

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §2.1, relating to general and emergency environmental action procedures, and the repeal of §11.56 and new §11.56 relating to connection with regionally significant highway, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, repeal, and new section, attached to this minute order as Exhibits A - E, 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*.

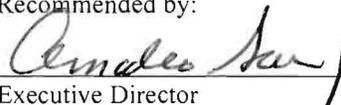
IT IS THEREFORE ORDERED by the commission that the amendments to §2.1, the repeal of §11.56, and new §11.56 are adopted and are authorized for filing with the Office of the Secretary of State.

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

**111779 APR 30 09**

Minute Number      Date Passed

Adoption Preamble

1  
2 The Texas Department of Transportation (department) adopts  
3 amendments to §2.1, concerning general and emergency action  
4 procedures for environmental review and public involvement  
5 requirements for transportation projects. The amendments to  
6 §2.1 are adopted in conjunction with the adopted repeal of 43  
7 TAC §11.56 and new 43 TAC §11.56, relating to connection with a  
8 regionally significant highway. The amendments to §2.1 are  
9 adopted without changes to the proposed text as published in the  
10 March 6, 2009 issue of the *Texas Register* (34 TexReg 1547) and  
11 will not be republished.

12

13 EXPLANATION OF ADOPTED AMENDMENTS

14 Transportation Code, Chapter 203 provides that the Texas  
15 Transportation Commission (commission) may lay out, construct,  
16 maintain, and operate a modern state highway system.

17 Transportation Code, §201.604, requires the commission by rule  
18 to provide for the commission's environmental review of the  
19 department's transportation projects that are not subject to  
20 review under the National Environmental Policy Act (42 U.S.C.  
21 §4321 et seq.)

22

23 Senate Bill 792 (SB 792), 80th Legislature, 2007, granted local  
24 authorities the first option in building projects within their  
25 jurisdictions and provided those authorities with the powers to

1 construct and complete those projects in a manner consistent  
2 with the practices and procedures by which the local authority  
3 finances, constructs, or operates a project. Senate Bill 792  
4 also authorized the department to assist those authorities in  
5 the completion of projects by providing use of the right of way  
6 owned by the department and access to the state highway system  
7 without requiring payment for those resources. The amendments  
8 to §2.1 allow the local governments to follow their own  
9 environmental review for those projects.

10

11 Amendments to §2.1(b)(3) divide the paragraph into subparagraphs  
12 (A) and (B). New §2.1(b)(3)(A)(ii) exempts a project developed  
13 by a local governmental entity under Transportation Code,  
14 §§228.011 or 228.0111, from the environmental review and public  
15 involvement requirements of 43 TAC Chapter 2, Subchapter A,  
16 because of the local control requirements of SB 792.

17 Transportation Code, §228.011 includes the following county toll  
18 projects: Beltway 8 Tollway East, between US 59 North and US 90  
19 East; Hardy Downtown Connector, consisting of the proposed  
20 direct connection from the Hardy Toll Road southern terminus at  
21 Loop 610 to downtown Houston; State Highway 288, between US 59  
22 and Grand Parkway South (State Highway 99); US 290 Toll Lanes,  
23 between IH 610 West and the Grand Parkway Northwest (State  
24 Highway 99); Fairmont Parkway East, between Beltway 8 East and  
25 Grand Parkway East (State Highway 99); South Post Oak Road

1 Extension, between IH 610 South and near the intersection of  
2 Beltway 8 and Hillcroft in the vicinity of the Fort Bend Parkway  
3 Tollway; Westpark Toll Road Phase II, between Grand Parkway  
4 (State Highway 99) and FM 1463; Fort Bend Parkway, between State  
5 Highway 6 and the Brazos River; and Montgomery County Parkway,  
6 between State Highway 242 and the Grand Parkway (State Highway  
7 99). Transportation Code, §228.0111, includes a project that is  
8 not covered by Transportation Code, §228.011, and that is  
9 constructed by a regional tollway authority under Transportation  
10 Code, Chapter 366, a regional mobility authority under  
11 Transportation Code, Chapter 370, or a county acting under  
12 Transportation Code, Chapter 284.

13  
14 New §2.1(b)(3)(B) provides that in the agreement for a project  
15 excepted under §2.1(b)(3) the department must ensure that the  
16 entity responsible for the project complies with all state and  
17 federal environmental review and public involvement laws  
18 applicable to the entity. This amendment is necessary to  
19 conform the provision to changes made by new §2.1(b)(3)(A)(ii).

20

21 COMMENTS

22 No comments on the proposed amendments were received.

23

24 STATUTORY AUTHORITY

25 The amendments are adopted under Transportation Code, §201.101,

1 which provides the commission with the authority to establish  
2 rules for the conduct of the work of the department, and more  
3 specifically, Transportation Code, §201.604, which requires the  
4 commission by rule to provide for the commission's environmental  
5 review of the department's transportation projects that are not  
6 subject to review under the National Environmental Policy Act  
7 (42 U.S.C. §4321 et seq.).

8

9 CROSS REFERENCE TO STATUTE

10 Transportation Code, §§201.604, 228.011, and 228.0111.



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 (3) Exception.

16 (A) Notwithstanding paragraph (1) of this subsection,  
17 the requirements of this subchapter do not apply to a project  
18 that is not on the state highway system and:

19 (i) that the department funds solely with money held  
20 in a project subaccount created under Transportation Code,  
21 §228.012; or [-]

22 (ii) that is developed by a county or other local  
23 governmental entity under Transportation Code, §228.011 or

1 §228.0111.

2           (B) An [A project] agreement entered into by the  
3 department for a project excepted under this paragraph must  
4 ~~[shall]~~ ensure that the entity responsible for implementing such  
5 a project complies with all environmental review and public  
6 involvement requirements applicable to that entity under state  
7 and federal law in connection with the project.

8           (c) Purpose. This subchapter implements the requirements  
9 of Transportation Code, §91.033, §91.034, §201.604, §201.607,  
10 §201.610, §201.617, §203.021, §203.022, §227.004, §227.013,  
11 §227.027, and §227.028. Also, the requirements in this chapter  
12 follow the requirements of the National Environmental Policy  
13 Act, 42 United States Code §§4321 et seq., 23 United States Code  
14 §109(h), and federal rules adopted under those laws. For a  
15 federal-aid transportation project, the subchapter sets forth  
16 additional requirements the department shall follow in order to  
17 comply with the National Environmental Policy Act and federal  
18 rules adopted under that law.

19           (d) Additional requirements for certain projects.  
20 Subchapter C of this chapter (relating to Additional  
21 Requirements for Certain Types of Transportation Projects)  
22 prescribes additional environmental requirements for certain  
23 types of projects.

1           (e) Other applicable environmental law. For a  
2 transportation project, in addition to the requirements in this  
3 subchapter and Subchapters B and C of this chapter, the  
4 department shall ensure compliance with state and federal law  
5 including the Endangered Species Act, 16 United States Code  
6 §§1531 et seq.; the Rivers and Harbors Act, 33 United States  
7 Code §§401 et seq.; the Federal Water Pollution Act (commonly  
8 known as the Clean Water Act), 33 United States Code §§1251 et  
9 seq.; 33 Code of Federal Regulations Parts 114 through 115; the  
10 Safe Drinking Water Act, 42 United States Code §§300f et seq.;  
11 Section 106 of the National Historic Preservation Act, 36 Code  
12 of Federal Regulations Part 800.

13           (f) Processing by district or other office. When this  
14 subchapter and Subchapters B or C of this chapter requires that  
15 a district undertake certain actions, another office of the  
16 department shall take the actions if the other office controls  
17 processing of the project. The Aviation Division may control  
18 the processing of an aviation project. The Transportation  
19 Planning and Programming Division may control the processing of  
20 a railroad project. The Texas Turnpike Authority Division may  
21 control the processing of a toll project. This subsection only  
22 concerns the processing of a project, and does not confer  
23 authority on a district or other office to issue approval of an

1 environmental document.

2 (g) Roles of department and other entities. For a project  
3 by a private or public entity, the entity shall submit a written  
4 proposal to the department for a determination of the respective  
5 roles and responsibilities of the entity and the department  
6 under this subchapter. The department shall determine and issue  
7 in writing the respective roles and responsibilities of the  
8 entity and the department.

9 (h) Emergency action procedures and compliance with other  
10 regulations.

11 (1) Any request for deviations from the procedures in  
12 this subchapter because of emergency circumstances will be  
13 handled on a case by case basis. Emergency circumstances will  
14 include natural disasters, such as floods, hurricanes, tidal  
15 waves, earthquakes, severe storms, landslides, or catastrophic  
16 failures from any cause.

17 (2) All applicable state and federal emergency  
18 environmental permitting and approval processes will be  
19 followed.

20 (3) The work shall be limited to those actions directly  
21 related to public health and safety and to further minimize loss  
22 of public infrastructure.

23 (4) The project files shall contain copies of all

1 coordination and approvals obtained.

Adoption Preamble

1  
2 The Texas Department of Transportation (department) adopts the  
3 repeal of §11.56, and new §11.56, concerning connection with  
4 regionally significant highway. The repeal of §11.56 and new  
5 §11.56 are adopted in conjunction with amendments to 43 TAC  
6 §2.1, relating to general and emergency action procedures for  
7 environmental review and public involvement requirements for  
8 transportation projects. The repeal of §11.56 and new §11.56  
9 are adopted without changes to the proposed text as published in  
10 the March 6, 2009 issue of the *Texas Register* (34 TexReg 1549)  
11 and will not be republished.

12

13 EXPLANATION OF ADOPTED REPEAL AND NEW SECTION

14 Transportation Code, Chapter 203 provides that the Texas  
15 Transportation Commission (commission) may lay out, construct,  
16 maintain, and operate a modern state highway system.

17

18 Due to the significant cost associated with the construction and  
19 maintenance of highways, it is imperative that the highway  
20 system provide maximum traffic handling capacity and reasonable  
21 access for as long as practical. Access management is one  
22 method of preserving the substantial investment in the ground  
23 transportation system by preserving the roadway level of  
24 service. Adjacent development and uncontrolled access points  
25 along highways can contribute to congestion and early

1 deterioration of the operation of the highway, thereby reducing  
2 the ability of the state highway system to safely and  
3 efficiently move higher volumes of traffic. Access management  
4 is an engineering and planning method of balancing the needs of  
5 mobility and safety on a highway system with the needs of access  
6 to adjacent land. Access management can significantly enhance  
7 traffic safety by reducing traffic accidents, personal injury,  
8 and property damage. Access management promotes a more  
9 coordinated intergovernmental, long term approach to land use  
10 and transportation decisions in the context of quality of life,  
11 economic development, livable communities, and public safety.

12

13 Transportation Code, Chapter 228, provides general authority for  
14 state highway toll projects. Senate Bill 792 (SB 792), 80th  
15 Legislature, 2007, added provisions to Transportation Code,  
16 Chapter 228 that granted local authorities the first option for  
17 building toll projects within their jurisdictions and provides  
18 the local authorities with the powers to construct and complete  
19 these projects. Senate Bill 792 also authorized the department  
20 to assist the local authorities in the completion of projects by  
21 providing the use of the right of way owned by the department  
22 and access to the state highway system without requiring payment  
23 for those resources.

24

25 Current §11.56 assigns broad environmental review and approval

1 authority to the department, and requires a public or private  
2 entity to comply with 43 TAC Chapter 2, Subchapter C to connect  
3 a regionally significant highway to a segment of the state  
4 highway system. Current §11.56 is being repealed and replaced  
5 with a new §11.56. The rule changes the focus of the  
6 environmental requirements on the projects' connection to the  
7 state highway system.

8  
9 New §11.56 is added to provide a uniform means by which public  
10 and private entities with the authority to construct, maintain,  
11 and operate regionally significant highway facilities may obtain  
12 permission to connect those facilities to the state highway  
13 system. While most such entities are required to obtain  
14 commission approval to construct regionally significant  
15 highways, certain entities with independent authority may  
16 construct regionally significant highways that do not  
17 necessarily conform to the Transportation Improvement Program  
18 (TIP). Adding regionally significant highways that are not in  
19 the TIP, especially in non-attainment areas, can threaten the  
20 entire area's transportation conformity under the federal Clean  
21 Air Act, resulting in sanctions that could severely hamper the  
22 state's federal highway program. The current rules govern  
23 connection to the state highway system, but do not give the  
24 department the ability to deny connections based on these  
25 conformity concerns, design and construction issues, or

1 noncompliance with federal requirements. This new rule will  
2 ensure that proper statewide planning is employed in the  
3 construction of major highway facilities that connect to the  
4 state highway system, that the facilities are properly designed  
5 and constructed in compliance with federal laws, and that  
6 environmental impacts are adequately considered.

7

8 New §11.56(a), Purpose, provides the purpose of the section and  
9 is the same as the current subsection (a). It requires approval  
10 from the commission for a connection from a regionally  
11 significant highway to a segment of the state highway system.

12

13 New §11.56(b), Request, requires the entity seeking approval to  
14 send to the executive director a written request containing a  
15 detailed schematic indicating the location of the connection, an  
16 overpass, underpass, intersection, or interchange, and the  
17 location of the logical termini of the connection. This differs  
18 from current subsection (b) which requires a schematic  
19 indicating the location of interchanges and mainlanes.

20

21 New §11.56(c), Approval criteria, authorizes the commission to  
22 approve a request if the highway to be connected is identified  
23 in a conforming TIP, the requestor agrees to use the  
24 department's design and construction criteria as set out in  
25 §11.56(d), and the requestor satisfies the applicable

1 requirements concerning public involvement and impacts of the  
2 connection set out in §11.56(e). The requirement of compliance  
3 with §11.56(e) ensures public involvement in the process and  
4 that the social, environmental, and economic impacts of the  
5 connection are considered.

6  
7 New §11.56(c) is similar to current subsection (c). However,  
8 current subsection (c) contains a process for waiving the design  
9 and construction requirements and the environmental requirements  
10 for the part of the project that is not a connection. The  
11 waivers are omitted from the new subsection as unnecessary  
12 because the subsection applies only to the connection area of a  
13 project.

14  
15 New §11.56(d), Design and construction, specifies that the  
16 design and construction criteria set forth in 43 TAC §26.33  
17 apply for purposes of the subsection. The new subsection is  
18 essentially the same as the current subsection (d).

19  
20 New §11.56(e)(1), Environmental review and public involvement,  
21 specifies that subsection (e) applies only to construction  
22 activities and utility adjustments within rights of way owned by  
23 the department and, if a terminus of the proposed connection is  
24 outside of the department's right of way, between the connection  
25 terminus and the department's right of way. Focusing the

1 environmental review and public involvement on the connection  
2 portion of the project addresses the state's requirements  
3 concerning adequate consideration of environmental, safety, and  
4 mobility concerns.

5  
6 New §11.56(e)(2) exempts from the environmental review and  
7 public involvement requirements local authority projects  
8 developed under Transportation Code, §§228.011 or 228.0111, and  
9 projects that the department funds solely with money held in a  
10 project subaccount created under Transportation Code, §228.012.  
11 Senate Bill 792 requires that the local authority have the  
12 primary authority for the projects in a manner consistent with  
13 the practices and procedures by which the local authority  
14 finances, constructs, or operates a project and requires the  
15 commission and the department to allow the local authority  
16 access to the state highway system.

17  
18 New §11.56(e)(3) requires the requestor to perform and document  
19 all environmental studies, environmental compliance, and public  
20 involvement activities. Section 11.56(e)(3) clarifies that the  
21 requestor's environmental compliance and public involvement  
22 activities will not be performed under memoranda of agreement,  
23 programmatic agreements, or other environmental agreements  
24 between the department and a state or federal agency as the  
25 project sponsor is performing the environmental compliance and

1 public involvement. To ensure that stakeholders' interests and  
2 concerns are addressed, the requestor is required to apply for,  
3 obtain, and comply with all permits and approvals required by  
4 state and federal law, and to establish all commitments needed  
5 to address public, state agency, and federal agency concerns.

6  
7 New §11.56(e)(4) requires that the environmental documents,  
8 environmental studies, environmental compliance, and public  
9 involvement activities must comply with the requirements of 43  
10 TAC Chapter 2, Subchapter A, relating to Environmental Review  
11 and Public Involvement for Transportation Projects.

12  
13 New §11.56(e)(5) requires the requestor to submit the  
14 environmental documents and supporting documentation to the  
15 department to ensure that the documentation is completed and to  
16 provide department review of the documentation. The department  
17 reviews and determines whether or not the requestor has  
18 completed agency coordination relating to the environmental  
19 review of the proposed access connection, and has responded to  
20 public comments.

21  
22 New §11.56(e)(6) provides that if Federal Highway Administration  
23 (FHWA) regulations specify that a project or connection requires  
24 FHWA approval, the requestor has to perform the necessary  
25 environmental and public involvement activities and produce an

1 environmental document that meets FHWA requirements.

2

3 New subsection (e) differs significantly from current subsection  
4 (e) because the process is being changed to streamline the  
5 process and to allow for more local responsibility for the  
6 performance of environmental review and public involvement in  
7 that review.

8

9 COMMENTS

10 No comments on the proposed repeal of §11.56 and new §11.56 were  
11 received.

12

13 STATUTORY AUTHORITY

14 The repeal and new section are adopted under Transportation  
15 Code, §201.101, which provides the commission with the authority  
16 to establish rules for the conduct of the work of the  
17 department, and more specifically, Transportation Code,  
18 §201.604, which requires the commission by rule to provide for  
19 the commission's environmental review of the department's  
20 transportation projects that are not subject to review under the  
21 National Environmental Policy Act (42 U.S.C. §4321 et seq.), and  
22 Transportation Code, §203.031, which provides the commission  
23 with the authority to control access to highways.

24

25 CROSS REFERENCE TO STATUTE

- 1 Transportation Code, Chapter 203, and Transportation Code,
- 2 §§201.604, 228.011, and 228.0111.

1 SUBCHAPTER C. ACCESS CONNECTIONS TO STATE HIGHWAYS

2 §11.56. Connection with Regionally Significant Highway.

3 (a) Purpose. A public or private entity may not connect a  
4 regionally significant highway to a segment of the state highway  
5 system without the approval of the commission. This section  
6 prescribes the procedure by which the commission will consider  
7 approval.

8 (b) Request. An entity seeking approval to connect a  
9 regionally significant highway to a segment of the state highway  
10 system must send a written request to the executive director.  
11 The request must include a detailed schematic indicating the  
12 location of the connection, including an overpass, underpass,  
13 intersection, or interchange, and the location of the logical  
14 termini of the connection.

15 (c) Approval criteria. The commission will approve a  
16 request made under this section if:

17 (1) the highway to be connected is identified in a  
18 conforming Transportation Improvement Program;

19 (2) the requestor agrees to design and construct the  
20 connection in compliance with subsection (d) of this section;  
21 and

22 (3) the requestor satisfies the applicable requirements  
23 under subsection (e) of this section concerning public

1 involvement and a study of the social, environmental, and  
2 economic impacts of the connection.

3 (d) Design and construction. The requestor shall design  
4 and construct the connection in accordance with the schematics  
5 required by subsection (b) of this section and 43 TAC §26.33(d),  
6 (f), and (g)-(1) of this title (relating to Design and  
7 Construction), which for the purposes of this subsection apply  
8 as if the requestor were a regional mobility authority.

9 (e) Environmental review and public involvement.

10 (1) This subsection applies only to construction  
11 activities and utility adjustments related to the proposed  
12 connection that are:

13 (A) within rights of way owned by the department; and

14 (B) if a terminus of the proposed connection is outside  
15 of the department's right of way, between the terminus and the  
16 department's right of way.

17 (2) This subsection does not apply to a project developed  
18 by a county or other local governmental entity under  
19 Transportation Code, §§228.011 or 228.0111, or that the  
20 department funds solely with money held in a project subaccount  
21 created under Transportation Code, §228.012.

22 (3) The requestor, as project sponsor, shall perform and  
23 document all environmental studies, environmental compliance,

1 and public involvement activities arising as a result of  
2 construction of the proposed access connection. The requestor  
3 will not perform its environmental compliance and public  
4 involvement activities under memoranda of agreement,  
5 programmatic agreements, or other environmental agreements  
6 between the department and a state or federal agency. The  
7 requestor shall apply for, obtain, and comply with all permits  
8 and approvals required by state and federal law, and shall  
9 establish all commitments needed to address public, state  
10 agency, and federal agency concerns.

11 (4) The requestor's environmental documents,  
12 environmental studies, environmental compliance, and public  
13 involvement activities must comply with the requirements of 43  
14 TAC Chapter 2, Subchapter A, of this title (relating to  
15 Environmental Review and Public Involvement for Projects).

16 (5) The requestor shall submit the environmental  
17 documentation, including supporting documents, to the  
18 department, and request the department review the environmental  
19 documentation. The department shall review the environmental  
20 documentation and supporting documents and shall determine  
21 whether or not the requestor has completed agency coordination  
22 relating to the environmental impact of the proposed access  
23 connection, and has responded to public comments relating to the

1 connection. If the department determines that the requestor has  
2 not demonstrated completion of agency coordination or response  
3 to public comment related to the connection, the requestor shall  
4 provide any additional documentation requested by the  
5 department. The commission will not grant access connection  
6 until the requestor satisfies the requirements of this  
7 paragraph.

8 (6) If Federal Highway Administration (FHWA) regulations  
9 specify that a project or connection requires FHWA approval, the  
10 requestor shall perform all environmental and public involvement  
11 activities as the project sponsor, and shall produce an  
12 environmental document that meets FHWA requirements.

1 SUBCHAPTER C. ACCESS CONNECTIONS TO STATE HIGHWAYS

2 §11.56. Connection with Regionally Significant Highway.

3 (a) Purpose. A public or private entity may not connect a  
4 regionally significant highway to a segment of the state highway  
5 system without the approval of the commission. This section  
6 prescribes the procedure by which the commission will consider  
7 approval.

8 (b) Request. An entity seeking approval under this section  
9 shall send a written request to the executive director. The  
10 request shall include a detailed schematic indicating the  
11 location of interchanges and mainlanes.

12 (c) Approval criteria.

13 (1) The commission will approve a connection requested  
14 under this section if:

15 (A) the highway is identified in a conforming  
16 Transportation Improvement Program;

17 (B) the requestor agrees to design and construct the  
18 project in compliance with subsection (d) of this section; and

19 (C) the requestor agrees to conduct public involvement  
20 and a study of the social, environmental, and economic impacts  
21 of the project in compliance with subsection (e) of this  
22 section.

23 (2) The commission may waive the requirements of

1 paragraph (1)(B) of this subsection as they apply to the portion  
2 of the project that is not the connection if the commission  
3 determines that the past performance of the requestor on  
4 previous projects developed in collaboration with the department  
5 indicates that the requestor will design and construct a safe  
6 and durable highway. For purposes of this paragraph, the term  
7 "connection" includes an overpass, underpass, intersection, and  
8 interchange.

9 (3) The commission may waive the requirements of  
10 paragraph (1)(C) of this subsection if the commission determines  
11 that the requestor has a written policy that adequately provides  
12 for:

13 (A) public involvement, including public hearings on an  
14 environmental review;

15 (B) an evaluation of direct and indirect effects of the  
16 highway project;

17 (C) analysis of project alternatives; and

18 (D) a written report that briefly explains the  
19 requestor's decision on the project and that specifies the  
20 measures to mitigate environmental harm on which the project is  
21 conditioned.

22 (d) Design and construction. Except as provided in  
23 subsection (c)(2) of this section, the requestor shall design

1 and construct the highway in accordance with §26.33(d), (f), and  
2 (g)-(1) of this title (relating to Design and Construction).

3 For purposes of this subsection, the term RMA as used in §26.33  
4 shall mean the requestor.

5 (e) Environmental review and public involvement.

6 (1) Environmental documentation.

7 (A) Subject to paragraph (4) of this subsection, a  
8 requestor shall prepare an environmental document in accordance  
9 with Chapter 2, Subchapter C, of this title (relating to  
10 Environmental Review and Public Involvement for Transportation  
11 Projects).

12 (B) The environmental document must describe all  
13 reasonable and feasible measures to avoid, minimize, or mitigate  
14 for adverse environmental impacts and all practicable measures  
15 to enhance the environment.

16 (C) The form and content of an environmental document  
17 prepared by a requestor and any decision by a requestor that an  
18 environmental impact statement is not necessary must be approved  
19 by the department.

20 (2) Public involvement. Subject to paragraph (4) of this  
21 subsection, a requestor shall provide for public involvement by:

22 (A) complying with §2.43(c) of this title (relating to  
23 Non Federal-Aid Transportation Projects);

1 (B) holding one or more public hearings following the  
2 completion of the studies required by this section as may be  
3 necessary to ensure participation by each community affected by  
4 the project; and

5 (C) notifying the department in writing not less than  
6 ten days in advance of all public meetings and public hearings  
7 held under this section.

8 (3) Revision to environmental document. Following the  
9 public hearing, a requestor shall revise the environmental  
10 document showing the proposed changes in the project location,  
11 design, and mitigation as a result of comments and the public  
12 involvement process for the project to address any issues or  
13 concerns identified during the public involvement process.

14 (4) Respective roles and responsibilities. The requestor  
15 shall request that the department make a determination of the  
16 respective roles and responsibilities of the requestor and the  
17 department under Chapter 2, Subchapter C, of this title  
18 (relating to Environmental Review and Public Involvement for  
19 Transportation Projects). The requestor shall comply with the  
20 department's directives. The directives will specify who will  
21 conduct the following work, the requestor or the department:

22 (A) preparation and completion of environmental  
23 studies;

1 (B) submission of appropriate environmental  
2 documentation for department review;

3 (C) preparation of any document revisions;

4 (D) submission of copies of the environmental studies  
5 and documentation adequate for distribution;

6 (E) preparation of legal and public notices for  
7 department review and use;

8 (F) arrangements for appropriate public involvement,  
9 including court reporters and accommodations if requested for  
10 persons with special communication or physical needs related to  
11 public hearings;

12 (G) preparation of public meetings and hearing  
13 materials;

14 (H) preparation of any responses to comments;

15 (I) preparation of public meeting and public hearing  
16 summary and analysis, and the comment and response reports; and

17 (J) submission of documentation showing all  
18 environmental permits, issues, and commitments have been or will  
19 be completed, including copies of permits or other approvals  
20 required prior to construction.

21 (5) Record. Subject to paragraph (4) of this subsection,  
22 a requestor shall provide the department:

23 (A) the appropriate environmental document;

1 (B) summary and comment and response reports for all  
2 meetings;

3 (C) summary and analysis and comment and response  
4 reports for all public hearings;

5 (D) a summary of the proposed changes in the project  
6 location and design and mitigation planned as a result of  
7 comments;

8 (E) the verbatim transcript of any public hearing;

9 (F) certification that all public hearings were held in  
10 accordance with §2.43 of this title (relating to Non Federal-Aid  
11 Transportation Projects), the Civil Rights Act of 1964, and the  
12 Civil Rights Restoration Act of 1987; and

13 (G) revised environmental document showing the proposed  
14 changes in project location, design, and mitigation as a result  
15 of comments and public involvement.

16 (6) This subsection does not apply if the commission has  
17 approved a waiver under subsection (c)(3) of this section.