

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

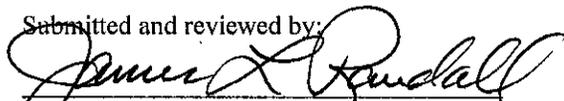
The Texas Transportation Commission (commission) finds it necessary to adopt the repeal of Title 16, Chapter 5, Rail Safety Rules and adopt Title 43, Chapter 7, new Subchapter D, §§7.30–7.42, relating to rail safety, to be codified under Title 43, Texas Administrative Code, Part 1.

The preambles and the adopted 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.

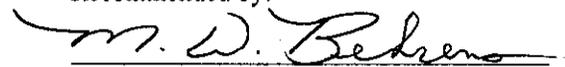
IT IS THEREFORE ORDERED by the commission that the repeal of Title 16, Chapter 5, Rail Safety Rules and Title 43, Chapter 7, new Subchapter D, §§7.30–7.42, are adopted and are authorized for filing with the Office of the Secretary of State.

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, Transportation Planning
and Programming Division

Recommended by:


Executive Director

110348 DEC 15 05

Minute
Number

Date
Passed

1 For example, the department has added headings to subsections of
2 some rules. Other changes, as compared to the rules of the
3 Railroad Commission, are described later in this preamble. When
4 this preamble refers to the rules of the Railroad Commission it
5 means that agency's rail safety rules that the department is
6 repealing in a simultaneous rule adoption.

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

22
23 New \$7.30, Definitions, defines for purposes of the subchapter,
24 division director, FRA, and railroad. The definition of
25 railroad is the same as in the Federal Railroad Safety Act.

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

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

24
25 New §7.33, Reports of Accidents/Incidents, concerns the

1 requirement to report accidents and incidents. The rule adopts
2 by reference 49 C.F.R. §225.9, so that when a railroad gives a
3 telephonic report to the National Response Center the railroad
4 shall also give a telephonic report to the department in the
5 same manner and following the requirements. The rule also
6 includes the accidents/incidents that must be reported under the
7 rules of the Railroad Commission. Concerning written reports,
8 the requirements are the same as in the rules of the Railroad
9 Commission, with the exception that the information shall be
10 filed only when the department requests it. Inspectors desire
11 the most up to date information and railroads routinely provide
12 the information upon request to them.

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

1 relation to hazardous materials issues.

2

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

22

23 New §7.36, Clearances of Structures Over and Alongside Railway
24 Tracks, specifies the minimum required clearances between the
25 track and various specified objects. With the exception of

1 grammatical changes, the requirements are the same as those in
2 the rules of the Railroad Commission.

3
4 New §7.37, Visual Obstruction at Public Grade Crossing,
5 specifies requirements to maintain a clear line-of-site adequate
6 to protect vehicle occupants when crossing an unprotected grade
7 crossing. The new rule contains an exemption for permanent
8 buildings that existed at the time of the effective date of the
9 rule. To make the "effective date" remain unchanged, the
10 department has added the date June 26, 1986, which was the
11 effective date of the Railroad Commission's original version of
12 the rule (11 TexReg 2741). Similar to the rules of the Railroad
13 Commission, the adopted rule allows for the granting of a
14 variance. The adopted rule adds a reference to the department's
15 procedure for processing a request for variance, which is
16 discussed below. The adopted rule also substitutes a new, more
17 specific, standard by which to judge a request for variance.
18 The standard, that a request for variance may be granted
19 provided there remains a clear line-of-site adequate to provide
20 for the safe passage of vehicles, ensures the objective of the
21 rule will be obtained even if a variance is granted

22

23

24 New §7.38, Wayside Detector Map, List, or Chart, concerns the
25 reporting of certain wayside detector information to the

1 department. The requirements are the same as those in the rules
2 of the Railroad Commission, with the exception that the
3 information shall be filed only when the department requests it.
4 Inspectors desire the most up to date information when they
5 prepare to conduct an inspection, and railroads routinely
6 provide the information upon request to them.

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

16
17 New §7.40, Enforcement of Safety Requirements, concerns the
18 enforcement of violations of Subchapter D, whether in a federal
19 enforcement action or in a state enforcement action. The
20 requirements are the same as those in the rules of the Railroad
21 Commission.

22
23 New §7.41, Rail Safety Program Fee, concerns the department's
24 calculation and collection of the fees authorized under Texas
25 Civil Statutes, Article 6448a, to administer the department's

1 rail safety program. The requirements are the same as those in
2 the rules of the Railroad Commission. However, the adopted rule
3 does not include the deposit of fees to the general revenue
4 fund, because it is not needed. In new §7.41(i), the department
5 adopts a new procedure by which a railroad may request an
6 administrative review (described in new §7.42) of the department
7 staff's calculation of the annual fee.

8

9 New §7.42, Administrative Review. The department adopts new
10 §7.42 to allow a railroad, in specified circumstances, to apply
11 for administrative review of a decision under Subchapter D.
12 Adopted §7.35 (concerning Hazardous Materials - Written
13 Reports), and §7.37 (concerning Visual Obstructions at Public
14 Grade Crossings), state that a railroad may apply for a variance
15 from the requirements of those rules according to the procedure
16 in this section. The Railroad Commission also allowed for the
17 granting of variances to the requirements of its rules. The
18 department adds another instance in the rules when a railroad
19 may request administrative review. Adopted §7.41 (concerning
20 Rail Safety Program Fee) authorizes administrative review of the
21 department's calculation of the annual fee. The department
22 adopts a procedure to process the requests. The executive
23 director, or his designee not below division director, shall
24 make the decision on an application. Section 7.42(c) specifies
25 the administrative review is not a contested case hearing (under

1 the Administrative Procedure Act, Government Code, Chapter 2001)
2 and not subject to appeal because no statute grants such rights.

3

4 COMMENTS

5 One comment on the proposed new sections was received. The
6 Burlington Northern Santa Fe Railway commented in support of the
7 rules. The department appreciates the comment.

8

9 The department is adopting §7.36 with changes by adding new
10 §7.36(h) to implement Texas Civil Statutes, Article 6559f, which
11 authorizes the granting of variances to the Texas clearance laws
12 (Texas Civil Statutes, Articles 6559a - f). Section 7.36(h)
13 also authorizes the department, upon granting a variance, to
14 impose conditions to ensure the safety of people and equipment.

15

16 The department is adopting §7.37(e) with changes by adding
17 language authorizing the department, upon granting a variance,
18 to impose conditions to ensure there remains a clear line-of-
19 site adequate to provide for the safe passage of vehicles. The
20 department adds this provision to make explicit what was
21 intended, that it may be necessary to impose conditions as part
22 of an approval in order to guarantee safety.

23

24 STATUTORY AUTHORITY

25 The new sections are adopted under Transportation Code,

1 §201.101, which provides the Texas Transportation Commission
2 with the authority to establish rules for the conduct of the
3 work of the department, and more specifically, Texas Civil
4 Statutes, Articles 6445 and 6448a, which provide the department
5 with the authority to adopt regulations and rules to perform its
6 duties under those articles.

7

8 CROSS REFERENCE TO STATUTE

9 Texas Civil Statutes, Articles 6419c, 6445, 6446, 6448a, 6448b,
10 6464, 6492a, 6506, 6507, and 6519.

SUBCHAPTER D. RAIL SAFETY

§7.30. Definitions.

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

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

(2) FRA--The Federal Railroad Administration.

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

(A) Railroad includes:

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

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

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

§7.31. Safety Requirements.

(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

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 (h) Variance. A railroad may apply for a variance from the
19 requirements of one or both, the Texas Clearance Law, Texas
20 Civil Statutes, Art. 6559(a)-(f), or this section, on a form to
21 be prescribed by the department. The department shall process
22 the application in accordance with §7.42 of this subchapter
23 (relating to Administrative Review). The department may approve

1 an application, provided there remains adequate protection for
2 the safety of people and equipment. The department may require
3 appropriate measures such as posting warning signs and giving
4 notice to railroads that use the facility.

5
6 §7.37. Visual Obstructions at Public Grade Crossings.

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

10 (1) Unprotected public grade crossing--A crossing or
11 intersection of railroad track by a publicly maintained road or
12 highway at which there are no electronic devices (such as
13 flashers or gates) to provide an active warning to a motorist of
14 the approach of a train to the crossing.

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

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

21 (c) Vegetation. At unprotected public grade crossings,
22 each railroad shall control vegetation on its right-of-way
23 (except for the roadbed and areas immediately adjacent to the

1 roadbed) for a distance of 250 feet each way from the centerline
2 of the crossings, so that vegetation does not block the
3 vehicular highway traffic's view of approaching trains. The 250
4 feet shall be measured from the point where the centerline of
5 the railroad crosses the centerline of the public road. Where
6 the right-of-way is fenced, this subsection shall be deemed
7 complied with if vegetation is controlled up to two feet from
8 the fence.

9 (d) Permanent structures. At unprotected public grade
10 crossings, each railroad shall keep its right-of-way clear of
11 unnecessary permanent obstructions, such as billboards and signs
12 that are not authorized by the railroad and that are not
13 required for the safe operation of the railroad, for a distance
14 of 250 feet each way from the crossing so that the obstructions
15 do not block the vehicular highway traffic's view of approaching
16 trains. Billboards and signs that are legally permitted by the
17 state or a political subdivision are not unnecessary permanent
18 obstructions, so long as they do not block the vehicular highway
19 traffic's view of approaching trains. Permanent buildings, such
20 as warehouses and equipment facilities, which existed prior to
21 June 26, 1986, are exempt from the requirements of this
22 subsection. The 250 feet shall be measured from the point where
23 the centerline of the railroad crosses the centerline of the

1 public road.

2 (e) Variance. A railroad may apply for a variance from the
3 requirements of subsections (c) and (d) of this section on a
4 form to be prescribed by the department. The department shall
5 process the application in accordance with §7.42 of this
6 subchapter (relating to Administrative Review). The department
7 may approve an application, provided there remains a clear line-
8 of-site adequate to provide for the safe passage of vehicles.
9 The department may require appropriate measures such as posting
10 warning signs and giving notice to railroads that use the
11 facility.

12

13 §7.38. Wayside Detector Map, List, or Chart.

14 (a) When the department requests in writing, a railroad
15 shall file a map, list, or chart with the department indicating
16 the current locations within the state of Texas of the following
17 wayside detectors:

- 18 (1) hot box indicators;
19 (2) dragging equipment detectors;
20 (3) high water indicators;
21 (4) shifted load detectors; and
22 (5) other wayside detectors.

23 (b) Filings required by this section shall be submitted to:

1 Multimodal Section, Transportation Planning and Programming
2 Division, Texas Department of Transportation, P. O. Box 149217,
3 Austin, Texas 78714-9217.

4
5 §7.39. Right To Inspect Railroad Property. Authorized
6 personnel of the department shall have the right to enter onto
7 the property of any railroad operating within the state of
8 Texas, for the purpose of conducting inspections,
9 investigations, and surveillance of railroad tracks, facilities,
10 equipment, records, and operations in order to determine the
11 railroad's compliance with relevant safety requirements. Any
12 inspection, investigation, or surveillance shall be conducted at
13 a reasonable time and in a reasonable manner.

14
15 §7.40. Enforcement of Safety Requirements.

16 (a) Federal enforcement action. The division director may
17 refer violations of railroad safety requirements adopted under
18 §7.31 of this subchapter (relating to Railroad Safety
19 Requirements) to the FRA with a recommendation that the FRA seek
20 either imposition of civil penalties or an injunction against
21 further railroad safety violations, or both.

22 (b) State enforcement action. The department may, through
23 the attorney general of Texas, bring an action in any court of

1 competent jurisdiction and proper venue, seeking either
2 imposition of a civil penalty or an injunction, or both, against
3 violation of a railroad safety regulation or order issued under
4 the provisions of Texas Civil Statutes, Article 6448a. The
5 department may also, through the attorney general of Texas,
6 bring an action in the United States district court for the
7 judicial district in which the violation occurred or in which
8 the defendant has its principal executive office, seeking either
9 imposition of a civil penalty or an injunction, or both, for a
10 violation of a railroad safety requirement adopted under the
11 provisions of §7.31 of this subchapter, if the division director
12 has requested such action and the FRA has failed to take timely
13 action on a request. FRA action on a request that it seek to
14 impose a civil penalty is timely if, within 60 days after
15 receipt of the request, FRA has either assessed a civil penalty
16 or determined, in writing, that no violation has occurred. FRA
17 action on a request that it seek an injunction against further
18 violation of a rail safety requirement is timely if, within 15
19 days after receipt of the request, the FRA has referred the
20 matter to the United States attorney general for institution of
21 litigation, has undertaken other enforcement action, or has
22 determined, in writing, that no violation has occurred.

23

1 \$7.41. Rail Safety Program Fee.

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

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

7 (1) Gross ton miles:

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

11 (B) if a railroad has reported its calendar year gross
12 ton miles on a Form R-1 filed with the United States Surface
13 Transportation Board (USSTB), that portion of the reported gross
14 ton miles that are for operations within the state.

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

17 (c) Annual report of gross ton miles. Each railroad
18 operating within the state that is required to report its gross
19 ton miles to the USSTB, shall report to the department, no later
20 than July 1 of each calendar year, the railroad's gross ton
21 miles for the preceding calendar year. The report shall be in
22 writing, signed by a duly authorized officer of the railroad,
23 and verified.

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

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

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

12 (A) each railroad's gross ton miles will be divided by
13 the total gross ton miles of all railroads required to report
14 gross ton miles to the department; and

15 (B) the result will be multiplied by 95% of the amount
16 estimated by the department to be necessary to recover the costs
17 of administering the department's rail safety program for the
18 next state fiscal year;

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

21 (A) each railroad's total number of rail cars
22 interchanged will be divided by the total number of rail cars
23 interchanged by all railroads required to report rail car

1 interchanges to the department; and

2 (B) the result will be multiplied by 5% 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 (f) Notice of fee due. The department shall, no later than
7 September 1 of each calendar year, notify each railroad
8 operating in the state of the amount of that railroad's fee that
9 is due and payable.

10 (g) Payment of fee. Each railroad operating in the state
11 shall, no later than November 1 of each calendar year, pay its
12 assessed fee to the department. The payment shall be made
13 payable to the state of Texas and shall be considered by the
14 department to be timely made if it is received by the department
15 on or before November 1 of the same calendar year in which
16 notice has been given under subsection (f) of this section, or
17 is sent to the department by first-class United States mail in
18 an envelope properly addressed, stamped, and postmarked on or
19 before November 1 of the same calendar year in which notice has
20 been given under subsection (f) of this section, and received by
21 the department not more than 10 days later. A legible postmark
22 affixed by the United States Postal Service shall be prima facie
23 evidence of the date of mailing.

1 (h) Determination of gross ton miles, total rail cars
2 interchanged. The following requirements apply to railroad
3 reports.

4 (1) If a railroad does not timely report its gross ton
5 miles as required by subsection (c) of this section, the
6 department may make a good-faith estimate of the railroad's
7 gross ton miles and assess the railroad's fee based on that
8 estimate. Failure by a railroad to timely report its gross ton
9 miles constitutes a waiver by the railroad to object to both the
10 department's estimate and the fee based on the estimate.

11 (2) If a railroad does not timely report its total rail
12 cars interchanged as required by subsection (d) of this section,
13 the department may make a good-faith estimate of the railroad's
14 total cars interchanged and assess the railroad's fee based on
15 that estimate. Failure by a railroad to timely report its total
16 cars interchanged constitutes a waiver by the railroad to object
17 to both the department's estimate and the fee based on the
18 estimate.

19 (3) If the department has a rational basis for
20 questioning the gross ton miles or the total rail cars
21 interchanged reported by a railroad, the department may, by
22 letter, fax, or electronic mail, request the railroad provide
23 documentation or other evidence demonstrating how the railroad

1 determined its reported gross ton miles or its reported total
2 rail cars interchanged. The request shall state the
3 department's rational basis for questioning the reported gross
4 ton miles or the reported total rail cars interchanged and shall
5 inform the railroad that it may deliver such documentation or
6 evidence to the department by hand delivery, mail, fax,
7 electronic mail, or private carrier.

8 (4) If the department determines that a railroad has not
9 provided sufficient documentation or other evidence within 14
10 calendar days of the request, the department may, in the case of
11 a railroad required to report its gross ton miles, proceed under
12 paragraph (1) of this subsection as if the railroad did not
13 timely report its gross ton miles or, in the case of a railroad
14 required to report its total rail cars interchanged, proceed
15 under paragraph (2) of this subsection as if the railroad did
16 not timely report its total rail cars interchanged. The
17 department shall inform a railroad whether it accepts the
18 railroad's documentation or evidence or whether it is proceeding
19 under paragraph (1) or (2) of this subsection.

20 (i) Administrative review. A railroad may apply for
21 administrative review of the department's determination under
22 subsection (h)(3) and (4) of this section in accordance with
23 §7.42 of this subchapter (relating to Administrative Review).

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§7.42. Administrative Review.

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

(b) Application.

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

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

(3) If the application seeks review of a department decision given to the railroad in writing, the railroad shall submit an application for review no later than 30 days after receipt of the written decision.

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

- 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 C. RAIL SAFETY PROGRAM

2 §5.301. Rail Safety Program Fee.

REPEAL

NOTE: Repeals

Exhibit F

OGC: 09/02/05 2:22 PM