TEXAS TRANSPORTATION COMMISSION

ALL Counties

ALL Districts

MINUTE ORDER

The Texas Transportation Commission (commission) finds it necessary to adopt new §§30.501-30.503, Meteorological Evaluation Towers, relating to Aviation, 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 new §§30.501-30.503 are adopted and are authorized for filing with the Office of 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, Aviation Division

Recommended by:

Executive Director

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Minute Number | Date Passed

Adoption Preamble

The Texas Department of Transportation (department) adopts new §§30.501 - 30.503, concerning Meteorological Evaluation Towers. The new sections are adopted without changes to the proposed text as published in the November 13, 2015 issue of the *Texas Register* (40 TexReg 8015) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTIONS

The increasing prevalence of meteorological evaluation towers (METs), which are used to measure wind speed and direction to identify locations for future wind turbines, has caused concern for the National Transportation Safety Board and the Federal Aviation Administration. Senate Bill 505, 84th Legislature, Regular Session, added new Transportation Code, §21.071, which establishes painting and marking requirements for certain METs, and requires the department to adopt rules requiring a person who owns, operates, or erects a MET to provide notice to the department of the existence of or intent to erect a tower and to register the tower with the department. The department is developing a web-based notice, registration, and reporting tool that will be available to owners and operators of METs, as well as other interested parties that need to know the location of such towers.

New Subchapter F is titled “Meteorological Evaluation Towers” to accurately reflect the subject matter of the subchapter.

New §30.501, Purpose, describes the purpose of the subchapter, which is to set out the procedures for notice and registration of METs in accordance with Transportation Code, §21.071.

New §30.502, Definitions, defines various terms used in the new subchapter, which are consistent with Transportation Code, §21.071.

New §30.503, Notice and Registration, describes the method, timeframe, and type of information required for providing notice of the intent to erect a MET, as well as registration of such a tower.

New subsection (a) provides that a person who intends to erect a MET shall provide notice of that intention to the department by submitting the appropriate form through the department’s Internet website. The notice must be submitted no later than the 30th day before the day that erection of the tower begins. This notification deadline will allow the department to disseminate pertinent information through the web-based tool prior to the construction of the tower.

New subsection (b) sets out the information required to complete the notice form, including: the name, address, and contact information of the owner or operator of the MET; the proposed location of the MET; the proposed date of construction; and any other information the department deems necessary to assist in determining ownership, physical characteristics, or location of the tower.

New subsection (c) provides that a person who owns or operates a MET shall register the tower with the department by submitting the appropriate form through the department's Internet website. The registration must be completed before the 30th day after the day that erection of the tower begins or February 29, 2016, whichever is later. These registration deadlines will allow the department to disseminate pertinent information related to existing towers through the web-based tool in a timely manner.

New subsection (d) sets out the information required to complete the registration form, including: the name, address, and contact information of the owner or operator of the MET; the location of the MET; for certain METs, an affirmation that the tower complies with the painting and marking requirements of Transportation Code, §21.071; and any other information the department deems necessary to assist in determining ownership, physical characteristics, or location of the tower.

New subsection (e) provides that a person who is responsible for filing a form required by Subsection (a) or (c) shall amend the filed information as necessary to maintain accuracy of that information.

COMMENTS

The department received two comments regarding proposed §§30.501 - 30.503.

Comment: Major Steve Robertson, Texas Wing Director of Emergency Services, Civil Air Patrol, commented that while the notification requirement and posting of the coordinates of any newly erected MET will aid the Civil Air Patrol’s mission, it is the provision for the painting and marking of METs that will most enhance the safety of any aircraft flying in the vicinity of these towers.

Response: The department appreciates the support of the Civil Air Patrol, Texas Wing, and agrees that the painting and marking of METs will offer a critical safety enhancement. The MET registration form will include an affirmation that METs at least 50 feet but not more than 200 feet in height above ground level comply with the requirements of Transportation Code, §21.071; however, any further enforcement of MET markings falls outside

of the scope of the department’s authority.

Comment: Yasmina Platt, Central Southwest Regional Manager, Aircraft Owners and Pilots Association (AOPA), expressed appreciation for the legislation and adoption of rules to address the increasing safety concerns METs have created for aviation operators and pilots over the last few years. AOPA commented that, in addition to the department’s online mapping tool, it would be beneficial for pilots to be able to consume the data in a format directly compatible with respective cockpit equipment and navigation software. To that end, AOPA suggested that the notice form also include any other information that flight planning providers and cockpit equipment providers would require to incorporate MET information into their respective databases. A format identical to that of the Federal Aviation Administration (FAA) digital obstacle file (DOF) was requested. AOPA also cited FAA Form 7460 “Notice of Proposed Construction or Alteration” as a good example for the registration form and, in addition to the information currently proposed to be collected, requested that the department include the proposed duration of the structure’s location. Finally, AOPA proposed adding an aeronautical chart background to the web mapping application.

Response: The department appreciates the AOPA’s support and

agrees with most of the comments. The MET notice and registration system has been programed to provide the data in a web map as well as in the FAA's DOF format. The goal is for pilots to be able to use the data in navigation systems seamlessly. The department believes that inclusion of information concerning the proposed duration of the structure's location would be redundant, as the presence of the MET in the database is an indication of the structure's continued presence on the ground. The use of aeronautical charts as a background for the web mapping application would be beneficial; however, the time constraints associated with developing and activating the MET system, and the fact that the Texas Aeronautical Chart does not yet exist in digital form, have prevented the department from including this option. The department will consider this suggestion for future improvements to the system.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §21.071, which requires the department to adopt rules related to the notice and registration of METs.

CROSS REFERENCE TO STATUTE

1 Transportation Code, §21.071.

SUBCHAPTER F. METEOROLOGICAL EVALUATION TOWERS

§30.501. Purpose. The purpose of this subchapter is to prescribe the procedures for notice and registration of meteorological evaluation towers in accordance with Transportation Code, §21.071.

§30.502. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Department-–The Texas Department of Transportation.

(2) Meteorological Evaluation Tower–-A structure that is self-standing or supported by guy wires and anchors, is not more than six feet in diameter at the base of the structure, and has accessory facilities on which an antenna, sensor, camera, meteorological instrument, or other equipment is mounted for the purpose of documenting whether a site has sufficient wind resources for the operation of a wind turbine generator. For purposes of this subchapter, the term does not include a structure that is located adjacent to a building, including a barn, or an electric utility substation, or in the curtilage of a residence.

§30.503. Notice and Registration.

(a) A person who intends to erect a meteorological evaluation tower shall provide notice of that intention to the department by submitting the appropriate form through the department's Internet website. The notice required by this subsection must be submitted no later than the 30th day before the day that erection of the tower begins.

(b) The following information is required to complete the notice form required by subsection (a) of this section:

(1) the name, address, and contact information of the owner or operator of the meteorological evaluation tower;

(2) the proposed location of the meteorological evaluation tower, including latitude, longitude, ground elevation at the site and height above ground level of the tower;

(3) the proposed date of construction; and

(4) any other information the department considers necessary to assist in determining ownership, physical characteristics, or location of the meteorological evaluation tower.

(c) A person who owns or operates a meteorological evaluation tower shall register the tower with the department by submitting the appropriate form through the department's

Internet website. The registration required by this subsection must be completed before the 30th day after the day that erection of the tower begins or February 29, 2016, whichever is later.

(d) The following information is required to complete the registration form required by subsection (c) of this section:

(1) the name, address, and contact information of the owner or operator of the meteorological evaluation tower;

(2) the location of the meteorological evaluation tower, including latitude, longitude, ground elevation at the site and height above ground level of the tower;

(3) if the meteorological evaluation tower is at least 50 feet but not more than 200 feet in height above ground level, an affirmation that the tower complies with the requirements applicable to the tower under Transportation Code, §21.071; and

(4) any other information the department considers necessary to assist in determining ownership, physical characteristics, or location of the meteorological evaluation tower.

(e) The person who is responsible for filing a form required by subsection (a) or (c) of this section shall amend the filed information as necessary to maintain the accuracy of that information.