

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt new Chapter 10, Ethical Conduct by Entities Doing Business with the Department, New Subchapter A, General Provisions, §§10.1 - 10.7; New Subchapter B, Other Entities' Internal Ethics and Compliance Procedures, §10.51; New Subchapter C, Required Conduct by Entities Doing Business with the Department, §§10.101 - 10.102; New Subchapter D, Score Reduction for Ethical Violations by Architectural, Engineering, and Surveying Service Providers, §§10.151 - 10.160; New Subchapter E, Removal of Certification of Architectural, Engineering, and Surveying Service Providers for Ethical Violations, §§10.201 - 10.206; and New Subchapter F, Sanctions for Ethical Violations by Other Entities, §§10.251 - 10.257, all to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted new sections, attached to this minute order as Exhibits A - G, 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*.

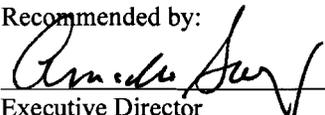
IT IS THEREFORE ORDERED by the commission that new §§10.1 - 10.7, §10.51, §§10.101 - 10.102, §§10.151 - 10.160, §§10.201 - 10.206, and §§10.251 - 10.257 are adopted and are authorized for filing with the Office of the Secretary of State.

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

**112517 DEC16 10**

Minute Number      Date Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts new  
3 Chapter 10, Ethical Conduct by Entities Doing Business with the  
4 Department, new Subchapter A, General Provisions, new  
5 §§10.1 - 10.7, new Subchapter B, Other Entities' Internal Ethics  
6 and Compliance Procedures, §10.51, new Subchapter C, Required  
7 Conduct by Entities Doing Business with the Department, new  
8 §10.101 and §10.102, new Subchapter D, Score Reduction for  
9 Ethical Violations by Architectural, Engineering, and Surveying  
10 Service Providers, new §§10.151 - 10.160, new Subchapter E,  
11 Removal of Precertification of Architectural, Engineering, and  
12 Surveying Service Providers for Ethical Violations, new  
13 §§10.201 - 10.206, new Subchapter F, Sanctions for Ethical  
14 Violations by Other Entities, new §§10.251 - 10.257. These new  
15 sections are adopted in association with new 43 TAC §§9.101 -  
16 9.115. New §§10.1 - 10.7, §10.51, §10.102, §§10.151 - 10.155,  
17 §§10.157 - 10.158, §10.160, §§10.201 - 10.206, and §§10.252 -  
18 10.257 are adopted without changes to the proposed text as  
19 published in the September 10, 2010 issue of the *Texas Register*  
20 (35 TexReg 8310) and will not be republished. New §§10.101,  
21 10.156, 10.159, and 10.251 are adopted with changes to the  
22 proposed text as published in the September 10, 2010 issue of  
23 the *Texas Register* (35 TexReg 8310).

24

25 EXPLANATION OF ADOPTED NEW CHAPTER

26 In its effort to emphasize transparency, accountability, and  
27 ethical standards, the department adopts new rules to establish

1 conduct requirements for entities that do business with the  
2 department and to describe what measures may be taken in  
3 response to violations.

4  
5 The new rules set forth ethical and other requirements that, if  
6 violated, may lead to disciplinary actions and sanctions. They  
7 create enforcement provisions that correspond with different  
8 types of violations to provide clear notice of what an action's  
9 consequences will be and also describe how to appeal the  
10 enforcement action.

11  
12 The sections will only apply to agreements signed or extended on  
13 or after the effective date of the rules.

14  
15 New §10.1, Purpose, sets forth the purpose of the subchapter,  
16 which is to prescribe the ethical conduct required of entities  
17 that do business with the department and to describe how  
18 violations will be enforced. Enforcement provisions for ethical  
19 violations by a contractor who is subject to 43 TAC Chapter 9,  
20 Subchapter G, Highway Improvement Contract Sanctions are  
21 provided under that chapter rather than under new Chapter 10.  
22 Chapter 10 does not apply to the federal government. The  
23 requirements and enforcement measures of the chapter supplement  
24 other applicable provisions. The latter provision gives notice  
25 that the department may use all remedies legally available to  
26 it.

27

1 New §10.2, Definitions, provides definitions for terms  
2 associated with conduct requirements and enforcement provisions.  
3 The definition of debarment is among those provided in the  
4 section, and states that debarment is disqualification of an  
5 entity from bidding on or entering into a contract with the  
6 department, from participating as a subcontractor under a  
7 contract with the department, and from participating as a  
8 supplier of materials or equipment to be used under a contract  
9 with the department, so that debarment applies to an entity no  
10 matter what function the entity is attempting to undertake in an  
11 agreement with the department.

12  
13 New §10.3, Delivery of Written Notice, Disclosures, or Requests  
14 to the Department, clarifies the proper methods of delivery of  
15 written notices, disclosures, and requests to the department,  
16 which are by mail and hand delivery. This ensures timely  
17 receipt of written communications to the department.

18  
19 New §10.4, Act of Individual Imputed to Entity, limits when acts  
20 of those acting on behalf of an entity may be imputed to the  
21 entity. Only conduct of an individual acting on behalf of an  
22 entity that seriously and directly affects the entity's  
23 responsibility to the department may be imputed to the entity.  
24 The purpose of this section is to give notice that an entity may  
25 be sanctioned for acts of those acting on behalf of the entity,  
26 but only in situations where those acts seriously and directly  
27 affect the entity's responsibility to the department.

1

2 New §10.5, Benefit, defines a benefit as anything that is  
3 reasonably regarded as financial gain or advantage, including  
4 something given to another person in whose welfare the  
5 beneficiary has a direct interest. It also describes what items  
6 are not considered benefits for purposes of the chapter. In  
7 order to protect the integrity of department agreements, it is  
8 the department's intent that its employees not be influenced by  
9 being offered things described as a benefit under this section.

10

11 New §10.6, Conflict of Interest, describes a conflict of  
12 interest as a circumstance arising out of an entity's existing  
13 or past activities, business interests, contractual  
14 relationships, or organizational structure, or a familial or  
15 domestic living relationship between a department employee and  
16 an employee of the entity, that affects or may affect the  
17 entity's objectivity in performing the scope of work sought by  
18 the department, or that provides or may reasonably appear to  
19 provide an unfair competitive advantage to an entity or a third  
20 party in the entity's performance of services for the department  
21 or participation in an agreement with the department. As  
22 stewards of public resources, the department has a vested  
23 interest in ensuring that both impropriety and the perception of  
24 impropriety are avoided.

25

26 New 10.7, Delegation of Authority, describes how and to whom the  
27 executive director and assistant executive director may delegate

1 the authority given to them under this chapter. The executive  
2 director may delegate to AN assistant executive director any  
3 authority provided to the executive director under this chapter,  
4 unless otherwise provided. The assistant executive director may  
5 delegate to an employee of the department who is not below the  
6 level of district engineer, division director, or office  
7 director any authority provided to the assistant executive  
8 director under this chapter, unless otherwise provided.

9  
10 New §10.51, Internal Ethics and Compliance Program, is adopted  
11 without change from existing §1.8, Internal Ethics and  
12 Compliance Program. In the interest of organization, the  
13 section has been removed from 43 TAC Chapter 1, Subchapter C,  
14 Other Entities' Internal Ethics and Compliance Procedures, and  
15 inserted into new Chapter 10. This allows for easy subject  
16 matter reference and location of the rules.

17  
18 New §10.101, Required Conduct, lists requirements to which  
19 entities must adhere. Entities must disclose conflicts of  
20 interest, refrain from offering benefits to department employees  
21 or commissioners, and obey all applicable laws. An entity must  
22 also maintain good standing with the state's comptroller of  
23 public accounts, and must notify the department of, as well as  
24 adequately address, a business-related conviction or judgment  
25 against the entity, debarment for a reason related to business  
26 integrity, or a violation of the law or department rules if that  
27 violation seriously and directly affects the entity's

1 responsibility to the department. This section provides notice  
2 as to exactly what ethical standards of conduct the department  
3 requires entities follow. High ethical standards are essential  
4 in promoting transparency, accountability, and responsible use  
5 of department resources.

6  
7 New §10.102, Grounds for Sanctions, provides that an entity's  
8 violation of the conduct requirements is a ground for an  
9 enforcement action. Allowing the department to impose an  
10 enforcement action on an entity ensures that the required  
11 conduct will be adhered to by entities doing business with the  
12 department.

13  
14 New §10.151, Definitions, provides definitions for Subchapter D,  
15 Score Reduction for Ethical Violations by Architectural,  
16 Engineering, and Surveying Service Providers.

17  
18 New §10.152, Score Reduction for Ethical Violations, states that  
19 if a service provider violates the conduct requirements, the  
20 executive director may reduce the provider's points total under  
21 43 TAC Chapter 9, Subchapter C, Contracting for Architectural,  
22 Engineering, and Surveying Services. This section states the  
23 manner in which enforcement action will be taken against service  
24 providers. The section also states that this action is in  
25 addition to other actions available to the department. The  
26 latter provision gives notice that the department is not  
27 forfeiting any options legally available.

1

2 New §10.153, Member Score Reduction Applied to Team, provides  
3 that if any member of a team has the member's score reduced  
4 under this subchapter, then the score reduction applies to all  
5 submissions made by the team under 43 TAC Chapter 9, Subchapter  
6 C, Contracting for Architectural, Engineering, and Surveying  
7 Services. Holding a team accountable for the actions of its  
8 team members provides an additional level of protection of the  
9 department's interest in doing business with ethical providers.

10

11 New §10.154, Factors Considered in Imposing Score Reduction,  
12 describes the factors that the executive director will consider  
13 in imposing a score reduction. Factors to be considered include  
14 the seriousness and willfulness of the act or omission, whether  
15 and when the provider has committed similar acts or omissions,  
16 whether the department has been fully compensated for any  
17 damages, and mitigating factors including the provider's  
18 adoption and enforcement of an internal ethics and compliance  
19 program, the provider's cooperation with the department in the  
20 investigation of ethical violations, and the provider's  
21 disassociation from individuals and firms that have been  
22 involved in the ethical violation. Allowing the department to  
23 consider a range of factors ensures that all aspects of a  
24 particular situation can be assessed in imposing a score  
25 reduction in response to a violation.

26

27 New §10.155, Account and Period of Score Reduction, sets forth

1 guidelines for application of a score reduction by recommending,  
2 for specific violations, the percentage and period of a score  
3 reduction available to the executive director, taking into  
4 consideration the mitigating factors described in §10.154(b).  
5 The guidelines are set forth in a chart format that ties  
6 recommended score reduction percentages and lengths of time to  
7 specific violations based on varying factors. The chart is  
8 designed to show the most severe score reduction allowable for a  
9 specific violation. The executive director may assign a lesser  
10 score reduction than recommended for a specific violation, but  
11 may not assign a more severe score reduction than recommended.  
12 The process provides notice as to a provider's recommended  
13 reduction while also granting limited discretion to the  
14 department.

15  
16 New §10.156, Notice of Score Reduction, describes the contents  
17 of the notice that will be sent to a service provider receiving  
18 a score reduction. In order to ensure timely notification, the  
19 department will notify the provider by certified mail within  
20 five working days after the date of the assistant executive  
21 director's decision to issue a sanction. The notice will state  
22 the percentage of score reduction and the period during which it  
23 will be imposed, summarize the facts and circumstances  
24 underlying the reduction, explain how the percentage of score  
25 reduction and time period of the reduction were determined using  
26 Figure 43 TAC §10.155(b), inform the provider of the imposition  
27 of a suspension if applicable, and state that the provider may

1 appeal the score reduction. In the interest of transparency, it  
2 is the department's intent for a sanctioned service provider to  
3 have full knowledge of the basis of the score reduction and how  
4 the score reduction and period of imposition were decided.

5  
6 Section 10.156 also states that the executive director,  
7 concurrent with the delivery of the notice of a score reduction,  
8 may suspend a service provider. Suspension protects department  
9 resources from being irresponsibly allocated before a score  
10 reduction is finally imposed. In order to ensure that a  
11 suspension is not unnecessarily imposed, the executive director  
12 will consider all relevant circumstances before imposing a  
13 suspension, including the severity and willfulness of the  
14 conduct, the likelihood of immediate harm to the public, and  
15 whether there has been a pattern of inappropriate conduct. The  
16 suspension terminates when a final order imposing the score  
17 reduction is entered.

18  
19 Finally, §10.156 specifies that the imposition of a score  
20 reduction on a service provider does not affect the provider's  
21 obligations under an agreement with the department or limit the  
22 department's remedies under the agreement. This provision  
23 preserves the integrity of contractual agreements with the  
24 department.

25  
26 New §10.157, Application of Score Reduction, provides that the  
27 score reduction will be applied to each letter of interest

1 submittal under 43 TAC Chapter 9, Subchapter C, Contracting for  
2 Architectural, Engineering, and Surveying Services. It states  
3 that the score reduction will be applied at the earliest of the  
4 following steps in the selection process: (1) on assignment of  
5 the score at the long list evaluation; (2) on assignment of the  
6 score at the short list proposal evaluation; (3) on assignment  
7 of the score at the interview evaluation; or (4) on preparation  
8 of a contract evaluation summary. This procedure allows the  
9 department to consider an ethical violation at the earliest  
10 possible step after which it is decided to impose a score  
11 reduction.

12  
13 New §10.158, Appeal of Score Reduction, describes the procedure  
14 for appeal of a score reduction. A score reduction may be  
15 appealed to the executive director for an informal hearing.  
16 This option allows the provider the opportunity to appeal a  
17 score reduction in an informal setting that requires minimal  
18 time and resource investment. If the provider is unsatisfied  
19 with the decision of the executive director, the provider may  
20 pursue a contested case hearing in the State Office of  
21 Administrative Hearings (SOAH). This option offers the provider  
22 a judicial proceeding through which it may present evidence and  
23 offer testimony in support of its appeal. Following the  
24 contested case hearing, the administrative law judge's proposal  
25 for decision is presented to the commission at a regularly  
26 scheduled open meeting for a determination based on the proposal  
27 for decision. The commission may consider oral presentations.

1 The commission's determination on the proposal for decision will  
2 be adopted by minute order. The executive director will issue a  
3 final order on the score reduction based on the commission's  
4 determination, or if an appeal to SOAH is not requested, the  
5 determination of the informal hearing. This multi-step process  
6 for appeal ensures due process in the application of a score  
7 reduction and allows a provider the opportunity to appeal a  
8 sanction.

9  
10 Finally, §10.158 states that a score reduction is automatically  
11 stayed from the date that the department receives the notice of  
12 appeal until a final order is entered by the executive director.  
13 On entry of a final order by the executive director imposing the  
14 score reduction, the full term of the score reduction will be  
15 imposed on the date of the final order unless the executive  
16 director expressly orders that a lesser score reduction be  
17 imposed. Staying a score reduction during the pendency of an  
18 appeal makes certain that a score reduction is not unjustly  
19 imposed in a situation in which an appeal results in a reversal  
20 of a score reduction. An order of the executive director under  
21 §10.158 is not subject to judicial review unless otherwise  
22 provided by law.

23  
24 New §10.159, Lessening or Removal of Score Reduction, allows a  
25 provider to request that the executive director reduce or remove  
26 a score reduction by demonstrating changes in circumstances that  
27 were described in the notice of score reduction under §10.156.

1 The executive director will consider a provider's request not  
2 more than once in a 12-month period. This provision ensures  
3 that the executive director will have the ability to lessen or  
4 remove a score reduction if the circumstances underlying the  
5 score reduction change and promotes a continuing effort by a  
6 sanctioned provider to address the issues that led to the score  
7 reduction in the effort to have the score reduction lessened or  
8 removed. This section also allows the executive director to  
9 remove a score reduction and replace it with a reprimand at the  
10 provider's request.

11  
12 New §10.160, Publication of Names of Providers Receiving Score  
13 Reductions, provides that the department will publish a list on  
14 its website of the names of providers who are subject to score  
15 reductions. The names will be added when the reduction becomes  
16 effective and will be removed as soon as practicable after the  
17 date on which the score reduction imposition ends. This  
18 provision allows the public to know which service providers have  
19 been found to have engaged in unethical conduct and illustrates  
20 the department's commitment to holding its providers accountable  
21 to a high standard of conduct.

22  
23 New §10.201, Purpose, sets forth the purpose of Subchapter E,  
24 Removal of Precertification of Architectural, Engineering, and  
25 Surveying Service Providers for Ethical Violations, which is to  
26 provide a procedure by which an architectural, engineering, or  
27 surveying service provider's precertification can be removed by

1 the assistant executive director if a ground for removal under  
2 §10.101 exists. This procedure ensures that only responsible  
3 persons are precertified to enter into certain contracts with  
4 the department.

5  
6 New §10.202, Factors Considered in Removing Precertification,  
7 describes the factors that the assistant executive director will  
8 consider before removing a person's precertification. Factors  
9 that will be considered include the seriousness and willfulness  
10 of the act or omission, whether and when the person has  
11 committed similar acts or omissions, whether the department has  
12 been fully compensated for any damages, and mitigating factors  
13 including the person's cooperation with the department in the  
14 investigation of ethical violations, and the person's  
15 disassociation from individuals and firms that have been  
16 involved in the ethical violation. The department's  
17 consideration of multiple factors means that all aspects of a  
18 particular situation can be assessed before a person's  
19 precertification is removed.

20  
21 New §10.203, Time Period of Prohibition from Reapplying for  
22 Precertification, sets forth guidelines for application of a  
23 certain period during which a person is prohibited from  
24 reapplying for precertification. The guidelines are set forth  
25 in a chart format that ties specific periods of prohibition to  
26 specific violations based on varying factors. The chart is  
27 designed to show the most severe period of prohibition from

1 reapplying for precertification that is allowable for a specific  
2 violation. The assistant executive director may prohibit a  
3 person from reapplying for precertification for a lesser period  
4 than recommended for a specific violation, but may not prohibit  
5 reapplication for a longer period than recommended. The process  
6 provides notice as to a provider's recommended period of  
7 prohibition while also granting limited discretion to the  
8 department.

9  
10 New §10.204, Notice of Removal of Precertification, describes  
11 the contents of the notice that will be sent to a person whose  
12 precertification is removed. In order to ensure timely  
13 notification, the department will notify the person by certified  
14 mail within five working days after the date of the assistant  
15 executive director's decision to remove precertification. The  
16 notice will state the period during which the person is  
17 prohibited for applying for precertification, summarize the  
18 facts and circumstances underlying the removal of  
19 precertification, explain how the period of prohibition was  
20 determined using Figure 43 TAC §10.203, and state that the  
21 person may appeal the removal of precertification. It is the  
22 department's intent to promote transparency by ensuring that a  
23 person has full knowledge of the basis of a precertification  
24 removal and how the period of prohibition was decided.

25  
26 Section 10.204 also states that the executive director,  
27 concurrent with the delivery of the notice of a precertification

1 removal, may suspend a person from participating in agreements  
2 with the department. Suspension protects department resources  
3 from being irresponsibly allocated before precertification is  
4 finally removed. In order to ensure that a suspension is not  
5 unnecessarily imposed, the assistant executive director will  
6 consider all relevant circumstances before imposing a  
7 suspension, including the severity and willfulness of the  
8 conduct, the likelihood of immediate harm to the public, and  
9 whether there has been a pattern of inappropriate conduct. The  
10 suspension terminates when a final order removing the  
11 precertification is entered.

12

13 Finally, §10.204 specifies that removal of precertification does  
14 not affect the provider's obligations under an agreement with  
15 the department or limit the department's remedies under the  
16 agreement. This preserves the integrity of contractual  
17 agreements with the department. Additionally, unless the person  
18 is suspended, precertification removal does not prevent the  
19 person from participating in agreements with the department in a  
20 capacity that does not require precertification status. This  
21 clarifies that a person is not prohibited from participating in  
22 agreements with the department, but if the person does  
23 participate in an agreement with the department, it must be in a  
24 capacity that does not require precertification.

25

26 New §10.205, Appeal of Removal of Precertification, describes  
27 the procedure for appeal of precertification removal. Removal

1 may be appealed to the executive director by submitting  
2 documentation with the notice for appeal or by requesting an in-  
3 person meeting with the executive director. At the meeting, the  
4 person may present written documentation and oral testimony, and  
5 may answer questions from the executive director. The executive  
6 director will issue a final order after considering all  
7 documentation and testimony. The final order is not subject to  
8 judicial review, except as required by law. Additionally, the  
9 executive director may not delegate authority under this  
10 section. Providing for appeal to the executive director ensures  
11 that a person has the ability to contest the removal of  
12 precertification if the person so desires, and that the  
13 executive director may change the removal of precertification if  
14 the situation so dictates.

15  
16 New §10.206, Eligibility to Reapply for Precertification, allows  
17 a person to request that the assistant executive director reduce  
18 or remove a period of prohibition for precertification by  
19 demonstrating changes in the circumstances that were described  
20 in the notice of score reduction. The assistant executive  
21 director will consider a provider's request not more than once  
22 in a 12-month period. This provision ensures that the assistant  
23 executive director will have the ability to lessen or remove a  
24 period of prohibition if there is a change in the circumstances  
25 that led to precertification removal and encourages persons to  
26 remedy the problems that led to precertification removal in the  
27 effort to have a period of prohibition lessened or removed.

1

2 New §10.251, Application of Subchapter, provides that Subchapter  
3 F, Sanctions for Ethical Violations by Other Entities, only  
4 applies to entities or individuals doing business with the  
5 department that are subject to Chapter 10 but are not subject to  
6 Subchapter E of Chapter 10, relating to Score Reduction for  
7 Ethical Violations by Architectural, Engineering, and Surveying  
8 Service Providers. Additionally, the section states that  
9 sanctions provided by this subchapter are in addition to other  
10 actions and remedies available to the department. The latter  
11 provision gives notice that the department is not forfeiting any  
12 options legally available to it.

13

14 New §10.252, Procedure, details the method by which sanctions  
15 will be imposed. The executive director may impose a sanction  
16 on an entity if a ground for a sanction exists. If the  
17 executive director decides to impose a sanction, it will be  
18 imposed in accordance with Figure 43 TAC §10.255(c). These  
19 provisions limit the executive director's discretion on when and  
20 how to impose a sanction and give notice to entities of these  
21 limits. The section also states that a sanction is effective on  
22 the date specified in the notice, unless it is stayed pending an  
23 appeal. The section specifies that the imposition of a sanction  
24 on an entity does not affect the entity's obligations under an  
25 agreement with the department or limit the department's remedies  
26 under the agreement. This provision preserves the integrity of  
27 contractual agreements with the department. Finally, this

1 section states that the executive director, concurrent with the  
2 delivery of the notice of a sanction other than a reprimand, may  
3 suspend an entity without a prior hearing. This protects  
4 department resources from being irresponsibly allocated before a  
5 sanction is finally imposed. In order to ensure that a  
6 suspension is not unnecessarily imposed, the executive director  
7 will consider all relevant circumstances before imposing a  
8 suspension, including the severity and willfulness of the  
9 conduct, the likelihood of immediate harm to the public, and  
10 whether there has been a pattern of inappropriate conduct.

11  
12 New §10.253, Notice of Sanction, describes the contents of the  
13 notice that will be sent to an entity receiving a sanction. In  
14 order to ensure timely notification, the department will notify  
15 the entity by certified mail within five working days after the  
16 date of the executive director's decision to issue a sanction.  
17 The notice will state the sanction and the period of the  
18 sanction, summarize the facts and circumstances underlying the  
19 sanction, explain how the sanction was selected, inform the  
20 entity of the imposition of a suspension if applicable, and  
21 state that the entity may appeal the sanction. To encourage  
22 transparency, it is the department's intent for a sanctioned  
23 entity to have full knowledge of the basis of the sanction and  
24 how the sanction was decided.

25  
26 New §10.254, Available Sanctions, describes the sanctions  
27 available to the department and also identifies factors that

1 will be considered in imposing the sanction. Available  
2 sanctions, in order of increasing severity, are a reprimand,  
3 prohibition from participating in a specified agreement, a limit  
4 on the contract amount or amount of funds that may be awarded or  
5 paid to the entity, or debarment of the entity for a period of  
6 not more than 60 months. The range of sanctions available  
7 allows the department to appropriately address various levels of  
8 violations. Factors that will be considered in imposing the  
9 sanction include the seriousness and willfulness of the act or  
10 omission, whether and when the entity has committed similar acts  
11 or omissions, whether the department has been fully compensated  
12 for any damages, and mitigating factors, including the entity's  
13 adoption and enforcement of an internal ethics and compliance  
14 program, the entity's cooperation with the department in the  
15 investigation of ethical violations, and the entity's  
16 disassociation from individuals and firms that have been  
17 involved in the ethical violation. The department's  
18 consideration of a range of factors guarantees that all aspects  
19 of a particular situation can be evaluated in assigning a  
20 sanction to a violation.

21  
22 New §10.255, Application of Sanction, sets forth guidelines for  
23 application of a sanction by assigning, for specific violations,  
24 the sanctions available to the executive director and taking  
25 into consideration the factors described in §10.254(b). The  
26 guidelines are set forth in a chart format that ties specific  
27 sanctions to specific violations based on varying factors. The

1 chart is designed to show the most severe sanction allowable for  
2 a specific violation. The executive director may assign a  
3 lesser sanction than recommended for a specific violation, but  
4 may not assign a more severe sanction than recommended.  
5 Additionally, if an entity commits multiple violations arising  
6 out of separate occurrences, the executive director may impose  
7 multiple sanctions. The process provides notice as to an  
8 entity's recommended sanction while also granting limited  
9 discretion to the department.

10

11 New §10.256, Appeal of Sanction, describes the procedure for  
12 appeal of a sanction other than a reprimand. A sanction may be  
13 appealed to the executive director for an informal hearing.  
14 This option allows the entity the opportunity to appeal a  
15 sanction in an informal setting that requires minimal time and  
16 resource investment. If the entity is unsatisfied with the  
17 decision of the executive director, the entity may pursue a  
18 contested case hearing in the State Office of Administrative  
19 Hearings (SOAH). This option offers the entity a judicial  
20 proceeding through which it may present evidence and offer  
21 testimony in support of its appeal. Following the contested  
22 case hearing, the administrative law judge's proposal for  
23 decision is presented to the commission at a regularly scheduled  
24 open meeting for a determination based on the proposal for  
25 decision. The commission may consider oral presentations. The  
26 commission's determination on the proposal for decision will be  
27 adopted by minute order. The executive director will issue a

1 final order on the sanction based on the commission's  
2 determination, or if an appeal to SOAH is not requested, the  
3 determination of the informal hearing. This multi-step process  
4 for appeal ensures due process in the application of a sanction  
5 and allows an entity the opportunity to appeal a sanction.

6  
7 Section 10.256(e) specifies that a reprimand may be appealed by  
8 delivering to the executive director a written notice of appeal  
9 and written documentation disputing the reprimand. The  
10 executive director will make the determination on an appeal and  
11 issue a final order. Because a reprimand is the least severe  
12 sanction and has minimal implications on an entity, a more  
13 limited opportunity to appeal is appropriate.

14  
15 Section 10.256(f) states that a sanction is automatically stayed  
16 from the date that the department receives the notice of appeal  
17 until a final order is entered by the executive director. On  
18 entry of a final order by the executive director imposing the  
19 sanction, the full term of the sanction will be imposed on the  
20 date of the final order unless the executive director expressly  
21 orders that a lesser sanction be imposed. Staying a sanction  
22 during the pendency of an appeal makes certain that a sanction  
23 is not unjustly imposed in a situation in which an appeal  
24 results in a reversal of a sanction. The automatic stay  
25 provided by subsection (f) does not apply to a suspension or a  
26 reprimand. An order of the executive director under §10.256 is  
27 not subject to judicial review unless otherwise provided by law.

1  
2 New §10.257, Lessening or Removal of Sanction, provides that an  
3 entity may request that the executive director reduce or remove  
4 a sanction once in a 12-month period. This provision ensures  
5 that the executive director will have the ability to lessen or  
6 remove a sanction if the circumstances underlying the sanction  
7 change and is intended to motivate entities to improve the  
8 issues that originally led to the sanction in the effort to have  
9 the sanction reduced or removed.

10  
11 COMMENTS

12 Comments were received from the Texas Council of Engineering  
13 Companies (CEC) and the Associated General Contractors of Texas  
14 (AGC).

15  
16 Comment: CEC commented that it is not necessary to require the  
17 adoption of an internal ethics and compliance program, and  
18 suggested that Subchapter B be deleted or revised to require  
19 only that a firm acting as a prime consultant must certify that  
20 it has and enforces an internal ethics and compliance program.

21  
22 Response: Neither Subchapter B nor any other provision of  
23 Chapter 10 requires the adoption of an internal ethics and  
24 compliance program. Sections 10.154 and 10.254 provide that in  
25 considering the imposition of sanctions under Subchapters D and  
26 F, respectively, the adoption and enforcement of an internal  
27 ethics and compliance program that complies with Subchapter B

1 will be considered by the executive director as a mitigating  
2 factor.

3

4 Comment: AGC commented that violation of an entity's own  
5 internal compliance program should not be grounds for sanctions  
6 because that could discourage entities from electing to adopt  
7 internal compliance programs.

8

9 Response: The department agrees with this comment and has  
10 omitted this ground for sanction from §10.101.

11

12 Comment: Rather than requiring a firm to disclose a conflict of  
13 interest as that term is defined in the rules, CEC recommended  
14 that the department require disclosure only of certain  
15 delineated relationships, and that the department itself  
16 determine whether those relationships result in a conflict of  
17 interest. The requirement should be to disclose any business,  
18 familial, domestic, or investment relationship because of which  
19 a person would be unable or potentially unable to render  
20 impartial assistance.

21

22 Response: The department disagrees with this comment because it  
23 would unnecessarily limit disclosures to the department.

24

25 Comment: AGC commented that the definition of conflict of  
26 interest is too broad because it encompasses activities that are  
27 otherwise perfectly acceptable, such as acquiring material sites

1 ahead of time. The recommendation is that only actual, illegal  
2 conflicts should be included, not perceived conflicts.

3

4 Response: The department disagrees that the definition is too  
5 broad, because the activities it covers are still limited by  
6 principles of objectivity and fairness. Further, the perceived  
7 conflict standard is not broader than the one imposed by state  
8 law on state officers and employees.

9

10 Comment: AGC commented that the language regarding familial  
11 relationships is not limited enough. As written, the rules  
12 would deny a contractor the opportunity to contract based on a  
13 family relationship, when recusal should suffice.

14

15 Response: The department disagrees with this comment. The  
16 rules provide for a sanction only if the contractor fails to  
17 disclose and remedy a conflict of interest, including one  
18 created by a familial relationship. In most cases, recusal  
19 would be the appropriate remedy.

20

21 Comment: CEC commented that the score reductions in the tables  
22 are too harsh because even a ten percent reduction will prevent  
23 a firm from winning any work. Chapter 10 should include the  
24 option of a reprimand for engineers and architects.

25

26 Response: The department agrees with this comment and has added  
27 an option to §10.159 for a provider to request that the

1 executive director replace a score reduction with a reprimand.

2

3 Comment: CEC suggested that imputing the acts of an individual  
4 to a firm should include a provision that a firm is not  
5 responsible for actions of individuals who provide false  
6 information to their employer.

7

8 Response: The department disagrees with this comment because an  
9 employee acting within the course and scope of his or her  
10 employment is the agent of the employer. However, the  
11 department will consider this type of evidence in deciding  
12 whether to take action against a firm.

13

14 Comment: CEC recommended limiting the ability to suspend a  
15 provider pending appeal to those violations that are egregious,  
16 or based on a pattern or history of violations.

17

18 Response: The department agrees that the ability to suspend a  
19 provider pending appeal should not be unlimited, and has added  
20 language to §10.156 to allow suspension only when immediate  
21 action is necessary to protect the public interest.

22

23 Comment: AGC commented that it is unclear which provisions of  
24 Chapter 10 actually apply to highway improvement contractors.

25

26 Response: Section 10.251 has been amended to clarify that  
27 Subchapter F does not apply to highway improvement contractors.

1

2 STATUTORY AUTHORITY

3 The new sections are adopted under Transportation Code,  
4 §201.101, which provides the Texas Transportation Commission  
5 with the authority to establish rules for the conduct of the  
6 work of the department.

7

8 CROSS REFERENCE TO STATUTE

9 None.

1 SUBCHAPTER A. GENERAL PROVISIONS

2 §10.1. Purpose.

3 (a) As a steward of public resources, the department must  
4 ensure the protection of public funds and maintain a high level  
5 of transparency and accountability. Therefore, the department  
6 expects entities doing business with the department to adhere to  
7 ethical standards of conduct. This chapter prescribes required  
8 ethical standards for entities doing business with the  
9 department, and most enforcement provisions applicable for  
10 violations of the ethical standards.

11 (b) The ethical requirements and enforcement provisions  
12 provided under this chapter do not apply to the federal  
13 government or an agency of the federal government.

14 (c) Enforcement provisions for ethical violations by a  
15 contractor who is subject to Chapter 9, Subchapter G of this  
16 title (relating to Highway Improvement Contract Sanctions) are  
17 provided under that chapter rather than under this chapter.

18 (d) The requirements and enforcement provisions provided  
19 under this chapter are in addition to any other contract, rule,  
20 or legal requirement or enforcement provision.

21

22 §10.2. Definitions. The following words and terms, when used  
23 in this chapter, have the following meanings, unless the context

1 clearly indicates otherwise.

2 (1) Assistant executive director--An assistant executive  
3 director of the Texas Department of Transportation.

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

5 (3) Debarment--Disqualification of an entity from bidding  
6 on or entering into a contract with the department, from  
7 participating as a subcontractor under a contract with the  
8 department, and from participating as a supplier of materials or  
9 equipment to be used under a contract with the department.

10 (4) Department--The Texas Department of Transportation.

11 (5) Entity--A contractor, subcontractor, supplier,  
12 grantee, subgrantee, provider, subprovider, governmental agency,  
13 local government, or other business or governmental organization  
14 with which the department does business. The term does not  
15 include the federal government or an agency of the federal  
16 government.

17 (6) Executive director--The executive director of the  
18 Texas Department of Transportation.

19 (7) Reprimand--A written warning issued by the department  
20 that documents an act or omission committed by an entity.

21 (8) Sanction--A consequence imposed on an entity for  
22 failure to comply with this chapter including suspension,  
23 reprimand, prohibition against participation in a specified

1 agreement, or debarment.

2 (9) Suspension--Immediate, temporary disqualification of  
3 an entity or individual from entering into or attempting to  
4 enter into an agreement with the department.

5

6 §10.3. Delivery of Written Notice, Disclosures, or Requests to  
7 the Department. For the purposes of this chapter, written  
8 notice, disclosures, or requests may be delivered to the  
9 department by:

10 (1) sending the document by United States mail or by  
11 overnight delivery service to: Executive Director, Texas  
12 Department of Transportation, 125 East 11th Street, Austin,  
13 Texas 78701; or

14 (2) hand delivering the document to: Executive Director,  
15 Texas Department of Transportation, 125 East 11th Street,  
16 Austin, Texas.

17

18 §10.4. Act of Individual Imputed to Entity. For the purposes  
19 of this chapter, an act of or omission by a person on behalf of  
20 an entity that seriously and directly affects the entity's  
21 responsibility to the department is considered to be an act or  
22 omission of the entity.

23

1 §10.5. Benefit.

2 (a) Except as provided by subsection (b) of this section, a  
3 benefit, for the purposes of this chapter, is anything that is  
4 reasonably regarded as financial gain or financial advantage,  
5 including a benefit to another person in whose welfare the  
6 beneficiary has a direct and substantial interest, regardless of  
7 whether the donor is reimbursed. Examples are cash, loans,  
8 meals other than ordinary working meals, lodging, services,  
9 tickets, door prizes, free entry to entertainment or sporting  
10 events, transportation, hunting or fishing trips, or discounts  
11 on goods or services.

12 (b) The following are not benefits for the purposes of this  
13 chapter:

14 (1) an ordinary working meal;

15 (2) a token item, other than cash, a check, stock, bond,  
16 or similar item, that is distributed generally as a normal means  
17 of advertising and that does not exceed an estimated value of  
18 \$25;

19 (3) an honorarium in the form of a meal served at an  
20 official, department-related event such as a conference,  
21 workshop, seminar, or symposium; or

22 (4) reimbursement for food, travel, or lodging to an  
23 event described by paragraph (3) of this subsection in an amount

1 allowable under department policy if the recipient were to seek  
2 reimbursement from the department, or a greater amount if  
3 preapproved by the assistant executive director.

4

5 §10.6. Conflict of Interest. For the purposes of this chapter,  
6 a conflict of interest is a circumstance arising out of existing  
7 or past activities, business interests, contractual  
8 relationships, or organizational structure of an entity, or a  
9 familial or domestic living relationship between a department  
10 employee and an employee of the entity, and because of which:

11 (1) the entity's objectivity in performing the scope of  
12 work sought by the department is or might be affected; or

13 (2) the entity's performance of services on behalf of the  
14 department or participation in an agreement with the department  
15 provides or may reasonably appear to provide an unfair  
16 competitive advantage to the entity or to a third party.

17

18 §10.7. Delegation of Authority.

19 (a) The executive director may delegate to the assistant  
20 executive director any authority provided to the executive  
21 director under this chapter, unless otherwise provided.

22 (b) The assistant executive director may delegate to an  
23 employee of the department who is not below the level of

1 district engineer, division director, or office director any  
2 authority provided to the assistant executive director under  
3 this chapter, including authority delegated under subsection (a)  
4 of this section, unless otherwise provided.

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

3   §10.51. 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 certify to the  
7   department that the entity:

8           (1) has adopted an internal ethics and compliance program  
9   that:

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

13           (B) satisfies all requirements of this section; and

14           (2) enforces compliance with its internal ethics and  
15   compliance program.

16           (b) An entity's internal ethics and compliance program must  
17   be in writing and must provide compliance standards and  
18   procedures that the entity's employees and agents are expected  
19   to follow. At a minimum, the program must provide that:

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

22           (2) appropriate care is being taken to avoid the  
23   delegation of substantial discretionary authority to individuals

1 whom the organization knows, or should know, have a propensity  
2 to engage in illegal activities;

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

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

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

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

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

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

19 (7) consistent enforcement of compliance standards and  
20 procedures is administered through appropriate disciplinary  
21 mechanisms;

22 (8) reasonable steps are being taken to respond  
23 appropriately to detected offenses and to prevent future similar

1 offenses; and

2 (9) the organization has a written employee code of

3 conduct that, at a minimum, addresses:

4 (A) record retention;

5 (B) fraud;

6 (C) equal opportunity employment;

7 (D) sexual harassment and sexual misconduct;

8 (E) conflicts of interest;

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

10 (G) gifts and honoraria.

11 (c) The department may, at its discretion, request that the

12 entity provide the department with written evidence of the

13 entity's internal ethics and compliance program.

1           SUBCHAPTER C.   REQUIRED CONDUCT BY ENTITIES DOING  
2                           BUSINESS WITH THE DEPARTMENT

3   §10.101.   Required Conduct.   An entity that does business with  
4   the department is required to:

5           (1) disclose to the department in writing the existence  
6   of a conflict of interest involving an agreement between the  
7   entity and the department and adequately remedy the conflict:

8           (A) before the effective date of the agreement; or

9           (B) if the conflict of interest arises after the  
10   effective date of the agreement, within five working days after  
11   the date that the entity knows or should have known of the  
12   conflict;

13          (2) refrain from offering, giving, or agreeing to give a  
14   benefit to a member of the commission or to a department  
15   employee;

16          (3) adhere to all civil and criminal laws related to  
17   business;

18          (4) maintain good standing with the comptroller, other  
19   state agencies, states, and agencies of the federal government  
20   with which the entity has had a business relationship;

21          (5) notify the department in writing within five working  
22   days after the date that the entity knows or should have known  
23   of the existence of, and must adequately address:

1           (A) a conviction of, a plea of guilty or nolo  
2           contendere to, a civil judgment for or a public admission to a  
3           crime or offense related to business by the entity;

4           (B) debarment of the entity by the comptroller, another  
5           state agency, another state, or an agency of the federal  
6           government for a ground related to business integrity; or

7           (C) any behavior of the entity that seriously and  
8           directly affects the entity's responsibility to the department  
9           and that is also a violation of:

10           (i) the law; or

11           (ii) the department's rules that relate to the  
12           entity's dealing with the department.

13

14 §10.102. Grounds for Sanctions. An entity's violation of  
15 §10.101 of this subchapter (relating to Required Conduct) is a  
16 ground for the imposition of sanctions, score reduction, or  
17 removal from precertification status under this chapter.

1           SUBCHAPTER D. SCORE REDUCTION FOR ETHICAL VIOLATIONS BY  
2           ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICE PROVIDERS  
3 §10.151. Definitions. The following words, when used in this  
4 subchapter, have the following meanings, unless the context  
5 clearly indicates otherwise.

6           (1) Provider--An individual or entity that provides  
7 engineering, architectural, or surveying services.

8           (2) Team--The provider and all proposed subproviders who  
9 will be working on a particular contract.

10

11 §10.152. Score Reduction for Ethical Violations.

12           (a) If a provider violates §10.101 of this chapter  
13 (relating to Required Conduct), the executive director may  
14 reduce the provider's points total under 43 TAC Chapter 9,  
15 Subchapter C, Contracting for Architectural, Engineering, and  
16 Surveying Services, in accordance with this subchapter.

17           (b) An action taken under this subchapter is in addition to  
18 other actions and remedies available to the department.

19

20 §10.153. Member Score Reduction Applied to Team. If any member  
21 of a team receives or has received a score reduction under this  
22 subchapter, then the score reduction will be applied to all  
23 submissions of the team under 43 TAC Chapter 9, Subchapter C,

1 relating to Contracting for Architectural, Engineering and  
2 Surveying Services.

3

4 §10.154. Factors Considered in Imposing Score Reduction.

5 (a) Before imposing a score reduction, the executive  
6 director will consider the following factors:

7 (1) the seriousness and willfulness of the act or  
8 omission;

9 (2) whether the provider has committed similar acts or  
10 omissions and, if so, when those acts or omissions were  
11 committed;

12 (3) whether the provider, or a third party on behalf of  
13 the provider, has fully compensated the department for any  
14 damages suffered by the department as a result of the provider's  
15 acts or omissions; and

16 (4) any mitigating factors.

17 (b) For the purposes of subsection (a)(4) of this section,  
18 mitigating factors are:

19 (1) the provider's adoption and enforcement of an  
20 internal ethics and compliance program that satisfies the  
21 requirements of §10.51 of this chapter (relating to Internal  
22 Ethics and Compliance Program);

23 (2) the provider's cooperation with the department in the

1 investigation of ethical violations, including the provision of  
2 a full and complete account of the provider's involvement; and  
3 (3) the provider's disassociation from individuals and  
4 firms that have been involved in the ethical violation.

5

6 §10.155. Amount and Period of Score Reduction.

7 (a) The executive director, at the executive director's  
8 sole discretion, may assign a score reduction that is less than,  
9 but not greater than, the recommended score reduction under  
10 subsection (b) of this section.

11 (b) Figure 43 TAC §10.155(b) sets forth guidelines for  
12 application of a score reduction by assigning for the specific  
13 violations of §10.101 of this chapter (relating to Required  
14 Conduct), the percentage of score reduction available, and the  
15 maximum period for which that percentage of score reduction may  
16 be applied, taking into consideration the factors described in  
17 §10.154 of this subchapter (relating to Factors Considered in  
18 Imposing Score Reduction).

- 1 Figure 43 TAC §10.155(b)
- 2 Guidelines for Selection of Score Reduction based on Grounds and Factors
- 3

Ground for Score Reduction	Recommended Percentage and Period of Score Reduction/Factors for Imposition			
	no more than 10% reduction for a time period of no more than 12 months	no more than 20% reduction for a time period of no more than 36 months	no more than 50% reduction for a time period of no more than 48 months	no more than 75% reduction for a time period of no more than 60 months
§10.101(4) relating to maintaining good standing	allowable with written explanation of justification	allowable with written explanation of justification	allowable with written explanation of justification	recommended
§10.101(3) relating to adherence to civil and criminal laws	allowable with written explanation of justification	allowable with written explanation of justification	recommended only if: <ul style="list-style-type: none"> <li>• the provider meets all mitigating factors of §10.154(b) and</li> <li>• the provider has not committed similar acts or omissions and</li> <li>• the seriousness and willfulness of the act or omission is not severe, and</li> <li>• the provider, or</li> </ul>	recommended if: <ul style="list-style-type: none"> <li>• the provider does not meet all mitigating factors of §10.154(b), or</li> <li>• the provider has committed similar acts or omissions, or</li> <li>• the seriousness and willfulness of the act or omission is severe, or</li> <li>• the department has not been</li> </ul>

			a third party on behalf of the provider, has fully compensated the department for any damages suffered by the department as a result of the provider's acts or omissions	fully compensated for any damages suffered by the department as a result of the provider's acts or omissions
§10.101(1) relating to conflicts of interest; or §10.101(2) relating to offering, giving, or agreeing to give a benefit	allowable with written explanation of justification	recommended only if: <ul style="list-style-type: none"> <li>• the provider meets all of the mitigating factors of §10.154(b), and</li> <li>• the provider has not committed similar acts or omissions, and</li> <li>• the seriousness and willfulness of the act or omission is not severe, and</li> <li>• the provider, or a third party on behalf of the provider, has fully</li> </ul>	recommended only if: <ul style="list-style-type: none"> <li>• the provider meets some of the mitigating factors of §10.154(b), and</li> <li>• the provider has not committed similar acts or omissions, and</li> <li>• the seriousness and willfulness of the act or omission is not severe, and</li> <li>• the provider, or a third party on behalf of the</li> </ul>	recommended if: <ul style="list-style-type: none"> <li>• the provider meets no mitigating factors of §10.154(b), or</li> <li>• the provider has committed similar acts or omissions, or</li> <li>• the seriousness and willfulness of the act or omission is not severe, or</li> <li>• the department has not been fully compensated for any damages suffered by the</li> </ul>

		compensated the department for any damages suffered by the department as a result of the provider's acts or omissions	provider, has fully compensated the department for any damages suffered by the department as a result of the provider's acts or omissions	department as a result of the provider's acts or omissions
§10.101(5) relating to notifying the department	recommended only if: <ul style="list-style-type: none"> <li>• the provider meets all mitigating factors of §10.154(b), and</li> <li>• the provider has not committed similar acts or omissions, and</li> <li>• the seriousness and willfulness of the act or omission is not severe, and</li> <li>• the provider, or a third party on behalf of the provider, has fully</li> </ul>	recommended only if: <ul style="list-style-type: none"> <li>• the provider meets some of the mitigating factors of §10.154(b) , and</li> <li>• the provider has not committed similar acts or omissions, and</li> <li>• the seriousness and willfulness of the act or omission is not severe, and</li> <li>• the provider, or a third party on behalf of the provider, has fully compensated the department for</li> </ul>	recommended if: <ul style="list-style-type: none"> <li>• the provider has committed similar acts or omissions, or</li> <li>• the seriousness and willfulness of the act or omission is severe, or</li> <li>• the department has not been fully compensated for any damages suffered by the department as a result of the provider's</li> </ul>	recommended only if: <ul style="list-style-type: none"> <li>• the provider has committed similar acts or omissions, and</li> <li>• the seriousness and willfulness of the act or omission is severe, and</li> <li>• the department has not been fully compensated for any damages suffered by the department as a result of the provider's acts or omissions</li> </ul>

	compensated the department for any damages suffered by the department as a result of the provider's acts or omissions	any damages suffered by the department as a result of the provider's acts or omissions	acts or omissions	
--	---	--	-------------------	--

1

1 §10.156. Notice of Score Reduction.

2 (a) If the executive director imposes a score reduction  
3 under this section, the department will notify the provider by  
4 certified mail within five working days after the date of the  
5 executive director's decision. The notice will:

6 (1) state the percentage of score reduction and the  
7 period during which the reduction will be imposed;

8 (2) summarize the facts and circumstances underlying the  
9 reduction;

10 (3) explain how the percentage of score reduction and the  
11 time period of the score reduction were determined using Figure  
12 43 TAC §10.155(b) as a basis for explanation;

13 (4) if applicable, inform the provider of the imposition  
14 of a suspension under subsection (b) of this section; and

15 (5) state that the provider may appeal the reduction in  
16 accordance with §10.158 of this subchapter (relating to Appeal  
17 of Score Reduction).

18 (b) The executive director, concurrent with the delivery of  
19 the notice of a score reduction, may suspend a provider when  
20 immediate action is necessary to protect the public interest.

21 Before imposing a suspension, the executive director will  
22 consider all relevant circumstances, including the severity and  
23 willfulness of the conduct, the likelihood of immediate harm to

1 the public, and whether there has been a pattern of  
2 inappropriate conduct. The suspension terminates when a final  
3 order is entered under §10.158(d) of this subchapter.

4 (c) The imposition of a score reduction or a suspension on  
5 a provider does not affect the provider's obligations under an  
6 agreement with the department or limit the department's remedies  
7 under the agreement.

8

9 §10.157. Application of Score Reduction.

10 (a) The score reduction will be applied to each letter of  
11 interest submittal of the provider under 43 TAC Chapter 9,  
12 Subchapter C, Contracting for Architectural, Engineering, and  
13 Surveying Services.

14 (b) The score reduction will be applied at the earliest of  
15 the following steps in the selection process:

16 (1) on assignment of the score at the long list  
17 evaluation (§9.34 of this title, relating to Short List  
18 Determination);

19 (2) on assignment of the score at the short list proposal  
20 evaluation (§9.35 of this title, relating to Short List Meeting,  
21 Proposals, and Evaluation);

22 (3) on assignment of the score at the interview  
23 evaluation (§9.36 of this title, relating to Short List

1 Interviews and Evaluation); or

2 (4) on preparation of a contract evaluation summary

3 (§9.37 of this title, relating to Selection).

4

5 §10.158. Appeal of Score Reduction.

6 (a) A provider may appeal a score reduction by delivering  
7 to the executive director a written notice of appeal within 10  
8 working days after the date that the department mails the notice  
9 of the score reduction under §10.156 of this subchapter  
10 (relating to Notice of Score Reduction).

11 (b) If the notice of appeal is timely delivered, the  
12 provider will be given the opportunity for an informal hearing  
13 before the executive director. The executive director will set  
14 a time for the hearing at the executive director's earliest  
15 convenience. The executive director will set the maximum time  
16 allowed for oral presentations and the procedure for written  
17 documents to be presented by the provider. The executive  
18 director will notify the provider in writing within 5 working  
19 days of the executive director's determination on the appeal.

20 (c) If the provider is dissatisfied with the determination  
21 of the executive director, the provider may request an  
22 administrative hearing under §1.21 et seq. of this title  
23 (relating to Procedures in Contested Case). To be effective the

1 request must be received by the executive director within 10  
2 working days after the date that the executive director mails  
3 the notification of determination under subsection (b) of this  
4 section.

5 (d) The proposal for decision will be presented to the  
6 commission at a regularly scheduled open meeting. The  
7 commission may consider oral presentations. The commission will  
8 make a determination based on the proposal for decision. The  
9 commission's determination on the proposal for decision will be  
10 adopted by minute order and reflected in the minutes of the  
11 meeting.

12 (e) If an appeal to the executive director or by an  
13 administrative hearing, as appropriate, is not timely requested  
14 under this section, the executive director will issue a final  
15 order imposing the score reduction when the deadline for  
16 requesting an appeal has passed. If an appeal is timely  
17 requested, the executive director will issue a final order based  
18 on one of the following:

19 (1) the executive director's determination under  
20 subsection (b) of this section; or

21 (2) the commission's determination under subsection (d)  
22 of this section.

23 (f) A score reduction is automatically stayed from the date

1 that the department receives the notice of appeal until a final  
2 order is entered by the executive director. On entry of a final  
3 order by the executive director imposing the score reduction,  
4 the full term of the score reduction will be imposed on the date  
5 of the final order unless the executive director expressly  
6 orders that a lesser score reduction be imposed.

7 (g) The order of the executive director issued under  
8 subsection (f) of this section is final and not subject to  
9 judicial review, except as required by law.

10

11 §10.159. Lessening or Removal of Score Reduction.

12 (a) A provider may request the lessening or removal of an  
13 imposed score reduction by delivering to the executive director  
14 the request in writing and written documentation in support of  
15 the request demonstrating changes in the circumstances that were  
16 described in the notice of score reduction under §10.156 of this  
17 subchapter (relating to Notice of Score Reduction).

18 (b) The executive director, at the executive director's  
19 sole discretion, may decide to lessen or remove the imposed  
20 score reduction. The executive director will send a written  
21 notice of the decision to the provider.

22 (c) A provider may request that a score reduction be  
23 removed and replaced with a reprimand under §10.254 of this

1 chapter (relating to Available Sanctions). Upon receipt of a  
2 request, the executive director may, at the executive director's  
3 sole discretion, remove the imposed score reduction and issue a  
4 reprimand to the provider.

5 (d) The executive director will consider not more than one  
6 request for an entity under this section during any 12-month  
7 period.

8

9 §10.160. Publication of Names of Providers Receiving Score  
10 Reductions.

11 (a) The department will provide on its website a list of  
12 the names of the providers who are subject to score reductions  
13 under this subchapter.

14 (b) The name of a provider will be added to the list when  
15 the score reduction becomes effective and will be removed from  
16 the list as soon as practicable after the date on which the  
17 application of the score reduction ends.

1       SUBCHAPTER E. REMOVAL OF PRECERTIFICATION OF ARCHITECTURAL,  
2               ENGINEERING, AND SURVEYING SERVICE PROVIDERS  
3                       FOR ETHICAL VIOLATIONS

4 §10.201. Purpose. A person who is precertified under §9.43 of  
5 this title (relating to Precertification Requirements) may have  
6 the person's precertification removed by the assistant executive  
7 director if a ground for removal of precertification under  
8 §10.101 of this chapter (relating to Required Conduct) exists.

9  
10 §10.202. Factors Considered in Removing Precertification.

11       (a) Before removing a person's precertification, the  
12 assistant executive director will consider the following  
13 factors:

14           (1) the seriousness and willfulness of the act or  
15 omission;

16           (2) whether and when the person has committed similar  
17 acts or omissions;

18           (3) whether the person, or a third party on behalf of the  
19 person, has fully compensated the department for any damages  
20 suffered by the department as a result of the person's acts or  
21 omissions; and

22           (4) any mitigating factors.

23       (b) For the purposes of subsection (a)(4) of this section,

1 the following are mitigating factors:

2 (1) the person's cooperation with the department in the  
3 investigation of ethical violations, including the provision of  
4 a full and complete account of the person's involvement; or

5 (2) the person's disassociation from individuals and  
6 firms that have been involved in the ethical violation.

7

8 §10.203. Time Period of Prohibition from Reapplying for  
9 Precertification.

10 (a) If a person's precertification is removed under this  
11 subchapter, the period during which the person is prohibited  
12 from reapplying for precertification is set by the assistant  
13 executive director based on the guidelines in subsection (c) of  
14 this section.

15 (b) The assistant executive director, at the assistant  
16 executive director's sole discretion, may prohibit a person from  
17 applying for precertification for less time than, but not more  
18 time than, the recommended time period under subsection (c) of  
19 this section.

20 (c) Figure 43 TAC §10.203(c) sets forth guidelines for  
21 assigning the time period during which a person is prohibited  
22 from reapplying for precertification based on specific  
23 violations of §10.101 of this chapter (relating to Required

- 1 Conduct), taking into consideration the factors described in
- 2 §10.202 of this subchapter (relating to Factors Considered in
- 3 Removing Precertification).

1 Figure 43 TAC §10.203(c)

2 Guidelines for Selecting Period of Prohibition based on Grounds and Factors

Ground for Removal of Precertification	Period of Prohibition from Reapplying for Precertification			
	no more than 12 months	no more than 36 months	no more than 48 months	no more than 60 months
§10.101(4) relating to maintaining good standing	allowable with written explanation of justification	allowable with written explanation of justification	allowable with written explanation of justification	recommended
§10.101(3) relating to adherence to civil and criminal laws	allowable with written explanation of justification	allowable with written explanation of justification	recommended only if: <ul style="list-style-type: none"> <li>• the person meets all mitigating factors listed in §10.202(b) and</li> <li>• the person has not committed similar acts or omissions and</li> <li>• the seriousness and willfulness of the act or omission is not severe, and</li> <li>• the person , or a third party on behalf of the</li> </ul>	recommended if: <ul style="list-style-type: none"> <li>• the person does not meet all mitigating factors listed in §10.202(b), or</li> <li>• the person has committed similar acts or omissions, or</li> <li>• the seriousness and willfulness of the act or omission is severe, or</li> <li>• the department has not been fully</li> </ul>

			person, has fully compensated the department for any damages suffered by the department as a result of the individual's acts or omissions	compensated for any damages suffered by the department as a result of the individual's acts or omissions
§10.101(2) relating to offering, giving, or agreeing to give a benefit; or §10.101(1) relating to conflicts of interest	allowable with written explanation of justification	recommended only if: <ul style="list-style-type: none"> <li>• the person meets all of the mitigating factors of §10.202(b), and</li> <li>• the person has not committed similar acts or omissions, and</li> <li>• the seriousness and willfulness of the act or omission is not severe, and</li> <li>• the person, or a third party on behalf of the individual, has fully compensated the</li> </ul>	recommended only if: <ul style="list-style-type: none"> <li>• the person meets some of the mitigating factors of §10.202(b), and</li> <li>• the person has not committed similar acts or omissions, and</li> <li>• the seriousness and willfulness of the act or omission is not severe, and</li> <li>• the person, or a third party on behalf of the person, has fully compensated the</li> </ul>	recommended if: <ul style="list-style-type: none"> <li>• the person meets no mitigating factors listed in §10.202(b), or</li> <li>• the person has committed similar acts or omissions, or</li> <li>• the seriousness and willfulness of the act or omission is not severe, or</li> <li>• the department has not been fully compensated for any damages suffered by the department as a</li> </ul>

		department for any damages suffered by the department as a result of the individual's acts or omissions	department for any damages suffered by the department as a result of the individual's acts or omissions	result of the individual's acts or omissions
§10.101(5) relating to notifying the department	recommended only if: <ul style="list-style-type: none"> <li>• the person meets all mitigating factors listed in §10.202(b), and</li> <li>• the person has not committed similar acts or omissions, and</li> <li>• the seriousness and willfulness of the act or omission is not severe, and</li> <li>• the person , or a third party on behalf of the person , has fully compensated the department for any damages</li> </ul>	recommended only if: <ul style="list-style-type: none"> <li>• the person meets some of the mitigating factors of §10.202(b), and</li> <li>• the person has not committed similar acts or omissions, and</li> <li>• the seriousness and willfulness of the act or omission is not severe, and</li> <li>• the person, or a third party on behalf of the person , has fully compensated the department for any damages suffered by the</li> </ul>	recommended if: <ul style="list-style-type: none"> <li>• the person has committed similar acts or omissions, or</li> <li>• the seriousness and willfulness of the act or omission is severe, or</li> <li>• the department has not been fully compensated for any damages suffered by the department as a result of the person's acts or omissions</li> </ul>	recommended only if: <ul style="list-style-type: none"> <li>• the person has committed similar acts or omissions, and</li> <li>• the seriousness and willfulness of the act or omission is severe, and</li> <li>• the department has not been fully compensated for any damages suffered by the department as a result of the person's acts or omissions</li> </ul>

Texas Department of Transportation  
Ethical Conduct by Entities Doing  
Business with the Department

	suffered by the department as a result of the individual's acts or omissions	department as a result of the individual's acts or omissions		
--	--	--	--	--

1

2

1 §10.204. Notice of Removal of Precertification.

2 (a) If the assistant executive director removes a person's  
3 precertification, the department will notify the person by  
4 certified mail within five working days after the date of the  
5 assistant executive director's decision. The notice will:

6 (1) state the period for which precertification is  
7 prohibited;

8 (2) summarize the facts and circumstances underlying the  
9 removal of precertification;

10 (3) explain how the period of the prohibition was  
11 selected, using §10.203 of this subchapter (relating to Time  
12 Period of Prohibition from Reapplying for Precertification) as a  
13 basis for explanation; and

14 (4) state that the person may appeal the removal of  
15 precertification under §10.205 of this subchapter (relating to  
16 Appeal of Removal of Precertification).

17 (b) The assistant executive director, concurrent with the  
18 delivery of the notice of removal from precertification status,  
19 may suspend a person from participating in agreements with the  
20 department. Before imposing a suspension, the assistant  
21 executive director will consider all relevant circumstances,  
22 including the severity and willfulness of the conduct, the  
23 likelihood of immediate harm to the public, and whether there

1 has been a pattern of inappropriate conduct. The suspension  
2 terminates when the deadline for appeal under §10.205(a) of this  
3 subchapter has passed and the provider has not appealed the  
4 removal from precertification status, or if the provider has  
5 appealed, when a final order is entered under §10.205(c) of this  
6 subchapter.

7 (c) The removal of a person's precertification or a  
8 suspension of a person does not affect the person's obligations  
9 under an agreement with the department or limit the department's  
10 remedies under the agreement.

11 (d) Unless the assistant executive director imposes a  
12 suspension under subsection (b) of this section, the removal of  
13 a person's precertification status does not prevent that person  
14 from participating in agreements with the department in a  
15 capacity that does not require precertification status.

16

17 §10.205. Appeal of Removal of Precertification.

18 (a) A person may appeal the removal of precertification by  
19 delivering to the executive director a written notice of appeal  
20 within 10 working days after the date that the department mails  
21 the notice of removal of precertification under §10.204 of this  
22 subchapter (relating to Notice of Removal of Precertification).

23 (b) The person may submit with the notice of appeal written

1 documentation in support of the appeal. The person may  
2 alternatively request an in-person meeting with the executive  
3 director for the purpose of presenting written documentation and  
4 oral presentation in support of the appeal and answering  
5 questions posed by the executive director. The meeting will be  
6 scheduled at the executive director's earliest convenience.

7 (c) The executive director will consider any written  
8 documentation submitted by a person and any oral presentation  
9 made in support of an appeal. The executive director will make  
10 a decision on the person's appeal and issue a final order. The  
11 decision of the executive director is final and not subject to  
12 judicial review, except as required by law.

13 (d) The executive director may not delegate authority under  
14 this section.

15

16 §10.206. Eligibility to Reapply for Precertification.

17 (a) A person whose precertification has been removed under  
18 this subchapter may not reapply for precertification until after  
19 the period of prohibition for precertification ends.

20 (b) A person may request the reduction or removal of a  
21 period of prohibition for precertification by delivering to the  
22 assistant executive director the request in writing and written  
23 documentation in support of the request demonstrating changes in

1 the circumstances that were described in the notice of score  
2 reduction under §10.204 of this subchapter (relating to Notice  
3 of Removal of Precertification).

4 (c) The assistant executive director, at the assistant  
5 executive director's sole discretion, may decide to reduce or  
6 remove the period of prohibition for precertification. The  
7 assistant executive director will send a written notice of the  
8 decision to the provider.

9 (d) The assistant executive director will consider not more  
10 than one request for an entity under this section during any 12-  
11 month period.

1 SUBCHAPTER F. SANCTIONS FOR ETHICAL VIOLATIONS BY OTHER ENTITIES

2 §10.251. Application of Subchapter.

3 (a) This subchapter applies only to an individual or entity  
4 doing business with the department that is subject to this  
5 chapter but not subject to either Subchapter D, Score Reduction  
6 for Ethical Violations by Architectural, Engineering, and  
7 Surveying Service Providers, of this chapter or Chapter 9,  
8 Subchapter G of this title (relating to Highway Improvement  
9 Contract Sanctions).

10 (b) The sanctions provided by this subchapter are in  
11 addition to other actions and remedies available to the  
12 department.

13

14 §10.252. Procedure.

15 (a) The executive director may impose a sanction on an  
16 entity if a ground for a sanction under §10.101 of this chapter  
17 (relating to Required Conduct) exists. The executive director  
18 will impose sanctions under this subchapter in accordance with  
19 §10.255(c) of this subchapter (relating to Application of  
20 Sanction).

21 (b) Except as provided in §10.256(g) of this subchapter  
22 (relating to Appeal of Sanction), a sanction is effective on the

1 date specified in the notice of sanction under §10.253 of this  
2 subchapter (relating to Notice of Sanction).

3 (c) The imposition of a sanction on an entity does not  
4 affect the entity's obligations under an agreement with the  
5 department or limit the department's remedies under the  
6 agreement.

7 (d) The executive director, concurrent with the delivery of  
8 the notice of a sanction other than a reprimand, may suspend an  
9 entity without a prior hearing. Before imposing a suspension,  
10 the executive director will consider all relevant circumstances,  
11 including the severity and willfulness of the conduct, the  
12 likelihood of immediate harm to the public, and whether there  
13 has been a pattern of inappropriate conduct. The suspension  
14 terminates when a final order is entered under §10.256(e) of  
15 this subchapter.

16

17 §10.253. Notice of Sanction. If the executive director imposes  
18 a sanction under this subchapter, the department will notify the  
19 entity by certified mail within five working days after the date  
20 of the executive director's decision. The notice will:

21 (1) state the sanction and the time period of the  
22 sanction, if applicable;

1           (2) summarize the facts and circumstances underlying the  
2 sanction;

3           (3) explain how the sanction was selected, using  
4 §10.255(c) of this subchapter (relating to Application of  
5 Sanction) as a basis for explanation;

6           (4) if applicable, inform the entity of the imposition of  
7 a suspension under §10.252(d) of this subchapter (relating to  
8 Procedure); and

9           (5) state that the provider may appeal the reduction in  
10 accordance with §10.256 of this subchapter (relating to Appeal  
11 of Sanction).

12

13 §10.254. Available Sanctions.

14           (a) The available sanctions, in order of increasing  
15 severity, are:

16           (1) a reprimand;

17           (2) prohibition from participating in a specified  
18 agreement, whether the agreement was previously awarded or to be  
19 awarded or whether funds under the agreement have been paid or  
20 are to be paid;

21           (3) a limit on the contract amount or amount of funds  
22 that may be awarded or paid to the entity for a period of not

1 more than 60 months; or

2 (4) debarment of the entity for a period of not more than  
3 60 months.

4 (b) Before imposing a sanction, the executive director will  
5 consider the following factors:

6 (1) the seriousness and willfulness of the act or  
7 omission;

8 (2) whether the entity has committed similar acts or  
9 omissions and if so, when those acts or omissions were  
10 committed;

11 (3) whether the entity, or a third party on behalf of the  
12 entity, has fully compensated the department for any damages  
13 suffered by the department as a result of the entity's acts or  
14 omissions; and

15 (4) any mitigating factors.

16 (c) For the purposes of subsection (b)(4) of this section,  
17 the following are mitigating factors:

18 (1) the entity's adoption and enforcement of an internal  
19 ethics and compliance program that satisfies the requirements of  
20 §10.51 of this chapter (relating to Internal Ethics and  
21 Compliance Program);

22 (2) the entity's cooperation with the department in the

1 investigation of ethical violations, including the provision of  
2 a full and complete account of the entity's involvement; or

3 (3) the entity's disassociation from individuals and  
4 firms that have been involved in the ethical violation.

5

6 §10.255. Application of Sanction.

7 (a) The executive director, at the executive director's  
8 sole discretion, may impose a sanction that is less severe, but  
9 not more severe, than the sanction recommended under §10.254(c)  
10 of this subchapter (relating to Available Sanctions).

11 (b) If an entity commits multiple violations arising out of  
12 separate occurrences, the executive director may impose multiple  
13 sanctions in accordance with subsection (c) of this section.

14 (c) Figure 43 TAC §10.255(c) sets forth guidelines for  
15 application of a sanction by assigning for specific violations  
16 of §10.101 of this chapter (relating to Required Conduct), the  
17 sanctions available to the executive director as described in  
18 §10.254(a) of this subchapter, taking into consideration the  
19 factors described in subsection §10.254(b) of this subchapter.

- 1 Figure 43 TAC §10.255(c)
- 2 Guidelines for Application of Sanction based on Grounds and Factors

Ground for Sanction	Sanction			
	Reprimand	Prohibition from entering into a specified agreement	Limit on contract amount	Debarment
§10.101(4) relating to maintaining good standing	allowable with written explanation of justification	allowable with written explanation of justification	allowable with written explanation of justification	recommended
§10.101(3) relating to adherence to civil and criminal laws	allowable with written explanation of justification	allowable with written explanation of justification	recommended only if: <ul style="list-style-type: none"> <li>• the entity meets all mitigating factors listed in §10.254(c), and</li> <li>• the entity has not committed similar acts or omissions and</li> <li>• the seriousness and willfulness of the act or omission is not severe, and</li> <li>• the entity, or a third party on</li> </ul>	recommended if: <ul style="list-style-type: none"> <li>• the entity does not meet all mitigating factors listed in §10.254(c), or</li> <li>• the entity has committed similar acts or omissions, or</li> <li>• the seriousness and willfulness of the act or omission is severe, or</li> <li>• the department has not been</li> </ul>

			behalf of the entity, has fully compensated the department for any damages suffered by the department as a result of the entity's acts or omissions	fully compensated for any damages suffered by the department as a result of the entity's acts or omissions
§10.101(2) relating to offering, giving, or agreeing to give a benefit; or §10.101(1) relating to conflicts of interest	allowable with written explanation of justification	recommended only if: <ul style="list-style-type: none"> <li>• the entity meets all of the mitigating factors of §10.254(c), and</li> <li>• the entity has not committed similar acts or omissions, and</li> <li>• the seriousness and willfulness of the act or omission is not severe, and</li> <li>• the entity, or a third party on behalf of the entity, has</li> </ul>	recommended only if: <ul style="list-style-type: none"> <li>• the entity meets some of the mitigating factors of §10.254(c), and</li> <li>• the entity has not committed similar acts or omissions, and</li> <li>• the seriousness and willfulness of the act or omission is not severe, and</li> <li>• the entity, or a third party on behalf of the entity, has</li> </ul>	recommended if: <ul style="list-style-type: none"> <li>• the entity meets no mitigating factors listed in §10.254(c), or</li> <li>• the entity has committed similar acts or omissions, or</li> <li>• the seriousness and willfulness of the act or omission is not severe, or</li> <li>• the department has not been fully compensated for any damages</li> </ul>

		fully compensated the department for any damages suffered by the department as a result of the entity's acts or omissions	fully compensated the department for any damages suffered by the department as a result of the entity's acts or omissions	suffered by the department as a result of the entity's acts or omissions
§10.101(5) relating to notifying the department	recommended only if: <ul style="list-style-type: none"> <li>the entity meets all mitigating factors listed in §10.254(c), and</li> <li>the entity has not committed similar acts or omissions, and</li> <li>the seriousness and willfulness of the act or omission is not severe, and</li> <li>the entity, or a third party on behalf of the entity, has fully</li> </ul>	recommended only if: <ul style="list-style-type: none"> <li>the entity meets some of the mitigating factors of §10.254(c), and</li> <li>the entity has not committed similar acts or omissions, and</li> <li>the seriousness and willfulness of the act or omission is not severe, and</li> <li>the entity, or a third party on behalf of the entity, has fully compensated the</li> </ul>	recommended if: <ul style="list-style-type: none"> <li>the entity has committed similar acts or omissions, or</li> <li>the seriousness and willfulness of the act or omission is severe, or</li> <li>the department has not been fully compensated for any damages suffered by the department as a result of</li> </ul>	recommended only if: <ul style="list-style-type: none"> <li>the entity has committed similar acts or omissions, and</li> <li>the seriousness and willfulness of the act or omission is severe, and</li> <li>the department has not been fully compensated for any damages suffered by the department as a result of the entity's acts or omissions</li> </ul>

	compensated the department for any damages suffered by the department as a result of the entity's acts or omissions	department for any damages suffered by the department as a result of the entity's acts or omissions	the entity's acts or omissions	
--	---	---	--------------------------------	--

1

1 §10.256. Appeal of Sanction.

2 (a) A sanction, other than a reprimand, and unless ordered  
3 or directed by the federal government, may be appealed to the  
4 executive director by delivering to the executive director a  
5 written notice of appeal within 10 working days after the  
6 effective date of the sanction as specified in the notice of  
7 sanction. If the notice of appeal is timely delivered, the  
8 entity will be given the opportunity for an informal hearing  
9 before the executive director. The executive director will set  
10 a time for the hearing at the executive director's earliest  
11 convenience. The executive director will set time the maximum  
12 allowed for oral presentations and the procedure for written  
13 documents to be presented by the entity. The executive director  
14 will notify the entity in writing within 5 working days of the  
15 executive director's determination on the appeal.

16 (b) If the entity is dissatisfied with the determination of  
17 the executive director, the entity may request an administrative  
18 hearing under §1.21 et seq. of this title (relating to  
19 Procedures in Contested Cases). To be effective the request must  
20 be received by the executive director within 10 working days  
21 after the date that the executive director mails the  
22 notification of determination under subsection (b) of this

1 section.

2 (c) The proposal for decision will be presented to the  
3 commission at a regularly scheduled open meeting. The  
4 commission may consider oral presentations. The commission will  
5 make a determination based on the proposal for decision. The  
6 commission's determination on the proposal for decision will be  
7 adopted by minute order and reflected in the minutes of the  
8 meeting.

9 (d) If an appeal to the executive director or by an  
10 administrative hearing, as appropriate, is not timely requested  
11 under this section, the executive director will issue a final  
12 order imposing the sanction when the deadline for requesting an  
13 appeal has passed. If an appeal is timely requested, the  
14 executive director will issue a final order based on one of the  
15 following:

16 (1) the executive director's determination under  
17 subsection (a) of this section; or

18 (2) the commission's determination under subsection (c).

19 (e) If the only sanction being imposed is a reprimand, the  
20 entity may appeal the reprimand by delivering to the executive  
21 director a written notice of appeal and written documentation  
22 disputing the reprimand within 10 working days after the

1 effective date of the sanction as specified in the notice of  
2 sanction. The executive director will make the determination on  
3 an appeal and issue a final order under this subsection.

4 (f) A sanction, other than a suspension or a reprimand, is  
5 automatically stayed from the date that the department receives  
6 the notice of appeal until a final order is entered by the  
7 executive director. On entry of a final order by the executive  
8 director imposing the sanction, the full term of the sanction  
9 will be imposed on the date of the final order unless the  
10 executive director expressly orders that a lesser sanction be  
11 imposed.

12 (g) The order of the executive director issued under  
13 subsection (e) of this section is final and not subject to  
14 judicial review, except as required by law.

15

16 §10.257. Lessening or Removal of Sanction.

17 (a) An entity may request the reduction or removal of a  
18 sanction imposed under this subchapter by delivering to the  
19 executive director the request in writing and written  
20 documentation in support of the request demonstrating changes in  
21 the circumstances that were described in the notice of score  
22 reduction under §10.253 of this subchapter (relating to Notice

1 of Sanction).

2 (b) The executive director, at the executive director's  
3 sole discretion, may decide to reduce or remove the sanction.  
4 The executive director will send a written notice of the  
5 decision to the entity.

6 (c) The executive director will consider not more than one  
7 request under this section during any 12-month period.