

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt the repeal of §1.8, Internal Ethics and Compliance Program, and §1.9, Effect of Contractor's Internal Ethics and Compliance Program, both relating to other entities' internal ethics and compliance procedures, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted repeals, 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 repeal of §1.8 and §1.9 are adopted and are authorized for filing with the Office of the Secretary of State.

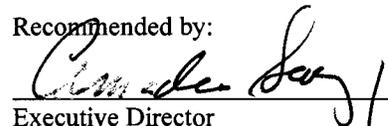
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



Deputy Executive Director

Recommended by:



Executive Director

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Minute  
Number

Date  
Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts the  
3 repeal of §1.8, Internal Ethics and Compliance Program, and  
4 §1.9, Effect of Contractor's Internal Ethics and Compliance  
5 Program, concerning other entities' internal ethics and  
6 compliance procedures. The repeal of §1.8 and §1.9 are adopted  
7 in association with the adoption of 43 TAC Chapter 9, new  
8 Subchapter G and 43 TAC new Chapter 10. The repeal of §1.8 and  
9 §1.9 are adopted without changes to the proposed text as  
10 published in the September 10, 2010 issue of the *Texas Register*  
11 (35 TexReg 8302) and will not be republished.

12

13 EXPLANATION OF ADOPTED REPEALS

14 Title 43, Texas Administrative Code (43 TAC), §1.8, Internal  
15 Ethics and Compliance Program, and §1.9, Effect of Contractor's  
16 Internal Ethics and Compliance Program, became effective  
17 February 19, 2009. Section 1.8 establishes, for an entity that  
18 is required by Texas Transportation Commission (commission) rule  
19 to have an internal ethics and compliance program, the minimum  
20 requirements of such a program, and requires the entity to  
21 certify that it has adopted and enforces compliance with the  
22 program. Section 1.9 provides that a contractor's adoption and  
23 enforcement of compliance with an internal ethics and compliance  
24 program that meets the requirements of §1.8 may be considered in  
25 determining a sanction that may be imposed on the contractor.

1

2 The substance of §1.8 is transferred to 43 TAC §9.106, which is  
3 applicable to entities participating in highway improvement  
4 contracts and new 43 TAC §10.51, which is applicable to other  
5 entities doing business with the department, in separate rules  
6 that are being adopted by the commission.

7

8 The substance of §1.9 is integrated into 43 TAC Chapter 9,  
9 Contract and Grant Management, and new Chapter 10, Ethical  
10 Conduct by Entities Doing Business with the Department. Under  
11 §9.110, before imposing a sanction against a contractor, the  
12 executive director will consider whether the contractor has  
13 adopted a compliance program that satisfies §9.106, and if so,  
14 whether the program is being enforced. Under new §10.154,  
15 before imposing a score reduction on an individual or entity  
16 that provides engineering, architectural, or surveying services,  
17 the executive director will consider, as a mitigating factor,  
18 the adoption and enforcement of an internal ethics and  
19 compliance program that satisfies the requirements of new  
20 §10.51. Finally, under §10.254 the executive director will  
21 consider the adoption and enforcement of an internal ethics and  
22 compliance program that satisfies the requirements of §10.51 as  
23 a mitigating factor before imposing a sanction on a person doing  
24 business with the department other than a person that provides  
25 engineering, architectural, or surveying services.

1

2 COMMENTS

3 No comments on the proposed repeals were received.

4

5 STATUTORY AUTHORITY

6 The repeals are adopted under Transportation Code, §201.101,  
7 which provides the commission with the authority to establish  
8 rules for the conduct of the work of the department.

9

10 CROSS REFERENCE TO STATUTE

11 None.

1 SUBCHAPTER C. OTHER ENTITIES' INTERNAL ETHICS AND COMPLIANCE  
2 PROCEDURES

3 §1.8. Internal Ethics and Compliance Program.

4 (a) Various sections of this title require an entity to  
5 adopt and enforce an internal ethics and compliance program. To  
6 comply with that requirement, the entity must provide the  
7 department with written evidence of the internal ethics and  
8 compliance program and must certify to the department that the  
9 entity:

10 (1) has adopted an internal ethics and compliance program  
11 that:

12 (A) is designed to detect and prevent violations of the  
13 law, including regulations, and ethical standards applicable to  
14 the entity or its officers or employees; and

15 (B) satisfies the requirements of this section; and

16 (2) enforces compliance with its internal ethics and  
17 compliance program.

18 (b) An entity's internal ethics and compliance program must  
19 be in writing and must provide compliance standards and  
20 procedures that the entity's employees and agents are expected  
21 to follow. The program must be recognized by the department as  
22 a qualifying compliance program. At a minimum, the program must  
23 provide that:

1 (1) high-level personnel are responsible for oversight of  
2 compliance with the standards and procedures;

3 (2) appropriate care is being taken to avoid the  
4 delegation of substantial discretionary authority to individuals  
5 whom the organization knows, or should know, have a propensity  
6 to engage in illegal activities;

7 (3) compliance standards and procedures are effectively  
8 communicated to all of the organization's employees by requiring  
9 them to participate in training and disseminating to them  
10 information that explains, in understandable language, the  
11 requirements of the program;

12 (4) the governing body or individuals of the organization  
13 have periodic training in ethics and in the compliance program;

14 (5) compliance standards and procedures are effectively  
15 communicated to all of the organization's agents;

16 (6) reasonable steps are being taken to achieve  
17 compliance with the compliance standards and procedures by:

18 (A) using monitoring and auditing systems that are  
19 designed to reasonably detect noncompliance; and

20 (B) providing and publicizing a system for the  
21 organization's employees and agents to report suspected  
22 noncompliance without fear of retaliation;

23 (7) consistent enforcement of compliance standards and

1 procedures is administered through appropriate disciplinary  
2 mechanisms;

3 (8) reasonable steps are being taken to respond  
4 appropriately to detected offenses and to prevent future similar  
5 offenses; and

6 (9) the organization has a written employee code of  
7 conduct that, at a minimum, addresses:

8 (A) record retention;

9 (B) fraud;

10 (C) equal opportunity employment;

11 (D) sexual harassment and sexual misconduct;

12 (E) conflicts of interest;

13 (F) personal use of the organization's property; and

14 (G) gifts and honoraria.

15

16 §1.9. Effect of Contractor's Internal Ethics and Compliance  
17 Program. The adoption by a contractor, as defined by §9.101 of  
18 this title, of an internal ethics and compliance program that  
19 satisfies the requirements of §1.8 of this subchapter applicable  
20 to an internal ethics and compliance program and the  
21 contractor's enforcement of compliance with that program may  
22 mitigate the imposition of a sanction on the contractor or the  
23 level of a sanction that is imposed.