

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

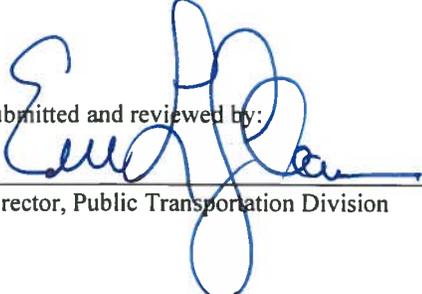
The Texas Transportation Commission (commission) finds it necessary to propose new §§11.400 - 11.418, relating to Transportation Alternatives Set-Aside Program, to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the new §§11.400 - 11.418 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:


Director, Public Transportation Division

Recommended by:


Executive Director

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Minute
Number

Date
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes new
3 §§11.400 - 11.418 concerning the Transportation Alternatives
4 Set-Aside Program.

5

6 EXPLANATION OF PROPOSED NEW SECTIONS

7 The proposed new sections implement the Transportation
8 Alternatives Set-Aside Program (TA Set-Aside Program) as
9 authorized by the federal Fixing America's Surface
10 Transportation Act (FAST Act). The FAST Act establishes the TA
11 Set-Aside Program as part of the Surface Transportation Block
12 Grant, and replaces the Transportation Alternatives Program
13 (TAP) which was established as an independent funding category
14 under the Moving Ahead for Progress in the 21st Century Act
15 (MAP-21). Like the TAP, the TA Set-Aside Program provides
16 funding for a variety of alternative transportation projects.
17 The TA Set-Aside Program is contained in 23 U. S. C. §133(h).

18

19 A majority of the concepts contained in the new sections are
20 carried forward from the department's administrative rules
21 concerning the TAP, and will be familiar to interested parties.

22

23 New Subchapter G is titled "Transportation Alternatives
24 Set-Aside Program" to accurately reflect and conform to federal
25 law.

1

2 New §11.400, Purpose, describes the purpose of the subchapter,
3 which is to set out the policies and procedures for the
4 implementation and administration of the TA Set-Aside Program.

5

6 New §11.401, Definitions, defines various terms used in the new
7 subchapter, which are standard and recognizable within the
8 transportation planning community.

9

10 New §11.402, Program Administration, briefly describes the
11 suballocation of TA Set-Aside funds as required by federal law,
12 and provides that each Metropolitan Planning Organization (MPO)
13 serving an urbanized area with a population over 200,000 shall
14 implement the TA Set-Aside Program for the award of funds in
15 that area. The remaining TA Set-Aside funds will be distributed
16 through a competitive process administered by the department.

17

18 New §11.403, Project Selection and Implementation by MPOs,
19 provides general guidance for MPOs that are responsible for the
20 review and selection of TA Set-Aside projects. The department
21 is not mandating how the MPOs will conduct the selection
22 process; however, project selection and implementation shall be
23 conducted in accordance with applicable state and federal laws
24 and regulations. Eligibility determinations shall be made by
25 the MPO, subject to audit by the Federal Highway Administration

1 (FHWA). MPOs are required to provide the department a list of
2 all projects submitted during a program call, specifically
3 identifying the selected projects, and shall include selected
4 projects within their respective Transportation Improvement
5 Programs (TIPs). A project sponsor requesting an adjustment to
6 the minimum local funding match requirement based on the
7 county's status as an economically disadvantaged county is
8 required to obtain written authorization from the department and
9 must include that authorization with the application submitted
10 to the MPO. If an adjustment is granted, the adjustment
11 percentage in effect at the time the application is submitted
12 will be used and the county must remain eligible for the
13 adjustment until the date the project sponsor enters into the
14 local agreement. Projects, or substantially similar projects,
15 submitted during a program call administered by the MPO are not
16 eligible for consideration under a program call administered by
17 the department. In addition, MPOs shall report annually to the
18 department on TA Set-Aside project applications and projects
19 awarded TA Set-Aside funding.

20
21 New §11.404, Eligible Activities, describes those activities for
22 which TA Set-Aside funds may be awarded under a program call
23 administered by the department. As under the TAP, these
24 activities include construction of on-road and off-road trail
25 facilities for pedestrians, bicyclists, and other non-motorized

1 forms of transportation; construction of infrastructure-related
2 projects and systems to improve safe routes for non-drivers;
3 conversion and use of abandoned railroad corridors for trails
4 for pedestrians, bicyclists, or other non-motorized
5 transportation users; and construction of infrastructure-related
6 projects to improve the ability of students to bike and walk to
7 school. Several types of activities that are defined as
8 "transportation alternatives" under federal law will not be
9 considered for funding under a program call administered by the
10 department. The agency continues to place an emphasis on
11 facilities for pedestrians, bicyclists and other non-motorized
12 forms of transportation, as well as certain types of
13 infrastructure projects formerly eligible under the Safe Routes
14 to School Program, in an effort to encourage the development of
15 a safe and multimodal transportation system. Projects requiring
16 the acquisition of real property through eminent domain or
17 condemnation are not eligible. Whether proposed as an
18 independent project or an element of a larger project, the
19 project must be limited to a logical unit of work and be
20 constructible as an independent project.

21
22 New §11.405, Allowable Costs, provides that the use of federal
23 funds is limited to construction-related project expenditures
24 and eligible project costs incurred by the department. The
25 costs of preliminary engineering are not allowable, and

1 expenditures for routine operation and maintenance are not
2 reimbursable unless specifically allowed under the applicable
3 federal program category. These limitations were previously
4 established under the TAP.

5
6 New §11.406, Local Funding Match, specifies that the local
7 funding match will be a cash match or in-kind contribution
8 provided by or through the project sponsor. In-kind
9 contributions for development of project plans, specifications,
10 and estimates (PS&E) may be considered part of the local funding
11 match; however, these costs must be incurred after project
12 selection, execution of the project agreement and issuance of
13 the authorization to proceed. Unless specifically authorized
14 under federal law or regulation, funds from other federal
15 programs may not be used as a local funding match. Donated
16 services will not be accepted as a part of the local match, but
17 may be used to reduce the overall cost of the project. If a
18 selected project is to be administered by the department, the
19 project sponsor must provide the local funding match prior to
20 the commencement of project activities for each phase of work.
21 The local match associated with the department's administrative
22 cost must be provided in cash.

23
24 New §11.407, Call for Nominations, describes the method by which
25 the department will announce a call for projects and the type of

1 information that will be included in the notice. The department
2 may limit a program call to a particular type of eligible
3 activity, in order to focus its efforts towards making an
4 overall impact in a specific area.

5
6 New §11.408, Nomination Package, specifies the manner in which a
7 project sponsor must submit its nomination and the type of
8 information and justification that must be included in the
9 nomination package. Project sponsors must provide persuasive
10 evidence of support from the local community and a commitment to
11 provide a minimum local match of 20% of the allowable project
12 costs. If the project is located in a county that has been
13 certified by the Texas Transportation Commission (commission) as
14 an economically disadvantaged county, the nomination package may
15 include a request for adjustment to the minimum local match
16 requirement. For those projects in which the commission is
17 authorized by law to provide state cost participation, the
18 department may adjust the match amount. If an adjustment is
19 granted, the adjustment percentage in effect at the time the
20 nomination package is submitted will be used and the county must
21 remain eligible for the adjustment until the date the project
22 sponsor enters into the local agreement. Project submissions
23 must be received by the published deadline and any nomination
24 package that fails to include the required items will be
25 considered incomplete and will not be considered for funding.

1 The department may request supplemental information as needed to
2 conduct project screening and evaluation.

3

4 New §11.409, Project Screening and Evaluation, describes the
5 method by which the department will conduct the project review
6 process. As with the TAP, the executive director will appoint a
7 project evaluation committee consisting of department staff to
8 review and evaluate all aspects of the project. The committee
9 will provide selection recommendations to the director of the
10 division responsible for administering the TA Set-Aside Program,
11 who will review the recommendations and provide a final list of
12 recommended projects to the commission for consideration.

13

14 New §11.410, Finding of Ineligibility; Request for
15 Reconsideration, provides that the department will notify
16 project sponsors of ineligible activities proposed and the
17 reason for the determination, and describes how a project
18 sponsor may request a reconsideration of the determination.

19

20 New §11.411, Selection of Projects by the Commission, describes
21 the process by which the commission will select projects for
22 funding under the TA Set-Aside Program. In making the
23 selection, the commission will consider: (1) recommendations
24 from the director of the division responsible for administering
25 the program; (2) the potential benefit to the state of the

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

7

8 New §11.412, Inclusion of Selected Projects in Planning
9 Documents, provides that the department will request that MPOs
10 include projects selected by the commission within their
11 respective TIPs. The department will also include all selected
12 projects in the Statewide Transportation Improvement Program
13 (STIP).

14

15 New §11.413, Project Implementation, describes the operational
16 responsibilities of project sponsors, as well as the
17 department's role, during implementation of the project. These
18 guidelines will help ensure effective and efficient
19 implementation of each project selected by the commission.
20 Project sponsors are expected to implement or arrange for
21 implementation of a selected project; however, the department,
22 in its sole discretion, may agree to implement a project on
23 behalf of a project sponsor. All selected projects shall be
24 developed according to current standards and specifications and
25 in accordance with new Subchapter G. Project sponsors must

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

14

15 New §11.414, Payment of Costs, provides that the department will
16 submit all requests for reimbursement to FHWA and describes the
17 manner in which costs for locally-administered projects may be
18 submitted for reimbursement. All project costs are borne by the
19 project sponsor until reimbursement can be obtained. Costs
20 incurred prior to inclusion of the project in the STIP,
21 execution of the local agreement, and prior to state and federal
22 authorization are not eligible for reimbursement.

23

24 New §11.415, Elimination of Project from the TA Set-Aside
25 Program, specifies that a project will be eliminated from the

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

14

15 New §11.416, Project Transfer; Approval of Change, outlines the
16 basic steps required to transfer a project to another entity in
17 the event of a legislative action and specifies that the
18 disposition must be approved by FHWA.

19

20 New §11.417, Maintenance and Operation; Dedication for Public
21 Use, provides that a selected project shall be maintained and
22 operated for the purpose for which it was approved and funded,
23 and offers guidance regarding the expected project lifespan as
24 it relates to the federal investment.

25

1 New §11.418, Annual Reporting to FHWA, provides that the
2 department will report annually to FHWA on the total number of
3 TA Set-Aside project applications and the total number of
4 projects that are awarded TA Set-Aside funding.

5

6 FISCAL NOTE

7 Brian Ragland, Chief Financial Officer, has determined that for
8 each of the first five years in which the new sections as
9 proposed are in effect, there will be no fiscal implications for
10 state or local governments as a result of enforcing or
11 administering the new sections.

12

13 Eric Gleason, Director of Public Transportation, has certified
14 that there will be no significant impact on local economies or
15 overall employment as a result of enforcing or administering the
16 new sections.

17

18 PUBLIC BENEFIT AND COST

19 Mr. Gleason has also determined that for each year of the first
20 five years in which the sections are in effect, the public
21 benefit anticipated as a result of enforcing or administering
22 the new sections will be a more efficient and robust
23 transportation system through the development of various types
24 of federally-funded transportation projects as allowed under the
25 Transportation Alternatives Set-Aside Program. There are no

1 anticipated economic costs for persons required to comply with
2 the sections as proposed. There will be no adverse economic
3 effect on small businesses.

4

5 SUBMITTAL OF COMMENTS

6 Written comments on the proposed new §§11.400 - 11.418 may be
7 submitted to Rule Comments, General Counsel Division, Texas
8 Department of Transportation, 125 East 11th Street, Austin,
9 Texas 78701-2483 or to RuleComments@txdot.gov with the subject
10 line "TA SET-ASIDE PROGRAM." The deadline for receipt of
11 comments is 5:00 p.m. on November 14, 2016. In accordance with
12 Transportation Code, §201.811(a)(5), a person who submits
13 comments must disclose, in writing with the comments, whether
14 the person does business with the department, may benefit
15 monetarily from the proposed new sections, or is an employee of
16 the department.

17

18 STATUTORY AUTHORITY

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

22

23 CROSS REFERENCE TO STATUTE

24 Title 23, United States Code, §133(h).

1 SUBCHAPTER G. TRANSPORTATION ALTERNATIVES SET-ASIDE PROGRAM

2 §11.400. Purpose. The sections under this subchapter prescribe
3 the policies and procedures for the implementation and
4 administration of the Transportation Alternatives Set Aside
5 Program (TA Set-Aside Program), as authorized by 23 U.S.C.
6 §133(h).

7

8 §11.401. Definitions. The following words and terms, when used
9 in this subchapter, shall have the following meanings, unless
10 the context clearly indicates otherwise.

11 (1) Commission--Texas Transportation Commission.

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

13 (3) Executive director--The executive director of the
14 Texas Department of Transportation or the executive director's
15 designee.

16 (4) FHWA--Federal Highway Administration.

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

22 (6) Metropolitan planning organization (MPO)--The
23 organization or policy board of an organization created and

1 designated under 23 U.S.C. §134, and 49 U.S.C. §5303, to make
2 transportation planning decisions for the metropolitan planning
3 area and carry out the metropolitan planning process.

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

8 (8) Project sponsor--An eligible entity as described
9 by 23 U.S.C. §133(h), that nominates a particular project for
10 consideration, exercises jurisdiction over the geographic area
11 in which that project is located, and commits to the project's
12 development, implementation, construction, maintenance,
13 management, and financing.

14 (9) State--The State of Texas or any of its political
15 subdivisions.

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

1 (11) Surface transportation system--An interconnected
2 surface transportation network for moving people and goods using
3 various combinations of transportation modes.

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

11
12 §11.402. Program Administration.

13 (a) The state is required to suballocate, in accordance
14 with 23 U.S.C. §133(h), a part of its TA Set-Aside apportionment
15 to urbanized areas with populations over 200,000.

16 (b) Each MPO serving an urbanized area with a population
17 over 200,000 shall implement the TA Set-Aside Program for the
18 award of funds suballocated within that area. Section 11.403 of
19 this subchapter (relating to Project Selection and
20 Implementation by MPOs) applies only to the use of those TA Set-
21 Aside funds.

22 (c) For TA Set-Aside funds not covered by subsection (b) of
23 this section, the commission will select projects through a

1 competitive process administered by the department. Sections
2 11.404 - 11.417 of this subchapter apply only to the use of
3 those TA Set-Aside funds.

4
5 §11.403. Project Selection and Implementation by MPOs.

6 (a) This section applies only to an MPO serving an
7 urbanized area with a population over 200,000 and the award of
8 TA Set-Aside funds suballocated for such an urbanized area.

9 (b) The MPO, in consultation with the department, shall
10 develop a competitive process to allow project sponsors to
11 submit project applications for funding that achieve the
12 objectives of the TA Set-Aside Program.

13 (c) The MPO shall coordinate determinations regarding
14 project eligibility, subject to audit by the FHWA.

15 (d) The MPO, in consultation with the department, shall
16 conduct project selection in accordance with all applicable
17 federal and state laws and regulations.

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

1 (f) The MPO shall conduct project implementation in
2 accordance with all applicable federal and state laws and
3 regulations.

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

7 (h) A project sponsor requesting an adjustment to the
8 minimum local funding match requirements based on the county's
9 status as an economically disadvantaged county is required to
10 obtain written authorization from the department, in the form
11 prescribed by the department, and must include the form with the
12 application submitted to the MPO. If an adjustment is granted,
13 the adjustment percentage in effect for the county at the time
14 the application is submitted to the MPO will be used. The
15 county must remain eligible for the adjustment until the date
16 the project sponsor enters into the local agreement.

17 (i) Projects, or substantially similar projects, submitted
18 during a program call administered by the MPO are not eligible
19 for consideration under a program call administered by the
20 department.

21 (j) Not later than November 15 of each year, the MPO shall
22 submit to the department a report that describes:

1 (1) the number of project applications received by the
2 MPO for the preceding federal fiscal year (the period of October
3 1 through September 30), including the aggregate cost of the
4 projects for which applications are received and the types of
5 projects to be carried out, expressed as percentages of the
6 MPO's total apportionment for TA Set-Asides; and

7 (2) the number of projects selected for funding by the
8 MPO for the preceding federal fiscal year, including the
9 aggregate cost and location of projects selected.

10

11 §11.404. Eligible Activities.

12 (a) During a program call administered by the department,
13 TA Set-Aside funds may be awarded for any of the following
14 activities:

15 (1) construction of on-road and off-road trail
16 facilities for pedestrians, bicyclists, and other non-motorized
17 forms of transportation, including sidewalks, bicycle
18 infrastructure, pedestrian and bicycle signals, traffic calming
19 techniques, lighting and other safety-related infrastructure,
20 and transportation projects to achieve compliance with the
21 Americans with Disabilities Act of 1990;

22 (2) construction of infrastructure-related projects
23 and systems that will provide safe routes for non-drivers,

1 including children, older adults, and individuals with
2 disabilities to access daily needs;

3 (3) conversion and use of abandoned railroad corridors
4 for trails for pedestrians, bicyclists, or other non-motorized
5 transportation users; and

6 (4) construction of infrastructure-related projects to
7 improve the ability of students to walk and bicycle to school,
8 including sidewalk improvements, traffic calming and speed
9 reduction improvements, pedestrian and bicycle crossing
10 improvements, on-street bicycle facilities, off-street bicycle
11 and pedestrian facilities, secure bicycle parking facilities,
12 and traffic diversion improvements in the vicinity of schools.

13 (b) A project that will require the acquisition of real
14 property through the exercise of eminent domain or condemnation
15 is not eligible for participation in the TA Set-Aside Program.

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

20

21 §11.405. Allowable Costs.

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

4 (b) The costs of preliminary engineering, including
5 planning, design, and plans, specifications, and estimates, are
6 not allowable costs.

7 (c) Eligible pre-construction costs incurred by the
8 department are reimbursable. All other pre-construction costs
9 are the responsibility of the project sponsor.

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

13

14 §11.406. Local Funding Match.

15 (a) The local funding match is a cash match or in-kind
16 contribution provided by or through the project sponsor. An in-
17 kind contribution may include only actual and documented costs
18 incurred by the project sponsor for the development of project
19 plans, specifications, and estimates that would otherwise be
20 eligible for reimbursement under applicable statutes and
21 regulations.

22 (b) Costs incurred prior to execution of the local
23 agreement or prior to federal and state approval and

1 authorization to proceed are not eligible for consideration as
2 in-kind contributions.

3 (c) Funds from other federal programs may be used as a
4 local funding match only when specifically authorized by federal
5 law or regulation.

6 (d) Donated services may not be accepted as a local funding
7 match, but may be used to reduce the overall cost of the
8 project.

9 (e) If a project selected by the commission is implemented
10 by the department, the project sponsor must provide the local
11 funding match prior to the commencement of project activities
12 for each phase of work.

13 (f) Projects selected by the commission will include an
14 administrative cost for the department's oversight. The local
15 funding match associated with this administrative cost must be
16 provided in cash.

17

18 §11.407. Call for Nominations.

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

21 (b) The notice will include information regarding the
22 content of the nomination package, the procedures applicable to

1 the program call, and the specific evaluation criteria to be
2 used during the project selection process.

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

5

6 §11.408. Nomination Package.

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

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

15 (c) If the project is located in a county that has been
16 certified by the commission as an economically disadvantaged
17 county, the nomination package may include a request for
18 adjustment to the minimum local funding match requirement. For
19 those projects in which the commission is authorized by law to
20 provide state cost participation, the department may adjust the
21 amount required by subsection (b) of this section. If an
22 adjustment is granted, the adjustment percentage in effect for
23 the county at the time the program call is initiated will be

1 used. The county must remain eligible for the adjustment until
2 the date the project sponsor enters into the local agreement.

3 (d) A complete nomination package must be received by the
4 department not later than the specified deadline published in
5 the Texas Register. A nomination package that fails to include
6 any of the items specified in this section or the respective
7 program call is considered to be incomplete and will not be
8 considered for funding. The department may request supplemental
9 information as needed to conduct project screening and
10 evaluation.

11

12 §11.409. Project Screening and Evaluation.

13 (a) The executive director will appoint a project
14 evaluation committee consisting of department staff to review,
15 evaluate, and make recommendations on projects submitted during
16 a program call administered by the department.

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

21 (c) The committee will evaluate the benefits of each
22 project that is determined to be eligible under subsection (b)

1 of this section or §11.410 of this subchapter based on the
2 specific selection criteria set forth in the program call.

3 (d) The committee will provide project selection
4 recommendations and supporting documentation to the director of
5 the division responsible for administering the TA Set-Aside
6 Program.

7 (e) The director of the division responsible for
8 administering the TA Set-Aside Program will review the
9 recommendations and supporting documentation submitted by the
10 committee and provide a final list of recommended projects to
11 the commission for consideration.

12

13 §11.410. Finding of Ineligibility; Request for Reconsideration.

14 (a) The department will by certified mail, return receipt
15 requested, notify the project sponsor of ineligible activities
16 proposed and the reason for the determination.

17 (b) A request for reconsideration of a finding of
18 ineligibility may be initiated only by a letter from the
19 nominating entity to the executive director setting forth
20 reasons in support of a finding of eligibility. The letter
21 requesting reconsideration must be received by the department
22 not later than 15 days after the day that nominating entity

1 received the department's notification, as established by the
2 return receipt.

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

5

6 §11.411. Selection of Projects by the Commission.

7 (a) The commission, by written order, will select projects
8 for funding under the TA Set-Aside Program based on:

9 (1) recommendations from the director of the division
10 responsible for administering the TA Set-Aside Program;

11 (2) the potential benefit to the state of the project;
12 and

13 (3) whether the project enhances the surface
14 transportation system.

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

17 (c) The department will notify the project sponsor of the
18 selection.

19 (d) The commission will specify a fixed amount of TA Set
20 Aside funds for each project. Project costs in excess of this
21 amount are the responsibility of the project sponsor. The
22 project sponsor may seek additional funds through the TA Set
23 Aside Program in subsequent program calls.

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

3

4 §11.412. Inclusion of Selected Projects in Planning Documents.

5 (a) If a project selected by the commission is to be
6 implemented in a metropolitan area, the department will request
7 that the MPO for that area immediately begin the process
8 required to include the selected project in its TIP.

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

11

12 §11.413. Project Implementation.

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

19 (b) All projects shall be developed:

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

23 (2) in accordance with this subchapter.

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

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

9 (e) Funds from other federal programs may be used only if
10 specifically authorized by federal law or regulation. Private
11 cash donations may be accepted if authorized by law.

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

15 (g) The department is responsible for the inspection and
16 final acceptance of all projects selected by the commission and
17 for certification of project completion.

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

21

22 §11.414. Payment of Costs.

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

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

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

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

13

14 §11.415. Elimination of Project from the TA Set-Aside Program.

15 (a) A project will be eliminated from participation in the
16 TA Set-Aside Program if prior to the execution of the local
17 agreement, the governing body of a municipality or county in
18 which project activities are proposed, by resolution, order, or
19 other official action, notifies the department of its opposition
20 to the project.

21 (b) The executive director may eliminate a project or a
22 portion of a project from participation in the TA Set-Aside
23 Program if:

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

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

6 (3) the project sponsor withdraws from participation
7 in the project;

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

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

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

16

17 §11.416. Project Transfer; Approval of Change.

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

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

1

2 §11.417. Maintenance and Operation; Dedication for Public Use.

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

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

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

12 (2) 10 years, if the amount of federal investment in
13 the project is \$1 million or less, or 20 years, if the amount of
14 federal investment is more than \$1 million.

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

19

20 §11.418. Annual Reporting to FHWA. The department will
21 annually submit a report to FHWA that describes:

22 (1) the total number of project applications received
23 for the federal fiscal year (the period of October 1 through

1 September 30), including the aggregate cost of the projects for
2 which applications are received and the types of projects to be
3 carried out, expressed as percentages of the total apportionment
4 for TA Set-Asides; and

5 (2) the total number of projects selected for funding
6 for each federal fiscal year, including the aggregate cost and
7 location of projects selected.