

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt new Chapter 16, Planning and Development of Transportation Projects, new Subchapter A, General Provisions, §§16.1 - 16. 4; new Subchapter B, Transportation Planning, §§16.51 - 16.56; new Subchapter C, Transportation Programs, §§16.101 - 16.105; new Subchapter D, Transportation Funding, §§16.151 - 16.160; and new Subchapter E, Project and Performance Reporting, §§16.201 - 16.205 to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted new sections, attached to this minute order as Exhibits A - F, 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 §§16.1 - 16. 4, 16.51 - 16.56, 16.101 - 16.105, 16.151 - 16.160, and 16.201 - 16.205 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:

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Recommended by:

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Executive Director

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Minute Number Date Passed

Adoption Preamble

1
2 The Texas Department of Transportation (department) adopts new
3 Chapter 16, Planning and Development of Transportation Projects,
4 Subchapter A, General Provisions, §§16.1 - 16.4, Subchapter B,
5 Transportation Planning, §§16.51 - 16.56, Subchapter C,
6 Transportation Programs, §§16.101 - 16.105, Subchapter D,
7 Transportation Funding, §§16.151 - 16.160, and Subchapter E,
8 Project and Performance Reporting, §§16.201 - 16.205, all
9 concerning the transportation planning and programming process
10 for development of projects on the state highway system and
11 projects involving other modes of transportation. New §§16.1 -
12 16.205 are adopted without changes to the proposed text as
13 published in the June 11, 2010 issue of the *Texas Register* (35
14 TexReg 4977) and will not be republished.

15

16 EXPLANATION OF ADOPTED NEW SECTIONS

17 Currently, the department has transportation planning and
18 programming rules in Title 43, Texas Administrative Code (TAC),
19 Chapter 15, Subchapter A, Transportation Planning, and
20 Subchapter D, Texas Highway Trunk System. Those rules focus
21 primarily on the federal planning and programming requirements
22 applicable to metropolitan planning organizations under 23
23 C.F.R. Parts 420 and 450. Before the Regular Session of the
24 Texas Legislature in 2009, the Sunset Advisory Commission made
25 several recommendations for legislation that would require the

1 department to develop a continuing, cooperative, and
2 comprehensive transportation planning and programming process
3 that includes all modes of transportation and involves all
4 transportation stakeholders. The recommendations of the Sunset
5 Advisory Commission report were incorporated in the
6 transportation planning article of the department's sunset bill,
7 House Bill No. 300. Although HB 300 was not enacted, the
8 concepts expressed in the Conference Committee Report for the
9 bill provide a basis for revisions to the department's existing
10 planning and project development program.

11
12 On July 30, 2009, the Texas Transportation Commission
13 (commission) created the Transportation Planning and Project
14 Development Rulemaking Advisory Committee (rules advisory
15 committee) to be comprised of eleven members, including
16 representatives from large metropolitan planning organizations,
17 small metropolitan planning organizations, counties, transit
18 organizations, tolling authorities, small cities, councils of
19 governments, and the Federal Highway Administration. The rules
20 advisory committee met five times with department staff to
21 render advice, review draft proposals and make specific
22 recommendations. In addition to the rules advisory committee,
23 the department solicited public comments on the draft rules. On
24 May 4, 2010, with eight members present, the rules advisory
25 committee unanimously recommended that the commission propose

1 these rules.
2
3 Development of rules for a comprehensive approach to
4 transportation planning, programming, funding, and performance
5 reporting requires a significant expansion of the existing rules
6 in Chapter 15, Subchapters A and D. In order to consolidate and
7 expand those provisions, it is necessary to repeal the current
8 provisions for planning and programming in Chapter 15 and
9 simultaneously adopt new Chapter 16, Planning and Development of
10 Transportation Projects. New Subchapter A, General Provisions,
11 Subchapter B, Transportation Planning, and Subchapter C,
12 Transportation Programs, incorporate both the existing
13 requirements of Chapter 15, Subchapters A and D, and additional
14 requirements that are necessary to provide a detailed,
15 coordinated, and comprehensive planning and programming process.
16 New Subchapter D, Transportation Funding, contains all new
17 provisions that are necessary to develop reliable financial
18 assumptions and forecasts for common use by all participants in
19 the planning and programming process, and to provide for a fair
20 and balanced allocation of available state and federal resources
21 to department districts, metropolitan planning organizations,
22 and other authorized entities in order to fund individual
23 projects. New Subchapter E, Project and Performance Reporting,
24 contains provisions that are necessary to establish strategic
25 performance measures and a reporting system that is used to

1 monitor and evaluate the effectiveness of the planning and
2 programming process and to identify areas that need improvement.

3
4 Subchapter A, General Provisions, incorporates the existing
5 provisions of §15.1, Purpose, Applicability, and Scope (now
6 §16.1 and §16.3); and §15.2, Definitions (now §16.2). It adds a
7 new Introduction section (§16.4) that summarizes the planning
8 and programming process, identifies its component parts, and
9 describes the relationship among the department and both
10 metropolitan and rural planning organizations.

11
12 Section 16.1, Purpose, identifies the purpose of the chapter as
13 providing minimum standards for transportation planning and
14 program development, describing how the state and planning
15 organizations will develop coordinated processes, plans, and
16 programs, and ensuring the eligibility of the state to continue
17 to receive federal transportation funds. The goal is to
18 establish a transparent, well-defined, and understandable system
19 of planning and programming. This section incorporates the
20 existing provisions of §15.1(a) with only minor non-substantive
21 changes.

22
23 Section 16.2(a), Definitions, incorporates most of the existing
24 definitions of §15.2 either with their existing language or with
25 only minor non-substantive changes, deletes some of the existing

1 definitions that are no longer necessary, and adds new
2 definitions to provide clarity to the chapter's provisions.

3
4 The definitions in §16.2(a) of (2) "Commission", (5)
5 "Department", (9) "Executive director", (11) "Federal Highway
6 Administration (FHWA)", (12) "Federal Transit Administration
7 (FTA)", (13) "Governor", (28) "Texas Commission on Environmental
8 Quality (TCEQ)", (30) "Transportation control measure (TCM)",
9 and (33) "Unified Planning Work Program (UPWP)" are identical to
10 the existing definitions in §15.2.

11
12 The definitions in §16.2(a) of (1) "Clean Air Act (CAA)", (3)
13 "Conformity", (4) "Corridor", (6) "District", (8) "Environmental
14 Protection Agency (EPA)", (10) "Federal discretionary programs",
15 (16) "Metropolitan planning organization (MPO)", (24) "Rural
16 transportation improvement program (RTIP)", (26) "Subarea", and
17 (27) "Surface Transportation Program (STP)" incorporate the
18 language and concepts of the existing definitions in §15.2 with
19 only minor non-substantive changes.

20
21 The existing definition in §15.2(13) "Major revision" is deleted
22 and not included in §16.2(a) because it is no longer a
23 distinction in federal regulations governing the plans and
24 programs of metropolitan planning organizations. The existing
25 definition in §15.2(15) "Metropolitan planning organization

1 policy board" is deleted and not included in §16.2(a) because
2 the concept and function of the policy board is consolidated
3 with the definition of the organization in the revised
4 definition of (16) "Metropolitan planning organization (MPO)".
5 The existing definition in §15.2(22) "Trans-Texas Corridor" is
6 deleted and not included in §16.2(a) because the department is
7 no longer using that concept in its planning and programming
8 process.

9
10 Section 16.2(a)(7) defines "District engineer" as the chief
11 administrative officer in charge of a department district, or
12 his or her designee and is consistent with the definition used
13 in other chapters of Title 43, Part 1, Texas Administrative
14 Code.

15
16 Section 16.2(a)(14) defines "Letting" as the official act of
17 opening contractors' bids for a proposed highway improvement
18 contract to construct, reconstruct, or maintain a segment of the
19 state highway system. The term is necessary to identify a point
20 in time that marks the beginning of the construction phase of a
21 project.

22
23 Section 16.2(a)(15) defines "Local transportation entity" as an
24 entity that participates in the transportation planning process.
25 The definition provides examples of eligible entities but the

1 examples are not exclusive. Examples include metropolitan
2 planning organizations, rural planning organizations, toll
3 authorities, transit authorities, and rail districts.

4

5 Section 16.2(a)(17) defines "Mexican ports of entry" as
6 connections between Mexico and the State of Texas at
7 international bridge crossings of 5,000 vehicles or more average
8 daily traffic. It is identical to the existing definition in
9 §15.41(4) and is a necessary term in describing the selection
10 criteria for routes to be included in the Texas Highway Trunk
11 System in §16.56.

12

13 Section 16.2(a)(19) defines "On-system" as the state highway
14 system as approved by the commission in accordance with
15 Transportation Code, §201.103. The term is used as a
16 distinguishing factor in the description of several allocation
17 funding formulas in §16.154.

18

19 Section 16.2(a)(20) defines "Planning organization" as a
20 metropolitan planning organization, rural planning organization,
21 or a district for an area that is not in the boundaries of
22 either a metropolitan planning organization or rural planning
23 organization.

24

25 Section 16.2(a)(21) defines "Public transportation" as the

1 transportation of passengers and their hand carried packages on
2 a regular or continuing basis by means of surface or water
3 conveyance by either a governmental or private entity that
4 receives financial assistance from a governmental entity. The
5 term is used throughout the chapter to identify mass
6 transportation and transit entities and is consistent with
7 federal regulations.

8

9 Section 16.2(a)(22) defines "Routes" as all or a portion of a
10 selected course of travel between two specific geographic
11 locations. It is similar to the existing definition in
12 §15.41(5) and is a necessary term in describing the selection
13 criteria for routes to be included in the Texas Highway Trunk
14 System in §16.56.

15

16 Section 16.2(a)(23) defines "Rural planning organization (RPO)"
17 as a voluntary organization created and governed by local
18 elected officials with responsibility for transportation
19 decisions at the local level. It is recognized in this chapter
20 as a valid planning organization and may address rural
21 transportation priorities and planning and provide
22 recommendations to the department for areas of the state not
23 included in the boundaries of a metropolitan planning
24 organization.

25

1 Section 16.2(a)(25) defines "State Implementation Plan (SIP)" as
2 the latest approved version of the state adopted plan
3 promulgated for each nonattainment or maintenance area to
4 achieve or maintain compliance with national ambient air quality
5 standards required by the federal Clean Air Act. It is one of
6 the benchmarks used in satisfying federal regulations during the
7 planning and programming process.

8
9 Section 16.2(a)(29) defines "Texas Highway Trunk System" as a
10 rural network of four-lane or better divided highways that will
11 serve as a principal connector of all Texas cities with over
12 20,000 population as well as major ports and points of entry.
13 It is identical to the existing definition in §15.41(6) and is a
14 necessary term in describing the selection criteria for planning
15 connectivity routes in §16.56.

16
17 Section 16.2(a)(31) defines "Transportation management area
18 (TMA)" as an urbanized area with a population over 200,000 as
19 designated by the U.S. Secretary of Transportation. It is a
20 term that distinguishes a type of metropolitan planning
21 organization (MPO) and affects both the MPO's authority to
22 select projects in the programming process and its allocation of
23 funding.

24
25 Section 16.2(a)(32) defines "Transportation project" as the

1 planning, engineering, right-of-way acquisition, expansion,
2 improvement, addition, or contract maintenance, other than the
3 routine or contracted routine maintenance of a bridge, highway,
4 toll road or toll road system, railroad, enhancement of a
5 roadway that increases the safety of the traveling public, air
6 quality improvement initiative, or transportation enhancement
7 activity under 23 U.S.C. §101. The term is used to distinguish
8 projects that are not related to aviation, public
9 transportation, or the state's waterways and coastal waters.

10

11 Section 16.2(b), Acronyms, is a new provision that identifies 18
12 terms that are frequently used in the chapter and provides the
13 common abbreviation for each term. For those terms that are not
14 included in the definitions of §16.2(a), each term and
15 abbreviation also contains a reference to the section in the
16 chapter in which the term is primarily described. Examples of
17 the acronyms include "(3) FHWA--Federal Highway Administration,"
18 "(6) MTP--Metropolitan Transportation Plan, as described in
19 §16.53," "(8) RTIP--Rural Transportation Improvement Program,"
20 and "(11) STIP--Statewide Transportation Improvement Program, as
21 described in §16.103."

22

23 Section 16.3(a), Applicability, provides that the provisions of
24 the chapter apply to the department, all metropolitan planning
25 organizations, rural planning organizations, and appropriate

1 federally funded public transportation operators. This section
2 incorporates the existing provisions of §15.1(b) with only minor
3 non-substantive changes.

4

5 Section 16.3(b), Relationship to federal law and regulations,
6 provides that the chapter incorporates by reference federal
7 transportation planning laws and regulations, and that to the
8 extent of any conflict between provisions of the chapter and
9 federal law, the federal law controls. This section
10 incorporates the existing federal law references of §15.1(c) and
11 adds the conflict language to clarify the legal concept that
12 federal law has supremacy over state law.

13

14 Section 16.4, Introduction, is a new section that summarizes the
15 planning and programming process, identifies its component
16 parts, and describes the relationship among the department and
17 both metropolitan and rural planning organizations. These
18 entities cooperate in the development of separate but
19 interrelated long-range planning documents that identify
20 projects, strategies, and transportation needs and also in the
21 development of both mid-range and short-range programming
22 documents that contain a listing of prioritized projects for
23 implementation. The provisions in this section are not binding,
24 but are for illustrative purposes only. The purpose is to
25 assist readers with an understanding of the primary planning and

1 programming documents and how they are involved in the overall
2 process.

3

4 Section 16.4(c) provides a general description of long-range
5 planning documents that include the 24-year statewide long-range
6 transportation plan developed by the department and the 20-year
7 metropolitan transportation plan developed by each metropolitan
8 planning organization.

9

10 Section 16.4(d) provides a general description of the ten-year
11 unified transportation program developed by the department that
12 includes all of the projects, or phases of projects, within the
13 state that the department anticipates can be implemented with
14 funding that is reasonably anticipated to be available at the
15 designated time.

16

17 Section 16.4(e) provides a general description of short-range
18 programming documents that include the four-year transportation
19 improvement program developed by metropolitan planning
20 organizations for projects proposed for the metropolitan area,
21 the four-year rural transportation improvement program developed
22 by the department in cooperation with rural planning
23 organizations for projects proposed for all areas of the state
24 outside of metropolitan planning areas, and the four-year
25 statewide transportation improvement program developed by the

1 department for all areas of the state and containing a
2 compilation of the projects identified in the above
3 transportation improvement programs and rural transportation
4 improvement programs. All of the short-range programs must
5 contain estimates of available state, federal, and local funding
6 and the estimated project expenditures.

7
8 Section 16.4(f) contains a representational graphic flow chart
9 of planning and programming stages.

10
11 Subchapter B, Transportation Planning, incorporates the existing
12 provisions of §15.3, Organization, Structure, and
13 Responsibilities of Metropolitan Planning Organizations (now
14 §16.51); §15.4, Unified Planning Work Program (UPWP) (now
15 §16.52); and §15.6, Metropolitan Transportation Plan (now
16 §16.53). The subchapter adds new sections that establish the
17 structure and requirements of a Statewide Long-Range
18 Transportation Plan (SLRTP)(§16.54); provide for Long-Range
19 Transportation Planning Recommendations for Non-Metropolitan
20 Areas (§16.55); and establish criteria for the Texas Highway
21 Trunk System (§16.56).

22
23 Section 16.51, Responsibilities of Metropolitan Planning
24 Organizations (MPO), reorganizes and incorporates most of
25 existing §15.3 with only minor non-substantive changes. The

1 changes clarify existing provisions and remove unnecessary
2 language.

3
4 Existing §15.3(e)(1), relating to the responsibility of MPOs in
5 cooperation with the department and public transportation
6 operators for carrying out the metropolitan transportation
7 planning process in accordance with federal regulations and
8 these rules is moved to §16.51(a), General, and reenacted with
9 only minor non-substantive changes.

10
11 Section 16.51(b), Membership of MPOs, is added to describe the
12 federal requirement that each MPO that serves a transportation
13 management area shall consist of local elected officials,
14 officials of public agencies that operate major modes of
15 transportation in the area, and appropriate state transportation
16 officials. The provision is added to provide clarification.

17
18 Existing §15.3(c)(4), relating to approval of the boundaries of
19 a designated metropolitan planning area and any revision of
20 those boundaries, is moved to §16.51(c), Approval of boundaries,
21 and reenacted with only minor non-substantive changes.

22
23 Existing §15.3(d), relating to the requirement for a written
24 agreement between the MPO, the department, and public
25 transportation operators for carrying out transportation

1 planning and programming, is moved to §16.51(d), Metropolitan
2 planning area agreements, and reenacted with only minor non-
3 substantive changes.

4

5 Existing §15.3(e)(4), relating to the requirement that an MPO in
6 nonattainment or maintenance areas shall coordinate the
7 development of the transportation plan with the State
8 Implementation Plan including the development of any
9 transportation control measures, is moved to §16.51(e),
10 Coordination with State Implementation Plan (SIP), and reenacted
11 with only minor non-substantive changes.

12

13 Existing §15.3(e)(5), relating to the requirement that if more
14 than one MPO has authority in a metropolitan planning area or in
15 a nonattainment or maintenance area, the MPOs and the governor
16 shall cooperatively establish the boundaries of the metropolitan
17 planning area and the respective jurisdictional responsibilities
18 of each MPO, and that the MPOs shall consult with each other to
19 assure the preparation of integrated plans and transportation
20 improvement programs for the entire metropolitan planning area,
21 is moved to §16.51(f), Metropolitan planning in areas with
22 multiple MPOs, and reenacted with only minor non-substantive
23 changes.

24

25 Portions of existing §15.3 are not reenacted. The Purpose

1 provision in §15.3(a); Designations, redesignations, and
2 membership of MPOs in §15.3(b); Metropolitan planning area
3 boundaries in §15.3(c)(1),(2),(3), and (5); Paragraph (5) of
4 §15.3(d) relating to existing agreements; and Paragraphs (2) and
5 (3) of §15.3(e) relating to approval of the metropolitan
6 transportation plan and the transportation improvement program
7 are all not reenacted because they are merely repetitive of
8 federal regulations or other sections in new Chapter 16.

9
10 Section 16.52, Unified Planning Work Program (UPWP),
11 incorporates most of existing §15.4. The changes primarily
12 clarify existing provisions with only minor non-substantive
13 changes and remove unnecessary language. New language provides
14 a limited exception to the prior language in existing
15 §15.4(b)(4) that prohibited all reimbursement of travel costs of
16 elected officials.

17
18 Existing §15.4(a), relating to the requirement of an MPO to
19 document planning activities in a unified planning work program
20 to indicate who will perform the work, the schedule for
21 completing it, and all products that will be produced, is moved
22 to §16.52(a), Planning activities, and reenacted with only minor
23 non-substantive changes. Existing §15.4(a)(2), relating to
24 development of a prospectus that establishes a multiyear
25 framework, was not reenacted because the concept is no longer

1 provided for in federal regulations.

2

3 Existing §15.4(b), relating to the availability and use of
4 federal transportation planning funds, is moved to §16.52(b),
5 Planning activities, and reenacted with primarily minor non-
6 substantive changes. Existing §15.4(b)(4) relating to a
7 prohibition against the reimbursement of travel costs for
8 elected officials is changed by adding language to authorize
9 reimbursement for elected officials serving on an MPO policy
10 board if the costs are specifically related to a federal award,
11 necessary and reasonable for the proper and efficient
12 administration of the federal award, approved by the awarding
13 federal agency prior to incurring the costs, and not prohibited
14 under federal lobbying restrictions or state or local laws.

15

16 Existing §15.5, Metropolitan Planning Process, is not reenacted.
17 The section generally describes the metropolitan planning
18 process for MPOs including development of a metropolitan
19 transportation plan and transportation improvement program. The
20 Responsibilities provision in §15.5(a); Elements in §15.5(b);
21 Public involvement process in §15.5(c); Simplified procedures
22 allowed in §15.5(d); Technical and other reports in §15.5(e);
23 Major investment studies in §15.5(f); Managing and monitoring
24 systems in §15.5(g); and Certification in §15.5(h) were all not
25 reenacted because they were merely repetitive of federal

1 regulations or other sections in new Chapter 16.

2

3 Section 16.53, Metropolitan Transportation Plan (MTP),
4 incorporates most of existing §15.6. The changes clarify
5 existing provisions with primarily minor non-substantive changes
6 and remove unnecessary language. New language is added to
7 §16.53(a) and (e) as described in the following paragraphs.

8

9 Existing §15.6(a), relating to the requirement of an MPO to
10 develop a metropolitan transportation plan to address at least a
11 20-year planning horizon and include both long-range and short-
12 range strategies, is moved to §16.53(a), Requirements, and
13 reenacted with primarily minor non-substantive changes. New
14 language in §16.53(a) provides a requirement that the MTP must
15 be based on the funding assumptions and forecasts set forth in
16 §16.151 and §16.152 relating to long-term planning assumptions
17 and cash flow forecast. This financial requirement is also
18 applicable to an MPO's transportation improvement program, the
19 department's statewide transportation improvement program, and
20 the department's unified transportation program. By using
21 common assumptions and forecasts, all entities involved in the
22 planning and programming process will develop documents that are
23 more uniform, consistent, and realistic.

24

25 Existing §15.6(b), relating to the development of the MTP in

1 accordance with federal regulations, is moved to §16.53(b),
2 Development, and reenacted with only minor non-substantive
3 changes.

4

5 Existing §15.6(c), relating to the approval of the MTP by the
6 applicable MPO and requirements for public involvement in
7 accordance with federal regulations, is moved to §16.53(c),
8 Approval, and reenacted with only minor non-substantive changes.

9

10 Existing §15.6(d), relating to submission to the state of copies
11 of any new or revised MTPs for information purposes, is moved to
12 §16.53(d), Submission of new and revised plans, and reenacted
13 with primarily minor non-substantive changes. New language in
14 §16.53(d) requires copies to also be provided to the Federal
15 Highway Administration, Federal Transit Administration, and
16 other applicable federal agencies. This provision clarifies
17 that the federal agencies need to receive copies even though
18 there is no requirement that they approve the MTP.

19

20 Section 16.53(e), MTP public participation, is added. It
21 requires the MPO to develop a public participation process
22 covering the development of an MTP in accordance with federal
23 regulations. This provision is similar to that required for the
24 MPO's transportation improvement program in §16.101(m) and makes
25 the two sections consistent.

1
2 Section 16.54, Statewide Long-Range Transportation Plan (SLRTP),
3 is a new section that implements the requirements in Title 23
4 U.S.C. §135, as implemented by 23 C.F.R. Part 450 and
5 Transportation Code, Chapter 201, Subchapter H, for the state to
6 develop a statewide long-range transportation plan that provides
7 for the development and implementation of a transportation
8 system and contains all modes of transportation.

9
10 Section 16.54(a), General, requires the department to develop a
11 statewide long-range transportation plan covering a period of
12 not less than 24 years that contains all modes of transportation
13 including: 1) the systems and facilities for highways,
14 turnpikes, aviation, public transportation, railroads,
15 waterways, pedestrian walkways, and bicycle transportation
16 facilities; and 2) the transportation users of each type of
17 facility.

18
19 Section 16.54(b), Requirements, provides that the plan must:
20 contain specific, long-term transportation goals for the state;
21 contain specific, measurable targets for each transportation
22 goal; consider the projects and strategies adopted by each MPO
23 and RPO in the organization's long-range plans; identify
24 priority corridors, projects, or areas of the state that are of
25 particular concern to the department in meeting its goals; and

1 contain a participation plan for obtaining input on the goals,
2 measurable targets, projects, and priorities from other state
3 agencies, political subdivisions, MPOs, RPOs, local
4 transportation entities, other officials who have local
5 responsibility for the various modes of transportation, and the
6 general public.

7
8 Section 16.54(c), Financial considerations, requires that the
9 plan include: 1) a component that is financially constrained and
10 identifies proposed projects and strategies; and 2) a component
11 that is not financially constrained and identifies corridors,
12 projects, strategies, and other transportation needs in various
13 areas of the state.

14
15 Section 16.54(d), Updates, requires the department to update the
16 plan every four years or more frequently as necessary.

17
18 Section 16.54(e), Public involvement during development of the
19 SLRTP, requires the department to provide adequate opportunity
20 for public involvement during the development process by
21 publishing appropriate notice and holding at least one public
22 meeting in each region of the state during which the department
23 will report its progress on the plan and provide a free exchange
24 of ideas, views, and concerns relating to the planning issues.

25

1 Section 16.54(f), Public involvement prior to final adoption,
2 requires the department to provide at least one statewide
3 hearing prior to final adoption of the SLRTP or any update of
4 the SLRTP by the commission. The department will publish a
5 notice of a hearing in the *Texas Register* a minimum of 15 days
6 prior to the hearing date; accept written public comments for a
7 period of at least 30 days after the date the notice appears in
8 the *Texas Register*; and make copies of the SLRTP available for
9 review at each of the district offices, at the department's
10 Transportation Planning and Programming Division in Austin, and
11 on the department website.

12

13 Section 16.54(g), Publication, requires the department to
14 publish the adopted SLRTP on the department's website and make
15 it available for review at each of the district offices, and at
16 the department's Transportation Planning and Programming
17 Division in Austin.

18

19 Section 16.55, Long-Range Transportation Planning
20 Recommendations for Non-Metropolitan Areas, is a new section
21 that authorizes a rural planning organization (RPO) to make
22 recommendations to the department concerning transportation
23 projects, systems, or programs that impact the area within the
24 boundaries of the RPO over the 24-year statewide long-range
25 transportation plan horizon. For an area that is outside of the

1 boundaries of both an MPO and an RPO, those long-range planning
2 recommendations will be made by the district engineer of the
3 district in which the area is located. The recommendations
4 shall include: 1) a prioritized list of mobility projects,
5 rehabilitation projects, and safety projects; and 2) for each
6 listed project, an estimate of project costs as approved by the
7 applicable district. Although the significance and number of
8 RPOs is growing around the state and the department currently
9 allows an RPO to informally participate in the statewide long-
10 range planning process, there is no existing state law or rule
11 that formally recognizes that participation.

12

13 Section 16.56, Texas Highway Trunk System, incorporates and
14 reenacts existing §15.42 relating to the criteria used by the
15 commission for choosing routes to be included in and developed
16 as a part of the rural network of four-lane or better divided
17 highways known as the Texas Highway Trunk System that serve as a
18 principal connector of all Texas cities with over 20,000
19 population as well as major ports and points of entry. Examples
20 of the eleven criteria include: maximizing the use of existing
21 four-lane divided roadways; minimizing circuitous or indirect
22 routing; connecting with principal roadways from adjacent
23 states; serving significant military or other national security
24 installations; closing gaps in the existing state highway
25 system; and providing system connectivity.

1
2 Subchapter C, Transportation Programs, incorporates the existing
3 provisions of §15.7, Transportation Improvement Program (TIP)
4 (now §16.101); and §15.8, Statewide Transportation Improvement
5 Program (STIP) (now §16.103). It adds new sections that
6 establish the structure and requirements of a Rural
7 Transportation Improvement Program (RTIP) (§16.102); provide for
8 Ten-Year Transportation Programming Recommendations for Non-
9 Metropolitan Areas (§16.104); and establish the structure and
10 requirements of a Unified Transportation Program (UTP)
11 (§16.105).

12
13 Section 16.101, Transportation Improvement Program (TIP),
14 reorganizes and incorporates most of existing §15.7. The
15 changes clarify existing provisions with primarily minor non-
16 substantive changes and remove unnecessary language. New
17 language is added to §16.101(a), (g), and (k). Those portions
18 of §15.7 that specifically relate to rural areas are removed and
19 reenacted as a new section dedicated to rural transportation
20 improvement programs in §16.102.

21
22 Existing §15.7(a), relating to the requirement of an MPO to
23 develop a transportation improvement program for the
24 metropolitan planning area containing a list of projects that
25 have been approved for development in the near term, is moved to

1 §16.101(a), Requirements, and reenacted with primarily minor
2 non-substantive changes. New language in §16.101(a) provides a
3 requirement that the list of projects must be prioritized by the
4 category of funding described in §16.153 and by project within
5 each funding category. This prioritization requirement relates
6 to a need for both the department and MPO to identify the
7 projects appropriate for selection in the unified transportation
8 program and those that might be advanced or delayed in the event
9 of a significant change in funding as provided in §16.160. New
10 language in §16.101(a) also prescribes that an approved TIP is
11 then included in the statewide transportation program, which
12 contains a listing of projects for all areas of the state that
13 are likely to be implemented in that identified four-year
14 period. This provision is added for informational purposes to
15 illustrate how the various programs are interrelated. The last
16 three sentences of existing §15.7(a) relating to a general
17 description of the process for developing a TIP were removed and
18 not reenacted because they were merely repetitive of other
19 provisions in §16.101 and elsewhere in new Chapter 16.

20
21 Existing §15.7(b)(1), relating to the MPO's obligation to
22 cooperatively develop a TIP and financial plan with the
23 department and public transportation operators, and to update
24 the TIP at least every two years, is moved to §16.101(b),
25 Development of transportation improvement program (TIP), and

1 reenacted with only minor non-substantive changes.

2

3 Existing §15.7(b)(2), relating to the department's obligation to
4 develop a TIP for all areas of the state outside of metropolitan
5 areas, is moved to §16.102(a) concerning development of the
6 Rural Transportation Improvement Program (RTIP), and reenacted
7 with only minor non-substantive changes.

8

9 Existing §15.7(c), relating to the authorized grouping by
10 function, geographic area, or work type of projects that are not
11 considered by the department and the MPO to be of appropriate
12 scale for individual identification in a given program year, is
13 moved to §16.101(c), Grouping of projects, and reenacted with
14 only minor non-substantive changes.

15

16 Existing §15.7(d), relating to the type of projects that may be
17 excluded from the TIP by agreement between the department and
18 the MPO, including certain safety projects, planning and
19 research activities and certain projects for resurfacing,
20 restoration, rehabilitation, reconstruction, or highway safety
21 improvement, is moved to §16.101(d), Projects excluded, and
22 reenacted.

23

24 Existing §15.7(e), relating to requirements that: 1) a project
25 must be consistent with the metropolitan transportation plan; 2)

1 a project must be consistent with the statewide long-range
2 transportation plan; 3) a project must conform to the Clean Air
3 Act and the state implementation plan in nonattainment and
4 maintenance areas; and 4) the MPO in each urbanized
5 nonattainment and maintenance area will be responsible for
6 preparation of the conformity determination requirements of the
7 Clean Air Act and the Environmental Protection Agency conformity
8 regulations, and the department will be responsible for
9 preparation of the same conformity determination requirements in
10 nonattainment and maintenance areas outside of metropolitan
11 planning areas, is moved to §16.101(e), Consistency and
12 conformity, and reenacted with only minor non-substantive
13 changes.

14
15 Existing §15.7(f), relating to development of a uniform TIP
16 format to produce a uniform statewide transportation improvement
17 program, is moved to §16.101(f), Format, and reenacted with only
18 minor non-substantive changes.

19
20 Existing §15.7(g), relating to the development, by an MPO in
21 cooperation with the department and public transportation
22 operators, of a financial plan that demonstrates consistency
23 with funding reasonably expected to be available during the
24 relevant period, is moved to §16.101(g), Financial plan, and
25 reenacted with primarily minor non-substantive changes. New

1 language in §16.101(g) is added to emphasize the federal
2 requirement that in nonattainment areas, the financial plan must
3 demonstrate that funding is available or committed for the first
4 two years of the TIP.

5
6 Existing §15.7(h), relating to the requirement that the TIP be
7 approved by both the MPO and the state and that the state will
8 approve the TIP if it finds that the TIP has met all federal
9 requirements and the requirements of these rules, is moved to
10 §16.101(h), Transportation improvement program (TIP) approval,
11 and reenacted with primarily minor non-substantive changes. The
12 listing in existing §15.7(h) of six specific criteria to be met
13 in developing the TIP has been replaced with new language added
14 to §16.101(h) that requires compliance with the project
15 selection criteria listed in §16.105(d) for the unified
16 transportation program. The project selection criteria listed
17 in §16.105(d) are substantially the same as the existing six
18 criteria and the change is intended to provide for a consistent
19 uniform approach to the selection of projects for all areas of
20 the state.

21
22 Existing §15.7(i), relating to the requirement that an MPO, as a
23 management tool for monitoring progress in implementation of the
24 metropolitan transportation plan, identify the criteria and
25 process for prioritizing implementation of transportation plan

1 elements for inclusion in the TIP and any changes in priorities
2 from previous TIPs, is moved to §16.101(i), Management, and
3 reenacted with only minor non-substantive changes.

4

5 Existing §15.7(j), relating to the requirement that the
6 frequency and cycle for updating the TIP must be compatible with
7 the statewide transportation improvement program development
8 process, is moved to §16.101(j), Updating, and reenacted with
9 only minor non-substantive changes.

10

11 Existing §15.7(k), relating to requirements for amending the
12 TIP, is moved to §16.101(k), Modification, and reenacted with
13 primarily minor non-substantive changes.

14

15 Under §16.101(k)(1), amendments to the TIP must be consistent
16 with the procedures established in §16.101 for development and
17 approval of the TIP and with stipulations that list when an
18 amendment is required in attainment areas, when an amendment is
19 required in nonattainment areas, and when an amendment is not
20 required. New language in §16.101(k)(1)(A)(iv) and (B)(iv) adds
21 "fourth year" in order to comply with federal regulations. New
22 language in §16.101(k)(1)(A)(v) and (B)(vi) adds the phrase "or
23 funding availability" in order to comply with federal
24 regulations. New language in §16.101(k)(1)(B)(ii) adds the
25 phrase "design concept" in order to comply with federal

1 regulations. New language in §16.101(k)(1)(C)(ii) adds the
2 clarification that an amendment is not required if the change is
3 not greater than 50 percent of the approved cost estimate and
4 the revised cost estimate is less than \$1,500,000, and the
5 change in the cost estimate is not caused by a change in the
6 project work scope or limits. This language is added to comply
7 with federal regulations.

8
9 Under §16.101(k)(2), in nonattainment and maintenance areas for
10 transportation related pollutants, a conformity determination
11 must be made on any new or amended TIPS (unless the amendment
12 consists entirely of projects exempt under §16.101(c)) in
13 accordance with Clean Air Act requirements and the Environmental
14 Protection Agency conformity regulations.

15
16 Existing §15.7(1)(1), relating to inclusion of the approved TIP
17 without modification in the statewide transportation improvement
18 program, except that in nonattainment and maintenance areas the
19 Federal Highway Administration and the Federal Transit
20 Administration must make a conformity determination before
21 inclusion, is moved to §16.101(1), Transportation improvement
22 program (TIP) relationship to statewide transportation
23 improvement program (STIP), and reenacted with only minor non-
24 substantive changes.

25

1 Existing §15.7(1)(2), relating to inclusion of the approved
2 rural TIP in the statewide transportation improvement program,
3 except in nonattainment and maintenance areas outside
4 metropolitan planning areas where federal determinations of
5 conformity must be made before inclusion, is moved to §16.102
6 Rural Transportation Improvement Program (RTIP), subsection (h),
7 Relationship to statewide transportation improvement program
8 (STIP), and reenacted with only minor non-substantive changes.

9
10 Existing §15.7(m)(1), relating to the public participation
11 process covering the development and amendment of a TIP in
12 accordance with federal regulations, is moved to §16.101(m), TIP
13 public participation, and reenacted with only minor non-
14 substantive changes.

15
16 Existing §15.7(m)(2), relating to the public participation
17 process covering the development and revisions of a rural TIP,
18 including requirements for publication in a newspaper with
19 general circulation in each county within the district of a
20 notice of the rural TIP, a public hearing, and a ten-day comment
21 period, is moved to §16.102 Rural Transportation Improvement
22 Program (RTIP), subsection (i), Rural public involvement
23 process, and reenacted with only minor non-substantive changes.

24
25 Existing §15.7(n), relating to project selection procedures from

1 an approved TIP that vary depending on whether a project
2 selected for implementation is located in a transportation
3 management area and what type of federal funding is involved, is
4 moved to §16.101(n), Project selection procedures, and reenacted
5 with only minor non-substantive changes.

6
7 Under §16.101(n)(1), the first year of both the TIP and the
8 statewide transportation improvement program (STIP) constitute
9 an agreed to list of projects, although project selection may be
10 revised if the apportioned funds are significantly more or less
11 than the authorized funds. Only projects included in the
12 federally approved STIP will be eligible for federal funding.

13
14 Under §16.101(n)(2), in an area not designated as a
15 transportation management area, the commission or the affected
16 public transportation operator, in cooperation with the MPO,
17 will select projects to be implemented using federal funds from
18 the approved TIP, other than federal lands highways program
19 projects.

20
21 Under §16.101(n)(3), in an area designated as a transportation
22 management area, an MPO, in consultation with the department and
23 public transportation operator, shall select funded projects
24 from the approved TIP and in accordance with the TIP priorities,
25 except projects on the National Highway System and projects

1 funded under the bridge, interstate maintenance, safety, and
2 federal lands highways programs. The commission, in cooperation
3 with the MPO, will select projects on the National Highway
4 System and projects funded under the bridge, interstate
5 maintenance, and safety programs.

6
7 Section 16.102, Rural Transportation Improvement Program (RTIP),
8 is a new section that incorporates and reenacts those portions
9 of existing §15.7 that specifically relate to rural areas. The
10 provisions are reorganized into a structure similar to §16.101
11 relating to development of a transportation improvement program
12 (TIP) in metropolitan planning areas.

13
14 Section 16.102(a) Development, requires the department to
15 develop a transportation improvement program for all areas of
16 the state outside of metropolitan planning areas that contain a
17 prioritized list of projects that have been approved for
18 development in the near term. Subsection (a) is a reenactment
19 of existing §15.7(b)(2) with primarily minor non-substantive
20 changes. New language in §16.102(a) provides that the RTIP will
21 be developed in cooperation with rural planning organizations
22 (RPO) and projects will be selected in accordance with federal
23 regulations and the requirements of the subchapter. This
24 addition is a continuation of the formal recognition of RPOs in
25 the planning and programming process.

1

2 Section 16.102(b) Grouping of projects, authorizes the grouping
3 by function, geographic area, or work type of projects that are
4 not considered by the department to be of appropriate scale for
5 individual identification in a given program year. This is
6 similar to the requirement for a TIP in metropolitan planning
7 areas under §16.101(c).

8

9 Section 16.102(c), Approval, provides that the commission, or
10 the executive director, if delegated by the commission, will
11 approve an RTIP if it meets all federal requirements and the
12 requirements of the subchapter.

13

14 Section 16.102(d) Updating, provides that the frequency and
15 cycle for updating an RTIP must be compatible with the statewide
16 transportation improvement program. This is similar to the
17 requirement for a TIP in metropolitan planning areas under
18 §16.101(j).

19

20 Section 16.102(e) Modification, provides that the RTIP may be
21 amended consistent with the requirements established in
22 §16.101(k).

23

24 Section 16.102(f) Relationship to the statewide long-range
25 transportation plan (SLRTP), requires that a project in the RTIP

1 must be consistent with the statewide long-range transportation
2 plan. This is similar to the requirement for a TIP in
3 metropolitan planning areas under §16.101(e).

4
5 Section 16.102(g), Relationship to the Clean Air Act (CAA) and
6 State Implementation Plan (SIP), requires that in nonattainment
7 and maintenance areas, a project selected for the RTIP must
8 conform to the CAA and SIP. This is similar to the requirement
9 for a TIP in metropolitan planning areas under §16.101(e).

10
11 Section 16.102(h), Relationship to statewide transportation
12 improvement program (STIP), provides that after approval, RTIPs
13 will be included in the STIP, except that a federal
14 determination of conformity must be made for nonattainment and
15 maintenance areas that are outside of metropolitan areas before
16 projects in that area may be included in the STIP. This is
17 similar to the requirement for a TIP in metropolitan planning
18 areas under §16.101(1).

19
20 Section 16.102(i) Rural public involvement process, requires the
21 department to develop and implement a public participation
22 process covering the development and revisions of an RTIP,
23 including requirements for publication in a newspaper with
24 general circulation in each county within the district, of a
25 notice of the RTIP, a public hearing, and a ten-day comment

1 period.

2

3 Section 16.102(j) Project selection, requires the department to
4 develop and annually reevaluate project selection procedures for
5 state projects that lie outside of metropolitan planning areas
6 in accordance with §16.103(g) relating to the statewide
7 transportation improvement program (STIP).

8

9 Section 16.103, Statewide Transportation Improvement Program
10 (STIP), incorporates most of existing §15.8. The changes
11 clarify existing provisions with primarily minor non-substantive
12 changes and remove unnecessary language. New language is added
13 to §16.103(c) - (f).

14

15 Existing §15.8(a), relating to the requirement of the state to
16 carry out a continuing, comprehensive, and intermodal statewide
17 transportation planning process, is moved to §16.103(a),
18 Purpose, and reenacted with only minor non-substantive changes.

19

20 Existing §15.8(b), relating to the requirement that the
21 department, in cooperation with metropolitan planning
22 organizations (MPO) designated for metropolitan areas and rural
23 planning organizations (RPO) designated for areas that are not
24 within the boundaries of an MPO, will develop a STIP covering a
25 period of four years for all areas of the state in accordance

1 with federal requirements, is moved to §16.103(b), Statewide
2 Transportation Improvement Program (STIP), and reenacted with
3 primarily minor non-substantive changes. New language in
4 §16.103(b) adds RPOs as entities that may formally participate
5 in the STIP process. New language in the form of subparagraph
6 (E) is added to §16.103(b)(1) to authorize exclusion of projects
7 from the STIP by agreement of the department and MPO in
8 accordance with requirements of §16.101(d) relating to the TIP.
9 This addition is necessary to make §16.103(b) consistent with
10 §16.101(d).

11
12 Existing §15.8(c), relating to the requirement that the STIP
13 reflect the priorities for programming and expenditure of funds
14 and will: 1) include a financial plan, 2) be consistent with
15 funding reasonably expected to be available during the relevant
16 period, and 3) be financially constrained by year, is moved to
17 §16.103(c), Statewide transportation improvement program (STIP)
18 funding, and reenacted with primarily minor non-substantive
19 changes. New language in §16.103(c)(2) adds the clarification
20 that the funding reasonably expected to be available during the
21 relevant period is to be determined by the unified
22 transportation program in new §16.105. This addition reinforces
23 the concept that funding expectations at all levels of the
24 planning and programming process should be the same to provide a
25 uniform, consistent, and interrelated process.

1
2 Existing §15.8(d), relating to the public involvement process
3 for development of the STIP is completely rewritten and moved to
4 §16.103(d), Statewide transportation improvement program (STIP)
5 public involvement process. Existing language only requires one
6 statewide public hearing prior to final adoption of the STIP.
7 To provide for public involvement during the development
8 process, new language in §16.103(d)(1) adds a requirement of at
9 least one publicized public meeting in each region of the state
10 to allow for the free exchange of ideas, views, and concerns
11 relating to proposed projects and priorities. The existing
12 requirement for a statewide public hearing is retained but is
13 expanded to provide for 15 days notice and a total of 30 days
14 after the publication of the notice for the public to provide
15 written comments. The same public involvement process is
16 applied to STIP amendments in §16.103(d)(2).

17
18 Existing §15.8(e), relating to the requirement that the STIP be
19 approved by the state and that the state will approve the STIP
20 if it finds that the STIP has met all the requirements of these
21 rules, is moved to §16.103(e), Statewide transportation
22 improvement program (STIP) approval, and reenacted with
23 primarily minor non-substantive changes. The listing in
24 existing §15.8(e) of six specific criteria to be met in
25 developing the STIP has been replaced with new language added to

1 §16.103(e) that requires compliance with the project selection
2 criteria listed in §16.105(d) for the unified transportation
3 program. The project selection criteria listed in §16.105(d)
4 are substantially the same as the existing six criteria and the
5 change is intended to provide for a consistent uniform approach
6 to the selection of projects for all areas of the state.

7
8 Existing §15.8(f), relating to the STIP quarterly revision cycle
9 and requirements for exceptions to the quarterly revision
10 schedule, including availability of additional funding and a
11 revision that involves a project which is expected to have a
12 significant effect on capacity, connectivity, or public safety
13 and security, is moved to §16.103(f), Statewide transportation
14 improvement program (STIP) revisions, and reenacted with
15 primarily minor non-substantive changes. New language in
16 §16.103(f)(2) adds the clarification that the request must be in
17 writing and include reasons justifying the need for the
18 exception.

19
20 Existing §15.8(g), relating to project selection from an
21 approved STIP is moved to §16.103(g), Project selection
22 procedures, and reenacted with only minor non-substantive
23 changes.

24
25 Section 16.104, Ten-Year Transportation Programming

1 Recommendations for Non-Metropolitan Areas, is a new section
2 that authorizes a rural planning organization (RPO) to make
3 recommendations to the department concerning the prioritization
4 of projects and programs in the department's unified
5 transportation program to be developed within the boundaries of
6 the RPO. For an area that is outside of the boundaries of both
7 an MPO and an RPO, the programming recommendations will be made
8 by the district engineer of the district in which the area is
9 located. The recommendations must include a prioritized list of
10 projects with input from officials of affected municipalities,
11 counties, and local transportation entities. The addition of
12 RPOs in the programming process is a continuation of the attempt
13 to formalize RPO participation.

14
15 Section 16.105, Unified Transportation Program (UTP), is a new
16 section that formalizes the department's ten-year financially
17 constrained program. The UTP includes all of the projects, or
18 phases of projects, covered in the four-year statewide
19 transportation improvement program (STIP) plus those projects,
20 or phases of projects, within the state that the department
21 anticipates can proceed to letting within the next six years. A
22 project's inclusion in the UTP also represents a commitment to
23 its continued development. Although there is no state or
24 federal law that requires development of the UTP, the department
25 has long recognized its usefulness in providing an intermediate

1 timeframe in the statewide project development process that
2 links the short-range four-year programs to the statewide long-
3 range transportation plan. Inclusion of the UTP in these rules
4 contributes to the department's effort to create a formalized
5 comprehensive transportation planning and programming process.

6
7 Section 16.105(a), General, requires the department, in
8 cooperation with metropolitan planning organizations (MPO),
9 rural planning organizations (RPO), and public transportation
10 operators to develop a UTP that covers a period of ten years to
11 guide the development and authorize construction of highway and
12 rail transportation projects and projects involving aviation,
13 public transportation, and the state's waterways. It is
14 intended that the UTP consolidate in one document the
15 anticipated project development for all modes of transportation
16 during the next ten years.

17
18 Section 16.105(b), Requirements, provides that the UTP will: 1)
19 be financially constrained and estimate funding levels and the
20 allocation of funds to each district and MPO in accordance with
21 Subchapter D of 43 TAC Chapter 16; 2) list all projects and
22 programs that the department intends to develop during the ten-
23 year program period after consideration of the statewide long-
24 range transportation plan, metropolitan transportation plans
25 (MTP), TIPS, STIP, the MPOs annual reevaluations of the MTPs and

1 TIPS, and recommendations of RPOs; and 3) be organized by
2 funding category, district, mode of transportation, and year a
3 project is scheduled for development. It is intended that the
4 department consider the plans and programs of all MPOs and RPOs
5 in development of the UTP, and organize the UTP in a manner that
6 ties project selection to funding categories to provide a
7 transparent, well defined, and understandable document.

8
9 Section 16.105(c), MPO annual reevaluation of project selection,
10 requires an MPO to annually reevaluate the status of project
11 priorities and selection in its approved MTP and TIP and provide
12 a report of any changes to the department. It is intended that
13 this reevaluation will provide the department with the most
14 current project information and enable the department to develop
15 a more realistic UTP. The annual reevaluation is necessary
16 because the MTP and TIP are not updated annually nor are they
17 necessarily on the same schedule as the UTP.

18
19 Section 16.105(d), Project selection, paragraph (1) describes
20 the criteria for project selection in the UTP that the
21 commission will consider including: the potential of the project
22 to increase safety, maintain and preserve the existing
23 transportation system, provide congestion relief, increase the
24 accessibility and mobility of the transportation system, support
25 the economic vitality of the area, and promote efficient system

1 management and operation; and adherence to all accepted
2 department design standards as well as applicable state and
3 federal law. It is intended that these criteria will be
4 applicable to the selection processes used by MPOs and RPOs to
5 provide for a consistent uniform approach to the selection of
6 projects for all areas of the state (the criteria are
7 incorporated into the transportation improvement program
8 requirements under §16.101(h)) and the state transportation
9 improvement program requirements under §16.103(e)).

10

11 Section 16.105(d), Project selection, paragraph (2) provides
12 that the commission will determine and approve the final
13 selection of projects and programs to be included in the UTP
14 except for the selection of federally funded projects by an MPO
15 serving in an area designated as a transportation management
16 area as provided for in §16.101(n). This provision is in
17 accordance with federal requirements. Selection of federally
18 funded projects by an MPO serving in an area designated as a
19 transportation management area is subject to satisfaction of the
20 project selection criteria in §16.105(d)(1), compliance with
21 federal law, and the district's and MPO's allocation of funds
22 for the applicable years. These requirements are intended to
23 provide for a consistent, uniform, and realistic approach to the
24 selection of projects for all areas of the state.

25

1 Section 16.105(e), Approval of unified transportation program
2 (UTP), provides that the commission will adopt the UTP not later
3 than March 31 of each even-numbered year. It may be updated
4 more frequently if necessary. The commission will hold a
5 hearing prior to final adoption of the UTP and any updates and
6 approval of any adjustments to the program resulting from
7 changes to the allocation of funds under §16.160 relating to
8 funding allocation adjustments.

9

10 Section 16.105(f), Program revisions, provides that a project
11 may be added to the UTP, or a project within the UTP may be
12 moved forward or delayed if the status of a listed project or
13 projects change, and if the moved or added project can be
14 developed and constructed within the district's or MPO's
15 allocated funds for the applicable year. The department, an
16 MPO, RPO, or public transportation operator may request a
17 revision and if requested, the department will, in coordination
18 with the other affected parties, determine if the revision is
19 appropriate. This subsection provides the flexibility necessary
20 to revise the UTP for individual projects based on unexpected
21 events without going through the more formal update or
22 adjustment procedures.

23

24 Section 16.105(g), Public involvement during development of the
25 unified transportation program, requires the department to

1 provide adequate opportunity for public involvement in
2 development of the UTP. The department will divide the state
3 into regions and hold at least one publicized public meeting in
4 each region to allow for the free exchange of ideas, views, and
5 concerns relating to project selection, funding categories,
6 level of funding in each category, each region's allocation of
7 funds for each year of the program, and the relative importance
8 of the various selection criteria.

9

10 Section 16.105(h), Public involvement prior to final adoption,
11 requires the department, prior to adoption of the UTP and
12 approval of any updates, to hold at least one statewide public
13 hearing on its project selection process including the UTP's
14 funding categories, level of funding in each category, each
15 region's allocation of funds for each year of the program, and
16 the relative importance of the various selection criteria. The
17 department will provide a minimum of 15 days prior notice of the
18 hearing and a total of 30 days after the date of the notice for
19 the public to provide written comments.

20

21 Section 16.105(i), Publication, requires the department to
22 publish the approved UTP, updates, and adjustments on the
23 department's website. The documents will also be available for
24 review at each of the district offices and at the department's
25 Finance Division offices in Austin.

1
2 Subchapter D, Transportation Funding, contains all new
3 provisions. It requires the department to develop mutually
4 acceptable assumptions for the purposes of long-range federal
5 and state funding forecasts in §16.151, Long-Term Planning
6 Assumptions; requires the department to issue annual cash flow
7 forecasts that are based on the above funding assumptions in
8 §16.152, Cash Flow Forecast; establishes program funding
9 categories for both highway related projects and other modes of
10 transportation in §16.153, Funding Categories; establishes
11 formulas for the allocation of funds for certain of the program
12 funding categories in §16.154, Transportation Allocation Funding
13 Formulas; exempts revenue to which Transportation Code, Chapter
14 228 applies from allocation by formula in §16.155, Surplus
15 Revenue and Contract Payments Not Allocated by Formula; places
16 limits on the commission's ability to allocate funds based on a
17 region's participation in toll projects in §16.156, Limitation
18 on Allocation of Funds; identifies the authorized uses of funds
19 allocated to a district or metropolitan planning organization
20 (MPO) in §16.157, Use of Allocated Funds; imposes an encumbrance
21 on funds allocated to a district or MPO based on the district
22 engineer's estimate of project costs in §16.158, Encumbrance of
23 Allocated Funds; establishes a procedure for the voluntary
24 transfer of allocated funds from one MPO to another in §16.159,
25 Voluntary Transfer of Allocated Funds; and establishes a

1 procedure for adjusting the allocation of funds in the event of
2 significant changes in the department's funding in §16.160,
3 Funding Allocation Adjustments. Issues of funding are critical
4 to the development of realistic financially constrained planning
5 and programming documents by MPOs and the department. It is
6 also critical that requirements for financial assumptions and
7 forecasts, as well as allocation of funding, be well-defined,
8 predictable, and applicable to all parties and regions
9 throughout the state. The sections in this chapter are based on
10 concepts described in the transportation planning article of
11 House Bill No. 300 from the Regular Session of the Texas
12 Legislature in 2009.

13
14 Section 16.151, Long-Term Planning Assumptions, provides for the
15 department to develop mutually acceptable assumptions for the
16 purposes of long-range federal and state funding forecasts and
17 development of the metropolitan transportation plans (MTP) and
18 the statewide long-range transportation plan (SLRTP) in §16.53
19 and §16.54. The department and each planning organization will
20 use the same basic funding assumptions to provide consistent and
21 realistic plans.

22
23 Section 16.151(b), Factors, describes the factors to be included
24 in the assumptions including anticipated levels of available
25 state gas tax revenues, registration fees and other state non-

1 gas tax revenues, and federal transportation funding. It also
2 may include other factors considered appropriate by the
3 commission.

4

5 Section 16.151(c), *Optional factors*, authorizes MPOs to include
6 other optional funding assumptions to be used in development of
7 a separate supplement to the MTP and its portion of the SLRTP.
8 Although all MPOs must use the basic assumptions provided by the
9 department in §16.151(b), individual MPOs may include local
10 funding options and contingent state, federal, and local funding
11 sources in the supplement to address local conditions. The
12 supplement must clearly identify and separate the basic state
13 funding forecasts developed by the department from the
14 individual MPO forecasts and describe the rationale for
15 incorporating each additional funding option and source. The
16 supplement may only contain reasonable funding assumptions and
17 the MPO must cooperate with the department in development of
18 those additional assumptions.

19

20 Section 16.152, *Cash Flow Forecast*, subsection (a), *Forecast*,
21 requires the department to issue a cash flow forecast for each
22 source of funding that covers a period of not less than 20 years
23 and based on the funding assumptions developed under §16.151.

24

25 Section 16.152(b), *Requirements*, requires that the forecast

1 identify all sources of funding, including bond proceeds,
2 available for projects involving all modes of transportation and
3 any limitations imposed by state or federal law on the use of
4 the identified source.

5
6 The remaining subsections of §16.152 provide that: the first one
7 or two years of the forecast, as appropriate must be based on
8 amounts appropriated by the legislature; the forecast will be
9 updated at least annually; the forecast and updates will be
10 available on the department's website for viewing and the
11 documents will be available for review at each district office
12 and in Austin; and the commission will use the cash flow
13 forecast to estimate funding levels for each year, determine the
14 annual amount of funding in each of the program funding
15 categories described in §16.153, and allocate funding in the
16 districts, MPOs, and other authorized entities in accordance
17 with §16.154. The cash flow forecast is critical to developing
18 realistic and predictable planning and programming documents.

19
20 Section 16.153, Funding Categories, formalizes 12 funding
21 categories for highway related projects and 4 funding categories
22 for projects involving other modes of transportation, into which
23 funds are allocated under the ten-year unified transportation
24 program (UTP) under §16.105. Although there is no state or
25 federal law that requires development of specific funding

1 categories, the department has long recognized the usefulness of
2 funding categories in providing a framework for the allocation
3 of funds. Inclusion of funding categories in these rules
4 contributes to the department's effort to create a formalized
5 structure for its programming of projects that is transparent,
6 well-defined, understandable, and predictable.

7
8 Section 16.153(a), Highway program funding categories, describes
9 the 12 program funding categories for highway related projects:
10 Category 1 Preventive Maintenance and Rehabilitation, that
11 includes minor roadway modifications on the existing state
12 highway system to improve operations and safety, and the
13 installation and maintenance of pavement, bridges, and traffic
14 devices; Category 2 Metropolitan and Urban Corridor Projects,
15 that include mobility and added capacity projects along a
16 corridor that improve transportation facilities in metropolitan
17 and urbanized areas; Category 3 Non-Traditionally Funded
18 Transportation Projects, that include projects that qualify for
19 funding from sources not traditionally part of the state highway
20 fund such as state bond financing, pass-through toll financing,
21 unique federal funding, and local participation funding;
22 Category 4 Statewide Connectivity Corridor Projects, that
23 include mobility and added capacity projects on major state
24 highway system corridors providing statewide connectivity
25 between urban areas and corridors; Category 5 Congestion

1 Mitigation and Air Quality Improvement, that includes projects
2 to address attainment of a national ambient air quality standard
3 in the nonattainment areas of the state; Category 6 Structures
4 Replacement and Rehabilitation, that includes replacement and
5 rehabilitation of deficient existing bridges, construction of
6 grade separations at highway-railroad crossings, and
7 rehabilitation of deficient railroad underpasses; Category 7
8 Metropolitan Mobility and Rehabilitation (TMA), that includes
9 transportation needs within the boundaries of designated
10 metropolitan planning areas of MPOs located in a transportation
11 management area; Category 8 Safety, that includes safety related
12 projects both on and off the state highway system; Category 9
13 Transportation Enhancement, that includes categories outlined in
14 federal law and building new safety rest areas; Category 10
15 Supplemental Transportation Projects, that include projects that
16 do not qualify for funding in other categories, such as
17 landscape, erosion control and environmental mitigation, and
18 replacement of railroad crossing surfaces; Category 11 District
19 Discretionary, that includes projects eligible for federal or
20 state funding selected at the district engineer's discretion;
21 and Category 12 Strategic Priority, that includes projects with
22 specific importance to the state including those that generally
23 promote economic opportunity, increase efficiency on military
24 deployment routes, maintain the ability to respond to
25 emergencies, and provide pass-through toll financing for local

1 communities. These categories are similar to the funding
2 categories currently being used in the department's UTP. The
3 major changes are a combination of both metropolitan and urban
4 corridor projects (previously Categories 2 and 3) into one
5 Category 2, and the addition of non-traditionally funded
6 transportation projects into Category 3.

7
8 Section 16.153(b), Program funding categories for other modes of
9 transportation and transportation infrastructure, describes the
10 four program funding categories for modes of transportation
11 other than highway related projects: Aviation Capital
12 Improvement Program, that includes projects for general aviation
13 airport development based on anticipated federal funding for
14 specific programs; Public Transportation, that includes
15 multimodal related projects based on the anticipated federal
16 funding levels for public transportation including types of bus
17 service and special transit service; Rail, that includes both
18 freight and passenger rail related projects; and State waterways
19 and coastal waters, that includes the widening, deepening, and
20 expansion of the main channel of the Gulf Intracoastal Waterway
21 and other maritime related projects.

22
23 Section 16.153(c), Determination of funding allocations,
24 provides that the commission will determine the amount of funds
25 to be allocated to each program funding category, subject to the

1 mandates of state and federal law.

2

3 Section 16.154, Transportation Allocation Funding Formulas,
4 describes specific formulas for the commission's allocation of
5 funds from seven of the program funding categories to the
6 districts and MPOs. Allocation of funds from the remaining
7 funding categories is dictated either by specific federal and
8 state law, or is at the discretion of the commission. The
9 intent is to increase predictability and transparency by
10 formalizing the allocation process.

11

12 Section 16.154(a), Formula allocations, describes the specific
13 formulas for the commission's allocation of funds from seven of
14 the program funding categories: Category 1 Preventive
15 Maintenance and Rehabilitation, to all districts; Category 2
16 Metropolitan and Urban Corridor Projects, to both MPOs operating
17 in transportation management areas (87% of Category 2 funding)
18 and MPOs operating in areas that are not transportation
19 management areas (13% of Category 2 funding); Category 4
20 Statewide Connectivity Corridor Projects, to districts; Category
21 5 Congestion Mitigation and Air Quality Improvement, to
22 districts and MPOs; Category 7 Metropolitan Mobility and
23 Rehabilitation (TMA,) to MPOs that are in transportation
24 management areas; Category 9 Transportation Enhancement, (one-
25 half of the funds in Category 9) to MPOs that are in

1 transportation management areas ; and Category 11 District
2 Discretionary, to all districts.

3
4 Section 16.154(b), Pace factor calculation, describes the
5 calculation and effect of the term "Pace factor" as it is used
6 in the formulas for Category 1.

7
8 Section 16.154(c), Non-formula allocations, authorizes the
9 commission, subject to the mandates of state and federal law, to
10 determine the amount of funding to be allocated to a district,
11 MPO, political subdivision or other eligible entity from the
12 remaining ten program funding categories: Category 3 Non-
13 Traditionally Funded Transportation Projects; Category 6
14 Structures Replacement and Rehabilitation; Category 8 Safety;
15 Category 9 Transportation Enhancement (one-half of the funds in
16 this category); Category 10 Supplemental Transportation
17 Projects; Category 12 Strategic Priority; Aviation Capital
18 Improvement Program; Public Transportation; Rail; and State
19 waterways and coastal waters. For most of these categories, the
20 allocations are determined by specific mandates of state and
21 federal law.

22
23 Section 16.154(d), Formula revisions, provides that the
24 commission will review and, if determined appropriate, revise
25 the formulas and criteria for allocation of funds at least every

1 four years.

2

3 Section 16.155, Surplus Revenue and Contract Payments Not
4 Allocated by Formula, clarifies that toll revenue governed by
5 Transportation Code, Chapter 228 must be allocated in accordance
6 with that chapter and is not considered revenue to be allocated
7 under §16.154.

8

9 Section 16.156, Limitation on Allocation of Funds, prohibits the
10 commission from imposing a requirement that a toll project be
11 included in a region's transportation plan or program as a
12 condition for the allocation of funds to the region. Subsection
13 (b) also prohibits the department and commission from revising a
14 formula in the UTP in a manner that results in a decrease of an
15 allocation to a district or MPO because of the failure of a
16 region to include toll projects in the region's plan,
17 participation by a political subdivision in the funding of a
18 project, or payments, project savings, and other revenue
19 received by the commission or the department under a
20 comprehensive development agreement and used for a project in
21 the region.

22

23 Section 16.156(b)(2) further prohibits the department and
24 commission from taking any other action that would reduce
25 funding allocated to a district or MPO without the prior consent

1 of the MPO because of the failure of a region to include toll
2 projects in the region's plan, receipt by a region of payments,
3 project savings, and other revenue received by the commission of
4 the department under a comprehensive development agreement, or
5 the need of another district or MPO for increased funding to
6 complete a pending project.

7

8 Section 16.157, Use of Allocated Funds, authorizes a district or
9 MPO to use funds allocated to it under §16.154 to pay project
10 costs, provide toll equity, or make payments under a pass-
11 through toll agreement, or fund operation costs of an MPO in
12 accordance with §16.52 relating to the unified planning work
13 program. This section clarifies the uses to which project
14 funding under the UTP can be applied and promotes
15 accountability.

16

17 Section 16.158, Encumbrance of Allocated Funds, provides that
18 the allocation of funds to a district or metropolitan planning
19 organization will be encumbered in an amount equal to the
20 estimate of the project cost and periodically adjusted to
21 reflect the bid award, any change orders that modify the bid
22 award, and the total amount paid when the project is completed.
23 This section requires that allocated funds be dedicated to the
24 selected projects and promotes accountability in the budgeting
25 process.

1
2 Section 16.159, Voluntary Transfer of Allocated Funds,
3 authorizes an MPO to voluntarily transfer funds allocated to it
4 under §16.154 to another MPO. To effect a transfer, §16.159(b)
5 requires a written agreement executed by the MPOs and approved
6 by the executive director, that includes the amount of funding
7 to be transferred and the applicable program funding category,
8 the total amount of funds to be reimbursed, the applicable
9 program funding category, the reimbursement period, the payment
10 schedule, and a description of the projects to be developed with
11 the transferred funds. Section 16.159(c) requires commission
12 approval of the transfer and sets forth the criteria by which
13 the commission will make its decision. Section 16.159(d)
14 recognizes the obligation of a recipient MPO to reimburse the
15 lending MPO and establishes a priority for that reimbursement
16 with regard to the allocation of future funding in the
17 applicable program funding category. This section recognizes
18 the need and formalizes the process for transfers of funding
19 among MPOs to meet varying financial needs around the state and
20 to prevent the possible loss of federal obligation authority or
21 apportionment in certain fiscal years when selected projects are
22 delayed.

23
24 Section 16.160, Funding Allocation Adjustments, provides a
25 formalized process for revising allocations of funds to each

1 program funding category or from the program funding categories
2 to the districts and MPOs, based on significant changes in the
3 department's funding.

4
5 Under §16.160(b), Allocation revisions, the commission may
6 revise the allocation of funds if a significant change in
7 funding is identified by the department's chief financial
8 officer in an updated cash flow forecast. The commission may
9 approve 1) a specific percentage increase or decrease in the
10 allocation of funds and, subject to the mandates of state and
11 federal law, apply the percentage change equally to each program
12 funding category; or 2) an increase or decrease in the
13 allocation of funds to one or more program funding categories
14 after considering the total amount of the change, priority of
15 the funding category based on the category's relationship to
16 stated commission goals, mandates of state and federal law, and
17 best interests of the state.

18
19 Section 16.160(c), Adjustment of programs, provides that after
20 the commission approves a change in the allocation of funds to a
21 program funding category under §16.160(b), the funds allocated
22 to individual districts and MPOs will be proportionally adjusted
23 and the UTP, STIP, and TIPS will be revised in accordance with
24 the applicable change in funding. Specific projects will be
25 advanced or delayed in the order of the planning organization's

1 and department's listed priorities in the applicable programs.

2

3 Section 16.160(d), Preference for allocation of funding
4 increases, provides that if the allocation of funds to a
5 district or MPO is reduced under §16.160(c), any subsequent
6 increase in the allocation of funds to the applicable program
7 funding category will be allocated first to the accounts of the
8 districts and MPOs that were previously reduced. This
9 subsection provides for a mechanism to ensure that there is a
10 fair distribution of future funding.

11

12 Section 16.160(e), Public involvement, requires public
13 involvement of at least one statewide public hearing and a 30
14 day comment period for a proposed change in the allocation of
15 funds to a program funding category, and §16.160(f),
16 Publication, requires publication of documents describing each
17 change in the allocation of funds on the department's website
18 and at each of the district offices and in Austin.

19

20 Subchapter E, Project and Performance Reporting, contains all
21 new provisions. It requires the department to establish an
22 overall project and performance reporting system in §16.201,
23 Project and Performance Reporting System; develop a four-year
24 business work plan for tracking the delivery of each
25 transportation project in the UTP in §16.202, Reporting System

1 for Delivery of Individual Projects; develop a set of
2 performance measures for evaluating the effectiveness of
3 department expenditures on the statewide transportation system
4 in achieving the transportation goals in §16.203, Performance
5 Reporting on the Operation and Condition of the Statewide
6 Transportation System; and develop an account information
7 reporting system for tracking money deposited to the state
8 highway fund in §16.204, Reporting System for Funding and
9 Expenditures. Section 16.205, Department Information
10 Consolidation, authorizes the department to combine reports to
11 the extent practicable to avoid duplication of reporting
12 requirements. A formalized project and performance reporting
13 system is critical to the department's efforts to provide a
14 transparent and understandable planning and programming process.
15 The sections in this subchapter are based on concepts described
16 in the transportation planning article of House Bill No. 300
17 from the Regular Session of the Texas Legislature in 2009.

18

19 Section 16.201, Project and Performance Reporting System,
20 describes the overall requirement for the department to
21 establish a project and performance reporting system to be made
22 available on the department's website. Each district is
23 required to enter information about each of its transportation
24 projects into the system.

25

1 Section 16.202, Reporting System for Delivery of Individual
2 Projects, requires the department to develop a four-year
3 business work plan for tracking the delivery of transportation
4 projects that are being developed or under construction and
5 identified in the UTP. For each project, the work plan must
6 contain an identification of each phase of project development,
7 the estimated cost of each phase of project development, a
8 project schedule with timelines, a summary of progress that
9 identifies whether the project is being completed on-time and
10 on-budget, and a list of department employees responsible for
11 the project. The department will use the work plan to prepare
12 its budget, monitor the performance of the district, and
13 evaluate the performance of district employees. Information
14 contained in the work plan will be updated at least monthly.

15
16 Under §16.202(b), the department must conduct an annual review
17 of project benchmarks and timelines and create an annual report
18 on its level of achievement statewide and by district. Section
19 16.202(c) requires the department to make copies of the annual
20 reports available to each member of the legislature and
21 §16.202(d) requires the department to provide copies to the
22 lieutenant governor, the speaker of the house of
23 representatives, and the chair of the standing committee of each
24 house of the legislature with primary jurisdiction over
25 transportation issues.

1
2 Section 16.203, Performance Reporting on the Operation and
3 Condition of the Statewide Transportation System, requires the
4 department to develop a set of performance measures for
5 evaluating the effectiveness of its expenditures on the
6 statewide transportation system in achieving the transportation
7 goals identified by the statewide long-range transportation
8 plan.

9
10 Section 16.203(b), Performance measures, describes ten
11 performance measures that are required. Examples include the
12 percentage of transportation construction projects for which
13 construction is completed on-time and on-budget; peak hour
14 travel congestion in the eight largest metropolitan areas;
15 percentage of bridges that have a condition rating of good or
16 better; dollar amounts deposited to the state highway fund and
17 disbursements from the fund compared to the amounts forecasted;
18 and percentage of lane miles on the state highway system that
19 have a pavement condition rating of good or better. The
20 department must update the information regarding performance
21 measures at least annually.

22
23 Under §16.203(e), Annual report, the department must annually
24 compile and evaluate the information provided for the
25 performance measures and publish a report describing the

1 results. Section 16.203(f) requires the department to make
2 copies of the annual reports available to each member of the
3 legislature, and §16.203(g) requires the department to provide
4 copies to the lieutenant governor, the speaker of the house of
5 representatives, and the chair of the standing committee of each
6 house of the legislature with primary jurisdiction over
7 transportation issues.

8
9 Section 16.204, Reporting System for Funding and Expenditures,
10 requires the department to develop an account information
11 reporting system for tracking money deposited to the state
12 highway fund. The account information will include the source
13 and amount of deposited funds; the amount and general type or
14 purpose of expenditure; and the balance credited to each account
15 and subaccount of the state highway fund. The account
16 information will be updated at least quarterly.

17
18 Section 16.205, Department Information Consolidation, authorizes
19 the department, to the extent practicable and to avoid
20 duplication of reporting requirements, to combine the reports
21 required by this subchapter.

22
23 **The effective date for these rules is January 1, 2011.**

24

1 COMMENTS

2 No comments on the proposed new sections were received.

3

4 STATUTORY AUTHORITY

5 The new sections are adopted under Transportation Code,
6 §201.101, which provides the Texas Transportation Commission
7 with the authority to establish rules for the conduct of the
8 work of the department.

9

10 CROSS REFERENCE TO STATUTE

11 Transportation Code, §§201.601, 201.602, 201.608, 201.609,
12 201.616, 201.805, and 201.806.

1 SUBCHAPTER A. GENERAL PROVISIONS

2 §16.1. Purpose. It is in the interest of the State of Texas to
3 encourage and promote the safe and efficient management,
4 operation, and development of transportation systems that will
5 serve the mobility needs of people and movement of freight, and
6 foster economic growth and development in both rural and
7 urbanized areas of the state, while minimizing transportation
8 related air pollution. These goals can be advanced through a
9 continuing, cooperative, and comprehensive transportation
10 planning process that includes the state, metropolitan, rural,
11 rail, and public transportation organizations, and promotes
12 plans, programs, and policies that consider all transportation
13 modes and support community development and social goals. This
14 chapter prescribes minimum standards for metropolitan and rural
15 transportation planning and program development, describes how
16 the state and planning organizations will develop coordinated
17 transportation planning processes, plans, and programs, and
18 ensures the eligibility of the state to continue to receive
19 federal transportation funds. The ultimate goal is to establish
20 a transparent, well-defined, and understandable system of
21 planning and programming that integrates priorities, financial
22 forecasts, and project milestones.

23

1 §16.2. Definitions and Acronyms.

2 (a) The following words and terms, when used in this
3 chapter, shall have the following meanings, unless the context
4 clearly indicates otherwise.

5 (1) Clean Air Act (CAA)--The Clean Air Act of 1970 and
6 Amendments of 1990 (42 U.S.C. §7401 et seq.), including
7 procedures that apply to all transportation plans, programs, and
8 projects as they relate to air quality.

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

10 (3) Conformity--Clean Air Act requirements that ensure
11 that federal funding and approval are given to transportation
12 plans, programs, and projects that are consistent with the air
13 quality goals established by the State Implementation Plan.

14 (4) Corridor--A broad geographic band with no predefined
15 size or scale that follows a general directional flow, providing
16 for the movement of people and freight and connecting major
17 sources of transportation trips. It involves a nominally linear
18 transportation service area that may contain a number of
19 streets, highways, rail, utility, and public transportation
20 route alignments.

21 (5) Department--The Texas Department of Transportation.

22 (6) District--One of the geographic areas into which the
23 department is divided in order to conduct its primary work

1 activities.

2 (7) District engineer--The chief administrative officer
3 in charge of a district, or that officer's designee.

4 (8) Environmental Protection Agency (EPA)--The agency of
5 the federal government with broad responsibilities for
6 environmental protection and enforcement, including air quality,
7 as it relates to this chapter.

8 (9) Executive director--The executive director of the
9 department or the executive director's designee.

10 (10) Federal discretionary programs--Programs that
11 provide the U.S. Department of Transportation with discretion to
12 award funds for specific projects outside of the normal
13 transportation fund formulas. The U.S. Congress may designate
14 the projects that are eligible for discretionary program funds
15 and the scope of discretion may vary depending on the applicable
16 statutory provisions.

17 (11) Federal Highway Administration (FHWA)--The federal
18 agency primarily responsible for highway transportation.

19 (12) Federal Transit Administration (FTA)--The federal
20 agency primarily responsible for public transportation.

21 (13) Governor--The governor of the State of Texas.

22 (14) Letting--The official act of opening contractors'
23 bids for a proposed highway improvement contract to construct,

1 reconstruct, or maintain a segment of the state highway system,
2 or to construct or maintain a building or other facility
3 appurtenant to a building.

4 (15) Local transportation entity--An entity that
5 participates in the transportation planning process. The term
6 includes but is not limited to:

7 (A) a metropolitan planning organization;

8 (B) a rural planning organization;

9 (C) a regional tollway authority organized under
10 Transportation Code, Chapter 366;

11 (D) a regional transportation authority operating under
12 Transportation Code, Chapter 452;

13 (E) a metropolitan rapid transit authority operating
14 under Transportation Code, Chapter 451;

15 (F) a rural transit district as defined by
16 Transportation Code, §458.001;

17 (G) a coordinated county transportation authority
18 operating under Transportation Code, Chapter 460;

19 (H) a rural rail transportation district operating
20 under Transportation Code, Chapter 172; and

21 (I) a commuter rail district operating under
22 Transportation Code, Chapter 174.

23 (16) Metropolitan planning organization (MPO)--The

1 organization or policy board of an organization created and
2 designated under 23 U.S.C. §134 and 49 U.S.C. §5303, as amended,
3 to make transportation planning decisions for the metropolitan
4 planning area and carry out the metropolitan transportation
5 planning process.

6 (17) Mexican ports of entry--Connections between Mexico
7 and the State of Texas at international bridge crossings of
8 5,000 vehicles or more average daily traffic.

9 (18) Mobility projects--Transportation projects that add
10 additional mainlanes to an existing highway facility or
11 construct lanes on a new location and have a length of at least
12 one mile, or any projects that otherwise improve transportation
13 facilities for highways, public transportation, or other modes
14 of transportation to decrease travel time and the level or
15 duration of traffic congestion, and to increase the safe and
16 efficient movement of people and freight.

17 (19) On-system--The system of highways in the state
18 included in a comprehensive plan prepared by the department's
19 executive director under the direction and with the approval of
20 the commission in accordance with Transportation Code, §201.103.

21 (20) Planning organization--A metropolitan planning
22 organization, a rural planning organization, or, for an area
23 that is not in the boundaries of a metropolitan planning

1 organization or a rural planning organization, a district.

2 (21) Public transportation--Transportation of passengers
3 and their hand carried packages or baggage on a regular or
4 continuing basis by means of surface or water conveyance by a
5 public or private entity that receives financial assistance from
6 the Federal Highway Administration, the Federal Transit
7 Administration, the department, or a local political
8 subdivision.

9 (22) Routes--All or a portion of a selected course of
10 travel between two specific geographic locations.

11 (23) Rural planning organization (RPO)--A voluntary
12 organization created and governed by local elected officials
13 with responsibility for transportation decisions at the local
14 level, including an organization established by a council of
15 governments or regional planning commission designated by the
16 governor pursuant to Local Government Code, Chapter 391, to
17 address rural transportation priorities and planning and provide
18 recommendations to the department for areas of the state not
19 included in the boundaries of a metropolitan planning
20 organization.

21 (24) Rural transportation improvement program (RTIP)--A
22 staged, multiyear, intermodal program of transportation projects
23 and public transportation projects developed by the department,

1 in consultation with local officials, for areas of the state
2 outside of the metropolitan planning area boundaries. The RTIP
3 includes a financially constrained plan that demonstrates how
4 the program can be implemented.

5 (25) State Implementation Plan (SIP)--The latest approved
6 version of the state adopted plan promulgated for each
7 nonattainment or maintenance area to achieve or maintain
8 compliance with the national ambient air quality standards
9 required by the federal Clean Air Act.

10 (26) Subarea--A geographic area with no predefined size
11 or scale that is located within the boundaries of a designated
12 metropolitan planning area.

13 (27) Surface Transportation Program (STP)--The funding
14 program established by 23 U.S.C. §133.

15 (28) Texas Commission on Environmental Quality (TCEQ)--
16 The state agency responsible for coordination of natural
17 resources and air quality for the state, including development
18 of the State Implementation Plan.

19 (29) Texas Highway Trunk System--A rural network of four-
20 lane or better divided roadways that will serve as a principal
21 connector of all Texas cities with over 20,000 population as
22 well as major ports and points of entry, not to exceed a total
23 system mileage of 11,500 miles.

1 (30) Transportation control measure (TCM)--Any measure
2 used for the purpose of reducing emissions or concentrations of
3 air pollutants from transportation sources by reducing vehicle
4 use or changing traffic flow or congestion conditions.

5 (31) Transportation management area (TMA)--An urbanized
6 area with a population over 200,000 as defined by the U.S.
7 Bureau of the Census and designated by the U.S. Secretary of
8 Transportation, or any additional area where transportation
9 management area designation is requested by the governor and the
10 metropolitan planning organization and designated by the U.S.
11 Secretary of Transportation.

12 (32) Transportation project--The planning, engineering,
13 right of way acquisition, expansion, improvement, addition, or
14 contract maintenance, other than the routine or contracted
15 routine maintenance of a bridge, highway, toll road or toll road
16 system, or railroad, enhancement of a roadway that increases the
17 safety of the traveling public, air quality improvement
18 initiative, or transportation enhancement activity under 23
19 U.S.C. §101.

20 (33) Unified Planning Work Program (UPWP)--The governing
21 planning document, prepared by an MPO on an annual or bi-annual
22 basis, which identifies the transportation planning work to be
23 undertaken within the metropolitan planning area for the

1 applicable period.

2 (b) Acronyms. The following acronyms, when used in this
3 chapter, are abbreviations for the associated terms. If an
4 associated term is not defined under subsection (a) of this
5 section, a reference is provided to the section in this chapter
6 in which the term is primarily described.

7 (1) CAA--Clean Air Act.

8 (2) EPA--Environmental Protection Agency.

9 (3) FHWA--Federal Highway Administration.

10 (4) FTA--Federal Transit Administration.

11 (5) MPO--Metropolitan planning organization.

12 (6) MTP--Metropolitan transportation plan, as described
13 in §16.53 of this chapter (relating to Metropolitan
14 Transportation Plan).

15 (7) RPO--Rural planning organization.

16 (8) RTIP--Rural transportation improvement program.

17 (9) SIP--State implementation plan.

18 (10) SLRTP--Statewide long-range transportation plan, as
19 described in §16.54 of this chapter (relating to Statewide Long-
20 Range Transportation Plan).

21 (11) STIP--Statewide transportation improvement program,
22 as described in §16.103 of this chapter (relating to Statewide
23 Transportation Improvement Program).

1 (12) STP--Surface transportation program.

2 (13) TCEQ--Texas Commission on Environmental Quality.

3 (14) TCM--Transportation control measure.

4 (15) TIP--Transportation improvement program, as

5 described in §16.101 of this chapter (relating to Transportation
6 Improvement Program).

7 (16) TMA--Transportation management area.

8 (17) UPWP--Unified planning work program.

9 (18) UTP--Unified transportation program, as described in
10 §16.105 of this chapter (relating to Unified Transportation
11 Program).

12

13 §16.3. Applicability of Chapter; Effect of Conflict with Other
14 Law.

15 (a) Applicability. The provisions of this chapter apply to
16 the department, all metropolitan planning organizations serving
17 urbanized areas as defined by the U.S. Bureau of the Census with
18 populations of at least 50,000, as well as rural planning
19 organizations and appropriate federally-funded public
20 transportation operators as defined by 23 C.F.R. Part 450.

21 (b) Relationship to federal law and regulations. This
22 chapter incorporates by reference federal transportation
23 planning laws and regulations. If a provision of this chapter

1 conflicts with federal law or regulation, the federal law
2 controls to the extent of the conflict.

3

4 §16.4. Introduction.

5 (a) Explanation of process. An effective transportation
6 planning and programming process requires continuous cooperation
7 among many state, local, and federal transportation entities and
8 the integration of numerous requirements imposed by state and
9 federal law. It is a multi-step process that is more dynamic
10 than static and more circular than linear. The process includes
11 development by the department, metropolitan planning
12 organizations (MPO), and rural planning organizations (RPO) of
13 separate but interrelated long-range planning documents that
14 identify projects, strategies, and transportation needs, mid-
15 range programming documents that contain a listing of
16 prioritized projects expected to be ready for implementation in
17 identified future years, and short-range programming documents
18 that contain a listing of prioritized projects that are likely
19 to be implemented. Underlying the planning and programming
20 process is the need to develop reliable financial assumptions
21 and forecasts for common use by all participants at all levels
22 of the process. Finally, there is the allocation of available
23 state and federal resources by the department and MPOs to fund

1 individual projects that will address the long-range needs and
2 goals. Strategic performance measures are used to monitor and
3 evaluate the effectiveness of the process and its participants
4 and to identify areas that need improvement.

5 (b) Document overview. The planning and programming
6 process involves a number of documents that have similar names
7 and overlapping functions.

8 (1) In this chapter, unless the context indicates
9 otherwise, the words plan or planning refer to documents that
10 identify projects, strategies, and transportation needs over an
11 extended period of years to provide for the ultimate development
12 and implementation of an integrated multimodal transportation
13 system. Long-range planning documents include the:

14 (A) statewide long-range transportation plan (SLRTP);
15 and

16 (B) metropolitan transportation plan (MTP).

17 (2) In this chapter, unless the context indicates
18 otherwise, the words program or programming refer to that part
19 of the transportation planning process that identifies a
20 prioritized list of transportation projects proposed for
21 implementation in a specified number of years in the foreseeable
22 future with funding that is reasonably anticipated to be
23 available at the designated time. Programming documents include

1 the:

2 (A) ten-year statewide unified transportation program

3 (UTP);

4 (B) four-year metropolitan transportation improvement

5 program (TIP);

6 (C) four-year rural transportation improvement program

7 (RTIP); and

8 (D) four-year statewide transportation improvement

9 program (STIP).

10 (3) The planning and programming documents are more
11 particularly described in subsections (c) - (e) of this section.

12 (c) Long-range planning documents.

13 (1) The statewide long-range transportation plan (SLRTP)
14 is a comprehensive, statewide multimodal transportation plan
15 that covers a period of at least 24 years and serves as the
16 defining vision for the state's transportation system and
17 services. It is comprised of two components: a priority based
18 listing of projects that are expected to be developed within the
19 financial constraint of forecasted state and federal funding
20 levels, and a non-financially constrained component that
21 identifies projects, strategies, and other needs that could be
22 developed if additional funding resources become available. The
23 SLRTP considers the long-range plans and strategies of the

1 metropolitan and rural planning organizations and identifies the
2 state's transportation goals, measurable targets, and priority
3 projects and corridors.

4 (2) A metropolitan transportation plan (MTP) is a long-
5 range plan developed by each MPO for areas within its
6 boundaries, that covers a period of at least 20 years and
7 contains a priority based listing of projects for long-range,
8 mid-range, and short-range strategies that are expected to be
9 developed within the financial constraint of forecasted state,
10 federal, and local funding levels. The funding levels are
11 estimated in cooperation with the department. The first four
12 years of the MTP will be developed to comply with federally
13 mandated transportation improvement program (TIP) and statewide
14 transportation improvement program (STIP) requirements and to
15 identify those projects that have a high probability of
16 implementation during the four-year period.

17 (d) Mid-range programming document. The unified
18 transportation program (UTP) is a ten-year financially
19 constrained program developed by the department that represents
20 an intermediate timeframe in the statewide project development
21 process. The UTP includes all of the projects, or phases of
22 projects, covered in the four-year statewide transportation
23 improvement program (STIP) plus those projects, or phases of

1 projects, within the state that the department anticipates can
2 proceed to letting within the next six years. A project's
3 inclusion in the UTP also represents a commitment to its
4 continued development.

5 (e) Short-range programming documents.

6 (1) A transportation improvement program (TIP) is a
7 short-range program developed by each MPO in cooperation with
8 the department and with public transportation operators as
9 defined by 23 C.F.R. Part 450 that covers a four-year period and
10 contains a prioritized listing of all projects proposed for
11 federal funding and regionally significant projects proposed for
12 state, federal, and local funding in a metropolitan area.
13 Projects may include planning, engineering, design, right of way
14 acquisition, and construction. The TIP also contains an
15 estimate of available state, federal, and local funding and the
16 estimated project expenditures. A project's inclusion in the
17 TIP and statewide transportation improvement program (STIP)
18 generally represents a commitment that it is programmed for
19 implementation in the near term.

20 (2) A rural transportation improvement program (RTIP) is
21 a short-range program developed by the department in cooperation
22 with rural planning organizations (RPO) that covers a four-year
23 period and contains a prioritized listing of all projects

1 proposed for federal funding and regionally significant projects
2 proposed for state, federal, and local funding in all areas of
3 the state outside of metropolitan planning areas. Projects may
4 include planning, engineering, design, right of way acquisition,
5 and construction. The RTIP also contains an estimate of
6 available state, federal, and local funding and the estimated
7 project expenditures. A project's inclusion in the RTIP and
8 statewide transportation improvement program (STIP) generally
9 represents a commitment that it is programmed for implementation
10 in the near term.

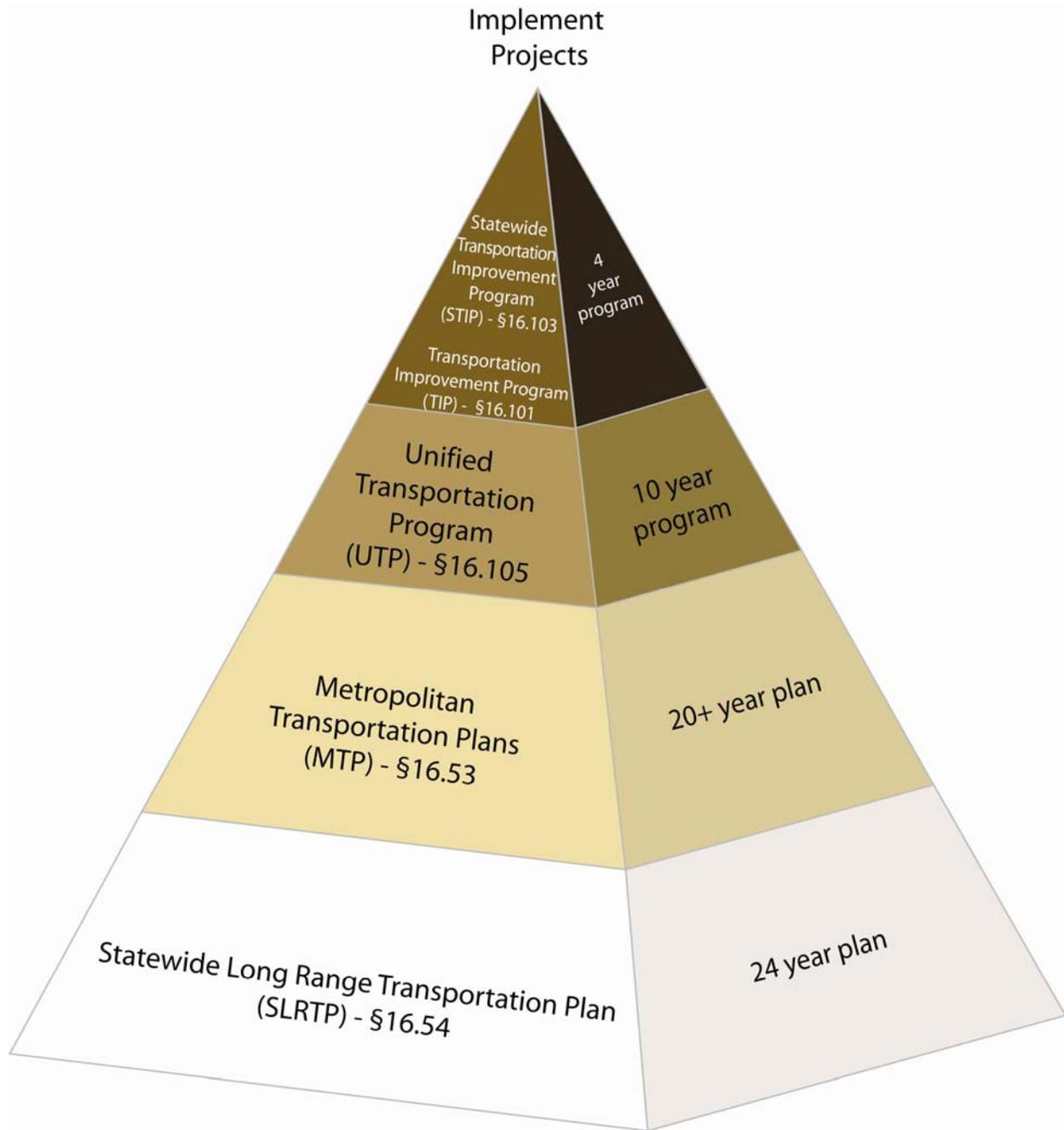
11 (3) A statewide transportation improvement program (STIP)
12 is a four-year short-range program developed by the department
13 as a compilation of all metropolitan transportation improvement
14 programs (TIP), together with rural transportation improvement
15 programs (RTIP), that include recommendations from RPOs and
16 department districts for the areas of the state that are outside
17 of the boundaries of an MPO, including transportation between
18 cities. The STIP identifies a list of projects to be
19 implemented statewide with reasonably available funds over a
20 multi-year period. The first year of the STIP contains projects
21 that are scheduled for letting of construction contracts by the
22 project sponsor. The remaining three years identify projects
23 and funding sources that also have a high probability of

1 implementation. In addition, in nonattainment and maintenance
2 areas, funding for projects in the first and second years of the
3 STIP must be available or committed.

4 (f) Flow chart. A graphic flow chart and description of
5 the documents, interactions, and time frames involved in the
6 planning and programming process is shown in the following
7 figure.

8

Figure: §16.4(f)



1 (g) Limits of section. This section and the flow chart
2 designated Figure §16.4(f) are for illustrative purposes only
3 and shall not be construed or interpreted to abridge, enlarge,
4 modify, or otherwise change the responsibilities, requirements,
5 and procedures described in this chapter.

1 SUBCHAPTER B. TRANSPORTATION PLANNING

2 §16.51. Responsibilities of Metropolitan Planning Organizations
3 (MPO).

4 (a) General. Pursuant to 23 U.S.C. §134 and 49 U.S.C.
5 §5303, as implemented by 23 C.F.R. Part 450, the metropolitan
6 planning organization (MPO), in cooperation with the department
7 and with public transportation operators as defined by 23 C.F.R.
8 Part 450, shall be responsible for carrying out the metropolitan
9 transportation planning process. The MPO, department, and
10 public transportation operators shall cooperatively determine
11 their mutual responsibilities in the conduct of the planning
12 process, including corridor refinement (e.g., feasibility and
13 major investment) studies. They shall cooperatively develop the
14 unified planning work program (UPWP), metropolitan
15 transportation plan (MTP) containing a long-range forecast of
16 proposed projects and transportation improvement program (TIP)
17 containing a list of projects that have been approved for
18 development in the near-term. The MPO, department, and public
19 transportation operators shall coordinate the development of the
20 MTP and TIP with other providers of transportation, such as 14
21 C.F.R. Part 139 airport sponsors, maritime port operators, and
22 rail operators. All transportation plans and programs developed
23 by the MPO as part of the planning process must comply with

1 federal requirements and provide for public involvement.

2 (b) Membership of MPOs. According to 23 C.F.R. Part 450,
3 each MPO that serves a transportation management area shall
4 consist of local elected officials, officials of public agencies
5 that administer or operate major modes of transportation in the
6 metropolitan planning area, and appropriate state transportation
7 officials.

8 (c) Approval of boundaries. The governor or the
9 commission, if the approval authority has been delegated to the
10 commission, must approve the boundaries of a designated
11 metropolitan planning area and any revision of those boundaries.
12 Approval of the boundaries of a designated metropolitan planning
13 area by the Federal Highway Administration (FHWA) or the Federal
14 Transit Administration (FTA) is not required. The MPO must
15 provide the governor and the department with appropriate
16 documentation and the rationale supporting any recommended
17 boundary change. The MPO must provide its approved metropolitan
18 planning area boundary maps to the department for submission to
19 the FHWA, FTA, and other applicable federal agencies.

20 (d) Metropolitan planning area agreements.

21 (1) Planning contract. The responsibilities for
22 cooperatively carrying out transportation planning (including
23 corridor and subarea studies) and programming shall be clearly

1 identified in a planning contract between the department and the
2 MPO.

3 (2) MPO-public transportation operator planning
4 agreement. There shall be a written agreement between the MPO,
5 the department, and public transportation operators as defined
6 by 23 C.F.R. Part 450 that specifies cooperative procedures for
7 carrying out transportation planning (including corridor and
8 subarea studies) and programming as required by this subchapter.

9 (3) Agreements in nonattainment MPOs. If the
10 metropolitan planning area includes part but not all of a
11 nonattainment or maintenance area, as defined by the federal
12 Clean Air Act (CAA), there shall be a written agreement among
13 the department, the Texas Commission on Environmental Quality
14 (TCEQ), affected local agencies, and the MPO describing the
15 process for cooperative planning and analysis of all projects
16 outside the metropolitan planning area, but within the
17 nonattainment or maintenance area. The agreement shall be in
18 accordance with federal requirements.

19 (4) Coordination of planning processes. If more than one
20 MPO has authority within an urbanized area or a nonattainment or
21 maintenance area, there shall be a written agreement between the
22 department and the MPOs describing how the processes will be
23 coordinated to assure the development of an overall

1 transportation plan for that area. The TCEQ and any local air
2 quality agencies must also be parties to an agreement that
3 relates to a nonattainment or maintenance area.

4 (e) Coordination with state implementation plan (SIP)
5 development. In nonattainment or maintenance areas, the MPO
6 shall coordinate the development of the transportation plan with
7 the state implementation plan (SIP) development process,
8 including the development of any transportation control measures
9 (TCMs). The MPO shall develop or assist in developing the TCMs,
10 which may include any measure used for the purpose of reducing
11 emissions or concentrations of air pollutants from
12 transportation sources by reducing vehicle use or changing
13 traffic flow or congestion conditions. The MPO shall not
14 approve any metropolitan transportation plan or transportation
15 improvement program which does not conform with the SIP, as
16 determined in accordance with Environmental Protection Agency
17 (EPA) conformity regulations.

18 (f) Metropolitan planning in areas with multiple MPOs. If
19 more than one MPO has authority in a metropolitan planning area
20 (including multistate metropolitan planning areas) or in an area
21 which is designated as nonattainment or maintenance for
22 transportation related pollutants, the MPOs, the governor, and
23 the governor's counterpart in any other involved state shall

1 cooperatively establish the boundaries of the metropolitan
2 planning area (including the 20-year planning horizon and
3 relationship to the nonattainment or maintenance areas) and the
4 respective jurisdictional responsibilities of each MPO. The
5 MPOs shall consult with each other and the states to assure the
6 preparation of integrated plans and transportation improvement
7 programs for the entire metropolitan planning area. While an
8 individual MPO's metropolitan transportation plan and
9 transportation improvement program may be developed separately,
10 each plan and transportation improvement program must be
11 consistent with the plans and transportation improvement
12 programs of other MPOs in the metropolitan planning area. For
13 the overall metropolitan planning area, the individual MPO
14 planning process shall reflect coordinated data collection,
15 analysis, and development. In those areas where this provision
16 is applicable, coordination efforts shall be initiated and the
17 process and outcomes documented in subsequent transmittals of
18 the unified planning work program and various planning products
19 (e.g., the metropolitan transportation plan and transportation
20 improvement program) to the department for further transmittal
21 to the FHWA, FTA, and other applicable federal agencies.

22

23 §16.52. Unified Planning Work Program (UPWP).

1 (a) Planning activities. Under 23 C.F.R. Part 450, an MPO
2 is required to document planning activities in a unified
3 planning work program (UPWP) to indicate who will perform the
4 work, the schedule for completing it, and all products that will
5 be produced. The department is responsible for assisting in the
6 development of the UPWP, approving the format of work programs
7 submitted by metropolitan planning organizations (MPOs), and,
8 where required by federal law or regulation, monitoring an MPO's
9 performance of activities and expenditure of funds under a UPWP.
10 Where monitoring is not required, the department is responsible
11 for reviewing an MPO's activities and expenditure of funds, and
12 will comment on and make suggestions relating to those
13 activities and expenditures.

14 (1) Requirements. An MPO, in cooperation with the
15 department and public transportation operators as defined by 23
16 C.F.R. Part 450, must annually or bi-annually develop a UPWP
17 that meets federal requirements.

18 (2) UPWP development. The department will develop a time
19 line for development of the UPWP by the MPOs. Failure to adhere
20 to the time line may result in a delay in the authorization to
21 the MPOs to proceed in incurring costs.

22 (3) UPWP format. The department, in consultation with
23 the MPOs, shall develop a standard UPWP format to be used by all

1 MPOs. UPWPs submitted in a different format will not be
2 approved.

3 (4) UPWP approval and revisions. The MPO policy board
4 must approve the UPWP and any subsequent revisions, and shall
5 not delegate the approval authority.

6 (5) Annual performance and expenditure report. To allow
7 the department to monitor work programs, the MPOs shall prepare
8 and submit to the department an annual performance and
9 expenditure report of progress no later than December 31 of each
10 year. A uniform format for the annual report will be
11 established by the department, in consultation with the MPOs.

12 (b) Funding. Federal transportation planning funds are
13 available to MPOs to develop the metropolitan transportation
14 plans and transportation improvement programs required by this
15 subchapter. Under 23 C.F.R. Part 420, the use of federal
16 planning funds must be documented by the MPO in a work program
17 acceptable to the FHWA setting out proposed work undertaken with
18 federal planning funds and the estimated cost of this work. A
19 work program acceptable to the FTA and other applicable federal
20 agencies is required for planning activities involving public
21 transportation plans and programs.

22 (1) Requirements. The UPWP shall reflect transportation
23 planning work tasks to be funded by federal, state, or local

1 transportation, or transportation related (e.g. air quality)
2 planning funds.

3 (2) Planning work eligibility. The use of federal
4 metropolitan transportation planning funds shall be limited to
5 transportation planning activities affecting the transportation
6 system within the boundaries of a designated metropolitan
7 planning area. If an MPO determines that data collection and
8 analysis activities relating to land use, demographics, or
9 traffic or travel information, conducted outside its boundaries,
10 affects the transportation system within its boundaries, then
11 those activities may be undertaken using federal planning funds,
12 if the activities are specifically identified in an approved
13 UPWP. Any other costs incurred for transportation planning
14 activities outside the boundaries of a designated metropolitan
15 planning area are not eligible for reimbursement.

16 (3) Authorization for travel outside the state. The
17 department will approve proposed travel outside the State of
18 Texas by MPO staff and other agencies participating in the MPO
19 planning process if the travel is funded with federal
20 transportation planning funds. The MPO must receive approval
21 prior to incurring any costs associated with the actual travel
22 (e.g., registration fee). This provision will not apply if the
23 travel is at the request of the department. Travel to the State

1 of Arkansas by the Texarkana MPO staff and travel to the State
2 of New Mexico by the El Paso MPO staff shall be considered in-
3 state travel.

4 (4) Reimbursement of travel costs of elected officials.
5 The cost of travel incurred by elected officials serving on an
6 MPO policy board is eligible for reimbursement with federal
7 transportation planning funds if the costs are:

8 (A) specifically related to a federal award, including
9 a grant, cost reimbursement contract, or other agreement between
10 a state, local, or Indian tribal government and the federal
11 government;

12 (B) necessary and reasonable for the proper and
13 efficient performance and administration of the federal award;

14 (C) not prohibited under:

15 (i) federal lobbying restrictions; or

16 (ii) state or local laws or regulations; and

17 (D) approved by the awarding federal agency prior to
18 incurring any costs associated with the actual travel.

19 (5) Funding limitations. The use of federal
20 transportation planning funds is limited to corridor/subarea
21 level planning or multimodal or systemwide transit planning
22 studies. Major investment studies and environmental studies are
23 considered corridor level planning. Unless otherwise authorized

1 by federal law or regulation, the use of such funds beyond
2 environmental document preparation or for specific project level
3 planning and engineering (efforts directly related to a specific
4 project instead of a corridor) is not allowed.

5 (6) Department approval of costs. The MPO shall not
6 incur any costs for work outlined in the UPWP or any subsequent
7 amendments (i.e., adding new work tasks or changing the scope of
8 existing work tasks) prior to receiving approval from the
9 department. Any costs incurred prior to receiving department
10 approval are not eligible for reimbursement from federal
11 transportation planning funds.

12 (7) Expenditure limitations. Costs incurred by the MPO
13 shall not exceed the total budgeted amount of the UPWP without
14 prior approval of the MPO policy board and the department.
15 Costs incurred on individual work tasks shall not exceed that
16 task budget by 25 percent without prior approval of the MPO
17 policy board and the department. If the costs exceed 25 percent
18 of the task budget, the UPWP shall be revised, approved by the
19 MPO policy board, and submitted to the department for approval.

20 (8) Distribution of funds. The department will make
21 available to MPOs all federal metropolitan planning funds and
22 provide the required non-federal match as authorized by the
23 commission. The department will distribute federal

1 transportation planning funds to the MPOs based on a formula
2 developed by the department, in consultation with the MPOs, and
3 approved by FHWA, FTA, and other applicable federal agencies.
4

5 §16.53. Metropolitan Transportation Plan (MTP).

6 (a) Requirements. Pursuant to 23 C.F.R. Part 450, each
7 metropolitan planning organization (MPO) shall develop a
8 metropolitan transportation plan (MTP) to address at least a 20-
9 year planning horizon and include both long-range and short-
10 range strategies or actions that lead to the development of an
11 integrated intermodal transportation system that facilitates the
12 efficient movement of people and freight. The MTP is
13 cooperatively developed by the MPO, the department, and public
14 transportation operators as defined by 23 C.F.R. Part 450. The
15 MTP must be based on the funding assumptions and forecasts set
16 forth in §16.151 and §16.152 of this chapter (relating to Long-
17 Term Planning Assumptions and Cash Flow Forecast, respectively).

18 (b) Development. Development of a metropolitan
19 transportation plan (MTP) shall be conducted in accordance with
20 federal regulations. Each project in the MTP shall be assigned
21 a unique project number.

22 (c) Approval. Each metropolitan transportation plan must
23 be approved by the applicable MPO. Prior to any approval, there

1 must be adequate opportunity for public involvement in the
2 development of the plan, in accordance with federal regulations.

3 (d) Submission of new and revised plans. Copies of any new
4 or revised MTPs must be submitted to the governor, or to the
5 department if the governor delegates this authority to the
6 commission, for information purposes. Copies must also be
7 provided to the FHWA, FTA, and other applicable federal
8 agencies.

9 (e) MTP public participation. Each MPO will develop a
10 public participation process covering the development of an MTP
11 in accordance with federal regulations. The MPOs shall also use
12 the same process in amending the MTP.

13

14 §16.54. Statewide Long-Range Transportation Plan (SLRTP).

15 (a) General. In compliance with Title 23 U.S.C. §135, as
16 implemented by 23 C.F.R. Part 450 and Transportation Code,
17 Chapter 201, Subchapter H, the department will develop a
18 statewide long-range transportation plan (SLRTP) covering a
19 period of not less than 24 years that provides for the
20 development and implementation of a transportation system and
21 contains all modes of transportation, including:

22 (1) the systems and facilities for highways and
23 turnpikes, aviation, public transportation, railroads and high-

1 speed railroads, waterways, pedestrian walkways, and bicycle
2 transportation facilities; and

3 (2) the transportation users of each type of
4 transportation facility.

5 (b) Requirements. The plan must:

6 (1) contain specific, long-term transportation goals for
7 the state, including maintenance of the existing transportation
8 system, reduction of congestion throughout the state,
9 enhancement of safety, and promotion of economic development;

10 (2) contain specific, measurable targets for each
11 transportation goal;

12 (3) consider the projects and strategies adopted by each
13 metropolitan planning organization and rural planning
14 organization in the organization's long-range plans;

15 (4) identify priority corridors, projects, or areas of
16 the state that are of particular concern to the department in
17 meeting the goals established under paragraph (1) of this
18 subsection; and

19 (5) contain a participation plan for obtaining input on
20 the goals, measurable targets, projects, and priorities under
21 this section from other state agencies, political subdivisions,
22 metropolitan planning organizations, rural planning
23 organizations, local transportation entities, other officials

1 who have local responsibility for the various modes of
2 transportation, and members of the general public.

3 (c) Financial considerations. The plan must include:

4 (1) a component that is financially constrained and
5 identifies proposed projects and strategies; and

6 (2) a component that is not financially constrained and
7 identifies corridors, projects, strategies, and other needs in
8 various areas of the state including transportation improvements
9 designed to relieve congestion.

10 (d) Updates. The department will update the plan every
11 four years or more frequently as necessary.

12 (e) Public involvement during development of the SLRTP.

13 (1) The department will provide adequate opportunity for
14 public involvement in development of the SLRTP.

15 (2) The department will divide the state into regions and
16 hold at least one public meeting in each region during
17 development of the SLRTP and each update of the plan. The
18 public meetings will be held as early as the department
19 determines is feasible to assure public input into the planning
20 process. The department will publish notice of each public
21 meeting as appropriate to maximize attendance at the meeting.

22 (3) The department will report its progress on the plan
23 to participants at the meeting and provide a free exchange of

1 ideas, views, and concerns relating to proposed transportation
2 goals, measurable targets, projects, and priorities. A
3 representative from each district located wholly or partially
4 within a region will attend each public meeting of that region
5 and be available for the discussion.

6 (f) Public involvement prior to final adoption. The
7 department will hold at least one statewide hearing prior to
8 final adoption of the SLRTP by the commission and before final
9 adoption of any update to the plan by the commission.

10 (1) The department will publish a notice of a hearing in
11 the *Texas Register* a minimum of 15 days prior to its being held
12 and in the notice will inform the public where written comments
13 may be sent.

14 (2) The department will accept written public comments,
15 including comments submitted in electronic format, for a period
16 of at least 30 days after the date the notice appears in the
17 *Texas Register*.

18 (3) At the time the notice of hearing is published under
19 paragraph (1) of this subsection and until the SLRTP or update
20 is finally adopted, the department will make a copy of the SLRTP
21 or an update to the plan available for review at each of the
22 district offices and at the department's Transportation Planning
23 and Programming Division offices in Austin. A copy will also be

1 available on the department website.

2 (g) Publication. The department will publish the adopted
3 or updated SLRTP on the department's website. The SLRTP will
4 also be available for review at each of the district offices and
5 at the department's Transportation Planning and Programming
6 Division offices in Austin.

7

8 §16.55. Long-Range Transportation Planning Recommendations for
9 Non-Metropolitan Areas. A rural planning organization (RPO)
10 shall make recommendations to the department concerning
11 transportation projects, systems, or programs that impact the
12 area within the boundaries of the RPO over the 24-year statewide
13 long-range transportation plan horizon as provided for in §16.54
14 of this subchapter (relating to Statewide Long-Range
15 Transportation Plan (SLRTP)), including strategies that lead to
16 the development of an integrated intermodal transportation
17 system that facilitates the efficient movement of people and
18 freight. For an area that is outside of the boundaries of an
19 MPO and an RPO, those long-range planning recommendations will
20 be made by the district engineer of the district in which the
21 area is located. All recommendations shall be delivered to the
22 department at the times and in the manner and format established
23 by the department and shall include:

1 (1) a prioritized list of mobility projects,
2 rehabilitation projects as described in §16.153(a)(1) of this
3 chapter (relating to Funding Categories), and safety projects as
4 described in §16.153(a)(8) of this chapter, for the area within
5 its boundaries; and

6 (2) for each listed project, an estimate of project costs
7 as approved by the district or districts in which the project is
8 located.

9
10 §16.56. Texas Highway Trunk System. Routes to be included in
11 and developed as a part of the Texas Highway Trunk System shall
12 be chosen by the commission as recommended by the executive
13 director based on one or more of the criteria set out in this
14 section. To be included in the Texas Highway Trunk System the
15 commission will give consideration to routes:

16 (1) maximizing the use of existing four-lane divided
17 roadways;

18 (2) minimizing circuitous or indirect routing;

19 (3) connecting with principal roadways from adjacent
20 states;

21 (4) connecting with principal deep water ports with
22 channel depths of 40 feet or more;

23 (5) connecting with principal Mexican ports of entry;

- 1 (6) serving significant military or other national
- 2 security installations;
- 3 (7) serving tourism or recreational areas;
- 4 (8) comprising major truck routes;
- 5 (9) which are within 25 miles or less of cities of 10,000
- 6 population or greater;
- 7 (10) closing gaps in the existing state highway system;
- 8 and
- 9 (11) providing system connectivity.

1 SUBCHAPTER C. TRANSPORTATION PROGRAMS

2 §16.101. Transportation Improvement Program (TIP).

3 (a) Requirements. Title 23 U.S.C. §134 and 23 C.F.R. Part
4 450, require the metropolitan transportation planning process to
5 include the development of a transportation improvement program
6 (TIP) for the metropolitan planning area, containing a list of
7 projects that have been approved for development in the near
8 term. The list must be prioritized by the category of funding
9 described in §16.153 of this chapter (relating to Funding
10 Categories) and by project within each funding category. An
11 approved TIP is then included in the statewide transportation
12 improvement program (STIP) which contains a listing of projects
13 for all areas of the state that are likely to be implemented in
14 that identified four-year period.

15 (b) Development of transportation improvement program
16 (TIP). The MPO designated for a metropolitan planning area, in
17 cooperation with the department and public transportation
18 operators as defined by 23 C.F.R. Part 450, shall develop a TIP
19 and financial plan in accordance with federal requirements. The
20 department will provide an MPO with estimates of available
21 federal and state funds to be used in developing the financial
22 plan in accordance with §16.152 of this chapter (relating to
23 Cash Flow Forecast). The TIP shall cover the metropolitan

1 planning area and shall be approved and amended in accordance
2 with subsection (h) of this section. The TIP shall be updated
3 and approved at least every two years.

4 (c) Grouping of projects. Projects that are not considered
5 by the department and the MPO to be of appropriate scale for
6 individual identification in a given program year may be grouped
7 by function, geographic area, or work type (e.g., minor
8 rehabilitation, preventive maintenance). In nonattainment and
9 maintenance areas, classification must be consistent with the
10 exempt project classifications contained in the EPA conformity
11 regulations.

12 (d) Projects excluded. The following projects may be
13 excluded from the TIP by agreement between the department and
14 the MPO:

15 (1) safety projects funded under 23 U.S.C. §402 (highway
16 safety programs) and emergency relief projects, except those
17 involving substantial functional, location, and capacity
18 changes;

19 (2) planning and research activities, except those
20 activities funded with National Highway System or Surface
21 Transportation Program funds other than those used for major
22 investment studies; and

23 (3) projects under 23 U.S.C. §104(b)(1), (4), and §144

1 that are for resurfacing, restoration, rehabilitation,
2 reconstruction, or highway safety improvement, and which will
3 not alter the functional traffic capacity or capability of the
4 facility being improved.

5 (e) Consistency and conformity.

6 (1) Relationship to the metropolitan transportation plan
7 (MTP). A project in the TIP must be consistent with the MTP.

8 (2) Relationship to the statewide long-range
9 transportation plan (SLRTP). A project in the TIP must be
10 consistent with the SLRTP developed under federal law and §16.54
11 of this chapter (relating to Statewide Long-Range Transportation
12 Plan (SLRTP)).

13 (3) Relationship to the Clean Air Act and State
14 Implementation Plan. In nonattainment and maintenance areas, a
15 project selected for the TIP must conform to the Clean Air Act
16 (CAA) and the state implementation plan (SIP).

17 (4) Conformity requirements. The MPO in each urbanized
18 nonattainment and maintenance area will be responsible for
19 preparation of the conformity determination requirements of the
20 CAA and the Environmental Protection Agency (EPA) conformity
21 regulations. The department will be responsible for preparation
22 of the conformity determination requirements in nonattainment
23 and maintenance areas outside of metropolitan planning areas.

1 (f) Format. The department, in cooperation with the MPOs,
2 will develop a uniform TIP format to produce a uniform statewide
3 transportation improvement program (STIP). The department in
4 consultation with the MPOs may make modifications to the format.
5 The MPOs shall submit electronic and printed copies of their
6 TIPs to the department in this format.

7 (g) Financial plan. A financial plan that demonstrates
8 consistency with funding reasonably expected to be available
9 during the relevant period shall be developed for TIPs by the
10 MPO in cooperation with the department and public transportation
11 operators. In nonattainment areas, the plan must demonstrate
12 that funding is available or committed for the first two years
13 of the TIP.

14 (h) Transportation improvement program (TIP) approval. The
15 MPO and the governor shall approve the TIP and any amendments.
16 If the governor delegates this authority to the commission, the
17 commission, or if further delegated, the executive director,
18 will approve transportation improvement programs if the
19 executive director finds the TIP has met all federal
20 requirements and the requirements of this subchapter, including
21 satisfaction of the project selection criteria developed for the
22 department's unified transportation program, as set forth in
23 §16.105(d) of this subchapter (relating to Unified

1 Transportation Program (UTP)).

2 (i) Management. As a management tool for monitoring
3 progress in implementation of the metropolitan transportation
4 plan, the TIP shall identify the criteria and process for
5 prioritizing implementation of transportation plan elements for
6 inclusion in the TIP and any changes in priorities from previous
7 TIPs in accordance with the factors specified in federal
8 regulations.

9 (j) Updating. The frequency and cycle for updating the TIP
10 must be compatible with the statewide transportation improvement
11 program (STIP) development process established by the department
12 and described in §16.103 of this subchapter (relating to
13 Statewide Transportation Improvement Program (STIP)).

14 (k) Modification.

15 (1) Amendments. The transportation improvement program
16 (TIP) may be amended consistent with the procedures established
17 in this section for its development and approval with the
18 following stipulations.

19 (A) An amendment to the TIP is required in attainment
20 areas if there is a change:

21 (i) adding or deleting a federally funded project in
22 the TIP;

23 (ii) in the scope of work of a federally funded

1 project;

2 (iii) in the phase of work (such as the addition of
3 preliminary engineering, construction, or right of way) of a
4 federally funded project;

5 (iv) in the TIP year if the MPO's project selection
6 procedure does not provide for selecting projects from the
7 second, third, or fourth year; or

8 (v) in funding sources or funding availability that
9 forces the addition or deletion of federally funded projects.

10 (B) An amendment to the TIP is required in
11 nonattainment areas if there is a change:

12 (i) adding or deleting a project in the TIP;

13 (ii) in a project's design concept or scope of work;

14 (iii) in the phase of work (such as the addition of
15 preliminary engineering, construction, or right of way) of a
16 project;

17 (iv) in the TIP year if the MPO's project selection
18 procedure does not provide for selecting projects from the
19 second, third, or fourth year;

20 (v) adding Congestion Mitigation and Air Quality
21 funding to a previously approved project; or

22 (vi) in funding from non-federal funding to any
23 combination of federal funding or federal and state funding, or

1 where the change in funding sources or funding availability
2 forces the addition or deletion of federally funded projects or
3 regionally significant state funded projects.

4 (C) An amendment to the transportation improvement
5 program (TIP) is not required if there is a change:

6 (i) in funding sources, except as provided in this
7 subsection;

8 (ii) in the cost estimate where such change is not
9 greater than 50 percent of the approved cost estimate and the
10 revised cost estimate is less than \$1,500,000, and the change in
11 the cost estimate is not caused by a change in the project work
12 scope or limits;

13 (iii) in the letting date unless, in nonattainment
14 areas, the change affects conformity; or

15 (iv) that is administrative and does not require
16 public review and comment, redemonstration of fiscal constraint,
17 or a conformity determination.

18 (2) Conformity requirements. In nonattainment and
19 maintenance areas for transportation related pollutants, a
20 conformity determination must be made on any new or amended TIPs
21 (unless the amendment consists entirely of projects exempt under
22 subsection (c) of this section) in accordance with CAA
23 requirements and the EPA conformity regulations.

1 (1) Transportation improvement program (TIP) relationship
2 to statewide transportation improvement program (STIP). After
3 approval, the TIP will be included without modification in the
4 STIP except that in nonattainment and maintenance areas, the
5 FHWA and the FTA must make a conformity determination before
6 inclusion. The department will notify the MPO and appropriate
7 federal agencies when a TIP has been included in the STIP.

8 (m) TIP public participation. Each MPO will develop a
9 public participation process covering the development of a TIP
10 in accordance with federal regulations. The MPOs shall also use
11 the same procedures in amending the TIP.

12 (n) Project selection procedures. Under federal
13 regulations, project selection from an approved transportation
14 improvement program (TIP) varies depending on whether a project
15 selected for implementation is located in a transportation
16 management area and what type of federal funding is involved.

17 (1) General. Project selection procedures must be
18 developed for each metropolitan area and for state projects that
19 lie outside of metropolitan planning areas.

20 (A) Project agreement. The first year of both the TIP
21 and the statewide transportation improvement program (STIP)
22 constitute an agreed to list of projects for project selection
23 purposes. Project selection may be revised if the apportioned

1 funds, including the highway obligation ceiling and transit
2 appropriations, are significantly more or less than the
3 authorized funds. In such cases, and if requested by the MPO,
4 the department, or the transit operator, a revised agreed to
5 list of projects for project selection purposes may be
6 developed.

7 (B) Eligibility. Only projects included in the
8 federally approved STIP will be eligible for funding with Title
9 23 U.S. Code or Federal Transit Act (49 U.S.C. §5307 et seq.)
10 funds.

11 (2) Project selection in non-transportation management
12 areas. In an area not designated as a transportation management
13 area, the commission or the affected public transportation
14 operator as defined by 23 C.F.R. Part 450, as applicable, in
15 cooperation with the MPO, will select projects to be implemented
16 using federal funds from the approved TIP. Federal lands
17 highways program projects shall be selected in accordance with
18 23 U.S.C. §204.

19 (3) Project selection in transportation management areas
20 (TMAs). In an area designated as a TMA, an MPO, in consultation
21 with the department and public transportation operators as
22 defined by 23 C.F.R. Part 450, shall select from the approved
23 TIP and in accordance with the priorities of the approved TIP,

1 all Title 23 U.S. Code and Federal Transit Act (49 U.S.C. §5307
2 et seq.) funded projects, except projects on the National
3 Highway System and projects funded under the bridge, interstate
4 maintenance, safety, and federal lands highways programs. The
5 commission, in cooperation with the MPO, will select projects on
6 the National Highway System and projects funded under the
7 bridge, interstate maintenance, and safety programs. Federal
8 lands highways program projects shall be selected in accordance
9 with 23 U.S.C. §204.

10

11 §16.102. Rural Transportation Improvement Program (RTIP).

12 (a) Development. The department will develop
13 transportation improvement programs for all areas of the state
14 outside of metropolitan planning areas, containing a prioritized
15 list of projects approved for development in the near term. The
16 rural transportation improvement program (RTIP) will be
17 developed in cooperation with rural planning organizations (RPO)
18 and projects will be selected in accordance with federal
19 regulations and the requirements of this subchapter. An
20 approved RTIP is then included in the statewide transportation
21 improvement program (STIP) which contains a listing of projects
22 for all areas of the state that are likely to be implemented in
23 that identified four-year period.

1 (b) Grouping of projects. Projects that are not considered
2 by the department and the RPO to be of appropriate scale for
3 individual identification in a given program year may be grouped
4 by function, geographic area, or work type (e.g., minor
5 rehabilitation, preventive maintenance). In nonattainment and
6 maintenance areas, classification must be consistent with the
7 exempt project classifications contained in the EPA conformity
8 regulations.

9 (c) Approval. The commission, or the executive director,
10 if delegated to the executive director, will approve an RTIP if
11 the executive director finds that the RTIP has met all federal
12 requirements and the requirements of this subchapter.

13 (d) Updating. The frequency and cycle for updating an RTIP
14 must be compatible with the statewide transportation improvement
15 program (STIP) development process described in §16.103 of this
16 subchapter (relating to Statewide Transportation Improvement
17 Program (STIP)).

18 (e) Modification. The RTIP may be amended consistent with
19 the requirements established in §16.101(k) of this subchapter
20 (relating to Transportation Improvement Program (TIP)).

21 (f) Relationship to the statewide long-range transportation
22 plan (SLRTP). A project in the RTIP must be consistent with the
23 SLRTP developed under federal law and §16.54 of this chapter

1 (relating to Statewide Long-Range Transportation Plan (SLRTP)).

2 (g) Relationship to the Clean Air Act (CAA) and State
3 Implementation Plan (SIP). In nonattainment and maintenance
4 areas, a project selected for the RTIP must conform to the CAA
5 and the SIP.

6 (h) Relationship to statewide transportation improvement
7 program (STIP). After approval, RTIPs will be included in the
8 STIP, except that a federal determination of conformity must be
9 made for nonattainment and maintenance areas that are outside of
10 metropolitan planning areas before projects in that area may be
11 included in the STIP.

12 (i) Rural public involvement process.

13 (1) Initial adoption. Each district will coordinate with
14 the applicable rural planning organization (RPO), if any, to
15 develop and implement a public involvement process covering the
16 development of an RTIP. At a minimum, the process must consist
17 of the publication of a notice concerning the proposed RTIP in a
18 newspaper with general circulation in each county within the
19 district. The notice will:

20 (A) inform the public of the availability of the
21 proposed RTIP;

22 (B) inform the public that a public hearing will be
23 held to receive comments on the initial adoption of the proposed

1 RTIP, that there will be a public comment period after the date
2 of the hearing, and the length of the comment period, which must
3 be at least ten days;

4 (C) request that public comments concerning the
5 proposed RTIP be submitted in writing to the district; and

6 (D) be published at least ten days before the date of
7 the hearing.

8 (2) Revisions involving mobility projects. Each district
9 will, at a minimum, publish, in a local newspaper of general
10 circulation, a notice informing the public of the availability
11 of revisions to the RTIP involving mobility projects and of a
12 ten-day public comment period. The notice will request public
13 comments to be submitted, in writing, to the district, and also
14 will notify the public that a public hearing will be conducted
15 to receive comments on the proposed revision.

16 (j) Project selection. The department will develop and
17 annually reevaluate project selection procedures for state
18 projects that lie outside of metropolitan planning areas in
19 accordance with §16.103(g) of this subchapter (relating to
20 Statewide Transportation Improvement Program (STIP)).

21

22 §16.103. Statewide Transportation Improvement Program (STIP).

23 (a) Purpose. Title 23 U.S.C. §135, as implemented by 23

1 C.F.R. Part 450, requires each state to carry out a continuing,
2 comprehensive, and intermodal statewide transportation planning
3 process that facilitates the efficient, economic movement of
4 people and freight in all areas of the state, including those
5 areas subject to federal metropolitan planning requirements.

6 (b) Statewide transportation improvement program (STIP)
7 development. The department, in cooperation with the MPOs
8 designated for metropolitan areas and RPOs designated for areas
9 that are not within the boundaries of an MPO, will develop a
10 STIP covering a period of four years for all areas of the state
11 in accordance with federal requirements. The STIP includes all
12 of the transportation improvement programs (TIP) and rural
13 transportation improvement programs (RTIP) approved in
14 accordance with requirements established in §16.101 and §16.102
15 of this subchapter (relating to Transportation Improvement
16 Program (TIP) and Rural Transportation Improvement Program
17 (RTIP), respectively).

18 (1) Projects included.

19 (A) A highway or transit project funded under Title 23
20 U.S. Code or the Federal Transit Act (49 U.S.C. §5307 et seq.)
21 will be included in a federally approved STIP. A project in the
22 STIP will be consistent with the statewide long-range
23 transportation plan, metropolitan transportation plan, and

1 transportation improvement program, and the STIP will reflect
2 expected funding and priorities for programming.

3 (B) Projects that are not considered by the department
4 and MPO to be of appropriate scale for individual identification
5 in a given program year (e.g., minor rehabilitation, preventive
6 maintenance, non-urbanized transit projects) may be grouped by
7 function, geographic area, or work type.

8 (C) In a nonattainment area, only those projects
9 determined to conform to the requirements of the Clean Air Act
10 and which comply with the state implementation plan may be
11 included in the STIP.

12 (D) Regionally significant projects to be funded with
13 non-federal funds will be included in the STIP for planning,
14 coordination, and public disclosure purposes.

15 (E) Projects may be excluded from the STIP by agreement
16 between the department and the MPO in accordance with
17 requirements established in §16.101(d) of this subchapter.

18 (2) Statewide transportation improvement program (STIP)
19 funding. The federal funding level for each year of the STIP is
20 the annual authorization as outlined in 23 U.S.C. §101 et seq.
21 and funds appropriated under 49 U.S.C. §5307 et seq., in
22 addition to the appropriate state and local match.

23 (c) Statewide transportation improvement program (STIP)

1 financial plan. The STIP will reflect the priorities for
2 programming and expenditure of funds and will:

3 (1) include a financial plan that demonstrates how the
4 transportation improvements can be funded and reasonably
5 implemented;

6 (2) be consistent with funding reasonably expected to be
7 available during the relevant period as provided under the
8 unified transportation program in §16.105 of this subchapter
9 (relating to Unified Transportation Program (UTP)); and

10 (3) be financially constrained by year.

11 (d) Statewide transportation improvement program (STIP)
12 public involvement process. The governor is responsible for
13 providing for public involvement in the STIP development
14 process. If the governor delegates this responsibility to the
15 commission, the commission, or if further delegated, the
16 executive director, will provide for public involvement in
17 accordance with this subsection.

18 (1) Initial adoption of the STIP.

19 (A) The department will provide adequate opportunity
20 for public involvement in development of the STIP.

21 (B) The department will divide the state into regions
22 and hold at least one public meeting in each region during
23 development of the STIP as early as the department determines is

1 feasible to assure public input into the process. The
2 department will publish notice of each public meeting as
3 appropriate to maximize attendance at the meeting.

4 (C) The department will report its progress on the
5 program and provide a free exchange of ideas, views, and
6 concerns relating to proposed projects and priorities. A
7 representative from each district located wholly or partially
8 within a region will attend each public meeting of that region
9 and be available for the discussion.

10 (D) In developing the STIP, the department will hold at
11 least one statewide public hearing regarding the adoption of the
12 proposed STIP.

13 (i) The department will publish a notice of the
14 hearing in the *Texas Register* a minimum of 15 days prior to it
15 being held and will inform the public where to send any written
16 comments.

17 (ii) The department will accept written public
18 comments, including comments submitted in electronic format, for
19 a period of at least 30 days after the date the notice appears
20 in the *Texas Register*.

21 (iii) A copy of the proposed STIP will be available
22 for review, at the time the notice of hearing is published, at
23 each of the district offices, at the department's Transportation

1 Planning and Programming Division offices in Austin, and on the
2 department website.

3 (iv) A STIP must be approved in accordance with
4 subsection (e) of this section.

5 (v) The approved STIP will be made available at each
6 of the district offices, at the department's Transportation
7 Planning and Programming Division offices in Austin, and on the
8 department website.

9 (2) STIP amendments.

10 (A) General. The governor will approve amendments to
11 the STIP. If the governor delegates this authority to the
12 commission, the commission, or if further delegated, the
13 executive director, will approve amendments according to a
14 published schedule developed in accordance with subsection (f)
15 of this section, which the department will make available at the
16 district offices, to the MPOs, and on the department website on
17 an annual basis.

18 (B) Amendments to the STIP. The STIP may be amended
19 consistent with the requirements established in §16.101(k) of
20 this subchapter. The public involvement process for amendments
21 to the STIP will be the same as for initial adoption of the
22 STIP.

23 (e) Statewide transportation improvement program (STIP)

1 approval.

2 (1) The governor will approve the STIP. The governor, or
3 if the governor delegates this authority to the commission, the
4 commission, or if further delegated, the executive director,
5 must approve the STIP if it finds the STIP has met all the
6 requirements of this section and that it satisfies the project
7 selection criteria developed for the department's unified
8 transportation program, as set forth in §16.105(d) of this
9 subchapter.

10 (2) The governor, or if the governor delegates this
11 authority to the commission, the commission, or if further
12 delegated, the executive director, may approve a partial STIP if
13 difficulties are encountered in cooperatively developing the TIP
14 portion for a particular metropolitan or rural area.

15 (f) Statewide transportation improvement program (STIP)
16 revisions.

17 (1) Schedule of revisions. The department and the MPOs
18 are required to adhere to a quarterly STIP revision cycle,
19 except as provided in paragraph (2) of this subsection. Project
20 information and MPO approval documentation for the quarterly
21 revisions must be received by the department's Transportation
22 Planning and Programming Division by the close of business on
23 the submittal date established by the department.

1 (2) Exceptions.

2 (A) Request. An MPO may submit a written request for
3 an exception to the quarterly revision schedule. The request
4 must include reasons justifying the need for the exception.

5 (B) Approval of request. The executive director may
6 approve an exception to this requirement if:

7 (i) additional funding becomes available; or

8 (ii) the revision involves a project which is
9 expected to have a significant effect on capacity, connectivity,
10 or public safety and security on transportation systems.

11 (g) Project selection procedures. Under 23 C.F.R.
12 §450.220, project selection from an approved STIP depends on
13 whether a project selected for implementation is located in or
14 outside of a metropolitan planning area and on the type of
15 federal funding involved. The purpose of this subsection is to
16 prescribe project selection procedures and specify which entity
17 may select a project for implementation.

18 (1) General. Project selection procedures must be
19 developed for each metropolitan area and for state projects that
20 lie outside of metropolitan planning areas. The department will
21 develop and reevaluate annual project selection procedures for
22 state projects that lie outside of metropolitan planning areas.

23 (A) Project agreement. The first year of both the TIP

1 and the STIP constitute an agreed to list of projects for
2 project selection purposes. Project selection may be revised if
3 the apportioned funds, including the highway obligation ceiling
4 and public transportation appropriations, are significantly more
5 or less than the authorized funds. In such cases, if requested
6 by the MPO, the department, or the public transportation
7 operator, a revised agreed-to list of projects for project
8 selection purposes may be developed.

9 (B) Eligibility. Except as provided in 23 C.F.R.
10 §450.220, only those projects included in the federally approved
11 STIP will be eligible for funding with Title 23 U.S. Code or
12 Federal Transit Act (49 U.S.C. §5307 et seq.) funds.

13 (2) Project selection in metropolitan planning areas. In
14 metropolitan planning areas, transportation projects shall be
15 selected in accordance with the project selection procedures
16 established in §16.101(n) of this subchapter (relating to
17 Transportation Improvement Program (TIP)).

18 (3) Project selection outside metropolitan planning
19 areas. Outside metropolitan planning areas, transportation
20 projects undertaken on the National Highway System with Title 23
21 funds and under the bridge and interstate maintenance programs
22 shall be selected by the department in consultation with
23 affected local officials. Federal lands highways projects shall

1 be selected in accordance with 23 U.S.C. §204. Other
2 transportation projects undertaken with funds administered by
3 the FHWA shall be selected by the department in cooperation with
4 the affected local officials, and projects undertaken with
5 Federal Transit Act funds shall be selected by the department in
6 cooperation with the affected local officials and public
7 transportation operators.

8

9 §16.104. Ten-Year Transportation Programming Recommendations
10 for Non-Metropolitan Areas. A rural planning organization (RPO)
11 shall make recommendations to the department concerning the
12 prioritization of projects and programs in the department's
13 unified transportation program under §16.105 of this subchapter
14 (relating to Unified Transportation Program (UTP)) to be
15 developed within the boundaries of the RPO. For an area that is
16 outside of the boundaries of an MPO and an RPO, the programming
17 recommendations will be made by the applicable district
18 engineer. All recommendations shall be delivered to the
19 department at the times and in the manner and format established
20 by the department and must include a prioritized list of
21 projects with input from officials of affected municipalities,
22 counties, and local transportation entities.

23

1 §16.105. Unified Transportation Program (UTP).

2 (a) General. The department will develop a unified
3 transportation program (UTP) that covers a period of ten years
4 to guide the development and authorize construction of
5 transportation projects and projects involving aviation, public
6 transportation, and the state's waterways and coastal waters.
7 In developing the UTP, the department will cooperate with
8 metropolitan planning organizations (MPO), rural planning
9 organizations (RPO), and public transportation operators as
10 defined by 23 C.F.R. Part 450.

11 (b) Requirements. The program will:

12 (1) be financially constrained and estimate funding
13 levels and the allocation of funds to each district and
14 metropolitan planning organization (MPO) for each year in
15 accordance with Subchapter D of this chapter (relating to
16 Transportation Funding);

17 (2) list all projects and programs that the department
18 intends to develop, or on which the department intends to
19 initiate construction, during the program period, after
20 consideration of the:

21 (A) statewide long-range transportation plan (SLRTP);

22 (B) metropolitan transportation plans (MTP);

23 (C) transportation improvement programs (TIP);

1 (D) MPO annual reevaluations of project selection in
2 MTPs and TIPs in accordance with subsection (c) of this section;

3 (E) statewide transportation improvement programs
4 (STIP); and

5 (F) recommendations of rural planning organizations
6 (RPO)as provided in this subchapter; and

7 (3) be organized by funding category, district, mode of
8 transportation, and the year a project is scheduled for
9 development or construction.

10 (c) MPO annual reevaluation of project selection. An MPO
11 shall annually reevaluate the status of project priorities and
12 selection in its approved metropolitan transportation plan (MTP)
13 and transportation improvement program (TIP) and provide a
14 report of any changes to the department at the times and in the
15 manner and format established by the department. The
16 reevaluation must be consistent with criteria applicable to
17 development of the MTP and TIP in accordance with federal
18 requirements.

19 (d) Project selection.

20 (1) The commission will consider the following criteria
21 for project selection in the UTP as applicable to the program
22 funding categories described in §16.153 of this chapter
23 (relating to Funding Categories):

1 (A) the potential of the project to:

2 (i) increase the safety of the transportation system
3 for all transportation users;

4 (ii) maintain and preserve the existing
5 transportation system;

6 (iii) provide congestion relief;

7 (iv) increase the accessibility and mobility of the
8 transportation system for all transportation users;

9 (v) support the economic vitality of the area,
10 especially by enabling global competitiveness, productivity, and
11 efficiency; and

12 (vi) promote efficient system management and
13 operation; and

14 (B) adherence to all accepted department design
15 standards as well as applicable state and federal law and
16 regulations.

17 (2) The commission will determine and approve the final
18 selection of projects and programs to be included in the UTP,
19 except for the selection of federally funded projects by an MPO
20 serving in an area designated as a transportation management
21 area (TMA) as provided in §16.101(n) of this subchapter
22 (relating to Transportation Improvement Program (TIP)). A
23 federally funded project selected by an MPO designated as a TMA

1 will be approved by the commission, subject to:

2 (A) satisfaction of the project selection criteria in
3 paragraph (1) of this subsection;

4 (B) compliance with federal law; and

5 (C) the district's and MPO's allocation of funds for
6 the applicable years.

7 (e) Approval of unified transportation program (UTP). Not
8 later than March 31 of each even-numbered year, the commission
9 will adopt the unified transportation program. The UTP may be
10 updated more frequently if necessary. The commission will hold
11 a hearing prior to:

12 (1) final adoption of the UTP and any updates; and

13 (2) approval of any adjustments to the program resulting
14 from changes to the allocation of funds under §16.160 of this
15 chapter (relating to Funding Allocation Adjustments).

16 (f) Program revisions.

17 (1) A project may be added to the UTP, or a project
18 within the UTP may be moved forward or delayed if the status of
19 a listed project or projects change, and if the moved or added
20 project can be developed and constructed within the district's
21 or MPO's allocated funds for the applicable year.

22 (2) The department, an MPO, an RPO, or a public
23 transportation operator as defined by 23 C.F.R. Part 450 may

1 request a revision of the UTP. A revision request by a public
2 transportation operator must be applicable to projects in the
3 public transportation portion of the UTP and, if the public
4 transportation operator is located within the boundaries of an
5 MPO or RPO, it must obtain consent of the applicable MPO or RPO
6 prior to making the request. If a revision is requested, the
7 department will, in coordination with the other affected
8 parties, determine whether a revision is appropriate and may,
9 consistent with the authority to select projects under
10 subsection (d) of this section, develop a revised list of
11 projects for the applicable period. A revision under this
12 subsection is not an update or adjustment to which subsection
13 (e) of this section applies.

14 (g) Public involvement during development of the unified
15 transportation program.

16 (1) The department will provide adequate opportunity for
17 public involvement in development of the UTP.

18 (2) The department will divide the state into regions and
19 hold at least one public meeting in each region during
20 development of the UTP and each update of the program as early
21 as the department determines is feasible to assure public input
22 into the process. The department will publish notice of each
23 public meeting as appropriate to maximize attendance at the

1 meeting.

2 (3) The department will report its progress on the
3 program and provide a free exchange of ideas, views, and
4 concerns relating to project selection, funding categories,
5 level of funding in each category, each region's allocation of
6 funds for each year of the program, and the relative importance
7 of the various selection criteria. A representative from each
8 district located wholly or partially within a region will attend
9 each public meeting of that region and be available for the
10 discussion.

11 (h) Public involvement prior to final adoption. The
12 department, prior to adoption of the unified transportation
13 program and approval of any updates to the program, will hold at
14 least one statewide hearing on its project selection process
15 including the UTP's funding categories, the level of funding in
16 each category, each region's allocation of funds for each year
17 of the program, and the relative importance of the various
18 selection criteria.

19 (1) The department will publish a notice of the
20 applicable hearing in the *Texas Register* a minimum of 15 days
21 prior to it being held and will inform the public where to send
22 any written comments.

23 (2) The department will accept written public comments

1 for a period of at least 30 days after the date the notice
2 appears in the *Texas Register*.

3 (3) A copy of the proposed project selection process, the
4 UTP, and any adjustments to the plan, as applicable, will be
5 available for review at the time the notice of hearing is
6 published at each of the district offices and at the
7 department's Finance Division offices in Austin. A copy will
8 also be available on the department website.

9 (i) Publication. The department will publish the entire
10 approved unified transportation program, updates, and
11 adjustments together with any summary documents highlighting
12 project benchmarks, priorities, and forecasts on the
13 department's website. The documents will also be available for
14 review at each of the district offices and at the department's
15 Finance Division offices in Austin.

1 SUBCHAPTER D. TRANSPORTATION FUNDING

2 §16.151. Long-Term Planning Assumptions.

3 (a) Development. The department, in cooperation with
4 metropolitan planning organizations (MPO), will develop mutually
5 acceptable assumptions for the purposes of long-range federal
6 and state funding forecasts that are consistent with the project
7 selection criteria prescribed under §16.105(d) of this chapter
8 (relating to Unified Transportation Program (UTP)). The
9 department and each planning organization will use those funding
10 assumptions to guide development of the metropolitan
11 transportation plans and statewide long-range transportation
12 plan under §16.53 and §16.54 of this chapter (relating to
13 Metropolitan Transportation Plan (MTP) and Statewide Long-Range
14 Transportation Plan (SLRTP), respectively).

15 (b) Factors. The assumptions will include the following
16 factors:

17 (1) anticipated level of available state gas tax revenues
18 to be deposited to the credit of the state highway fund;

19 (2) anticipated level of registration fees and other
20 state non-gas tax revenues to be deposited to the credit of the
21 state highway fund and the Texas Mobility Fund;

22 (3) anticipated level of federal transportation funding;
23 and

1 (4) other factors considered appropriate by the
2 commission for projection of available revenue.

3 (c) Optional factors. In addition to the funding forecasts
4 developed under subsection (b) of this section, an MPO may, in
5 order to guide development of a separate supplement to the MPO's
6 metropolitan transportation plan and its portion of the
7 statewide long-range transportation plan, also include
8 reasonable funding assumptions based on local funding options
9 and contingent state, federal, and local funding sources.

10 (1) The supplement must:

11 (A) clearly identify and separate the funding forecasts
12 developed by the department under subsection (b) of this section
13 from the forecasts using assumptions based on local funding
14 options and contingent funding sources;

15 (B) describe the rationale for incorporating each
16 additional funding option and source; and

17 (C) be approved by the MPO policy board.

18 (2) The MPO will cooperate with the department in
19 development of the additional funding assumptions.

20

21 §16.152. Cash Flow Forecast.

22 (a) Forecast. On or before September 1 of each year, the
23 department's chief financial officer will issue a cash flow

1 forecast for each source of funding that covers a period of not
2 less than the 20 years following the date the forecast is issued
3 and is based on the funding assumptions developed under §16.151
4 of this subchapter (relating to Long-Term Planning Assumptions).

5 (b) Requirements. The forecast must identify:

6 (1) all sources of funding available for transportation
7 projects and projects involving aviation, public transportation,
8 rail, and the state's waterways and coastal waters, including
9 bond proceeds; and

10 (2) any limitations imposed by state or federal law on
11 the use of the identified source.

12 (c) First two years. The first year or two years of the
13 forecast, as appropriate, must be based on the amounts
14 appropriated by the legislature to the department for that
15 period.

16 (d) Updates. The department's chief financial officer will
17 update the forecast more frequently than annually if significant
18 changes in the department's funding occur.

19 (e) Publication. Each cash flow forecast and update will
20 be available on the department's website for viewing by the
21 public and the documents will be available for review at each of
22 the district offices and at the department's Finance Division
23 offices in Austin.

1 (f) Uses of forecast. The commission will use the cash
2 flow forecast to estimate funding levels for each year, to
3 determine the annual amount of funding in each of the program
4 funding categories described in §16.153 of this subchapter
5 (relating to Funding Categories), and to allocate funding to the
6 districts, metropolitan planning organizations, and other
7 authorized entities in accordance with §16.154 of this
8 subchapter (relating to Transportation Allocation Funding
9 Formulas).

10 (g) Funding definition. In this subchapter, unless the
11 context clearly indicates otherwise, "funds" or "funding" means
12 the estimates of federal, state, and local money reasonably
13 expected to be available for expenditure on transportation
14 projects and projects involving aviation, public transportation,
15 rail, and the state's waterways and coastal waters during the
16 relevant period.

17

18 §16.153. Funding Categories.

19 (a) Highway program funding categories. The ten-year
20 unified transportation program (UTP) described in §16.105 of
21 this chapter (relating to Unified Transportation Program (UTP))
22 will contain the following 12 program funding categories for
23 highway related projects:

1 (1) Category 1 Preventive Maintenance and
2 Rehabilitation - preventive maintenance and rehabilitation on
3 the existing state highway system, including:

4 (A) Preventive maintenance - minor roadway
5 modifications to improve operations and safety; and

6 (B) Rehabilitation - installation, rehabilitation,
7 replacement, and maintenance of pavement, bridges, traffic
8 control devices, traffic management systems, and ancillary
9 traffic devices;

10 (2) Category 2 Metropolitan and Urban Corridor Projects -
11 mobility and added capacity projects along a corridor that
12 improve transportation facilities in order to decrease travel
13 time and the level or duration of traffic congestion, and to
14 increase the safe and efficient movement of people and freight
15 in metropolitan and urbanized areas;

16 (3) Category 3 Non-Traditionally Funded Transportation
17 Projects - transportation related projects that qualify for
18 funding from sources not traditionally part of the state highway
19 fund including state bond financing under programs such as
20 Proposition 12 (General Obligation Bonds), pass-through toll
21 financing, unique federal funding, regional toll revenue, and
22 local participation funding;

23 (4) Category 4 Statewide Connectivity Corridor Projects -

1 mobility and added capacity projects on major state highway
2 system corridors which provide statewide connectivity between
3 urban areas and corridors, to create a highway connectivity
4 network composed of the Texas Highway Trunk System, National
5 Highway System, and connections from those two systems to major
6 ports of entry on international borders and Texas water ports;

7 (5) Category 5 Congestion Mitigation and Air Quality
8 Improvement - congestion mitigation and air quality improvement
9 area projects to address attainment of a national ambient air
10 quality standard in the nonattainment areas of the state;

11 (6) Category 6 Structures Replacement and
12 Rehabilitation - replacement and rehabilitation of deficient
13 existing bridges located on the public highways, roads, and
14 streets in the state, construction of grade separations at
15 existing highway-railroad grade crossings, and rehabilitation of
16 deficient railroad underpasses on the state highway system;

17 (7) Category 7 Metropolitan Mobility and Rehabilitation
18 (TMA) - transportation needs within the boundaries of designated
19 metropolitan planning areas of metropolitan planning
20 organizations located in a transportation management area;

21 (8) Category 8 Safety - safety related projects both on
22 and off the state highway system including the federal Highway
23 Safety Improvement Program, Railway-Highway Crossing Program,

1 Safety Bond Program, Safe Routes To School Program, and High
2 Risk Rural Roads Program;

3 (9) Category 9 Transportation Enhancement -
4 transportation related projects, including:

5 (A) categories outlined in federal law; and

6 (B) building new safety rest areas and visitor centers
7 along the state highway system;

8 (10) Category 10 Supplemental Transportation Projects -
9 transportation related projects that do not qualify for funding
10 in other categories, including landscape and aesthetic
11 improvement, erosion control and environmental mitigation,
12 construction and rehabilitation of roadways within or adjacent
13 to state parks, fish hatcheries, and similar facilities,
14 replacement of railroad crossing surfaces, maintenance of
15 railroad signals, construction or replacement of curb ramps for
16 accessibility to pedestrians with disabilities, and
17 miscellaneous federal programs;

18 (11) Category 11 District Discretionary - projects
19 eligible for federal or state funding selected at the district
20 engineer's discretion; and

21 (12) Category 12 Strategic Priority - projects with
22 specific importance to the state including those that generally
23 promote economic opportunity, increase efficiency on military

1 deployment routes or to retain military assets in response to
2 the federal military base realignment and closure reports,
3 maintain the ability to respond to both man-made and natural
4 emergencies, and provide pass-through toll financing for local
5 communities.

6 (b) Program funding categories for other modes of
7 transportation and transportation infrastructure. The ten-year
8 unified transportation program described in §16.105 of this
9 chapter will contain the following program funding categories
10 for aviation, public transportation, rail, and the state's
11 waterways and coastal waters projects:

12 (1) Aviation Capital Improvement Program - projects based
13 on the anticipated funding levels of the Federal Aviation
14 Administration Airport Improvement Program and the Texas
15 Aviation Facilities Development Program for general aviation
16 airport development in Texas;

17 (2) Public Transportation - multimodal related projects
18 based on the anticipated federal funding levels for public
19 transportation including fixed route city bus service, rural
20 demand response service, special transit service for elderly and
21 persons with disabilities, and intercity bus service from city
22 to city;

23 (3) Rail - rail related projects including light rail,

1 freight rail, passenger rail, and high-speed rail; and

2 (4) State waterways and coastal waters - lands,
3 easements, and rights of way for the widening, deepening, and
4 expansion of the main channel of the Gulf Intracoastal Waterway
5 (GIWW), including beneficial use projects of dredged material,
6 and other maritime related projects.

7 (c) Determination of funding allocations. The commission
8 will determine, subject to the mandates of state and federal law
9 and specific requirements contained in other chapters of this
10 title for programs and projects described in subsection (b) of
11 this section, the amount of funds to be allocated to each
12 program funding category for the appropriate period of time.

13

14 §16.154. Transportation Allocation Funding Formulas.

15 (a) Formula allocations. The commission will, subject to
16 the mandates of state and federal law, allocate funds from
17 program funding Categories 1, 2, 4, 5, 7, 9, and 11, as
18 described in §16.153 of this subchapter (relating to Funding
19 Categories), to the districts and metropolitan planning
20 organizations (MPO) as follows:

21 (1) Category 1 Preventive Maintenance and
22 Rehabilitation - will be allocated to all districts according to
23 the following formulas:

1 (A) Preventive maintenance.

2 (i) Ninety-eight percent for roadway maintenance with
3 65 percent based on on-system lane miles, and 33 percent based
4 on the pavement distress score Pace factor; and

5 (ii) Two percent for bridge maintenance based on
6 square footage of on-system span bridge deck area;

7 (B) Rehabilitation. Thirty-two and one half percent
8 based on three-year average lane miles of pavement distress
9 scores less than 70, 20 percent based on on-system vehicle miles
10 traveled per lane mile, 32.5 percent based on equivalent single
11 axle load miles for on-system, off-system, and interstate, and
12 15 percent based on the pavement distress score Pace factor;

13 (2) Category 2 Metropolitan and Urban Corridor Projects -
14 will be allocated to MPOs in the following manner:

15 (A) 87 percent to MPOs operating in areas that are
16 transportation management areas, according to the following
17 formula: 30 percent based on total vehicle miles traveled on and
18 off the state highway system, 17 percent based on estimated
19 population within the boundaries of the metropolitan planning
20 area using data derived from the most recent census provided by
21 the U.S. Bureau of the Census (census population), 10 percent
22 based on lane miles on-system, 14 percent based on truck vehicle
23 miles traveled on-system, 7 percent based on percentage of

1 census population below the federal poverty level, 15 percent
2 based on congestion, and 7 percent based on fatal and
3 incapacitating vehicle crashes;

4 (B) 13 percent to MPOs operating in areas that are not
5 transportation management areas, according to the following
6 formula: 20 percent based on total vehicle miles traveled on and
7 off the state highway system, 25 percent based on estimated
8 population within the boundaries of the metropolitan planning
9 area using data derived from the most recent census provided by
10 the U.S. Bureau of the Census (census population), 8 percent
11 based on lane miles on-system, 15 percent based on truck vehicle
12 miles traveled on-system, 4 percent based on percentage of
13 census population below the federal poverty level, 8 percent
14 based on centerline miles on-system, 10 percent based on
15 congestion, and 10 percent based on fatal and incapacitating
16 vehicle crashes;

17 (3) Category 4 Statewide Connectivity Corridor Projects -
18 will be allocated to districts for specific projects selected by
19 the commission based on engineering analysis of projects on
20 three corridor types:

21 (A) Mobility corridors - congestion considerations in
22 areas that are not in the boundaries of an MPO;

23 (B) Connectivity corridors - two-lane roadways

1 requiring upgrade to four-lane divided roadways to connect the
2 urban areas of the state; and

3 (C) Strategic corridors - strategic corridor additions
4 to the state highway network;

5 (4) Category 5 Congestion Mitigation and Air Quality
6 Improvement - will be allocated to districts and MPOs for
7 projects in a nonattainment area population weighted by ozone
8 and carbon monoxide pollutant severity;

9 (5) Category 7 Metropolitan Mobility and Rehabilitation
10 (TMA) - will be allocated to MPOs operating in areas that are
11 transportation management areas based on the applicable federal
12 formula;

13 (6) Category 9 Transportation Enhancement - One-half of
14 the funds in this category will be allocated to MPOs operating
15 in transportation management areas based on estimated population
16 within the boundaries of the metropolitan planning area using
17 data derived from the most recent census provided by the U.S.
18 Bureau of the Census; and

19 (7) Category 11 District Discretionary - will be
20 allocated to all districts based on state legislative mandates,
21 but if there is no mandate or the amount of available funding in
22 this category exceeds the minimum required by a mandate, the
23 funding allocation for this category or the excess funding, as

1 applicable, will be allocated according to the following
2 formula: 70 percent based on annual on-system vehicle miles
3 traveled, 20 percent based on annual on-system lane miles, and
4 10 percent based on annual on-system truck vehicle miles
5 traveled.

6 (b) Pace factor calculation. For purposes of subsection
7 (a)(1) of this section, the Pace factor is a calculation used to
8 adjust funding among districts according to increases or
9 decreases in a district's need to improve its pavement distress
10 scores. It will slow the rate of improvement for districts with
11 the highest condition scores and accelerate the rate of
12 improvement for districts with the lowest condition scores. The
13 Pace factor is calculated by:

14 (1) determining the district with the highest distress
15 score;

16 (2) determining the deviation of a district's distress
17 score from the highest score;

18 (3) totaling the deviations for all districts as
19 determined by subsection (b)(2) of this section.

20 (c) Non-formula allocations. The commission, subject to
21 the mandates of state and federal law and specific requirements
22 contained in other chapters of this title for programs and
23 projects described in subsection (a) of this section, will

1 determine the amount of funding to be allocated to a district,
2 metropolitan planning organization, political subdivision,
3 governmental agency, local governmental body, or recipient of a
4 governmental transportation grant, from each of the following
5 program funding categories described in §16.153 of this
6 subchapter:

7 (1) Category 3 Non-Traditionally Funded Transportation
8 Projects;

9 (2) Category 6 Structures Replacement and Rehabilitation;

10 (3) Category 8 Safety;

11 (4) Category 9 Transportation Enhancement - one-half of
12 the funds in this category will be allocated under this
13 subsection;

14 (5) Category 10 Supplemental Transportation Projects;

15 (6) Category 12 Strategic Priority;

16 (7) Aviation Capital Improvement Program;

17 (8) Public Transportation;

18 (9) Rail; and

19 (10) State waterways and coastal waters.

20 (d) Formula revisions. The commission will review and, if
21 determined appropriate, revise both the formulas and criteria
22 for allocation of funds under subsections (a) - (c) of this
23 section at least as frequently as every four years.

1

2 §16.155. Surplus Revenue and Contract Payments Not Allocated by
3 Formula. Revenue to which Transportation Code, Chapter 228
4 applies is allocated in accordance with that chapter and is not
5 considered revenue to be allocated by a formula under §16.154 of
6 this subchapter (relating to Transportation Allocation Funding
7 Formulas).

8

9 §16.156. Limitation on Allocation of Funds.

10 (a) Toll project conditions. Neither the commission nor
11 the department may require that a toll project be included in a
12 region's transportation plan or program as a condition for the
13 allocation of funds for the construction of projects in the
14 region.

15 (b) Limitations on allocation decrease. Neither the
16 commission nor the department may:

17 (1) revise a formula as provided in the unified
18 transportation program under §16.105 of this chapter (relating
19 to Unified Transportation Program (UTP)), or a successor
20 program, in a manner that results in a decrease of an allocation
21 to a district or metropolitan planning organization (MPO)
22 because of:

23 (A) the failure of a region to include toll projects in

1 a region's transportation plan or program;

2 (B) participation by a political subdivision in the
3 funding of a transportation project in the region, including the
4 use of money collected in a transportation reinvestment zone
5 under Transportation Code, §222.106 or §222.107; or

6 (C) payments, project savings, refinancing dividends,
7 and any other revenue received by the commission or the
8 department under a comprehensive development agreement and used
9 to finance the construction, maintenance, or operation of
10 transportation projects or air quality projects in the region;
11 or

12 (2) take any other action that would reduce funding
13 allocated to a district or MPO without the prior consent of the
14 MPO because of:

15 (A) the failure of a region to include toll projects in
16 a region's transportation plan or program; or

17 (B) receipt by a region of payments, project savings,
18 refinancing dividends, and any other revenue received by the
19 commission or the department under a comprehensive development
20 agreement; or

21 (C) the need of another district or MPO for increased
22 funding to complete a pending project.

23 (c) Financial assistance for toll projects. Nothing in

1 this section precludes the commission or the department from
2 using funds to design, develop, finance, construct, maintain,
3 repair, or operate, or assist in the design, development,
4 financing, construction, maintenance, repair, or operation of a
5 toll project in a region.

6

7 §16.157. Use of Allocated Funds. The funds allocated to a
8 district or metropolitan planning organization (MPO) under
9 §16.154 of this subchapter (relating to Transportation
10 Allocation Funding Formulas) may be used to:

11 (1) pay project costs, provide toll equity, or make
12 payments under a pass-through toll agreement, for selected
13 transportation projects; or

14 (2) fund operation costs of an MPO in accordance with
15 §16.52 of this chapter (relating to Unified Planning Work
16 Program (UPWP)).

17

18 §16.158. Encumbrance of Allocated Funds. The allocation of
19 funds to a district or metropolitan planning organization will
20 be encumbered in an amount equal to the district engineer's
21 estimate of the project cost and periodically adjusted to
22 reflect:

23 (1) the bid award;

1 (2) any change orders issued during construction that
2 modify the bid award; and

3 (3) the total amount paid for a project when it is
4 completed and closed out.

5

6 §16.159. Voluntary Transfer of Allocated Funds.

7 (a) Transfer of allocated funds. Under this section, a
8 metropolitan planning organization (MPO) may voluntarily
9 transfer funds allocated to it under §16.154 of this subchapter
10 (relating to Transportation Allocation Funding Formulas) to
11 another MPO.

12 (b) Transfer agreement. An agreement for the transfer of
13 allocated funds must be written, executed by both MPOs, and
14 approved by the executive director. The agreement must include:

15 (1) the amount of funding to be transferred and the
16 program funding category described in §16.153 of this subchapter
17 (relating to Funding Categories) from which it will be re-
18 allocated;

19 (2) the total amount of funds to be reimbursed from
20 allocations to the recipient MPO in future years, the applicable
21 program funding category, the reimbursement period, and the
22 payment schedule; and

23 (3) a description of the project or projects to be

1 developed with the transferred funds, including the project
2 limits, connections with other transportation facilities, and
3 the geographic area affected.

4 (c) Commission approval. In determining whether to approve
5 the transfer, the commission will consider the:

6 (1) transportation need for and anticipated public
7 benefit of the transfer, including:

8 (A) possible loss of federal obligation authority or
9 apportionment in one or more fiscal years; and

10 (B) need of the recipient MPO for increased funding to
11 complete a pending project;

12 (2) reasonableness of the financial terms contained in
13 the transfer agreement; and

14 (3) relationship of the transfer to furthering the
15 purposes of this chapter.

16 (d) Reimbursement priority. The obligation of a recipient
17 MPO to reimburse the lending MPO in accordance with the transfer
18 agreement has priority over all other considerations relating to
19 the allocation of future funding in the applicable program
20 funding category to each of the participating MPOs. If, in any
21 fiscal year, funds in the applicable program funding category
22 are not available to the recipient MPO in an amount sufficient
23 to reimburse the scheduled payment or payments, all of the

1 recipient MPO's available funds in that category for that fiscal
2 year will be re-allocated to the lending MPO. Any remaining
3 unpaid balance of the scheduled reimbursement has priority in
4 the next fiscal year over all other considerations relating to
5 the recipient MPO's allocation of funding from the applicable
6 program funding category. The priorities described in this
7 subsection may be changed by written consent of all parties to
8 the transfer agreement.

9 (e) Federal requirements. The transfer and reimbursement
10 of funds under this section are subject to all applicable
11 federal requirements.

12

13 §16.160. Funding Allocation Adjustments.

14 (a) Changes in funding. Changes in the allocation of funds
15 under §16.153 or §16.154 of this subchapter (relating to Funding
16 Categories and Transportation Allocation Funding Formulas,
17 respectively) may result from significant changes in the
18 department's funding.

19 (b) Allocation revisions. If a significant change in
20 funding is identified by the department's chief financial
21 officer in an updated cash flow forecast, the commission may
22 revise the allocation of funds to each program funding category
23 or from the program funding categories to the districts and

1 metropolitan planning organizations (MPO) and may approve:

2 (1) a specific percentage increase or decrease in the
3 allocation of funds and, subject to the mandates of state and
4 federal law, apply the percentage change equally to each program
5 funding category; or

6 (2) an increase or decrease in the allocation of funds to
7 one or more program funding categories, after considering the:

8 (A) total amount of the change;

9 (B) priority of the funding category based on the
10 category's relationship to the stated commission goals as
11 provided in the statewide long-range transportation plan under
12 §16.54 of this chapter;

13 (C) mandates of state and federal law; and

14 (D) best interests of the state.

15 (c) Adjustment of programs. After the commission approves
16 a change in the allocation of funds to a program funding
17 category under subsection (b) of this section, the funds
18 allocated to individual districts and MPOs will be
19 proportionally adjusted and the unified transportation program,
20 statewide transportation improvement program, and metropolitan
21 transportation improvement programs will be revised in
22 accordance with the applicable change in funding. Specific
23 projects will be advanced or delayed in the order of the

1 planning organization's and department's listed priorities in
2 the applicable programs.

3 (d) Preference for allocation of funding increases. If the
4 allocation of funds to a district or MPO is reduced under
5 subsection (c) of this section, any subsequent increase in the
6 allocation of funds to the applicable program funding category
7 will be allocated first to the accounts of the districts and
8 MPOs that were previously reduced.

9 (e) Public involvement. The department will hold at least
10 one statewide public hearing regarding a proposed change in the
11 allocation of funds to a program funding category under this
12 section with an available comment period of at least 30 days
13 after the date the hearing notice appears in the *Texas Register*
14 in accordance with the procedures set forth in §16.105(h) of
15 this chapter (relating to Unified Transportation Program (UTP)).

16 (f) Publication. Documents describing each change in the
17 allocation of funds to a program funding category will be
18 available for viewing by the public on the department's website
19 and at each of the district offices and at the department's
20 Finance Division offices in Austin.

1 SUBCHAPTER E. PROJECT AND PERFORMANCE REPORTING

2 §16.201. Project and Performance Reporting System.

3 (a) General. The department will establish a project and
4 performance reporting system that makes available in a central
5 location on the department's website information regarding the:

6 (1) delivery of individual transportation projects as
7 provided in §16.202 of this subchapter (relating to Reporting
8 System for Delivery of Individual Projects);

9 (2) operation and condition of the department's statewide
10 transportation system as provided in §16.203 of this subchapter
11 (relating to Performance Reporting on the Operation and
12 Condition of the Statewide Transportation System); and

13 (3) funding available for the department's statewide
14 transportation system and actual expenditures related to the
15 system as provided in §16.204 of this subchapter (relating to
16 Reporting System for Funding and Expenditures).

17 (b) Entry of information. Each district will enter
18 information about each of its transportation projects into the
19 project and performance reporting system.

20 (c) Department website. The department will make the
21 statistical information provided under this subchapter available
22 on the department's website in more than one downloadable
23 electronic format. The information will be easily accessible,

1 understandable, and in a format that allows a person to conduct
2 electronic searches for information about a specific district, a
3 county, a highway under the jurisdiction of the department, or a
4 type of road.

5

6 §16.202. Reporting System for Delivery of Individual Projects.

7 (a) Work plan. The department will develop a business work
8 plan for tracking the delivery of each transportation project,
9 including grouped rehabilitation and preventive maintenance
10 projects, that are being developed or under construction and
11 identified in the unified transportation program (UTP) described
12 in §16.105 of this chapter (relating to Unified Transportation
13 Program (UTP)).

14 (1) Each district will develop a consistently formatted
15 work plan based on the UTP that contains all transportation
16 projects that the district intends to implement during the next
17 fiscal year and the following three consecutive fiscal years.

18 (2) For each project the work plan must contain:

19 (A) an identification of each phase of project
20 development, including planning, route, and environmental impact
21 studies, design, right of way acquisition, utility adjustment,
22 and construction;

23 (B) the estimated cost of each phase of project

1 development;

2 (C) a project schedule with timelines for completing
3 each phase of the project;

4 (D) a summary of progress on the project that
5 identifies whether the project is being completed on-time and
6 on-budget; and

7 (E) a list of department employees responsible for the
8 project and contact information for each person listed.

9 (3) The department will use the work plan in:

10 (A) preparing a budget for the district and the
11 department;

12 (B) monitoring the performance of the district; and

13 (C) evaluating the performance of district employees.

14 (4) The department will consolidate the districts' work
15 plans into a statewide work plan and publish it on the
16 department's website.

17 (5) The department will update the information contained
18 in the project and performance reporting system for delivery of
19 individual transportation projects under this section at least
20 monthly.

21 (b) Annual Report. As a component of the project and
22 performance reporting system for delivery of individual
23 transportation projects required by this section, the department

1 will conduct an annual review of the benchmarks and timelines of
2 all transportation projects funded under program funding
3 Categories 2, 3, 4, 5, 6, 7, and 12 as described in §16.153 of
4 this chapter (relating to Funding Categories) to determine the
5 completion rates of the projects and whether the projects were
6 completed on-time and on-budget. The review will be used to
7 create an annual report on the level of achievement statewide
8 and by district based on the benchmarks and timelines described
9 in subsection (a)(2) of this section for each transportation
10 project listed in the work plan and included in the program
11 funding categories described in this subsection.

12 (c) Legislative districts. The department will make
13 available to each member of the legislature a copy of the annual
14 report required by subsection (b) of this section for each
15 department district located within the boundaries of a
16 legislative district, and at the request of a legislator, a
17 senior management employee of the department will meet with the
18 legislator to explain the report.

19 (d) Legislature. The department will provide a copy of the
20 annual report required by subsection (b) of this section to the
21 lieutenant governor, the speaker of the house of
22 representatives, and the chair of the standing committee of each
23 house of the legislature with primary jurisdiction over

1 transportation issues.

2

3 §16.203. Performance Reporting on the Operation and Condition
4 of the Statewide Transportation System.

5 (a) System performance. The department will develop a set
6 of performance measures for evaluating the effectiveness of its
7 expenditures on the statewide transportation system in achieving
8 the transportation goals identified by the statewide long-range
9 transportation plan under §16.54 of this chapter (relating to
10 Statewide Long-Range Transportation Plan (SLRTP)).

11 (b) Performance measures. At a minimum, the performance
12 measures adopted under subsection (a) of this section will
13 include the:

14 (1) percentage of transportation construction projects
15 for which the planning, design, and project development phases,
16 including environmental clearance, right of way acquisition, and
17 utility coordination, are completed on or before the planned
18 implementation timelines and on-budget;

19 (2) percentage of transportation construction projects
20 for which construction is completed on or before the planned
21 implementation timelines and on-budget;

22 (3) total dollar amount spent for right of way
23 acquisition as a percentage of the original amount estimated for

1 right of way acquisition;

2 (4) number of vehicle miles traveled;

3 (5) peak hour travel congestion in the eight largest
4 metropolitan areas;

5 (6) number of fatalities per 100 million vehicle miles
6 traveled;

7 (7) percentage of bridges that have a condition rating of
8 good or better;

9 (8) dollar amounts deposited to the credit of the state
10 highway fund and disbursements from the fund compared to the
11 amounts forecasted to be deposited and disbursed, respectively;

12 (9) dollar amounts obligated in connection with contracts
13 or participation in contracts with historically underutilized
14 businesses, disadvantaged business enterprises, and small
15 business enterprises as a percentage of the amounts spent on all
16 contracts; and

17 (10) percentage of lane miles on the state highway system
18 that have a pavement condition rating of good or better.

19 (c) Additional performance measures. The commission, as it
20 deems appropriate, may adopt performance measures in addition to
21 those listed in subsection (b) of this section.

22 (d) Updates. The department will update the information
23 contained in the project and performance reporting system for

1 performance measures under this section at least annually.

2 (e) Annual Report. As a component of the project and
3 performance reporting system required by this section, the
4 department annually will compile and evaluate the information
5 provided for the performance measures and publish a report
6 describing the results and the effectiveness of meeting each
7 transportation goal that is identified by the statewide long-
8 range transportation plan under §16.54 of this chapter. The
9 department will report on the results and level of achievement
10 statewide and by district.

11 (f) Legislative districts. The department will make
12 available to each member of the legislature a copy of the annual
13 report required by subsection (e) of this section for each
14 district located within the boundaries of a legislative
15 district, and at the request of a legislator, a senior
16 management employee of the department will meet with the
17 legislator to explain the report.

18 (g) Legislature. The department will provide a copy of the
19 annual report required by subsection (e) of this section to the
20 lieutenant governor, the speaker of the house of
21 representatives, and the chair of the standing committee of each
22 house of the legislature with primary jurisdiction over
23 transportation issues.

1

2 §16.204. Reporting System for Funding and Expenditures.

3 (a) Account information system. The department will
4 develop an account information reporting system for tracking
5 money deposited to the credit of each separate account and
6 subaccount of the state highway fund, including subaccounts for
7 toll projects required under Transportation Code, Chapter 228.

8 The account information will include:

9 (1) the source and amount of the deposited funds;

10 (2) the amount and general type or purpose of expenditure
11 as described in the comptroller's statewide accounting system;

12 and

13 (3) the balance credited to each account and subaccount.

14 (b) Updates. The department will update the account
15 information reporting system at least quarterly.

16

17 §16.205. Department Information Consolidation. To the extent
18 practicable and to avoid duplication of reporting requirements,
19 the department may combine the reports required under this
20 subchapter.