ii) For projects requiring the taking of public land
15 designated and used as a park, recreation area, wildlife refuge,
16 historic site, or scientific area pursuant to Parks and Wildlife
17 Code, §26.002, notice of the public hearing must be given by the
18 publication of four notices in local newspapers. The first
19 notice will be published at least 30 days before the hearing,
20 and once a week thereafter for three consecutive weeks. The
21 last date of publication must be no more than 10 days nor less
22 than seven days before the date of the hearing.

23 (I) The notice must be published in a newspaper of

1 general circulation that is published at least six days a week
2 in the county in which the land to be taken is situated.

3 (II) If there is no newspaper that qualifies for
4 these requirements, the notices may be published in any county
5 that adjoins the county in which the land is situated.

6 (III) If there is no qualifying newspaper published
7 in any adjoining county, then the notice must be published in
8 the qualifying newspaper published in the nearest county to the
9 county where the land is situated.

10 (IV) If there is no qualifying daily newspaper
11 published therein, the notice must be published in a newspaper
12 of general circulation published in the political subdivision
13 affected.

14 (V) If no newspaper is published in the political
15 subdivision, the notice must be published in a newspaper
16 published in the political subdivision nearest the political
17 subdivision affected.

18 (iii) Notices of the public hearing will also be
19 mailed to landowners abutting the proposed project as identified
20 by tax rolls, and affected local governments and public
21 officials.

22 (iv) If the population that will be affected by the
23 project is predominantly non-English speaking, the notices must

1 also be published in the dominant language in accordance with
2 Presidential Executive Order 13166, Improving Access to Services
3 for Persons with Limited English Proficiency.

4 (D) All testimony given at a public hearing will be
5 made a part of the public hearing record.

6 (E) Written comments regarding a proposed project must
7 be submitted to the district office within 10 days after the
8 close of a public hearing.

9 (F) For non-EIS projects, the district will publish a
10 notice, in local newspapers having general circulation, of the
11 availability of the summary and analysis, and the comment and
12 response report of the public hearing in order to inform the
13 public of their availability and to advertise where to obtain
14 copies of the summary and analysis and comment and response
15 reports.

16 (G) For non-EIS projects, the district will submit two
17 copies each of the verbatim transcript, the public hearing
18 summary and analysis, the comment and response report, and the
19 original certification of the public involvement process signed
20 by the district engineer or his or her designee to the division
21 for review and approval. The certification of the public
22 involvement process will contain:

23 (i) general information on the public hearing;

1 (ii) a statement regarding consideration of the
2 economic, social and environmental impacts of the project;

3 (iii) a statement regarding consideration of the
4 statutory provisions of the Civil Rights act of 1964 and the
5 Civil Rights Restoration Act of 1987; and

6 (iv) a statement regarding the project's consistency
7 with planning goals and objectives.

8 (6) Media releases. Following completion of the public
9 involvement process, project specific planning and development
10 decisions will be publicized through press releases in order to
11 keep the public informed of any new or continuing issues. Any
12 changes to the project may require additional public
13 involvement.

14 (7) Public involvement on projects for which a public
15 hearing is not required. In accordance with Transportation
16 Code, §201.604, for projects for which a public hearing is not
17 required by law, the district will hold a public hearing in
18 accordance with paragraph (5) of this subsection if at least 10
19 individuals submit written requests for a hearing and the
20 district is unable to address the concerns of the persons
21 requesting the public hearing.

22 (8) Notice of intent. A notice of intent (NOI), as a
23 required form of public involvement, will be published prior to

1 the preparation of an environmental impact statement (EIS) and
2 when a decision is made to supplement a final EIS.

3 (A) The NOI will:

4 (i) briefly detail the project;

5 (ii) identify known and potential significant impacts
6 on the human environment to the extent possible at this state of
7 project planning;

8 (iii) identify any preliminary alternatives under
9 consideration by the department;

10 (iv) identify whether when, and where any scoping
11 meetings will be held; and

12 (v) state the name and address of the person in the
13 department that can answer questions about the proposed project
14 and the environmental impact statement.

15 (B) After review and approval of the NOI by the
16 division, the division will publish it in the Texas Register.

17 (C) The district will publish a summary or a copy of
18 the NOI in local newspapers.

19 (D) Following publication of the NOI, the department
20 will begin a scoping process for the EIS project. The scoping
21 process is not required if a decision is made to supplement an
22 EIS. The scoping process identified the range of alternatives
23 and the known or potential significant impacts to be addressed

1 in the EIS and is normally achieved through public and
2 interagency coordination and involvement.

3 (9) Notice of availability for EIS projects. Notices of
4 availability for EIS projects will be made in the following
5 manner:

6 (A) After the division approves the draft environmental
7 impact statement (DEIS), the division will:

8 (i) publish a notice of availability in the Texas
9 Register describing a circulation and comment period of no less
10 than 45 days and identifying where comments are to be sent;

11 (ii) transmit the DEIS at no charge to state agencies
12 through the TRACS system, and directly to applicable federal
13 agencies; and

14 (iii) coordinate directly with other governmental
15 entities in accordance with memoranda of understanding under
16 Subchapter B of this chapter, memoranda of agreement, or other
17 formal and informal agreements with those entities.

18 (B) After the division approves the DEIS, the district
19 will:

20 (i) publish a notice of availability in local
21 newspapers describing a circulation and comment period of no
22 less than 45 days and identifying where comments are to be sent;
23 and

1 (ii) coordinate directly with local agencies,
2 including the appropriate metropolitan planning organization.

3 (C) After the division approves the FEIS, the division
4 will publish a notice detailing the availability of the FEIS in
5 the Texas Register. The district will publish a duplicate
6 notice in local newspapers. The notices will:

7 (i) include information on obtaining copies; and

8 (ii) state that the public will have 30 days
9 following publication of the notice in the Texas Register to
10 submit comments.

11 (10) Additional public involvement following project
12 approval. As provided by Transportation Code, §203.022, the
13 district will offer an additional opportunity for public hearing
14 for certain projects that have received project approval.
15 Project approval for the purposes of this subsection is defined
16 as having received approval from the division of the CE or
17 through the issuance of a FONSI or ROD. This provision applies
18 to those projects in which the approval involved either the
19 addition of one or more vehicular lanes or construction on a new
20 location, and in which conditions relating to land use, traffic
21 volumes, and traffic patterns have changed significantly from
22 the time the project originally underwent public review and
23 comment. The opportunity for public hearing will be afforded in

1 accordance with paragraph (4)(A) of this subsection if the
2 project will use federal or state funds, or a public hearing
3 will be held in accordance with paragraph (5) of this subsection
4 if the project requires the taking of public land designated and
5 used as a park, recreation area, wildlife refuge, historic site
6 or scientific area, regardless of funding.

7 (11) Notice of construction. Pursuant to Transportation
8 Code, §203.022, the district will send notice of impending
9 construction of a project that involves either the addition of
10 at least one travel lane or construction of a project on new
11 location to landowners abutting the roadway as identified by tax
12 rolls, and affected local governments and public officials.

13 (12) Public transportation. The provisions of paragraph
14 (10) of this subsection do not apply to public transportation
15 projects.

16 (d) Environmental documentation - categorical exclusion
17 (CE).

18 (1) CEs are transportation projects or associated
19 facilities that do not individually or cumulatively have a
20 significant environmental impact. All CE actions will be
21 consistent with, and comply with, all applicable federal and
22 state laws. The CE action directly, indirectly, or
23 cumulatively, will not:

1 (A) induce significant impacts to planned growth or
2 land use for the area;

3 (B) cause any significant environmental impacts to any
4 natural, cultural, recreational, historic or other resource;

5 (C) cause any significant impacts to air, noise, or
6 water quality;

7 (D) relocate significant numbers of people; or

8 (E) cause significant impacts on travel patterns.

9 (2) The CE action will not involve unusual circumstances
10 or lead to:

11 (A) significant environmental impacts;

12 (B) substantial controversy on environmental grounds;

13 (C) significant impact on properties protected under
14 §4(f) of the Department of Transportation Act, (49 United States
15 Code §303) or §106 of the National Historic Preservation Act,
16 (16 United States Code §470f); or

17 (D) inconsistencies with any appropriate federal or
18 state laws, requirement or administrative determination relating
19 to the environmental aspects of the action.

20 (3) Projects that, based on past departmental experience
21 with similar actions, do not involve significant environmental
22 impacts have been determined by the department to be blanket
23 CEs. Blanket CEs will not, in most cases, require review or

1 approval by the division. Blanket CEs will require
2 environmental review by the district to determine if
3 coordination is required under other state or federal laws and
4 regulations, including the Endangered Species Act, National
5 Historic Preservation Act, Antiquities Code of Texas, Clean
6 Water Act, Rivers and Harbors Act, or others. For these blanket
7 CEs, the district or the department's Aviation Division will
8 visit the project area and confirm that there are no
9 environmental issues, will identify issues if present, and will
10 obtain any required permits and approvals. Examples of Blanket
11 CEs include:

12 (A) actions that do not involve or lead directly to
13 construction, such as planning and technical studies, grants or
14 training and research programs, engineering feasibility studies
15 that either define the elements of a proposed highway
16 improvement project or identify alternatives, so that social,
17 economic, and environmental effects can be assessed for
18 potential impact;

19 (B) construction of bicycle and pedestrian lanes,
20 paths, and facilities consisting of work on an existing road,
21 path or lane and completely within the footprint of the existing
22 sub-grade course; and

23 (C) activities included in the State's "highway safety

1 plan" under 23 United States Code §402.

2 (D) landscaping;

3 (E) installation of fencing, signs, pavement markings,
4 small passenger shelters, traffic signals, and railroad warning
5 devices if no substantial land acquisition or traffic disruption
6 will occur;

7 (F) emergency repairs as defined in 23 United States
8 Code §125;

9 (G) acquisition of scenic easements;

10 (H) minor improvements to existing rest areas and truck
11 weigh stations;

12 (I) ridesharing activities;

13 (J) alterations to facilities or vehicles in order to
14 make them accessible for elderly and disabled persons;

15 (K) improvements, regular maintenance and emergency
16 repairs to existing mechanical, electromechanical, hydraulic,
17 electronic and manned toll collection facilities;

18 (L) minor expansion of toll plazas and approach aprons;

19 (M) renovation or rehabilitation of airport runways
20 where no additional right of way is required, and where existing
21 rights of way have been previously disturbed;

22 (N) renovation or rehabilitation of airport facilities
23 where no additional right of way is required, and where existing

1 rights of way have been previously disturbed;

2 (O) installation or upgrading of airfield lighting
3 systems, including runway end identification lights, visual
4 approach aids, beacons and electrical distribution systems;

5 (P) installation of miscellaneous items at airports,
6 including segmented circles, wind or landing direction
7 indicators or measuring devices, or fencing;

8 (Q) grading or removal of obstructions on airport
9 property and erosion control actions with no off-airport
10 impacts;

11 (R) noise compatibility programs for airports;

12 (S) track and railbed maintenance improvements carried
13 out within existing right of way;

14 (T) projects consisting of work classified as a seal
15 coat, overlay, resurfacing, rehabilitation or restoration done
16 within existing right of way on an existing road completely
17 within the footprint of existing base course;

18 (U) highway traffic operation improvements including
19 the installation of ramp metering control devices and lighting;

20 (V) approval for disposal of excess right of way or for
21 joint or limited use of right of way, if the proposed use does
22 not have significant adverse impacts; and

23 (W) installation of noise barriers or alterations to

1 existing publicly owned buildings to provide for noise
2 reduction.

3 (4) Additional projects will also qualify as CEs if
4 environmental studies demonstrate that the environmental issues
5 described under paragraphs (1) and (2) of this subsection have
6 been met.

7 (5) Actions meeting the criteria for a CE as found in
8 paragraph (4) of this subsection will require division review
9 and approval.

10 (A) Division approval will be based on the appropriate
11 office providing documentation in the form of a descriptive
12 letter, environmental issues check list, or brief environmental
13 evaluation that demonstrates that the specific conditions or
14 criteria for classification of a CE as found in paragraphs (1)
15 and (2) of this subsection have been met. Documentation must
16 demonstrate that significant environmental impacts will not
17 result, based on the results of an evaluation of the specific
18 project and any coordination with resource agencies. All EPIC
19 will be summarized in the documentation and, as appropriate,
20 will be included in the plans, specifications, and estimates.

21 (B) Examples of CEs for transportation projects
22 include:

23 (i) modernization of a highway outside of the

1 existing sub-grade by resurfacing, restoration, rehabilitation,
2 reconstruction, adding shoulders, or adding auxiliary lanes such
3 as parking, weaving, turning, or climbing and passing, and
4 correction of substandard curves and intersections;

5 (ii) highway safety or traffic operation improvement
6 projects including the installation of ramp metering control
7 devices and lighting;

8 (iii) bridge rehabilitation, reconstruction, or
9 replacement, or the construction of grade separation to replace
10 existing at-grade railroad crossings;

11 (iv) addition of travel lanes to existing rural
12 roadways using only existing right of way, or any added capacity
13 on an existing highway, after public involvement, provided the
14 project is in an attainment area for air quality or outside the
15 non-attainment boundaries for those metropolitan planning
16 organizations that do not meet air quality standards;

17 (v) transportation corridor fringe parking
18 facilities;

19 (vi) construction of new truck weigh stations or rest
20 areas;

21 (vii) approvals for changes in access control, with
22 appropriate public involvement;

23 (viii) early and advance acquisition of land through

1 donation or early acquisition of land for hardship acquisition
2 or protective purposes pursuant to 23 Code of Federal
3 Regulations §§710.501-710.503;

4 (ix) rehabilitation or reconstruction of existing
5 rail and bus buildings and ancillary facilities if only minor
6 amounts of additional land are required and there is not a
7 substantial increase in the number of users;

8 (x) construction of bus transfer facilities (an open
9 area consisting of passenger shelters, boarding areas, kiosks
10 and related street improvements) located in a commercial area or
11 other high activity center in which there is adequate street
12 capacity for projected bus traffic;

13 (xi) construction of rail storage, maintenance, or
14 inspection facilities in areas used predominantly for industrial
15 or transportation purposes if the construction is not
16 inconsistent with existing zoning and if there is no significant
17 noise impact on the surrounding community; and

18 (xii) construction of new or expanded bicycle and
19 pedestrian lanes, paths, and facilities except as provided for
20 in paragraph (3)(B) of this subsection.

21 (6) The department may classify other projects as CEs if,
22 from the documentation required to be submitted, a determination
23 is made that the project meets the CE classification. These

1 projects include runway extensions requiring minor amounts of
2 additional rights of way, and expansion of airport facilities
3 requiring minor amounts of additional rights of way.

4 (7) Sufficient information should be retained in the
5 district and division CE project files to document that the
6 project meets the CE criteria.

7 (e) Environmental documentation - environmental assessment
8 (EA).

9 (1) EA. For projects where the extent of impacts is not
10 readily discerned, or for aviation projects involving any
11 residential or commercial relocations, environmental studies
12 will be conducted and an EA will be prepared to determine the
13 nature and extent of environmental impacts. For aviation
14 projects that require an EA, the department will utilize the
15 format and content requirements of Federal Aviation
16 Administration (FAA) procedures established to comply with 42
17 United States Code §§4321 et seq. The EA will be prepared as a
18 decision-making document and to provide full disclosure of
19 project impacts to the public. If the studies reveal that the
20 impacts are not significant, then the EA will conclude with a
21 finding of no significant impact (FONSI). If the studies reveal
22 that the impacts are significant, then the EA will conclude that
23 an environmental impact statement is required.

1 (2) Coordination and consultation. For projects that
2 require an EA, the department will, at the earliest appropriate
3 time, begin coordination and consultation with state and federal
4 resource agencies, local political subdivisions, and the public
5 to achieve the following objectives:

6 (A) definition of the scope of the project;

7 (B) identification and evaluation of any alternatives
8 meeting the action's established purpose and need, including
9 evaluation of the no-build alternative;

10 (C) determination of potential social, economic, and
11 environmental impact;

12 (D) identification of mitigation measures and
13 alternatives that might avoid, minimize, or compensate for
14 adverse environmental impacts; and

15 (E) identification of other environmental reviews,
16 permits, and other approvals, as well as consultation
17 requirements that should be done as part of the decision-making
18 studies.

19 (3) Review and consultation. Results of review and
20 consultation with regulatory agencies and a summary of the
21 contacts and comments received will be included in the EA.

22 (4) Notice. As required in subsection (c)(5) of this
23 section, the notice of the public hearing will announce the

1 availability of the EA and where it may be obtained or reviewed.

2 (5) Division determination. If, at any point during the
3 environmental studies, the division determines that the project
4 may have a significant impact on the environment, the
5 preparation of an environmental impact statement (EIS) as
6 discussed in subsection (f) of this section will be required.

7 (6) Finding of no significant impact. The division will
8 review the EA, any proposed mitigation measures, and the summary
9 and analysis and comment and response reports of the public
10 hearing. The division will make a separate written finding of
11 no significant impact (FONSI), based on the EA and any other
12 appropriate environmental documents and agency consultation and
13 coordination.

14 (7) Notification of FONSI. After issuance of the FONSI,
15 a notice of the availability of the FONSI will be furnished by
16 the division to TRACS. The district will furnish the notice of
17 the availability to the metropolitan planning organization and
18 provide the notice to the local media through a press release.

19 (8) Additional permits or approvals. In addition to a
20 determination of no significant impact, additional permits or
21 approvals may be required before the project can be approved for
22 construction letting.

23 (f) Environmental documentation - environmental impact

1 statement (EIS).

2 (1) An EIS will be required for projects in which there
3 are likely to be significant environmental impacts. For
4 aviation projects, the department will utilize the format and
5 content requirements of FAA procedures established to comply
6 with 42 United States Code §§4321 et seq. The preparation of
7 the EIS will occur in two stages:

8 (A) the draft EIS or DEIS (a supplemental DEIS may be
9 required in some cases); and

10 (B) the final EIS or FEIS (a supplemental FEIS may be
11 required in some cases).

12 (2) If the analyses or agency review comments indicate
13 that significant impacts to the human and natural environment
14 will not occur, an EIS should not be prepared.

15 (3) Publication of a notice of intent (NOI) and scoping
16 meetings will be accomplished in accordance with subsection (c)
17 of this section.

18 (4) Following a notice of intent and scoping, a draft
19 environmental impact statement will be prepared.

20 (A) The draft environmental impact statement (DEIS)
21 will:

22 (i) identify all reasonable alternatives satisfying
23 the purpose and need of the project and evaluate them for their

1 associated social, economic, and environmental impacts;

2 (ii) discuss the elimination of alternatives that do
3 not meet the purpose and need of the project, if applicable;

4 (iii) summarize the studies, reviews, consultations,
5 and coordination required by law to the extent appropriate; and

6 (iv) designate a preferred alternative, if
7 appropriate.

8 (B) If the division determines that the DEIS complies
9 with the provisions of subparagraph (A) of this paragraph and
10 other requirements, the DEIS will be approved for circulation by
11 signing and dating the cover sheet, and will be printed in
12 sufficient number to provide review copies.

13 (C) The DEIS will be circulated in accordance with
14 subsection (c)(9) of this section.

15 (D) Copies of the DEIS will be provided upon request.
16 The department may charge a fee not to exceed the actual cost of
17 reproduction.

18 (E) The DEIS may also be reviewed at designated public
19 locations.

20 (F) A public hearing will be held for a DEIS highway
21 improvement project. Notice of the public hearing will be given
22 in accordance with subsection (c)(1) of this section.

23 (G) The DEIS will be made available at the district for

1 the general public 45 days in advance of the public hearing.

2 (5) After the DEIS is circulated and comments reviewed, a
3 final environmental impact statement (FEIS) will be prepared by
4 the department.

5 (A) The FEIS will:

6 (i) identify the preferred alternative and evaluate
7 all reasonable alternatives considered that satisfy the purpose
8 and need of the project;

9 (ii) discuss substantive comments received on the
10 DEIS and responses to those comments;

11 (iii) summarize public involvement and describe the
12 mitigation measures that are to be incorporated as EPIC into the
13 state project;

14 (iv) document compliance, to the extent possible,
15 with all applicable environmental laws, or provide reasonable
16 assurance that requirements can be met; and

17 (v) identify environmental issues and the
18 consultations and other efforts made to resolve interagency
19 disagreements.

20 (B) If the division determines that the FEIS complies
21 with these and other requirements, the division will indicate
22 approval of the FEIS by signing and dating the cover page.

23 (C) The initial printing of the FEIS will be in

1 sufficient quantities to meet the requests for copies that can
2 be reasonably expected from agencies, organizations, and
3 individuals.

4 (D) A fee that is not more than the actual cost of
5 reproduction of the FEIS may be charged for purchase of the
6 document.

7 (E) Copies of the FEIS may also be placed in
8 appropriate designated public locations, such as local
9 governmental offices, libraries, or other public institutions.

10 (F) Notice detailing the availability of the FEIS will
11 be published in accordance with subsection (c)(9) of this
12 section.

13 (G) Following the approval of the FEIS, it will be made
14 available to agencies that made substantive comments on the
15 DEIS; however, in the event the FEIS is voluminous, the
16 department may provide for alternative circulation such as
17 notifying agencies of the availability of the FEIS, and by
18 providing a method for these agencies to request a copy.

19 (H) The division will complete and sign a record of
20 decision (ROD) no sooner than 30 days after publication of the
21 availability of the FEIS notice in the Texas Register. Until
22 any required ROD has been signed, no further approvals may be
23 taken except for administrative activities taken to secure

1 further project funding. The ROD will present the basis for the
2 decision, summarize the department's responses to comments
3 received, summarize any mitigation measures and commitments, and
4 be published in the Texas Register. A notice of availability of
5 the ROD will be published in local newspapers.

6 (g) Environmental documentation - reevaluation.

7 (1) The department will prepare a reevaluation for
8 projects with an approved CE, FONSI, or FEIS if:

9 (A) a period of three years has passed without major
10 steps to advance the action, such as authority to undertake
11 final design or acquire significant portions of right of way or
12 approval of the plans, specifications, and estimates (PS&E) on
13 the project from the date of the issuance of a FONSI or ROD or
14 last major departmental approval;

15 (B) there are changes in a project (e.g., right-of-way
16 requirements, design changes, etc.) since environmental
17 approval; or

18 (C) there have been regulatory changes (e.g., new
19 threatened or endangered species listed, new executive orders
20 issued, etc.) or changes in the surrounding land use or
21 environment after environmental approval.

22 (2) The department will prepare a reevaluation that
23 determines whether a supplement to the DEIS is required if an

1 acceptable FEIS is not submitted within three years from the
2 date of circulation of the DEIS.

3 (3) The reevaluation will not necessarily be circulated
4 for agency review, although resource agency coordination may be
5 required.

6 (4) For projects for which a ROD was issued, the
7 reevaluation will confirm the findings in the ROD or determine
8 that a supplemental EIS will be required.

9 (5) For projects determined to be CEs or for which a
10 FONSI was issued, the reevaluation will either confirm the CE
11 designation, confirm the finding of no significant impacts, or
12 identify significant impacts that will require the department to
13 conduct additional environmental studies and prepare an
14 environmental impact statement.

15 (h) Environmental documentation - supplemental
16 environmental impact statement.

17 (1) A DEIS or FEIS may be supplemented at any time.

18 (2) An EIS will be supplemented whenever the department
19 determines that:

20 (A) changes to the project would result in significant
21 environmental impacts that were not evaluated in the EIS; or

22 (B) new information or circumstances relevant to
23 environmental concerns bearing on the proposed action or its

1 impacts would result in significant environmental impacts not
2 evaluated in the EIS.

3 (3) A supplemental EIS will not be necessary when:

4 (A) changes to the project, new information, or new
5 circumstances result in a lessening of adverse impacts evaluated
6 in the EIS without causing other environmental impacts that are
7 significant and were not evaluated in the EIS; or

8 (B) the department decides to approve an alternative
9 fully evaluated in the approved FEIS, but not identified as the
10 preferred alternative (in such cases, a revised ROD will be
11 prepared and published in the Texas Register).

12 (4) If there is an uncertainty of the significance of new
13 impacts, the department will develop appropriate environmental
14 studies or, if deemed appropriate, a reevaluation or an EA to
15 assess the impacts of the changes, new information, or new
16 circumstances.

17 (5) If the department determines, based on studies that a
18 supplemental EIS is not necessary, it will indicate that
19 determination in the project record.

20 (6) A supplemental EIS will be developed using the same
21 process and format as an original EIS including publication of
22 an NOI, except that scoping and early coordination will not be
23 required. No NOI is required for a supplemental DEIS.

1 (7) A supplemental EIS may be required to address issues
2 of limited scope, such as the extent of proposed mitigation, or
3 the evaluation of location or design variations for a limited
4 portion of an overall project. In this situation the
5 preparation of the supplemental EIS will not necessarily:

6 (A) prevent the granting of new approvals;

7 (B) require the withdrawal of previous approvals; or

8 (C) require the suspension of project activities for

9 any activity not directly affected by the supplement. (If
10 changes at issue are of such magnitude as to require a
11 reassessment of the entire action, or more than a limited
12 portion of the overall action, the department will suspend any
13 activities that would have an adverse environmental impact or
14 limit the choice of reasonable alternatives, until the
15 supplemental EIS is completed).

16
17 §2.45. Emergency Action Procedures and Compliance with Other
18 Regulations.

19 (a) Any request for deviations from the procedures in this
20 subchapter because of emergency circumstances will be handled on
21 a case by case basis. Emergency circumstances will include
22 natural disasters, such as floods, hurricanes, tidal waves,
23 earthquakes, severe storms, landslides, or catastrophic failures

1 of any cause.

2 (b) All applicable state and federal emergency
3 environmental permitting and approval processes will be
4 followed.

5 (c) The work will be limited to those actions directly
6 related to public health and safety and to further minimize loss
7 of public infrastructure.

8 (d) The project files will contain copies of all
9 coordination and environmental approvals obtained.

10

11 §2.46. Special Right-of-Way Acquisitions.

12 (a) Taking of designated public land. Approval by the
13 department of the use of public land designated and used as a
14 park, recreation area, or wildlife refuge, historic site, or
15 scientific area will be given only if:

16 (1) there is no feasible or prudent alternative to the
17 use of land from the property;

18 (2) the project includes all possible planning to
19 minimize harm to the property resulting from such use, including
20 mitigation measures;

21 (3) supporting information demonstrates that there are
22 unique problems or unusual factors involved in the use of
23 alternatives that avoid these properties or that the cost,

1 social, economic, and environmental impacts, or community
2 disruption resulting from such alternatives reach extraordinary
3 magnitudes; and

4 (4) supporting information documents that officials
5 having jurisdiction over an acquisition have no jurisdictional
6 opposition to the acquisition and that the proposed mitigation
7 is acceptable to such jurisdictions.

8 (5) Projects that fall under this subsection will comply
9 with all necessary environmental analysis, documentation, and
10 interagency coordination as described in this subchapter.

11 (6) A public hearing will be held as described in
12 §2.43(c)(5) of this subchapter with appropriate notification.

13 (b) Early and advance acquisition. Early and advance
14 acquisition under 23 Code of Federal Regulations §§710.501-
15 710.505 includes protective buying, hardship acquisition, and
16 real property donations. Completion of environmental
17 documentation for early and advance acquisition shall apply to
18 the acquisition of a specific parcel only and shall not imply
19 approval of the construction project. Acquisition of a parcel
20 under early and advance acquisition shall not influence the
21 final environmental decision regarding the build, no-build
22 decision or a decision regarding the project alignment. Prior
23 to the acquisition of real property under 23 Code of Federal

1 Regulations Chapter 710, the department will complete a
2 categorical exclusion analysis under §2.43 of this subchapter to
3 determine whether the acquisition will cause significant
4 environmental impacts and to identify any environmental
5 liabilities associated with the acquisition.

6

7 §2.47. Maintenance Programs and Actions.

8 (a) Procedures. Maintenance programs are a part of the
9 department's mandate to develop and maintain a safe and
10 efficient transportation system for Texas. The following
11 procedures provide for the environmental review and public
12 comment on department maintenance programs.

13 (1) Environmental review.

14 (A) The department will conduct an environmental review
15 of the following maintenance programs:

- 16 (i) bridge maintenance;
17 (ii) customer service;
18 (iii) debris and spills;
19 (iv) drainage;
20 (v) ferry maintenance;
21 (vi) maintenance enhancement;
22 (vii) pavement maintenance;
23 (viii) roadside appurtenances;

1 (ix) traffic pavement markings; and

2 (x) vegetation management.

3 (B) The environmental review will consist of:

4 (i) a description of the maintenance program and the
5 activities in each;

6 (ii) the department's evaluation of direct and
7 indirect effects of each maintenance program;

8 (iii) the department's analysis of program
9 alternatives; and

10 (iv) a description of the department's best
11 management practices and mitigation plans for each maintenance
12 program.

13 (C) The department will analyze and coordinate each
14 review with appropriate state and federal environmental resource
15 agencies and work with them to develop effective environmental
16 protection measures.

17 (D) The department will reassess the environmental
18 reviews at least every five years and if revisions are made,
19 will re-coordinate with appropriate resource agencies.

20 (2) Public involvement for maintenance programs.

21 (A) Following the preparation and coordination of
22 environmental reviews for each maintenance program, the
23 department will afford an opportunity for a public hearing

1 through publication of a notice in at least one issue of the
2 Texas Register. The notice will be published at least 30 days
3 in advance of the deadline date set by the Maintenance Division
4 for submission of written requests to hold a public hearing. If
5 a public hearing is requested, the department will conduct one
6 or more public hearings, to solicit comments from the public on
7 maintenance programs. The hearing will be conducted within six
8 months of the department's approval of the environmental reviews
9 prepared for each maintenance program.

10 (B) If a public hearing is requested, a public hearing
11 notice will be published at least 10 days in advance of the
12 hearing date in at least one issue of the Texas Register and the
13 hearing will be held pursuant to §1.5 of this title (relating to
14 Public Hearings).

15 (C) The department will report to the commission the
16 findings of the environmental review and any public hearings
17 along with the response to comments for each maintenance
18 program.

19 (b) Maintenance actions under these programs are considered
20 by the department to be blanket categorical exclusions (CEs)
21 because they generally do not cause significant impacts.
22 However, blanket CEs may require permits or approvals under
23 specific state and federal laws and regulations. The district

1 will determine whether the level of impacts of specific projects
2 meet the criteria under §2.43(d)(1), §2.43(d)(2), and
3 §2.43(d)(3) of this subchapter for blanket CEs. Projects that
4 do not meet the criteria for blanket CEs will be processed
5 according to §2.43(d)(4) or §2.43(e) of this subchapter as
6 appropriate.

7

8 §2.49. Rail Transportation Projects.

9 (a) Environmental studies for the acquisition, abandonment,
10 design, construction, lease, maintenance, or operation of a
11 passenger or freight rail facility under Transportation Code,
12 Chapter 91 or Chapter 227 that are subject to 49 United States
13 Code §10901 will be accomplished in accordance with applicable
14 state and federal requirements and, in particular, 49 Code of
15 Federal Regulations Part 1105.

16 (b) Public involvement for rail transportation projects
17 that are subject to 49 United States Code §10901 will be
18 consistent with applicable state and federal law, particularly
19 49 Code of Federal Regulations Part 1105 and §2.43 of this
20 subchapter.

21 (c) Environmental studies and public involvement for the
22 acquisition, abandonment, design, construction, lease,
23 maintenance, or operation of a passenger or freight rail

1 facility, under Transportation Code, Chapters 91 and 227, that
2 are not subject to 49 U.S.C. §10901 will be accomplished in
3 accordance with §2.42 and §2.43 of this subchapter, as
4 applicable.

5 The provisions of this §2.49 adopted to be effective December 9,
6 2004, 29 TexReg 11371; readopted by review, filed on February
7 25, 2005, 30 TexReg 1477.

8

9 §2.50. Financial Assistance for Toll Facilities and Pass-
10 Through Toll Projects.

11 A public or private entity receiving financial assistance under
12 Chapter 27, Subchapter E (relating to Financial Assistance for
13 Toll Facilities) or developing a project under Chapter 5,
14 Subchapter E (relating to Pass-Through Tolls) must comply with
15 the provisions of §2.42 of this subchapter if the project uses
16 federal funds or §2.43 of this subchapter if the project uses
17 only state funds. The entity shall initiate that process by
18 writing to the department for a determination of the respective
19 roles and responsibilities of the entity and the department
20 under the applicable section. Unless the department determines
21 that project-specific considerations warrant changes to roles
22 and responsibilities, the governmental or private entity shall
23 obtain the department's concurrence that the following

1 activities were properly conducted under §2.42 or §2.43 of this
2 subchapter:

3 (1) preparation and completion of environmental studies;

4 (2) submission of appropriate documentation (categorical
5 exclusion, environmental assessment, and environmental impact
6 statement, including reevaluation, and supplemental
7 documentation) for departmental review;

8 (3) preparation of any document revisions;

9 (4) submission to the department of copies of the
10 environmental studies and documentation adequate for
11 distribution;

12 (5) preparation of legal and public notices in accordance
13 with §2.43(c) of this subchapter for department review and use;

14 (6) arrangements for appropriate public involvement,
15 including court reporters and accommodations for persons with
16 special communication of physical needs related to the public
17 hearing if requested;

18 (7) preparation of public meeting and hearing materials;

19 (8) preparation of any necessary responses to comments;

20 (9) preparation of the public meeting and public hearing
21 summary and analysis, and the comment and response reports;

22 (10) submission to the department of a verbatim
23 transcript of any public hearing and the original certification

1 of the public involvement process as described in §2.43(c) of
2 this subchapter; and
3 (11) submission to the department of documentation
4 showing that all EPIC have been or will be completed, including
5 copies of permits or other approvals required prior to
6 construction.