

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 §§30.203 - 30.205 and §30.214 relating to Aviation Facilities Development and Financial Assistance Rules 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 §§30.203 - 30.205 and §30.214 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

114852 FEB 23 11
Minute Number Date Passed

Adoption Preamble

The Texas Department of Transportation (department) adopts amendments to §§30.203 - 30.205, and §30.214 concerning aviation facilities development and financial assistance rules. The amendments to §§30.203 - 30.205, and §30.214 are adopted without changes to the proposed text as published in the December 2, 2016, issue of the *Texas Register* (41 TexReg 9453) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Government Code, §2001.039 requires a state agency to review each of its rules every four years or more frequently and, as the result of the review, to decide whether to readopt, amend, or repeal the rule. In the course of reviewing 43 TAC Chapter 30, the department determined that need for the rules in Chapter 30 continues to exist and that the rules reflect the procedures and processes currently being used, but the department identified several non-substantive changes that need to be made to correct errors in the rules.

The Texas Legislature codified former Article 46c-1 et seq., Revised Statutes, as Transportation Code, Chapter 21, and in doing so, deleted the short title assigned to those former articles. The amendments change the statutory references in the rules from the specified provisions of Revised Statutes to the

1 appropriate provisions of Chapter 21.

2

3 Amendments to §30.203, Definitions, delete the definitions of
4 "Act" and "agent." Because the term "Act" is used only in
5 §30.205, rather than updating the statutory reference in the
6 definition, the amendments delete the defined term and provide
7 the appropriate statutory reference in §30.205, as described
8 below. The definition of "agent" does not define the term, but
9 rather lists the purposes for which the department may act as an
10 agent for a governmental agency that receives financial aid
11 under the Texas Aviation Facilities Development Program. The
12 amendments delete the definition as unnecessary and redundant of
13 the operative provisions of the rules.

14

15 Finally, amendments to the definition of "Aviation Advisory
16 Committee" in §30.203 provide a reference to Transportation
17 Code, §21.003, which specifies the composition of and
18 qualifications for the committee, and delete the description of
19 the committee, as unnecessary.

20

21 Amendments to §30.204, Facilities Development Program, update
22 the references to the statutes that provide the specified duties
23 of the Texas Transportation Commission (commission) and
24 department relating to the program.

25

1 Amendments to §30.205, Eligibility for Financial Assistance,
2 replace "the Act" with a reference to Transportation Code,
3 Chapter 21, Subchapter C, which provides the requirements for
4 and conditions of financial assistance for aviation facility
5 development.

6
7 Amendments to §30.214, Grant and Loan Agreement Payments, update
8 the reference to Article 46d-1 et seq., Revised Statutes, as
9 Transportation Code, §22.054.

10

11 COMMENTS

12 No comments on the proposed amendments were received.

13

14 STATUTORY AUTHORITY

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

18

19 CROSS REFERENCE TO STATUTE

20 Transportation Code, Chapter 21, Subchapter C.

1 SUBCHAPTER C. AVIATION FACILITIES DEVELOPMENT
2 AND FINANCIAL ASSISTANCE RULES

3
4 §30.203. Definitions. The following words and terms, when used
5 in this subchapter, shall have the following meanings, unless
6 the context clearly indicates otherwise.

7 ~~[(1) Act--The Texas Aeronautics Act, Texas Civil~~
8 ~~Statutes, Article 46c-1 et seq.]~~

9 ~~[(2) Agent--The department for the purpose of applying~~
10 ~~for, receiving, and disbursing federal funds for the benefit of~~
11 ~~general aviation airports. Also, when so designated by the~~
12 ~~sponsor for the purpose of contracting for and supervising the~~
13 ~~planning, acquisition, development, construction, improvement,~~
14 ~~maintenance, equipment, or operation of an airport or air~~
15 ~~navigation facility.]~~

16 (1)~~[(3)]~~ Airport--An area of land that is designated
17 for the landing and takeoff of aircraft.

18 (2)~~[(4)]~~ Airport hazard--Any structure, flora, or use
19 of land which obstructs the airspace required for the flight of
20 aircraft in landing or takeoff at any airport or is otherwise
21 hazardous to such landing or takeoff of aircraft. For further
22 definition, see the Local Government Code, §§241.001 et seq.

23 (3)~~[(5)]~~ Airport Project Participation Agreement--An
24 intergovernmental agreement between the department and the
25 sponsor which grants financial assistance.

1 (4)~~(+6)~~ Aviation Advisory Committee--The committee
2 ~~[commission]~~ appointed under Transportation Code, §21.003
3 ~~[committee consisting of six members to advise the commission~~
4 ~~and department on aviation matters]~~.

5 (5)~~(+7)~~ Aviation Facilities Capital Improvement
6 Program (CIP)--A multi-year capital improvement program,
7 prepared by the division and approved by the commission which
8 identifies projects to be considered for financial assistance.

9 (6)~~(+8)~~ Commission--The Texas Transportation
10 Commission.

11 (7)~~(+9)~~ Department--The Texas Department of
12 Transportation.

13 (8)~~(+10)~~ Director--The director of the Aviation
14 Division of the Texas Department of Transportation.

15 (9)~~(+11)~~ Division--The aviation division of the Texas
16 Department of Transportation.

17 (10)~~(+12)~~ Emergency--A situation or condition at a
18 general aviation airport which requires immediate attention due
19 to an existing unsafe condition. The condition should be of
20 sufficient concern to require the filing of a Notice to Airman
21 with the Federal Aviation Administration under FAA Order 7930.2E
22 until the safety concern has been resolved.

23 (11)~~(+13)~~ Executive director--The executive director
24 of the Texas Department of Transportation.

1 (12)~~(14)~~ Grant--An offer of financial assistance of
2 state and/or federal funds to improve, repair, upgrade, or add
3 to an airport included in the Texas Airport System Plan. A
4 grant with federal funds requires a match of 10% from state
5 and/or local funds. A grant with state funds must be matched
6 with at least 10% local funds.

7 (13)~~(15)~~ Hazard zoning--Zoning pursuant to the
8 provisions of the Local Government Code, §§241.001 et seq., for
9 the purpose of protecting the aerial approaches to an airport.

10 (14)~~(16)~~ Intergovernmental Agreement--A formal
11 written agreement between the sponsor and the division,
12 specifying the duties and obligations of the department and the
13 sponsor, and the terms and conditions of a grant of state and/or
14 financial assistance. The department issues two aviation
15 intergovernmental agreements titled Airport Project
16 Participation Agreement and Loan Agreement.

17 (15)~~(17)~~ Letter of Intent--The sponsor's formal
18 commitment to proceed with an airport improvement project,
19 signed by the chief elected official, including a description
20 and cost estimate of the project, and accompanied by a
21 resolution adopted by the sponsor's governing body indicating
22 the sponsor's willingness to participate in the local share of
23 project costs.

24 (16)~~(18)~~ Letter of interest--A preliminary statement
25 submitted by a sponsor to indicate the sponsor's desire to be

1 included in the program and to provide a basis for programming
2 available funds.

3 (17)~~(+19)~~ Loan--An intergovernmental agreement
4 between the department and a sponsor which provides state
5 financial assistance to be repaid to the department at a
6 specific interest rate and over a specific time period.

7 (18)~~(+20)~~ Local funds--Cash, in-kind contributions,
8 or force account work remitted by a local airport sponsor as its
9 share of project costs for an airport development project.

10 (19)~~(+21)~~ Program--The Texas Aviation Facilities
11 Development Program, which includes the administration of
12 federal Airport Improvement Program grants to general aviation
13 airports, and state grants and loans.

14 (20)~~(+22)~~ Project--Design and construction of
15 improvements to, or planning of an airport or air navigational
16 facility as part of the program.

17 (21)~~(+23)~~ Sponsor--Any eligible state agency or
18 governmental entity seeking state or federal aid under the
19 program.

20 (22)~~(+24)~~ Staff--Employees of the aviation division
21 of the Texas Department of Transportation.

22

23 §30.204. Facilities Development Program.

24 (a) As required by Transportation Code, §§21.106, 21.107,
25 and 21.109 [~~Texas Civil Statutes, Article 46c-6, Subdivision~~

1 ~~10~~], the staff, with aviation advisory committee advice, shall
2 prepare and present for the commission's adoption:

3 (1) an Aviation Facilities Development Program,
4 namely, the Texas Airport System Plan (TASP), identifying the
5 aviation facilities requirements, locations, timing, eligibility
6 for funding, and the investment necessary for a statewide
7 airport system that, for the least practicable cost, will
8 provide for the state's air transportation needs;

9 (2) a method for determining priorities among
10 locations and projects eligible to receive financial assistance;
11 and

12 (3) annually, a multi-year CIP identifying projects to
13 be considered for financial assistance.

14 (b) The division will periodically review the programs and
15 priorities required by subsection (a)(1)-(3) of this section to
16 determine the need for their revision. The multi-year CIP shall
17 be the basis for allocation of financial assistance.

18

19 §30.205. Eligibility for Financial Assistance.

20 (a) Political subdivisions. Any city, town, county,
21 community, or other governmental entity in the State of Texas is
22 eligible to be included in the Texas Airport System Plan for
23 financial assistance. Eligibility for federal financial
24 assistance shall be as determined by the Federal Aviation
25 Administration.

1 (b) State agencies. Texas state agencies with governing
2 boards authorized to operate airports are also eligible for
3 state financial aid under the program. Eligibility for federal
4 financial assistance shall be as determined by the Federal
5 Aviation Administration.

6 (c) Texas Airport System Plan airports. Only projects at
7 airports included in the Texas Airport System Plan, as adopted
8 and amended by the commission, shall be eligible for state
9 financial assistance under Transportation Code, Chapter 21,
10 Subchapter C [~~the Act~~].

11 (d) Hazard zoning. No project may be considered for a
12 grant or loan where the sponsor has not adopted and enforced
13 airport hazard zoning for the airport in a form acceptable to
14 the division. Upon showing of good cause, the director may
15 recommend to the commission approval of a project, contingent
16 upon the sponsor's adoption of acceptable hazard zoning.

17

18 §30.214. Grant and Loan Agreement Payments.

19 (a) Grant payments made under APPA's in which the
20 department is not named as the sponsor's agent, and loan
21 payments, may be authorized upon application to the department.
22 Such payments will be in proportion to the amount of the project
23 satisfactorily completed at the time of the payment application.
24 No more than 90% of the total loan or grant will be paid prior
25 to the completion of the project and enactment of airport hazard

1 zoning. The last 10% of the loan or grant amount will be paid
2 only after the staff has inspected and approved the completed
3 project. No loan or grant payment will be made until:

4 (1) creation by the sponsor of a special airport fund
5 as required by Transportation Code, §22.054 [~~the Municipal~~
6 ~~Airports Act, Texas Civil Statutes, Article 46d-1 et seq.~~], into
7 which all revenues derived from all airport operations are to be
8 deposited, and approval by the department of the sponsor's
9 resolution or order creating the fund; and

10 (2) passage of an airport hazard zoning
11 ordinance/order approved by the department.

12 (b) For loan agreements, proof is made to the department of
13 property damage insurance for the project, naming the Texas
14 Department of Transportation Loan Fund as beneficiary in the
15 total amount of the loan, both principal and interest.