

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

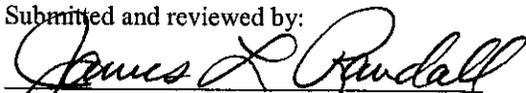
The Texas Transportation Commission (commission) finds it necessary to propose the repeal of Title 16, Chapter 5, Rail Safety Rules and propose Title 43, Chapter 7, new Subchapter D, §§7.30–7.42, relating to rail safety, to be codified under Title 43, Texas Administrative Code, Part 1.

The preambles and the proposed repeals and new sections, attached to this minute order as Exhibits A - F, are incorporated by reference as though set forth at length verbatim in this minute order.

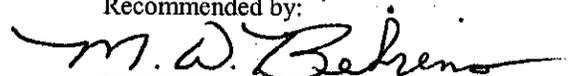
IT IS THEREFORE ORDERED by the commission that the repeal of Title 16, Chapter 5, Rail Safety Rules and Title 43, Chapter 7, new Subchapter D, §§7.30–7.41, are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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:


Director, Transportation Planning
and Programming Division

Recommended by:


Executive Director

110228 SEP 29 05

Minute
Number

Date
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 Title 43, Chapter 7, new Subchapter D, §§7.30 - 7.42, concerning
4 rail safety.

5

6 EXPLANATION OF PROPOSED SECTIONS

7 House Bill 2702, 79th Legislature, Regular Session, 2005,
8 transferred all powers and duties of the Railroad Commission
9 that relate primarily to railroads and the regulation of
10 railroads, to the department effective October 1, 2005. Under
11 the new law the department is authorized to perform any act and
12 issue any rules and orders as permitted by the Federal Railroad
13 Safety Act of 1970 (49 U.S.C. 20101 et seq.). The department
14 proposes the adoption of rules concerning railroad safety in
15 order to implement the law. In a separate proposal, the
16 department is proposing the repeal of the Railroad Commission's
17 rules on rail safety. The proposed rules generally follow the
18 rules of the Railroad Commission, but identify the department as
19 the regulatory entity. The proposed rules also contain changes
20 to organization and wording that are meant to make the rules
21 easier to read. For example, the department has added headings
22 to subsections of some rules. Other changes, as compared to the
23 rules of the Railroad Commission, are described later in this
24 preamble. When this preamble refers to the rules of the
25 Railroad Commission it means that agency's rail safety rules

1 that the department is proposing for repeal in a simultaneous
2 rule proposal.

3
4 The department does not propose rules similar to all of the
5 Railroad Commission's rules. There is no proposed rule similar
6 to: §5.101 (concerning statement of philosophy), §5.105
7 (concerning statement of goals), §5.110 (concerning statement of
8 objectives or policies), and §5.115 (concerning criteria for
9 screening and ranking alternatives to abandonment). The
10 Railroad Commission rules, while in a subchapter concerning rail
11 safety, related to rail planning. If federal funds become
12 available, the department believes it could qualify for federal
13 assistance for local rail service under 49 C.F.R. part 266 by
14 showing it has the required state rail plan. The department
15 does not believe these rules are necessary for that purpose.
16 Finally, the department proposes no similar rule entitled
17 "severability clause" because it is not needed.

18
19 New §7.30, Definitions, defines for purposes of the subchapter,
20 division director, FRA, and railroad. The definition of
21 railroad is the same as in the Federal Railroad Safety Act.

22
23 New §7.31, Safety Requirements, specifies the applicable
24 railroad safety requirements. Section 7.31(a) specifies that
25 any person, association, private corporation, public

1 corporation, or any other entity, that is the owner or operator
2 of a railroad is responsible for compliance with the rules in
3 the subchapter. Section 7.31(b) sets forth the applicable laws,
4 and federal regulations adopted by reference. The list of
5 adopted regulations is the same as those in the rules of the
6 Railroad Commission, plus six additional federal areas have been
7 added to update the list.

8
9 New §7.32, Filing Requirements, concerns the filing of contact
10 information for a railroad's principal operating officer and
11 railroad dispatcher. This will provide the department with
12 basic information about how to contact a railroad in an
13 emergency. The remainder of the requirements are the same as
14 those in the rules of the Railroad Commission, with the
15 exception that the information shall be filed only when the
16 department requests it. Inspectors desire the most up to date
17 information when they prepare to conduct an inspection, and
18 railroads routinely provide the information upon request to
19 them.

20
21 New §7.33, Reports of Accidents/Incidents, concerns the
22 requirement to report accidents and incidents. The rule adopts
23 by reference 49 C.F.R. §225.9, so that when a railroad gives a
24 telephonic report to the National Response Center the railroad
25 shall also give a telephonic report to the department in the

1 same manner and following the requirements. The rule also
2 includes the accidents/incidents that must be reported under the
3 rules of the Railroad Commission. Concerning written reports,
4 the requirements are the same as in the rules of the Railroad
5 Commission, with the exception that the information shall be
6 filed only when the department requests it. Inspectors desire
7 the most up to date information and railroads routinely provide
8 the information upon request to them.

9
10 New §7.34, Hazardous Materials - Telephonic Reports of
11 Incidents, concerns the requirements to report accidents and
12 incidents concerning hazardous materials. The rule adopts by
13 reference 49 C.F.R. §171.15, so that when a railroad gives a
14 telephonic report to the National Response Center the railroad
15 shall also give a telephonic report to the department in the
16 same manner and following the same requirements. Adopting the
17 federal rule will ensure the department is aware of the
18 incidents that are significant. Inspectors found that the rules
19 of the Railroad Commission, which required a report when an
20 incident "involved" a hazardous material, would lead to
21 railroads reporting incidents that had only a tangential
22 relation to hazardous materials issues.

23
24 New §7.35, Hazardous Materials - Written Reports, concerns the
25 reporting of certain hazardous materials information to the

1 department regarding the transportation of hazardous materials.
2 The requirements are the same as those in the rules of the
3 Railroad Commission, with the exception that the proposed rules
4 do not contain requirements to report car classification and
5 peak density season. Those requirements are not in Texas Civil
6 Statutes, Article 6419c, and are not needed. Also, the
7 department deleted a subsection concerning obsolete effective
8 dates. New §7.35(g) contains a reference to the department's
9 procedure for processing a request for variance. The proposed
10 rule substitutes a new, more specific, standard by which to
11 judge a request for variance. Under the proposed rule a request
12 for variance may be granted, provided the department will
13 continue to receive information concerning the transportation of
14 hazardous materials needed by local emergency planning agencies
15 and needed to efficiently allocate the department's inspection
16 resources. This standard will ensure the objective of the rule
17 will be obtained even if a variance is granted.

18
19 New §7.36, Clearances of Structures Over and Alongside Railway
20 Tracks, specifies the minimum required clearances between the
21 track and various specified objects. With the exception of
22 grammatical changes, the requirements are the same as those in
23 the rules of the Railroad Commission.

24
25 New §7.37, Visual Obstruction at Public Grade Crossing,

1 specifies requirements to maintain a clear line-of-site adequate
2 to protect vehicle occupants when crossing an unprotected grade
3 crossing. The new rule contains an exemption for permanent
4 buildings that existed at the time of the effective date of the
5 rule. To make the "effective date" remain unchanged, the
6 department has added the date June 26, 1986, which was the
7 effective date of the Railroad Commission's original version of
8 the rule (11 TexReg 2741). Similar to the rules of the Railroad
9 Commission, the proposed rule allows for the granting of a
10 variance. The proposed rule adds a reference to the
11 department's procedure for processing a request for variance,
12 which is discussed below. The proposed rule also substitutes a
13 new, more specific, standard by which to judge a request for
14 variance. The standard, that a request for variance may be
15 granted provided there remains a clear line-of-site adequate to
16 provide for the safe passage of vehicles, ensures the objective
17 of the rule will be obtained even if a variance is granted.

18
19 New §7.38, Wayside Detector Map, List, or Chart, concerns the
20 reporting of certain wayside detector information to the
21 department. The requirements are the same as those in the rules
22 of the Railroad Commission, with the exception that the
23 information shall be filed only when the department requests it.
24 Inspectors desire the most up to date information when they
25 prepare to conduct an inspection, and railroads routinely

1 provide the information upon request to them.

2

3 New §7.39, Right to Inspect Railroad Property, concerns the
4 right of department personnel to enter the property of a
5 railroad. It is essential for department personnel to be able
6 to enter the property of a railroad for purposes of
7 investigations, surveillance, and inspection of records, in
8 order to carry out the department's powers and duties related to
9 railroad safety. The requirements are the same as those in the
10 rules of the Railroad Commission.

11

12 New §7.40, Enforcement of Safety Requirements, concerns the
13 enforcement of violations of Subchapter D, whether in a federal
14 enforcement action or in a state enforcement action. The
15 requirements are the same as those in the rules of the Railroad
16 Commission.

17

18 New §7.41, Rail Safety Program Fee, concerns the department's
19 calculation and collection of the fees authorized under Texas
20 Civil Statutes, Article 6448a, to administer the department's
21 rail safety program. The requirements are the same as those in
22 the rules of the Railroad Commission. However, the proposed
23 rule does not include the deposit of fees to the general revenue
24 fund, because it is not needed. In new §7.41(i), the department
25 proposes a new procedure by which a railroad may request an

1 administrative review (described in new §7.42) of the department
2 staff's calculation of the annual fee.

3
4 New §7.42, Administrative Review. The department proposes new
5 §7.42 to allow a railroad, in specified circumstances, to apply
6 for administrative review of a decision under Subchapter D.
7 Proposed §7.35 (concerning Hazardous Materials - Written
8 Reports), and §7.37 (concerning Visual Obstructions at Public
9 Grade Crossings), state that a railroad may apply for a variance
10 from the requirements of those rules according to the procedure
11 in this section. The Railroad Commission also allowed for the
12 granting of variances to the requirements of its rules. The
13 department proposes to add another instance in the rules when a
14 railroad may request administrative review. Proposed §7.41
15 (concerning Rail Safety Program Fee) authorizes administrative
16 review of the department's calculation of the annual fee. The
17 department proposes to adopt a procedure to process the
18 requests. The executive director, or his designee not below
19 division director, shall make the decision on an application.
20 Section 7.42(c) specifies the administrative review is not a
21 contested case hearing (under the Administrative Procedure Act,
22 Government Code, Chapter 2001) and not subject to appeal because
23 no statute grants such rights.

24

1 FISCAL NOTE

2 James Bass, Chief Financial Officer, has determined that for
3 each of the first five years the new sections as proposed are in
4 effect, there will be no fiscal implications for state or local
5 governments as a result of enforcing or administering the new
6 sections. There are no anticipated economic costs for persons
7 required to comply with the new sections as proposed.

8

9 The proposed rules will implement the legislature's transfer of
10 the railroad safety program from the Railroad Commission to the
11 department. The law: (1) transfers to the department the
12 employees of the Railroad Commission that work primarily on
13 railroad safety; and (2) gives the department the authority to
14 collect rail safety program fees but does not change the method
15 of calculating the amount of fees. The proposed rules will
16 continue the state's railroad safety program in its current
17 form.

18

19 James L. Randall, P.E., Director, Transportation Planning and
20 Programming, has certified that there will be no significant
21 impact on local economies or overall employment as a result of
22 enforcing or administering the new sections.

23

24 PUBLIC BENEFIT

25 Mr. Randall has also determined that for each year of the first

1 five years the new sections are in effect, the public benefit
2 anticipated as a result of enforcing or administering the new
3 sections will be the consolidation of the state's oversight of
4 railroads into one state agency. The department already has
5 authority to make statewide transportation plans, including rail
6 plans, and to own and operate rail facilities. The state will
7 benefit from the consolidation of this expertise, including rail
8 safety, into one agency. The economic cost to railroads
9 regulated under the proposed rules will not be significant. The
10 proposed rules primarily adopt by reference federal railroad
11 safety standards that a railroad must already comply with. The
12 proposed rules also implement the transfer of the state's
13 railroad safety program from one state agency to another, which
14 should not in itself have an economic impact on railroads.
15 There will be no adverse economic effect on small businesses.

16

17 TAKINGS IMPACT ASSESSMENT

18 The department has prepared an analysis of the applicability of
19 the Private Real Property Rights Preservation Act, Texas
20 Government Code, Chapter 2007, and concluded the rulemaking is
21 within an exception to the applicability of the act.

22

23 PUBLIC HEARING

24 Pursuant to the Administrative Procedure Act, Government Code,
25 Chapter 2001, the Texas Department of Transportation will

1 conduct a public hearing to receive comments concerning the
2 proposed rules. The public hearing will be held at 9:00 a.m. on
3 October 21, 2005, in the first floor hearing room of the Dewitt
4 C. Greer State Highway Building, 125 East 11th Street, Austin,
5 Texas and will be conducted in accordance with the procedures
6 specified in 43 TAC §1.5. Those desiring to make comments or
7 presentations may register starting at 8:00 a.m. Any interested
8 persons may appear and offer comments, either orally or in
9 writing; however, questioning of those making presentations will
10 be reserved exclusively to the presiding officer as may be
11 necessary to ensure a complete record. While any person with
12 pertinent comments will be granted an opportunity to present
13 them during the course of the hearing, the presiding officer
14 reserves the right to restrict testimony in terms of time and
15 repetitive content. Organizations, associations, or groups are
16 encouraged to present their commonly held views and identical or
17 similar comments through a representative member when possible.
18 Comments on the proposed text should include appropriate
19 citations to sections, subsections, paragraphs, etc. for proper
20 reference. Any suggestions or requests for alternative language
21 or other revisions to the proposed text should be submitted in
22 written form. Presentations must remain pertinent to the issues
23 being discussed. A person may not assign a portion of his or
24 her time to another speaker. Persons with disabilities who plan
25 to attend this meeting and who may need auxiliary aids or

1 services such as interpreters for persons who are deaf or
2 hearing impaired, readers, large print or Braille, are requested
3 to contact Randall Dillard, Director, Public Information Office,
4 125 East 11th Street, Austin, Texas 78701-2483, 512/463-8588 at
5 least two working days prior to the hearing so that appropriate
6 services can be provided.

7

8 SUBMITTAL OF COMMENTS

9 Written comments on the proposed new sections may be submitted
10 to James L. Randall, P.E., Director, Transportation Planning and
11 Programming, Texas Department of Transportation, 125 East 11th
12 Street, Austin, Texas 78701-2483. The deadline for receipt of
13 comments is 5:00 p.m. on November 14, 2005.

14

15 STATUTORY AUTHORITY

16 The new sections are proposed under Transportation Code,
17 §201.101, which provides the Texas Transportation Commission
18 with the authority to establish rules for the conduct of the
19 work of the department, and more specifically, Texas Civil
20 Statutes, Articles 6445 and 6448a, which provide the department
21 with the authority to adopt regulations and rules to perform its
22 duties under those articles.

23

24 CROSS REFERENCE TO STATUTE

25 Texas Civil Statutes, Articles 6419c, 6445, 6446, 6448a, 6448b,

- 1 6464, 6492a, 6506, 6507, and 6519.

1 SUBCHAPTER D. RAIL SAFETY

2 §7.30. Definitions.

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

6 (1) Division director--the director of the department's
7 Transportation Planning and Programming Division.

8 (2) FRA--The Federal Railroad Administration.

9 (3) Railroad--any form of nonhighway ground transportation
10 that runs on rails or electromagnetic guideways.

11 (A) Railroad includes:

12 (i) commuter or other short-haul railroad passenger
13 service in a metropolitan or suburban area; and

14 (ii) high speed ground transportation systems that
15 connect metropolitan areas, without regard to whether those
16 systems use new technologies not associated with traditional
17 railroads;

18 (B) Railroad does not include rapid transit operations in
19 an urban area that are not connected to the general railroad
20 system of transportation.

21

22 §7.31. Safety Requirements.

23 (a) Applicability. A person, association, private

1 corporation, public corporation, or any other entity that owns
2 or operates a railroad shall comply with the requirements of
3 this subchapter.

4 (b) Governing statutes. Railroads operating within the
5 state of Texas shall comply with the safety requirements
6 contained in or adopted under the following statutes:

7 (1) 49 United States Code, Subtitle III, §§5101, et seq.;

8 (2) 49 United States Code, Subtitle V, §§20101, et seq.;

9 (3) Texas Civil Statutes, Article 6448a; and

10 (4) Texas Civil Statutes, Article 6492a.

11 (c) Federal regulations adopted by reference. The
12 following federal railroad safety requirements, as they exist on
13 the effective date of this rule, are adopted by the department
14 as the minimum railroad safety requirements, and all railroads
15 operating within the state of Texas shall comply with them:

16 (1) transportation workplace drug testing programs,
17 codified at 49 Code of Federal Regulations, Part 40;

18 (2) hazardous materials regulations, codified at 49 Code
19 of Federal Regulations, Parts 171-179;

20 (3) track safety standards, codified at 49 Code of
21 Federal Regulations, Part 213;

22 (4) bridge-worker safety standards, codified at 49 Code
23 of Federal Regulations, Part 214;

1 (5) freight car safety standards, codified at 49 Code of
2 Federal Regulations, Part 215;

3 (6) special notice and emergency order procedures,
4 codified at 49 Code of Federal Regulations, Part 216;

5 (7) federal operating practice regulations, codified at
6 49 Code of Federal Regulations, Parts 217, 218, 220, 221, 225,
7 and 228;

8 (8) control of alcohol and drug use, codified at 49 Code
9 of Federal Regulations, Part 219;

10 (9) locomotive horns at public highway-rail crossings
11 regulations, codified at 49 Code of Federal Regulations, Part
12 222;

13 (10) safety glazing standards, codified at 49 Code of
14 Federal Regulations, Part 223;

15 (11) reflectorization of rail freight rolling stock
16 regulations, codified at 49 Code of Federal Regulations, Part
17 224;

18 (12) locomotive safety standards, codified at 49 Code of
19 Federal Regulations, Part 229;

20 (13) steam locomotive inspection and maintenance
21 standards regulations, codified at 49 Code of Federal
22 Regulations, Part 230;

23 (14) safety appliance standards, codified at 49 Code of

1 Federal Regulations, Part 231;

2 (15) power brake standards, codified at 49 Code of

3 Federal Regulations, Part 232;

4 (16) rules, standards, and instructions for railroad

5 signal systems, codified at 49 Code of Federal Regulations, Part

6 236;

7 (17) passenger equipment safety standards regulations,

8 codified at 49 Code of Federal Regulations, Part 238;

9 (18) passenger train emergency preparedness regulations,

10 codified at 49 Code of Federal Regulations, Part 239; and

11 (19) qualifications and certification of locomotive

12 engineers, codified at 49 Code of Federal Regulations, Part 240.

13

14 §7.32. Filing Requirements.

15 (a) A railroad shall file with the department:

16 (1) the name, address, and telephone number of the

17 principal operating officer in Texas;

18 (2) a primary and secondary telephone number, which are

19 manned 24 hours per day, for the railroad dispatcher responsible

20 for train operations in Texas;

21 (b) When the department makes a written request, a railroad

22 shall file with the department:

23 (1) its code of operating rules, timetables, and

NOTE: Additions underlined

Deletions in []

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Exhibit B

1 timetable special instructions as follows:

2 (A) the operating rules, timetables, and timetable
3 special instructions; and

4 (B) each amendment to the railroad's code of operating
5 rules, each new timetable, and each new timetable special
6 instruction;

7 (2) a copy of monthly reports of excess service filed
8 with the FRA under 49 C.F.R. §228.19;

9 (3) a copy of its program for periodic conduct of
10 operational tests and inspections filed with the FRA under 49
11 C.F.R. §217.9; and

12 (4) a copy of its program for periodic instruction of its
13 employees filed with the FRA under 49 C.F.R. §217.11.

14 (c) Filings required by subsection (b)(1)-(4) of this
15 section may include only information pertaining to railroad
16 operations conducted in the state of Texas.

17 (d) Filings required by this section shall be submitted to:
18 Multimodal Section, Transportation Planning and Programming
19 Division, Texas Department of Transportation, P. O. Box 149217,
20 Austin, Texas 78714-9217.

21

22 §7.33. Reports of Accidents/Incidents.

23 (a) Telephonic reports of certain accidents/incidents.

1 (1) A railroad shall give immediate telephonic notice to
2 the department of accidents/incidents and other events by
3 calling the department's Transportation Planning and Programming
4 Division at (800) 440-0376. Except as provided in paragraph (2)
5 of this subsection, a railroad shall give reports to the
6 department in the same manner and following the same
7 requirements as the railroad shall give reports to the National
8 Response Center under 49 C.F.R. §225.9.

9 (2) In addition to giving the department telephonic
10 notice of the accidents/incidents and other events described in
11 49 C.F.R. §225.9, a railroad shall give telephonic notice of
12 accidents/incidents which:

- 13 (A) result in the death of one or more persons;
14 (B) result in the injury of two or more persons;
15 (C) involve a fire or explosion; or
16 (D) involve a passenger train.

17 (b) Written reports. When the department makes a written
18 request, a railroad shall furnish the department with a copy of
19 an accident/incident report filed with the FRA under 49 C.F.R.
20 Part 225, within 30 days after expiration of the month during
21 which the accident/incident occurred. Only copies of reports
22 that concern accidents/incidents occurring in the state of Texas
23 shall be filed with the department.

1
2 §7.34. Hazardous Materials - Telephonic Reports of Incidents.
3 A railroad shall give immediate telephonic notice to the
4 department of hazardous materials incidents by calling the
5 department's Transportation Planning and Programming Division at
6 (800) 440-0376. Except as provided in the succeeding sentence,
7 a railroad shall give reports to the department in the same
8 manner and following the same requirements as the railroad shall
9 give reports to the National Response Center under 49 C.F.R.

10 §171.15. A railroad shall give telephonic notice of only those
11 accidents/incidents which involve the operation of railroad on-
12 track equipment (standing or moving).

13
14 §7.35. Hazardous Materials - Written Reports.

15 (a) Policy. It is the policy of the department to provide
16 information regarding the type and quantity of hazardous
17 materials transported within the state to local emergency
18 planning agencies in areas containing reported railroad
19 operations. It is also department policy to collect such
20 information in order for the department to more efficiently
21 allocate hazardous materials inspection resources. To
22 accomplish these policies, each railroad that transports a
23 hazardous material through the state is required to adhere to

1 certain reporting requirements relating to the transportation of
2 hazardous materials.

3 (b) Definitions. The following words and terms, when used
4 in this section, shall have the following meanings, unless the
5 context clearly indicates otherwise.

6 (1) Emergency management program--An emergency management
7 program established under Government Code, Chapter 418,
8 Subchapter E.

9 (2) Hazardous material--Any substance transported by a
10 railroad which is included within the requirements of the
11 railcar placarding regulations adopted by the United States
12 Department of Transportation and published in the Code of
13 Federal Regulations, Title 49.

14 (3) Railroad line segment--A length of railroad line over
15 which hazardous materials are transported between two or more
16 municipalities within the state that are also identified as
17 stations on a current railroad timetable. A line segment will
18 terminate at the nearest municipality where the frequency of
19 cars-per-year transporting hazardous materials changes from one
20 category, as defined in subsection (d)(2) of this section, to
21 another.

22 (4) Reporting year--Calendar year (January 1-December 31)
23 preceding the year the report is to be submitted.

1 (c) Reporting requirements. A railroad that transports
2 hazardous materials in or through the state is required to file
3 the following information with the department.

4 (1) When the department makes a written request, a copy
5 of the report of each hazardous materials incident occurring
6 within the state of Texas that the railroad company files with
7 the United States Department of Transportation under 49 C.F.R.
8 §171.16;

9 (2) a map delineating the geographical limits of the
10 railroad operating divisions or districts and the principal
11 operating officer for the railroad in each operating division or
12 district in the state;

13 (3) a primary and secondary telephone number, which are
14 manned 24 hours per day, for the railroad dispatcher responsible
15 for train operations in each operating division or district in
16 the state;

17 (4) the name and address of the railroad employee in
18 charge of managing hazardous materials transportation for the
19 railroad; and

20 (5) a list of each type of hazardous material (sorted by
21 hazard class and quantity) transported over each railroad line
22 segment owned, leased, or operated by the railroad in the state
23 during the reporting year.

1 (d) Type of hazardous material.

2 (1) The type of hazardous material transported shall be
3 identified by hazard class as defined by 49 Code of Federal
4 Regulations, Part 173, or 40 Code of Federal Regulations, Part
5 261.

6 (2) The quantity of hazardous materials transported shall
7 be classified into the following five categories depending on
8 the number of shipments of hazardous materials transported in a
9 year:

10 (A) more than 10,000 cars-per-year;

11 (B) 5,001 to 10,000 cars-per-year;

12 (C) 1,001 to 5,000 cars-per-year;

13 (D) 501 to 1,000 cars-per-year;

14 (E) 51 to 500 cars-per-year;

15 (F) one to 50 cars-per-year.

16 (3) Texas counties traversed by each railroad line
17 segment shall be identified.

18 (4) The applicable railroad operating division or
19 district shall be identified for each railroad line segment. A
20 railroad line segment shall not traverse more than one railroad
21 operating division or district.

22 (e) Reporting dates. Reports required by subsection

23 (c) (2)-(5) of this section shall be filed with the department

1 not later than April 1 of each year.

2 (f) Forms. Reporting shall be made on a form or a copy as
3 prescribed by the department.

4 (g) Variance. A railroad may request that the department
5 grant a variance from the requirements of this section. The
6 department shall process the application in accordance with
7 §7.42 of this subchapter (relating to Administrative Review).
8 The department may approve the variance only if the department
9 will continue to receive information concerning the
10 transportation of hazardous materials needed by local emergency
11 planning agencies and needed to efficiently allocate the
12 department's inspection resources. Any exception granted by the
13 department shall be valid for a period not to exceed two years.

14
15 §7.36. Clearances of Structures Over and Alongside Railway
16 Tracks.

17 (a) Mail cranes, turn tables, cattle guards, icing racks
18 and coal chutes. Mail cranes, turn tables, cattle guards, icing
19 racks, and coal chutes are exempt from provisions of the Texas
20 Clearance Law, Texas Civil Statutes, Article 6559(a)-(f).

21 (b) Water cranes and oil cranes. Present standards for
22 water cranes and oil cranes may be maintained, provided there is
23 a minimum clearance of seven feet from the center line of the

1 track.

2 (c) Through truss and girder bridges.

3 (1) The minimum horizontal clearance in bridges shall be
4 seven feet six inches from the center line of the track, over a
5 distance between a point four feet above the top of the rail and
6 a point 17 feet above the top of the rail.

7 (2) Upper diagonal bracing in bridges shall not encroach
8 within a line extending from a point seven feet six inches from
9 the center line of the track at a height of 17 feet above the
10 top of the rail to a point three feet from the center line of
11 the track, at a height of 22 feet above the top of the rail.

12 (3) Lower diagonal bracing in bridges and walkway
13 railings on bridges shall not encroach within a line extending
14 from a point seven feet six inches outside of the center line of
15 the track at a height of four feet above the top of the rail to
16 a point five feet nine inches outside of the center line of the
17 track at the top of the rail elevation.

18 (d) Switch stands interlocking plants.

19 (1) A switch stand or dwarf signal shall have a minimum
20 horizontal clearance of five feet six inches from the center of
21 the track, for the area two feet six inches or less above the
22 top of the rail.

23 (2) Interlocking apparatus not exceeding six inches above

1 the top of the rail shall have a minimum horizontal clearance of
2 four feet from the center of the track.

3 (e) Passenger train sheds and platform. Passenger train
4 sheds where only passenger equipment is handled are exempt from
5 the requirements of this section. The minimum horizontal
6 clearance between the center line of the track and the passenger
7 station platform, one foot or less in height above the top of
8 the rail, shall be four feet six inches.

9 (f) Round house and shop building doors. The provisions of
10 the Texas Clearance Law, Texas Civil Statutes, Article 6559(a)-
11 (f), shall not apply to engine houses or buildings into which
12 locomotives or cars are moved for terminal inspection,
13 attention, or repairs.

14 (g) Stock yards and loading chutes. Minimum horizontal
15 clearance for stock yards and loading chutes shall be six feet
16 six inches, except where such structures are constructed on main
17 line tracks.

18
19 §7.37. Visual Obstructions at Public Grade Crossings.

20 (a) Definitions. The following words or terms, when used
21 in this section, shall have the following meanings, unless the
22 context clearly indicates otherwise.

23 (1) Unprotected public grade crossing--A crossing or

1 intersection of railroad track by a publicly maintained road or
2 highway at which there are no electronic devices (such as
3 flashers or gates) to provide an active warning to a motorist of
4 the approach of a train to the crossing.

5 (2) Vegetation--Grass, bushes, shrubbery, and trees
6 having a trunk diameter of six inches or less.

7 (b) Standing equipment. No railroad shall cause or allow
8 trains, railway cars, or equipment to stand less than 250 feet
9 from the centerline of any unprotected public grade crossing
10 unless a closer distance cannot be avoided.

11 (c) Vegetation. At unprotected public grade crossings,
12 each railroad shall control vegetation on its right-of-way
13 (except for the roadbed and areas immediately adjacent to the
14 roadbed) for a distance of 250 feet each way from the centerline
15 of the crossings, so that vegetation does not block the
16 vehicular highway traffic's view of approaching trains. The 250
17 feet shall be measured from the point where the centerline of
18 the railroad crosses the centerline of the public road. Where
19 the right-of-way is fenced, this subsection shall be deemed
20 complied with if vegetation is controlled up to two feet from
21 the fence.

22 (d) Permanent structures. At unprotected public grade
23 crossings, each railroad shall keep its right-of-way clear of

1 unnecessary permanent obstructions, such as billboards and signs
2 that are not authorized by the railroad and that are not
3 required for the safe operation of the railroad, for a distance
4 of 250 feet each way from the crossing so that the obstructions
5 do not block the vehicular highway traffic's view of approaching
6 trains. Billboards and signs that are legally permitted by the
7 state or a political subdivision are not unnecessary permanent
8 obstructions, so long as they do not block the vehicular highway
9 traffic's view of approaching trains. Permanent buildings, such
10 as warehouses and equipment facilities, which existed prior to
11 June 26, 1986, are exempt from the requirements of this
12 subsection. The 250 feet shall be measured from the point where
13 the centerline of the railroad crosses the centerline of the
14 public road.

15 (e) Variance. A railroad may apply for a variance from the
16 requirements of subsections (c) and (d) of this section on a
17 form to be prescribed by the department. The department shall
18 process the application in accordance with §7.42 of this
19 subchapter (relating to Administrative Review). The department
20 may approve an application, provided there remains a clear line-
21 of-site adequate to provide for the safe passage of vehicles.

22

23 §7.38. Wayside Detector Map, List, or Chart.

1 (a) When the department requests in writing, a railroad
2 shall file a map, list, or chart with the department indicating
3 the current locations within the state of Texas of the following
4 wayside detectors:

- 5 (1) hot box indicators;
6 (2) dragging equipment detectors;
7 (3) high water indicators;
8 (4) shifted load detectors; and
9 (5) other wayside detectors.

10 (b) Filings required by this section shall be submitted to:
11 Multimodal Section, Transportation Planning and Programming
12 Division, Texas Department of Transportation, P. O. Box 149217,
13 Austin, Texas 78714-9217.

14
15 §7.39. Right To Inspect Railroad Property. Authorized
16 personnel of the department shall have the right to enter onto
17 the property of any railroad operating within the state of
18 Texas, for the purpose of conducting inspections,
19 investigations, and surveillance of railroad tracks, facilities,
20 equipment, records, and operations in order to determine the
21 railroad's compliance with relevant safety requirements. Any
22 inspection, investigation, or surveillance shall be conducted at
23 a reasonable time and in a reasonable manner.

1

2 §7.40. Enforcement of Safety Requirements.

3 (a) Federal enforcement action. The division director may
4 refer violations of railroad safety requirements adopted under
5 §7.31 of this subchapter (relating to Railroad Safety
6 Requirements) to the FRA with a recommendation that the FRA seek
7 either imposition of civil penalties or an injunction against
8 further railroad safety violations, or both.

9 (b) State enforcement action. The department may, through
10 the attorney general of Texas, bring an action in any court of
11 competent jurisdiction and proper venue, seeking either
12 imposition of a civil penalty or an injunction, or both, against
13 violation of a railroad safety regulation or order issued under
14 the provisions of Texas Civil Statutes, Article 6448a. The
15 department may also, through the attorney general of Texas,
16 bring an action in the United States district court for the
17 judicial district in which the violation occurred or in which
18 the defendant has its principal executive office, seeking either
19 imposition of a civil penalty or an injunction, or both, for a
20 violation of a railroad safety requirement adopted under the
21 provisions of §7.31 of this subchapter, if the division director
22 has requested such action and the FRA has failed to take timely
23 action on a request. FRA action on a request that it seek to

1 impose a civil penalty is timely if, within 60 days after
2 receipt of the request, FRA has either assessed a civil penalty
3 or determined, in writing, that no violation has occurred. FRA
4 action on a request that it seek an injunction against further
5 violation of a rail safety requirement is timely if, within 15
6 days after receipt of the request, the FRA has referred the
7 matter to the United States attorney general for institution of
8 litigation, has undertaken other enforcement action, or has
9 determined, in writing, that no violation has occurred.

10

11 §7.41. Rail Safety Program Fee.

12 (a) Annual fee. Each railroad operating within the state
13 shall pay an annual fee as provided by this section.

14 (b) Definitions. The following terms, when used in this
15 section, shall have the following meanings unless the context
16 clearly indicates otherwise.

17 (1) Gross ton miles:

18 (A) the combined weight of all rail cars and their
19 contents, exclusive of locomotives, multiplied by the number of
20 miles traveled in the state within a calendar year; or

21 (B) if a railroad has reported its calendar year gross
22 ton miles on a Form R-1 filed with the United States Surface
23 Transportation Board (USSTB), that portion of the reported gross

1 ton miles that are for operations within the state.

2 (2) Interchanged--transferred from one railroad to
3 another.

4 (c) Annual report of gross ton miles. Each railroad
5 operating within the state that is required to report its gross
6 ton miles to the USSTB, shall report to the department, no later
7 than July 1 of each calendar year, the railroad's gross ton
8 miles for the preceding calendar year. The report shall be in
9 writing, signed by a duly authorized officer of the railroad,
10 and verified.

11 (d) Annual report of rail cars interchanged. Each railroad
12 operating within the state that is not required to report its
13 gross ton miles to the USSTB, shall report to the department, no
14 later than July 1 of each calendar year, the railroad's total
15 number of rail cars interchanged for the preceding calendar
16 year. The report shall be in writing, signed by a duly
17 authorized officer of the railroad, and verified.

18 (e) Calculation of fee. The department shall determine the
19 annual fee for each railroad operating in the state as follows:

20 (1) for each railroad that is required to report its
21 gross ton miles to the department:

22 (A) each railroad's gross ton miles will be divided by
23 the total gross ton miles of all railroads required to report

1 gross ton miles to the department; and

2 (B) the result will be multiplied by 95% of the amount
3 estimated by the department to be necessary to recover the costs
4 of administering the department's rail safety program for the
5 next state fiscal year;

6 (2) for each railroad that is required to report its
7 total rail cars interchanged to the department:

8 (A) each railroad's total number of rail cars
9 interchanged will be divided by the total number of rail cars
10 interchanged by all railroads required to report rail car
11 interchanges to the department; and

12 (B) the result will be multiplied by 5% of the amount
13 estimated by the department to be necessary to recover the costs
14 of administering the department's rail safety program for the
15 next state fiscal year.

16 (f) Notice of fee due. The department shall, no later than
17 September 1 of each calendar year, notify each railroad
18 operating in the state of the amount of that railroad's fee that
19 is due and payable.

20 (g) Payment of fee. Each railroad operating in the state
21 shall, no later than November 1 of each calendar year, pay its
22 assessed fee to the department. The payment shall be made
23 payable to the state of Texas and shall be considered by the

1 department to be timely made if it is received by the department
2 on or before November 1 of the same calendar year in which
3 notice has been given under subsection (f) of this section, or
4 is sent to the department by first-class United States mail in
5 an envelope properly addressed, stamped, and postmarked on or
6 before November 1 of the same calendar year in which notice has
7 been given under subsection (f) of this section, and received by
8 the department not more than 10 days later. A legible postmark
9 affixed by the United States Postal Service shall be prima facie
10 evidence of the date of mailing.

11 (h) Determination of gross ton miles, total rail cars
12 interchanged. The following requirements apply to railroad
13 reports.

14 (1) If a railroad does not timely report its gross ton
15 miles as required by subsection (c) of this section, the
16 department may make a good-faith estimate of the railroad's
17 gross ton miles and assess the railroad's fee based on that
18 estimate. Failure by a railroad to timely report its gross ton
19 miles constitutes a waiver by the railroad to object to both the
20 department's estimate and the fee based on the estimate.

21 (2) If a railroad does not timely report its total rail
22 cars interchanged as required by subsection (d) of this section,
23 the department may make a good-faith estimate of the railroad's

1 total cars interchanged and assess the railroad's fee based on
2 that estimate. Failure by a railroad to timely report its total
3 cars interchanged constitutes a waiver by the railroad to object
4 to both the department's estimate and the fee based on the
5 estimate.

6 (3) If the department has a rational basis for
7 questioning the gross ton miles or the total rail cars
8 interchanged reported by a railroad, the department may, by
9 letter, fax, or electronic mail, request the railroad provide
10 documentation or other evidence demonstrating how the railroad
11 determined its reported gross ton miles or its reported total
12 rail cars interchanged. The request shall state the
13 department's rational basis for questioning the reported gross
14 ton miles or the reported total rail cars interchanged and shall
15 inform the railroad that it may deliver such documentation or
16 evidence to the department by hand delivery, mail, fax,
17 electronic mail, or private carrier.

18 (4) If the department determines that a railroad has not
19 provided sufficient documentation or other evidence within 14
20 calendar days of the request, the department may, in the case of
21 a railroad required to report its gross ton miles, proceed under
22 paragraph (1) of this subsection as if the railroad did not
23 timely report its gross ton miles or, in the case of a railroad

1 required to report its total rail cars interchanged, proceed
2 under paragraph (2) of this subsection as if the railroad did
3 not timely report its total rail cars interchanged. The
4 department shall inform a railroad whether it accepts the
5 railroad's documentation or evidence or whether it is proceeding
6 under paragraph (1) or (2) of this subsection.

7 (i) Administrative review. A railroad may apply for
8 administrative review of the department's determination under
9 subsection (h) (3) and (4) of this section in accordance with
10 §7.42 of this subchapter (relating to Administrative Review).

11
12 §7.42. Administrative Review.

13 (a) Applicability. This section applies only when another
14 section makes a specific reference to this section.

15 (b) Application.

16 (1) A railroad shall submit an application for
17 administrative review to the following address: Director,
18 Transportation Planning and Programming Division, Texas
19 Department of Transportation, P. O. Box 149217, Austin, Texas
20 78714-9217.

21 (2) The application shall explain the relief requested,
22 all relevant facts, and the legal basis for the relief sought.

23 (3) If the application seeks review of a department

1 decision given to the railroad in writing, the railroad shall
2 submit an application for review no later than 30 days after
3 receipt of the written decision.

4 (c) Decision. The executive director, or his designee not
5 below division director, shall decide whether to grant, grant in
6 part, or deny the application. If an applicant does not provide
7 information sufficient to evaluate the application, the
8 application shall be denied. The applicant is not entitled to a
9 contested case hearing, and there is no right to appeal the
10 decision.

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes the
3 repeal of Title 16, Chapter 5, §5.101, §5.105, §5.110, §5.115,
4 §5.201, §5.205, §5.210, §5.215, §5.220, §5.225, §5.230, §5.235,
5 §5.240, §5.245, and §5.301, concerning rail safety.

6

7 EXPLANATION OF PROPOSED REPEALS

8 House Bill 2702, 79th Legislature, Regular Session, 2005,
9 transferred all powers and duties of the Railroad Commission
10 that relate primarily to railroads and the regulation of
11 railroads, to the department effective October 1, 2005. Under
12 the new law, the department is authorized to perform any act and
13 issue any rules and orders as permitted by the Federal Railroad
14 Safety Act of 1970 (49 U.S.C. 20101 et seq.). The department
15 proposes the repeal of the Railroad Commission's rules
16 concerning railroad safety because by separate action, the rules
17 are being adopted in Title 43 in an amended form.

18

19 FISCAL NOTE

20 James Bass, Chief Financial Officer, has determined that for
21 each of the first five years the repeals as proposed are in
22 effect, there will be no fiscal implications for state or local
23 governments as a result of enforcing or administering the
24 repeals. There are no anticipated economic costs for persons
25 required to comply with the sections as proposed.

1

2 James L. Randall, P.E., Director, Transportation Planning and
3 Programming, has certified that there will be no significant
4 impact on local economies or overall employment as a result of
5 enforcing or administering the repeals.

6

7 PUBLIC BENEFIT

8 Mr. Randall has also determined that for each year of the first
9 five years the sections are in effect, the public benefit
10 anticipated as a result of enforcing or administering the
11 repeals will be the avoidance of confusion. There will be no
12 adverse economic effect on small businesses. Given that the
13 legislature has transferred authority concerning railroad safety
14 to the department, it would be confusing to the public to retain
15 the rules in the Railroad Commission part of the Texas
16 Administrative Code.

17

18 TAKINGS IMPACT ASSESSMENT

19 The department has prepared an analysis of the applicability of
20 the Private Real Property Rights Preservation Act, Texas
21 Government Code, Chapter 2007, and concluded the rulemaking is
22 within an exception to the applicability of the act.

23

24 PUBLIC HEARING

25 Pursuant to the Administrative Procedure Act, Government Code,

1 Chapter 2001, the Texas Department of Transportation will
2 conduct a public hearing to receive comments concerning the
3 proposed rules. The public hearing will be held at 9:00 a.m. on
4 October 21, 2005, in the first floor hearing room of the Dewitt
5 C. Greer State Highway Building, 125 East 11th Street, Austin,
6 Texas and will be conducted in accordance with the procedures
7 specified in 43 TAC §1.5. Those desiring to make comments or
8 presentations may register starting at 8:00 a.m. Any interested
9 persons may appear and offer comments, either orally or in
10 writing; however, questioning of those making presentations will
11 be reserved exclusively to the presiding officer as may be
12 necessary to ensure a complete record. While any person with
13 pertinent comments will be granted an opportunity to present
14 them during the course of the hearing, the presiding officer
15 reserves the right to restrict testimony in terms of time and
16 repetitive content. Organizations, associations, or groups are
17 encouraged to present their commonly held views and identical or
18 similar comments through a representative member when possible.
19 Comments on the proposed text should include appropriate
20 citations to sections, subsections, paragraphs, etc. for proper
21 reference. Any suggestions or requests for alternative language
22 or other revisions to the proposed text should be submitted in
23 written form. Presentations must remain pertinent to the issues
24 being discussed. A person may not assign a portion of his or
25 her time to another speaker. Persons with disabilities who plan

1 to attend this meeting and who may need auxiliary aids or
2 services such as interpreters for persons who are deaf or
3 hearing impaired, readers, large print or Braille, are requested
4 to contact Randall Dillard, Director, Public Information Office,
5 125 East 11th Street, Austin, Texas 78701-2483, 512/463-8588 at
6 least two working days prior to the hearing so that appropriate
7 services can be provided.

8

9 SUBMITTAL OF COMMENTS

10 Written comments on the proposed repeals may be submitted to
11 James L. Randall, P.E., Director, Transportation Planning and
12 Programming, Texas Department of Transportation, 125 East 11th
13 Street, Austin, Texas 78701-2483. The deadline for receipt of
14 comments is 5:00 p.m. on November 14, 2005.

15

16 STATUTORY AUTHORITY

17 The repeals are proposed under Transportation Code, §201.101,
18 which provides the Texas Transportation Commission with the
19 authority to establish rules for the conduct of the work of the
20 department, and more specifically, Texas Civil Statutes,
21 Articles 6445, and 6448a, which provides the department with the
22 authority to adopt regulations and rules to perform its duties
23 under these Articles.

24

25 CROSS REFERENCE TO STATUTE

- 1 Texas Civil Statutes, Articles 6419c, 6445, 6446, 6448a, 6448b,
- 2 6464, 6492a, 6506, 6507, and 6519.

- 1 SUBCHAPTER A. POLICIES, GOALS, AND OBJECTIVES
- 2 §5.101. Statement of Philosophy.
- 3 §5.105. Statement of Goals.
- 4 §5.110. Statement of Objectives of Policies.
- 5 §5.115. Criteria for Screening and Ranking Alternatives to
- 6 Abandonment.

REPEAL

NOTE: Repeals

Exhibit D

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1 SUBCHAPTER B. SAFETY RULES

- 2 \$5.201. Clearances of Structures Over and Alongside Railway
3 Trails.
- 4 \$5.205. Reports of Railroad Accidents/Incidents.
- 5 \$5.210. Railroad Safety Requirements.
- 6 \$5.215. Right to Inspect Rail Property.
- 7 \$5.220. Enforcement of Railroad Safety Requirements.
- 8 \$5.225. Reporting/Filing Requirements.
- 9 \$5.230. Wayside Detector Map, List or Chart.
- 10 \$5.235. Visual Obstructions at Public Grade Crossings.
- 11 \$5.240. Severability Clause.
- 12 \$5.245. Hazardous Materials Reporting Requirements.

NOTE: Repeals

Exhibit E

OGC: 09/02/05 2:21 PM

1 SUBCHAPTER C. RAIL SAFETY PROGRAM

2 §5.301. Rail Safety Program Fee.

REPEAL

NOTE: Repeals

Exhibit F

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