

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt new §31.39, Required Internal Ethics and Compliance Program, relating to public transportation program administration to be codified under Title 43, Texas Administrative Code, Part 1.

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

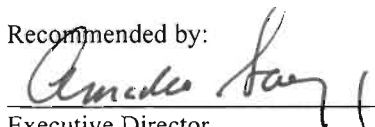
IT IS THEREFORE ORDERED by the commission that new §31.39 is adopted and is authorized for filing with the Office of the Secretary of State.

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

Submitted and reviewed by:

  
\_\_\_\_\_  
Director, Public Transportation Division

Recommended by:

  
\_\_\_\_\_  
Executive Director  
**112193 MAR 25 10**

Minute  
Number

Date  
Passed

Adoption Preamble

The Texas Department of Transportation (department) adopts new §31.39, concerning a required internal ethics and compliance program. New §31.39 is adopted without changes to the proposed text as published in the January 1, 2010 issue of the *Texas Register* (35 TexReg 56) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTION

To maintain and build on the department's commitment to integrity and ethical behavior, the Texas Transportation Commission (commission) ordered the department to develop an internal compliance program (ICP) designed to promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law and departmental policies. The new section expands the use of that concept to require an entity that receives state or federal public transportation funds through the department to have and enforce compliance with an internal ethics and compliance program. The purpose of the changes is to curtail fraudulent and illegal activity by persons who receive financial assistance from or through the department.

New §31.39, Required Internal Ethics and Compliance Program, adds a general eligibility requirement at the beginning of 43 TAC Chapter 31, Subchapter D, Program Administration. The requirement is that to be eligible to receive any state or

1 federal public transportation funds from the department, an  
2 entity must have adopted, and must enforce compliance with, an  
3 internal ethics and compliance program that satisfies the  
4 requirements of 43 TAC §1.8, Internal Ethics and Compliance  
5 Program. The new requirement applies only to funds awarded  
6 after January 1, 2011.

7

8 The Public Transportation Advisory Committee (PTAC) met on January  
9 29, 2010 to review the draft rules and by motion recommended to the  
10 commission that the amended rules be filed with the Office of the  
11 Secretary of State.

12

13 COMMENTS

14 One comment was received from the Fort Bend County Public  
15 Transportation Department.

16

17 Comment: The commenter explained that their structure is such  
18 that a separate transit department exists within the larger  
19 county entity. The commenter requested clarification regarding  
20 applicability of the proposed rules (i.e. just to the transit  
21 department or the entire county organization) and expressed a  
22 concern that if applicable to the entire county organization it  
23 could create conflicts with existing statutes, and become  
24 difficult and costly to implement.

25

1 Response: In response to applicability, the rules are  
2 applicable to whatever entity enters into an agreement with and  
3 receives funds from the department. If an entity is structured  
4 as a transit department and only the department is bound by the  
5 terms of the grant and funds received, then only the department  
6 is subject to the rules. If an entity is structured as a  
7 transit department but functions as an arm of a larger  
8 organization which is bound by the terms of the grant and funds  
9 received, then the entire organization is subject to the rules.

10

11 With regard to conflicts with statutes, while the department is  
12 not aware of existing statutory conflicts nor did the commenter  
13 provide any examples of statutory conflicts, rules do not  
14 supersede statutes. If a statutory conflict exists today or at  
15 some future time, the statutory provisions would take precedence  
16 over these rules.

17

#### 18 STATUTORY AUTHORITY

19 The new section is adopted under Transportation Code, §201.101,  
20 which provides the Texas Transportation Commission with the  
21 authority to establish rules for the conduct of the work of the  
22 department.

23

#### 24 CROSS REFERENCE TO STATUTE

25 Transportation Code, Chapters 455, 456, 458, and 461.

1                           SUBCHAPTER D.   PROGRAM ADMINISTRATION  
2   §31.39.   Required Internal Ethics and Compliance Program.   To be  
3   eligible to receive state or federal public transportation funds  
4   awarded by the commission after January 1, 2011, an entity must  
5   have adopted an internal ethics and compliance program that  
6   satisfies the requirements of §1.8 of this title (relating to  
7   Internal Ethics and Compliance Program) and must enforce  
8   compliance with that program.