

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose new §§11.300 – 11.317, relating to Transportation Alternatives Program to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed new sections, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the general counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the new §§11.300 – 11.317 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:

mark a. mark
Director, Design Division

Recommended by:

[Signature]
Executive Director

113971 JUN 26 14
Minute Number Date Passed

Proposed Preamble

The Texas Department of Transportation (department) proposes new §§11.300 - 11.317 concerning the Transportation Alternatives Program.

EXPLANATION OF PROPOSED NEW SECTIONS

The Transportation Alternatives Program (TAP) was created by the Moving Ahead for Progress in the 21st Century Act (also known as MAP-21). The TAP provides federal funding for a variety of alternative transportation projects, many of which were previously eligible for funding under separate programs. The TAP is contained in 23 U. S. C. §213.

Many of the concepts contained in the new sections are carried forward from the department's administrative rules concerning the Transportation Enhancement (TE) Program, the predecessor to the TAP, and will be familiar to interested parties.

New Subchapter F is titled "Transportation Alternatives Program" to accurately reflect and conform to federal law.

New §11.300, Purpose, describes the purpose of the subchapter, which is to set out the policies and procedures for the implementation and administration of the TAP.

1 New §11.301, Definitions, defines various terms used in the new
2 subchapter, which are standard and recognizable within the
3 transportation planning community.

4

5 New §11.302, Program Administration, briefly describes the
6 suballocation of TAP funds as required by federal law, and
7 provides that each Metropolitan Planning Organization (MPO)
8 serving an urbanized area with a population over 200,000 will
9 implement the TAP for the award of funds in that area. The
10 remaining TAP funds will be distributed through a competitive
11 process administered by the department.

12

13 New §11.303, Project Selection and Implementation by MPOs,
14 provides general guidance for MPOs that are responsible for the
15 review and selection of TAP projects. The department is not
16 mandating how the MPOs will conduct the selection process;
17 however, project selection and implementation must be conducted
18 in accordance with applicable state and federal laws and
19 regulations. Eligibility determinations will be made by the
20 MPO, subject to audit by the Federal Highway Administration
21 (FHWA). Applications for projects located within an urbanized
22 area with a population in excess of 200,000 must be submitted
23 during a program call administered by the MPO serving the
24 urbanized area. Projects not selected by the MPO are not
25 eligible for consideration during a program call administered by

1 the department. MPOs are required to provide the department a
2 list of all projects submitted during a program call,
3 specifically identifying the selected projects, and must include
4 selected projects within their respective Transportation
5 Improvement Programs (TIPs).

6
7 New §11.304, Eligible Activities, describes those activities for
8 which TAP funds may be awarded under a program call administered
9 by the department. These activities include construction of on-
10 road and off-road trail facilities for pedestrians, bicyclists,
11 and other non-motorized forms of transportation; construction of
12 infrastructure-related projects and systems to improve safe
13 routes for non-drivers; conversion and use of abandoned railroad
14 corridors for trails for pedestrians, bicyclists, or other non-
15 motorized transportation users; and construction of
16 infrastructure-related projects to improve the ability of
17 students to bike and walk to school. Several types of
18 activities that are defined as "transportation alternatives"
19 under federal law will not be considered for funding under a
20 program call administered by the department. The agency is
21 placing an emphasis on facilities for pedestrians, bicyclists
22 and other non-motorized forms of transportation, as well as
23 certain types of infrastructure projects formerly eligible under
24 the Safe Routes to School Program, in an effort to encourage the
25 development of a safe and multimodal transportation system.

1 Non-infrastructure activities formerly eligible under the Safe
2 Routes to School Program remain eligible for funding from other
3 sources. Projects requiring the acquisition of real property
4 through eminent domain or condemnation are not eligible.
5 Whether proposed as an independent project or an element of a
6 larger project, the project must be limited to a logical unit of
7 work and be constructible as an independent project.

8
9 New §11.305, Allowable Costs, provides that the use of federal
10 funds is limited to construction-related project expenditures
11 and eligible project costs incurred by the department. The
12 costs of preliminary engineering are not allowable, and
13 expenditures for routine operation and maintenance are not
14 reimbursable unless specifically allowed under the applicable
15 federal program category. These limitations on allowable costs
16 are based on the department's experience under the TE Program,
17 where much of the funding for selected projects was ultimately
18 expended on the planning and design phase. As a result, many
19 projects were left with inadequate funding and could not be
20 built as originally proposed.

21
22 New §11.306, Local Funding Match, specifies that the local
23 funding match will be a cash match provided by or through the
24 project sponsor. In-kind donations will not be considered part
25 of the local funding match due to the difficulty associated with

1 properly accounting for and quantifying such donations. Unless
2 specifically authorized under federal law or regulation, funds
3 from other federal programs may not be used as a local funding
4 match. Donated services will not be accepted as a match, but
5 may be used to reduce the overall cost of the project. If a
6 selected project is to be administered by the department, the
7 project sponsor must provide the local funding match prior to
8 the commencement of project activities.

9

10 New §11.307, Call for Nominations, describes the method by which
11 the department will announce a call for projects and the type of
12 information that will be included in the notice. The department
13 may limit a program call to a particular type of eligible
14 activity, in order to focus its efforts towards making an
15 overall impact in a specific area.

16

17 New §11.308, Nomination Package, specifies the manner in which a
18 project sponsor must submit its nomination and the type of
19 information and justification that must be included in the
20 nomination package. Project sponsors must provide persuasive
21 evidence of support from the local community and a commitment to
22 provide a cash match of 20% of the allowable project costs.
23 Project submissions must be received by the published deadline
24 and any nomination package that fails to include the required
25 items will be considered incomplete and not considered for

1 funding.

2

3 New §11.309, Project Screening and Evaluation, describes the
4 method by which the department will conduct the project review
5 process. Under the TE Program, the department used a bifurcated
6 process that separated the eligibility/technical screening from
7 the evaluation of project benefits. In an effort to streamline
8 the review process for the TAP, the executive director will
9 appoint a project evaluation committee consisting of department
10 staff to review and evaluate all aspects of the project. The
11 committee will provide selection recommendations to the director
12 of the division responsible for administering the TAP, who will
13 then provide a list of recommended projects to the commission
14 for consideration.

15

16 New §11.310, Finding of Ineligibility; Request for
17 Reconsideration, provides that the department will notify
18 project sponsors of each ineligible activity proposed and the
19 reason for the determination, and describes how a project
20 sponsor may request a reconsideration of the determination.

21

22 New §11.311, Selection of Projects by the Commission, describes
23 the process by which the commission will select projects for
24 funding under the TAP. In making the selection, the commission
25 will consider: (1) recommendations from the director of the

1 division responsible for administering the program; (2) the
2 potential benefit to the state of the project; and (3) whether
3 the project enhances the surface transportation system. The
4 commission will not be bound by the department's
5 recommendations. Funds awarded by the commission are a fixed
6 amount and any additional funds needed for the project must be
7 provided by the project sponsor or sought during subsequent
8 program calls.

9

10 New §11.312, Inclusion of Selected Projects in Planning
11 Documents, provides that the department will request that MPOs
12 include projects selected by the commission within their
13 respective TIPs. The department will also include all selected
14 projects in the Statewide Transportation Improvement Program
15 (STIP).

16

17 New §11.313, Project Implementation, describes the operational
18 responsibilities of project sponsors, as well as the
19 department's role, during implementation of the project. These
20 guidelines will help ensure effective and efficient
21 implementation of each project selected by the commission.
22 Project sponsors are expected to implement or arrange for
23 implementation of a selected project; however, the department,
24 in its sole discretion, may agree to implement a project on
25 behalf of a project sponsor. All selected projects must be

1 developed according to current standards and specifications and
2 in accordance with new Subchapter F. Project sponsors must
3 enter into a local agreement with the department and comply with
4 all applicable state and federal requirements related to the
5 development of federal-aid highway projects. The department
6 will ensure that all required opportunities for public
7 involvement have been followed and that all environmental
8 documentation has been completed prior to funding construction
9 activities. Funding from other federal programs may only be
10 used when specifically authorized by federal law or regulation.
11 Changes to the scope of work must be approved in advance by the
12 executive director. The department is responsible for final
13 project inspection and acceptance. If the project sponsor does
14 not complete the project as approved, the department may seek
15 reimbursement of the expended federal funds.

16

17 New §11.314, Payment of Costs, provides that the department will
18 submit all requests for reimbursement to FHWA and describes the
19 manner in which costs for locally-administered projects may be
20 submitted for reimbursement. All project costs are borne by the
21 project sponsor until reimbursement can be obtained. Costs
22 incurred prior to inclusion of the project in the STIP,
23 execution of the local agreement, and prior to state and federal
24 authorization are not eligible for reimbursement.

25

1 New §11.315, Elimination from the TAP, specifies that a project
2 will be eliminated from the TAP if the department is notified of
3 opposition from the local jurisdiction in which the project is
4 located. In addition, the executive director may eliminate a
5 project from the TAP if: (1) the project sponsor fails to meet
6 the requirements of the proposed subchapter; (2) implementation
7 of the project would require a significant deviation from the
8 activities proposed in the nomination package; (3) the project
9 sponsor withdraws from the project; (4) a construction contract
10 has not been awarded within three years of project selection;
11 (5) a local agreement has not been executed within one year of
12 project selection; or (6) the executive director determines that
13 federal funding may be jeopardized because the project has not
14 been implemented or completed.

15

16 New §11.316, Project Transfer; Approval of Change, outlines the
17 basic steps required to transfer a project to another entity in
18 the event of a legislative action and specifies that the
19 disposition must be approved by FHWA.

20

21 New §11.317, Maintenance and Operation; Dedication for Public
22 Use, provides that a selected project must be maintained and
23 operated for the purpose for which it was approved and funded,
24 and offers guidance regarding the expected project lifespan as
25 it relates to the federal investment.

1

2 FISCAL NOTE

3 James Bass, Chief Financial Officer, has determined that for
4 each of the first five years in which the new sections as
5 proposed are in effect, there will be no fiscal implications for
6 state or local governments as a result of enforcing or
7 administering the new sections.

8

9 Mark Marek, Director of Engineering Operations for the
10 Engineering Operations Divisions, has certified that there will
11 be no significant impact on local economies or overall
12 employment as a result of enforcing or administering the new
13 sections.

14

15 PUBLIC BENEFIT AND COST

16 Mr. Marek has also determined that for each year of the first
17 five years in which the sections are in effect, the public
18 benefit anticipated as a result of enforcing or administering
19 the new sections will be a more efficient and robust
20 transportation system through the development of various types
21 of federally-funding transportation projects as allowed under
22 the Transportation Alternatives Program. There are no
23 anticipated economic costs for persons required to comply with
24 the sections as proposed. There will be no adverse economic
25 effect on small businesses.

1

2 SUBMITTAL OF COMMENTS

3 Written comments on the proposed new §§11.300 - 11.317 may be
4 submitted to Rule Comments, Office of General Counsel, Texas
5 Department of Transportation, 125 East 11th Street, Austin,
6 Texas 78701-2483 or to RuleComments@txdot.gov with the subject
7 line "TAP." The deadline for receipt of comments is 5:00 p.m.
8 on August 11, 2014. In accordance with Transportation Code,
9 §201.811(a)(5), a person who submits comments must disclose, in
10 writing with the comments, whether the person does business with
11 the department, may benefit monetarily from the proposed new
12 sections, or is an employee of the department.

13

14 STATUTORY AUTHORITY

15 The new sections are proposed under Transportation Code,
16 §201.101, which provides the Texas Transportation Commission
17 with the authority to establish rules for the conduct of the
18 work of the department.

19

20 CROSS REFERENCE TO STATUTE

21 Title 23, United States Code, §213.

1 SUBCHAPTER F. TRANSPORTATION ALTERNATIVES PROGRAM

2 §11.300. Purpose. The sections under this subchapter prescribe
3 the policies and procedures for the implementation and
4 administration of the Transportation Alternatives Program (TAP),
5 as authorized by 23 U. S. C. §213.

6
7 §11.301. Definitions. The following words and terms, when used
8 in this subchapter, shall have the following meanings, unless
9 the context clearly indicates otherwise.

10 (1) Commission--Texas Transportation Commission.

11 (2) Department--Texas Department of Transportation.

12 (3) Executive director--The executive director of the
13 Texas Department of Transportation or his or her designee.

14 (4) FHWA--Federal Highway Administration.

15 (5) Local agreement--An agreement between the project
16 sponsor and the department which includes a commitment for the
17 required local funding, describes the total scope and course of
18 project activities, and outlines the responsibilities and duties
19 of the participants.

20 (6) Metropolitan planning organization (MPO)--The
21 organization or policy board of an organization created and
22 designated under 23 U. S. C. §134, and 49 U. S. C. §5303, to
23 make transportation planning decisions for the metropolitan

1 planning area and carry out the metropolitan planning process.

2 (7) Project--An undertaking to implement or construct an
3 eligible activity at a specific location or locations, or, if
4 the context so implies, the particular activity so implemented
5 or constructed.

6 (8) Project sponsor--An eligible entity as described by
7 23 U. S. C. §213, that nominates a particular project for
8 consideration, exercises jurisdiction over the geographic area
9 in which that project is located, and commits to the project's
10 development, implementation, construction, maintenance,
11 management, and financing.

12 (9) State--The State of Texas or any of its political
13 subdivisions.

14 (10) Statewide Transportation Improvement Program (STIP)-
15 -A four year short-range program developed by the department as
16 a compilation of all metropolitan transportation improvement
17 programs, together with rural transportation improvement
18 programs, that include recommendations from rural planning
19 organizations and department districts for the areas of the
20 state that are outside of the boundaries of a metropolitan
21 planning organization, including transportation between cities.

22 (11) Surface transportation system--An interconnected
23 surface transportation network for moving people and goods using

1 various combinations of transportation modes.

2 (12) Transportation Improvement Program (TIP)--A short-
3 range program developed by each metropolitan planning
4 organization in cooperation with the department and public
5 transportation operators that covers a four-year period and
6 contains a prioritized listing of all projects proposed for
7 federal funding and regionally significant projects proposed for
8 state, federal, and local funding in a metropolitan area.

9 §11.302. Program Administration.

10 (a) The state is required to suballocate, in accordance
11 with 23 U.S.C. §213, a part of its TAP apportionment to
12 urbanized areas with populations over 200,000.

13 (b) Each MPO serving an urbanized area with a population
14 over 200,000 shall implement the TAP for the award of funds
15 suballocated within such area. Section 11.303 of this
16 subchapter applies only to the use of those TAP funds.

17 (c) For TAP funds not covered by subsection (b) of this
18 section, the commission will select projects through a
19 competitive process administered by the department. Sections
20 11.304 - 11.317 of this subchapter apply only to the use of
21 those TAP funds.

22

23 §11.303. Project Selection and Implementation by MPOs.

1 (a) This section applies only to an MPO serving an
2 urbanized area with a population over 200,000 and the award of
3 TAP funds suballocated for such an urbanized area.

4 (b) The MPO, in consultation with the department, shall
5 develop a competitive process to allow project sponsors to
6 submit applications for funding under the TAP.

7 (c) The MPO will coordinate determinations regarding
8 project eligibility, subject to audit by the FHWA.

9 (d) Applications for projects located within an urbanized
10 area with a population over 200,000 must be submitted during the
11 program call administered by the MPO serving that urbanized
12 area.

13 (e) Projects not selected by the MPO are not eligible for
14 consideration under a program call administered by the
15 department.

16 (f) Following the conclusion of the competitive process,
17 the MPO shall provide to the department a list of all projects
18 submitted during the program call on which the selected projects
19 are identified, and immediately shall begin the process required
20 to include the selected projects in its TIP.

21 (g) The MPO will conduct project selection and
22 implementation in accordance with all applicable federal and
23 state laws and regulations.

1 (h) If a project is located on state right-of-way, the
2 project sponsor is responsible for securing a land-use permit
3 from the department prior to construction.
4

5 §11.304. Eligible Activities.

6 (a) During a program call administered by the department,
7 TAP funds may be awarded for any of the following activities:

8 (1) Construction of on-road and off-road trail facilities
9 for pedestrians, bicyclists, and other non-motorized forms of
10 transportation, including sidewalks, bicycle infrastructure,
11 pedestrian and bicycle signals, traffic calming techniques,
12 lighting and other safety-related infrastructure, and
13 transportation projects to achieve compliance with the Americans
14 with Disabilities Act of 1990;

15 (2) Construction of infrastructure-related projects and
16 systems that will provide safe routes for non-drivers, including
17 children, older adults, and individuals with disabilities to
18 access daily needs;

19 (3) Conversion and use of abandoned railroad corridors
20 for trails for pedestrians, bicyclists, or other non-motorized
21 transportation users; and

22 (4) Construction of infrastructure-related projects to
23 improve the ability of students to walk and bicycle to school,

1 including sidewalk improvements, traffic calming and speed
2 reduction improvements, pedestrian and bicycle crossing
3 improvements, on-street bicycle facilities, off-street bicycle
4 and pedestrian facilities, secure bicycle parking facilities,
5 and traffic diversion improvements in the vicinity of schools.

6 (b) A project that will require the acquisition of real
7 property through the exercise of eminent domain or condemnation
8 is not eligible for participation in the TAP.

9 (c) Whether proposed as an independent project or as an
10 element of a larger transportation project, the project must be
11 limited to a logical unit of work and be constructible as an
12 independent project.

13

14 §11.305. Allowable Costs.

15 (a) Costs are allowable only if they are necessary
16 construction-related project expenditures that are eligible for
17 reimbursement under applicable statutes and regulations.

18 (b) The costs of preliminary engineering (including
19 planning, design, and plans, specifications, and estimates) are
20 not allowable costs.

21 (c) Eligible pre-construction costs incurred by the
22 department are reimbursable. All other pre-construction costs
23 are the responsibility of the project sponsor.

1 (d) Expenditures for routine operation and maintenance are
2 not allowable costs unless specifically allowed under the
3 individual federal category for which the project qualifies.

4

5 §11.306. Local Funding Match.

6 (a) The local funding match is a cash match provided by or
7 through the project sponsor.

8 (b) Funds from other federal programs may be used as a
9 local funding match only when specifically authorized by federal
10 law or regulation.

11 (c) Donated services may not be accepted as a local funding
12 match, but may be used to reduce the overall cost of the
13 project.

14 (d) If a project selected by the commission is administered
15 by the department, the project sponsor must provide the local
16 funding match prior to the commencement of project activities.

17

18 §11.307. Call for Nominations.

19 (a) The department will issue a notice of a call for
20 nominations by publication in the *Texas Register*.

21 (b) The notice will include information regarding the
22 content of the nomination package, the procedures applicable to
23 the program call, and the specific evaluation criteria to be

1 used during the project selection process.

2 (c) All or a portion of a call for nominations may be
3 designated for a particular eligible activity.

4

5 §11.308. Nomination Package.

6 (a) To nominate a project during a program call
7 administered by the department, the project sponsor must submit
8 its nomination in the form prescribed by the department.

9 (b) The nomination package must present persuasive evidence
10 of support for the proposed project from the communities in
11 which it would be implemented and include a commitment to
12 provide a cash amount of at least 20% of the allowable costs of
13 the project.

14 (c) A complete nomination package must be received by the
15 department no later than the specified deadline published in the
16 *Texas Register*. A nomination package that fails to include any
17 of the items specified in this subsection or the respective
18 program call is considered to be incomplete and will not be
19 considered for funding.

20

21 §11.309. Project Screening and Evaluation.

22 (a) The executive director will appoint a project
23 evaluation committee consisting of department staff to review,

1 evaluate, and make recommendations on projects submitted during
2 a program call administered by the department.

3 (b) The committee will screen each project to determine
4 whether it is eligible for funding under applicable federal and
5 state law and whether it meets technical standards established
6 by applicable law and accepted professional practice.

7 (c) The committee will evaluate the benefits of each
8 project that is determined to be eligible under subsection (b)
9 of this section or §11.310 based on the specific selection
10 criteria set forth in the program call.

11 (d) The committee will provide project selection
12 recommendations and supporting documentation to the director of
13 the division of the department responsible for administering the
14 TAP.

15 (e) The director of the division responsible for
16 administering the TAP will provide a list of recommended
17 projects to the commission for consideration.

18
19 §11.310. Finding of Ineligibility; Request for Reconsideration.

20 (a) The department will by certified mail, return receipt
21 requested, notify the project sponsor of each ineligible
22 activity proposed and the reason for the determination.

23 (b) A request for reconsideration of a finding of

1 ineligibility may be initiated only by a letter from the
2 nominating entity to the executive director setting forth
3 reasons in support of a finding of eligibility. The letter
4 requesting reconsideration must be received by the department no
5 later than 15 days after the nominating entity received the
6 department's notification, as established by the return receipt.

7 (c) The determination of the executive director in response
8 to the request for reconsideration is final.

9
10 §11.311. Selection of Projects by the Commission.

11 (a) The commission, by written order, will select projects
12 for funding under the TAP based on:

13 (1) recommendations from the director of the division
14 responsible for administering the TAP;

15 (2) the potential benefit to the state of the project;
16 and

17 (3) whether the project enhances the surface
18 transportation system.

19 (b) The commission is not bound by project selection
20 recommendations provided by the department.

21 (c) The department will notify the project sponsor of the
22 selection.

23 (d) The commission will specify a fixed amount of TAP funds

1 for each project. Project costs in excess of this amount are
2 the responsibility of the project sponsor. The project sponsor
3 may seek additional funds through the TAP in subsequent program
4 calls.

5 (e) A project that is not selected must be resubmitted to
6 receive consideration during subsequent program calls.

7
8 §11.312. Inclusion of Selected Projects in Planning Documents.

9 (a) If a project selected by the commission is to be
10 implemented in a metropolitan area, the department will request
11 that the MPO for that area immediately begin the process
12 required to include the selected project in its TIP.

13 (b) The department will also immediately begin the process
14 required to include all selected projects in the STIP.

15
16 §11.313. Project Implementation.

17 (a) The project sponsor will implement or arrange for
18 implementation of each project selected by the commission in
19 accordance with statutory requisites and contracting procedures
20 applicable to the type and character of the project. The
21 department, in its sole discretion, may agree to implement a
22 project on behalf of a project sponsor.

23 (b) All projects must be developed:

1 (1) to current standards and specifications established
2 or recognized by the federal government and the department; and

3 (2) in accordance with this subchapter.

4 (c) All project sponsors must enter into a local agreement
5 and comply with all federal and state procedures and
6 requirements applicable to development of federal-aid
7 transportation projects.

8 (d) Before funding any construction activities, the
9 department will ensure that required opportunities for public
10 involvement have been provided and proper environmental
11 documentation has been completed.

12 (e) Funds from other federal programs may be used only when
13 specifically authorized by federal law or regulation. Private
14 cash donations may be accepted if authorized by law.

15 (f) Any change in the scope of work that was specified in
16 the nomination package and approved by the commission must have
17 the advance written approval of the executive director.

18 (g) The department is responsible for the inspection and
19 final acceptance of all projects selected by the commission and
20 for certification of project completion.

21 (h) If the project sponsor does not complete the project as
22 originally approved by the commission, the department may seek
23 reimbursement of the expended federal funds from the sponsor.

1

2 §11.314. Payment of Costs.

3 (a) The department will submit all requests for
4 reimbursement of allowable costs to FHWA.

5 (b) A project sponsor must use the forms and procedures
6 specified by the department to request reimbursement of
7 allowable costs incurred.

8 (c) For locally administered projects, the entire project
9 cost is borne by the project sponsor until reimbursement can be
10 obtained from FHWA for eligible activities.

11 (d) Costs incurred prior to the inclusion of the project in
12 the STIP, execution of the local agreement, or prior to federal
13 and state approval and authorization to proceed are not eligible
14 for reimbursement.

15

16 §11.315. Elimination of Project from the TAP.

17 (a) A project will be eliminated from participation in the
18 TAP if at any time prior to the execution of the local
19 agreement, the governing body of a municipality or county in
20 which project activities are proposed, by resolution, order, or
21 other official action, notifies the department of its opposition
22 to the project.

23 (b) The executive director may eliminate a project or a

1 portion of a project from participation in the TAP if at any
2 time:

3 (1) the project sponsor fails to satisfy any requirement
4 of this subchapter;

5 (2) implementation of the project would involve
6 significant deviation from the activities as proposed in the
7 nomination package and approved by the commission;

8 (3) the project sponsor withdraws from participation in
9 the project;

10 (4) a construction contract has not been awarded or
11 construction has not been initiated within three years after the
12 date that the commission selected the project;

13 (5) a local agreement is not executed within one year
14 after the date that the commission selected the project; or

15 (6) the executive director determines that federal
16 funding may be lost because the project has not been implemented
17 or completed.

18
19 §11.316. Project Transfer; Approval of Change.

20 (a) If at any time legislative action requires transfer of
21 the project to another entity, the department may terminate the
22 existing project agreement and execute an agreement with the
23 responsible entity.

1 (b) A transfer under subsection (a) of this section must
2 receive approval from FHWA.

3

4 §11.317. Maintenance and Operation; Dedication for Public Use.

5 (a) A project selected by the commission shall be
6 maintained and operated for the purpose for which it was
7 approved and funded and for a period of time that is
8 commensurate with the amount of federal investment in the
9 project.

10 (b) A project selected by the commission shall be dedicated
11 for public use for the greater of:

12 (1) a period that is commensurate with the amount of
13 federal investment in the project; or

14 (2) 10 years, if the amount of federal investment in the
15 project is \$1 million or less, or 20 years, if the amount of
16 federal investment is more than \$1 million.

17 (c) If at any time the project sponsor can no longer
18 maintain and operate the project for its intended purpose, the
19 sponsor will return the federal share used for the project in
20 accordance with current deferral recapture procedures.