

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 §9.133 relating to Procedure for Imposing Sanctions 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 §9.133 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:



General Counsel

Recommended by:



Interim Executive Director
112830 SEP 29 11

Minute Date
Number Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §9.133, Procedure for Imposing Sanctions.

4

5 EXPLANATION OF PROPOSED AMENDMENTS

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7 Compliance Program, was repealed and the substance of that rule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

17

18 The amendment to §§9.133(b) merely changes the reference from
19 §1.8 to §10.51 to correctly cite the section that currently
20 contains the internal ethics and compliance program
21 requirements.

22

23 FISCAL NOTE

24 James Bass, Chief Financial Officer, has determined that for
25 each of the first five years in which the amendments as proposed

1 are in effect, there will be no fiscal implications for state or
2 local governments as a result of enforcing or administering the
3 amendments.

4

5 Bob Jackson, General Counsel, has certified that there will be
6 no significant impact on local economies or overall employment
7 as a result of enforcing or administering the amendments.

8

9 PUBLIC BENEFIT AND COST

10 Mr. Jackson has also determined that for each year of the first
11 five years in which the sections are in effect, the public
12 benefit anticipated as a result of enforcing or administering
13 the amendments will be correct internal section references
14 within the rules of the department. There are no anticipated
15 economic costs for persons required to comply with the sections
16 as proposed. There will be no adverse economic effect on small
17 businesses.

18

19 SUBMITTAL OF COMMENTS

20 Written comments on the proposed amendments to §9.133 may be
21 submitted to Bob Jackson, General Counsel, Texas Department of
22 Transportation, 125 East 11th Street, Austin, Texas 78701-2483.
23 The deadline for receipt of comments is 5:00 p.m. on
24 November 14, 2011.

25

1 STATUTORY AUTHORITY

2 The amendments are proposed under Transportation Code, §201.101,
3 which provides the Texas Transportation Commission with the
4 authority to establish rules for the conduct of the work of the
5 department.

6

7 CROSS REFERENCE TO STATUTE

8 None.

1 SUBCHAPTER H. GRANT SANCTIONS

2 §9.133. Procedure for Imposing Sanctions.

3 (a) The assistant executive director may impose sanctions
4 on a subgrantee under §9.135 of this subchapter (relating to
5 Withholding Funds or Disallowing Costs), §9.136 of this
6 subchapter (relating to Suspension or Termination for Cause), or
7 §9.137 of this subchapter (relating to Determination of
8 Ineligibility).

9 (b) In making the decision whether to impose a sanction,
10 the assistant executive director may consider, as a mitigating
11 factor, whether the subgrantee has adopted and enforces an
12 internal ethics and compliance program that satisfies the
13 requirements of §10.51 [~~§11.8~~] of this title (relating to
14 Internal Ethics and Compliance Program).

15 (c) If the assistant executive director decides to impose a
16 sanction on a subgrantee, the department will notify the
17 subgrantee of the sanction by certified mail within five working
18 days after the date of the assistant executive director's
19 decision. The notice will summarize the facts and circumstances
20 underlying the sanction, identify the period of the sanction and
21 the deadline for correction of deficient conditions, if
22 applicable, and state that the subgrantee may appeal the
23 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.