

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

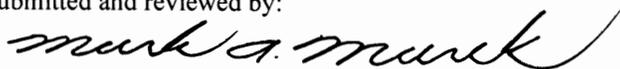
The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §§2.1-2.20, §2.44 and §2.48, and the simultaneous replacement of the repealed sections with new Subchapter A, General Provisions, §§2.1-2.14; new Subchapter C, Environmental Review Process for Highway Projects, §§2.41-2.52; new Subchapter D, Requirements for Classes of Projects, §§2.81-2.86; new Subchapter E, Public Participation, §§2.101-2.110; and new Subchapter F, Requirements for Specific Types of Projects and Programs, §§2.131-2.134 all relating to the environmental review of transportation projects to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed repeals and new sections, attached to this minute order as Exhibits A - H, 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 §§2.1-2.20, §2.44 and §2.48 and new §§2.1-2.14, §§2.41-2.52, §§2.81-2.86, §§2.101-2.110, and §§2.131-2.134 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

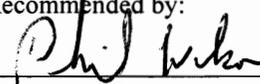
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



Interim Director, Environmental Affairs Division

Recommended by:



Executive Director

**112906 NOV 17 11**

Minute  
Number

Date  
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes the  
3 repeal of 43 TAC Chapter 2, Subchapter A, §§2.1-2.20,  
4 Environmental Review and Public Involvement for Transportation  
5 Projects, and Subchapter C, §§2.44 and 2.48, Additional  
6 Requirements for Certain Types of Transportation Projects. The  
7 department proposes the simultaneous replacement of the repealed  
8 subchapters with new Subchapter A, General Provisions, §§2.1-  
9 2.14; new Subchapter C, Environmental Review Process for Highway  
10 Projects, §§2.41-2.52; new Subchapter D, Requirements for  
11 Classes of Projects, §§2.81-2.86; new Subchapter E, Public  
12 Participation, §§2.101-2.110; and new Subchapter F, Requirements  
13 for Specific Types of Projects and Programs, §§2.131-2.134.

14

15 EXPLANATION OF PROPOSED REPEALS AND NEW SECTIONS

16 The 82nd Texas Legislature, in passing Senate Bill 548, Senate  
17 Bill 1420 and House Bill 630, enacted Transportation Code,  
18 Chapter 201, Subchapter I-1, setting forth new requirements for  
19 the environmental review of highway projects, and requiring the  
20 department to adopt rules implementing Subchapter I-1 not later  
21 than March 1, 2012. These same three bills also enacted  
22 Transportation Code, §222.006, Environmental Review  
23 Certification Process, requiring the department to, by rule,  
24 establish a process to certify department district environmental  
25 specialists who work on documents related to the environmental

1 review process. This proposed rulemaking implements the recent  
2 legislation, and makes other substantive and non-substantive  
3 changes to the department's existing environmental review rules  
4 intended to improve the efficiency and effectiveness of the  
5 environmental review process for transportation projects.  
6  
7 Most of the proposed rules implementing Transportation Code,  
8 Chapter 201, Subchapter I-1 are found in new Subchapter C,  
9 §§2.41-2.52, Environmental Review Process for Highway Projects.  
10 In accordance with the new statutory subchapter, the rules in  
11 new Subchapter C set deadlines on the department's review of  
12 certain types of environmental review documents. They also  
13 prescribe a process by which the department district, region, or  
14 division or local government preparing the environmental review  
15 document for a project (the project sponsor), and the entity who  
16 will ultimately approve or disapprove that document on the  
17 department's behalf (the department delegate), must come to an  
18 agreement on the expected content of the document, the roles and  
19 responsibilities for related tasks, and the process for  
20 informally resolving any disputes, by jointly executing a  
21 "project scope," using a standardized checklist, early on in the  
22 process. The department expects this and other aspects of the  
23 proposed rules to result in more timely environmental reviews,  
24 and more efficient and effective collaboration with local  
25 government sponsors of highway projects.

1  
2 This proposed rulemaking also makes a number of improvements to  
3 the existing environmental review rules unrelated to the recent  
4 legislation. For example, the proposed rules provide for  
5 greater operational flexibility within the department as  
6 compared to the existing rules. While many of the current rules  
7 are written with the assumption that a department district is  
8 preparing the environmental review document, the proposed rules  
9 allow a department district, region, or division or a local  
10 government with the department's permission to prepare the  
11 environmental review document for a given project. Further,  
12 while the current rules are generally written with the  
13 assumption that the Environmental Affairs Division reviews and  
14 approves the document, the proposed rules allow the executive  
15 director to delegate this authority as appropriate. For  
16 example, under the proposed rules, the executive director could  
17 determine that, for a particular project classification, such as  
18 blanket categorical exclusions, or even for a particular type of  
19 project within that classification, such as resurfacing  
20 projects, the district or region environmental personnel should  
21 be the department entity that reviews and approves the relevant  
22 documentation. The department believes this change will allow  
23 it to better adjust its resources to maximize both the quality  
24 of environmental review and the efficiency of the process.  
25

1 The proposed rules also more clearly differentiate between  
2 federal and state requirements. For example, the current rules  
3 apply to projects receiving federal aid or requiring federal  
4 approval, regardless of which federal agency is involved. This  
5 broad approach may not be appropriate in all circumstances  
6 because each of the different federal transportation agencies  
7 (the Federal Highway Administration, the Federal Aviation  
8 Administration, the Federal Railroad Administration, and the  
9 Federal Transit Administration) may have different environmental  
10 review requirements. The proposed rules clearly indicate that  
11 they apply only to (1) state transportation projects, which are  
12 those that are neither conducted nor supported by one of the  
13 operating administrations of the United States Department of  
14 Transportation and (2) transportation projects conducted or  
15 supported by the Federal Highway Administration (FHWA) for which  
16 FHWA is the lead federal agency and for which FHWA agrees the  
17 department may act as the joint lead agency or project sponsor,  
18 as the rules have been written with a goal of consistency with  
19 FHWA's environmental review requirements. For transportation  
20 projects conducted or supported by a federal transportation  
21 agency other than FHWA, and for transportation projects  
22 conducted or supported by multiple federal transportation  
23 agencies for which FHWA is not the lead federal agency, the  
24 department delegate and project sponsor will follow not the  
25 department's rules, but the environmental review rules of the

1 lead federal agency. The applicability of the proposed rules is  
2 addressed more thoroughly in this preamble in the discussion of  
3 new §2.3, Applicability; Exceptions, and new §2.6, FHWA  
4 Transportation Projects.

5  
6 Further, some of the current rules may be confusing because they  
7 appear to require compliance with specific federal laws, for  
8 example, Section 106 of the National Historic Preservation Act,  
9 regardless of whether the project has any federal aspects. The  
10 proposed rules are written to avoid that confusion by reciting  
11 only state requirements, and referring to federal law only for  
12 projects conducted or supported by FHWA.

13  
14 The proposed rules do not carry forward current §2.14,  
15 Supplemental Environmental Assessment (Supplemental EA), which  
16 had been added the last time the department revised Chapter 2 in  
17 January of 2007. Since then, the department has not used the  
18 procedures under this rule for any project, and the department  
19 no longer believes the rule is necessary. Project changes or  
20 other developments potentially affecting an environmental  
21 assessment (EA) may be addressed using the reevaluation  
22 procedures set forth in new §2.85, which has been written to  
23 more closely track FHWA's regulations on reevaluations than does  
24 the department's current rule.

25

1 Another significant change made in these proposed rules pertains  
2 to the process for determining whether a project qualifies as a  
3 blanket categorical exclusion (BCE). The current rules require  
4 district environmental personnel to perform a site visit for  
5 every project categorized as a BCE. However, BCEs are, by  
6 definition, projects that, based on the department's experience,  
7 have no significant environmental impacts. The proposed rules,  
8 therefore, do not require a site visit for BCEs. The department  
9 believes that this proposed change will better focus the  
10 department's resources, and minimize the potential for delay on  
11 projects with no potential for significant environmental  
12 impacts. The proposed rules regarding CEs and BCEs also more  
13 closely track the recently re-negotiated programmatic agreement  
14 between the department and FHWA, which is generally more  
15 straightforward than the current rules on those subjects. They  
16 also more clearly identify the level of documentation required  
17 for processing a transportation project as a CE or BCE. Under  
18 the proposed rules, a BCE requires the preparation of a  
19 descriptive letter or environmental issues checklist. A  
20 descriptive letter or environmental issues checklist may also be  
21 used to process a project as a CE; however, if the department  
22 delegate determines to hold a public hearing or offer the  
23 opportunity for one, a brief environmental review document is  
24 required for a CE.

25

1 The proposed rules also encourage the streamlining of  
2 environmental review documents. The department's ability to  
3 review and approve EAs and environmental impact statements  
4 (EISs) may be affected by the sheer length of these documents.  
5 In these proposed rules, the department encourages project  
6 sponsors to summarize and incorporate by reference environmental  
7 reports on discrete issues, rather than repeating all of the  
8 information from those reports in the body of the environmental  
9 review document.

10

11 The proposed rules also include updates to reflect changes in  
12 law made since the last time the Chapter 2 rules were adopted.  
13 For example, references in the current Chapter 2 rules to the  
14 Texas Review and Comment System (TRACS) are not carried forward  
15 in this proposed rulemaking. On March 25, 2011, the Office of  
16 the Governor announced the repeal of Title 1, Part 1, Chapter 5,  
17 Subchapter B of the Texas Administrative Code, relating to TRACS  
18 because it determined that TRACS is no longer necessary or  
19 efficient in light of current advancements in technology. See  
20 36 *Texas Register* 1970 (March 25, 2011).

21

22 In addition to these specific changes, this proposed rulemaking  
23 makes various other substantive and non-substantive changes as  
24 compared to the current Chapter 2 rules to improve the  
25 organization, accuracy, clarity, and readability of the rules,

1 and to make the department's environmental review process more  
2 efficient and effective.

3

4 SUBCHAPTER A, GENERAL PROVISIONS

5 New Subchapter A, General Provisions, contains rules and  
6 definitions generally applicable to the department's  
7 environmental review of transportation projects. It also  
8 implements Transportation Code, §222.006, Environmental Review  
9 Certification Process.

10

11 New §2.1 identifies the state statutes implemented by Chapter 2.

12

13 New §2.2 explains that the department will protect, preserve,  
14 and, when practicable, enhance the environment, and further  
15 elaborates on the department's environmental policy.

16

17 New §2.3 explains that Chapter 2 applies to transportation  
18 projects conducted, funded, or approved by the department,  
19 including those transportation projects conducted, funded, or  
20 approved by FHWA. More specifically, using this section, a  
21 project sponsor or department delegate may determine whether  
22 Chapter 2 applies to a particular project by first determining  
23 whether it is a "transportation project," as defined in new  
24 §2.5, and if it is, then determining if it is a "state  
25 transportation project" or "FHWA transportation project" both of

1 which are defined in new §2.5. If it is one of those types of  
2 transportation projects, and it is conducted by the department,  
3 is funded in whole or in part by the department, or requires  
4 Texas Transportation Commission (commission) or department  
5 approval, it will be subject to Chapter 2, unless one of the  
6 following two exceptions set forth in the section applies.  
7 First, certain transportation projects funded with toll revenue  
8 and local toll projects developed under the statutory sections  
9 cited at new §2.3(b)(1) are not subject to the proposed sections  
10 because the environmental review of such a project is conducted  
11 not by the department, but by the entity responsible for  
12 implementing the project. The provisions on local toll projects  
13 have been updated to reflect changes made by Senate Bill 19  
14 (Acts of the 82nd Legislature, Regular Session). Second, the  
15 department's actions undertaken in its capacity as a nonfederal  
16 sponsor of the Gulf Intracoastal Waterway are subject only to  
17 the requirements of new §2.132.

18

19 Because the proposed sections have been written with a goal of  
20 consistency with FHWA's environmental review requirements, but  
21 not with the environmental review requirements of other federal  
22 transportation agencies, the proposed sections apply to a  
23 transportation project conducted or supported by a federal  
24 transportation agency only if that federal agency is FHWA. New  
25 §2.3 clarifies that if a federal transportation agency other

1 than FHWA is conducting or supporting a transportation project,  
2 or if there are multiple federal transportation agencies and  
3 FHWA is not the lead federal agency, Chapter 2 does not apply,  
4 and the project sponsor and department delegate must comply with  
5 the environmental review rules of the lead federal agency.

6  
7 A transportation project that is not conducted or supported by  
8 any federal transportation agency, but requires a federal  
9 agency's approval, such as a state highway project funded solely  
10 with state funds that requires an individual permit issued by  
11 the United States Army Corps of Engineers (Corps), is considered  
12 to be a state transportation project under the rules (see the  
13 definition of "state transportation project" in new §2.5). In  
14 this situation, new Chapter 2 would govern the department's  
15 environmental review process, but the project sponsor would be  
16 required to comply with the Corps' rules regarding issuance of  
17 individual permits under the Clean Water Act by new §2.4, Other  
18 Applicable Laws. That section provides that a sponsor of a  
19 transportation project must ensure compliance not only with  
20 Chapter 2, but also with any other applicable local, state, or  
21 federal laws that apply by their own force. It is not  
22 practicable to list every local, state, and federal law  
23 potentially applicable to a transportation project, and an  
24 incomplete list of those laws is of limited usefulness and  
25 potentially misleading. Therefore, the proposed rules generally

1 require compliance with all applicable laws.

2

3 New §2.5 sets forth definitions of key terms and phrases used in  
4 Chapter 2. The definition of an acronym, such as "BCE,"  
5 provides the associated term and directs the reader to the  
6 section of Chapter 2, in which the acronym is explained in  
7 detail.

8

9 This section defines three phrases that are fundamental to  
10 understanding the applicability of the proposed rules. The  
11 first is "transportation project," which is defined as "[a]  
12 project to construct, maintain or improve a highway, rest area,  
13 toll facility, aviation facility, public transportation  
14 facility, rail facility, ferry, or ferry landing." The  
15 definition goes on to include a federally funded "transportation  
16 enhancement," a defined term under federal law. The department  
17 believes that this plain English definition is an improvement  
18 over the one found in the current version of the rules.

19

20 Two other key defined terms are "state transportation project"  
21 and "FHWA transportation project." The definitions of these  
22 terms are noteworthy because, as explained in new §2.3, Chapter  
23 2 applies only to state transportation projects and FHWA  
24 transportation projects conducted or funded in whole or in part  
25 by the department or requiring commission or department

1 approval. An "FHWA transportation project" is defined as "[a]  
2 transportation project conducted or supported by FHWA, such as  
3 by providing federal funds or by granting access to the  
4 interstate highway system, for which FHWA is the lead federal  
5 agency, and for which FHWA agrees the department may act as the  
6 joint lead agency or project sponsor." The phrase, "conducted  
7 or supported," is adapted from federal law describing the  
8 purpose of the National Environmental Protection Act (NEPA). A  
9 "state transportation project" is defined as "[a] transportation  
10 project that is not conducted or supported, such as by providing  
11 federal funds or by granting access to the interstate highway  
12 system, by one of the operating administrations of the United  
13 States Department of Transportation."

14

15 New §2.6 explains that, for a project conducted or supported by  
16 FHWA, the department delegate and project sponsor will comply  
17 with FHWA's rules concerning the environmental review of the  
18 project, as appropriate, in addition to the requirements of this  
19 chapter. To the extent there is a conflict between FHWA's rules  
20 and the requirements of this chapter, FHWA's rules will control.  
21 The section also clarifies that, for a project conducted or  
22 supported by FHWA, the entity with the authority to issue final  
23 approval of an environmental review document, or a descriptive  
24 letter or environmental issues checklist prepared for a  
25 categorical exclusion, blanket categorical exclusion, or

1 programmatic categorical exclusion (CE/BCE/PCE documentation),  
2 is FHWA. The section further acknowledges that a qualifying  
3 project may be considered to be approved by FHWA under a  
4 programmatic agreement if it meets specified criteria.

5  
6 New §2.7 introduces use of the term "project sponsor" to denote  
7 the entity that accepts responsibility for preparing the  
8 environmental review document or CE/BCE/PCE documentation and  
9 for performing related tasks for a given project. Use of this  
10 new term fulfills two purposes. The first is related to  
11 implementation of new Transportation Code, Chapter 201,  
12 Subchapter I-1, enacted by the 82nd Texas Legislature.  
13 Subchapter I-1 requires the adoption of rules governing the  
14 environmental review of highway projects that apply regardless  
15 of whether the entity preparing the environmental review  
16 document or CE/BCE/PCE documentation is a department entity or a  
17 local government. Use of "project sponsor" allows the  
18 department to write implementing rules that interchangeably  
19 apply to a department entity or local government, depending on  
20 which is preparing the environmental review document or  
21 CE/BCE/PCE documentation for a project.

22  
23 Secondly, use of "project sponsor" allows the department's rules  
24 to generically refer to the entity preparing an environmental  
25 review document or CE/BCE/PCE documentation, without

1 specifically identifying it to the exclusion of other types of  
2 entities that might fulfill that role. For example, many of the  
3 current rules assume that the environmental review document or  
4 CE/BCE/PCE documentation is prepared by a department district,  
5 but it is possible for a department region or division to assume  
6 that responsibility for certain types of projects. For these  
7 reasons, the rules are being revised throughout to generically  
8 refer to the entity preparing the environmental review document  
9 or CE/BCE/PCE documentation as the project sponsor.

10

11 As explained in new §2.7, the project sponsor for a given  
12 project may be a department district, region, or division, or,  
13 for a highway project, a local government. Under new  
14 Transportation Code, §201.751(4), the types of local governments  
15 that are eligible to be project sponsors are municipalities,  
16 counties, groups of adjoining counties, counties acting under  
17 Transportation Code, Chapter 284, regional tollway authorities  
18 operating under Transportation Code, Chapter 366, regional  
19 mobility authorities operating under Transportation Code,  
20 Chapter 370, local government corporations, and transportation  
21 corporations created under Transportation Code, Chapter 431. A  
22 local government may serve as a project sponsor only if approved  
23 by the department. Approval of a local government as a project  
24 sponsor will be made in consideration of the criteria set forth  
25 in new §2.47(d).

1  
2 A private entity may develop environmental review documents or  
3 CE/BCE/PCE documentation for a department district, region, or  
4 division's use, but may not be a project sponsor. If a private  
5 entity develops an environmental review document or CE/BCE/PCE  
6 documentation for a department district, region, or division's  
7 use, the district, region, or division using the environmental  
8 review document or CE/BCE/PCE documentation will be the project  
9 sponsor.

10  
11 New §2.8 introduces use of the term "department delegate" to  
12 denote the entity within the department to which the executive  
13 director has delegated authority to make decisions on the  
14 department's behalf regarding the approval of an environmental  
15 review document or CE/BCE/PCE documentation. As explained  
16 earlier, the department proposes to transition from the  
17 prescriptive approach taken in the current rules, to allowing  
18 the executive director to determine which entity within the  
19 department has authority to act on the department's behalf with  
20 respect to different classes of transportation projects. For  
21 example, the executive director might determine that, while it  
22 is appropriate for department districts to have approval  
23 authority over certain types of projects, it is appropriate for  
24 some other operational unit to have approval authority over  
25 other types. This approach will also allow the executive

1 director to respond to project-specific circumstances that may  
2 call for a re-assignment of this responsibility. Under the  
3 section, the executive director could make these types of  
4 adjustments pertaining to the department's internal conduct of  
5 its affairs without having to undertake formal notice-and-  
6 comment rulemaking.

7  
8 The section provides for the possibility that, for certain  
9 classes of transportation projects, the executive director might  
10 designate a district, region, or division as both the project  
11 sponsor and the department delegate, in which event that  
12 district, region, or division would be responsible for both (1)  
13 preparing the environmental review document or CE/BCE/PCE  
14 documentation, and (2) conducting the required reviews of and  
15 making a final decision regarding approval or disapproval of the  
16 environmental review document or CE/BCE/PCE documentation on the  
17 department's behalf.

18  
19 New §2.9 explains that requests for deviations from the  
20 requirements of Chapter 2 for emergency circumstances, such as  
21 floods, will be handled by the department delegate. The section  
22 also identifies appropriate limits on such a deviation.

23  
24 New §2.10, explains how deadlines under Chapter 2 are  
25 calculated.

1  
2 New §2.11 implements Transportation Code, §222.006, by requiring  
3 district employees who prepare or review environmental studies  
4 or reports, environmental review documents, or CE/BCE/PCE  
5 documentation to complete certification training conducted by a  
6 certification program manager appointed by the department's  
7 executive director. To allow time for the certification program  
8 manager to develop the certification training, and for district  
9 employees to complete the training with minimal interruption to  
10 department business, the section allows up to one year from the  
11 rules' estimated effective date, March 15, 2012, or the date of  
12 hire, whichever is later, to complete the training. In  
13 accordance with new Transportation Code, §222.006, the section  
14 also prescribes a recertification requirement.

15  
16 New §2.12 sets forth the department's requirements for  
17 coordinating transportation projects with "participating  
18 agencies," which are defined as agencies, departments, or other  
19 units of federal, state, local, or Indian tribal government that  
20 may have an interest in or jurisdiction over a transportation  
21 project. The section explains how participating agencies for a  
22 particular transportation project will be identified, and  
23 specifies that, at a minimum, they must include the Texas  
24 Commission on Environmental Quality, the Texas Historical  
25 Commission, and the Texas Parks and Wildlife Department, to the

1 extent required by the memoranda of understanding between the  
2 department and each of those agencies set forth in Subchapter B  
3 of Chapter 2.

4  
5 While the section specifies the project sponsor as the default  
6 entity responsible for coordinating a transportation project  
7 with participating agencies, it recognizes that for a highway  
8 project, as explained in new §2.44(d), the project sponsor and  
9 department delegate may agree that the department delegate will  
10 conduct the coordination, rather than the project sponsor. The  
11 section also recognizes that some participating agencies may  
12 insist on coordinating transportation projects with an  
13 organizational unit of the department that is not the project  
14 sponsor, in which event that organizational unit, rather than  
15 the project sponsor, will coordinate the project with the  
16 participating agency. Regarding the sequencing of coordination  
17 in relation to other environmental review tasks, for highway  
18 projects, the project sponsor and department delegate will agree  
19 in the project scope on whether any coordination should be done  
20 before submission of an environmental review document or  
21 CE/BCE/PCE documentation to the department delegate, and if so,  
22 with which participating agencies. The results of that  
23 coordination should be discussed in the environmental review  
24 document or CE/BCE/PCE documentation.

25

1 New §2.13 requires the project sponsor of a transportation  
2 project to seek to avoid and minimize environmental impacts. It  
3 further authorizes the project sponsor to, when impacts cannot  
4 be avoided and efforts to minimize them have been exhausted,  
5 propose compensatory mitigation in consultation with the  
6 department delegate and any appropriate agency or agencies. The  
7 section recites the statutory provisions authorizing the  
8 department to undertake compensatory mitigation, and explains  
9 that local government sponsors may propose as compensatory  
10 mitigation any of the actions that the department is authorized  
11 by statute to undertake, and any others authorized by law. The  
12 section also clarifies that nothing in Chapter 2 prevents a  
13 local government sponsor from seeking to use a department-funded  
14 mitigation bank for compensatory mitigation on a project  
15 concerning a segment of the state highway system. Subsection  
16 (c)(2) is added to implement Government Code, Chapter 403,  
17 Subchapter Q, added by Senate Bill 1, 82nd legislature, First  
18 Called Session, authorizing the comptroller to develop a habitat  
19 conservation plan or candidate conservation plan, and to  
20 designate certain state agencies including the department to  
21 develop a plan.

22

23 New §2.14 specifies that the project sponsor will maintain  
24 documentation showing work completed under Chapter 2 in a  
25 project file. If the project sponsor is a local government, on

1 approval of the environmental review document or CE/BCE/PCE  
2 documentation, the local government will retain the project file  
3 or forward it to the department district in which the project is  
4 located, as directed by the district.

5

6 SUBCHAPTER C, ENVIRONMENTAL REVIEW PROCESS FOR HIGHWAY PROJECTS

7 New Subchapter C, Environmental Review Process for Highway

8 Projects, implements Transportation Code, Chapter 201,

9 Subchapter I-1, setting forth new requirements for the

10 environmental review of highway projects.

11

12 New §2.41 explains that new Subchapter C will apply in its

13 entirety to all highway projects for which an environmental

14 review document or CE/BCE/PCE documentation for the project has

15 not been provided, in whole or in part, to the department

16 delegate as of March 15, 2012, the proposed rules' anticipated

17 effective date. If a project sponsor has submitted to the

18 department delegate an environmental review document or

19 CE/BCE/PCE documentation, in whole or in part, as of March 15,

20 2012, then Subchapter C applies to the highway project only if

21 the project sponsor notifies the department delegate in writing

22 that it elects to have the project processed under Subchapter C,

23 in which case Subchapter C will apply in its entirety to that

24 project.

25

1 The department believes that the approach set forth in new §2.41  
2 will allow for the most orderly transition to processing  
3 environmental review documents for highway projects under the  
4 new rules. A given highway project will either be subject to  
5 all of the procedural requirements and deadlines under  
6 Subchapter C, or none of them, depending on whether the  
7 department delegate's review of an environmental review document  
8 or CE/BCE/PCE documentation has begun on March 15, 2012, and if  
9 it has, whether the project sponsor elects to have the project  
10 processed under Subchapter C. This will avoid partial  
11 application of Subchapter C to a given highway project, such as  
12 imposition of the technical review deadlines in new §2.49  
13 without the benefit of the other procedural requirements in new  
14 Subchapter C, such as a project scope under new §2.44, and  
15 administrative completeness review under new §2.48.

16  
17 New §2.42 implements Transportation Code, §201.753. The section  
18 provides that, with one exception, an environmental review  
19 document or CE/BCE/PCE documentation may be prepared for a  
20 highway project only if it is identified in the financially  
21 constrained portion of the approved state transportation  
22 improvement program (STIP) or the financially constrained  
23 portion of the approved unified transportation program (UTP), or  
24 identified by the commission as being eligible for participation  
25 under the subchapter. The sole exception to this limitation is

1 that, as provided in Transportation Code, §201.753(b), a local  
2 government may prepare an environmental review document or  
3 CE/BCE/PCE documentation for a project that is not identified in  
4 the STIP, UTP, or commission order if the local government  
5 timely pays a fee to cover the department's costs of reviewing  
6 the environmental review document or CE/BCE/PCE documentation.  
7 Procedures governing the payment of such a fee by a local  
8 government are set forth in new §2.46.

9  
10 New §2.43 lists the tasks for which a project sponsor of a  
11 highway project will generally be responsible, unless the  
12 project sponsor and department delegate agree to alternative  
13 roles or responsibilities in accordance with new §2.44(d). This  
14 list is based on Transportation Code, §201.756, Local Government  
15 Sponsor Responsibilities, but is written to apply regardless of  
16 whether the project sponsor is a department entity or a local  
17 government. It is also more detailed and comprehensive than the  
18 list of local government sponsor responsibilities set forth in  
19 Transportation Code, §201.756. Among the project sponsor's  
20 responsibilities is the preparation of any environmental report  
21 describing or analyzing the results of an environmental study or  
22 survey. While other proposed sections, such as new §2.84(b)(4),  
23 encourage the preparation of environmental reports and their  
24 attachment to environmental review documents as an alternative  
25 to lengthy technical explanations of any environmental studies

1 in the body of an environmental review document, and while new  
2 §2.43(2) assigns responsibility for preparing any environmental  
3 reports to the project sponsor, neither new §2.43 nor any other  
4 proposed section requires the preparation of separate  
5 environmental reports.

6  
7 New §2.44 implements Transportation Code, §201.754. It requires  
8 a project sponsor to, in collaboration with the department  
9 delegate, prepare a detailed project scope before the project  
10 sponsor prepares and submits an environmental review document or  
11 CE/BCE/PCE documentation to the department delegate for its  
12 review. The section specifies that the project scope must be  
13 prepared using a standardized checklist approved by the  
14 department, and sets forth its required content. Among the  
15 required contents of a project scope is a list of issues to be  
16 addressed in the environmental review document or CE/BCE/PCE  
17 documentation, and a statement of the anticipated classification  
18 of the project under Subchapter D. The section also provides  
19 that FHWA may be a party to a project scope if its approval of  
20 the highway project will be required.

21  
22 The development of an agreed-upon project scope is required by  
23 statute to be a collaborative process conducted by the project  
24 sponsor and department delegate. For the purposes of this  
25 section, a project sponsor includes a local government that

1 proposes to serve as a project sponsor and intends to seek the  
2 department's approval of such a designation under §2.47. The  
3 section requires the department delegate and project sponsor to  
4 meet to discuss the preparation of the project scope within 30  
5 days after the project sponsor submits to the department  
6 delegate a proposed project scope, unless the project sponsor  
7 and department delegate agree that no meeting is necessary, or  
8 agree to postpone the meeting. If the project sponsor and  
9 department delegate have not agreed upon a project scope within  
10 60 days of the project sponsor's submittal of its proposed  
11 project scope, the department delegate will provide the project  
12 sponsor with its proposed project scope, and the parties may  
13 proceed to dispute resolution as provided by new §2.52. Any  
14 unresolved disagreements about any of the issues covered in the  
15 project scope must be resolved, using the dispute resolution  
16 procedures set forth in new §2.52, before the deadline for  
17 submitting the agreed-upon project scope set by §2.44(g).

18

19 The department views the project scope as an essential component  
20 of its new environmental review process for highway projects. A  
21 primary purpose of the project scope is to allow the department  
22 delegate and project sponsor an opportunity to, at the outset,  
23 jointly determine which coordination, public participation,  
24 environmental studies, and other tasks will be required for  
25 environmental clearance of the project. The department believes

1 that requiring agreement on the essential components of an  
2 environmental review early in the process will significantly  
3 reduce the need for extensive revision of environmental review  
4 documents resulting from misunderstandings about the expected  
5 content of the document.

6  
7 The section also allows the department delegate to undertake  
8 tasks that would normally be the responsibility of the project  
9 sponsor under new §2.43. For example, the project sponsor and  
10 department delegate might agree that the department delegate,  
11 rather than the project sponsor, will conduct coordination with  
12 a particular resource agency. To minimize the potential for  
13 misunderstandings about which entity is responsible for which  
14 tasks, the section provides that any agreements to deviate from  
15 the default project sponsor responsibilities set forth in new  
16 §2.43 must be clearly identified in the project scope. Finally,  
17 the section describes the circumstances in which an agreed-upon  
18 project scope must be amended.

19  
20 New §2.45 explains that the project sponsor may submit to the  
21 department delegate any environmental reports as they are  
22 developed in the course of preparing the environmental review  
23 document, and that the department delegate will identify in  
24 writing any deficiencies, flaws, or omissions within 60 days of  
25 the receipt of such a report, unless the project sponsor and

1 department delegate agree to extend that deadline.

2

3 As explained earlier, this proposed rulemaking will not require  
4 the preparation of any separate environmental reports that are  
5 not otherwise required by law. Several of the sections in  
6 proposed Subchapter D encourage project sponsors to prepare  
7 separate environmental reports documenting environmental studies  
8 or analyses, summarize them in an environmental review document  
9 for a given project, and append them to that environmental  
10 review document. However, project sponsors will still have the  
11 option of documenting any environmental studies or analyses in  
12 the body of an environmental document, as opposed to preparing  
13 separate environmental reports. If a project sponsor opts to  
14 prepare separate environmental reports documenting environmental  
15 studies or analyses, new §2.45 will provide a procedural  
16 mechanism for having them reviewed by the department delegate in  
17 advance of preparation and submittal of the environmental review  
18 document. The department strongly encourages project sponsors  
19 to take advantage of this opportunity because advance review of  
20 environmental reports will significantly reduce the potential  
21 for extensive revision of the environmental review document to  
22 address deficiencies, flaws, or omissions that can be  
23 identified early in the process.

24

25 New §2.46 implements Transportation Code, §201.753(b) and (c).

1 A local government may pay the department a fee to cover the  
2 department's costs to contract with a consulting company or  
3 companies to review an environmental document or CE/BCE/PCE  
4 documentation prepared by the local government. There are two  
5 reasons why a local government might pay a fee under this  
6 section. The first is to allow the department delegate to  
7 review an environmental review document or CE/BCE/PCE  
8 documentation prepared by the local government that it would  
9 otherwise not be able to under new §2.42(a) because the project  
10 is not identified in the financially constrained portion of the  
11 approved STIP or UTP, and is not identified in a commission  
12 order as being eligible for participation under Subchapter C.  
13 Note that, while payment of a fee under this section will allow  
14 the department delegate to review a document that it otherwise  
15 could not because it is not identified in the STIP or UTP or in  
16 a commission order, it does not avoid other consequences of a  
17 project not being identified in planning documents. For  
18 example, the department delegate will not forward to FHWA an  
19 environmental review document or CE/BCE/PCE documentation for a  
20 project in a non-attainment area that is not in a plan for which  
21 a conformity determination has been made under the Federal Clean  
22 Air Act. The second reason is to prevent the department  
23 delegate from deferring review of an environmental review  
24 document under new §2.51.

25

1 The section explains the procedure by which the local government  
2 requests calculation of, and the department delegate calculates  
3 a fee for a given project. The department anticipates that it  
4 would calculate a fee for a given project based on an estimate  
5 from a consulting company or companies, and by estimating the  
6 cost to the department of staff time spent coordinating and  
7 supervising the consulting company or companies' review. Under  
8 Transportation Code, §201.753(b), the local government must pay  
9 to the department delegate any fee concurrently with the  
10 submittal of the notice required by new §2.47; therefore, a  
11 local government's request for calculation of a fee for a  
12 project must be submitted in advance of that notice. The  
13 section allows the department delegate 30 days to respond to a  
14 local government's request for calculation of a fee. It further  
15 explains that the department delegate will recalculate the fee,  
16 and the local government shall pay to the department delegate  
17 any cost increases, if at any time there are changes to the  
18 project description or project classification that significantly  
19 increase the department's costs of reviewing the environmental  
20 review document or CE/BCE/PCE documentation. The section also  
21 provides for a reconciliation of the amount of the fee paid and  
22 the actual cost of reviewing a document at the conclusion of  
23 review. The local government will pay any additional costs  
24 incurred by the department delegate beyond the fee paid, and the  
25 department delegate will return to the local government any

1 excess funds paid. Payment of a fee by a local government does  
2 not obligate the department delegate to contract out the review  
3 of a document. When a document for which a fee was paid is  
4 submitted for administrative completeness review, which could  
5 occur many months after the local government submits its notice  
6 and fee under new §2.47, the department delegate could decide  
7 that its resources would be better allocated by conducting the  
8 review itself, in which event the department delegate would  
9 return the entire fee to the project sponsor.

10

11 New §2.47 implements Transportation Code, §201.755. It requires  
12 a local government proposing to serve as the project sponsor for  
13 a highway project to provide written notice to the department  
14 delegate. The notice must include (1) the project scope agreed  
15 on by the department delegate and project sponsor; (2) a request  
16 for verification of the decision made in the project scope  
17 regarding the anticipated classification of the project under  
18 Subchapter D; and (3) a statement whether the project sponsor is  
19 paying a fee under new §2.46, and if so, a check in the amount  
20 calculated by the department delegate must accompany the notice.

21

22 The department recognizes that, because the anticipated project  
23 classification will be documented in the project scope and  
24 because the project sponsor will be required to later submit a  
25 notice with a request for verification of that classification,

1 the department delegate will essentially be determining the  
2 classification twice. However, this is necessary given that  
3 Transportation Code, §201.755 requires a local government to,  
4 after preparation of the project scope in collaboration with the  
5 department delegate, submit a notice requesting classification  
6 of the project. Therefore, the request for classification  
7 required by the statute, will, in practice, be a request for  
8 verification of the classification made in the course of  
9 preparing the project scope. Both the initial classification  
10 and verification of that classification in response to the  
11 notice required by new §2.47 are subject to change pending the  
12 results of technical review. While the department delegate  
13 should exercise its best professional judgment in making the  
14 initial classification and verification based on information  
15 provided by the local government, a situation may arise in which  
16 it is not evident to the department delegate until it is  
17 conducting its technical review of a CE document that the  
18 project does not qualify for that classification.

19  
20 The section provides that the department delegate will respond  
21 within 30 days of receiving a notice submitted by a local  
22 government, verifying the classification of the project.  
23 Regarding approval of a local government as a project sponsor,  
24 the section requires the department delegate to make its  
25 determination based on a consideration of the specific factors.

1 While the department anticipates that most requests by local  
2 governments to be project sponsors will be approved, it reserves  
3 the right to deny such a request if, for example, a local  
4 government proposes to take responsibility for preparing an EIS  
5 for a significant project but has no demonstrated ability or  
6 resources to do so.

7

8 New §2.48 implements Transportation Code, §§201.757 and 201.758  
9 by requiring the department delegate to determine whether an  
10 environmental review document submitted by a project sponsor is  
11 administratively complete before undertaking technical review.  
12 This section does not apply to BCEs, PCEs and CEAs for which a  
13 descriptive letter or environmental issues checklist, rather  
14 than an environmental review document, is prepared.

15

16 The primary purpose of an administrative completeness review is  
17 to determine whether or not the environmental review document  
18 has been prepared in accordance with the project scope. For  
19 example, if a project scope called for an archeological survey  
20 to be conducted and discussed in an environmental review  
21 document or an attached environmental report, and such a  
22 discussion is not provided, the department delegate could not  
23 conclude that the document is administratively complete. Using  
24 this example, the purpose of the administrative completeness  
25 review would not be to determine whether an archeological survey

1 was done properly or whether the project sponsor's conclusions  
2 from the survey are sound; those types of considerations would  
3 be more relevant in the technical review under new §2.49.  
4 Rather, the purpose of the administrative completeness review  
5 would be to determine whether the survey was done and whether it  
6 had been documented as required by the project scope.

7  
8 New §2.48 sets forth the requirements for determining that an  
9 environmental review document is administratively complete. It  
10 also sets a deadline for the department delegate to determine  
11 whether a document is administratively complete of 20 days from  
12 receipt of the document. If the department delegate determines  
13 that an environmental review document is not administratively  
14 complete, it must, in writing, inform the project sponsor and  
15 explain its basis for that determination in reasonable detail.  
16 If the project sponsor re-submits a revised or amended  
17 environmental review document, the department delegate will have  
18 another 20 days to determine whether the revised or amended  
19 version is administratively complete. The section also requires  
20 the department delegate to undertake all reasonable efforts to  
21 cooperate with the project sponsor to ensure that the  
22 environmental review document is administratively complete.

23  
24 Finally, §2.48 sets a deadline on the project sponsor's  
25 submittal of an EA or final environmental impact statement

1 (FEIS) for administrative completeness review of two years  
2 before the date planned for publishing notice to let the  
3 construction contract for the project as indicated in the  
4 financially constrained portion of the STIP or UTP or a  
5 commission order identifying the project as being eligible for  
6 environmental review. The need for this deadline relates to new  
7 §2.51, Deferral of Review. That section, in accordance with  
8 Transportation Code, §201.752(e), provides the department  
9 delegate with flexibility to defer the processing of an EA or  
10 FEIS if it determines that it lacks the resources to timely  
11 process all documents it receives, in which event the  
12 administrative completeness and technical review deadlines would  
13 not apply to the deferred document. However, the section also  
14 provides that the department delegate must render an  
15 environmental decision on a document not later than one year  
16 before the date planned for publishing notice to let the  
17 construction contract for the project as indicated in the STIP,  
18 UTP, or commission order. In order to preserve the department  
19 delegate's ability to defer the processing of an EA or FEIS, and  
20 still comply with the requirement to complete review one year  
21 before the date planned for publishing letting notice, there  
22 must be an earlier deadline for submittal of the document to the  
23 department delegate. The submittal deadline set in new §2.48,  
24 two years before the date planned for publishing letting notice,  
25 provides the department with a reasonable opportunity to meet

1 the deadline for completing review on a deferred document. This  
2 deadline does not apply to a project for which a local  
3 government has paid a fee under new §2.46, because the  
4 department delegate will not have the option to defer the  
5 processing of a document for which a fee has been paid.  
6  
7 New §2.49 requires the department delegate to undertake a  
8 technical review of an environmental review document or  
9 CE/BCE/PCE documentation. For an environmental review document,  
10 the technical review begins when the department delegate  
11 determines the document is administratively complete. The  
12 purpose of a technical review of an environmental review  
13 document is to confirm that the document is (1) comprehensive in  
14 its treatment of all required subject areas; (2) written in a  
15 professional and understandable manner; (3) based on sound  
16 reasoning and accepted scientific and engineering principles;  
17 and (4) legally sufficient, including satisfying the  
18 requirements of Subchapter D. For a BCE, PCE, or CE for which a  
19 descriptive letter or environmental issues checklist is  
20 prepared, the technical review begins when the project sponsor  
21 provides the letter or checklist to the department delegate for  
22 its review, and the purpose of the review is to determine  
23 whether the letter or checklist shows that the project qualifies  
24 as a BCE, PCE, or CE. The section clarifies that a department  
25 may conclude that an environmental review document or CE/BCE/PCE

1 documentation cannot be approved because it does not meet the  
2 stated requirements.  
3  
4 New §2.50 implements Transportation Code, §§201.759 and 201.760.  
5 It imposes the deadlines for the department delegate to complete  
6 technical reviews of PCEs, CEs, EAs, final EISs, and  
7 reevaluations set forth in Transportation Code, §201.759. For  
8 state transportation projects, the department delegate may, by  
9 written communication to the project sponsor, decline to approve  
10 an environmental review document or CE/BCE/PCE documentation at  
11 the conclusion of technical review. The consequences of  
12 disapproval of an environmental review document or CE/BCE/PCE  
13 documentation will depend on the reason given by the department  
14 delegate. If disapproval is for a problem that can be cured  
15 with a new environmental review document or CE/BCE/PCE  
16 documentation, the project sponsor will be allowed to submit one  
17 for administrative completeness review and technical review in  
18 accordance with these proposed rules. For FHWA transportation  
19 projects, the department delegate will be required to forward  
20 the environmental review document or CE/BCE/PCE documentation to  
21 FHWA at the conclusion of technical review with an appropriate  
22 recommendation, which may be a recommendation to disapprove the  
23 document if the department delegate determines that it is  
24 deficient.  
25

1 The proposed section also provides for the suspension of the  
2 technical review deadlines (1) to allow the project sponsor to  
3 correct deficiencies or errors or make revisions as directed by  
4 the department delegate; (2) to allow the project sponsor and  
5 department delegate to address any additional work regarding the  
6 highway project, such as design changes; or (3) to allow the  
7 project sponsor and department delegate to resolve any issues  
8 raised by the department's legal counsel. The section also  
9 provides for suspension of the technical review deadlines by  
10 agreement of the project sponsor and department delegate.

11  
12 Regarding the department delegate's review of an environmental  
13 review document or CE/BCE/PCE documentation, the department  
14 appreciates the need to minimize multiple rounds of comment,  
15 revision, and review of a single document. While there is no  
16 limit on the number of times the technical review of a document  
17 may be suspended, the section requires the department delegate  
18 to provide to the project sponsor any comments on an  
19 environmental review document or CE/BCE/PCE documentation in a  
20 single set of comments, if possible. If at any time during  
21 technical review the classification of the project under  
22 Subchapter D changes, the section requires termination of  
23 technical review, and submittal of a new environmental review  
24 document or CE/BCE/PCE documentation for administrative  
25 completeness review and technical review in accordance with

1 these proposed rules.

2

3 New §2.51 implements Transportation Code, §201.752(e). It  
4 allows the department delegate to defer the processing of an EA  
5 or FEIS if it determines that it lacks the resources to timely  
6 process all documents it receives, in which event the  
7 administrative completeness and technical review deadlines would  
8 not apply to the deferred document. The only types of documents  
9 that may be deferred under the section are EAs and FEISs. The  
10 department delegate does not have the option of deferring review  
11 of a CE, BCE, PCE, or reevaluation or review of an EA or FEIS  
12 for which a local government has paid a fee under new §2.46.

13

14 The department delegate must make a decision to defer review of  
15 an EA or FEIS within 20 days of receipt of the document, and  
16 must notify the project sponsor of a decision to defer in  
17 writing. Even if the department delegate defers review of an EA  
18 or FEIS, it must render an environmental decision on a document  
19 not later than one year before the date planned for publishing  
20 notice to let the construction contract for the project as  
21 indicated in the STIP, UTP, or commission order. The section  
22 clarifies that there is no waiting period for letting after an  
23 environmental decision on a document has been rendered. In  
24 other words, while the department delegate is required to render  
25 an environmental decision on a deferred document at least one

1 year before the planned date for publishing letting notice,  
2 after it has rendered an environmental decision, the department  
3 may, in accordance with other rules and policies, let the  
4 project at any time.

5  
6 New §2.52 implements Transportation Code, §201.752(d). It  
7 prescribes a process for the project sponsor and department  
8 delegate to resolve any disputes concerning the preparation of  
9 the project scope, sufficiency of an environmental report or  
10 environmental review document, classification of a project, or  
11 any other kind of dispute arising under Subchapter C. If a  
12 dispute arises, the section requires the project sponsor and  
13 department delegate to first attempt to informally resolve it  
14 using the procedures set forth in the project scope for the  
15 given project. Each project scope will be required to have a  
16 dispute escalation ladder designating individuals representing  
17 the project sponsor and department delegate, and a deadline for  
18 resolving the dispute at each step of the dispute escalation  
19 ladder. For a given dispute, the individuals listed on the  
20 first step of the dispute escalation ladder would attempt to  
21 resolve the dispute. If they are unable to do so by the  
22 specified deadline, the individuals listed on the second step of  
23 the dispute escalation ladder, which would typically be at a  
24 higher level of management within their respective  
25 organizations, would attempt to resolve the dispute, and so on.

1  
2 The section also prescribes the procedures for resolving a  
3 dispute if the project sponsor and department delegate are  
4 unable to do so using the procedures specified in the project  
5 scope. If the project sponsor is a department district, region,  
6 or division, the project sponsor or department delegate may  
7 request that the department's executive director resolve the  
8 dispute. The section requires the executive director to resolve  
9 any dispute within 60 days of receiving a request for dispute  
10 resolution from the project sponsor or department delegate. If  
11 the project sponsor is a local government, the local government  
12 or department delegate will ask their respective attorneys to  
13 meet and attempt to resolve the dispute. If that is  
14 unsuccessful, the project sponsor or department delegate may  
15 refer the dispute to a mediator or other formal dispute  
16 resolution professional. The project sponsor and department  
17 delegate will share equally in any costs of formal dispute  
18 resolution, and it must be completed within 60 days of the date  
19 on which the project sponsor or department delegate requests it.

20

#### 21 SUBCHAPTER D, REQUIREMENTS FOR CLASSES OF PROJECTS

22 New Subchapter D, Requirements for Classes of Projects, sets  
23 forth the department's requirements for CEs, BCEs, EAs, EISs,  
24 reevaluations, and supplemental EISs prepared for transportation  
25 projects.

1  
2 New §2.81 concerns the preparation of categorical exclusion  
3 documentation for a transportation project that does not  
4 individually or cumulatively have a significant environmental  
5 impact. The section clarifies the documentation needed in order  
6 to approve a project as a categorical exclusion. The  
7 documentation may be in the form of a descriptive letter or an  
8 environmental issues checklist. However, if the department  
9 delegate, based on the nature of the project, requires the  
10 project sponsor to afford an opportunity for hearing or requires  
11 a public hearing, the project sponsor must instead prepare a  
12 brief environmental review document discussing and analyzing the  
13 potential environmental impacts. The section contains the same  
14 restrictions on the classification of a project as a categorical  
15 exclusion as found in the current rules.

16  
17 This section on categorical exclusions and all the following  
18 sections in new Subchapter D more clearly differentiate the  
19 requirements for a state transportation project versus an FHWA  
20 transportation project. For each section, the first subsection  
21 describes the requirements that apply to both state  
22 transportation projects and to FHWA transportation projects.  
23 The last subsection in each section describes the additional  
24 federal requirements that apply for an FHWA transportation  
25 project only. If federal law or a programmatic agreement with

1 FHWA conflicts with this chapter, the federal law or  
2 programmatic agreement provision controls to the extent of the  
3 conflict.  
4  
5 New §2.82 concerns the preparation of blanket categorical  
6 exclusion documentation for a transportation project that is  
7 similar to past projects that did not involve significant  
8 environmental impacts. The section covers the processing of  
9 only a blanket categorical exclusion rather than, as in the  
10 current rules, blanket categorical exclusion and categorical  
11 exclusions in one section. The new section organizes the  
12 approval criteria in the manner of a checklist so that the  
13 preparation and review of documentation may be more efficient.  
14 It clarifies that the approval documentation will be in the form  
15 of a descriptive letter or an environmental issues checklist  
16 showing compliance with the section. As explained earlier, the  
17 section more closely tracks the re-negotiated programmatic  
18 agreement between the department and FHWA, which is generally  
19 more straightforward than the current rules. The examples of  
20 projects that may qualify as a blanket categorical exclusion in  
21 subsections (c) and (d) are taken from the programmatic  
22 agreement. While the examples in subsection (d) are labeled  
23 "[a]dditional examples of BCE," in the programmatic agreement  
24 those same examples are labeled "programmatic categorical  
25 exclusions." The department believes this is reasonable because

1 in the programmatic agreement the substantive standards and the  
2 procedures used for processing a project are the same, whether a  
3 project is classified as a blanket categorical exclusion or a  
4 programmatic categorical exclusion. The section relates to the  
5 processing of a state transportation project. For an FHWA  
6 transportation project, subsection (f)(3) provides that the  
7 project sponsor and department delegate must comply with federal  
8 law including any programmatic agreement. Therefore, the  
9 additional reporting requirements in the current programmatic  
10 agreement with FHWA concerning projects identified as  
11 programmatic categorical exclusions will be complied with.

12  
13 In addition to the general public participation requirements in  
14 Subchapter E, which are covered later, that may apply to a BCE,  
15 the approval checklist in §2.82(b) includes paragraph (1)(F) and  
16 (G). Paragraph (1)(F) provides if there is any controversy  
17 concerning the project, the project sponsor will carry out  
18 public participation to address the controversy following the  
19 requirements in §2.101. Paragraph (1)(G) provides the project  
20 sponsor must determine if public participation is required under  
21 Transportation Code, §203.022(a), and if necessary must have  
22 carried out the public participation. This implements  
23 Transportation Code, §203.022(a), which requires notice and an  
24 opportunity for comment for projects that concern the addition  
25 of one or more vehicular lanes. This type of project is within

1 the description of projects that may be classified as a BCE, or  
2 PCE for an FHWA transportation project, and so the statutory  
3 public participation requirements may apply. The current rule  
4 that implements Transportation Code, §203.022(a) applies to all  
5 classifications of projects that include the addition of a  
6 vehicular lane or the construction of a highway at a new  
7 location. However, the more limited scope of the proposed  
8 section, which applies only to BCEs, is appropriate because  
9 other proposed sections for the other classes of projects  
10 contain more stringent public participation requirements that  
11 satisfy Transportation Code, §203.022(a).

12

13 New §2.83 concerns the preparation of an environmental  
14 assessment for a transportation project to determine the nature  
15 and extent of environmental impacts and whether the preparation  
16 of an EIS is necessary. The section generally follows the  
17 requirements in the current rules, with some changes made to  
18 differentiate between state and federal requirements, as  
19 described earlier.

20

21 New §2.84 concerns the preparation of an environmental impact  
22 statement for a transportation project if there are likely to be  
23 significant environmental impacts. The section generally  
24 follows the requirements in the current rule, with some changes  
25 made to differentiate between state and federal requirements, as

1 described earlier.

2

3 New §2.85 concerns the preparation of a reevaluation for a  
4 transportation project. Section 2.85 has been written to more  
5 closely track FHWA's regulations on reevaluations than does the  
6 department's current rule. Whereas the current rule requires  
7 the preparation of reevaluations of documents or notices of  
8 continuous activity every three years, regardless of whether any  
9 action is being taken on a project, the proposed rule requires  
10 the project sponsor and department delegate to consider whether  
11 a record of decision (ROD), finding of no significant impact  
12 (FONSI), or categorical exclusion (CE) designation remains valid  
13 only when some action on the project is being taken in the form  
14 of a request for a major approval or grant from the department.  
15 The department believes that this change will help better focus  
16 its environmental review resources by eliminating the  
17 preparation of unnecessary paperwork.

18

19

20 New §2.86 concerns the preparation of a supplemental  
21 environmental impact statement. The proposed section generally  
22 follows the requirements in the current rule, with some changes  
23 made to differentiate between state and federal requirements, as  
24 described earlier.

25

1 SUBCHAPTER E, PUBLIC PARTICIPATION

2 New Subchapter E, Public Participation, sets forth the  
3 department's requirements for conducting public participation  
4 for transportation projects.

5

6 New §2.101 provides the public participation requirements for a  
7 transportation project classified as a CE. The proposed section  
8 generally follows the requirements in the current rule. For  
9 purposes of uniformity, the notification of availability of the  
10 public hearing transcript and comment and response report is  
11 changed to track similar requirements found in the section on  
12 public participation requirements for an environmental  
13 assessment.

14

15 This section on public participation requirements for a  
16 categorical exclusion and all of the following sections in new  
17 Subchapter E, set forth the public participation requirements  
18 for each type of transportation project, and the implementation  
19 of more general public participation requirements in the  
20 Transportation Code, in separate sections rather than having all  
21 the requirements in one section as in the current rules.

22

23 New §2.102 sets forth the public participation requirements for  
24 a transportation project classified as an EA. The proposed  
25 section generally follows the requirements in the current rule.

1 A requirement was added to give notice of availability of the  
2 draft EA to the participating agencies, which requirement  
3 generally tracks the FHWA requirement in 23 C.F.R. §771.119(d).  
4  
5 New §2.103 sets forth the public participation requirements for  
6 a transportation project classified as an EIS or Supplemental  
7 EIS. The section generally follows the requirements in the  
8 current rule. For the purposes of uniformity, the notification  
9 of availability of the FEIS was changed to track similar  
10 requirements found in the section on public participation  
11 requirements for an environmental assessment, notice of  
12 availability of the public hearing transcript, and comment and  
13 response report. Subsection (i) is added to implement  
14 Transportation Code, §201.811(b), added by Senate Bill 1420  
15 (82nd legislature), concerning the required documentation and  
16 reporting of the number of positive, negative, or neutral public  
17 comments received regarding all environmental impact statements.  
18  
19 New §2.104 sets forth the public participation requirements in  
20 Transportation Code, §203.022(b), for certain projects if  
21 conditions relating to land use, traffic volumes, and traffic  
22 patterns have changed significantly since the project was  
23 originally subject to public review and comment. The section  
24 generally follows the requirements in the current rule. The  
25 reference to Parks and Wildlife Code, Chapter 26, has been

1 deleted because a rule is not needed to set forth the statutory  
2 requirement to hold a hearing for any new taking of public land  
3 designated and used as a park, recreation area, wildlife refuge,  
4 historic site, or scientific area.

5  
6 New §2.105 sets forth the public participation requirements in  
7 Transportation Code, §203.022(c), for certain projects on the  
8 beginning of construction. The section generally follows the  
9 requirements in the current rule.

10

11 New §2.106 concerns the holding of a meeting with affected  
12 property owners. The proposed section generally follows the  
13 requirements in the current rule.

14

15 New §2.107 concerns the holding of a public meeting. The  
16 proposed section generally follows the requirements in the  
17 current rule.

18

19 New §2.108 concerns the affording of an opportunity for public  
20 hearing. The proposed section generally follows the  
21 requirements in the current rule.

22

23 New §2.109 concerns the holding of a public hearing. The  
24 proposed section generally follows the requirements in the  
25 current rule.

1  
2 New §2.110 concerns additional public participation following  
3 completion of public participation for a project as specified in  
4 §§2.101 - 2.109. The section generally follows the requirements  
5 in the current rule.

6  
7 SUBCHAPTER F, REQUIREMENTS FOR SPECIFIC TYPES OF PROJECTS AND  
8 PROGRAMS

9 New Subchapter F, Requirements for Specific Types of Projects  
10 and Programs, sets forth the department's environmental review  
11 requirements for activities that, because of their unique  
12 characteristics, have environmental review requirements  
13 different than those generally applicable to transportation  
14 projects.

15  
16 New §2.131 implements Parks and Wildlife Code, §§26.001 and  
17 26.002, by requiring the department delegate to hold a public  
18 hearing and make certain determinations before approving the use  
19 or taking of public land that is designated and used as a park,  
20 recreation area, scientific area, wildlife refuge, or historic  
21 site. The new section also implements Natural Resources Code,  
22 §183.057 by requiring the department to hold a public hearing  
23 and make certain determinations before approving the use or  
24 taking of private land encumbered by an agricultural  
25 conservation easement. The section also prescribes the

1 environmental review requirements for early or advance  
2 acquisition of real property, including the acquisition of  
3 property before approval of an environmental review document or  
4 CE/BCE/PCE documentation.

5  
6 New §2.132 concerns the department's work as the non-federal  
7 sponsor of the Gulf Intracoastal Waterway. The section is  
8 reorganized for the purposes of clarity compared to the current  
9 rule. As discussed earlier, except for this section, Chapter 2  
10 will not apply to the environmental review of a GIWW project.

11  
12 New §2.133 identifies ten department maintenance programs and  
13 requires the department to undertake an environmental review of  
14 each of them. The section requires the department to conduct an  
15 environmental review under the chapter for each program at least  
16 every ten years. Under the current rules, the department is  
17 required to reassess an environmental review every five years,  
18 but the term "reassess" is not defined. The change to the ten-  
19 year review requirement is reasonable because the department's  
20 experience is that the reviews under the section have taken  
21 several years, and because the requirement clarifies what the  
22 department must do within that period. The section further  
23 provides that no individual environmental review of a  
24 maintenance project is required under Chapter 2 if the project  
25 is part of a program for which a review has been conducted in

1 accordance with new §2.133. However, an individual  
2 environmental review will be required under Chapter 2 for a  
3 maintenance project that is conducted or supported by FHWA,  
4 unless FHWA has approved an environmental review of the program  
5 under which the project is undertaken.

6  
7 New §2.134 specifies that approval of a transportation project  
8 located in whole or part within the coastal boundary, as defined  
9 by 31 TAC §503.1, is an action subject to the Texas Coastal  
10 Management Program (31 TAC Part 16), and that such a project may  
11 not be approved if it is found to be inconsistent with the goals  
12 and policies of the Program. The section recognizes Senate Bill  
13 656, Acts of the 82nd Legislature, Regular Session, which  
14 abolished the Coastal Coordination Council and transferred all  
15 of its powers and duties to the General Land Office effective  
16 September 1, 2011, by indicating that the department will refer  
17 certain actions to the General Land Office rather than the  
18 Coastal Coordination Program. The section specifies that the  
19 threshold for referring actions to the General Land Office is  
20 the approval of transportation projects and programs requiring  
21 an environmental impact statement. The section also specifies  
22 the threshold for referring to the General Land Office actions  
23 concerning the Gulf Intracoastal Waterway. Despite the fact  
24 that the Coastal Coordination Council has been abolished, this  
25 section contains citations to rules adopted by the Coastal

1 Coordination Council because Senate Bill 656 provides that the  
2 rules of the Coastal Coordination Council are continued in  
3 effect as rules of the General Land Office until superseded by a  
4 rule of the General Land Office, and the General Land Office has  
5 not yet promulgated superseding rules.

6

7 FISCAL NOTE

8 James Bass, Chief Financial Officer, has determined that for  
9 each of the first five years the repeals and new sections are in  
10 effect, there will be fiscal implications for state government,  
11 and also for local governments electing to participate as  
12 project sponsors, as a result of enforcing or administering the  
13 repeals and new sections. During the first five years, the  
14 department estimates that it will incur additional personnel  
15 costs as follows: 2012 - \$886,212; 2013 - \$818,331; 2014 -  
16 \$805,870; 2015 - \$805,870; and 2016 - \$805,870, for a total  
17 increase during the five years of \$4,122,156.

18

19 Local governments choosing to participate as project sponsors  
20 would incur costs associated with collaborative scoping and  
21 other aspects of the environmental review process for highway  
22 projects under the new sections, which costs would depend on the  
23 specific circumstances of each highway project. However, this  
24 type of participation by local governments is entirely optional.

25

1 Because this proposed rulemaking is intended, in part, to make  
2 the department's environmental review process more efficient,  
3 the department also anticipates some reductions in costs to the  
4 state, and to local governments electing to participate as  
5 project sponsors, as a result of enforcing or administering the  
6 repeals and new sections. However, cost reductions associated  
7 with realized efficiencies of the department's environmental  
8 review process are difficult to estimate and cannot be  
9 quantified.

10

11 Mark A. Marek, P.E., Interim Director of the department's  
12 Environmental Affairs Division, has certified that there will be  
13 no significant impact on local economies or overall employment  
14 as a result of enforcing or administering the repeals and new  
15 sections.

16

17 PUBLIC BENEFIT AND COST

18 Mr. Marek has determined that, for each of the first five years  
19 the repeals and new sections are in effect, multiple public  
20 benefits are expected. First, the procedures for environmental  
21 review will be easier to understand, for example, by more  
22 clearly differentiating between federal and state requirements  
23 and by more clearly identifying the level of documentation  
24 required for processing a transportation project as a CE or BCE.  
25 This should help both staff and the public track compliance with

1 environmental review requirements, and reduce delays associated  
2 with resolving contrary interpretations of the existing rules.

3

4 The new sections also ensure that the department complies with  
5 state law by implementing Senate Bill 548, Senate Bill 1420, and  
6 House Bill 630 (82nd legislature), all pertaining to the  
7 environmental review process for highway projects. The  
8 processes and requirements of this recent legislation and  
9 implementing rules in proposed Subchapter C are expected to  
10 result in more timely environmental reviews of highway projects,  
11 and more efficient and effective collaboration with local  
12 government sponsors of highway projects.

13

14 Proposed new §2.11, Employee Certification Process, will ensure  
15 that the department's district employees who work on  
16 environmental review documents and CE/BCE/PCE documentation are  
17 better trained in the applicable requirements and procedures.  
18 This is expected to increase the effectiveness of the  
19 department's environmental reviews of transportation projects.

20

21 The proposed rules also provide for greater operational  
22 flexibility within the department as compared to the existing  
23 rules. The department believes this change will allow it to  
24 better adjust its resources to maximize both the quality of  
25 environmental review and the efficiency of the process. The

1 proposed rules are expected to further focus the department's  
2 resources on projects that are most likely to have significant  
3 environmental impacts by, for example, encouraging the  
4 streamlining of environmental review documents, reducing the  
5 need to prepare reevaluations or other paperwork every three  
6 years after the approval of an environmental review document,  
7 and eliminating the requirement to conduct site visits for all  
8 BCEs.

9  
10 There are no anticipated economic costs for persons required to  
11 comply with the sections as proposed. There will be no adverse  
12 economic effect on small businesses.

13  
14 TAKINGS IMPACT ASSESSMENT

15 The department has evaluated this proposed repeal and adoption  
16 of rules to determine whether Government Code, Chapter 2007  
17 (Private Real Property Rights Preservation Act) requires the  
18 department to complete a takings assessment. The department has  
19 determined that the proposed repeal and adoption of rules does  
20 not affect private real property in a manner that requires the  
21 takings assessment.

22  
23 COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

24 The department determined that this rulemaking relates to  
25 actions subject to the Texas Coastal Management Program (CMP)

1 under the Coastal Coordination Act of 1991, as amended (Natural  
2 Resources Code, §§33.201 et seq.), because it concerns the  
3 department's rules on the environmental review of transportation  
4 projects. The department reviewed this action for consistency  
5 with the CMP goals and policies under the rules promulgated by  
6 the Coastal Coordination Council, which remain in effect until  
7 superseded by a rule of the General Land Office. The department  
8 has determined that the action is consistent with applicable CMP  
9 goals and policies.

10

11 A CMP goal applicable to this rulemaking is that transportation  
12 projects shall comply with certain practices concerning the  
13 siting of a project to lessen the impacts on coastal natural  
14 resources (see 31 TAC §501.31). The proposed rules concern the  
15 method by which to evaluate the environmental impacts of a  
16 transportation project, and do not dictate the siting of a  
17 project. However, proposed new §2.134, Coastal Management  
18 Program, specifies that approval of a transportation project  
19 located in whole or in part within the coastal boundary is an  
20 action subject to the Texas Coastal Management Program, and that  
21 such a project may not be approved if it is found to be  
22 inconsistent with the goals and policies of the CMP. The  
23 proposed rules are consistent with CMP goals and policies by  
24 specifically incorporating them in this manner. Another CMP  
25 goal applicable to this rulemaking is that the use of taking of

1 public land shall comply with Parks and Wildlife Code, Chapter  
2 26 (see 31 TAC §501.29). The rulemaking is consistent with this  
3 goal because proposed new §2.131(a), Special Right-of-Way  
4 Acquisition, implements the statutory requirements.

5  
6 A copy of this rulemaking will be submitted to the General Land  
7 Office for its comments on the consistency of the proposed  
8 rulemaking with the CMP. The department requests that the  
9 public also give comment on whether the proposed rulemaking is  
10 consistent with the CMP.

11  
12 PUBLIC HEARING

13 Pursuant to the Administrative Procedure Act, Government Code,  
14 Chapter 2001, the Texas Department of Transportation will  
15 conduct a public hearing to receive comments concerning the  
16 proposed repeals and new sections. The public hearing will be  
17 held at 10:00 a.m. on January 9, 2012 at 200 East Riverside  
18 Drive, Room 1A.1, Austin, Texas 78704, and will be conducted in  
19 accordance with the procedures specified in 43 TAC §1.5. Those  
20 desiring to make comments or presentations may register starting  
21 at 9:30 a.m. Any interested persons may appear and offer  
22 comments, either orally or in writing; however, questioning of  
23 those making presentations will be reserved exclusively to the  
24 presiding officer as may be necessary to ensure a complete  
25 record. While any person with pertinent comments will be

1 granted an opportunity to present them during the course of the  
2 hearing, the presiding officer reserves the right to restrict  
3 testimony in terms of time and repetitive content.  
4 Organizations, associations, or groups are encouraged to present  
5 their commonly held views and identical or similar comments  
6 through a representative member when possible. Comments on the  
7 proposed text should include appropriate citations to sections,  
8 subsections, paragraphs, etc. for proper reference. Any  
9 suggestions or requests for alternative language or other  
10 revisions to the proposed text should be submitted in written  
11 form. Presentations must remain pertinent to the issues being  
12 discussed. A person may not assign a portion of his or her time  
13 to another speaker. Persons with disabilities who plan to  
14 attend this meeting and who may need auxiliary aids or services  
15 such as interpreters for persons who are deaf or hearing  
16 impaired, readers, large print or Braille, are requested to  
17 contact the Government and Public Affairs Division, 125 East  
18 11th Street, Austin, Texas 78701-2483, (512) 463-6086 at least  
19 five working days prior to the hearing so that appropriate  
20 services can be provided.

21

22 SUBMITTAL OF COMMENTS

23 Written comments on the proposed repeal of §§2.1-2.20, §2.44,  
24 and §2.48 and new sections §§2.1-2.14, §§2.41-2.52, §§2.81-2.86,  
25 §§2.101-2.110 and §§2.131-2.134 may be submitted to Mark A.

1 Marek, P.E., Interim Director, Environmental Affairs Division,  
2 Texas Department of Transportation, 125 East 11th Street,  
3 Austin, Texas 78701-2483. The deadline for receipt of comments  
4 is 5:00 p.m. on January 11, 2012.

5

6 STATUTORY AUTHORITY

7 The repeals and new sections are proposed under Transportation  
8 Code, §201.101, which authorizes the commission to establish  
9 rules for the conduct of the work of the department, and more  
10 specifically, Transportation Code, §91.033, which authorizes the  
11 department to adopt rules concerning the environmental  
12 processing of a rail project; Transportation Code, §201.604,  
13 which requires the department to promulgate rules providing for  
14 its review of transportation projects that are not subject to  
15 review under the National Environmental Policy Act (42 U.S.C.  
16 §4321 et seq.); Transportation Code, §201.762(b), which requires  
17 the department to promulgate rules implementing Transportation  
18 Code, Chapter 201, Subchapter I-1, regarding environmental  
19 review of highway projects, not later than March 1, 2012;  
20 Transportation Code, §222.006, which requires the department to  
21 promulgate rules establishing a process to certify department  
22 district environmental specialists to work on all documents  
23 related to state and federal environmental review processes; and  
24 Transportation Code, §203.022, which requires the department to  
25 promulgate rules concerning public participation during the

1 environmental processing of certain projects.

2

3 CROSS REFERENCE TO STATUTE

4 Transportation Code §91.033, §91.034, §201.604, §201.606,

5 §201.607, §201.610, §201.611, §201.617, §§201.751-201.761,

6 §201.762(b), §203.021, §203.022 and §222.006; Parks and Wildlife

7 Code, §§26.001 and 26.002; and Natural Resources Code, §183.057.

1 SUBCHAPTER A. GENERAL PROVISIONS

2 §2.1. Purpose of Rules. This chapter implements Transportation  
3 Code, §91.033, §91.034, §201.604, §201.606, §201.607, §201.610,  
4 §201.611, §201.617, §§201.751-201.761, §201.762(b), §203.021,  
5 §203.022 and §222.006; Parks and Wildlife Code §§26.001 and  
6 26.002; and Natural Resources Code, §183.057.

7

8 §2.2. Environmental Policy. The Texas Transportation  
9 Commission (commission) and the Texas Department of  
10 Transportation (department) will protect, preserve, and, when  
11 practicable, enhance the environment. The focus will be on the  
12 human environment including the earth's systems, consisting of  
13 water, air, land, plants, people, and animals and the  
14 interrelationships that exist among these, including ecological,  
15 socio-economic, and archeological/cultural resources.  
16 Particular emphasis will be placed on avoidance, minimization,  
17 and compensation for adverse environmental impacts. Social and  
18 environmental concerns will be balanced with economic growth.  
19 The commission and the department will fully integrate  
20 environmental and public participation considerations into  
21 department policies, procedures, and decision-making practices,  
22 and will do so in a systematic, interdisciplinary manner.

23

1 §2.3. Applicability; Exceptions.

2 (a) Application of chapter. This chapter prescribes the  
3 environmental review and public participation requirements for:

4 (1) a state transportation project or FHWA transportation  
5 project conducted by the department;

6 (2) a state transportation project or FHWA transportation  
7 project of a private or public entity that is funded in whole or  
8 in part by the department; or

9 (3) a state transportation project or FHWA transportation  
10 project of a private or public entity that requires commission  
11 or department approval.

12 (b) Exceptions.

13 (1) Notwithstanding subsection (a) of this section, this  
14 chapter does not apply to a transportation project that is:

15 (A) not on the state highway system and that the  
16 department funds solely with money held in a project subaccount  
17 created under Transportation Code, §228.012; or

18 (B) developed by a county under Transportation Code,  
19 §228.011, or developed by a local toll project entity under  
20 Transportation Code, Chapter 373, and that is not on the state  
21 highway system and for which the department does not use funds  
22 other than funds derived solely from money held in a project  
23 subaccount created under Transportation Code, §228.012.

1           (2) An agreement entered into by the department for a  
2 transportation project excepted under paragraph (1)(A)(ii) of  
3 this section must require that the entity responsible for  
4 implementing the project will comply with all environmental  
5 review and public participation requirements applicable to that  
6 entity under other state and federal law in connection with the  
7 project.

8           (3) Notwithstanding subsection (a) of this section only  
9 §2.132 of this chapter (relating to Gulf Intracoastal Waterway  
10 Projects) applies to a project concerning the Gulf Intracoastal  
11 Waterway.

12           (c) Compliance with rules of federal transportation agency  
13 other than FHWA. For transportation projects conducted or  
14 supported by a federal transportation agency other than FHWA,  
15 and for transportation projects conducted or supported by  
16 multiple federal transportation agencies and for which FHWA is  
17 not the lead federal agency, the department delegate and project  
18 sponsor will comply with the environmental review rules of the  
19 lead federal agency, and not the rules in this chapter.

20  
21 §2.4. Other Applicable Laws. For a transportation project, in  
22 addition to the requirements in this chapter, the project  
23 sponsor will ensure compliance with all other applicable local,

1 state, and federal laws.

2

3 §2.5. Definitions. The following words and terms, when used in  
4 this chapter, have the following meanings, unless the context  
5 clearly indicates otherwise.

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

8 (2) BCE (Blanket categorical exclusion)--Is covered by  
9 §2.82 of this chapter (relating to Blanket Categorical  
10 Exclusions).

11 (3) Best management practices--Practices that are  
12 determined to be the most efficient, practical, and cost  
13 effective measures to guide a particular activity or address a  
14 particular problem.

15 (4) CE (Categorical Exclusion)--Is covered by §2.81 of  
16 this chapter (relating to Categorical Exclusions).

17 (5) CE/BCE/PCE documentation--A descriptive letter or  
18 environmental issues checklist showing that a transportation  
19 project qualifies as a categorical exclusion (CE), a blanket  
20 categorical exclusion (BCE), or a programmatic categorical  
21 exclusion (PCE).

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

23 (7) DEIS (Draft Environmental Impact Statement)--Is

1 covered by §2.84 of this chapter (relating to Environmental  
2 Impact Statements).

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

4 (9) Disposal plan--An operationally suitable method for  
5 the placement of dredged material that avoids or minimizes  
6 adverse environmental impacts.

7 (10) District--One of the 25 geographical districts into  
8 which the department is divided.

9 (11) Division--One of the department's divisions listed  
10 on the department's organizational chart.

11 (12) EA (Environmental Assessment)--Is covered by §2.83  
12 of this chapter (relating to Environmental Assessments).

13 (13) EIS (Environmental Impact Statement)--Is covered by  
14 §2.84 of this chapter (relating to Environmental Impact  
15 Statements).

16 (14) Environmental Affairs Division--The Environmental  
17 Affairs Division of the department, or its successor  
18 organizational unit within the department.

19 (15) Environmental report--A report, form, checklist, or  
20 other documentation analyzing an environmental issue in the  
21 context of a specific transportation project or presenting a  
22 thorough summary of an environmental study conducted in support  
23 of an environmental review document, or demonstrating compliance

1 with a specific environmental requirement.

2 (16) Environmental review document--A document prepared  
3 to demonstrate that a project qualifies as a categorical  
4 exclusion when the department delegate requires a public hearing  
5 or opportunity for one, an environmental assessment, an  
6 environmental impact statement, a reevaluation, or a  
7 supplemental environmental impact statement. An environmental  
8 review document includes any attached environmental reports.

9 (17) Environmental studies--The investigations of  
10 potential environmental impacts to determine the environmental  
11 process to be followed and to assist in the preparation of an  
12 environmental review document or CE/BCE/PCE documentation. The  
13 term includes studies conducted during transportation planning  
14 and project development, and studies conducted to evaluate  
15 alternatives.

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

1 project.

2 (19) Essential fish habitat--Waters and substrate  
3 designated as essential fish habitat by a Regional Fishery  
4 Management Council established under the Federal Magnuson-  
5 Stevens Fishery Conservation and Management Act.

6 (20) FEIS (Final Environmental Impact Statement)--Is  
7 covered by §2.84 of this chapter (relating to Environmental  
8 Impact Statements).

9 (21) FHWA--The United States Department of Transportation  
10 Federal Highway Administration.

11 (22) FHWA transportation project--A transportation  
12 project conducted or supported by FHWA, such as by providing  
13 federal funds or by granting access to the interstate highway  
14 system, for which FHWA is the lead federal agency, and for which  
15 FHWA agrees the department may act as the joint lead agency or  
16 project sponsor.

17 (23) FONSI (Finding of No Significant Impact)--Is covered  
18 by §2.83 of this chapter (relating to Environmental  
19 Assessments).

20 (24) Highway project--A project that is:

21 (A) for the construction or maintenance of a highway on  
22 the state highway system; or

23 (B) for the construction or maintenance of a highway

1 not on the state highway system but that is funded wholly or  
2 partly with federal money.

3 (25) Human environment--The natural and physical  
4 environment, and the relationship of people with that  
5 environment.

6 (26) MAPO (Meeting with Affected Property Owners)--Is  
7 covered by §2.106 of this chapter (relating to Meeting with  
8 Affected Property Owners (MAPO)).

9 (27) Need and purpose--The transportation issue that a  
10 proposed project seeks to address and the justification for the  
11 expenditure of public funds.

12 (28) NEPA--The National Environmental Policy Act,  
13 codified at 42 United States Code §§4321, et seq.

14 (29) NOI (Notice of Intent)--Is covered by §2.103 of this  
15 chapter (relating to Public Participation for an Environmental  
16 Impact Statement or Supplemental Environmental Impact  
17 Statement).

18 (30) PCE (Programmatic categorical exclusion)--A type of  
19 categorical exclusion provided for in a programmatic agreement  
20 with FHWA.

21 (31) Region--One of the department's four regional  
22 support centers.

23 (32) ROD (Record of Decision)--Is covered by §2.84 of

1 this chapter (relating to Environmental Impact Statements).

2 (33) SEIS (Supplemental Environmental Impact Statement)--  
3 Is covered by §2.86 of this chapter (relating to Supplemental  
4 Environmental Impact Statements).

5 (34) Significantly--As used in reference to the  
6 significance of the impact of a project, has the meaning as that  
7 term is used and has been interpreted under NEPA and its related  
8 regulations, including 40 Code of Federal Regulations §1508.27.

9 (35) State highway system--The system of highways  
10 designated by the commission under Transportation Code,  
11 §203.002.

12 (36) State transportation project--A transportation  
13 project that is not conducted or supported, such as by providing  
14 federal funds or by granting access to the interstate highway  
15 system, by one of the operating administrations of the United  
16 States Department of Transportation.

17 (37) Toll project--Has the meaning assigned by  
18 Transportation Code, §201.001.

19 (38) Transportation enhancement--An activity that is  
20 listed under 23 United States Code §101(a)(35), relates to a  
21 transportation project, and is eligible for federal funding  
22 under 23 United States Code §133.

23 (39) Transportation project--A project to construct,

1 maintain or improve a highway, rest area, toll facility,  
2 aviation facility, public transportation facility, rail  
3 facility, ferry, or ferry landing. A transportation enhancement  
4 is also a transportation project.

5

6 §2.6. FHWA Transportation Projects.

7 (a) Applicable requirements. For an FHWA transportation  
8 project, the department delegate and project sponsor will comply  
9 with FHWA's regulations concerning the environmental review of  
10 the project, as appropriate, in addition to the requirements of  
11 this chapter. To the extent there is a conflict between FHWA's  
12 regulations and the requirements of this chapter, FHWA's rules  
13 will control.

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

15 (1) For an FHWA transportation project, the entity with  
16 the authority to issue final approval of an environmental review  
17 document, or make a final determination that a project qualifies  
18 as a CE, BCE, or PCE, is FHWA.

19 (2) Notwithstanding paragraph (1) of this subsection, the  
20 department delegate may, if provided by a programmatic agreement  
21 with FHWA, consider certain projects satisfying criteria  
22 specified in that programmatic agreement as deemed approved by  
23 FHWA.

1

2 §2.7. Project Sponsor.

3 (a) Project sponsor required. Each transportation project  
4 must have a project sponsor that accepts responsibility for  
5 preparing the environmental review document or CE/BCE/PCE  
6 documentation, and performing related tasks.

7 (b) Project sponsor for projects developed by the  
8 department.

9 (1) For transportation projects developed by the  
10 department, the project sponsor will be the department district,  
11 region, or division that is developing the project.

12 (2) A district, region, or division may allow a private  
13 entity to develop an environmental review document or CE/BCE/PCE  
14 documentation for the district, region, or division's use, but a  
15 private entity may not be a project sponsor.

16 (c) Local government as project sponsor. A local  
17 governmental entity that is eligible under this subsection may  
18 be a project sponsor for a highway project under Subchapter C of  
19 this chapter (relating to Environmental Review Process for  
20 Highway Projects) if the department approves the notice  
21 submitted by the local government under §2.47 of this chapter  
22 (relating to Notice by Local Government; Classification of  
23 Project). To be eligible, an entity must be a municipality; a

1 county; a group of adjoining counties; a county acting under  
2 Transportation Code, Chapter 284; a regional tollway authority  
3 operating under Transportation Code, Chapter 366; a regional  
4 mobility authority operating under Transportation Code, Chapter  
5 370; a local government corporation; or a transportation  
6 corporation created under Transportation Code, Chapter 431.

7

8 §2.8. Department Delegate.

9 (a) Designation of department delegate. For each class of  
10 transportation project under Subchapter D of this chapter  
11 (relating to Requirements for Classes of Projects), the  
12 department's executive director will designate the department  
13 district, region, division, or other operational unit of the  
14 department that has the authority to review and approve on the  
15 department's behalf work conducted under this chapter, including  
16 an environmental review document. The executive director may  
17 designate exceptions to any delegation made under this section  
18 for specific projects or types of projects.

19 (b) Dual roles permitted. The department's executive  
20 director may designate a district, region, or division as both  
21 the project sponsor and the department delegate for a project.  
22 If a district, region, or division has both of those roles and  
23 this chapter requires the project sponsor to submit a document

1 to the department delegate, the district, region, or division  
2 will place documentation in the project file showing completion  
3 of the task by the date specified.

4

5 §2.9. Emergency Action Procedures.

6 (a) Any request for deviations from the procedures in this  
7 chapter because of emergency circumstances will be handled on a  
8 case by case basis by the department delegate. Emergency  
9 circumstances include natural disasters, such as floods,  
10 hurricanes, tidal waves, earthquakes, severe storms, landslides,  
11 or catastrophic failures from any cause.

12 (b) All applicable state and federal emergency  
13 environmental permitting and approval processes will be  
14 followed.

15 (c) The work will be limited to actions that are directly  
16 related to public health and safety and that are necessary to  
17 minimize loss of public infrastructure.

18 (d) The project file must contain copies of all  
19 coordination and approvals obtained.

20

21 §2.10. Computation of Time. In computing a period of days for  
22 the purposes of this chapter, unless otherwise provided by  
23 statute, the period begins on the day after the act, event, or

1 default in question and ends at the end of the last day of that  
2 designated period, unless that day is a Saturday, Sunday, or  
3 legal holiday on which the office of the executive director is  
4 closed, in which event the period ends at the end of the next  
5 day that is not a Saturday, Sunday, or legal holiday. All time  
6 periods and deadlines are expressed in calendar days, unless  
7 expressly provided otherwise.

8

9 §2.11. Employee Certification Process.

10 (a) Certification required. A person who is employed by a  
11 department district and prepares or reviews environmental  
12 studies or reports, environmental review documents or CE/BCE/PCE  
13 documentation must successfully complete certification training  
14 under this section.

15 (b) Certification program manager. The department's  
16 executive director will appoint a certification program manager  
17 to implement the requirements of this section on an agency-wide  
18 basis.

19 (c) Timing. A person must successfully complete the  
20 training within one year after the date that the person begins  
21 employment in a district, except that if the person is employed  
22 by a district on March 15, 2012, the person must complete the  
23 training before March 15, 2013.

1           (d) Recertification. To maintain certification under this  
2 section, a person must submit to the certification program  
3 manager before the second anniversary of the date that the  
4 person was certified, or most recently recertified under this  
5 section, documentation that the person has attended a minimum  
6 number of hours of training related to the preparation and  
7 review of environmental studies and reports, environmental  
8 review documents, and CE/BCE/PCE documentation, within that two-  
9 year period. The certification program manager will set the  
10 minimum number of hours of training required to be completed in  
11 each two-year period.

12

13 §2.12. Project Coordination.

14           (a) Participating agencies. A participating agency is any  
15 agency, department, or other unit of federal, state, local, or  
16 Indian tribal government, including a local flood control  
17 authority, that may have an interest in a transportation  
18 project, or that is a regulatory agency with jurisdiction over  
19 an aspect of the project. The project sponsor and department  
20 delegate will, in collaboration, identify the participating  
21 agencies for a project.

22           (b) Identification of participating agencies. The  
23 identification of participating agencies for a project will take

1 into account the nature and extent of the project, the  
2 jurisdiction and interests of the agencies, whether the agencies  
3 have previously expressed interest in similar projects, and any  
4 laws requiring coordination with specific agencies. At a  
5 minimum, the project sponsor will designate as participating  
6 agencies the Texas Commission on Environmental Quality, the  
7 Texas Historical Commission, and the Texas Parks and Wildlife  
8 Department, to the extent provided for in the respective  
9 memoranda of understanding under Subchapter B of this chapter  
10 (relating to Memoranda of Understanding with Natural Resource  
11 Agencies).

12 (c) Project sponsor responsibilities. Except as provided  
13 in subsection (d) of this section, or for a highway project  
14 unless otherwise agreed to by the project sponsor and department  
15 delegate in accordance with §2.44(d) of this chapter (relating  
16 to Project Scope), the project sponsor will:

17 (1) initiate coordination with participating agencies;

18 and

19 (2) advise the participating agencies of the proposed  
20 schedule for the completion of the environmental review process.

21 (d) Exception for requirements of a resource agency. If a  
22 participating agency is a resource agency that declines to  
23 coordinate a project with the project sponsor and instead

1 requests to coordinate with a particular organizational unit of  
2 the department, then that organizational unit will coordinate  
3 with the agency.

4 (e) Purpose. The purpose of coordination is to solicit and  
5 consider participating agencies' input on the following:

6 (1) the characteristics of the project;

7 (2) alternatives meeting the project's established need  
8 and purpose, including evaluation of the no-build alternative;

9 (3) potential social, economic, and environmental  
10 impacts;

11 (4) project features, mitigation measures, and  
12 alternatives that might avoid, minimize, or compensate for  
13 adverse environmental impacts; and

14 (5) other environmental reviews, permits, and other  
15 approvals, as well as consultation requirements that should be  
16 done as part of the environmental review process.

17 (f) Completion of coordination. For highway projects, the  
18 project sponsor and the department delegate will identify in the  
19 project scope which coordination with participating agencies, if  
20 any, should be done before submission of the environmental  
21 review document or CE/BCE/PCE documentation. Any coordination  
22 so identified must be completed before the project sponsor  
23 submits to the department delegate the environmental review

1 document or CE/BCE/PCE documentation. An environmental review  
2 document or CE/BCE/PCE documentation will describe the results  
3 of any coordination conducted and a summary of the contacts with  
4 participating agencies and the comments received up to the date  
5 of submittal.

6

7 §2.13. Mitigation.

8 (a) The project sponsor will seek to avoid and minimize  
9 environmental impacts.

10 (b) If adverse environmental impacts cannot be avoided, and  
11 efforts to minimize those impacts have been exhausted, the  
12 project sponsor may, in consultation with the department  
13 delegate and appropriate agency or agencies, propose  
14 compensatory mitigation, in accordance with this section, that  
15 will be included in an environmental review document.

16 Compensatory mitigation may rectify impacts by repairing,  
17 rehabilitating, or restoring the affected environment, or by  
18 replacing or providing for substitute resources or environments.

19 (c) For a transportation project developed by the  
20 department, the project sponsor may propose as compensatory  
21 mitigation any of the actions described by this subsection.

22 (1) Under Transportation Code, §201.606, if the  
23 department acquires for a transportation project property that

1 is habitat of one or more species listed as endangered under the  
2 Endangered Species Act (16 U.S.C. §1531 et seq.) and the  
3 property is within the boundaries of a regional habitat  
4 conservation plan, the department may participate in the  
5 regional habitat conservation plan.

6 (2) If the comptroller has designated the department to  
7 undertake functions under Government Code, Chapter 403,  
8 Subchapter Q (relating to Support for Habitat Protection  
9 Measures), the department may develop or coordinate the  
10 development of a habitat conservation plan or candidate  
11 conservation plan in accordance with that subchapter, or  
12 undertake any other actions authorized under that subchapter.

13 (d) For a highway project developed by the department, the  
14 project sponsor may propose as compensatory mitigation any of  
15 the actions described by this subsection, in addition to those  
16 described in subsection (c) of this section.

17 (1) Under Transportation Code, §201.617, if authorized by  
18 the appropriate regulatory agency or agencies, the department  
19 may undertake any of the following as compensatory mitigation  
20 for adverse environmental impacts that are a direct result of  
21 the construction, improvement, or maintenance of a state highway  
22 or the construction, improvement or maintenance of a facility  
23 used in connection with the construction, maintenance, or

1 operation of a state highway:

2 (A) payment of a fee to an appropriate public agency or  
3 private entity in lieu of acquiring or agreeing to manage  
4 property;

5 (B) the transfer of any interest in real property to an  
6 appropriate public agency or private entity with or without  
7 monetary consideration if the property is used or is proposed to  
8 be used for mitigation purposes; or

9 (C) a contractual agreement with any public or private  
10 entity for the management of property owned by the department  
11 and used for mitigation purposes.

12 (2) Under Transportation Code, §201.617, before the  
13 department acquires by purchase or condemnation real property to  
14 mitigate an adverse environmental impact that is the direct  
15 result of a state highway improvement project, the department  
16 will, if authorized by the appropriate regulatory authority,  
17 offer to purchase a conservation easement from the owner of the  
18 real property. If the landowner does not accept the offer  
19 before the 61st day after the date the offer is made, the  
20 department may acquire the property by purchase or condemnation.

21 (3) Under Transportation Code, §201.610, the department  
22 may erect a sound barrier to reduce noise from a road or highway  
23 on the state highway system.

1           (e) For highway projects for which a local government is  
2 the project sponsor and is responsible for mitigation, the local  
3 government may, in consultation with the department delegate and  
4 the appropriate agency or agencies, propose compensatory  
5 mitigation in any of the forms listed in subsection (c) or (d)  
6 of this section, or in any other form authorized by law. If the  
7 project concerns a segment of the state highway system, this  
8 chapter does not prevent a local government sponsor from seeking  
9 to use a department-funded mitigation bank for compensatory  
10 mitigation on a given project. However, use of such a  
11 mitigation bank, and the terms of that use, will be decided by  
12 the department at its sole discretion.

13

14 §2.14. Project File. The project sponsor will maintain the  
15 documentation showing work completed under this chapter in a  
16 project file. If the project sponsor is a local government,  
17 upon approval of the environmental review document or CE/BCE/PCE  
18 documentation, the local government will retain the project file  
19 or forward it to the district in which the project is located,  
20 as directed by the district.

1 SUBCHAPTER C. ENVIRONMENTAL REVIEW PROCESS FOR HIGHWAY PROJECTS

2 §2.41. Applicability.

3 (a) This subchapter applies in its entirety to all highway  
4 projects for which an environmental review document or  
5 CE/BCE/PCE documentation for the project has not been provided,  
6 in whole or in part, to the department delegate as of March 15,  
7 2012.

8 (b) For highway projects for which an environmental review  
9 document or CE/BCE/PCE documentation has been provided, in whole  
10 or in part, to the department delegate as of March 15, 2012,  
11 this subchapter applies only if the project sponsor notifies the  
12 department delegate in writing that it elects to have the  
13 project processed under this subchapter, in which case the  
14 subchapter applies in its entirety.

15

16 §2.42. Environmental Review Limited to Certain Projects.

17 (a) The project sponsor may prepare an environmental review  
18 document or CE/BCE/PCE documentation for a highway project only  
19 if the highway project is identified in:

20 (1) the financially constrained portion of:

21 (A) the approved state transportation improvement  
22 program; or

1 (B) the approved unified transportation program; or

2 (2) a commission order as being eligible for

3 participation under this subchapter.

4 (b) Notwithstanding subsection (a) of this section, a local

5 government may prepare an environmental review document or

6 CE/BCE/PCE documentation for a highway project that is not

7 identified in a program or by the commission as described by

8 subsection (a) of this section if:

9 (1) the local government submits with its notice under

10 §2.47 of this subchapter (relating to Notice by Local

11 Government; Classification of Project) a fee in an amount

12 established under §2.46 of this subchapter (relating to Optional

13 Payment of Fee by Local Government); and

14 (2) the department delegate designates the local

15 government as the project sponsor under §2.47(d) of this

16 subchapter.

17 (c) If a highway project is identified in the financially

18 constrained portion of the approved state transportation

19 improvement program or the approved unified transportation

20 program on the date that the department delegate issues its

21 written response to a notice submitted by a local government

22 sponsor in accordance with §2.47 of this subchapter, it will be

1 treated as being identified in the respective program for  
2 purposes of the department delegate's review under this  
3 subchapter even if it is later removed from the respective  
4 program.

5

6 §2.43. Project Sponsor Responsibilities. Unless the project  
7 sponsor and department delegate agree in the project scope to  
8 alternative roles and responsibilities in accordance with  
9 §2.44(d) of this subchapter (relating to Project Scope), the  
10 project sponsor for a highway project is responsible for:

11 (1) preparing the project scope, in collaboration with  
12 the department delegate, in accordance with §2.44 of this  
13 subchapter;

14 (2) preparing any environmental reports supporting an  
15 environmental review document, and performing all related  
16 studies and surveys;

17 (3) preparing the environmental review document or  
18 CE/BCE/PCE documentation in accordance with Subchapter D of this  
19 chapter (relating to Requirements for Classes of Projects);

20 (4) preparing all materials for and obtaining all  
21 required EPICs;

22 (5) preparing all materials for coordination with

1 resource agencies and performing the activities required under  
2 §2.12 of this chapter (relating to Project Coordination);

3 (6) preparing all materials for and conducting all  
4 required and appropriate public participation in accordance with  
5 Subchapter E of this chapter (relating to Public Participation);  
6 and

7 (7) arranging, paying for, and performing all mitigation  
8 of project impacts undertaken in accordance with §2.13 of this  
9 chapter (relating to Mitigation).

10

11 §2.44. Project Scope.

12 (a) Project scope required. The project sponsor, in  
13 collaboration with the department delegate, will prepare a  
14 detailed project scope that describes the preparation of the  
15 environmental review document or CE/BCE/PCE documentation and  
16 performance of related tasks. A district, region, or division  
17 that has dual roles as both project sponsor and department  
18 delegate satisfies this requirement by placing the project scope  
19 in the project file. For purposes of this section, a project  
20 sponsor includes a local government that proposes to serve as a  
21 project sponsor and intends to seek the department's approval of  
22 such a designation under §2.47 of this subchapter (relating to

1 Notice by Local Government; Classification of Project).

2 (b) Form. The project scope must be prepared using a  
3 standardized checklist approved by the department that reflects  
4 the requirements of subsection (c) of this section.

5 (c) Content. The project scope must include:

6 (1) a description of the project, including  
7 characteristics relevant to environmental review;

8 (2) issues that must be addressed in the environmental  
9 review document for the project;

10 (3) a statement of the anticipated classification of the  
11 project under Subchapter D of this chapter (relating to  
12 Requirements for Classes of Projects);

13 (4) identification of the department delegate, including  
14 the department employee with authority to issue approvals under  
15 this chapter on behalf of the department delegate;

16 (5) the name and contact information for the persons to  
17 whom communications between the project sponsor and department  
18 delegate should be addressed;

19 (6) obligations to coordinate with participating  
20 agencies;

21 (7) planned surveys or studies, including a description  
22 of additional tasks that may be required pending the results of

1 such surveys or studies;

2 (8) planned public participation;

3 (9) a list of state and federal approval authorities;

4 (10) a list of permits anticipated for the project;

5 (11) any other tasks that the department delegate and  
6 project sponsor jointly determine must be undertaken by the  
7 project sponsor, including tasks that must be completed before  
8 submission of the environmental review document or CE/BCE/PCE  
9 documentation and tasks that must be completed later;

10 (12) a plan showing the stages and persons responsible  
11 for engaging in informal dispute resolution under §2.52(a) of  
12 this subchapter (relating to Dispute Resolution Process) if a  
13 dispute arises concerning the preparation or review of the  
14 environmental review document or CE/BCE/PCE documentation, with  
15 a deadline for completing each stage of informal dispute  
16 resolution; and

17 (13) a non-binding schedule that shows when the project  
18 sponsor will submit any environmental reports under §2.45 of  
19 this subchapter (relating to Optional Early Submittal of  
20 Environmental Reports), conduct early communications with  
21 resource agencies, conduct coordination with participating  
22 agencies, conduct public participation, submit the environmental

1 review document or CE/BCE/PCE documentation for the department  
2 delegate's review, and perform any other tasks outlined in the  
3 project scope.

4 (d) Optional agreement between project sponsor and  
5 department. Notwithstanding any provision of this subchapter,  
6 the project scope may include the department delegate's  
7 agreement to complete a task that §2.43 of this subchapter  
8 (relating to Project Sponsor Responsibilities) otherwise directs  
9 is the responsibility of the project sponsor. Any such  
10 agreement must clearly identify the task that the department  
11 delegate has agreed to complete.

12 (e) Participation by FHWA. For a highway project for which  
13 an environmental decision requires FHWA approval, the FHWA may  
14 also be a party to the project scope.

15 (f) Collaboration on preparation; dispute resolution. The  
16 project sponsor and department delegate will meet to discuss the  
17 preparation of the project scope not later than the 30th day  
18 after the date that the project sponsor submits its proposed  
19 project scope to the department delegate, unless before the end  
20 of the 30-day period, the department delegate and project  
21 sponsor agree that there is no need to meet to finalize the  
22 project scope or agree to meet at a specified later date. If

1 the project sponsor and department delegate do not agree on the  
2 project scope, the department delegate will complete a proposed  
3 project scope not later than the 60th day after the date that  
4 the project sponsor submits its proposed project scope to the  
5 department delegate. The project sponsor and the department  
6 delegate will resolve any disagreements regarding the project  
7 scope using the process set forth in §2.52 of this subchapter,  
8 before the deadline set forth in subsection (g) of this section.

9 (g) Deadline for agreed upon project scope.

10 (1) If the project sponsor is a department district,  
11 region, or division, the project scope must be prepared and  
12 agreed to in writing by the project sponsor and the department  
13 delegate before the project sponsor submits an environmental  
14 review document or CE/BCE/PCE documentation to the department  
15 delegate for its review.

16 (2) A local government that submits notice under §2.47 of  
17 this subchapter (relating to Notice by Local Government;  
18 Classification of Project) must submit as part of the notice the  
19 project scope prepared and agreed to in writing by the project  
20 sponsor and the department delegate.

21 (h) Amendment of project scope. If, after completion of  
22 the project scope, there is a change in the description of the

1 project, or any other change that affects how the project  
2 sponsor will satisfy the requirements of this chapter, the  
3 project scope must be amended accordingly. An amendment must be  
4 agreed to in writing by the project sponsor and the department  
5 delegate.

6 (i) Change in project scope during preparation of an EIS.  
7 If the process under §2.103(b)(2)(A) of this chapter (relating  
8 to Public Participation for an Environmental Impact Statement or  
9 Supplemental Environmental Impact Statement) leads to changes,  
10 the project scope under this section must be amended in writing.

11

12 §2.45. Optional Early Submittal of Environmental Reports.

13 (a) Submittal. The project sponsor may submit to the  
14 department delegate any environmental reports as they are  
15 developed in the course of preparing an environmental review  
16 document.

17 (b) Review. The department delegate will review an  
18 environmental report submitted under this section and inform the  
19 project sponsor in writing of any deficiencies, flaws, or  
20 omissions within 60 days of receipt of the environmental report.  
21 The project sponsor and department delegate may agree to extend  
22 this deadline.

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§2.46. Optional Payment of Fee by Local Government.

(a) Applicability. This section applies to a local government that proposes to submit a notice under §2.47 of this subchapter (relating to Notice by Local Government; Classification of Project) requesting that it be designated the project sponsor for a highway project, and also proposes to pay to the department a fee to cover the cost to review an environmental review document or CE/BCE/PCE documentation.

(b) Effect of payment. Payment of a fee under this section allows a project sponsor that is a local government to prepare, and the department to review, an environmental review document or CE/BCE/PCE documentation for a highway project that does not meet the requirements of §2.42(a) of this subchapter (relating to Environmental Review Limited to Certain Projects). The department may not defer under §2.51 of this subchapter (relating to Deferral of Review) its review of an environmental review document or CE/BCE/PCE documentation for which a local government has paid a fee under this section.

(c) Determination of fee. The amount of the fee will be determined in accordance with this subsection.

(1) After the project scope is approved under §2.44 of

1 this subchapter (relating to Project Scope), the local  
2 government will submit to the department delegate a written  
3 request for calculation of a fee for review of the environmental  
4 review document or CE/BCE/PCE documentation.

5 (2) The department delegate will determine the fee for  
6 the review of the environmental review document or CE/BCE/PCE  
7 documentation based on the department's costs to contract for  
8 that work.

9 (3) The department delegate will provide written notice  
10 to the local government of the fee within 30 days after the date  
11 of the receipt of the request. The project sponsor and  
12 department delegate may agree to extend this deadline.

13 (d) Timing of payment. A local government must pay to the  
14 department any fee under this section at the time the entity  
15 submits notice under §2.47 for the highway project.

16 (e) Recalculation of fee. The department will recalculate  
17 the fee if, at any time, there are changes to the project  
18 description or the project classification that significantly  
19 increase the department's costs to review the environmental  
20 review document or CE/BCE/PCE documentation. The local  
21 government shall pay to the department any cost increases  
22 calculated under this subsection.

1           (f) Deposit and use. A fee received by the department  
2 under this section will be deposited in the state highway fund  
3 and used to pay costs incurred under this subchapter.

4           (g) Additional payment; return of excess funds. If the  
5 department determines that the actual cost of reviewing a  
6 document was more than the fee collected, the local government  
7 will submit the additional payment to the department. If the  
8 department determines that the fee collected is in excess of the  
9 actual cost of reviewing a document, the excess funds paid by  
10 the local government shall be returned.

11

12 §2.47. Notice by Local Government; Classification of Project.

13           (a) Written notice required. A local government that  
14 proposes to serve as the project sponsor for a highway project  
15 will provide written notice to the department delegate  
16 identified in the project scope.

17           (b) Content of notice. A notice under this section must  
18 include:

19               (1) the project scope prepared under §2.44 of this  
20 subchapter (relating to Project Scope);

21               (2) a request for verification of the decision made in  
22 the project scope regarding classification of the project under

1 Subchapter D of this chapter (relating to Requirements for  
2 Classes of Projects); and

3 (3) a statement regarding the optional payment of a fee  
4 under §2.46 of this subchapter (relating to Optional Payment of  
5 Fee by Local Government) and, if the local government opts to  
6 pay a fee, a check in the amount calculated under §2.46 of this  
7 subchapter.

8 (c) Classification of project. Within 30 days of receipt  
9 of a notice under this section, or some other deadline agreed to  
10 by the project sponsor and department delegate, the department  
11 delegate will issue a letter to the local government responding  
12 to its request for verification of the classification of the  
13 project made in the project scope. This verification of  
14 classification is subject to change pending the results of the  
15 department's technical review under §2.49 of this subchapter  
16 (relating to Technical Review).

17 (d) Approval of local government as project sponsor. The  
18 department delegate will, in its sole discretion, determine  
19 whether the local government may be designated the project  
20 sponsor based on the nature and extent of the local government's  
21 and the department's involvement in the project, and whether the  
22 local government possesses the required resources and a

1 demonstrated ability to prepare the environmental review  
2 document or CE/BCE/PCE documentation and perform related tasks.  
3 If the department delegate agrees that the local government may  
4 be the project sponsor, it will issue its decision in writing,  
5 direct that preparation of the environmental review document or  
6 CE/BCE/PCE documentation may begin, and identify the point of  
7 contact and address to which the environmental review document  
8 or CE/BCE/PCE documentation and other communications related to  
9 environmental review of the project should be submitted.

10

11 §2.48. Administrative Completeness Review.

12 (a) Administrative completeness required. All  
13 environmental review documents must be determined to be  
14 administratively complete by the department delegate before it  
15 begins a technical review. This section does not apply to BCEs,  
16 PCEs and CEs for which a descriptive letter or environmental  
17 issues checklist is prepared because, for these projects, there  
18 is no environmental review document.

19 (b) Initiation of review. To initiate administrative  
20 completeness review of an environmental review document, the  
21 project sponsor will submit the document to the department  
22 delegate with a signed cover letter stating that the document is

1 administratively complete, ready for technical review, and  
2 compliant with all applicable requirements.

3 (c) Project sponsor's deadline to submit certain types of  
4 documents.

5 (1) Applicability. This subsection applies to EAs, and  
6 FEISSs, but does not apply if the project sponsor is a local  
7 government that has paid a fee under §2.46 of this subchapter  
8 (relating to Optional Payment of Fee by Local Government).

9 (2) Deadline. The project sponsor will submit to the  
10 department delegate for administrative completeness review any  
11 environmental review document subject to this subsection at  
12 least two years before the date planned for publishing notice to  
13 let the construction contract for the project, as indicated in  
14 whichever of the following documents was most recently approved:

15 (A) the financially constrained portion of:

16 (i) the approved state transportation improvement  
17 program; or

18 (ii) the approved unified transportation program; or

19 (B) a commission order identifying the project as being  
20 eligible for environmental review.

21 (3) Date planned for publishing letting notice. If the  
22 date planned for publishing letting notice described in

1 paragraph (2) of this subsection is identified in the applicable  
2 document only by the fiscal year, for the purposes of this  
3 subsection the date is September 1 of the previous year. If it  
4 is identified only by the calendar year, for the purposes of  
5 this subsection the date is January 1 of that year. If it is  
6 identified only by month and year, for the purposes of this  
7 section it is the first day of that month.

8 (4) No waiting period for letting contract. This  
9 subsection does not require that the project sponsor wait any  
10 amount of time after the department delegate renders an  
11 environmental decision under §2.49 of this subchapter (relating  
12 to Technical Review) before letting the construction contract  
13 for the project.

14 (d) Requirements for administrative completeness. The  
15 department delegate will not determine an environmental review  
16 document to be administratively complete unless it determines  
17 that:

18 (1) the description of the project is the same as shown  
19 in the project scope prepared under §2.44 of this subchapter  
20 (relating to Project Scope) including any amendments of the  
21 project scope;

22 (2) the document contains a discussion of each issue

1 required to be addressed in the document by the project scope;

2 (3) all surveys and studies required by the project scope  
3 have been completed and are documented in the environmental  
4 review document, and any environmental reports prepared have  
5 been submitted to the department delegate;

6 (4) all coordination with participating agencies required  
7 by the project scope to be completed before approval of the  
8 environmental review document has been completed, and both  
9 participating agencies' comments and the project sponsor's  
10 responses to those comments are documented in the environmental  
11 review document;

12 (5) any other tasks required by the project scope before  
13 submission of the environmental review document have been  
14 completed and documented; and

15 (6) any other tasks required by the project scope to be  
16 undertaken after approval of the environmental review document  
17 are appropriately identified in writing.

18 (e) Deadline for determination. Not later than the 20th  
19 day after the date the department delegate receives the project  
20 sponsor's environmental review document for administrative  
21 completeness review, the department delegate will:

22 (1) issue a letter confirming that the document is

1 administratively complete and ready for technical review; or  
2 (2) decline to issue a letter confirming that the  
3 document is administratively complete and ready for technical  
4 review, and instead send a written response to the project  
5 sponsor specifying in reasonable detail the basis for the  
6 department delegate's conclusions, including a listing of any  
7 required information determined by the department delegate to be  
8 missing from the document.

9 (f) Cooperation by department delegate. If the department  
10 delegate declines to issue a letter confirming that an  
11 environmental review document is administratively complete under  
12 subsection (e) of this section, the department delegate will  
13 undertake all reasonable efforts to cooperate with the project  
14 sponsor in a timely manner to ensure that the environmental  
15 review document is administratively complete.

16 (g) Re-submittal. The project sponsor may revise and re-  
17 submit any environmental review document determined by the  
18 department delegate to not be administratively complete. The  
19 department delegate will, in accordance with subsection (e) of  
20 this section, issue a determination letter on the re-submitted  
21 document not later than the 20th day after the date the  
22 department delegate receives it. There is no limit on the

1 number of times an environmental review document may be revised  
2 and re-submitted under this subsection.

3

4 §2.49. Technical Review.

5 (a) Descriptive letter or environmental issues checklist.

6 For BCEs, PCEs and CEs for which a descriptive letter or  
7 environmental issues checklist is prepared, the department  
8 delegate will begin a technical review of the CE/BCE/PCE  
9 documentation when it is received from the project sponsor.

10 (b) Environmental review document. The department delegate  
11 will begin a technical review of an environmental review  
12 document when the department delegate determines that it is  
13 administratively complete under §2.48 of this subchapter  
14 (relating to Administrative Completeness Review).

15 (c) Purpose. The purpose of a technical review is for the  
16 department delegate to confirm that:

17 (1) for a BCE, PCE or CE for which a descriptive letter  
18 or environmental issues checklist is prepared, the documentation  
19 provided by the project sponsor shows that the project qualifies  
20 as a BCE, PCE or CE, as applicable; or

21 (2) for all other projects, the environmental review  
22 document prepared by the project sponsor is:

1 (A) comprehensive in its treatment of all required  
2 subject areas;

3 (B) written in a professional and understandable  
4 manner;

5 (C) based on sound reasoning and accepted scientific  
6 and engineering principles; and

7 (D) legally sufficient, including satisfying the  
8 requirements of Subchapter D of this chapter (relating to  
9 Requirements for Classes of Projects).

10 (d) Disapproval. The department delegate may conclude that  
11 the environmental review document or CE/BCE/PCE documentation  
12 cannot be approved because it does not meet the requirements of  
13 this section.

14

15 §2.50. Deadlines for Completing Certain Types of Technical  
16 Reviews; Suspension of Review Deadlines.

17 (a) Deadlines. This subsection sets out the deadlines that  
18 apply to the department delegate's technical review.

19 (1) PCEs. For a highway project classified as a PCE, the  
20 department delegate will verify whether the project qualifies as  
21 a PCE not later than the 60th day after the date the project  
22 sponsor submits the descriptive letter or environmental issues

1 checklist.

2 (2) CEs. For a highway project classified as a CE, the  
3 department delegate will render an environmental decision not  
4 later than the 90th day after it receives the descriptive letter  
5 or environmental issues checklist, or, for CEs for which an  
6 environmental review document is prepared, not later than the  
7 90th day after it determines that the environmental review  
8 document is administratively complete under §2.48 of this  
9 subchapter (relating to Administrative Completeness Review).

10 For purposes of this paragraph, the department delegate renders  
11 an environmental decision by:

12 (A) approving documentation showing the project meets  
13 applicable CE criteria under §2.81 of this chapter (relating to  
14 Categorical Exclusions) or declining in writing to do so; or

15 (B) for an FHWA transportation project, by forwarding  
16 such documentation to FHWA with an appropriate recommendation.

17 (3) EAs. This paragraph provides the deadlines for a  
18 highway project that requires the preparation of an EA.

19 (A) Comment deadline. The department delegate will  
20 provide to the project sponsor any department comments on the  
21 EA, if possible, in a single set of comments, not later than the  
22 90th day after the day that the department delegate determines

1 that the EA is administratively complete under §2.48 of this  
2 subchapter.

3 (B) Environmental decision deadline. The department  
4 delegate will render an environmental decision not later than  
5 the 60th day after the later of:

6 (i) the date that the department delegate receives  
7 from the project sponsor a revised EA responsive to and in  
8 satisfaction of comments provided by the department delegate  
9 under subparagraph (A) of this paragraph; or

10 (ii) the date the public participation process  
11 concludes, which if a public hearing is held, is the date that  
12 the project sponsor submits to the department delegate the  
13 documentation of public hearing required by §2.109 of this  
14 chapter (relating to Public Hearing).

15 (4) Rendering an environmental decision on an EA. For  
16 the purposes of paragraph (3)(B) of this subsection, the  
17 department delegate renders an environmental decision by:

18 (A) issuing a written FONSI, as provided by §2.83 of  
19 this chapter (relating to Environmental Assessments) or  
20 declining in writing to do so; or

21 (B) for an FHWA transportation project, forwarding the  
22 EA and other documentation to FHWA with an appropriate

1 recommendation.

2 (5) EISs. For a highway project that requires an EIS,  
3 the department delegate will render an environmental decision  
4 not later than the 120th day after the date the department  
5 delegate determines that the project sponsor's draft of the  
6 final EIS is administratively complete under §2.48 of this  
7 subchapter. For purposes of this paragraph, the department  
8 delegate renders an environmental decision by:

9 (A) signing and dating the FEIS cover page as provided  
10 for by §2.84 of this chapter (relating to Environmental Impact  
11 Statements) or declining in writing to do so; or

12 (B) for an FHWA transportation project, forwarding the  
13 FEIS to FHWA with an appropriate recommendation.

14 (6) Reevaluations. For a highway project that requires a  
15 reevaluation, the department delegate will render an  
16 environmental decision not later than the 120th day after the  
17 date the department delegate determines that the reevaluation  
18 document is administratively complete under §2.48 of this  
19 subchapter. For the purposes of this paragraph, the department  
20 delegate renders an environmental decision by:

21 (A) signing and dating the reevaluation or declining in  
22 writing to do so; or

1 (B) for an FHWA transportation project, forwarding the  
2 reevaluation to FHWA with an appropriate recommendation.

3 (b) Suspension of technical review deadlines.

4 (1) Amendments, corrections and revisions.

5 (A) If, at any time during its technical review, the  
6 department delegate identifies deficiencies, errors, or needed  
7 revisions in an environmental review document or CE/BCE/PCE  
8 documentation, the department delegate will notify, in writing,  
9 the project sponsor that it is suspending its technical review,  
10 and identify any needed amendments, corrections, and revisions.  
11 The department delegate will provide to the project sponsor any  
12 comments, if possible, in a single set of comments.

13 (B) The project sponsor may make any corrections or  
14 revisions to the environmental review document or CE/BCE/PCE  
15 documentation identified by the department delegate, and re-  
16 submit the revised documentation in whole or in part, as  
17 appropriate, for continuation of technical review.

18 (C) Any disagreements over corrections or revisions to  
19 an environmental review document or CE/BCE/PCE documentation  
20 will be resolved in accordance §2.52 of this subchapter  
21 (relating to Dispute Resolution Process).

22 (D) The department delegate's compliance with the

1 deadlines set forth in subsection (a) of this section is  
2 suspended from the time the department delegate provides written  
3 notice under subparagraph (A) of this paragraph until the time  
4 the project sponsor re-submits the environmental review document  
5 or CE/BCE/PCE documentation, in whole or in part, in accordance  
6 with subparagraph (B) of this paragraph.

7 (2) Additional work regarding highway project.

8 (A) If, at any time during technical review, the  
9 project becomes the subject of additional work, including a  
10 design change or identification and resolution of new  
11 significant issues, the project sponsor will notify the  
12 department delegate in writing.

13 (B) Compliance with the deadlines set forth in  
14 subsection (a) of this section is suspended from the time the  
15 project sponsor provides written notice until the project  
16 sponsor gives written notice to the department delegate that the  
17 additional work is completed and, if appropriate, submits a  
18 revised environmental review document or CE/BCE/PCE  
19 documentation, in whole or in part, reflecting the outcome of  
20 the additional work.

21 (C) If as a result of additional work the  
22 classification of the project changes, technical review under

1 this section is terminated, and the project sponsor may submit  
2 the new environmental review document or CE/BCE/PCE  
3 documentation to the department delegate under §2.48 of this  
4 subchapter.

5 (3) Issues raised by the department's legal counsel. If,  
6 at any time during technical review, the department delegate  
7 provides written notice to the project sponsor of an issue  
8 concerning compliance with applicable law identified by the  
9 department's legal counsel, compliance with the deadlines set  
10 forth in subsection (a) of this section is suspended from the  
11 time the department delegate provides that notice until the time  
12 that the project sponsor provides a satisfactory written  
13 response to the department delegate and, if appropriate, submits  
14 a revised environmental review document or CE/BCE/PCE  
15 documentation, in whole or in part, reflecting any warranted  
16 changes.

17 (4) Number of suspensions. There is no limit on the  
18 number of times technical review of an environmental review  
19 document or CE/BCE/PCE documentation may be suspended as  
20 provided by this subsection.

21 (5) Suspension by agreement. The project sponsor and  
22 department delegate may suspend compliance with the deadlines

1 set forth in subsection (a) of this section at any time by  
2 written agreement, in which case the deadlines are suspended  
3 until the project sponsor and department delegate lift the  
4 suspension and resume technical review by written agreement.

5

6 §2.51. Deferral of Review.

7 (a) Deferral. Not later than 20 days after the date that  
8 the project sponsor submits an EA or FEIS, the department  
9 delegate may defer undertaking administrative completeness  
10 review and technical review of the document if the department  
11 delegate, in its sole discretion, determines that it lacks  
12 resources to timely review and process all environmental review  
13 documents and CE/BCE/PCE documentation that have been, or are  
14 expected to be submitted for review. On deferral, the review  
15 deadlines set forth in §2.48 of this subchapter (concerning  
16 Administrative Completeness Review) and §2.50 of this subchapter  
17 (concerning Deadlines for Completing Certain Types of Technical  
18 Reviews; Suspension of Review Deadlines) do not apply.

19 (b) Projects eligible for deferral. The only types of  
20 environmental review documents that are subject to possible  
21 deferral under this section are EAs and FEISs. However, the  
22 department delegate may not defer review of an EA or EIS for any

1 project for which a local government sponsor has paid a fee  
2 under §2.46 of this subchapter (relating to Optional Payment of  
3 Fee by Local Government).

4 (c) Notice to project sponsor. The department delegate  
5 will provide written notice to the project sponsor of any  
6 determination to defer review of a document under this section.

7 (d) Deadline for review of deferred projects. The  
8 department delegate will render an environmental decision on a  
9 project for which review of the environmental review document is  
10 deferred under this section not later than one year before the  
11 date that is planned for publishing notice to let the  
12 construction contract for the project, as indicated in whichever  
13 of the following documents was most recently approved:

14 (1) the financially constrained portion of the approved:

15 (A) state transportation improvement program; or

16 (B) unified transportation program; or

17 (2) a commission order identifying the project as being  
18 eligible for environmental review.

19 (e) Date planned for publishing letting notice. If the  
20 date planned for publishing letting notice described in  
21 subsection (d) of this section is identified in the applicable  
22 document only by the fiscal year, for the purposes of this

1 subsection the date is September 1 of the previous year. If it  
2 is identified only by the calendar year, for the purposes of  
3 this subsection the date is January 1 of that year. If it is  
4 identified only by month and year, for the purposes of this  
5 section it is the first day of that month.

6 (f) No waiting period for letting. Subsection (d) of this  
7 section does not require the project sponsor to wait any amount  
8 of time after the department delegate renders an environmental  
9 decision before letting the construction contract for the  
10 project.

11

12 §2.52. Dispute Resolution Process.

13 (a) Informal resolution. The project sponsor and  
14 department delegate will attempt to informally resolve any  
15 dispute concerning implementation of this subchapter before  
16 using other methods of dispute resolution. The informal dispute  
17 resolution procedures described in the project scope will be  
18 implemented.

19 (b) Project sponsor is a department district, region, or  
20 division. If a project sponsor is a department district,  
21 region, or division, a dispute between the project sponsor and  
22 department delegate concerning implementation of this subchapter

1 that cannot be resolved informally under subsection (a) of this  
2 section will be brought to the attention of and resolved by the  
3 department's executive director within 60 days after that date  
4 that the project sponsor or department delegate requests  
5 resolution.

6 (c) Project sponsor is a local government. If the project  
7 sponsor is a local government, disputes between the project  
8 sponsor and department delegate concerning implementation of  
9 this subchapter that cannot be resolved informally under  
10 subsection (a) of this section will be resolved according to the  
11 procedures set out in this subsection.

12 (1) The project sponsor and department delegate will ask  
13 their respective attorneys to meet and attempt to resolve the  
14 dispute.

15 (2) If the project sponsor's and department delegate's  
16 respective attorneys are unable to resolve the dispute, the  
17 project sponsor or department delegate may refer the dispute to  
18 mediation or other alternative dispute resolution process for  
19 resolution. The project sponsor and the department will share  
20 equally the expenses of the mediation or other alternative  
21 dispute resolution process.

22 (3) Any mediation or other alternative dispute resolution

1 process must be concluded not later than the 60th day after the  
2 first date that either the project sponsor or the department  
3 delegate requests dispute resolution under subsection (c)(2) of  
4 this section.

1 SUBCHAPTER D. REQUIREMENTS FOR CLASSES OF PROJECTS

2 §2.81. Categorical Exclusions.

3 (a) Applicability.

4 (1) This section applies to a transportation project that  
5 is classified by the department delegate as a CE. A CE is a  
6 project that does not individually or cumulatively have a  
7 significant environmental impact.

8 (2) This section applies to a transportation project that  
9 is a state transportation project or an FHWA transportation  
10 project, except that subsection (d) of this section applies only  
11 if the project is an FHWA transportation project.

12 (3) This section does not apply to the purchase of an  
13 option to acquire real property, or to the exercise of an option  
14 or other early and advance acquisition of land. The required  
15 environmental review for those types of transactions is  
16 specified in §2.131 of this chapter (relating to Special Right-  
17 of-Way Acquisition).

18 (b) Approval for classification as CE.

19 (1) If the project sponsor satisfies the requirements of  
20 this subsection the department delegate may approve the  
21 classification of a transportation project as a CE.

22 (2) The project sponsor will submit to the department

1 delegate documentation that is a descriptive letter or an  
2 environmental issues checklist showing compliance with the  
3 section. However, if the department delegate requires an  
4 opportunity for hearing under §2.108 of this chapter (relating  
5 to Opportunity for Public Hearing) or a public hearing under  
6 §2.109 (relating to Public Hearing), the project sponsor must  
7 submit, instead of a letter or checklist, a brief environmental  
8 review document discussing and analyzing the potential  
9 environmental impacts. If the department delegate determines  
10 that a transportation project qualifies as a CE, it will  
11 document that determination in the project file.

12 (3) The descriptive letter, environmental issues  
13 checklist, or environmental review document must show that the  
14 project does not violate the restrictions in subsection (c) of  
15 this section and that significant environmental impacts will not  
16 result based on the results of an evaluation of the project.  
17 The project sponsor must indicate if coordination is required,  
18 and if so, the portion of coordination that can be completed  
19 before final approval of the environmental review document has  
20 been completed. The descriptive letter, environmental issues  
21 checklist, or environmental review document must summarize all  
22 EPICs. EPICs that will be performed during construction must be

1 included in the plans, specifications, and estimates.

2 (c) Restrictions on classification.

3 (1) A CE project directly, indirectly, or cumulatively,  
4 may not:

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

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

9 (C) cause any significant impacts to air, noise, or  
10 water quality;

11 (D) relocate significant numbers of people; or

12 (E) cause significant impacts on travel patterns.

13 (2) The CE action may not involve unusual circumstances  
14 or lead to:

15 (A) significant environmental impacts;

16 (B) substantial controversy on environmental grounds;

17 (C) significant impact on properties protected under  
18 Parks and Wildlife Code, Chapter 26, Government Code §442.016,  
19 or the Texas Antiquities Code (Natural Resources Code, Chapter  
20 191); or

21 (D) inconsistencies with federal or state law.

22 (d) FHWA transportation projects.

1           (1) For an FHWA transportation project, in addition to  
2 subsections (a) through (c) of this section, the department  
3 delegate and project sponsor must comply with any federal laws  
4 applicable to the processing of the project as a CE.

5           (2) If the department has a programmatic agreement with  
6 FHWA regarding the review and approval of categorically excluded  
7 transportation projects, the project sponsor and department  
8 delegate will comply with the terms of the agreement. If  
9 federal law or a programmatic agreement conflicts with this  
10 chapter, the federal law or programmatic agreement provision  
11 controls to the extent of the conflict.

12           (3) A programmatic agreement may allow that FHWA's  
13 approval is deemed granted if the department delegate finds that  
14 a project is within the conditions for approval for a project  
15 specified in the agreement. If, however, a programmatic  
16 agreement requires that approval be issued by FHWA, or if the  
17 department has no programmatic agreement with FHWA, the  
18 department delegate will, at the conclusion of technical review,  
19 forward the descriptive letter, environmental issues checklist,  
20 or environmental review document to FHWA with an appropriate  
21 recommendation.

22

1 §2.82. Blanket Categorical Exclusions.

2 (a) Applicability.

3 (1) This section applies to a transportation project that  
4 is classified by the department delegate as a BCE because the  
5 project is similar to past projects that did not involve  
6 significant environmental impacts.

7 (2) This section applies to a state transportation  
8 project or an FHWA transportation project, except that  
9 subsection (f) of this section applies only if the project is an  
10 FHWA transportation project.

11 (b) Approval for classification as BCE.

12 (1) The department delegate may determine that a  
13 transportation project be processed as a BCE under this section  
14 if:

15 (A) the project is listed in subsection (c) or (d) of  
16 this section, or based on department experience, the project is  
17 similar to other projects that did not involve significant  
18 environmental impacts;

19 (B) the project satisfies the restrictions on  
20 classification for CEs set forth in §2.81(c) of this subchapter  
21 (relating to Categorical Exclusions);

22 (C) the project satisfies the restrictions on

1 classification for BCEs in subsection (e) of this section;

2 (D) the project does not use public land designated and  
3 used as a park, recreation area, wildlife refuge, historic site,  
4 or scientific area under Parks and Wildlife Code, Chapter 26;

5 (E) the project sponsor determined whether coordination  
6 is required, and if necessary, has carried out the coordination;

7 (F) the project sponsor has determined whether there is  
8 any controversy concerning the project, and if necessary, has  
9 carried out appropriate public participation to address the  
10 controversy following the requirements in §2.101 of this chapter  
11 (relating to Public Participation for a Categorical Exclusion);  
12 and

13 (G) the project sponsor has determined whether public  
14 participation is required under Transportation Code,  
15 §203.022(a), and if necessary, has carried out the public  
16 participation;

17 (2) The project sponsor will submit to the department  
18 delegate documentation that is a descriptive letter or an  
19 environmental issues checklist showing compliance with this  
20 section. If the department delegate determines that a  
21 transportation project qualifies as a BCE, it will document that  
22 determination in the project file.

1           (3) The department delegate may group the processing of  
2 several projects that are of the same kind.

3           (c) Examples of BCE. A project normally qualifies as a BCE  
4 if the project is:

5           (1) an activity that does not involve or lead directly to  
6 construction, such as a planning or technical study, a grant for  
7 a training or research program, a research activity, approval of  
8 a unified work program and any findings required in the planning  
9 process, approval of statewide programs, approval of project  
10 concepts, or engineering to define the elements of a proposed  
11 action or alternatives so that social, economic, and  
12 environmental effects can be assessed;

13           (2) approval of utility installations along or across a  
14 transportation facility;

15           (3) construction of bicycle or pedestrian lanes, paths,  
16 or facilities;

17           (4) an activity included in the state's "highway safety  
18 plan";

19           (5) for FHWA transportation projects only, the transfer  
20 of federal lands under 23 U.S.C. §317 when the subsequent action  
21 is not an FHWA action;

22           (6) installation of noise barriers or alterations to an

- 1 existing publicly owned building to provide for noise reduction;
- 2 (7) landscaping;
- 3 (8) installation of fencing, signs, pavement markings,  
4 small passenger shelters, traffic signals, or railroad warning  
5 devices if no substantial land acquisition or traffic disruption  
6 will occur;
- 7 (9) emergency repairs;
- 8 (10) acquisition of scenic easements;
- 9 (11) for FHWA transportation projects only, determination  
10 of payback under 23 C.F.R. Part 480 for property previously  
11 acquired with federal-aid participation;
- 12 (12) improvements to an existing rest area or truck weigh  
13 stations;
- 14 (13) a ridesharing activity;
- 15 (14) bus or rail car rehabilitation;
- 16 (15) alterations to a facility or vehicle to make it  
17 accessible for elderly and handicapped persons;
- 18 (16) program administration, technical assistance, or  
19 operating assistance to transit authorities to continue existing  
20 service or increase service to meet routine changes in demand;
- 21 (17) the purchase of vehicles by the department if the  
22 use of the vehicles can be accommodated by an existing facility

1 or by a new facility that itself is within a CE;

2 (18) track or rail bed maintenance and improvements that  
3 is carried out within existing right-of-way;

4 (19) purchase and installation of operating or  
5 maintenance equipment located within the transit facility and  
6 with no significant impacts off the site;

7 (20) promulgation of rules, regulations, or directives;

8 (21) a project consisting of work classified as a seal  
9 coat, overlay, resurfacing, rehabilitation, or restoration done  
10 within existing right-of-way on an existing road and completely  
11 within the footprint of existing base course, or within 10 feet  
12 of each side of existing edge of pavement within previously  
13 disturbed right-of-way, or within the flowlines of the ditches,  
14 whichever is greater;

15 (22) a highway traffic operation improvement project,  
16 including the installation of ramp metering control devices and  
17 lighting; or

18 (23) approval for disposal of excess right-of-way or for  
19 joint or limited use of right-of-way if the proposed use does  
20 not have significant adverse impacts.

21 (d) Additional examples of BCE. Additionally, a project  
22 normally qualifies as a BCE if the project is:

1           (1) the modernization of a highway by resurfacing,  
2 restoration, rehabilitation, reconstruction, adding shoulders,  
3 or adding auxiliary lanes, such as parking, weaving, turning, or  
4 climbing lanes;

5           (2) a highway safety or traffic operations improvement  
6 project, including the installation of ramp metering control  
7 devices and lighting;

8           (3) bridge rehabilitation, reconstruction, or replacement  
9 or the construction of grade separation to replace an existing  
10 at-grade railroad crossing or a new grade separation at an  
11 existing intersection for safety improvement if no additional  
12 capacity is included;

13           (4) a transportation corridor fringe parking facility;

14           (5) construction of a new truck weigh station or rest  
15 area;

16           (6) approval for disposal of excess right-of-way or for  
17 joint or limited use of right-of-way, if the proposed use does  
18 not have significant adverse impacts;

19           (7) construction of a new bus storage or maintenance  
20 facility in an area used predominantly for industrial or  
21 transportation purposes if the construction is not inconsistent  
22 with existing zoning and is located on or near a street with

1 adequate capacity to handle anticipated bus and support vehicle  
2 traffic;

3 (8) approval for changes in access control;

4 (9) rehabilitation or reconstruction of an existing rail  
5 or bus building and ancillary facility if only minor amounts of  
6 additional land are required and there is not a substantial  
7 increase in the number of users;

8 (10) construction of a bus transfer facility that is an  
9 open area consisting of passenger shelters, boarding areas,  
10 kiosks, and related street improvements if the facility is  
11 located in a commercial area or other high activity center in  
12 which there is adequate street capacity for projected bus  
13 traffic;

14 (11) construction of a rail storage or maintenance  
15 facility in an area used predominantly for industrial or  
16 transportation purposes if the construction is not inconsistent  
17 with existing zoning and there is no significant noise impact on  
18 the surrounding community; or

19 (12) a project that adds capacity by adding through lanes  
20 on an existing highway within existing right-of-way in areas  
21 that are outside the metropolitan planning organization (MPO)  
22 metropolitan area boundary (MAB) for MPOs that are in attainment

1 of air quality standards, or outside the non-attainment or  
2 maintenance area boundaries for those MPOs that do not meet air  
3 quality standards, but not if transportation corridor  
4 preservation acquisition was done or if right-of-way acquisition  
5 was done by hardship or donation or for protection of an  
6 individual parcel.

7 (e) Restrictions on classification. The project must  
8 satisfy the restrictions on designation for BCEs in this  
9 subsection.

10 (1) New right-of-way, other land acquisition, and  
11 displacements are covered by this paragraph.

12 (A) The project may not involve acquisition of more  
13 than 30 acres of right-of-way for new land holdings for  
14 transportation related facilities, such as a safety rest area,  
15 intersection, maintenance yard, or border safety inspection  
16 facility.

17 (B) The project may not involve acquisition of more  
18 than minor amounts of temporary or permanent, adjacent or  
19 contiguous right-of-way or land holdings. For the purposes of  
20 this subparagraph, a minor amount is an amount that is not more  
21 than the greater of six acres per linear mile or 30 acres of the  
22 existing right-of-way acreage within the project's limits or the

1 greater of 20 percent of the land area or 30 acres of a  
2 transportation related facility, such as safety rest area,  
3 intersection, maintenance yard, or border safety inspection  
4 facility.

5 (C) For FHWA transportation projects only, the action  
6 will follow the requirements of the Uniform Relocation Act, 42  
7 United States Code §§4601, et seq.

8 (D) No commercial or residential displacements may  
9 result from the acquisitions.

10 (2) For FHWA transportation projects only, the project  
11 will not involve a use of properties protected by Section 4(f) of  
12 the Department of Transportation Act, 49 United States Code  
13 §§303. Any de minimus actions will be received, processed and  
14 approved, if appropriate, by FHWA before a project is allowed to  
15 be processed as a PCE.

16 (3) The project may not have been determined by the state  
17 historical preservation officer to have an adverse effect on any  
18 property determined eligible for the National Register of  
19 Historical Places.

20 (4) The project may not be subject to an individual  
21 Section 408, Section 404, or Section 10 permit, or Nationwide  
22 Permit 23 issued by the United States Army Corps of Engineers.

1           (5) The project may not be subject to a Section 9 permit  
2 issued by the United States Coast Guard (USCG). Further, any  
3 required USCG advanced approval or lighting exemption  
4 concurrence must be received before an action goes to letting.

5           (6) The project will not lead to a determination of other  
6 than "no effect" or "may affect, not likely to adversely affect"  
7 for federally listed resources under regulations implementing  
8 the Endangered Species Act (16 U.S.C. §1531 et seq.). Federally  
9 listed resources are defined as federally listed threatened or  
10 endangered species, proposed threatened or endangered species,  
11 designated critical habitat, and proposed designated critical  
12 habitat. Essential fish habitat must meet the equivalent level  
13 of effect as applicable under the laws and regulations governing  
14 that program.

15           (7) The project may not cause construction in, across, or  
16 adjacent to the specific section of the Rio Grande River  
17 designated as a component of the Rio Grande in the National  
18 System of Wild and Scenic Rivers.

19           (8) The project may not involve known hazardous materials  
20 impacts anticipated to adversely affect construction activities,  
21 and will not involve the acquisition of known unresolved  
22 contaminated sites where the department could reasonably expect

1 to assume liability for corrective action upon acquisition.

2 (9) The project must be consistent with the Coastal Zone  
3 Management Plan as determined by the appropriate federal or  
4 state agencies.

5 (10) The project must conform to all applicable laws,  
6 regulations, implementation plans, or other applicable federal  
7 and state air quality requirements under the federal and state  
8 Clean Air Acts.

9 (f) FHWA transportation projects.

10 (1) For an FHWA transportation project, in addition to  
11 subsections (a) through (e) of this section, the project sponsor  
12 and department delegate must comply with any federal laws  
13 applicable to the processing of the project as a BCE. If the  
14 department has a programmatic agreement with FHWA regarding the  
15 review and approval of categorically excluded projects, the  
16 department delegate and project sponsor will comply with the  
17 terms of the agreement. If federal law or a programmatic  
18 agreement conflicts with this chapter, the federal law or  
19 programmatic agreement controls to the extent of the conflict.

20 (2) A programmatic agreement may allow that FHWA's  
21 approval is considered granted if the department delegate finds  
22 that a project is within the conditions for approval for a

1 project specified in the agreement. If, however, a programmatic  
2 agreement requires that approval be issued by FHWA, the  
3 department delegate will comply with the processing requirements  
4 set forth in the programmatic agreement.

5 (3) The department will process a project as a BCE only  
6 if the department and FHWA have a programmatic agreement on the  
7 processing of a BCE. If the department has a programmatic  
8 agreement with FHWA that designates the types of projects listed  
9 in subsection (d) of this section as a PCE, the department will  
10 process such a project as a PCE following the requirements in  
11 the programmatic agreement.

12

13 §2.83. Environmental Assessments.

14 (a) Applicability.

15 (1) This section applies to a transportation project that  
16 the department delegate has not classified as a CE, BCE, or PCE,  
17 and that does not clearly require the preparation of an EIS, or  
18 if the department delegate believes an EA would assist in  
19 determining the need for an EIS.

20 (2) This section applies to a transportation project that  
21 is a state transportation project or an FHWA transportation  
22 project, except that subsection (i) of this section applies only

1 if the project is an FHWA transportation project.

2 (b) Purpose and content.

3 (1) An EA describes the need for the project, any  
4 alternatives considered, and the extent of environmental impact,  
5 including direct, indirect, and cumulative impacts. The project  
6 sponsor will conduct environmental studies and prepare an EA to  
7 determine the nature and extent of environmental impacts, and to  
8 provide full disclosure of project impacts to the public.

9 (2) If the EA shows that the environmental impacts are  
10 not significant, the EA will conclude with a FONSI. If the EA  
11 shows that the impacts are significant, the EA will conclude  
12 that an EIS is required.

13 (c) Coordination. The project sponsor will comply with  
14 §2.12 of this chapter (relating to Project Coordination), and  
15 will include in the EA the results of coordination and a summary  
16 of the contacts with participating agencies and the comments  
17 received.

18 (d) Public participation. The project sponsor will comply  
19 with §2.102 of this chapter (relating to Public Participation  
20 for an Environmental Assessment) and will include in the EA the  
21 results of public participation and the comments received.

22 (e) Organization of EA. To the maximum extent possible, an

1 EA should summarize, incorporate by reference, and include as  
2 appendices any separately prepared environmental reports  
3 supporting the EA's conclusions, rather than repeat the detailed  
4 information from environmental reports in the body of the EA.

5 (f) Circulation of draft EA. The draft EA is subject to  
6 the department delegate's approval before it is made available  
7 to the public as a department document. For highway projects  
8 processed under Subchapter C of this chapter (relating to  
9 Environmental Review Process for Highway Projects), the EA is  
10 considered approved for public review on the department  
11 delegate's completing the technical review of the draft EA under  
12 §2.49 of this chapter (relating to Technical Review) and  
13 §2.50(a)(3)(A) of this chapter (relating to Deadlines for  
14 Completing Certain Types of Technical Reviews; Suspension of  
15 Review Deadlines). The project sponsor will comply with §2.102  
16 of this chapter concerning notice of the draft EA.

17 (g) Change in determination of impact. If the department  
18 delegate determines at any point during the environmental  
19 studies that the project may have a significant impact on  
20 social, economic, or environmental concerns, the department  
21 delegate will direct the project sponsor to prepare an EIS.

22 (h) Preparation of FONSI.

1           (1) Finding of no significant impact (FONSI) means a  
2 document that is issued by the department delegate that briefly  
3 presents the reasons why the transportation project will not  
4 have a significant effect on the human environment and,  
5 therefore, for which an environmental impact statement will not  
6 be prepared. A FONSI will include the EA, or a summary of it,  
7 and will reference any other environmental documents related to  
8 the FONSI. If the EA is included, the FONSI may incorporate  
9 discussion in the EA by reference rather than repeating it.

10           (2) The department delegate will review the EA, any  
11 proposed mitigation measures, coordination with participating  
12 agencies, and if a public hearing was held, the summary and  
13 analysis, and the comment and response report. The department  
14 delegate, if appropriate, will explain the decision in a written  
15 FONSI, including how the EA and other environmental documents,  
16 coordination, and public participation affected the decision.

17           (3) The project sponsor will give notice of availability  
18 of a FONSI in accordance with §2.102 of this chapter.

19           (i) FHWA transportation project. For an FHWA  
20 transportation project, in addition to the requirements of  
21 subsections (a) through (h) of this section, the department  
22 delegate and project sponsor must comply with any federal laws

1 applicable to the processing of the project as an EA. If  
2 federal law conflicts with this chapter, federal law controls to  
3 the extent of the conflict. At the conclusion of the technical  
4 review, the department delegate will forward the environmental  
5 review document and any other relevant documentation to FHWA  
6 with an appropriate recommendation.

7

8 §2.84. Environmental Impact Statements.

9 (a) Applicability.

10 (1) This section applies to a transportation project if  
11 there are likely to be significant environmental impacts. The  
12 project sponsor will prepare an EIS that is a detailed public  
13 disclosure document that evaluates the impacts of the project.

14 (2) This section applies to a transportation project that  
15 is a state transportation project or an FHWA transportation  
16 project, except that subsection (f) of this section applies only  
17 if the project is an FHWA transportation project.

18 (b) Content.

19 (1) An EIS must include:

20 (A) a discussion of the need and purpose for the  
21 project;

22 (B) an evaluation of all reasonable alternatives

1 satisfying the need and purpose, their associated social,  
2 economic, and environmental impacts, an evaluation of  
3 alternatives eliminated from detailed study, and a determination  
4 of the preferred alternative;

5 (C) a summary of studies conducted to determine the  
6 nature and extent of environmental impacts;

7 (D) a description of the environmental impact of the  
8 project, any unavoidable adverse environmental impacts and  
9 associated measures to minimize harm, and any irreversible and  
10 irretrievable commitments of resources involved if the project  
11 is implemented;

12 (E) a description of the direct, indirect, and  
13 cumulative effects of the project; and

14 (F) a discussion of compliance with all applicable laws  
15 or reasonable assurances that the requirements can be met, and a  
16 description of the mitigation measures that are to be  
17 incorporated as EPICs into the project.

18 (2) Coordination. The project sponsor will comply with  
19 §2.12 of this chapter (relating to Project Coordination), and  
20 will include in the EIS the results of coordination conducted  
21 before final approval of the EIS and a summary of the contacts  
22 with participating agencies and the comments received.

1           (3) Public participation. The project sponsor will  
2 comply with §2.103 of this chapter (relating to Public  
3 Participation for an Environmental Impact Statement or  
4 Supplemental Environmental Impact Statement) and will include in  
5 the EIS the results of public participation and the comments  
6 received.

7           (4) Organization. To the maximum extent possible, an EIS  
8 should summarize, incorporate by reference and include as  
9 appendices any separately prepared environmental reports  
10 supporting the EIS's conclusions, rather than repeat the  
11 detailed information from environmental reports in the body of  
12 the EIS.

13           (c) Processing the EIS.

14           (1) The project sponsor will in the following order:

15           (A) publish a notice of intent and develop a  
16 coordination plan under §2.103 of this chapter;

17           (B) conduct public participation and coordination in  
18 the manner and at the times prescribed by law;

19           (C) prepare the draft EIS (DEIS);

20           (D) publish the notice of availability of the DEIS;

21           (E) conduct the public hearing;

22           (F) prepare the final EIS (FEIS);

1 (G) publish the notice of availability of the FEIS; and

2 (H) prepare a draft record of decision (ROD).

3 (2) The project sponsor will prepare a supplemental DEIS,  
4 a supplemental FEIS, or both if required by §2.86 of this  
5 subchapter (relating to Supplemental Environmental Impact  
6 Statements).

7 (d) Preparation of DEIS.

8 (1) The project sponsor will prepare a DEIS that meets  
9 the requirements of subsection (b) of this section. A preferred  
10 alternative may be designated, if appropriate. The preferred  
11 alternative may be developed to a higher level of detail than  
12 other alternatives. The higher level detail must be limited to  
13 work necessary for preliminary design, as described by paragraph  
14 (5) of this subsection. The department delegate will review,  
15 and will approve the development of the preferred alternative to  
16 a higher level of detail if appropriate, and only if that  
17 development does not prevent the department from making an  
18 impartial decision as to whether to accept another alternative  
19 under consideration in the environmental review process.

20 (2) The DEIS is subject to the department delegate's  
21 approval before it is made available to the public as a  
22 department document. For highway projects processed under

1 Subchapter C of this chapter (relating to Environmental Review  
2 Process for Highway Projects), the DEIS is approved for public  
3 review on the department delegate's completing the technical  
4 review of the DEIS under §2.49 of this chapter (relating to  
5 Technical Review).

6 (3) After the department delegate approves the DEIS, the  
7 project sponsor will circulate the DEIS and give notice of its  
8 availability in accordance with §2.103 of this chapter.

9 (4) After the DEIS is circulated, public hearing held,  
10 and comments reviewed, the project sponsor will prepare an FEIS,  
11 or a supplemental DEIS if required.

12 (5) For the purposes of paragraph (1) of this subsection,  
13 preliminary design is the part of design work on a project that  
14 supports one or more of the activities listed in this paragraph  
15 but does not include an activity that is an irreversible  
16 commitment of resources that forecloses the implementation of  
17 reasonable and prudent alternatives. The activities include:

18 (A) evaluation of alternative courses of action;

19 (B) preparation of information to satisfy EPICs  
20 requirements;

21 (C) work taken to reduce project risks for the final  
22 design and construction phase of the project, including

1 geotechnical investigations, utility surveys, hazardous  
2 materials assessments, and other investigations and analyses;  
3 and

4 (D) work taken to document a base case as part of an  
5 effort to define the requirements that apply to final design or  
6 construction.

7 (e) Preparation of FEIS.

8 (1) The project sponsor will prepare an FEIS that meets  
9 the requirements of subsection (b) of this section and will  
10 prepare a public hearing record under §2.109 of this chapter  
11 (relating to Public Hearing).

12 (2) After the department delegate approves the FEIS, the  
13 project sponsor will circulate the FEIS and publish notice of  
14 its availability in accordance with §2.103 of this chapter.

15 (3) The department delegate will complete and sign a  
16 record of decision (ROD) not earlier than the 30th day after the  
17 date of the publication of the availability of the FEIS notice  
18 in the *Texas Register*. The ROD will present the basis for the  
19 decision, summarize the department's responses to comments  
20 received, and summarize any mitigation measures and commitments.

21 (4) The department delegate will publish notice of the  
22 availability of the ROD in accordance with §2.103 of this

1 chapter.

2 (5) Until the required ROD is signed, no further  
3 approvals may be given except for administrative activities  
4 taken to secure further project funding.

5 (6) If after a ROD is issued for a project the department  
6 approves an alternative that was not identified as the preferred  
7 alternative, the department delegate will prepare a revised ROD  
8 and will publish notice of the availability of the revised ROD  
9 in accordance with §2.103 of this chapter.

10 (f) FHWA transportation project. For an FHWA  
11 transportation project, in addition to subsections (a) through  
12 (e) of this section, the department delegate and project sponsor  
13 must comply with any federal laws applicable to the processing  
14 of the project as an EIS. If federal law conflicts with this  
15 chapter, federal law controls to the extent of the conflict. At  
16 the conclusion of technical review, the department delegate will  
17 forward the environmental review document and any other relevant  
18 documentation to FHWA with an appropriate recommendation.

19

20 §2.85. Reevaluations.

21 (a) Applicability.

22 (1) This section applies to a transportation project that

1 is classified by the department delegate as a CE, EA, or EIS.

2 (2) This section applies to a transportation project that  
3 is a state transportation project or an FHWA transportation  
4 project, except that subsection (d) of this section applies only  
5 if the project is an FHWA transportation project.

6 (b) Purpose and content.

7 (1) A reevaluation of a DEIS will be prepared by the  
8 project sponsor in cooperation with the department delegate if  
9 an acceptable FEIS is not submitted to the department delegate  
10 within three years after the date that the DEIS is circulated.  
11 The purpose of this reevaluation is to determine whether or not  
12 a supplement to the DEIS or a new DEIS is needed.

13 (2) A reevaluation of a FEIS will be required before  
14 further approvals may be granted if major steps to advance the  
15 project, such as authority to undertake final design, authority  
16 to acquire a significant portion of the right-of-way, or  
17 approval of the plans, specifications, and estimates, have not  
18 occurred within three years after the date of the approval of  
19 the FEIS, FEIS supplement, or the last major department approval  
20 or grant.

21 (3) After approval of the ROD, FONSI, or CE designation,  
22 the project sponsor will consult with the department delegate

1 before requesting any major approvals or grants from the  
2 department to establish whether or not the approved  
3 environmental document or CE designation remains valid for the  
4 project. These consultations will be documented if determined  
5 necessary by the department delegate.

6 (c) Coordination. The department delegate may require the  
7 project sponsor to carry out coordination under §2.12 of this  
8 chapter (relating to Project Coordination).

9 (d) FHWA transportation project. For an FHWA  
10 transportation project, in addition to subsections (a) through  
11 (c) of this section, the department delegate and project sponsor  
12 must comply with any federal laws applicable to the processing  
13 of the reevaluation. If federal law conflicts with this  
14 chapter, federal law controls to the extent of the conflict. At  
15 the conclusion of technical review, the department delegate will  
16 forward the environmental review document and any other relevant  
17 documentation to FHWA with an appropriate recommendation.

18

19 §2.86. Supplemental Environmental Impact Statements.

20 (a) This section applies to a transportation project that  
21 is a state transportation project or an FHWA transportation  
22 project, except that subsection (g) of this section applies only

1 if the project is an FHWA transportation project.

2 (b) A DEIS, FEIS, or supplemental EIS may be supplemented  
3 at any time. An EIS will be supplemented if the department  
4 delegate determines that:

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

7 (2) new information or circumstances relevant to  
8 environmental concerns and bearing on the project or its impacts  
9 would result in significant environmental impacts not evaluated  
10 in the EIS.

11 (c) A supplemental EIS will not be necessary if:

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

17 (2) the department delegate decides to approve an  
18 alternative fully evaluated in an approved final EIS but not  
19 identified as the preferred alternative, in which event a  
20 revised ROD will be prepared and circulated in accordance with  
21 §2.84 of this chapter (relating to Environmental Impact  
22 Statements) and §2.103 of this chapter (relating to Public

1 Participation for an Environmental Impact Statement or  
2 Supplemental Environmental Impact Statement).

3 (d) If the department delegate is uncertain of the  
4 significance of the new impacts, the project sponsor will  
5 develop appropriate environmental studies or, if the department  
6 delegate considers appropriate, an EA to assess the impacts of  
7 the changes, new information, or new circumstances. If, based  
8 on the studies, the department delegate determines that a  
9 supplemental EIS is not necessary, the department delegate must  
10 indicate that determination in the project file.

11 (e) A supplement is to be developed using the same process  
12 and format (i.e., DEIS, FEIS, and ROD) as an original EIS,  
13 except that scoping is not required.

14 (f) In some cases, a supplemental EIS may be required to  
15 address issues of limited scope, such as the extent of proposed  
16 mitigation or the evaluation of location or design variations  
17 for a limited portion of the overall project. In such an event,  
18 the preparation of a supplemental EIS does not necessarily:

- 19 (1) prevent the granting of new approvals;  
20 (2) require the withdrawal of previous approvals; or  
21 (3) require the suspension of any project activities not  
22 directly affected by the supplement.

1           (g) If the changes in question are of such a magnitude as  
2 to require a reassessment of the entire project, or more than a  
3 limited portion of the overall project, the department delegate  
4 will suspend any activities that would have an adverse  
5 environmental impact or limit the choice of reasonable  
6 alternatives, until the supplemental EIS is completed.

7           (h) For an FHWA transportation project, in addition to the  
8 requirements of subsections (a) through (g) of this section, the  
9 department delegate and project sponsor must comply with any  
10 federal laws applicable to the processing of the supplemental  
11 EIS. If federal law conflicts with this chapter, federal law  
12 controls to the extent of the conflict. At the conclusion of  
13 technical review, the department delegate will forward the  
14 environmental review document and any other relevant  
15 documentation to FHWA with an appropriate recommendation.

1 SUBCHAPTER E. PUBLIC PARTICIPATION

2 §2.101. Public Participation for a Categorical Exclusion.

3 (a) Requirements.

4 (1) The project sponsor will hold a Meeting with Affected  
5 Property Owners (MAPO) under §2.106 of this subchapter (relating  
6 to Meeting with Affected Property Owners (MAPO)) if required  
7 under that section.

8 (2) The project sponsor may hold a public meeting under  
9 §2.107 of this subchapter (relating to Public Meeting) if  
10 appropriate.

11 (3) The project sponsor will provide an opportunity for  
12 public hearing under §2.108 of this subchapter (relating to  
13 Opportunity for Public Hearing) if appropriate and will hold a  
14 public hearing under §2.109 of this subchapter (relating to  
15 Public Hearing) if appropriate.

16 (4) The project sponsor will prepare a transcript of any  
17 hearing and a certification that a required hearing or hearing  
18 opportunity was offered. If a transcript is prepared, it will  
19 be accompanied by copies of all written statements from the  
20 public, including those submitted at the public hearing or  
21 during an announced period after the public hearing. The  
22 project sponsor also will prepare a report that summarizes all

1 comments and that a gives a response to each comment. The  
2 project sponsor will provide notice of availability of the  
3 documentation required by this paragraph and information on how  
4 to obtain copies. The project sponsor will provide, at a  
5 minimum, notice to the metropolitan planning organization,  
6 publish notice in a local newspaper having general circulation  
7 in the area affected by the project, and provide notice to the  
8 local media through press release. If there is no local  
9 newspaper in the area affected by the project, the project  
10 sponsor will publish notice in any newspaper having general  
11 circulation in the area affected by the project.

12 (b) After completion of public participation. Changes to  
13 the project may require additional public participation under  
14 §2.104 of this subchapter (relating to Additional Public  
15 Participation for Projects Affected by Significant Changes).

16

17 §2.102. Public Participation for an Environmental Assessment.

18 (a) Requirements.

19 (1) The project sponsor may hold a public meeting under  
20 §2.107 of this subchapter (relating to Public Meeting) if  
21 appropriate.

22 (2) On the department delegate's approving the

1 circulation of a draft EA under §2.83 of this chapter (relating  
2 to Environmental Assessments), the project sponsor will make the  
3 EA available for public inspection at the project sponsor's  
4 office. The project sponsor will send notice of availability of  
5 the EA, describing the project and its impacts, to the  
6 participating agencies identified during coordination.

7 (3) The project sponsor will provide an opportunity for  
8 public hearing under §2.108 of this subchapter (relating to  
9 Opportunity for Public Hearing) if appropriate and will hold a  
10 public hearing under §2.109 of this subchapter (relating to  
11 Public Hearing) if appropriate.

12 (4) The project sponsor will prepare a transcript of any  
13 hearing and a certification that a required hearing or hearing  
14 opportunity was offered. If a transcript is prepared, it will  
15 be accompanied by copies of all written statements from the  
16 public, including those submitted at the public hearing or  
17 during an announced period after the public hearing. The  
18 project sponsor also will prepare a report that summarizes all  
19 comment and gives a response to each. The project sponsor will  
20 provide notice of availability of the documentation required by  
21 this paragraph and information on how to obtain copies. The  
22 project sponsor will provide, at a minimum, notice to the

1 metropolitan planning organization, publish notice in a local  
2 newspaper having general circulation in the area affected by the  
3 project, and provide notice to the local media through press  
4 release. If there is no local newspaper in the area affected by  
5 the project, the project sponsor will publish notice in any  
6 newspaper having general circulation in the area affected by the  
7 project.

8 (5) If a FONSI is issued concerning the project, the  
9 project sponsor will give notice of availability of the FONSI to  
10 the metropolitan planning organization and the local media  
11 through press release.

12 (b) After completion of public participation. Changes to  
13 the project may require additional public participation under  
14 §2.104 of this subchapter (relating to Additional Public  
15 Participation for Projects Affected by Significant Changes).

16

17 §2.103. Public Participation for an Environmental Impact  
18 Statement or Supplemental Environmental Impact Statement.

19 (a) Notice of Intent (NOI).

20 (1) An NOI will be published before the preparation of an  
21 EIS or supplemental EIS.

22 (2) The NOI must:

1 (A) briefly describe the project and possible  
2 alternatives;

3 (B) describe the proposed scoping process including  
4 whether, when, and where any scoping meeting will be held, state  
5 that a scoping meeting provides an opportunity for participating  
6 agencies and the public to be involved in defining the need for  
7 and purpose of the proposed project, and to assist in  
8 determining the range of alternatives for consideration in the  
9 DEIS;

10 (C) give a proposed schedule for completion of the  
11 environmental review process, if available; and

12 (D) give the name and address of the designated  
13 department employee who can answer questions about the project  
14 and the EIS.

15 (3) The project sponsor will prepare a draft NOI. If the  
16 department delegate approves the NOI, the department delegate  
17 will submit it for publication in the *Texas Register*. The  
18 project sponsor will publish the NOI, at a minimum, in local  
19 newspapers having general circulation in the area affected by  
20 the project. If there is no local newspaper in the area affected  
21 by the project, the project sponsor will publish the NOI in any  
22 newspaper having general circulation in the area affected by the

1 project.

2 (b) Coordination plan.

3 (1) A coordination plan is a plan for coordinating public  
4 and agency participation in and comment on the environmental  
5 review process. After publication of the NOI, the project  
6 sponsor will prepare a coordination plan.

7 (2) A coordination plan is intended to involve, through  
8 scoping meetings, the participating agencies and the public in  
9 the early stages of development of an EIS, and is distinct from  
10 the process for preparation of the project scope prepared by a  
11 project sponsor and department delegate under §2.44 of this  
12 chapter (relating to Project Scope). Except as provided in  
13 paragraph (4) of this subsection, a coordination plan must:

14 (A) identify the participating agencies;

15 (B) provide for an initial public scoping meeting that  
16 addresses:

17 (i) a draft need and purpose statement, together with  
18 backup materials and a request for comments on it;

19 (ii) a draft coordination plan for the entire  
20 environmental review process, and a request for comments on it;

21 (iii) the range of alternatives, and the known or  
22 potential significant impacts;

1           (iv) a proposed method of alternatives analysis  
2 specifying the level of detail for each alternative proposed by  
3 the project sponsor, and a request for comments;

4           (v) information for issue identification and  
5 resolution, including information regarding the environmental  
6 and socioeconomic resources located within the project area and  
7 the general locations of the alternatives under consideration;  
8 and

9           (vi) identification of the potential participating  
10 agencies;

11           (C) provide for a second public scoping meeting that  
12 addresses:

13           (i) the approved coordination plan;

14           (ii) the range of alternatives based on the approved  
15 need and purpose; and

16           (iii) the method and level of detail used for the  
17 alternatives analysis, after taking into consideration input  
18 given during the initial public scoping meeting.

19           (D) provide a deadline for comment on the DEIS, which  
20 may not be earlier than the 45th day after the day that the DEIS  
21 becomes available.

22           (3) A coordination plan may include a schedule for

1 completion of the environmental review process for the project.

2 In establishing the schedule, the project sponsor will consider:

3 (A) the responsibilities of participating agencies  
4 under applicable laws;

5 (B) resources available to participating agencies;

6 (C) overall size and complexity of the project;

7 (D) the overall schedule for and cost of the project;

8 and

9 (E) the sensitivity of the natural and historic  
10 resources that could be affected by the project.

11 (4) Scoping meetings are not required for a supplemental  
12 EIS.

13 (5) The project sponsor must obtain the approval of a  
14 coordination plan in accordance with this subparagraph.

15 (A) The project sponsor will submit the draft  
16 coordination plan to the department delegate for approval before  
17 the initial public scoping meeting.

18 (B) The project sponsor will circulate the approved  
19 draft coordination plan to the agencies identified in the  
20 coordination plan and invite them to be participating agencies  
21 during the environmental review process, to comment on the draft  
22 coordination plan, and to comment on a proposed schedule for the

1 completion of the environmental process if one is available.  
2 The project sponsor will consider comments by the agencies  
3 concerning need and purpose, the range of alternatives, the  
4 method of alternatives analysis and level of detail, and the  
5 schedule for completing the environmental review process if  
6 available. The project sponsor will circulate the approved  
7 draft coordination plan to the public under subsection (e) of  
8 this section. The project sponsor will consider comments by the  
9 public concerning purpose and need and the range of  
10 alternatives. The project sponsor will allow not less than 30  
11 days for comment on the draft coordination plan and schedule.  
12 For an EIS the deadline will be after the date of the initial  
13 scoping meeting and before the date of the second scoping  
14 meeting. After the comment period, the project sponsor will  
15 submit the coordination plan to the department delegate for  
16 approval.

17 (6) The project sponsor will give a copy of the approved  
18 coordination plan and any approved schedule for completion of  
19 the environmental review process to the participating agencies  
20 and will make it available to the public.

21 (7) A deadline for comment by agencies and the public  
22 established in a coordination plan may be changed in accordance

1 with this paragraph.

2 (A) A deadline may be extended for good cause. The  
3 good cause must be documented in the project file.

4 (B) The project sponsor must obtain the concurrence of  
5 participating agencies to shorten a deadline, and their  
6 concurrence must be documented in the project file.

7 (c) Public meeting. The project sponsor will hold at least  
8 one public meeting under §2.107 of this chapter (relating to  
9 Public Meeting).

10 (d) Notice of availability of DEIS. Notice of availability  
11 of the DEIS will be made under this subsection after the DEIS is  
12 approved under §2.84(d) of this chapter (relating to  
13 Environmental Impact Statements).

14 (1) The department delegate will publish in the *Texas*  
15 *Register* a notice of availability that describes a circulation  
16 and comment period of not less than 45 days and that specifies  
17 where comments may be sent.

18 (2) The project sponsor will:

19 (A) transmit the DEIS directly to participating  
20 agencies;

21 (B) coordinate directly with participating agencies in  
22 accordance with memoranda of understanding under Subchapter B of

1 this chapter (relating to Memoranda of Understanding with  
2 Natural Resource Agencies), memoranda of agreement, or other  
3 formal and informal agreements with those entities;

4 (C) publish in local newspapers a notice of  
5 availability that describes a circulation and comment period of  
6 not less than 45 days and that specifies where comments may be  
7 sent, unless there is no local newspaper in the area affected by  
8 the project, in which event the project sponsor will publish the  
9 notice of availability in a newspaper having general circulation  
10 in the area affected by the project; and

11 (D) coordinate directly with local agencies, including  
12 the appropriate metropolitan planning organization.

13 (e) Circulation of draft coordination plan, DEIS, and FEIS.  
14 This subsection applies to the circulation of the draft  
15 coordination plan that is approved under this section, and to  
16 the circulation of the DEIS and FEIS if the respective documents  
17 are approved under §2.84 of this chapter (relating to  
18 Environmental Impact Statements). The project sponsor will  
19 prepare an initial printing of the document in sufficient  
20 quantity to meet the request for copies that can be reasonably  
21 expected from agencies, organizations, and individuals. Copies  
22 will be provided upon request. The project sponsor will place

1 copies of a draft coordination plan or DEIS in appropriate  
2 designated public locations, such as local government offices,  
3 libraries, or other public institutions. The project sponsor  
4 will transmit the FEIS to a person, organization, or agency that  
5 made substantive comments on the DEIS or that requests a copy.  
6 The project sponsor will give the document to the participating  
7 agencies. The project sponsor may charge a fee not to exceed  
8 the cost of reproduction. For a lengthy document, the project  
9 sponsor or department delegate may provide alternative  
10 circulation processes, including the circulation of a summary.

11 (f) Public hearing concerning DEIS. After a DEIS is  
12 approved under §2.84(d) of this chapter, the project sponsor  
13 will hold a public hearing under §2.109 of this subchapter  
14 (relating to Public Hearing) on the DEIS. The project sponsor  
15 will make the DEIS available at a designated location for the  
16 general public at least 45 days before the date of the public  
17 hearing.

18 (g) Notice of availability of FEIS. Notice of availability  
19 will be made under this subsection after the FEIS is approved  
20 under §2.84 of this chapter.

21 (1) The department delegate will publish notice of  
22 availability of the FEIS in the *Texas Register*. The project

1 sponsor will provide, at a minimum, notice of availability of  
2 the FEIS to the metropolitan planning organization, publish the  
3 notice in a local newspaper having general circulation in the  
4 area affected by the project, and provide the notice to the  
5 local media through press release. If there is no local  
6 newspaper in the area affected by the project, the project  
7 sponsor will publish the notice in a newspaper having general  
8 circulation in the area affected by the project. The notice  
9 will:

10 (A) include information on obtaining copies; and  
11 (B) state that the public will have not less than 30  
12 days after the date of the publication of the notice in the  
13 *Texas Register* to submit comments, and explain how the public  
14 may submit comments.

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

20 (h) Notice of ROD. The department delegate will publish  
21 notice of the ROD in the *Texas Register*. The project sponsor  
22 will, at a minimum, publish a notice of availability of the ROD

1 in local newspapers. If there is no local newspaper in the area  
2 affected by the project, the project sponsor will publish notice  
3 of the ROD in a newspaper having general circulation in the area  
4 affected by the project.

5 (i) Public comments. The project sponsor will document the  
6 number of positive, negative, or neutral public comments  
7 received regarding the project as expressed by the public  
8 through the public participation process. Based on  
9 documentation submitted by the project sponsor, the department  
10 delegate will:

11 (1) present the information to the commission in an open  
12 meeting; and

13 (2) report the information on the department's website in  
14 a timely manner.

15 (j) After completion of public participation. Changes to  
16 the project may require additional public participation under  
17 §2.104 of this chapter (relating to Additional Public  
18 Participation for Projects Affected by Significant Changes).

19  
20 §2.104. Additional Public Participation for Projects Affected  
21 by Significant Changes.

22 (a) Under Transportation Code, §203.022(b), the project

1 sponsor will provide an additional opportunity for public  
2 participation for a project that has received project approval  
3 if:

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

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

10 (b) If this section applies the project sponsor will  
11 provide an opportunity for public hearing under §2.108 of this  
12 chapter (relating to Opportunity for Public Hearing).

13

14 §2.105. Notice of Impending Construction. Under Transportation  
15 Code, §203.022(c), the project sponsor will send notice of the  
16 impending construction of a project that involves either the  
17 addition of at least one travel lane or construction of a  
18 project on new location to landowners abutting the roadway as  
19 identified by tax rolls, and to affected local governments and  
20 public officials.

21

22 §2.106. Meeting with Affected Property Owners (MAPO).

1           (a) The project sponsor will hold one or more MAPOs if a  
2 project requires detours, a minimal amount of right-of-way  
3 acquisition, or temporary construction easements.

4           (b) The project sponsor will hold a MAPO if a minor  
5 location or design revision occurs after the environmental  
6 review document or CE/BCE/PCE documentation has been approved  
7 and the public participation requirements have been completed.

8           (c) The affected property owners include:

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

10              (2) other affected property owners, such as a business or  
11 governmental entity that may be affected.

12           (d) The project sponsor will maintain the record of a MAPO  
13 and forward a summary to the department delegate.

14

15 §2.107. Public Meeting.

16           (a) Meetings with the public and other entities. A project  
17 sponsor may hold one or more public meetings with local public  
18 officials, interested citizens, the general public, and local,  
19 neighborhood, or special interest groups for the purpose of  
20 exchanging ideas and collecting input on the need for, and  
21 possible alternatives to, a project. The decision to hold a  
22 public meeting should be based on the project's type,

1 complexity, and level of public concern that is based on  
2 environmental issues. A public meeting will be held during the  
3 drafting of a DEIS.

4 (b) Requirements for public meeting. If the project  
5 sponsor elects to hold a public meeting or if this section  
6 requires a public meeting, the requirements of this subsection  
7 apply.

8 (1) The project sponsor will hold the meeting as early as  
9 it determines feasible to assure public input into project  
10 planning.

11 (2) The meeting will provide a free exchange of project  
12 views and concerns.

13 (3) The meeting will be held during project planning and  
14 development in order to keep the public informed.

15 (4) The meeting will be held at a time and place  
16 convenient to the public in the vicinity of the project.

17 (5) Notice of a public meeting will be appropriate for  
18 the anticipated audience to maximize attendance.

19 (6) The project sponsor will maintain a list of elected  
20 public officials, individuals, and groups interested in  
21 transportation projects, and will provide notification to these  
22 individuals and groups of a public meeting.

1           (c) Summary of meeting. After a public meeting the project  
2 sponsor will prepare a written summary of the meeting, including  
3 the comments received, responses to comments, and modifications,  
4 if any, to the project resulting from comments. The summary  
5 will be forwarded to the department delegate for review.

6

7 §2.108. Opportunity for Public Hearing.

8           (a) Opportunity to make request.

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

18           (2) An opportunity to request a public hearing will be  
19 given for a project if the results of the environmental studies  
20 support a FONSI.

21           (3) If a public hearing is not required under §2.109 of  
22 this subchapter (relating to Public Hearing), the project

1 sponsor may afford an opportunity for public hearing as another  
2 form of public participation.

3 (b) When to provide opportunity. The opportunity to  
4 request a public hearing will be given after the department  
5 delegate determines the environmental review document or  
6 CE/BCE/PCE documentation is technically complete and approves it  
7 as a full-disclosure document suitable for public review.

8 (c) Procedural requirements.

9 (1) The project sponsor will publish, at a minimum, two  
10 notices of the opportunity to request a public hearing in local  
11 newspapers having general circulation. If there is no local  
12 newspaper in the area affected by the project, the project  
13 sponsor will publish notice in a newspaper having general  
14 circulation in the area affected by the project.

15 (A) The first notice will be published at least 30 days  
16 before the deadline set by the project sponsor for submission of  
17 written requests for holding a public hearing.

18 (B) The second notice will be published not more than  
19 20 or less than seven days before the deadline.

20 (2) If a substantial portion of the population that will  
21 be affected by the project has limited English proficiency  
22 (LEP), the notices also must be published in the primary

1 language of the LEP population in accordance with Presidential  
2 Executive Order 13166, Improving Access to Services for Persons  
3 with Limited English Proficiency.

4 (3) The project sponsor also will mail notice of the  
5 opportunity to request a public hearing to landowners abutting  
6 the roadway, as identified by tax rolls, and to affected local  
7 governments and public officials.

8 (4) No further action will be taken to hold a public  
9 hearing if at the end of the time set for affording an  
10 opportunity to request a public hearing no requests have been  
11 received or if the project sponsor has addressed the concerns of  
12 the persons requesting the public hearing. The project sponsor  
13 will submit a certification of the public participation process  
14 to this effect to the department delegate.

15 (d) Certification if no hearing held. If, after providing  
16 an opportunity for a public hearing, the project sponsor does  
17 not hold a public hearing, the project sponsor will submit to  
18 the department delegate an original certification of the public  
19 participation process signed by an authorized representative of  
20 the project sponsor containing a statement that the requirements  
21 of this section have been met.

22 (e) Exception. A project sponsor is not required to comply

1 with this section if the project sponsor elects to hold a public  
2 hearing.

3

4 §2.109. Public Hearing.

5 (a) Purpose. A public hearing is held to present project  
6 alternatives and to encourage and solicit public comment. The  
7 hearing will be held after location and design studies are  
8 developed and the environmental review document or CE/BCE/PCE  
9 documentation is considered technically complete and approved as  
10 a full disclosure document suitable for public review by the  
11 department delegate.

12 (b) Public hearing required. A project sponsor will hold a  
13 public hearing if:

14 (1) a request for hearing is received under §2.108 of  
15 this subchapter (relating to Opportunity for Public Hearing);

16 (2) in accordance with Transportation Code, §201.604,  
17 between one and nine individuals submit a written request for a  
18 hearing and the project sponsor is unable to address the  
19 concerns of the individuals, or if ten or more individuals  
20 submit a written request for a hearing, except that a public  
21 hearing is not required under this paragraph if a public hearing  
22 has been held concerning the project before the requests are

1 received or if the hearing requests are received after the  
2 environmental review document or CE/BCE/PCE documentation for  
3 the project is approved; or

4 (3) the project is:

5 (A) a project with substantial public interest or  
6 controversy;

7 (B) an EIS project;

8 (C) a high-profile project;

9 (D) a project that requires the taking of public land  
10 designated and used as a park, recreation area, wildlife refuge,  
11 historic site or scientific area, as covered in the Parks and  
12 Wildlife Code, Chapter 26;

13 (E) a project requiring a public hearing under  
14 Transportation Code, §203.021; or

15 (F) a project that requires the taking of private land  
16 encumbered by an agricultural conservation easement purchased  
17 under Natural Resources Code, Chapter 183.

18 (c) Documents available for public inspection. The project  
19 sponsor will make available to the public at designated  
20 locations for not less than 30 days before the date of a public  
21 hearing the maps, drawings, environmental studies, and documents  
22 concerning the project. For an EIS project, the project sponsor

1 will make the DEIS available for not less than 45 days.

2 (d) Notice of public hearing.

3 (1) A notice will contain:

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

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

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

11 (D) a reference to the potential for relocation of  
12 residences and businesses and the availability of relocation  
13 assistance for persons displaced;

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

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

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

20 (H) in accordance with Parks and Wildlife Code,  
21 §26.002, a statement, if applicable, that the project will  
22 require the taking of public land designated and used as a park,

1 recreation area, wildlife refuge, historic site, or scientific  
2 area;

3 (I) in accordance with Natural Resources Code,  
4 §183.057, a statement, if applicable, that the project will  
5 require the taking of land protected by an agricultural  
6 conservation easement; and

7 (J) a statement that provision will be made for persons  
8 with special communication or physical needs related to the  
9 public hearing if requested.

10 (2) Publication of notice.

11 (A) Except as provided in subparagraph (B) of this  
12 paragraph, the project sponsor, at a minimum, will publish a  
13 notice twice in local newspapers having general circulation. If  
14 there is no local newspaper in the area affected by the project,  
15 the project sponsor will publish notice in a newspaper having  
16 general circulation in the area affected by the project. The  
17 first notice will be published at least 30 days before the date  
18 of the hearing. The second notice will be published not more  
19 than 20 days or less than seven days before the date of the  
20 hearing.

21 (B) For projects requiring the taking of public land  
22 designated and used as a park, recreation area, wildlife refuge,

1 historic site, or scientific area under Parks and Wildlife Code,  
2 Chapter 26, the project sponsor will publish notice under this  
3 subparagraph.

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

7 (ii) The notice must state clearly the proposed  
8 program or project and the date, time, and place for the public  
9 hearing. The notice must be given at least 30 days before the  
10 date for the public hearing.

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

1 published in the nearest county to the county where the land is  
2 situated.

3 (3) If a substantial portion of the population that will  
4 be affected by the project has limited English proficiency  
5 (LEP), the project sponsor will also publish notice in the  
6 primary language of the LEP population in accordance with  
7 Presidential Executive Order 13166, Improving Access to Services  
8 for Persons with Limited English Proficiency.

9 (4) The project sponsor will mail notice to landowners  
10 abutting the proposed project, as identified by tax rolls, and  
11 to affected local governments and public officials.

12 (5) The project sponsor will maintain a list of elected  
13 public officials, individuals, and groups interested in  
14 transportation projects, and will provide notification to these  
15 individuals and groups of a public hearing.

16 (e) Public hearing and comment. The project sponsor will  
17 make all testimony given at a public hearing a part of the  
18 public hearing record. A person or other entity will submit  
19 written comment to the project sponsor not later than 10 days  
20 after the date of the close of the public hearing.

21 (f) Documentation of public hearing. If the project  
22 sponsor held a public hearing, the project sponsor will submit

1 to the department delegate for review and approval:

2 (1) two copies each of the verbatim transcript, the  
3 public hearing summary and analysis, and the comment and  
4 response report;

5 (2) the original certification of the public  
6 participation process signed by an authorized representative of  
7 the project sponsor, containing:

8 (A) general information on the public hearing;

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

11 (C) a statement regarding consideration of the  
12 statutory provisions of the Civil Rights Act of 1964 and the  
13 Civil Rights Restoration Act of 1987;

14 (D) a statement regarding the project's consistency  
15 with planning goals and objectives; and

16 (E) a statement that the requirements of this section  
17 have been met.

18

19 §2.110. After Completion of Public Participation. After  
20 completion of the public participation process, the project  
21 sponsor will publicize through press releases project specific  
22 planning and development decisions in order to keep the public

- 1 informed of any new or continuing issues. Changes to the
- 2 project may require additional public involvement.

1 SUBCHAPTER F. REQUIREMENTS FOR SPECIFIC PROJECTS AND PROGRAMS

2 §2.131. Special Right-of-Way Acquisition.

3 (a) Use or taking of designated public land.

4 (1) The department delegate may approve the use or taking  
5 of public land that is designated and used as a park, recreation  
6 area, scientific area, wildlife refuge, or historic site only if  
7 the department delegate determines:

8 (A) there is no feasible and prudent alternative to the  
9 use or taking of the land; and

10 (B) the project includes all reasonable planning to  
11 minimize harm to the land as a park, recreation area, scientific  
12 area, wildlife refuge, or historic site resulting from the use  
13 or taking, including mitigation measures.

14 (2) The department delegate may make a determination  
15 required under this subsection only after holding a properly  
16 noticed public hearing in accordance with §2.109 of this chapter  
17 (relating to Public Hearing).

18 (b) Use or taking of protected private land.

19 (1) The department delegate may approve the use or taking  
20 of private land encumbered by an agricultural conservation  
21 easement purchased under Natural Resources Code, Chapter 183  
22 only if the department delegate determines:

1 (A) there is no feasible and prudent alternative to the  
2 use or taking of the land; and

3 (B) the project includes all reasonable planning to  
4 minimize harm to the land resulting from the use or taking.

5 (2) The department delegate may make a determination  
6 required under this subsection only at a properly noticed public  
7 hearing held in accordance with §2.109 of this chapter.

8 (c) Compliance with other requirements. If a project is  
9 subject to subsection (a) or (b) of this section, the department  
10 delegate and project sponsor also will require compliance with  
11 all applicable environmental analysis, documentation, and  
12 interagency coordination requirements in this chapter.

13 (d) Early and advance acquisition.

14 (1) The department may not acquire real property by early  
15 or advance acquisition without first completing a categorical  
16 exclusion analysis, using the standards set forth in this  
17 subsection rather than those provided under §2.81 of this  
18 chapter (relating to Categorical Exclusions). The department  
19 will identify in its categorical exclusion analysis any  
20 environmental issues or liabilities associated with the  
21 acquisition. The department will not make an early or advance  
22 acquisition if it requires relocation or the use or taking of

1 public land that is designated and used as a park, recreation  
2 area, scientific area, wildlife refuge, or historic site. The  
3 subject of a categorical exclusion analysis under this  
4 subsection will be the acquisition of a specific parcel or group  
5 of parcels only, and shall not assume or imply approval of the  
6 related transportation project. Early or advance acquisition  
7 will not influence any aspect of the final environmental  
8 decision, including any evaluation of build or no-build  
9 alternatives or alternative alignments for the transportation  
10 project. A categorical exclusion analysis is not required for a  
11 construction project for which there is an approved  
12 environmental review document or CE/BCE/PCE documentation.

13 (2) An option is an agreement by which the owner of a  
14 property conveys to the department the right to purchase the  
15 property on terms specified in the option. Exercising an option  
16 is the acquisition of property under an option agreement. The  
17 department may acquire an option, exercise an option, or both,  
18 before a final decision has been made as to whether the project  
19 will be located on the property that is the subject of the  
20 option. The department may purchase an option if the department  
21 conducts a site assessment and determines that the property does  
22 not appear to contain significant contamination of hazardous

1 materials, or other potential environmental concerns. The  
2 purchase of an option does not require a categorical exclusion  
3 determination. The exercise of an option is a type of early and  
4 advance acquisition of property, and the requirements of  
5 paragraph (1) of this subsection apply to the exercise.

6

7 §2.132. Gulf Intracoastal Waterway Projects.

8 (a) Definitions. The following words and terms, when used  
9 in this section, have the following meanings, unless the context  
10 clearly indicates otherwise.

11 (1) Beneficial use project--The productive and positive  
12 use of dredged material as proposed by the U.S. Army Corps of  
13 Engineers.

14 (2) Federal interagency coordination team--A group  
15 established to review proposed federal development projects  
16 related to the Gulf Intracoastal Waterway and whose duties  
17 include advising on the determinations of consistency with the  
18 Texas Coastal Management Program.

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

1 Isabel.

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

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

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

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

19 (5) Jurisdiction--

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

22 (B) for a county, any area within the boundaries of

1 that county, excluding incorporated areas and areas within the  
2 extraterritorial jurisdiction of a city.

3 (b) Federal and nonfederal sponsorship. The U.S. Army  
4 Corps of Engineers is responsible for maintaining the GIWW. The  
5 commission, under Transportation Code, Chapter 51, is the  
6 nonfederal sponsor of the GIWW.

7 (c) Initiation of proposed disposal plans or beneficial use  
8 projects.

9 (1) Disposal plan. The department may participate in the  
10 development of a disposal plan for dredged material.

11 (2) Laguna Madre disposal plans. Legislative approval is  
12 necessary for any substantive changes to the disposal plan  
13 developed for the Laguna Madre reach of the GIWW dated October  
14 11, 2002.

15 (3) Beneficial use project. The department may  
16 participate in the development of a beneficial use project for  
17 dredged material.

18 (A) Proposals. The department will accept from the  
19 U.S. Army Corps of Engineers proposals for beneficial use  
20 projects in the broad use categories of:

21 (i) habitat development;

22 (ii) beach nourishment;

- 1 (iii) aquaculture;
- 2 (iv) parks and recreation;
- 3 (v) agriculture, forestry, and horticulture;
- 4 (vi) strip mine reclamation and solid waste  
5 management;
- 6 (vii) shoreline stabilization and erosion control;
- 7 (viii) construction and industrial use;
- 8 (ix) material transfer, such as transfer for fill,  
9 dikes, levees, parking lots, roads; and
- 10 (x) multiple purposes, which is a combination of two  
11 or more of the categories listed in this subparagraph on a  
12 single dredging project.
- 13 (B) Submittal of proposals. The U.S. Army Corps of  
14 Engineers will submit proposals in writing to the executive  
15 director or the executive director's designee. The proposals  
16 will include:
- 17 (i) a description of the proposed beneficial use  
18 project and anticipated benefits;
- 19 (ii) a map delineating the location or locations of  
20 the proposed beneficial use project;
- 21 (iii) a proposed project schedule including an  
22 anticipated completion date;

1           (iv) a detailed estimate of the project cost,  
2 including an estimate of the U.S. Army Corps of Engineers'  
3 financial contributions to the project; and

4           (v) a plan addressing the operation and maintenance  
5 of the facility created by or benefiting from the beneficial use  
6 project.

7           (4) Early coordination. The department will initiate and  
8 oversee early coordination with appropriate state and federal  
9 agencies to develop a proposal for disposal plans or beneficial  
10 use projects.

11           (5) Investigation.

12           (A) The department will use a task force to investigate  
13 disposal plans and beneficial use projects and evaluate the  
14 environmental and operational suitability of each. The task  
15 force will include representatives from state and federal  
16 agencies having jurisdiction in the protection of the state's  
17 natural, historic, and economic resources, and the GIWAC or  
18 federal interagency coordination team.

19           (B) The department or U.S. Army Corps of Engineers will  
20 lead any field investigations. The task force agencies will be  
21 requested to participate in field investigations and to provide  
22 to the department written evaluations of the disposal plans and

1 beneficial use projects investigated.

2 (C) The GIWAC or federal interagency coordination team  
3 will review the investigations and discuss with the department  
4 any proposed disposal alternatives or beneficial use projects.

5 (d) Preparation of environmental review document. Upon the  
6 identification of a disposal proposal or beneficial use proposal  
7 related to the GIWW, the department will assist with the  
8 preparation of the environmental review document by the U.S.  
9 Army Corps of Engineers under 42 U.S.C. §§4321 et seq. and  
10 applicable federal rules. The department will assist with any  
11 public participation process conducted by the U.S. Army Corps of  
12 Engineers.

13 (e) Procedures for state acquisition of real property. If  
14 the commission proposes the acquisition of real property  
15 necessary to enable it to meet its responsibilities as the  
16 nonfederal sponsor of the GIWW, or if the commission proposes to  
17 participate in the cost of a project to beneficially use dredge  
18 material that requires the acquisition of an interest in real  
19 property, the commission will complete the following procedures.

20 (1) Public hearing. The commission, through the  
21 department, will hold a public hearing to receive evidence and  
22 testimony concerning the desirability of the plan or project.

1           (A) The department will publish notice of a plan or  
2 project and the date, time, and place of a hearing at least once  
3 a week for three successive weeks before the hearing in a  
4 newspaper of general circulation that is published in the county  
5 seat of each county in which any part of a proposed dredge  
6 material disposal site, channel alteration, or beneficial use  
7 project would be located.

8           (B) The commission also will publish notice of the  
9 hearing in at least one edition of the *Texas Register*.

10           (C) The department will also publish notice of the  
11 hearing on the department's website.

12           (D) The U.S. Army Corps of Engineers' environmental  
13 documents and findings will be on display at the public hearing.

14           (E) Comments, testimony, or evidence may be given in  
15 person or in writing during the public hearing or may be  
16 submitted in writing to the department during the prescribed  
17 public comment period.

18           (2) Commission approval. After the public hearing the  
19 commission may approve a plan or project under this paragraph,  
20 and implement it including the acquisition of real property, if  
21 it determines the following:

22           (A) The proposed plan or project can be accomplished

1 without an unjustifiable waste of publicly or privately owned  
2 natural resources or a permanent and substantial adverse impact  
3 on the environment, wildlife, or fisheries.

4 (B) For a project to beneficially use dredge material,  
5 in addition to the requirements of subparagraph (A) of this  
6 paragraph, the project:

7 (i) is proposed by the U.S. Army Corps of Engineers;

8 (ii) proposes one or more beneficial use activities  
9 having a direct relationship of function or impact to the GIWW;

10 (iii) has substantial local support, as evidenced  
11 through the public participation process and documentation,  
12 including, at a minimum, a resolution or other official document  
13 from the governing body of the city or county with jurisdiction  
14 over the project area or if the project area is located in more  
15 than one jurisdiction, from the governing body of the city or  
16 county within which a majority of the project area is located,  
17 in consultation with the other involved jurisdictions. For the  
18 purposes of this clause, the jurisdiction of a city is the area  
19 within the incorporated limits and the extraterritorial  
20 jurisdiction of the city, and the jurisdiction of a county is  
21 the area within the boundaries of the county, excluding  
22 incorporated areas and areas within the extraterritorial

1 jurisdiction of a city;

2 (iv) is limited to a logical unit of work and capable  
3 of being implemented and completed within a reasonable time as  
4 determined by the department;

5 (v) is consistent with the Texas Coastal Management  
6 Program; and

7 (vi) is consistent with the financial participation  
8 requirements of this clause.

9 (I) The commission will establish an eligible cost  
10 of the proposed beneficial use project by calculating the total  
11 estimated cost of the project in excess of the established  
12 federal standard for dredged material disposal. Except as  
13 provided in subclause (II) of this clause, the department's  
14 financial participation in the project will not exceed 50  
15 percent of eligible cost.

16 (II) The commission may authorize participation at  
17 levels exceeding 50 percent if the commission determines the  
18 additional participation will result in extraordinary  
19 environmental or economic benefits or the costs are reasonably  
20 comparable to the costs of providing property to accommodate  
21 traditional upland disposal.

22 (III) Department funding may not be used for

1 maintenance or operation of a beneficial use project.

2 (3) Commission agreement. If the commission approves  
3 department participation in a beneficial use project, the  
4 commission will enter into an agreement with the U.S. Department  
5 of the Army to participate in the cost of the project.

6 (f) Public participation for state acquisition of real  
7 property. Before conducting a public hearing required by  
8 subsection (e) of this section, the department will conduct the  
9 following additional public participation.

10 (1) Preliminary involvement.

11 (A) The department will notify a public or private  
12 landowner of a parcel's environmental and operational  
13 suitability for the proposed disposal plan or beneficial use  
14 project, and offer to meet with the landowner to answer any  
15 questions about the proposed disposal plan or beneficial use  
16 project.

17 (B) The department also will notify the landowner of  
18 any public meeting or public hearing on the proposed disposal  
19 plan or beneficial use project.

20 (C) Meetings on the proposed disposal plan or  
21 beneficial use project, as one form of public participation,  
22 will be held with individuals owning property adjacent to the

1 project and with other affected property owners, such as  
2 businesses and governmental entities that may be affected, if  
3 those individuals or owners request such a meeting.

4 (D) Public meetings, as another form of public  
5 participation, may be held in accordance with paragraph (2) of  
6 this subsection.

7 (2) Public meetings. Notice of a public meeting will be  
8 advertised through legal notices in a newspaper of general  
9 circulation published in the county seat of each county in which  
10 the proposed dredged material disposal plan or beneficial use  
11 project is located. The notice will also be posted on the  
12 department's website.

13

14 §2.133. Maintenance Projects and Programs.

15 (a) Maintenance programs. This section applies to the  
16 following maintenance programs and the maintenance projects  
17 undertaken under them:

18 (1) Bridge maintenance--Activities to repair or perform  
19 preventive maintenance on bridges, culverts, retaining walls,  
20 and barrier walls.

21 (2) Customer service--Activities related to providing the  
22 traveling public with services, including maintaining rest

1 areas, picnic areas, and litter barrels.

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

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

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

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

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

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

21 (9) Traffic pavement markings--Activities related to  
22 markings on the pavement to control vehicular movement,

1 including installing and removing striping, specialty markings,  
2 and pavement markings.

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

10 (b) Environmental review.

11 (1) Programs. At least every ten years the department  
12 will conduct an environmental review following the requirements  
13 of this chapter for each of the maintenance programs listed in  
14 subsection (a) of this section.

15 (2) Projects. Except as provided in the next succeeding  
16 sentence, no individual environmental review under this chapter  
17 will be required for maintenance projects undertaken under  
18 programs listed in subsection (a) of this section. An  
19 individual environmental review under this chapter will be  
20 required for a maintenance project that is conducted or  
21 supported by FHWA, unless FHWA has approved an environmental  
22 review of the program under which the project is conducted.

1

2 §2.134. Coastal Management Program.

3 (a) Scope. The approval of transportation projects and  
4 programs located in whole or in part within the coastal  
5 boundary, as defined in 31 TAC §503.1 (relating to Coastal  
6 Management Program Boundary), are actions subject to the Texas  
7 Coastal Management Program (CMP), 31 TAC Part 16. A project or  
8 program will be approved unless it is found to be inconsistent  
9 with the goals and policies of the CMP, as described in 31 TAC  
10 Chapter 501 (relating to the Coastal Management Program). For  
11 the purposes of this section, "transportation projects and  
12 programs" includes the projects and programs for which an  
13 environmental document is prepared under this subchapter and  
14 Gulf Intracoastal Waterway projects for which the commission  
15 authorizes right-of-way acquisition and beneficial use projects.

16 (b) Thresholds. In accordance with 31 TAC §505.26  
17 (relating to Approval of Thresholds for Referral), the  
18 department's threshold for referral of actions to the General  
19 Land Office is the approval of transportation projects and  
20 programs requiring an environmental impact statement. The  
21 threshold for actions concerning the Gulf Intracoastal Waterway  
22 is the approval by the commission for acquisitions of rights of

1 way for dredged material disposal and for beneficial use  
2 projects, unless:

3 (1) the federal agency's consistency determination for  
4 the federal activity or the federal development project included  
5 the dredged material disposal plan or the beneficial use  
6 project, and the consistency is affirmed in accordance with 31  
7 TAC Chapter 506 (relating to Council Procedures for Federal  
8 Consistency with Coastal Management Program Goals and  
9 Priorities);

10 (2) the Coastal Coordination Council or General Land  
11 Office previously issued a consistency agreement under 31 TAC  
12 Chapter 506 for the federal activity or the federal development  
13 project that included the disposal plan or the beneficial use  
14 project; or

15 (3) the disposal or placement of dredged material in  
16 existing dredge disposal sites or within existing beneficial use  
17 projects meets the provisions of 31 TAC Chapter 506.



- 1           SUBCHAPTER C.   ADDITIONAL REQUIREMENTS FOR CERTAIN TYPES  
2                                   OF TRANSPORTATION PROJECTS  
3   §2.44.   Gulf Intracoastal Waterway Projects.  
4   §2.48.   Coastal Management Program.

Repeals