

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §§25.901 - 25.903 and §25.906, all relating to the traffic safety program to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed 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 §§25.901 - 25.903 and §25.906 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

Submitted and reviewed by:



Deputy Executive Director

Recommended by:



Executive Director

112553 JAN 27 11

Minute
Number

Date
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §25.901, Purpose, §25.902, Definitions, §25.903,
4 Scope, and §25.906, Participation, all concerning the traffic
5 safety program.

6

7 EXPLANATION OF PROPOSED AMENDMENTS

8 In November 2007 the Texas Transportation Commission
9 (commission) ordered the department to develop an internal
10 compliance program (ICP) designed to promote an organizational
11 culture that encourages ethical conduct and a commitment to
12 compliance with the law and departmental policies. Since that
13 date the commission has taken action to discourage fraudulent
14 and illegal activity by certain persons who receive financial
15 assistance from or contract with the department by requiring
16 them to adopt and enforce ethics and compliance programs. Those
17 requirements now apply to transportation corporations (43 TAC
18 §15.92(c)), Regional Mobility Authorities (43 TAC §26.56),
19 entities receiving funds from the department for toll facilities
20 (43 TAC §27.53), and entities receiving funds from the
21 department for public transportation (43 TAC §31.39).

22

23 The new provision expands the use of that concept to require an
24 entity that receives Texas Traffic Safety Program Funds to have
25 and enforce compliance with an internal ethics and compliance

1 program. Texas Traffic Safety Program Funds are awarded under
2 traffic safety program contracts and traffic safety program
3 agreements. A traffic safety program contract is a contract
4 between the department and another state agency for the
5 procurement of goods or services for a traffic safety project.
6 A traffic safety program agreement is a contract between the
7 department and another state agency, a college, university,
8 local government, public or private for-profit or nonprofit
9 organization, or individual for the implementation of a traffic
10 safety project.

11
12 The amendments to §§25.901 - 25.903 change "undesignated head"
13 and associated references to "this subchapter" to conform to
14 currently used language. No substantive change is made to the
15 sections.

16
17 The amendments to §25.906, Participation, redesignate the
18 current wording as subsection (a) and add a new subsection (b).
19 Traffic safety staff who were formerly part of the department's
20 district offices are now part of the Traffic Operations
21 Division. Amendments to paragraphs (1) and (2) combine the
22 language to reflect current department organization and the
23 current practice for proposal submission to the department.
24 Subsequent paragraphs are renumbered. New subsection (b)
25 requires an entity to adopt and enforce an internal ethics and

1 compliance program that satisfies the requirements of 43 TAC
2 §10.51 (Internal Ethics and Compliance Program) in order to be
3 eligible to receive traffic safety funds. The change is
4 applicable only for grant agreements entered into after
5 January 1, 2012.

6

7 FISCAL NOTE

8 James Bass, Chief Financial Officer, has determined that for
9 each of the first five years the amendments as proposed are in
10 effect, there will be no fiscal implications for state or local
11 governments as a result of enforcing or administering the
12 amendments.

13

14 Steve Simmons, Deputy Executive Director, has certified that
15 there will be no significant impact on local economies or
16 overall employment as a result of enforcing or administering the
17 amendments.

18

19 PUBLIC BENEFIT AND COST

20 Mr. Simmons has also determined that for each year of the first
21 five years the sections are in effect, the public benefit
22 anticipated as a result of enforcing or administering the
23 amendments will be to ensure that recipients of traffic safety
24 program funds have in place and are following an internal
25 compliance program thereby reducing the possible misuse of those

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

4

5 SUBMITTAL OF COMMENTS

6 Written comments on the proposed amendments to §§25.901 -
7 25.903, and §25.906 may be submitted to Steve Simmons, Texas
8 Department of Transportation, 125 East 11th Street, Austin,
9 Texas 78701-2483. The deadline for receipt of comments is 5:00
10 p.m. on March 14, 2011.

11

12 STATUTORY AUTHORITY

13 The amendments are proposed under Transportation Code, §201.101,
14 which provides the commission with the authority to establish
15 rules for the conduct of the work of the department.

16

17 CROSS REFERENCE TO STATUTE

18 None.

1 SUBCHAPTER M. TRAFFIC SAFETY PROGRAM

2 §25.901. Purpose. The purpose of [~~the sections in~~] this
3 subchapter [~~undesignated head~~] is to provide an orderly and
4 efficient system of traffic safety program grant agreements or
5 contracts between the department and local governments, state
6 agencies, colleges, universities, individuals, and other public
7 and private entities for the purpose of improving traffic safety
8 and to facilitate compliance with applicable federal and state
9 laws. This subchapter [~~These sections~~] shall be construed to
10 obtain these objectives.

11
12 §25.902. Definitions. The following words and terms, when used
13 in this subchapter [~~undesignated head~~], shall have the following
14 meanings, unless the context clearly indicates otherwise.

15 (1) Commission--The Texas Transportation Commission.

16 (2) Common rule--Title 49, United States Code of Federal
17 Regulations, Part 18, Uniform Administrative Requirements for
18 Grants and Cooperative Agreements with State and Local
19 Governments.

20 (3) Contract--A Texas traffic safety program contract
21 between the department and another state agency for the
22 procurement of goods or services for a traffic safety project,
23 and including expenditures pursuant to which are reimbursable,

1 in whole or in part, by the department with traffic safety
2 funds.

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

4 (5) District--One of the 25 geographical areas into which
5 the department divides the state.

6 (6) DOT--The United States Department of Transportation.

7 (7) FHWA--The Federal Highway Administration.

8 (8) Grant agreement--A Texas traffic safety program
9 agreement between a subgrantee and the department for the
10 implementation of a traffic safety project which includes an
11 approved project description and planned expenditures
12 reimbursable, in whole or in part, by the department with
13 traffic safety funds.

14 (9) Local government--A county, city, incorporated
15 village or town, council of government, or other jurisdiction
16 existing, created, or organized under general, home-rule, or
17 special laws of the state.

18 (10) Monitoring--Project review and documentation that
19 provides a method of tracking fiscal management and progress
20 toward achievement of objectives.

21 (11) National Highway Traffic Safety Administration
22 (NHTSA)--A federal administration in DOT, which is responsible
23 for the administrative oversight of traffic safety funds and

1 programs among the various states.

2 (12) Program--The Texas Traffic Safety Program consisting
3 of a coordinated program planned and administered by the
4 department under the Federal Highway Safety Act of 1966 and the
5 Texas Traffic Safety Act of 1967.

6 (13) Project--An activity or group of related activities
7 having one or more defined objectives for improving traffic
8 safety, a detailed plan for implementation, a schedule with
9 milestones, a budget, and a method of evaluating
10 accomplishments.

11 (14) Prospective contractor--Any state agency, college,
12 university, local government, public or private for-profit or
13 nonprofit organization, or individual (other than the
14 department) which is designated as a party in an approved
15 contract.

16 (15) State--The State of Texas.

17 (16) State agency--A state office, officer, department,
18 division, bureau, board, commission, legislative committee,
19 authority, institution, or a subdivision of one of these
20 entities.

21 (17) Subgrantee--Any state agency, college, university,
22 local government, public or private for-profit or nonprofit
23 organization, or individual that receives traffic safety grant

1 funds from the department, and which is accountable to the
2 department for the use of the funds provided.

3 (18) Texas highway safety plan--The document which
4 identifies the state's traffic safety problems and describes the
5 programs and projects to address those problems. It serves as
6 the basis for the execution of a federal-aid agreement.

7 (19) Uniform Grant and Contract Management Standards--The
8 standards included in Chapter 783, Texas Government Code,
9 concerning uniform grant and contract management standards for
10 state agencies.

11
12 §25.903. Scope. This subchapter governs [~~The sections under~~
13 ~~this undesignated head govern~~] the scope and content of program
14 grant agreements and contracts and the means of determining
15 whether costs of a proposed project will be eligible for
16 reimbursement with traffic safety funds pursuant to a grant
17 agreement or a contract with the department. They shall not be
18 construed to enlarge, diminish, modify, or alter the power or
19 authority of the department or any substantive rights of any
20 person, organization, or political jurisdiction. This
21 subchapter does [~~The sections under this undesignated head do~~]
22 not apply to purchase order contracts awarded in accordance with
23 Government Code, Chapter 2155.

1

2 §25.906. Participation.

3 (a) Any prospective subgrantee with traffic safety
4 responsibility may have its project proposal considered for
5 inclusion in the Texas highway safety plan.

6 (1) Local governments wishing to submit a project
7 proposal should contact the traffic safety section of the
8 traffic operations division regarding their project proposals
9 [~~district office responsible for the geographic area in which~~
10 ~~they are located~~].

11 [~~(2) Other subgrantees may contact the traffic safety~~
12 ~~section of the traffic operations division regarding their~~
13 ~~project proposals.~~]

14 (2) [~~(3)~~] These proposals will be considered for
15 inclusion in the Texas highway safety plan during the planning
16 period which generally begins a year or more prior to the
17 projected date of implementation for the project proposals.

18 (3) [~~(4)~~] Approval of federal funding for the Texas
19 highway safety plan is normally not received by the department
20 until just prior to the beginning of each federal fiscal year,
21 which begins on October 1. In some instances the full amount of
22 funding available for a given fiscal year is not known until
23 after October 1 of that year. For this reason, the department

1 may be unable to determine if a particular project proposal will
2 be funded until after the beginning of the fiscal year in which
3 it is to be implemented.

4 (4) [~~5~~] Except for those projects funded according to
5 legislative or regulatory requirements, grant funding will be
6 awarded according to the following criteria:

7 (A) potential for impact on traffic safety;

8 (B) quality of problem identification, supported by
9 verifiable information or statistical data;

10 (C) demonstration of a reasonable and logical solution
11 for improving traffic safety; and

12 (D) cost effectiveness.

13 (b) To be eligible to receive traffic safety funds under a
14 grant agreement entered into after January 1, 2012, an entity
15 must have adopted an internal ethics and compliance program that
16 satisfies the requirements of §10.51 of this title (relating to
17 Internal Ethics and Compliance Program) and must enforce
18 compliance with that program.