

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

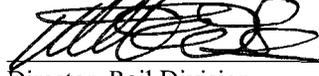
The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §7.1 and §7.13, new §7.13, and amendments to §§7.10-7.12, §§7.20-7.22, and §§7.30-7.42, all relating to rail facilities to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, repeal, and new section attached to this minute order as Exhibits A - E, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

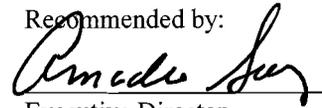
IT IS THEREFORE ORDERED by the commission that the repeal of §7.1 and §7.13, new §7.13, and amendments to §§7.10-7.12, §§7.20-7.22, and §§7.30-7.42 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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, Rail Division

Recommended by:


Executive Director

112493 NOV 18 10

Minute Number Date Passed

Proposed Preamble

1
2 The Texas Department of Transportation (department) proposes the
3 repeal of §7.1, Definitions; Amendments to §7.10, Definitions,
4 §7.11, Comprehensive Development Agreements, §7.12, Construction
5 and Maintenance Contracts, the repeal of §7.13, Leasing of Rail
6 Facilities and new §7.13, Contracts with Rail Operators and
7 Leases; Amendments to §7.20, Definitions, §7.21, Abandonment of
8 Rail Line by Rural Rail Transportation District, §7.22,
9 Acquisition of Abandoned Rail Facilities, §7.30, Definitions,
10 §7.31, Safety Requirements, §7.32, Filing Requirements, §7.33,
11 Reports of Accidents/Incidents, §7.34, Hazardous Materials -
12 Telephonic Reports of Incidents, §7.35, Hazardous Materials -
13 Written Reports, §7.36, Clearances of Structures Over and
14 Alongside Railway Tracks, §7.37, Visual Obstructions at Public
15 Grade Crossings, §7.38, Wayside Detector Map, List, or Chart,
16 §7.39, Right to Inspect Railroad Property, §7.40, Enforcement of
17 Safety Requirements, §7.41, Rail Safety Program Fee, and §7.42,
18 Administrative Review, all concerning rail facilities.

19
20 EXPLANATION OF PROPOSED AMENDMENTS, REPEAL, AND NEW SECTION
21 The department is amending its rules related to rail facilities
22 to correct statutory citations and to make nonsubstantive
23 changes. Additionally, there are several substantive changes
24 related to contracting with rail operators and leasing.

25

1
2 Section 7.01, Definitions, which contains the definitions of
3 "commission" and "department," is repealed. These terms are
4 defined in each of the subchapters of Chapter 7, so this section
5 is repealed because its provisions are redundant of other
6 provisions in the chapter and therefore, unnecessary.

7
8 Amendments to §7.10, Definitions, remove the definitions of
9 terms that are not used in the subchapter.

10
11 Amendments to §7.11, Comprehensive Development Agreements,
12 corrects a reference to the heading of 43 TAC Chapter 27,
13 Subchapter A.

14
15 Amendments to §7.12, Construction and Maintenance Contracts,
16 remove subsection (a) because the subsection merely repeated
17 statutory language, which is not needed. Further, while the
18 subsection included a reference to requirements for a contract
19 with a rail operator, the commission believes for the purpose of
20 clarity, such requirements should be in another section, §7.13.
21 The subsequent subsections are renumbered. The amendments also
22 correct the reference to the §9.15 heading title.

23
24 Section 7.13, Leasing of Rail Facilities, is repealed and
25 replaced with new §7.13, Contracts with Rail Operators and

1 Leases. This section provides that the department may contract
2 with a public or private entity to operate or lease a rail
3 facility acquired or constructed by the department. The
4 department must use a competitive process to select the operator
5 or lessee. For the selection of a rail operator, Transportation
6 Code, §91.051 directs the contract be awarded to the lowest
7 responsible bidder that complies with the department's criteria.
8 For the selection of a lessee, the contract will be awarded to
9 the bidder whose proposal offers the apparent best value to the
10 department. The apparent best value standard is the same
11 standard as used by the department to select the bidder for a
12 comprehensive development agreement. When the department seeks
13 an operator or lessee the department must publish a request for
14 proposals and evaluate the proposals based on specified
15 criteria. The department will rank the proposals and attempt to
16 negotiate an agreement with the highest ranked proposer. The
17 executive director will submit a summary of the agreement's
18 terms to the Texas Transportation Commission (commission), and
19 the commission may authorize the agreement's execution if it
20 finds the agreement to be in the best interest of the state and
21 furthers state, regional, and local transportation plans,
22 programs, policies, and goals. The department is not required
23 to use a competitive process when it contracts for rail operator
24 services for 90 days or less, when it contracts with a public
25 entity, or when it leases railroad track that connects to only

1 one railroad line.

2

3 The new section retains most of the existing language but
4 clarifies that the department will use a competitive process for
5 both contracts with rail operators and leases, because they may
6 be separate types of contracts. It also adds provisions that
7 exempt the department from the competitive process requirements
8 for certain types of contracts. Engaging in a competitive
9 process with a rail operator for a period of less than 90 days
10 would unduly hinder the department's ability to hire operators
11 for short periods of time. Additionally, Transportation Code,
12 §§91.051, 91.052, and 91.102 exempt the department from
13 competitive bidding requirements when contracting with public
14 entities. Finally, when the department devotes rail resources
15 in a region for a narrow purpose, for example, for the purpose
16 of economic development or safety, it may use its resources to
17 develop a segment and lease it to the adjacent railroad without
18 competition.

19

20 Amendments to §7.20, Definitions, remove the definitions of
21 terms that are not used in the subchapter.

22

23 Amendments to §7.21, Abandonment of Rail Line by Rural Rail
24 Transportation District, correct a statutory citation and
25 provide an address for the director of the Rail Division. The

1 amendments also clarify the time for submitting an application
2 for abandonment and the contents of that application to ensure
3 districts understand the timeline and necessary documentation.

4

5 Amendments to §7.22, Acquisition of Abandoned Rail Facilities,
6 clarify that the department may acquire abandoned rail
7 facilities from a rural rail transportation district and remove
8 redundant wording.

9

10 Amendments to §7.30, Definitions, add a definition for the term
11 "department" and change the definition of "division director" to
12 reflect the shift of the responsibility for rail safety from the
13 department's Transportation and Programming Division to the Rail
14 Division.

15

16 Amendments to §7.31, Safety Requirements, correct statutory
17 citations and add new federal railroad safety requirements to
18 the list of minimum railroad safety requirements for the state.

19

20 Amendments to §7.32, Filing Requirements, correct statutory
21 citations and add new federal filing requirements to the list of
22 items a railroad must file with the department upon request.

23 The amendments also provide a railroad with the option of filing
24 with the department the telephone numbers of either the railroad
25 dispatcher or a supervisor rather than limiting the requirement

1 to the number of the dispatcher. The amendments state that the
2 department prefers that filings be made in electronic digital
3 media format.

4

5 Amendments to §7.33, Reports of Accidents/Incidents, replace a
6 reference to the Transportation Planning and Programming
7 Division with a reference to the Rail Division. Additionally,
8 the amendments specify that the department prefers that
9 railroads electronically file copies of Federal Railroad
10 Administration reports requested by the department.

11

12 Amendments to §7.34, Hazardous Materials - Telephonic Reports of
13 Incidents, replace a reference to the Transportation Planning
14 and Programming Division with a reference to the Rail Division.

15

16 Amendments to §7.35, Hazardous Materials - Written Reports,
17 clarify the contents of a report a railroad must file listing
18 types and classifications of hazardous materials.

19

20 Amendments to §7.36, Clearance of Structures Over and Alongside
21 Railway Tracks, replaces existing language with a concise
22 statement of the Texas Clearance Law (Texas Civil Statutes,
23 Articles 6559a-6559f). A clear space is required to 22 feet
24 above the top of the rails, and 8-1/2 feet from the center line
25 of a railroad track. The changes remove references to

1 provisions the department believes are archaic and no longer
2 used by railroads. The amendments also correct statutory
3 citations.

4

5 Amendments to §7.37, Visual Obstructions at Public Grade
6 Crossings, add new definitions for "active warning device," and
7 "passive public grade crossing," for the purpose of clarity.
8 The section concerns preventing visual obstructions, namely
9 standing equipment on the track, vegetation, and permanent
10 structures.

11

12 Amendments to §7.38, Wayside Detector, Map, List, or Chart,
13 replace a reference to the Transportation Planning and
14 Programming Division with a reference to the Rail Division.

15

16 Amendments to §7.39, Right to Inspect, provide that the
17 department has the authority to inspect railroad facilities
18 equipment, records, and operations relating to the packaging,
19 loading, unloading, or transportation of hazardous materials in
20 accordance with Transportation Code §111.102. Vernon's Civil
21 Statutes Article 6448b, which previously assigned this
22 inspection authority to the Railroad Commission, was codified as
23 Transportation Code §111.102. Section 111.102 transferred this
24 authority to the department.

25

1 Amendments to §7.40, Enforcement of Safety Requirements, correct
2 a statutory citation. The amendments clarify that a violation
3 of any Federal Railroad Administration safety requirement may be
4 the subject of enforcement. The amendments also remove the
5 deadlines regarding timeliness of Federal Railroad
6 Administration enforcement action. The provisions that describe
7 timely action have not been used and so have been deleted.

8
9 Amendments to §7.41, Rail Safety Program Fee, specify that
10 "interchanged" refers to the transfer of rail cars between
11 railroads. Additionally, the amendments clarify that annual
12 reports submitted to the department will be verified as to their
13 accuracy.

14
15 Amendments to §7.42, Administrative Review, replace a reference
16 to the Transportation Planning and Programming Division with a
17 reference to the Rail Division and adds an address for the
18 department.

19
20 FISCAL NOTE
21 James Bass, Chief Financial Officer, has determined that for
22 each of the first five years the amendments, repeal, and new
23 section as proposed are in effect, there will be no fiscal
24 implications for state or local governments as a result of
25 enforcing or administering the amendments, repeal, and new

1 section.

2

3 Bill Glavin, Director, Rail Division has certified that there
4 will be no significant impact on local economies or overall
5 employment as a result of enforcing or administering the
6 amendments, repeal, and new section.

7

8 PUBLIC BENEFIT AND COST

9 Mr. Glavin has also determined that for each year of the first
10 five years the sections are in effect, the public benefit
11 anticipated as a result of enforcing or administering the
12 amendments, repeal, and new section will be greater clarity and
13 organization and eliminating obsolete provisions in the
14 department's rules. There are no anticipated economic costs for
15 persons required to comply with the sections as proposed. There
16 will be no adverse economic effect on small businesses.

17

18 SUBMITTAL OF COMMENTS

19 Written comments on the proposed repeal of §7.1; amendments to
20 §§7.10 - 7.12; the repeal of §7.13 and new §7.13; and amendments
21 to §§7.20 - 7.22, and §§7.30 - 7.42 may be submitted to Bill
22 Glavin, Director, Rail Division, Texas Department of
23 Transportation, 125 East 11th Street, Austin, Texas 78701-2483.
24 The deadline for receipt of comments is 5:00 p.m. on January 3,
25 2011.

1

2 STATUTORY AUTHORITY

3 The amendments, repeal, and new section are proposed under
4 Transportation Code, §201.101, which provides the commission
5 with the authority to establish rules for the conduct of the
6 work of the department, and more specifically, Transportation
7 Code, §91.003, which provides the commission with the authority
8 to adopt rules to implement Transportation Code, Chapter 91,
9 relating to rail facilities, and Transportation Code, §111.101,
10 which authorizes the commission to adopt rules to implement
11 federal safety laws.

12

13 CROSS REFERENCE TO STATUTE

14 Transportation Code, Chapter 91 and Chapter 111, Subchapter C.

SUBCHAPTER B. CONTRACTS

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

~~[(1) Abandoned rail facilities--Rail facilities for which:]~~

~~[(A) a notice of intent to abandon or discontinue service has been filed with the Surface Transportation Board under 49 C.F.R. §1152.20;]~~

~~[(B) an application for abandonment or discontinuance of service has been filed with the Surface Transportation Board under 49 C.F.R. Part 1152; or]~~

~~[(C) abandonment or discontinuance of service has been authorized by the Surface Transportation Board.]~~

(1) ~~[(2)]~~ Commission--The Texas Transportation Commission.

(2) ~~[(3)]~~ Department--The Texas Department of Transportation.

~~[(4) Director--The director of the department's Transportation Planning and Programming Division.]~~

~~[(5) District--A rural rail transportation district created under Texas Civil Statutes, Article 6550e.]~~

(3) ~~[(6)]~~ Executive Director--The executive director of

1 the department or the executive director's designee not below
2 the level of division director.

3 ~~[(7) Federal application--An application for abandonment~~
4 ~~of a rail line filed with the Surface Transportation Board under~~
5 ~~49 C.F.R. Part 1152, Subpart C.]~~

6 ~~[(8) Notice--The notice of intent to file an abandonment~~
7 ~~application described in 49 C.F.R. §1152.20.]~~

8 (4) ~~[(9)]~~ Public entity--A governmental entity, including
9 a political subdivision of this state, that is authorized by law
10 to operate rail facilities.

11 (5) ~~[(10)]~~ Rail facility--Real or personal property, or
12 any interest in that property, that is determined to be
13 necessary or convenient for the provision of a freight or
14 passenger rail facility or system, including commuter rail,
15 intercity rail, and high-speed rail.

16 ~~[(11) Service performed on the rail line--The number of~~
17 ~~trains operated on the line and their frequency, and the total~~
18 ~~tonnage and carloads on the line.]~~

19 ~~[(12) State funds--Funds provided by this state or an~~
20 ~~agency of this state for the purpose of acquiring or operating a~~
21 ~~rail line.]~~

22

23 §7.11. Comprehensive Development Agreements.

1 (a) To the extent and in the manner that the department may
2 enter into a comprehensive development agreement with respect to
3 a turnpike or toll project under Chapter 27, Subchapter A of
4 this title (relating to Comprehensive Development Agreements
5 [~~Policy, Rules, and Procedures for Private Involvement in~~
6 ~~Department Turnpike Projects~~]), the department may enter into a
7 comprehensive development agreement for the financing, design,
8 acquisition, construction, maintenance, or operation of a rail
9 facility or system.

10 (b) The department shall utilize the processes and
11 procedures provided in Chapter 27, Subchapter A of this title
12 when considering the use of a comprehensive development
13 agreement, including when:

14 (1) requesting qualifications and proposals or accepting
15 unsolicited proposals for the financing, design, acquisition,
16 construction, maintenance, or operation of a rail facility or
17 system;

18 (2) evaluating and ranking submissions and proposals; and

19 (3) selecting the proposal that provides the best value
20 to the department.

21 (c) The department may combine in a comprehensive
22 development agreement a rail facility or system and a turnpike
23 or toll project as defined in Transportation Code, §201.001.

1 (d) In this section, "rail facility" and "system" have the
2 meanings assigned in Transportation Code, Chapter 91.

3

4 §7.12. Construction and Maintenance Contracts.

5 [~~(a) Transportation Code, §91.051, provides that except for~~
6 ~~a contract entered into under §§91.052, 91.054 or 91.102, a~~
7 ~~contract made by the department for the construction,~~
8 ~~maintenance, or operation of a rail facility must be let by a~~
9 ~~competitive bidding procedure in which the contract is awarded~~
10 ~~to the lowest responsible bidder who complies with the~~
11 ~~department's requirements.]~~

12 (a) [~~(b)~~] The department shall comply with the policies and
13 procedures prescribed in Chapter 9, Subchapter B of this title
14 (relating to Highway Improvement Contracts) in the qualification
15 of bidders, issuance of proposals and receipt of bids, and award
16 and execution of a contract for the construction or maintenance
17 of a rail facility.

18 (b) [~~(c)~~] The name and address of the individual to whom
19 bids shall be submitted will be provided when a project is
20 advertised. That individual will be responsible for opening and
21 reading bids in accordance with the policies and procedures in
22 §9.15 of this title (relating to Acceptance, Rejection, and
23 Reading of Bids [~~Proposals~~]).

1 (c) [~~(d)~~] Bidder responsibility requirements shall be
2 provided by the department with the proposal form issued for a
3 project.

4 (d) [~~(e)~~] A construction or maintenance contract may
5 provide for partial payments and retainage in the amounts
6 provided in the contract.

7 (e) [~~(f)~~] Architectural, engineering, or surveying services
8 that are needed for the construction or maintenance of a rail
9 facility shall be acquired in accordance with the requirements
10 of Government Code, Chapter 2254, and Chapter 9, Subchapter C of
11 this title (relating to Contracting for Architectural,
12 Engineering, and Surveying Services), except that the
13 administrative qualification requirements of §9.42 of this title
14 (relating to Administrative Qualification) shall not apply if
15 the department does not have a precertification category for the
16 work to be performed.

17

18 [~~§7.13. Leasing of Rail Facilities.~~]

19 [~~(a) Transportation Code, §91.102, authorizes the~~
20 ~~department to lease all or part of a rail facility or system to~~
21 ~~a rail operator and to contract with a rail operator for the use~~
22 ~~or operation of all or part of a rail facility or system.~~
23 ~~Transportation Code, §91.052, authorizes the department to enter~~

1 ~~into an agreement with a public entity, including a political~~
2 ~~subdivision of this state, to permit the entity, independently~~
3 ~~or jointly with the department, to acquire, construct, maintain,~~
4 ~~or operate a rail facility or system.]~~

5 ~~[(b) The department may lease a rail facility acquired or~~
6 ~~constructed by the department to a public entity. The public~~
7 ~~entity shall comply with all applicable laws when contracting~~
8 ~~for the operation of the rail facility. The lease agreement~~
9 ~~shall provide for the department's monitoring of the rail~~
10 ~~operator's service and performance.]~~

11 ~~[(c) The department will use a competitive process to~~
12 ~~obtain private rail operators for rail facilities acquired or~~
13 ~~constructed by the department. The department will publish a~~
14 ~~notice in the Texas Register and in a newspaper of general~~
15 ~~circulation in the area in which the rail facility is located,~~
16 ~~requesting proposals to lease and operate a department rail~~
17 ~~facility.]~~

18 ~~[(d) In evaluating proposals submitted in response to a~~
19 ~~request under subsection (c) of this section, the department~~
20 ~~will consider the:]~~

21 ~~[(1) qualifications and capability of the proposer to~~
22 ~~operate the rail facility:]~~

23 ~~[(2) proposer's experience in constructing and~~

1 ~~maintaining rail facilities;]~~

2 ~~[(3) financial capability of the proposer to operate and~~

3 ~~maintain the rail facility;]~~

4 ~~[(4) relative effectiveness of the proposer's management~~

5 ~~team and staff;]~~

6 ~~[(5) extent to which the proposal minimizes the~~

7 ~~department's financial obligations in acquiring or maintaining~~

8 ~~the rail facility;]~~

9 ~~[(6) proposer's plan for maintaining and improving~~

10 ~~equipment, trackwork, and right of way, including the planned~~

11 ~~schedule for carrying out the maintenance and improvements and~~

12 ~~planned funding sources; and]~~

13 ~~[(7) proposer's planned operating rules and procedures~~

14 ~~for servicing markets served by the rail facility, including~~

15 ~~plans and proposed schedules for improving service and adding~~

16 ~~additional markets.]~~

17 ~~[(e) The department will rank all proposals submitted in~~

18 ~~response to a request under subsection (c) of this section using~~

19 ~~the criteria set out in the request for proposals. The criteria~~

20 ~~will, at a minimum, include the factors listed in subsection (d)~~

21 ~~of this section. The department will negotiate a lease~~

22 ~~agreement with the highest ranked proposer.]~~

23 ~~[(f) If an agreement satisfactory to the department cannot~~

1 ~~be negotiated with the proposer, the department will formally~~
2 ~~end negotiations with that proposer. The department may reject~~
3 ~~all proposals or proceed to the next highest ranked proposal and~~
4 ~~attempt to negotiate an agreement with that proposer.]~~

5 [~~(g) The executive director will submit to the commission a~~
6 ~~summary of the final terms of a lease agreement successfully~~
7 ~~negotiated with a public or private entity under this section.~~
8 ~~The commission may authorize the executive director to execute~~
9 ~~the agreement if it finds that the agreement is in the best~~
10 ~~interest of the state and furthers state, regional, and local~~
11 ~~transportation plans, programs, policies, and goals.]~~

12

13 §7.13. Contracts with Rail Operators and Leases.

14 (a) For any rail facility acquired or constructed by the
15 department, the department may contract with a public or private
16 entity to operate the facility or lease it.

17 (b) Except as provided in this section, the department will
18 use a competitive process to select the operator or lessee. For
19 the selection of a rail operator, the department will select the
20 lowest responsible bidder that complies with the department's
21 criteria. For the selection of a lessee, the department will
22 select the bidder whose proposal offers the apparent best value
23 to the department. The department will publish a notice in the

1 Texas Register and in a newspaper of general circulation in the
2 area in which the rail facility is located, requesting proposals
3 to operate or to lease the facility. In evaluating proposals
4 submitted in response to a request under this subsection, the
5 department will select the bidder considering the:

6 (1) qualifications and capability of the proposer to
7 operate the rail facility;

8 (2) proposer's experience in constructing and maintaining
9 rail facilities;

10 (3) financial capability of the proposer to operate and
11 maintain the rail facility;

12 (4) relative effectiveness of the proposer's management
13 team and staff;

14 (5) extent to which the proposal minimizes the
15 department's financial obligations in acquiring or maintaining
16 the rail facility;

17 (6) if within the scope of the published proposal,
18 proposer's plan for maintaining and improving equipment,
19 trackwork, and right of way, including the planned schedule for
20 carrying out the maintenance and improvements and planned
21 funding sources; and

22 (7) if within the scope of the published proposal,
23 proposer's planned operating rules and procedures for servicing

1 markets served by the rail facility, including plans and
2 proposed schedules for improving service and adding additional
3 markets.

4 (c) The department will rank all proposals submitted in
5 response to a request under subsection (b) of this section using
6 the criteria set out in the request for proposals. The criteria
7 will, at a minimum, include the factors listed in subsection (b)
8 of this section. The department will negotiate an agreement
9 with the highest ranked proposer.

10 (d) If an agreement satisfactory to the department cannot
11 be negotiated with the proposer, the department will formally
12 end negotiations with that proposer. The department may reject
13 all proposals or proceed to the next highest ranked proposal and
14 attempt to negotiate an agreement with that proposer.

15 (e) The executive director will submit to the commission a
16 summary of the final terms of the agreement. The commission may
17 authorize the executive director to execute the agreement if it
18 finds that the agreement is in the best interest of the state
19 and furthers state, regional, and local transportation plans,
20 programs, policies, and goals.

21 (f) The department may enter into the following contracts
22 without engaging in a competitive process:

23 (1) a contract for rail operator services for 90 days or

- 1 less, if the department first contacts at least three
2 responsible operators;
3 (2) a contract with a public entity; or
4 (3) a lease of railroad track that connects to only one
5 railroad line.

SUBCHAPTER C. ABANDONED RAIL

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

(1) Abandoned rail facilities--Rail facilities for which:

(A) a notice of intent to abandon or discontinue service has been filed with the Surface Transportation Board under 49 C.F.R. §1152.20;

(B) an application for abandonment or discontinuance of service has been filed with the Surface Transportation Board under 49 C.F.R. Part 1152; or

(C) abandonment or discontinuance of service has been authorized by the Surface Transportation Board.

(2) Commission--The Texas Transportation Commission.

(3) Department--The Texas Department of Transportation.

~~[(4) Director--The director of the department's Transportation Planning and Programming Division.]~~

~~[(5) District--A rural rail transportation district created under Texas Civil Statutes, Article 6550c.]~~

~~[(6) Federal application--An application for abandonment of a rail line filed with the Surface Transportation Board under 49 C.F.R. Part 1152, Subpart C.]~~

(4) ~~[(7)]~~ Notice of intent--The notice of intent to file

1 an abandonment application described in 49 C.F.R. §1152.20.

2 (5) [~~8~~] Rail facility--Real or personal property, or
3 any interest in that property, that is determined to be
4 necessary or convenient for the provision of a freight or
5 passenger rail facility or system, including commuter rail,
6 intercity rail, and high-speed rail.

7 (6) [~~9~~] Service performed on the rail line--The number
8 of trains operated on the line and their frequency, and the
9 total tonnage and carloads on the line.

10 (7) [~~10~~] State funds--Funds provided by this state or
11 an agency of this state for the purpose of acquiring or
12 operating a rail line.

13

14 §7.21. Abandonment of Rail Line by Rural Rail Transportation
15 District.

16 (a) Purpose. [~~Texas Civil Statutes, Article 6550c, §5(r)~~]
17 Transportation Code, §172.210, provides that a rural rail
18 transportation district created under that [~~article~~] chapter may
19 not abandon a rail line of the district with respect to which
20 state funds have been loaned or granted unless the abandonment
21 is approved by the commission [~~Texas Transportation Commission~~]
22 as being consistent with the policies of that [~~article~~] chapter.
23 This section prescribes the policies and procedures by which a

1 rural rail transportation district may apply for and obtain
2 approval to abandon a rail line of the district.

3 (b) Application.

4 (1) To request approval of the abandonment of a segment
5 of rail line with respect to which state funds have been loaned
6 or granted, a district shall submit an application to: Director,
7 Rail Division, Texas Department of Transportation, 125 East 11th
8 Street, Austin, Texas 78701 [~~the director~~].

9 (2) An application shall be submitted to the department
10 no later than 45 days after the district filed the notice of
11 intent [~~filing of a notice~~] under 49 C.F.R. §1152.20 and shall
12 include a copy of:

13 (A) documentation under which the district obtained
14 state funds for the rail line;

15 (B) the notice of intent filed with the Surface
16 Transportation Board [~~relating to the rail line~~];

17 (C) the [~~federal~~] application filed with the Surface
18 Transportation Board under 49 C.F.R. Part 1152, Subpart C
19 [~~relating to the rail line~~]; and

20 (D) documentation evidencing compliance with the
21 requirements of 49 C.F.R. §1152.20.

22 (c) Public Hearing.

23 (1) If the department finds that the application meets

1 the requirements of subsection (b) of this section, it will
2 notify the district of its findings and will conduct one or more
3 public hearings to receive public comment on the proposed
4 abandonment.

5 (2) The department will hold at least one hearing within
6 at least one of the counties of the district.

7 (3) The department will file a notice of each hearing
8 with the Secretary of the State for publication in the *Texas*
9 *Register*.

10 (4) The district shall advertise each hearing in
11 accordance with an outreach plan developed in consultation with
12 the department.

13 (d) Approval. In approving a request to abandon a segment
14 of rail line, the commission will consider:

15 (1) service performed on the line in the two years
16 preceding the date of the notice of intent;

17 (2) comments or other evidence of support of or
18 opposition to the proposed abandonment received from interested
19 parties;

20 (3) alternate sources of transportation services
21 available, including alternate sources of rail transportation
22 service;

23 (4) impact of the proposed abandonment on the operation

1 of the state transportation system;

2 (5) impact of the proposed abandonment on communities
3 served by the rail line; and

4 (6) viability of the rail line for continued rail
5 transportation service.

6 (e) Limitation. Abandonment of a rail line is subject to
7 Surface Transportation Board permission pursuant to federal law.

8

9 §7.22. Acquisition of Abandoned Rail Facilities.

10 (a) Purpose. Transportation Code, Chapter 91, authorizes
11 the department to acquire abandoned rail facilities. In
12 establishing criteria for the department's acquisition of
13 abandoned rail facilities, the commission is required to
14 consider the local and regional economic benefit realized from
15 the disbursement of funds in comparison to the amount of the
16 disbursement. This section prescribes policies and procedures
17 for the department's acquisition of abandoned rail facilities.

18 (b) Public involvement.

19 (1) On receipt of a notice of intent to abandon or
20 discontinue service, the department shall coordinate with the
21 governing body of any municipality, county, or rural rail
22 transportation district in which all or a segment of the rail
23 facility is located to determine whether:

1 (A) the department should acquire the rail facility [~~to~~
2 ~~which the notice relates~~]; or

3 (B) any other actions should be taken to provide for
4 continued rail transportation service.

5 (2) The department shall request that a municipality,
6 county, or district in which all or a segment of the rail
7 facility is located provide documentation concerning the local
8 and regional economic impact of an abandonment or discontinuance
9 of service.

10 (3) If the department determines that there is a need to
11 preserve the rail facility for continued rail service, or to
12 preserve the corridor for another public-use condition under 49
13 C.F.R. §1152.28, it will notify the municipalities, counties, or
14 districts in which all or a segment of the rail facility is
15 located, and will conduct one or more public hearings to receive
16 public comment on the proposed acquisition.

17 (4) In making a determination under subsection (c) of
18 this section, the department will consider:

19 (A) information contained in the notice of intent to
20 abandon or discontinue service and any application for
21 abandonment or discontinuance of service filed with the Surface
22 Transportation Board with respect to that rail facility under 49
23 C.F.R. Part 1152, including the extent of any service performed

1 on the rail line; and

2 (B) information provided by a municipality, county, or
3 district concerning the economic impact of an abandonment or
4 discontinuance of service.

5 (5) The department will hold at least one public hearing
6 within at least one of the counties in which the rail facility
7 is located and will file a notice of each hearing with the
8 Secretary of the State for publication in the *Texas Register*.

9 (c) Criteria. In approving the acquisition of an abandoned
10 rail facility, the commission will consider:

11 (1) service performed on the rail line in the two years
12 preceding the date of the notice of intent to abandon or
13 discontinue service;

14 (2) comments or other evidence in support of or
15 opposition to the proposed abandonment or discontinuance of
16 service received from interested parties;

17 (3) alternate sources of transportation services
18 available, including alternate sources of rail transportation
19 service;

20 (4) impact of the proposed abandonment or discontinuance
21 of service on the operation of the state transportation system;

22 (5) local and regional economic impact of the abandonment
23 or discontinuance of service;

1 (6) viability of the rail line for continued rail
2 transportation service; and
3 (7) the extent to which the monetary value of the
4 economic benefits attributable to the acquisition exceed the
5 amount of funds disbursed by the department to acquire the rail
6 facility.

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) Department--The Texas Department of Transportation.

(2) [~~1~~] Division director--the director of the department's Rail [~~Transportation Planning and Programming~~] Division.

(3) [~~2~~] FRA--The Federal Railroad Administration.

(4) [~~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.

1 (a) Applicability. A person, association, private
2 corporation, public corporation, or any other entity that owns
3 or operates a railroad shall comply with the requirements of
4 this subchapter.

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

8 (1) 49 United States Code, Subtitle III, Chapter 51
9 [~~§§5101, et seq~~];

10 (2) 49 United States Code, Subtitle V, Part A [~~§§20101,~~
11 ~~et seq.~~];

12 (3) Transportation Code, Chapter 111[~~Texas Civil~~
13 ~~Statutes, Article 6448a~~]; and

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

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

20 (1) transportation workplace drug testing programs,
21 codified at 49 C.F.R. [~~Code of Federal Regulations,~~] Part 40;

22 (2) hazardous materials regulations, codified at 49
23 C.F.R. [~~Code of Federal Regulations,~~] Parts 107 & 171-180 [~~171-~~

1 ~~179~~];

2 (3) track safety standards, codified at 49 C.F.R. [~~Code~~
3 ~~of Federal Regulations,~~] Part 213;

4 (4) Railroad Workplace Safety [~~bridge worker safety~~]
5 standards, codified at 49 C.F.R. [~~Code of Federal Regulations,~~]
6 Part 214;

7 (5) freight car safety standards, codified at 49 C.F.R.
8 [~~Code of Federal Regulations,~~] Part 215;

9 (6) special notice and emergency order procedures,
10 codified at 49 C.F.R. [~~Code of Federal Regulations,~~] Part 216;

11 (7) federal operating practice regulations, codified at
12 49 C.F.R. [~~Code of Federal Regulations~~] Parts 217, 218, 220,
13 221, 225, and 228;

14 (8) control of alcohol and drug use, codified at 49
15 C.F.R. [~~Code of Federal Regulations,~~] Part 219;

16 (9) locomotive horns at public highway-rail crossings
17 regulations, codified at 49 C.F.R. [~~Code of Federal~~
18 ~~Regulations,~~] Part 222;

19 (10) safety glazing standards, codified at 49 C.F.R.
20 [~~Code of Federal Regulations,~~] Part 223;

21 (11) reflectorization of rail freight rolling stock
22 regulations, codified at 49 C.F.R. [~~Code of Federal~~
23 ~~Regulations,~~] Part 224;

1 (12) occupational noise exposure, codified at 49 C.F.R.

2 Part 227;

3 (13) [~~(12)~~] locomotive safety standards, codified at 49

4 C.F.R. [~~Code of Federal Regulations,~~] Part 229;

5 (14) [~~(13)~~] steam locomotive inspection and maintenance

6 standards regulations, codified at 49 C.F.R. [~~Code of Federal~~

7 Regulations,] Part 230;

8 (15) [~~(14)~~] safety appliance standards, codified at 49

9 C.F.R. [~~Code of Federal Regulations,~~] Part 231;

10 (16) [~~(15)~~] power brake standards, codified at 49 C.F.R.

11 [~~Code of Federal Regulations,~~] Part 232;

12 (17) signal system reporting requirements, codified at 49

13 C.F.R. Part 233;

14 (18) grade crossing signal system safety, codified at 49

15 C.F.R. Part 234;

16 (19) instructions governing applications for approval of

17 a discontinuance or material modification of a signal system or

18 relief from the requirements of Part 236, codified at 49 C.F.R.

19 Part 235;

20 (20) [~~(16)~~] rules, standards, and instructions for

21 railroad signal systems, codified at 49 C.F.R. [~~Code of Federal~~

22 Regulations,] Part 236;

23 (21) bridge safety standards, codified at 49 C.F.R. Part

1 237;

2 (22) [~~+17~~] passenger equipment safety standards
3 regulations, codified at 49 C.F.R. [~~Code of Federal~~
4 ~~Regulations,~~] Part 238;

5 (23) [~~+18~~] passenger train emergency preparedness
6 regulations, codified at 49 C.F.R. [~~Code of Federal~~
7 ~~Regulations,~~] Part 239; and

8 (24) [~~+19~~] qualifications and certification of
9 locomotive engineers, codified at 49 C.F.R. [~~Code of Federal~~
10 ~~Regulations,~~] Part 240.

11

12 §7.32. Filing Requirements.

13 (a) A railroad shall file with the department;

14 (1) the name, address, and telephone number of the
15 principal operating officer in Texas;

16 (2) a primary and secondary telephone number, which are
17 manned 24 hours per day, for the railroad dispatcher or
18 supervisor responsible for train operations in Texas;

19 (b) When the department makes a written request, a railroad
20 shall file with the department:

21 (1) its code of operating rules, timetables, and
22 timetable special instructions as follows:

23 (A) the operating rules, timetables, and timetable

1 special instructions; and

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

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

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

10 (4) a copy of its program for periodic instruction of
11 employees filed with the FRA under 49 C.F.R. §217.11; and ~~[-]~~

12 (5) a copy of its program for engineer certification
13 filed with the FRA under 49 C.F.R. Part 240.

14 (c) Filings required by subsection (b)(1)-(5) [~~(b)(1)-(4)~~]
15 of this section may include only information pertaining to
16 railroad operations conducted in the state of Texas.

17 (d) It is preferred that filings required by this
18 subsection be made using electronic digital media format.

19 (e) [~~(d)~~] Filings required by this section shall be
20 submitted to: Rail [~~Transportation Planning and Programming~~]
21 Division, Texas Department of Transportation, 125 East 11th
22 Street, Austin, Texas 78701-2423 [~~P. O. Box 149217, Austin,~~
23 ~~Texas 78714-9217~~].

1

2 §7.33. Reports of Accidents/Incidents.

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

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

12 (2) In addition to giving the department telephonic
13 notice of the accidents/incidents and other events described in
14 49 C.F.R. §225.9, a railroad shall give telephonic notice of
15 accidents/incidents which:

16 (A) result in the death of one or more persons;

17 (B) result in the injury of two or more persons;

18 (C) involve a fire or explosion; or

19 (D) involve a passenger or commuter train.

20 (b) Written reports. When the department makes a written
21 request, a railroad shall furnish the department with a copy of
22 an accident/incident report filed with the FRA under 49 C.F.R.
23 Part 225, within 30 days after expiration of the month during

1 which the accident/incident occurred. Only copies of reports
2 that concern accidents/incidents occurring in the state of Texas
3 shall be filed with the department. It is preferred that
4 filings required by this section be made by electronic digital
5 media format.

6

7 §7.34. Hazardous Materials - Telephonic Reports of Incidents.

8 A railroad shall give immediate telephonic notice to the
9 department of hazardous materials incidents by calling the
10 department's Rail [~~Transportation Planning and Programming~~]
11 Division at (800) 440-0376. A [~~Except as provided in the~~
12 ~~succeeding sentence, a~~] railroad shall give reports to the
13 department in the same manner and following the same
14 requirements as the railroad shall give reports to the National
15 Response Center under 49 C.F.R. §171.15. A railroad shall give
16 telephonic notice of only those accidents/incidents which
17 involve the operation of railroad on-track equipment (standing
18 or moving).

19

20 §7.35. Hazardous Materials - Written Reports.

21 (a) Policy. It is the policy of the department to provide
22 information regarding the type and quantity of hazardous
23 materials transported within the state to local emergency

1 planning agencies in areas containing reported railroad
2 operations. It is also department policy to collect such
3 information in order for the department to more efficiently
4 allocate hazardous materials inspection resources. To
5 accomplish these policies, each railroad that transports a
6 hazardous material through the state is required to adhere to
7 certain reporting requirements relating to the transportation of
8 hazardous materials.

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

12 (1) Emergency management program--An emergency management
13 program established under Government Code, Chapter 418,
14 Subchapter E.

15 (2) Hazardous material--Any substance transported by a
16 railroad which is included within the requirements of the
17 railcar placarding regulations adopted by the United States
18 Department of Transportation and published in the Code of
19 Federal Regulations, Title 49.

20 (3) Railroad line segment--A length of railroad line over
21 which hazardous materials are transported between two or more
22 municipalities within the state that are also identified as
23 stations on a current railroad timetable. A line segment will

1 terminate at the nearest municipality where the frequency of
2 cars-per-year transporting hazardous materials changes from one
3 category, as defined in subsection (d)(2) of this section, to
4 another.

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

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

10 (1) When the department makes a written request, a copy
11 of the report of each hazardous materials incident occurring
12 within the state of Texas that the railroad company files with
13 the United States Department of Transportation under 49 C.F.R.
14 §171.16;

15 (2) a map delineating the geographical limits of the
16 railroad operating divisions or districts and the principal
17 operating officer for the railroad in each operating division or
18 district in the state;

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

23 (4) the name and address of the railroad employee in

1 charge of managing hazardous materials transportation for the
2 railroad; and

3 (5) a report that satisfies subsection (d) of this
4 section and that shows [~~a list of~~] each type of hazardous
5 material [~~(sorted by hazard class and quantity)~~] transported
6 over each railroad line segment owned, leased, or operated by
7 the railroad in the state during the reporting year.

8 (d) Contents of report. [~~Type of hazardous material.~~]

9 (1) The type of hazardous material transported shall be
10 identified by hazard class as defined by 49 Code of Federal
11 Regulations, Part 173, or 40 Code of Federal Regulations, Part
12 261.

13 (2) The quantity of hazardous materials transported shall
14 be classified into the following five categories depending on
15 the number of shipments of hazardous materials transported in a
16 year:

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

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

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

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

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

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

23 (3) Texas counties traversed by each railroad line

1 segment shall be identified.

2 (4) The applicable railroad operating division or
3 district shall be identified for each railroad line segment. A
4 railroad line segment shall not traverse more than one railroad
5 operating division or district.

6 (e) Reporting dates. Reports required by subsection
7 (c)(2)-(5) of this section shall be filed with the department
8 not later than April 1 of each year.

9 (f) Forms. Reporting shall be made [~~on a form or a copy~~]
10 as prescribed by the department.

11 (g) Variance. A railroad may request that the department
12 grant a variance from the requirements of this section. The
13 department shall process the application in accordance with
14 §7.42 of this subchapter (relating to Administrative Review).
15 The department may approve the variance only if the department
16 will continue to receive information concerning the
17 transportation of hazardous materials needed by local emergency
18 planning agencies and needed to efficiently allocate the
19 department's inspection resources. Any exception granted by the
20 department shall be valid for a period not to exceed two years.

21

22 §7.36. Clearances of Structures Over and Alongside Railway
23 Tracks.

1 (a) [~~Mail cranes, turn tables, cattle guards, icing racks~~
2 ~~and coal chutes.~~] The lowest part of a structure built over the
3 tracks of a railroad, including a bridge, viaduct, foot bridge,
4 or power line, may not be less than 22 feet above the top of the
5 rails of the tracks. [~~Mail cranes, turn tables, cattle guards,~~
6 ~~icing racks, and coal chutes are exempt from provisions of the~~
7 ~~Texas Clearance Law, Texas Civil Statutes, Article 6559(a)-(f).~~]

8 (b) [~~Water cranes and oil cranes.~~] A structure, including
9 a platform or fence, or material may not be built or placed so
10 that any part of the structure or material is less than 8-1/2
11 feet from the center line of a railroad track, including a main
12 line, spur, switch, or siding. [~~Present standards for water~~
13 ~~cranes and oil cranes may be maintained, provided there is a~~
14 ~~minimum clearance of seven feet from the center line of the~~
15 ~~track.~~]

16 (c) [~~Through truss and girder bridges.~~] The lowest part of
17 a roof projection constructed for any purpose may not be less
18 than 22 feet above the top of the rails of a railroad track and
19 the horizontal edge of the roof projection may not be less than
20 8-1/2 feet from the center line of the track.

21 [~~(1) The minimum horizontal clearance in bridges shall be~~
22 ~~seven feet six inches from the center line of the track, over a~~
23 ~~distance between a point four feet above the top of the rail and~~

1 ~~a point 17 feet above the top of the rail.]~~

2 ~~[(2) Upper diagonal bracing in bridges shall not encroach~~
3 ~~within a line extending from a point seven feet six inches from~~
4 ~~the center line of the track at a height of 17 feet above the~~
5 ~~top of the rail to a point three feet from the center line of~~
6 ~~the track, at a height of 22 feet above the top of the rail.]~~

7 ~~[(3) Lower diagonal bracing in bridges and walkway~~
8 ~~railings on bridges shall not encroach within a line extending~~
9 ~~from a point seven feet six inches outside of the center line of~~
10 ~~the track at a height of four feet above the top of the rail to~~
11 ~~a point five feet nine inches outside of the center line of the~~
12 ~~track at the top of the rail elevation.]~~

13 ~~[(d) Switch stands interlocking plants.]~~

14 ~~[(1) A switch stand or dwarf signal shall have a minimum~~
15 ~~horizontal clearance of five feet six inches from the center of~~
16 ~~the track, for the area two feet six inches or less above the~~
17 ~~top of the rail.]~~

18 ~~[(2) Interlocking apparatus not exceeding six inches~~
19 ~~above the top of the rail shall have a minimum horizontal~~
20 ~~clearance of four feet from the center of the track.]~~

21 ~~[(e) Passenger train sheds and platform. Passenger train~~
22 ~~sheds where only passenger equipment is handled are exempt from~~
23 ~~the requirements of this section. The minimum horizontal~~

1 ~~clearance between the center line of the track and the passenger~~
2 ~~station platform, one foot or less in height above the top of~~
3 ~~the rail, shall be four feet six inches.]~~

4 (d) [~~(f)~~] [~~Round house and shop building doors.~~] The
5 provisions of the Texas Clearance Law, Texas Civil Statutes,
6 Articles 6559a-6559f [~~Article 6559(a)-(f)~~], shall not apply to
7 engine houses or buildings into which locomotives or cars are
8 moved for terminal inspection, attention, or repairs.

9 [~~(g) Stock yards and loading chutes. Minimum horizontal~~
10 ~~clearance for stock yards and loading chutes shall be six feet~~
11 ~~six inches, except where such structures are constructed on main~~
12 ~~line tracks.]~~

13 (e) [~~(h)~~] Variance. A railroad may apply for a variance
14 from the requirements of [~~one or both,~~] the Texas Clearance Law,
15 Texas Civil Statutes, Articles 6559a-6559f [~~Art. 6559(a)-(f)~~],
16 or this section, on a form to be prescribed by the department.
17 The department shall process the application in accordance with
18 §7.42 of this subchapter (relating to Administrative Review).
19 The department may approve an application, provided there
20 remains adequate protection for the safety of people and
21 equipment. The department may require appropriate measures such
22 as posting warning signs and giving notice to railroads that use
23 the facility.

1

2 §7.37. Visual Obstructions at Public Grade Crossings.

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

6 (1) Active warning device--A bell, flashing light, gate,
7 wigwag, or other automatically activated warning device that
8 provides an active warning to a motorist of the approach of a
9 train to the crossing.

10 (2) [~~1~~] Passive [~~Unprotected~~] public grade crossing--A
11 crossing or intersection of railroad track by a publicly
12 maintained road or highway at which the traffic control devices
13 consist entirely of signs or pavement markings and there are no
14 active warning [~~electronic~~] devices [~~(such as flashers or gates)~~
15 to provide an active warning to a motorist of the approach of a
16 train to the crossing].

17 (3) [~~2~~] Vegetation--Grass, bushes, shrubbery, and trees
18 having a trunk diameter of six inches or less.

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

23 (c) Vegetation. A [~~At unprotected public grade crossings,~~

1 ~~each~~] railroad shall control vegetation on its right-of-way
2 (except for the roadbed and areas immediately adjacent to the
3 roadbed) for a distance of 250 feet each way from the centerline
4 of a passive public grade crossing [~~the crossings~~], so that
5 vegetation does not block the vehicular highway traffic's view
6 of approaching trains. The 250 feet shall be measured from the
7 point where the centerline of the railroad crosses the
8 centerline of the public road. Where the right-of-way is
9 fenced, this subsection shall be deemed complied with if
10 vegetation is controlled up to two feet from the fence.

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

1 exempt from the requirements of this subsection. The 250 feet
2 shall be measured from the point where the centerline of the
3 railroad crosses the centerline of the public road.

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

14

15 §7.38. Wayside Detector Map, List, or Chart.

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

- 20 (1) hot box indicators;
21 (2) dragging equipment detectors;
22 (3) high water indicators;
23 (4) shifted load detectors; and

1 (5) other wayside detectors.

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

3 Rail [~~Multimodal Section, Transportation Planning and~~
4 ~~Programming~~] Division, Texas Department of Transportation, 125
5 East 11th Street, Austin, Texas 78701-2423 [~~P. O. Box 149217,~~
6 ~~Austin, Texas 78714-9217~~].

7

8 §7.39. Right To Inspect [~~Railroad Property~~].

9 (a) Railroad property. Authorized personnel of the
10 department shall have the right to enter onto the property of
11 any railroad operating within the state of Texas, for the
12 purpose of conducting inspections, investigations, and
13 surveillance of railroad tracks, facilities, equipment, records,
14 and operations in order to determine the railroad's compliance
15 with relevant safety requirements. Any inspection,
16 investigation, or surveillance shall be conducted at a
17 reasonable time and in a reasonable manner.

18 (b) Hazardous materials. In accordance with Transportation
19 Code, §111.102, authorized personnel of the department have the
20 right to inspect facilities, equipment, records, and operations
21 relating to the packaging, loading, unloading, or transportation
22 of hazardous materials by railroad.

23

1 §7.40. Enforcement of Safety Requirements.

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

8 (b) State enforcement action. The department may, through
9 the attorney general of Texas, bring an action in any court of
10 competent jurisdiction and proper venue, seeking either
11 imposition of a civil penalty or an injunction, or both, against
12 violation of a railroad safety regulation or order issued under
13 the provisions of the Texas Civil Statutes[~~, Article 6448a~~] or
14 Transportation Code, Chapter 111. The department may also,
15 through the attorney general of Texas, bring an action in the
16 United States district court for the judicial district in which
17 the violation occurred or in which the defendant has its
18 principal executive office, seeking either imposition of a civil
19 penalty or an injunction, or both, for a violation of FRA's
20 railroad safety requirements [~~a railroad safety requirement~~
21 ~~adopted under the provisions of §7.31 of this subchapter~~], if
22 the division director has requested such action and the FRA has
23 failed to take timely action on a request. [~~FRA action on a~~

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

11

12 §7.41. Rail Safety Program Fee.

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

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

18 (1) Gross ton miles:

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

22 (B) if a railroad has reported its calendar year gross
23 ton miles on a Form R-1 filed with the United States Surface

1 Transportation Board (USSTB), that portion of the reported gross
2 ton miles that are for operations within the state.

3 (2) Rail cars interchanged [~~Interchanged~~]--rail cars that
4 are transferred from one railroad to another.

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

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

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

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

23 (A) each railroad's gross ton miles will be divided by

1 the total gross ton miles of all railroads required to report
2 gross ton miles to the department; and

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

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

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

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

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

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

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

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

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

22 (2) If a railroad does not timely report its total rail
23 cars interchanged as required by subsection (d) of this section,

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

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

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

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

8 (i) Administrative review. A railroad may apply for
9 administrative review of the department's determination under
10 subsection (h)(3) and (4) of this section in accordance with
11 §7.42 of this subchapter (relating to Administrative Review).

12
13 §7.42. Administrative Review.

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

16 (b) Application.

17 (1) A railroad shall submit an application for
18 administrative review to the following address: Director, Rail
19 [~~Transportation Planning and Programming~~] Division, Texas
20 Department of Transportation, 125 East 11th Street, Austin,
21 Texas 78701-2423 [~~P. O. Box 149217, Austin, Texas 78714-9217~~].

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

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

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