

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

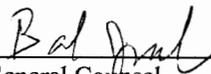
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §9.133 relating to Procedure for Imposing Sanctions to be codified under Title 43, Texas Administrative Code, Part 1.

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

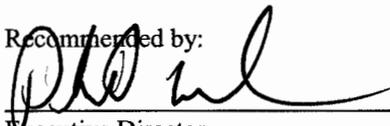
IT IS THEREFORE ORDERED by the commission that the amendments to §9.133 are adopted and are authorized for filing with the Office of the Secretary of State.

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:

  
\_\_\_\_\_  
General Counsel

Recommended by:

  
\_\_\_\_\_  
Executive Director

**112929 DEC 15 11**

Minute Date  
Number Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts an  
3 amendment to §9.133, Procedure for Imposing Sanctions. The  
4 amendment to §9.133 is adopted without changes to the proposed  
5 text as published in the October 14, 2011 issue of the *Texas*  
6 *Register* (36 TexReg 6913) and will not be republished.

7

8 EXPLANATION OF ADOPTED AMENDMENTS

9 Effective January 6, 2011, 43 TAC §1.8, Internal Ethics and  
10 Compliance Program, was repealed and the substance of that rule  
11 was moved to new 43 TAC §10.51. The transferred section  
12 establishes the minimum requirements of an internal ethics and  
13 compliance program required for entities doing business with the  
14 department, other than business under highway improvement  
15 contracts. At the time of the transfer of that rule, several  
16 references in the department's rules were changed from §1.8 to  
17 §10.51. However, the reference in §9.133 to §1.8 was overlooked  
18 and remained unchanged. The purpose of the amendment is to  
19 correct that error.

20

21 The amendment to §§9.133(b) merely changes the reference from  
22 §1.8 to §10.51 to correctly cite the section that currently  
23 contains the internal ethics and compliance program  
24 requirements.

25

1 COMMENTS

2 No comments on the proposed amendment were received.

3

4 STATUTORY AUTHORITY

5 The amendment is adopted under Transportation Code, §201.101,  
6 which provides the Texas Transportation Commission with the  
7 authority to establish rules for the conduct of the work of the  
8 department.

9

10 CROSS REFERENCE TO STATUTE

11 None.

SUBCHAPTER H. GRANT SANCTIONS

§9.133. Procedure for Imposing Sanctions.

(a) The assistant executive director may impose sanctions on a subgrantee under §9.135 of this subchapter (relating to Withholding Funds or Disallowing Costs), §9.136 of this subchapter (relating to Suspension or Termination for Cause), or §9.137 of this subchapter (relating to Determination of Ineligibility).

(b) In making the decision whether to impose a sanction, the assistant executive director may consider, as a mitigating factor, whether the subgrantee has adopted and enforces an internal ethics and compliance program that satisfies the requirements of §10.51 [~~§1-8~~] of this title (relating to Internal Ethics and Compliance Program).

(c) If the assistant executive director decides to impose a sanction on a subgrantee, the department will notify the subgrantee of the sanction by certified mail within five working days after the date of the assistant executive director's decision. The notice will summarize the facts and circumstances underlying the sanction, identify the period of the sanction and the deadline for correction of deficient conditions, if applicable, and state that the subgrantee may appeal the sanction in accordance with §9.138 of this subchapter (relating

1 to Appeal of Sanction).

2 (d) Except as provided by §9.138(d) of this subchapter, a  
3 sanction is effective on the date specified in the notice given  
4 under subsection (c) of this section.

5 (e) The imposition of a sanction does not affect a  
6 subgrantee's obligations under a grant or subgrant agreement  
7 with the department or limit the department's remedies under  
8 such an agreement. The department may take any remedy that is  
9 legally available.

10 (f) For purposes of this subchapter, an act or omission by  
11 an individual or other person on behalf of a subgrantee is  
12 considered to be an act or omission of the subgrantee.