

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

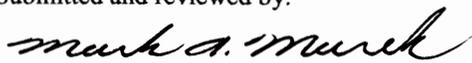
The Texas Transportation Commission (commission) finds it necessary to adopt the repeal of §§11.200-11.205 and new §§11.200-11.221 relating to the statewide transportation enhancement program to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted repeals and new sections, attached to this minute order as Exhibits A -C, 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 repeal of §§11.200-11.205 and new §§11.200-11.221 are adopted and are authorized for filing with the Office of the Secretary of State.

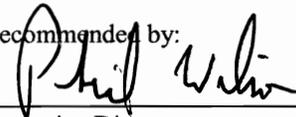
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



Director, Design Division

Recommended by:



Executive Director

112902 NOV 17 11

Minute
Number

Date
Passed

Adoption Preamble

The Texas Department of Transportation (department) adopts the repeal of §§11.200 - 11.205, concerning Statewide Transportation Enhancement Program and new §§11.200 - 11.221, concerning Transportation Enhancement Program. The repeals of §§11.200 - 11.205 and new §§11.200 - 11.221 are adopted without changes to the proposed text as published in the September 9, 2011 issue of the *Texas Register* (36 TexReg 5822) and will not be republished.

EXPLANATION OF ADOPTED REPEALS AND NEW SECTIONS

The department is currently modifying the process for selecting projects under the Transportation Enhancement Program. To achieve this goal the department has determined that changes to the existing rules are necessary. To streamline this process the department is repealing the sections relating to the existing program and simultaneously adopting new sections.

Many of the new sections contain non-substantive changes. The new rule organizational structure subdivides the current rules into smaller sections and reorganizes them so that the new rules are easier to read. The revision permits easier location of and access to specific provisions and makes them more understandable.

The department has made substantive changes to reflect recent

1 revisions to the department's rules regarding the planning and
2 development of transportation projects, found at 43 TAC Chapter
3 16, specifically relating to provisions which allocate
4 Transportation Enhancement Program funds to metropolitan
5 planning organizations operating in transportation management
6 areas. In addition, the revisions also clarify and refine the
7 existing language to improve the effectiveness of the program.

8
9 Subchapter E is retitled "Transportation Enhancement Program" to
10 reflect the current federal program title.

11
12 New §11.200, Purpose, contains the purpose and scope of the
13 subchapter and incorporates language from the department's rules
14 regarding the planning and development of transportation
15 projects, specifically, the allocation of one-half of the
16 Transportation Enhancement Program funds to metropolitan
17 planning organizations operating in transportation management
18 areas. The language clarifies that the Texas Transportation
19 Commission (commission) may allocate funds to the department for
20 activities that qualify for the Transportation Enhancement
21 Program and are located on the state highway system, and may
22 also make funds available in a statewide competitive program
23 call. The reference to the "Safe Routes to Schools Program" has
24 been eliminated since that program is no longer part of the
25 federal Transportation Enhancement Program.

1
2 New §11.201, Definitions, incorporates many of the definitions
3 from current §11.201 without change. Several previously-defined
4 terms are removed. The definitions for "Allowable costs,"
5 "Local funding match" and "TEPEC" are deleted and moved to new
6 sections which provide substantive information and clarify
7 programmatic requirements. The definition for "State highway
8 system" has been removed because it is used only in §11.200,
9 Purpose, and can therefore be eliminated for brevity. The
10 definition for "In-kind contribution" has been eliminated as the
11 department will no longer accept in-kind contributions. The
12 definitions for "Function" and "Impact" are deleted as these
13 definitions are no longer referenced in current federal law or
14 regulations. The definitions for "Appropriate local officials,"
15 "Metropolitan transportation plan," "Reimbursable costs," and
16 "Sponsor" are deleted as these terms are not referenced in the
17 rules. The definitions for "Local transit operator,"
18 "Metropolitan area," and "Program" are no longer necessary due
19 to other changes or clarifications in the rules and are also
20 deleted.

21
22 Several definitions are modified due to changes in the
23 department's rules regarding the planning and development of
24 transportation projects. The definitions for "Metropolitan
25 planning organization," and "Statewide Transportation

1 Improvement Program" are modified and new definition
2 "Transportation management area" is added for consistency with
3 those rules. The definitions for "Candidate project" and
4 "Selected project" are revised to recognize that certain
5 metropolitan planning organizations will select projects.

6
7 Several definitions are modified to reflect changes to the
8 Transportation Enhancement Program as reflected in the new
9 sections or to clarify existing practices. The definition of
10 "Nominating entity" has been expanded to include all political
11 subdivisions eligible to receive funds from the Federal Highway
12 Administration (FHWA). The definition of "Project" has been
13 revised to clarify that project development is no longer
14 considered an allowable cost. The definition of "Transportation
15 enhancement activities" has been revised to remove the specific
16 reference to each of the twelve federally eligible categories so
17 that any future federal changes will not necessitate changes to
18 the department's rules.

19
20 New §11.202, Allowable Costs, clarifies that the use of federal
21 funds is limited to construction-related project expenditures.
22 Exceptions are provided for those transportation enhancement
23 activities that specifically address planning, right-of-way,
24 environmental mitigation, or expenditures for routine operation
25 and maintenance. The department is proposing this change

1 because in past program calls much of the funding for selected
2 projects was expended on the development of plans,
3 specifications, and estimates. As a result, many projects were
4 left with inadequate funding and could not be built as
5 originally proposed.

6
7 New §11.203, Local Funding Match, clarifies that a local funding
8 match is a cash match provided by or through the nominating
9 entity. In-kind donations will no longer be considered part of
10 the local funding match. The use of in-kind items, such as
11 plans, property, and materials, is eliminated because this type
12 of local match is difficult to properly account for and
13 quantify. While an in-kind contribution appears to help the
14 nominator reach the minimum cash match requirement, it still
15 does not provide the cash needed to ultimately develop the
16 project. Further, an in-kind match reduces the amount of cash
17 that is available for the plans or construction of the project.
18 Unless specifically authorized by federal statute or regulation,
19 funds from other federal programs may not be used as a local
20 funding match. Donated services will not be accepted as a
21 match, but may be used to reduce the overall project cost.

22
23 New §11.204, Transportation Enhancement Project Evaluation
24 Committee (TEPEC), lists the members of the committee, which is
25 composed of directors or their designees from the department and

1 other state agencies. The composition of the committee remains
2 unchanged from current §11.204(b)(1), but changes to two agency
3 names are reflected in the new section.

4

5 New §11.205, Project Eligibility, incorporates and refines the
6 language and concepts of existing §11.202. References to
7 "function" and "impact" are deleted because these terms are no
8 longer referenced in federal law or regulation. Language is
9 added in §11.205(a)(3) to clarify that the required 20% local
10 commitment must be a cash commitment. The cross reference in
11 §11.205(a)(5) is updated. Language is added in §11.205(a)(6) to
12 tighten project qualifications and expectations. In
13 §11.205(a)(7), the percentage of project activity deemed
14 eligible for federal reimbursement is increased from 50% to 75%
15 because past history has demonstrated that projects with less
16 than 75% eligibility pose financial challenges for the
17 nominator; specifically, the nominator cannot provide the local
18 match on eligible activities in addition to the entire cost of
19 non-eligible items. As a result, many of these projects are
20 never completed. New §11.205(d) adds conditions associated with
21 eligible candidate projects that were not selected in a previous
22 program call if resubmitted for subsequent program calls.

23

24 New §11.206, Call for Nominations, incorporates the language
25 from former §11.203(a) with no substantive changes.

1
2 New §11.207, Receipt of Nominations, moves and consolidates
3 language from former §11.203(b) and (c) to improve clarity and
4 readability of the section and to facilitate the project
5 selection process. The chart contained in former §11.203(b)(1)
6 has been eliminated and new §11.207(a) provides that the
7 department will accept nominations from state agencies and
8 political subdivisions eligible to receive funding from FHWA.
9 This change simplifies the nomination process and will increase
10 the number of entities that may participate in the
11 Transportation Enhancement Program. New §11.207(c) provides
12 that if multiple jurisdictions are involved in the nomination,
13 the nomination may be sent to the department division
14 responsible for the Transportation Enhancement Program. This
15 simplifies the submittal process for projects taking place in
16 more than one district. New §11.207(d) provides that nomination
17 packages that fail to include specified items will be deemed
18 incomplete and will not be considered for funding. The language
19 contained in former §11.203(d) has been eliminated. Nomination
20 packages will no longer be returned upon request due to the
21 department's record retention requirements.

22
23 New §11.208, Nomination Documents, incorporates information from
24 former §11.203(c) with minor changes. An outdated reference to
25 the department's environmental policy rules at subsection

1 (c)(1)(K) is not incorporated into new §11.208(a)(11). New
2 §11.208(a)(15) - (18), add requirements that the nominator
3 provide documentary evidence of scenic or historic designation
4 from an appropriate entity; proposed environmental mitigation
5 from an appropriate agency; railroad granting a right of entry
6 or an executed encroachment agreement; and the project's
7 inclusion in the city or county bicycle plan. The intent of
8 these new documentation requirements is to ensure that the
9 nominator has thoroughly considered all aspects of the project,
10 understands that the project must be vetted by other entities,
11 and has allocated enough funding to the project. In previous
12 program calls, a particular project may have been selected, but
13 due to the lack of necessary agreements was never completed.

14

15 New §11.208(c) removes references to "design, plans,
16 specifications and estimates, environmental mitigation,
17 construction, construction management, real property
18 acquisition, department administrative expenses, and other costs
19 associated with development and implementation" found in former
20 §11.203(c)(1)(B) to reflect changes to allowable costs as
21 previously described.

22

23 New §11.208(e) clarifies the documentation required for any
24 property associated with the project and specifies that if real
25 property has already been acquired, a copy of the appropriate

1 documents demonstrating ownership must be provided. New
2 §11.208(f) clarifies that the community involvement
3 documentation must include evidence of support from public
4 authorities with jurisdiction over the transportation-related
5 activities in the project area.

6
7 New §11.209, Provision of Nomination Documents to Other Local
8 Governments, consists of information formerly found in
9 §11.203(c)(3) and clarifies that copies of nominations must be
10 provided to public officials that have jurisdiction over the
11 transportation-related activities in the project area.

12
13 New §11.210, Eligibility and Technical Screening, consists of
14 information formerly found in §11.204(a)(1) and clarifies that
15 project eligibility means "federal" project eligibility. In
16 addition, language indicating that the department will
17 coordinate with appropriate state and federal agencies has been
18 removed. The documentation pertaining to these reviews is now
19 required to be obtained by the nominator prior to submitting the
20 nomination, as described in new §11.208(a)(15) - (18).

21
22 New §11.211, Notification of Ineligibility, incorporates
23 information formerly found in §11.204(a)(2) and includes
24 necessary grammatical revisions.

25

1 New §11.212, Evaluation and Selection of Projects by Certain
2 MPOs, creates a new process whereby a metropolitan planning
3 organization located in a transportation management area will be
4 responsible for the selection of projects located within its
5 planning area. This process implements the changes to the
6 department's rules regarding the planning and development of
7 transportation projects, which specifically provide for the
8 allocation of one-half of the Transportation Enhancement Program
9 funds to metropolitan planning organizations operating in
10 transportation management areas. The department is not
11 mandating how the metropolitan planning organization will
12 conduct the selection process. The new section also includes
13 language that allows projects which are not selected by the
14 metropolitan planning organization to be considered in the
15 statewide competitive program, as further described in new
16 §11.213.

17

18 New §11.213, Evaluation of Project Benefits by the
19 Transportation Enhancement Project Evaluation Committee (TEPEC),
20 contains information formerly found in §11.204(a)(1) and (b)(2).
21 References to "function" and "impact" are removed because these
22 terms are no longer referenced in federal law or regulation.

23

24 New §11.214(a) is created from information formerly found in
25 §11.204(c) and includes minor changes to clarify the selection

1 process. New §11.214(a)(1) provides that, in addition to
2 submitting comments and recommendations from TEPEC, the
3 department will also provide the commission with comments and
4 recommendations received from any governmental entity with
5 jurisdiction over the transportation-related activities included
6 in the project. This change will ensure that any local
7 transportation policy opinions will be considered. The language
8 in new §11.214(b)(3) has been modified by deleting the reference
9 to the "safe, effective, and efficient movement of people and
10 goods" and replacing it with "whether the candidate project
11 enhances the surface transportation system." This change more
12 accurately reflects the goals of the Transportation Enhancement
13 Program. New §11.214(d) has been modified to recognize that
14 some projects are selected by metropolitan planning
15 organizations, as described in new §11.212. New §11.214(e)
16 includes language to clarify that funds are limited to those
17 authorized by the commission and the nominating entity will be
18 responsible for any additional costs.

19

20 New §11.215, Notification of Selection, is created from
21 §11.205(a) without change.

22

23 New §11.216, Inclusion in the STIP, is created from §11.205(b)
24 without change.

25

1 New §11.217, Development of Project, is derived from §11.205(d)
2 - (j) and (l), with minor changes. New §11.217(a) recognizes
3 that some projects will be selected by certain metropolitan
4 planning organizations, as reflected in recent revisions to the
5 department's rules regarding the planning and development of
6 transportation projects, found at 43 TAC Chapter 16. New
7 §11.217(a) reflects changes to allowable costs as set out in new
8 §11.202 by deleting the reference to "real property
9 acquisition." New §11.217(e) clarifies the acceptance of
10 private cash donations and deletes references to existing items
11 no longer eligible for federal reimbursement.

12
13 New §11.218, Payment of Costs, includes portions of existing
14 §11.205(k) and (m). New §11.218(b) clarifies that the project
15 must be completed as approved and includes language describing
16 the consequences of the failure to operate the project for its
17 intended purpose. New §11.218(c) seeks to clarify the fiscal
18 responsibilities of the local government, depending on whether
19 the project is administered locally or by the department.

20
21 New §11.219, Elimination of Project from Transportation
22 Enhancement Program, incorporates information from existing
23 §11.205(c) and (n) with minor changes. New §11.219(b)(4)
24 provides specific guidance with regard to expected timeframes
25 for award of a construction contract or initiation of

1 construction. The language contained in current §11.205(n)(4)
2 was vague and difficult to administer.

3

4 New §11.220, Transfer of Project to Another Agency; Approval of
5 Change, adds language to outline the basic steps required to
6 transfer a project from one agency to another in the event of
7 legislative action and clarifies that the disposition action
8 must be approved by FHWA.

9

10 New §11.221, Dedication for Public Use, adds language to offer
11 guidance regarding the expected project lifespan as it relates
12 to the federal investment.

13

14 COMMENTS

15 No comments on the proposed repeals and new sections were
16 received.

17

18 STATUTORY AUTHORITY

19 The repeals and new sections are adopted under Transportation
20 Code, §201.101, which provides the commission with the authority
21 to establish rules for the conduct of the work of the
22 department.

23

24 CROSS REFERENCE TO STATUTE

25 Title 23, United States Code, §133(d)(2) and §160(e)(2).

1 SUBCHAPTER E. TRANSPORTATION ENHANCEMENT PROGRAM

2 §11.200. Purpose. Title 23, United States Code, §133(d)(2) and
3 §160(e)(2), require that 10% of certain funds apportioned to a
4 state pursuant to Title 23, United States Code, §104(b)(3), be
5 used for transportation enhancement activities, as defined. The
6 commission will allocate one-half of those funds to metropolitan
7 planning organizations operating in transportation management
8 areas as provided by Chapter 16, Subchapter D, of this title
9 (relating to Transportation Funding). The commission may
10 allocate funds to the department for activities that qualify for
11 the Transportation Enhancement Program and are located on the
12 state highway system, and may also make funds available in a
13 statewide competitive program that enhances the surface
14 transportation systems and facilities within the state for the
15 benefit of the users of those systems. The sections under this
16 subchapter prescribe the policies and procedures for the
17 implementation of the program.

18
19 §11.201. Definitions. The following words and terms, when used
20 in this subchapter, shall have the following meanings, unless
21 the context clearly indicates otherwise.

22 (1) Candidate project--A project recommended by a
23 nominating entity for inclusion in the Transportation

1 Enhancement Program.

2 (2) Commission--Texas Transportation Commission.

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

4 (4) District office--A headquarters office for one of the
5 department's geographical districts into which the state is
6 divided.

7 (5) Executive director--The executive director of the
8 Texas Department of Transportation or his or her designee not
9 below the level of assistant executive director.

10 (6) Federal funds--Financial assistance provided by the
11 Federal Highway Administration for project development.

12 (7) FHWA--Federal Highway Administration.

13 (8) Jurisdiction--For a city, the area within the
14 incorporated city limits, including a city's extraterritorial
15 jurisdiction. For a county, any area within the boundaries of
16 the county, excluding incorporated areas. For a state agency,
17 any area within which its prescribed authority may be exercised.

18 (9) Local agreement--An agreement between the nominating
19 entity and the department which includes a commitment for the
20 required local funding, describes the total scope and course of
21 project activities, and outlines the responsibilities and duties
22 of the participants.

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

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

6 (11) Nominating entity--The state agency or political
7 subdivision eligible to receive funds from FHWA that nominates a
8 particular candidate project for consideration, exercises
9 jurisdiction over the geographic area in which that project is
10 located, and commits to the project's development,
11 implementation, construction, maintenance, management, and
12 financing.

13 (12) Operational income--Net income received by the owner
14 of a facility constructed or enhanced using funds received
15 through the Transportation Enhancement Program after deducting
16 the costs incident to the generation of that income. The term
17 includes, but is not limited to, income from fees for services
18 performed, use or rental of real or personal property, or sale
19 of commodities. Taxes, license fees, fines, royalties, and
20 other such revenues received by the facility owner or paid
21 within the facility are not considered income.

22 (13) Project--An undertaking to implement or construct a
23 particular transportation enhancement at a specific location or

1 locations, or, if the context so implies, the particular
2 enhancement so implemented or constructed.

3 (14) Project area--The location in which project
4 activities will take place.

5 (15) Public authority--A state agency, city, or county.

6 (16) Selected project--A project which the commission or
7 both the commission and a metropolitan planning organization
8 have elected to include in the Transportation Enhancement
9 Program.

10 (17) State--The State of Texas or any of its political
11 subdivisions.

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

20 (19) Surface transportation system--An interconnected
21 transportation network for moving people and goods using various
22 combinations of transportation modes.

23 (20) Transportation--Pertaining to the movement of people

1 between their places of residence, employment, commerce,
2 education, recreation, and entertainment; or of goods between
3 places of manufacture, storage, sale, maintenance, repair,
4 salvage, and disposition.

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

12 (22) Transportation enhancement activities--Those
13 activities so defined in Title 23, United States Code, §101(a),
14 if such activities relate to the surface transportation system.

15 (23) Transportation management area--An urbanized area
16 with a population over 200,000 as defined by the U.S. Bureau of
17 Census and designated by the U.S. Secretary of Transportation,
18 or any additional area where transportation management area
19 designation is requested by the governor and the metropolitan
20 planning organization and designated by the U.S. Secretary of
21 Transportation.

22

23 §11.202. Allowable Costs.

1 (a) This section describes allowable costs related to the
2 Transportation Enhancement Program. Allowable costs are the
3 necessary construction-related project expenditures incurred
4 after federal and state authorization to proceed and otherwise
5 eligible for reimbursement under applicable statutes and
6 regulations.

7 (b) Generally, the costs of preliminary engineering
8 (including planning, design, and plans, specifications, and
9 estimates) are not allowable costs.

10 (c) Planning costs are allowable only for activities
11 related to the provision of safety and educational activities
12 for pedestrians and bicyclists, scenic or historic highway
13 programs, control and removal of outdoor advertising, and
14 archeological planning and research.

15 (d) The cost of right of way acquisition is allowable only
16 for activities related to the acquisition of scenic easements
17 and scenic or historic sites.

18 (e) The cost of environmental mitigation is allowable only
19 for activities related to environmental mitigation to address
20 water pollution due to highway runoff, reduce vehicle caused
21 wildlife mortality while maintaining habitat connectivity, and
22 asbestos or lead paint removal or containment, when it is
23 required for the rehabilitation of an eligible project.

1 (f) Project costs incurred by the department are
2 reimbursable. All other pre-construction costs are the
3 responsibility of the nominating entity.

4 (g) Expenditures for routine operation and maintenance are
5 not allowable costs unless specifically allowed under the
6 individual federal category for which the project must qualify.

7
8 §11.203. Local Funding Match. For the purposes of the
9 Transportation Enhancement Program, a local funding match is a
10 cash match provided by or through the nominating entity. Funds
11 from other federal programs may be used as a local funding match
12 only when specifically authorized by federal statute or
13 regulation. Donated services may not be accepted as a local
14 funding match, but may be used to reduce the overall cost of the
15 project.

16
17 §11.204. Transportation Enhancement Project Evaluation
18 Committee (TEPEC).

19 (a) The Transportation Enhancement Project Evaluation
20 Committee is an evaluation committee that is composed of:

21 (1) the executive director of the department, or the
22 executive director's designee;

23 (2) the State Land Commissioner, or the land

1 commissioner's designee; and

2 (3) the director, or director's designee, of each of the
3 following:

4 (A) the Economic Development and Tourism Division of
5 the Governor's Office;

6 (B) the Texas Historical Commission;

7 (C) the Texas Parks and Wildlife Department; and

8 (D) the Texas Commission on Environmental Quality.

9 (b) The executive director of the department, or the
10 executive director's designee, serves as the chair of the
11 committee.

12

13 §11.205. Project Eligibility.

14 (a) To be eligible for consideration for inclusion in the
15 Transportation Enhancement Program, a candidate project must:

16 (1) propose one or more transportation enhancement
17 activities that have a relationship to the surface
18 transportation system, yet go beyond activities customarily
19 incorporated into transportation projects;

20 (2) consist of expenditures that conform to applicable
21 provisions of state and federal laws;

22 (3) present persuasive evidence of support for the
23 candidate project from the communities in which it would be

1 implemented, to include a commitment to provide a cash amount of
2 at least 20% of the allowable costs of the candidate project;

3 (4) propose to construct or enhance a facility from which
4 all operational income will be used for the costs necessary for
5 the proper operation and maintenance of the facility;

6 (5) be nominated for consideration by an eligible
7 nominating entity in the manner prescribed in §11.207 of this
8 subchapter (relating to Receipt of Nominations);

9 (6) be maintained and operated for the purpose for which
10 it was approved and funded with federal-aid highway funds for a
11 period of time commensurate with the project investment; and

12 (7) have at least 75% of the project's activities
13 identified in the project description and budget of the
14 nomination form deemed eligible for federal reimbursement (only
15 eligible activities will be considered for funding).

16 (b) Projects which will require the acquisition of real
17 property through the exercise of eminent domain by any entity
18 are not eligible for participation in the Transportation
19 Enhancement Program.

20 (c) Ineligible candidate projects may not be resubmitted
21 for subsequent program calls without revision.

22 (d) Eligible candidate projects that were not selected in a
23 previous program call may be resubmitted for subsequent program

1 calls provided that they are submitted on the current form and
2 with current supporting documentation.

3

4 §11.206. Call for Nominations. The department will call for
5 nominations of candidate projects by publication in the *Texas*
6 *Register*. The department will also provide notice of the call
7 for candidate projects to all MPOs, all councils of government
8 (COGs), and all local transit operators in the state.

9

10 §11.207. Receipt of Nominations.

11 (a) The department will receive and consider for funding
12 only candidate project nominations from state agencies and
13 political subdivisions of the state eligible to receive and
14 manage federal transportation funds.

15 (b) Activities in multiple jurisdictions should be
16 segmented into separate candidate projects whenever practical.

17 (c) To nominate a candidate project, the eligible
18 nominating entity must file its nomination, in the form
19 prescribed by the department, with the district engineer of the
20 district office responsible for the area in which the proposed
21 enhancement would be implemented. The nomination for a single
22 project in multiple jurisdictions may be filed with the
23 department division responsible for the Transportation

1 Enhancement Program.

2 (d) Complete nomination packages must be received by the
3 department no later than the specified deadline published in the
4 *Texas Register*. Nomination packages that fail to include any of
5 the items specified in §11.208 of this subchapter (relating to
6 Nomination Documents) are considered incomplete and will not be
7 considered for funding.

8

9 §11.208. Nomination Documents.

10 (a) The nomination shall consist of information necessary
11 for project evaluation, and must include to the maximum extent
12 practicable:

13 (1) a clear and concise description of the proposed
14 enhancement as described by subsection (b) of this section;

15 (2) an implementation plan for the candidate project,
16 including both a schedule of project activities and an itemized
17 budget as described by subsection (c) of this section;

18 (3) a map delineating the location or locations of the
19 candidate project, which should show project limits, highlight
20 any areas of major work, and show all existing or proposed
21 transportation facilities and associated real property;

22 (4) photographs of the existing project site;

23 (5) a site plan of the proposed construction and

1 illustrations of the proposed work that includes the information
2 described by subsection (d) of this section, if appropriate;

3 (6) documentation related to real property associated
4 with the project as described by subsection (e) of this section;

5 (7) if construction is proposed, a description of how it
6 would be accomplished, including estimated cost;

7 (8) a description of all expected benefits from the
8 proposed enhancement, particularly those benefits pertaining to
9 the surface transportation system that includes expected use of
10 any facilities involved, and a comparison of current and
11 projected demand for use of those facilities;

12 (9) appropriate documentary evidence of community
13 involvement in development of the proposed enhancement and
14 public support for it as described by subsection (f) of this
15 section;

16 (10) a plan covering the operation and maintenance of the
17 facility created by or benefiting from the enhancement as
18 described by subsection (g) of this section;

19 (11) documentary evidence that the environmental
20 consequences of the proposed enhancement have been fully
21 considered, and that the proposed enhancement will comply with
22 all applicable local, state, and federal environmental laws,
23 regulations, and requirements, which must provide evidence

1 sufficient to allow the department to determine the necessity
2 for environmental studies;

3 (12) a written statement showing that the proposed
4 enhancement is consistent with any long-range transportation
5 plans for that area in which it would be implemented;

6 (13) for any enhancement activity that would be
7 implemented within a metropolitan area, a letter from the MPO
8 stating that, should funding for the candidate project be made
9 available, the MPO will include the candidate project in the TIP
10 for that area if the candidate project has not yet been
11 included;

12 (14) for a project proposing the restoration or
13 rehabilitation of historic sites or properties, documentary
14 evidence from the Texas Historical Commission that the property
15 or site is currently listed in or eligible for listing in the
16 National Register of Historic Places;

17 (15) for a project proposing acquisition of scenic
18 easements and scenic or historic sites, documentary evidence
19 from the appropriate city, county, state, or national entity
20 indicating official designation;

21 (16) for a project proposing environmental mitigation,
22 documentary evidence from the Texas Commission on Environmental
23 Quality or the Texas Parks and Wildlife Department, as

1 appropriate, indicating technical evaluation of the project;

2 (17) for a project proposing to encroach or cross
3 railroad right of way, documentary evidence from the railroad
4 granting a right of entry or an executed encroachment agreement;
5 and

6 (18) for a project proposing to build facilities for
7 bicycles, documentary evidence from the city or county stating
8 that the project has been included in the entity's bicycle plan,
9 if applicable, or the bicycle element of the transportation
10 component of the entity's comprehensive plan.

11 (b) The description of the proposed enhancement must detail
12 all work to be performed as part of the candidate project, the
13 relationship between the proposed enhancement and the surface
14 transportation system, any real property or easements required,
15 any special land uses planned, and any relationships between the
16 candidate project and any other work anticipated, planned,
17 presently under way, or previously completed.

18 (c) The schedule of activities must indicate any
19 circumstances known to the nominating entity that are likely to
20 affect commencement of work on the candidate project or the time
21 required to complete it, including environmental and historic
22 issues. The budget must describe all proposed local financing
23 of project costs and be accompanied by documentary evidence of

1 the commitment of the nominating entity to pay those costs and
2 of its ability to do so. The budget shall indicate that an
3 appropriate amount has been included to cover costs for which
4 reimbursement is being requested.

5 (d) If the candidate project is proposing restoration or
6 rehabilitation work for a historic property, the site plan must
7 include current and proposed floor plans for the property. The
8 floor plan must indicate the proposed function to be served by
9 each room.

10 (e) If real property is to be acquired, the real property
11 documentation must include a written commitment from the current
12 real property owner and a description of whether it is to be
13 acquired through purchase, easement, or donation. The
14 documentation must also include the estimated current fair
15 market value of the property and proposed funding arrangements.
16 The fair market value of real property shall be established as
17 of the date the purchase becomes effective or when equitable
18 title to the real property vests in the purchasing entity,
19 whichever is earlier. If real property has already been
20 acquired, a copy of the appropriate documents demonstrating
21 ownership must be provided.

22 (f) At a minimum, evidence of community involvement must
23 include a description of any opportunities for public

1 participation, including public meetings, that were included in
2 the process of selecting candidate projects by the nominating
3 entity and a resolution or other official document from all of
4 the governing bodies of any public authority with jurisdiction
5 over the transportation-related activities located in the area
6 in which the project will be implemented. The supporting
7 document must state the governing body's support for the
8 implementation of the proposed project, its recommendation that
9 it be considered for funding, and, when appropriate, its
10 commitment to provide a share of allowable project costs. For
11 activities in metropolitan areas, one of these documents must be
12 from the governing body of the MPO for that area.

13 (g) The plan covering the operation and maintenance of the
14 facility must identify all parties responsible for operation and
15 maintenance, estimate the annual cost to operate and maintain
16 the facility, describe the source of those funds, identify all
17 expected operational income from the facility, and describe the
18 intended use of that income.

19 (h) A nominating entity may submit a written statement of
20 the relative priority ranking assigned by the nominating entity
21 to that candidate project among all candidate projects nominated
22 by that entity for consideration in response to the current call
23 for project nominations.

1

2 §11.209. Provision of Nomination Documents to Other Local
3 Governments. Nominating entities proposing candidate projects
4 calling for work in multiple metropolitan areas, cities, or
5 counties must provide copies of the nomination documents to
6 affected local public officials that have jurisdiction over the
7 transportation-related activities located in the project area.

8

9 §11.210. Eligibility and Technical Screening. The department
10 will review each candidate project to determine eligibility for
11 funding according to federal and state law and to determine that
12 each candidate project will meet technical standards established
13 by applicable law and accepted professional practice. In
14 determining federal eligibility, the department will coordinate
15 with FHWA.

16

17 §11.211. Notification of Ineligibility.

18 (a) The department will by certified mail, return receipt
19 requested, notify the nominating entity of each ineligible
20 activity proposed and the reason for the determination.

21 (b) A request for reconsideration of a finding of
22 ineligibility may be initiated only by a letter from the
23 nominating entity to the executive director setting forth

1 reasons in support of a finding of eligibility. The letter
2 requesting reconsideration must be received by the department no
3 later than 15 days after the nominating entity received the
4 department's notification, as established by the return receipt.
5 The determination of the executive director in response to the
6 request for reconsideration will be final.

7

8 §11.212. Evaluation and Selection of Projects by Certain MPOs.

9 (a) All eligible projects located within the metropolitan
10 planning area of an MPO operating in a transportation management
11 area will be submitted to the respective MPO for evaluation and
12 selection. The MPO must notify the department within 30 days of
13 its project selections.

14 (b) Any projects not selected by the MPO will be eligible
15 for consideration in the statewide competitive program and will
16 be evaluated in accordance with §11.213 of this subchapter
17 (relating to Evaluation of Project Benefits by the
18 Transportation Enhancement Project Evaluation Committee
19 (TEPEC)).

20

21 §11.213. Evaluation of Project Benefits by the Transportation
22 Enhancement Project Evaluation Committee (TEPEC).

23 (a) Eligible candidate projects, together with the results

1 of the technical review, will be submitted to the TEPEC. The
2 TEPEC will evaluate the potential benefit of each eligible
3 candidate project.

4 (b) The TEPEC will meet at the call of the chair to
5 consider and discuss the relationship to the surface
6 transportation system and potential benefit of eligible
7 candidate projects. After discussing the candidate projects,
8 the committee will evaluate each project based on the quality of
9 the project, the geographic scope of the project's benefits, and
10 the project's transportation enhancement value. The TEPEC will
11 prepare recommendations as to which projects are suitable for
12 funding and provide these recommendations to the department.

13 (c) The TEPEC will serve to advise the department of the
14 benefit of candidate projects only and its decisions will in no
15 way be binding on the ability of the commission to select from
16 among all eligible candidate projects those projects approved
17 for funding.

18

19 §11.214. Selection of Projects by the Commission.

20 (a) The department will recommend a program of candidate
21 projects for consideration by the commission. To assist the
22 commission in its decisions concerning selection and funding,
23 the department will, in addition to department staff

1 recommendations, provide to the commission:

2 (1) the list of all eligible candidate projects and any
3 comments and recommendations from any governmental entity with
4 jurisdiction over the activities included in the project and the
5 TEPEC;

6 (2) any other comments relevant to consideration of any
7 candidate project for funding, including:

8 (A) evidence of support and opposition for the
9 candidate project;

10 (B) evidence of the commitment from the nominating
11 entity to provide more than the minimum required non-federal
12 share of allowable project costs and its ability to do so;

13 (C) an evaluation of proposed projects indicating the
14 extent to which each project will meet accepted standards as
15 established by applicable law and by accepted professional
16 practice;

17 (D) the views, comments, and certifications of an MPO
18 or a governing body of a city or county; and

19 (E) all other project specific information as
20 appropriate.

21 (b) The commission will select from among all eligible
22 candidate projects those projects, if any, approved for funding.
23 In selecting an eligible candidate project for funding, the

1 commission will consider:

2 (1) all information provided under subsection (a)(1) and

3 (2) of this section;

4 (2) the potential benefit to the state of the candidate
5 project; and

6 (3) whether the candidate project enhances the surface
7 transportation system.

8 (c) In evaluating the potential benefit to the state of the
9 candidate project, the commission will consider, but is not
10 bound by, recommendations and comments from the TEPEC.

11 (d) The commission will, by written order, designate the
12 selected projects, including projects previously selected by
13 MPOs.

14 (e) The funds approved by the commission are a fixed
15 amount. Project costs in excess of this amount are the
16 responsibility of the nominating entity. The nominating entity
17 may seek additional funds through this program in subsequent
18 program calls.

19 (f) Candidate projects that are not selected must be
20 resubmitted to receive consideration during subsequent program
21 calls.

22

23 §11.215. Notification of Selection. When a project is selected

1 for funding, the department will notify the nominating entity of
2 its selection. If the selected project is to be implemented in
3 a metropolitan area, the department will request that the MPO
4 immediately begin the process required to include the selected
5 project in its TIP.

6

7 §11.216. Inclusion in STIP. The department will immediately
8 begin the process required to include all selected projects in
9 the STIP. Costs incurred prior to the inclusion of the activity
10 in the STIP, execution of the local agreement, and prior to
11 federal and state approval and authorization to proceed are not
12 eligible for reimbursement.

13

14 §11.217. Development of Project.

15 (a) The MPO or the department will implement or arrange for
16 implementation of each selected project in accordance with
17 statutory requisites and contracting procedures applicable to
18 the type and character of the project.

19 (b) All selected projects must be developed to current
20 standards and specifications established or recognized by the
21 federal government and the department. The department may allow
22 project plans to be developed by other public authorities,
23 provided the plans are reviewed by the department and determined

1 to have been developed according to current department standards
2 and specifications. The department will coordinate with other
3 state and federal agencies as required by state or federal law
4 or applicable policy.

5 (c) All agencies receiving federal funds for transportation
6 enhancement activities must comply with all federal and state
7 procedures and requirements applicable to development of
8 federal-aid transportation projects.

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

13 (e) Funds from other federal programs may be used only when
14 specifically authorized by federal statute or regulation.
15 Pursuant to Title 23, United States Code, §323, private cash
16 donations may be accepted.

17 (f) Whether proposed as an independent project or as an
18 element of a larger transportation project, the candidate
19 project must be limited to a logical unit of work.

20 (g) The department is responsible for inspection and final
21 acceptance of all selected projects and for certification of
22 project completion.

23 (h) Projects must be developed in accordance with this

1 subchapter. Any changes in the scope of work established in the
2 nomination form, as approved by the commission, must have the
3 advanced written approval of the executive director. A
4 significant increase in the scope of work will require the
5 advance approval of the commission.

6

7 §11.218. Payment of Costs.

8 (a) The department will submit all requests to FHWA for
9 reimbursement of allowable costs. When the department
10 implements appropriate projects through or in cooperation with
11 other entities, those entities will request reimbursement from
12 the department of allowable costs they incur using the forms and
13 procedures specified by the department.

14 (b) If the nominating entity does not complete the project
15 as originally approved, the department may seek reimbursement of
16 the expended federal funds from the nominating entity. If at
17 any time the nominating entity can no longer maintain and
18 operate the project for its intended purpose, the nominating
19 entity will return the federal share to the Transportation
20 Enhancement Program in accordance with the federal recapture
21 procedures set forth in Title 49, Code of Federal Regulations,
22 §18.31.

23 (c) For locally administered projects, the entire project

1 cost is borne by the nominating entity until reimbursement can
2 be obtained from FHWA for eligible activities. For projects
3 administered by the department, the nominating entity must
4 provide the local cash match prior to the commencement of
5 project activities.

6

7 §11.219. Elimination Of Project from Transportation Enhancement
8 Program.

9 (a) A candidate project will be eliminated from
10 participation in the Transportation Enhancement Program if at
11 any time prior to the execution of the local agreement, any
12 municipality or county in which project activities are proposed
13 notifies the department of its opposition to the project.
14 Notification of opposition must be in the form of a resolution
15 or other official document from the duly constituted governing
16 body of the entity opposing the project. Jurisdiction for the
17 purposes of support or opposition to a candidate project does
18 extend to a municipality's extraterritorial jurisdiction.

19 (b) The executive director may eliminate a project or a
20 portion of a project from participation in the Transportation
21 Enhancement Program if at any time:

22 (1) the nominating entity fails to satisfy any
23 requirement of this subchapter;

1 (2) implementation of the project would involve
2 significant deviation from the activities as proposed in the
3 nomination form;

4 (3) the nominating entity withdraws from participation in
5 the project;

6 (4) a construction contract has not been awarded or
7 construction has not been initiated by the local entity within
8 four years from the date of commission selection (for projects
9 that do not involve construction, project activities must be
10 completed within four years from the date of commission
11 selection);

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

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

16

17 §11.220. Transfer of Project to Another Agency; Approval of
18 Change.

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

23 (b) Any change in the project's disposition must receive

1 approval from FHWA.

2

3 §11.221. Dedication for Public Use. A project shall be
4 dedicated for public use as approved by the commission for a
5 period of time commensurate with the federal investment or at a
6 minimum according to the following schedule:

7 (1) federal project cost up to \$1 million - 10 years;

8 (2) federal project cost over \$1 million and up to \$3
9 million - 20 years; or

10 (3) federal project cost over \$3 million - at least 30
11 years.

1 SUBCHAPTER E. STATEWIDE TRANSPORTATION ENHANCEMENT PROGRAM

2 §11.200. Purpose. Title 23, United States Code, §133(d)(2) and
3 §160(e)(2), require that 10% of certain funds apportioned to a
4 state pursuant to Title 23, United States Code, §104(b)(3), be
5 used for transportation enhancement activities, as defined. The
6 commission may allocate funds to the department for use on the
7 state highway system for transportation enhancement activities
8 that provide a safe, effective, and efficient movement of people
9 and goods. The commission will also make funds available in a
10 statewide competitive program that enhances the surface
11 transportation systems and facilities within the state for the
12 benefit of the users of those systems. The commission may also
13 allocate funds under the Safe Routes to School Program in
14 accordance with §25.500 et seq. of this title (relating to the
15 Safe Routes to School Program) to improve bicycle and pedestrian
16 safety around school areas. The sections under this subchapter
17 prescribe the policies and procedures for the implementation of
18 the program.

19
20 §11.201. Definitions. The following words and terms, when used
21 in this subchapter, shall have the following meanings, unless
22 the context clearly indicates otherwise.

23 (1) Allowable costs--Necessary project expenditures

1 incurred after federal and state authorization to proceed and
2 otherwise eligible for reimbursement under applicable statutes
3 and regulations. In appropriate projects, allowable costs may
4 include costs of plans, specifications and estimates,
5 environmental mitigation, acquisition of land or other real
6 property, construction, construction management, administrative
7 expenses, and interpretation or other activities to enhance the
8 appreciation of scenic, historic, natural, or cultural
9 resources. Expenditures for routine operation and maintenance
10 are not allowable costs.

11 (2) Appropriate local officials--Principal elected
12 officials of general purpose local governments.

13 (3) Candidate project--A project recommended to the
14 department by a nominating entity for the commission's
15 consideration for inclusion in the Program.

16 (4) Commission--Texas Transportation Commission.

17 (5) Department--Texas Department of Transportation.

18 (6) District office--A headquarters office for one of the
19 department's geographical districts into which the state is
20 divided.

21 (7) Executive director--The executive director of the
22 Texas Department of Transportation or his or her designee not
23 below the level of assistant executive director.

1 (8) Federal funds--Financial assistance provided by the
2 Federal Highway Administration for project development.

3 (9) FHWA--Federal Highway Administration.

4 (10) Function--The candidate project serves a purpose
5 relating to the existing transportation system.

6 (11) Impact--Substantiates the relation to the surface
7 transportation system in that the candidate project creates a
8 beneficial effect on the existing transportation system.

9 (12) In-kind contributions--That portion of allowable
10 costs of a project contributed by other governmental entities or
11 private parties consisting of donations of cash, real property,
12 materials, or contribution of services.

13 (13) Jurisdiction--For a city, the area within the
14 incorporated city limits, including a city's extraterritorial
15 jurisdiction. For a county, any area within the boundaries of
16 the county, excluding incorporated areas. For a state agency,
17 any area within which its prescribed authority may be exercised.

18 (14) Local agreement--An agreement between the nominating
19 entity and the department which includes a commitment for the
20 required local funding, describes the total scope and course of
21 project activities, and outlines the responsibilities and duties
22 of the participants.

23 (15) Local funding match--Monies or authorized in-kind

1 contributions provided by the nominating entity to participate
2 in costs associated with project development.

3 (16) Local transit operator--A public entity providing
4 public transportation within a given region.

5 (17) Metropolitan area--That area included within the
6 boundaries determined pursuant to Title 23, United States Code,
7 §134(c), and/or §8(c) of the Federal Transit Act (49 USC App.
8 §1608(c)).

9 (18) Metropolitan transportation plan--The plan required
10 by Title 23, United States Code, §134(g), and/or §8(g) of the
11 Federal Transit Act (49 USC App. §1608(g)).

12 (19) Metropolitan planning organization (MPO)--That
13 entity designated by the governor in accordance with 1 TAC
14 §§5.51-5.57 concerning Metropolitan Planning Organizations as
15 responsible, together with the state, for carrying out the
16 provisions of Title 23, United States Code, §134, and/or §8 of
17 the Federal Transit Act (49 USC App. §1608). MPOs are generally
18 composed of local elected officials, the administrators of the
19 area's major transportation systems, state officials, transit
20 officials, and other interested parties.

21 (20) Nominating entity--The state agency, agency of the
22 state, MPO, councils of governments, city, county, or local
23 transit operator which nominates a particular candidate project

1 for consideration by the department, exercises jurisdiction over
2 the geographic area in which that project is located, and
3 commits to the project's development, implementation,
4 construction, maintenance, management, and financing.

5 (21) Operational income--Net income received by the owner
6 of a facility constructed or enhanced using funds received
7 through the Program after deducting the costs incident to the
8 generation of that income. The term includes, but is not
9 limited to, income from fees for services performed, use or
10 rental of real or personal property, or sale of commodities.
11 Taxes, license fees, fines, royalties, and other such revenues
12 received by the facility owner or paid within the facility are
13 not considered income.

14 (22) Program--The Statewide Transportation Enhancement
15 Program.

16 (23) Project--An undertaking to develop, implement, or
17 construct a particular transportation enhancement at a specific
18 location or locations, or, if the context so implies, the
19 particular enhancement so developed, implemented, or
20 constructed.

21 (24) Project area--The location in which project
22 activities will take place.

23 (25) Public authority--A state agency, city, or county.

1 (26) Reimbursable costs--Allowable costs that have been
2 incurred by the department or the nominating entity which are
3 eligible for federal participation and which have been approved
4 by the commission.

5 (27) Selected project--A project which the commission has
6 elected to include in the Program.

7 (28) Sponsor--One or more individuals, partnerships,
8 associations, private corporations, or public authorities
9 recommending a particular project and committed to its
10 development, and implementation.

11 (29) State--The State of Texas or any of its political
12 subdivisions.

13 (30) State highway system--As defined in Texas
14 Transportation Code §221.001, that system of highways in the
15 state included in a comprehensive plan prepared by the
16 department's executive director under the direction and with the
17 approval of the commission.

18 (31) Statewide Transportation Improvement Program (STIP)-
19 -The formal program document required by Title 23, United States
20 Code, §135(f), which is necessary to receive federal
21 reimbursement for projects.

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

1 combinations of transportation modes.

2 (33) TEPEC--Transportation Enhancement Project Evaluation
3 Committee.

4 (34) Transportation--Pertaining to the movement of people
5 between their places of residence, employment, commerce,
6 education, recreation, and entertainment; or of goods between
7 places of manufacture, storage, sale, maintenance, repair,
8 salvage, and disposition.

9 (35) Transportation Improvement Program (TIP)--The
10 transportation program required by Title 23, United States Code,
11 §134(h), and/or §8(h) of the Federal Transit Act (49 USC App.
12 §1608(h)), cooperatively developed with metropolitan planning
13 organizations which include improvement projects proposed for
14 federal funding in accordance with the criteria set forth in
15 federal law and federal regulations.

16 (36) Transportation enhancement activities--Those
17 activities so defined in §101(a) of Title 23, United States
18 Code, including any of the following, if such activities relate
19 to the surface transportation system:

20 (A) provision of facilities for pedestrians and
21 bicycles;

22 (B) provision of safety and education activities for
23 pedestrians and bicycles;

1 (C) acquisition of scenic easements and scenic or
2 historic sites;

3 (D) scenic or historic highway programs (including
4 providing tourist and welcome center facilities);

5 (E) landscaping and other scenic beautification;

6 (F) historic preservation;

7 (G) rehabilitation and operation of historic
8 transportation buildings, structures, or facilities (including
9 historic railroad facilities and canals);

10 (H) preservation of abandoned railway corridors
11 (including the conversion and use thereof for pedestrian or
12 bicycle trails);

13 (I) control and removal of outdoor advertising;

14 (J) archaeological planning and research;

15 (K) environmental mitigation to address water pollution
16 due to highway runoff or reduce vehicle-caused wildlife
17 mortality while maintaining habitat connectivity; and

18 (L) establishment of transportation museums.

19

20 §11.202. Project Eligibility.

21 (a) To be eligible for consideration for inclusion in the
22 Program, a candidate project must:

23 (1) propose one or more transportation enhancement

1 activities that have a relationship of function or impact to the
2 surface transportation system, yet go beyond activities
3 customarily incorporated into transportation projects;

4 (2) consist of expenditures that conform to applicable
5 provisions of state and federal laws;

6 (3) present persuasive evidence of support for the
7 candidate project from the communities in which it would be
8 implemented, to include a commitment to provide at least 20% of
9 the allowable costs of the candidate project;

10 (4) propose to construct or enhance a facility from which
11 all operational income will be used for the costs necessary for
12 the proper operation and maintenance of the facility;

13 (5) be nominated for consideration by an eligible
14 nominating entity in the manner prescribed in §11.203 of this
15 title (relating to Project Nomination)

16 (6) be available for public use for a period of not less
17 than 10 years; and

18 (7) have at least 50% of the project's activities
19 identified in the project description and budget of the
20 nomination form deemed eligible for federal reimbursement.

21 (b) Projects which will require the acquisition of real
22 property through the exercise of eminent domain by any entity
23 are not eligible for participation in the Program.

1 (c) Ineligible candidate projects may not be resubmitted
2 for subsequent program calls without revision.
3 The provisions of this §11.202 adopted to be effective July 26,
4 1993, 18 TexReg 4649; amended to be effective December 22, 1995,
5 20 TexReg 10391; amended to be effective March 21, 1999, 24
6 TexReg 1831; readopted by review, filed on May 28, 1999, 24
7 TexReg 4483; amended to be effective July 18, 1999, 24 TexReg
8 5217; readopted by review, filed on March 30, 2001, 26 TexReg
9 2860; readopted by review, filed on August 27, 2004, 29 TexReg
10 8901; readopted by review, July 11, 2008, 33 TexReg 5551.

11

12 §11.203. Project Nomination.

13 (a) Call for nominations. The department will call for
14 nominations of candidate projects by publication in the Texas
15 Register. The department will also provide notice of the call
16 for candidate projects to all Metropolitan Planning
17 Organizations (MPOs), all councils of governments (COGs), and
18 all local transit operators in the state.

19 (b) Who may nominate.

20 (1) The department will receive and consider for funding
21 only candidate project nominations from specific nominating
22 entities, depending on the location of the candidate project, as
23 outlined in the following chart: (Figure 1: 43 TAC

1 §11.203(b)(1)

IF THE CANDIDATE PROJECT IS	THEN THE ELIGIBLE NOMINATING ENTITY IS:
Located within a single city or within a single metropolitan area	The governing body of the city or MPO
Located in a rural area in a single county and not within a metropolitan area	The governing body of the county
Located on public lands managed by a state agency and located in a rural area in a single county and not within a metropolitan area.	The state agency managing those public lands
Located in multiple jurisdictions consisting of any combination of metropolitan areas, cities not within a metropolitan area, or rural areas in one or more counties	Either: A state agency, An agency of the state, A local transit operator, Any one MPO, the governing body of any one city or county, any one council of government
Other proponents of transportation enhancement activities may submit project ideas for application only through an appropriate nominating entity.	

2

3 (2) Activities in multiple jurisdictions should be
4 segmented into separate candidate projects whenever practical.

5 (3) When the nominating entity for a candidate project is
6 not itself the MPO, city, or county designated by Title 23,
7 United States Code, §134 or §135, to select enhancement projects
8 in any area in which activities would take place, the nominating

1 entity must provide documentary evidence that the MPO, city, or
2 county designated by §134 or §135, to select such projects in
3 that area has authorized it to nominate the project.

4 (c) How to nominate a project.

5 (1) To nominate a candidate project, the eligible
6 nominating entity must file its nomination, in the form
7 prescribed by the department, with the district engineer of the
8 district office responsible for the area in which the proposed
9 enhancement would be implemented. The nomination form for a
10 single project in multiple jurisdictions may be filed with the
11 district engineer of the district office responsible for any of
12 the areas in which the proposed enhancement would be
13 implemented. The nomination shall consist of information
14 necessary for project evaluation, and shall include to the
15 maximum extent practicable:

16 (A) a clear and concise description of the proposed
17 enhancement (The description must detail all work to be
18 performed as part of the candidate project, the relationship
19 between the proposed enhancement and the surface transportation
20 system, any real property or easements required, any special
21 land uses planned, and any relationships between the candidate
22 project and any other work anticipated, planned, presently under
23 way, or previously completed);

1 (B) an implementation plan for the candidate project,
2 including both a schedule of project activities and an itemized
3 budget (The schedule of activities must indicate any
4 circumstances known to the nominating entity that are likely to
5 affect commencement of work on the candidate project or the time
6 required to complete it, including environmental and historic
7 issues. The budget must describe all proposed local financing
8 of allowable project costs and be accompanied by documentary
9 evidence of the commitment of the nominating entity to pay those
10 costs and of their ability to do so. If federal funds will be
11 used for the locally provided share of project costs, a copy of
12 the statutory or regulatory authority for that use must be
13 attached. The budget shall indicate that an appropriate amount
14 has been included to cover design, plans, specifications and
15 estimates, environmental mitigation, construction, construction
16 management, real property acquisition, department administrative
17 expenses, and other costs associated with development and
18 implementation);

19 (C) a map delineating the location or locations of the
20 candidate project (The map should show project limits, highlight
21 any areas of major work, and show all existing or proposed
22 transportation facilities and associated real property);

23 (D) photographs of the existing project site;

1 (E) a site plan of the proposed construction and
2 illustrations of the proposed work (If the candidate project is
3 proposing restoration or rehabilitation work for a historic
4 property, the site plan must include current and proposed floor
5 plans for the property; the floor plan must indicate the
6 proposed function to be served by each room);

7 (F) if real property is to be acquired, a written
8 commitment from the current real property owner must be provided
9 and a description of how it is to be acquired (through purchase
10 or donation), including estimated current fair market value and
11 proposed funding arrangements (Fair market value of real
12 property shall be established as of the date the purchase
13 becomes effective or when equitable title to the real property
14 vests in the public authority, whichever is earlier.);

15 (G) if construction is proposed, a description of how
16 it would be accomplished, including estimated cost;

17 (H) a description of all expected benefits from the
18 proposed enhancement, particularly those benefits pertaining to
19 the surface transportation system (The description must include
20 expected use of any facilities involved, and must compare
21 current and projected demand for use of those facilities);

22 (I) appropriate documentary evidence of community
23 involvement in development of the proposed enhancement and

1 public support for it (At a minimum, evidence submitted must
2 include a description of any opportunities for public
3 participation, including public meetings, that were included in
4 the process of selecting candidate projects by the nominating
5 entity and a resolution or other official document from all of
6 the governing bodies of any public authority with jurisdiction
7 over the area in which the project would be implemented. The
8 supporting document should state the governing body's support
9 for the implementation of the proposed project, its
10 recommendation that it be considered for funding, and (when
11 appropriate) its commitment to provide a share of allowable
12 project costs. For activities in metropolitan areas, one of
13 these documents must be from the governing body of the MPO for
14 that area);

15 (J) a plan covering the operation and maintenance of
16 the facility created by or benefiting from the enhancement (The
17 plan will identify all parties responsible for operation and
18 maintenance, estimate the annual cost to operate and maintain
19 the facility, describe the source of those funds, identify all
20 expected operational income from the facility, and describe the
21 intended use of that income);

22 (K) documentary evidence that the environmental
23 consequences of the proposed enhancement have been fully

1 considered, and that the proposed enhancement will comply with
2 all applicable local, state, and federal environmental laws,
3 regulations, and requirements (The evidence required should
4 include sufficient facts to allow the department to determine
5 the necessity for environmental studies according to §§2.40-2.51
6 of this title (relating to Environmental Review and Public
7 Involvement for Transportation Projects));

8 (L) a written statement showing that the proposed
9 enhancement is consistent with any long-range transportation
10 plans for that area in which it would be implemented;

11 (M) for any enhancement activity that would be
12 implemented within a metropolitan area, a letter from the MPO
13 stating that, should funding for the candidate project be made
14 available, the MPO will include the candidate project in the TIP
15 for that area if the candidate project has not yet been
16 included; and

17 (N) for projects proposing the acquisition,
18 restoration, or rehabilitation of historic sites or properties,
19 documentary evidence from the Texas Historical Commission that
20 the property or site is currently listed in or eligible for
21 listing in the National Register of Historic Places.

22 (2) Complete nomination packages must be received by the
23 department no later than the specified deadline published in the

1 Texas Register.

2 (3) Nominating entities proposing candidate projects
3 calling for work in multiple metropolitan areas, cities, or
4 counties must provide copies of the nomination documents to
5 affected local public officials.

6 (4) A nominating entity may submit a written statement of
7 the relative priority ranking assigned by the nominating entity
8 to that candidate project among all candidate projects nominated
9 by that entity for consideration in response to the current call
10 for project nominations.

11 (d) All candidate project nomination packages become the
12 property of the department. Nomination packages will be
13 returned to the nominating entity only in cases where the
14 nominating entity requests the return in writing after the
15 completion of the project selection process for the current call
16 for nominations.

17 The provisions of this §11.203 adopted to be effective July 26,
18 1993, 18 TexReg 4649. This Section cited in 43 TAC §11.202,
19 (relating to Project Eligibility); 43 TAC §11.204, (relating to
20 Selection of Projects for Funding); amended to be effective
21 December 22, 1995, 20 TexReg 10391; amended to be effective
22 March 21, 1999, 24 TexReg 1831; readopted by review, filed on
23 May 28, 1999, 24 TexReg 4483; readopted by review, filed on

1 March 30, 2001, 26 TexReg 2860; readopted by review, filed on
2 August 27, 2004, 29 TexReg 8901; readopted by review, July 11,
3 2008, 33 TexReg 5551.

4

5 §11.204. Selection of Projects for Funding.

6 (a) Eligibility and technical screening.

7 (1) The department will review each candidate project to
8 determine eligibility for funding according to federal and state
9 law and to determine that each candidate project will meet
10 technical standards established by applicable law and accepted
11 professional practice. In determining eligibility, the
12 department will coordinate with FHWA. In determining technical
13 sufficiency, the department will coordinate with appropriate
14 state and federal agencies. Eligible candidate projects,
15 together with the results of the technical review, will be
16 submitted to the TEPEC as described in subsection (b)(1) of this
17 section for evaluation of potential benefits.

18 (2) The department will by certified mail, return receipt
19 requested, notify the nominating entity of each ineligible
20 activity proposed. This notification will include a statement
21 explaining the proposed activities' ineligibility. A request
22 for reconsideration of a finding of ineligibility may be
23 initiated only by a letter from the nominating entity to the

1 executive director setting forth reasons in support of a finding
2 of eligibility. The letter requesting reconsideration must be
3 received by the department no later than 15 days after the
4 nominating entity received the department's notification, as
5 established by the return receipt. The determination of the
6 executive director in response to the request for
7 reconsideration will be final.

8 (b) Evaluation of project benefits.

9 (1) The potential benefit of each eligible candidate
10 project will be evaluated by an advisory committee, to be known
11 as the Transportation Enhancement Project Evaluation Committee
12 (TEPEC). The members of TEPEC shall be:

13 (A) the executive director of the department, or
14 designee, who shall chair the committee;

15 (B) the State Land Commissioner, or designee; and

16 (C) the executive director, or designee, of each of the
17 following state agencies: the Texas Department of Economic
18 Development; the Texas Historical Commission; the Texas Parks
19 and Wildlife Department; and the Texas Natural Resource
20 Conservation Commission.

21 (2) The TEPEC will meet at the call of the chair to
22 consider and discuss the relationship to the surface
23 transportation system and potential benefit of eligible

1 candidate projects. After discussing the candidate projects,
2 the committee will evaluate the function and impact of each
3 project based on the quality of the project, the geographic
4 scope of the project's benefits, and the project's
5 transportation enhancement value. The TEPEC will prepare
6 recommendations as to which projects are suitable for funding
7 and provide these recommendations to the department.

8 (3) The TEPEC will serve to advise the department of the
9 benefit of candidate projects only and its decisions will in no
10 way be binding on the ability of the commission to select from
11 among all eligible candidate projects those projects approved
12 for funding.

13 (c) Selection.

14 (1) The department will recommend for consideration by
15 the commission a program of candidate projects. To assist the
16 commission in its decisions concerning selection and funding,
17 the department will, in addition to department staff
18 recommendations, provide to the commission:

19 (A) the list of all eligible candidate projects and any
20 comments and recommendations from the TEPEC;

21 (B) any other comments relevant to consideration of any
22 candidate project for funding, including:

23 (i) any policy matters;

1 (ii) evidence of support and opposition for the
2 candidate project;

3 (iii) evidence of the commitment from the nominating
4 entity to provide more than the minimum required non-federal
5 share of allowable project costs and their ability to do so;

6 (iv) an evaluation of proposed projects indicating
7 the extent to which each project will meet accepted standards as
8 established by applicable law and by accepted professional
9 practice;

10 (v) the views, comments, and certifications of an MPO
11 or a governing body of a city or county; and

12 (vi) all other project specific information as
13 appropriate.

14 (2) The commission will select from among all eligible
15 candidate projects those projects, if any, approved for funding.
16 In selecting an eligible candidate project for funding, the
17 commission will consider:

18 (A) all information provided under paragraph (1)(A) and
19 (B) of this subsection;

20 (B) the potential benefit to the state of the candidate
21 project; and

22 (C) contribution of candidate projects to the safe,
23 effective, and efficient movement of people and goods.

1 (3) In evaluating the potential benefit to the state of
2 the candidate project, the commission will consider, but is not
3 bound by, recommendations and comments from the TEPEC.

4 (4) The commission will, by written order, designate the
5 selected projects and specify the rationale for selection.

6 (5) The funds approved by the commission are a fixed
7 amount. The nominating entity may seek additional funds through
8 this program in subsequent program calls.

9 (6) Candidate projects which are not selected must be
10 resubmitted to receive consideration during subsequent program
11 calls.

12 The provisions of this §11.204 adopted to be effective July 26,
13 1993, 18 TexReg 4649; amended to be effective December 22, 1995,
14 20 TexReg 10391; amended to be effective March 21, 1999, 24
15 TexReg 1831; readopted by review, filed on May 28, 1999, 24
16 TexReg 4483; readopted by review, filed on March 30, 2001, 26
17 TexReg 2860; readopted by review, filed on August 27, 2004, 29
18 TexReg 8901; readopted by review, July 11, 2008, 33 TexReg 5551.

19
20 §11.205. Project Administration.

21 (a) When a project is selected for funding, the department
22 will notify the nominating entity of its selection. If the
23 selected project is to be implemented in a metropolitan area,

1 the department will request that the MPO immediately begin the
2 process required to include the selected project in its TIP.

3 (b) The department will immediately begin the process
4 required to include all selected projects in the STIP. Costs
5 incurred prior to the inclusion of the activity in the STIP,
6 execution of the local agreement, and prior to federal and state
7 approval and authorization to proceed are not eligible for
8 reimbursement.

9 (c) A candidate project will be eliminated from
10 participation in the Program if at any time prior to the
11 execution of the local agreement, any municipality or county in
12 which project activities are proposed notifies the department of
13 its opposition to the project. Notification of opposition must
14 be in the form of a resolution or other official document from
15 the duly constituted governing body of the entity opposing the
16 project. Jurisdiction for the purposes of support or opposition
17 to a candidate project does extend to a municipality's
18 extraterritorial jurisdiction.

19 (d) The department will implement or arrange for
20 implementation of each selected project in accordance with
21 statutory requisites and contracting procedures applicable to
22 the type and character of the project.

23 (e) All selected projects must be developed to current

1 standards and specifications established or recognized by the
2 federal government and the department. The department may allow
3 project plans to be developed by other public authorities,
4 provided those plans are reviewed by the department and
5 determined to have been developed according to current
6 department standards and specifications. The department will
7 coordinate with other state and federal agencies as required by
8 state or federal law or applicable policy.

9 (f) All agencies receiving federal funds for transportation
10 enhancement activities must comply with all federal and state
11 procedures and requirements applicable to development of
12 federal-aid transportation projects.

13 (g) Before funding any real property acquisition or
14 construction activities, the department will ensure that
15 required opportunities for public involvement have been provided
16 and proper environmental documentation has been completed.

17 (h) Funds from other federal programs may be used only when
18 specifically authorized by federal statute or regulation.
19 Pursuant to Title 23, United States Code §323, private cash
20 donations, donations of real property, and contributions of
21 materials and services, may be considered as in-kind
22 contributions and may be allowable costs to meet the local
23 funding match of the project. Except where specifically

1 permitted under federal law or by FHWA, the value of an activity
2 accomplished away from the project and not directly chargeable
3 to the project is not allowed as an in-kind contribution toward
4 the non-federal share of allowable project costs.

5 (i) Whether proposed as an independent project or as an
6 element of a larger transportation project, the candidate
7 project must be limited to a logical unit of work.

8 (j) The department is responsible for inspection and final
9 acceptance of all selected projects and for certification of
10 project completion.

11 (k) The department will submit all requests to FHWA for
12 reimbursement of allowable costs. When the department
13 implements appropriate projects through or in cooperation with
14 other entities, those entities will request reimbursement of
15 allowable costs they incur from the department using the forms
16 and procedures specified by the department.

17 (l) Projects must be developed in accordance with this
18 subchapter. Any changes in the scope of work established in the
19 nomination form, as approved by the commission, must have the
20 advanced written approval of the executive director.

21 Significant increase in the scope of work will require the
22 advanced approval of the commission.

23 (m) If the nominating entity does not complete the project,

1 the department may seek reimbursement of the expended federal
2 funds from the nominating entity.

3 (n) The executive director may eliminate a project or a
4 portion of a project from participation in the Program if at any
5 time:

6 (1) the nominating entity fails to satisfy any
7 requirement of this subchapter;

8 (2) implementation of the project would involve
9 significant deviation from the activities as proposed in the
10 nomination form;

11 (3) the nominating entity withdraws from participation in
12 the project;

13 (4) the project is not implemented within a reasonable
14 time, as determined by the department in consultation with the
15 nominating entity (In the absence of information suggesting that
16 a shorter or longer period is appropriate, three years or less
17 from the date of inclusion in the STIP will be presumed to be a
18 reasonable time.);

19 (5) a local agreement is not executed within one year
20 after the project is selected by the commission; or

21 (6) the director determines that federal funding may be
22 lost because the project has not been implemented or completed.