

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

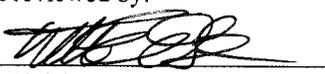
The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §§25.70 - 25.76 and propose new §§7.101 - 7.106 all relating to railroad grade crossings to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed repeals and new sections, attached to this minute order as Exhibits A - D, 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 §§25.70 - 25.76 and new §§7.101 - 7.106 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

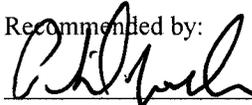
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



Director, Rail Division

Recommended by:



Executive Director

113152 JUN 28 12

Minute
Number

Date
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes new
3 §§7.101-7.106, concerning Railroad Grade Crossings.

4

5 EXPLANATION OF PROPOSED NEW SECTIONS

6 In 1998 the rules relating to railroad grade crossings were
7 moved to 43 TAC Chapter 25, Traffic Operations, because at that
8 time the responsibility for railroad crossings was assigned to
9 the Traffic Operations Division of the department. The
10 department's Rail Division, which was established in December
11 2009, currently has responsibility for the oversight of railroad
12 crossings. The purpose of these changes is to move rules
13 pertaining to the department's oversight of railroad crossings
14 from 43 TAC Chapter 25, Traffic Operations, to 43 TAC Chapter 7,
15 Rail Facilities, to revise the statutory citations contained in
16 the rules, and to update the language of the new rules to make
17 them easier to read and understand. The proposed changes repeal
18 43 TAC §§25.70-25.76 and simultaneously add new sections which
19 will be in Chapter 7, new Subchapter F, Railroad Grade
20 Crossings. Current §25.70, Purpose, provides no information in
21 addition to the subchapter heading and has not been revised as a
22 part of new Subchapter F, Chapter 7, because it is unnecessary.

23

24 New §7.101, Definitions, essentially contains the definitions
25 that are in current §25.71 that are necessary for new Chapter 7,

1 Subchapter F, Railroad Grade Crossings. A few of the
2 definitions in §25.71 have been integrated into the substantive
3 provisions of the subchapter. Several of the definitions that
4 were in §25.71 are used only in one of the new sections and,
5 therefore, have been moved to the section in which they are
6 used. A new definition of "active warning device" has been
7 added to new §7.101. This definition is based on the
8 definitions of "active warning device" contained in
9 Transportation Code, §471.004 and "warning signal" contained in
10 Transportation Code, §471.005 and combines the definitions of
11 "active warning device," "warning device," and "warning signal"
12 that were contained in current §25.71. The subject matters of
13 both Transportation Code, §§471.004 and 471.005 are covered in
14 Chapter 7, new Subchapter F. Those sections use different terms
15 to describe the same type of warning device. New §7.101
16 contains the elements used in the definition of "warning signal"
17 from Transportation Code, §471.005 for the definition of the new
18 term "active warning device."

19
20 New §7.102, Warning Sign Visibility at Railroad Grade Crossings,
21 is substantively the same as current §25.73. The statutory
22 reference has been updated. The definition of "local
23 jurisdiction" contained in current §25.71(9) has been integrated
24 into the wording of new §7.102(e)(2) and that definition has
25 been deleted as unnecessary. The new section clarifies that the

1 Texas Manual on Uniform Traffic Control Devices provides the
2 standard currently used by the department and railroads for the
3 installation and use of the retro-reflective material on the
4 crossbuck sign assemblies rather than the information provided
5 by Appendix A to current §25.73. Appendix A and references to
6 it have been deleted in new §7.102.

7

8 New §7.103, Dismantling Active Warning Devices at Railroad Grade
9 Crossings, is substantively the same as current §25.72. The
10 section has been reorganized and the statutory reference
11 contained in the section has been updated. The definitions of
12 "active rail line" contained in current §25.71(1) and "salvage
13 value" contained in current §25.71(19) have been moved to new
14 §7.103 as substantive provisions and those definitions have been
15 deleted as unnecessary. New §7.103 clarifies that an appeal of
16 the denial of a permit to remove an active warning device must
17 be sent to the director of the department's rail division.

18

19 New §7.104, Maintenance of Railroad Underpasses, is
20 substantively the same as current §25.74. The definition of
21 "railroad underpass" has been moved to this section because it
22 is not used elsewhere. The definition of "railroad overpass" in
23 current §25.71 is not used in the new rules and has been
24 deleted.

25

1 New §7.105, Spur Tracks Crossing Existing Highways, is
2 substantively the same as current §25.75. Under both
3 provisions, if the department allows a spur track grade crossing
4 on a roadway, the person requesting the crossing is required to
5 pay all costs of crossing pavement, highway adjustment, and
6 crossing warning protection. New §7.105(c) clarifies that
7 crossing warning protection includes active warning devices that
8 the department considers to be appropriate for the crossing.

9
10 New §7.106, Crossing and Maintenance of Highway-Railroad Grade
11 Crossings, is substantively the same as current §25.76.
12 Subsection (c) clarifies that full-depth concrete panels rather
13 than full depth timber pavement is the current standard for
14 crossings.

15
16 FISCAL NOTE

17 James Bass, Chief Financial Officer, has determined that for
18 each of the first five years in which the new sections as
19 proposed are in effect, there will be no fiscal implications for
20 state or local governments as a result of enforcing or
21 administering the new sections.

22
23 William E. Glavin, P.E., Director, Rail Division, has certified
24 that there will be no significant impact on local economies or
25 overall employment as a result of enforcing or administering the

1 new sections.

2

3 PUBLIC BENEFIT AND COST

4 Mr. Glavin has also determined that for each year of the first
5 five years in which the sections are in effect, the public
6 benefit anticipated as a result of enforcing or administering
7 the new sections will be better organization of the department's
8 rules and a clear statement of the policies and procedures
9 governing the department's projects and statutory
10 responsibilities at railroad crossings. There are no
11 anticipated economic costs for persons required to comply with
12 the sections as proposed. There will be no adverse economic
13 effect on small businesses.

14

15 SUBMITTAL OF COMMENTS

16 Written comments on the proposed adoption of new §§7.101-7.106
17 may be submitted to William E. Glavin, P.E., Director, Rail
18 Division, Texas Department of Transportation, 125 East 11th
19 Street, Austin, Texas 78701-2483. The deadline for receipt of
20 comments is 5:00 p.m. on August 13, 2012. In accordance with
21 Transportation Code, §201.811(a)(5), a person who submits
22 comments must disclose, in writing with the comments, whether
23 the person does business with the department, may benefit
24 monetarily from the proposed new sections, or is an employee of
25 the department.

1

2 STATUTORY AUTHORITY

3 The new sections are proposed under Transportation Code,
4 §201.101, which provides the Texas Transportation Commission
5 with the authority to establish rules for the conduct of the
6 work of the department, and more specifically, Transportation
7 Code, §471.004, which requires the department to adopt rules
8 governing the installation and maintenance of reflecting
9 material at grade crossings, and Transportation Code, §471.005,
10 which authorizes the department to adopt rules related to the
11 dismantling of warning signals at a grade crossing on an active
12 rail line and to define "active rail line."

13

14 CROSS REFERENCE TO STATUTE

15 Transportation Code, §§471.004 and 471.005.

1 SUBCHAPTER F. RAILROAD GRADE CROSSINGS

2 §7.101. Definitions. The following words and terms, when used
3 in this subchapter, have the following meanings, unless the
4 context clearly indicates otherwise.

5 (1) Active warning device--A traffic control device that
6 is activated by the approach or presence of a train and warns
7 motorists of the approach or presence of the train. The term
8 includes a flashing light signal, automatic gate, or similar
9 device.

10 (2) Crossbuck--A standard highway-rail grade crossing
11 sign designated as Number R15-1, and described in the Texas
12 Manual on Uniform Traffic Control Devices.

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

14 (4) District--One of the 25 geographical areas in which
15 the department conducts its primary work activities.

16 (5) Grade crossing--The intersection of a railroad and a
17 public roadway at grade.

18 (6) Person--An individual, corporation, organization,
19 government or governmental subdivision or agency, business
20 trust, estate, trust, partnership, association, or any other
21 legal entity.

22 (7) Railroad company--A business operating and
23 maintaining rail transportation of freight or passengers.

1 (8) Retroreflectorized material--Material that reflects
2 light back in the direction of the light source.

3

4 §7.102. Warning Sign Visibility at Railroad Grade Crossings.

5 (a) Purpose. This section provides the guidelines and
6 specifications for the installation and maintenance of
7 reflecting material at all public railroad grade crossings that
8 are not protected by active warning devices, as required by
9 Transportation Code, §471.004.

10 (b) Installation.

11 (1) The department shall affix retroreflectorized
12 material to the back of crossbucks and support posts at all
13 public railroad grade crossings that are not protected by active
14 warning devices in a manner that reflects light from vehicle
15 headlights to focus attention on the presence of such a
16 crossing.

17 (2) Each railroad company owning or operating a grade
18 crossing that is not protected by an active warning device shall
19 permit, by written agreement, department personnel to enter
20 railroad company property at that crossing to affix
21 retroreflectorized material as required under paragraph (1) of
22 this subsection.

23 (3) All new installations or replacements of crossbucks

1 and supports must meet the design standards and
2 retroreflectorized material requirements of the department and
3 the Texas Manual on Uniform Traffic Control Devices for Streets
4 and Highways that are applicable at the time of the installation
5 or replacement, as appropriate. The design standards and
6 retroreflectorized material requirements are available free of
7 charge on request from the department at: Texas Department of
8 Transportation, Rail Division, 125 East 11th Street, Austin,
9 Texas 78701-2483.

10 (c) Maintenance. Subject to subsections (d) and (e) of
11 this section, the maintenance of crossbucks, support posts, and
12 retroreflectorized material is the responsibility of the
13 railroad company owning or operating the crossing.

14 (d) Initial cost. The initial cost of affixing the
15 retroreflectorized material will be paid from money appropriated
16 to the department for the purpose of installing safety devices
17 at public grade crossings.

18 (e) Maintenance costs. The costs of maintaining the
19 retroreflectorized material installed under this section is the
20 responsibility of:

21 (1) the department if the crossing is on a public roadway
22 that is designated as part of the state highway system; or

23 (2) the city or county government that is responsible for

1 the maintenance of the public roadway if the crossing is on a
2 public roadway that is not designated as part of the state
3 highway system.

4

5 §7.103. Dismantling Active Warning Devices at Railroad Grade
6 Crossings.

7 (a) Purpose. This section implements Transportation Code,
8 §471.005, which provides that a person may not dismantle an
9 active warning device at a grade crossing on an active rail
10 line, if any part of the cost of the active warning device was
11 originally paid from public funds, unless the person:

12 (1) obtains a permit from the governmental entity that
13 maintains the roadway at the intersection with the rail line;
14 and

15 (2) pays to that governmental entity an amount equal to
16 the present salvage value of the active warning device, as
17 determined by the governmental entity.

18 (b) Exception. This section does not apply to a railroad
19 company that is classified as a Class I or Class II railroad by
20 the Surface Transportation Board.

21 (c) Active rail line. For the purposes of this section,
22 "active rail line" refers to any railroad tracks that are:

23 (1) classified by the United States Department of

1 Transportation to carry freight or passenger trains; and

2 (2) currently being used and maintained by a railroad
3 company.

4 (d) Request for determination. A person desiring to
5 dismantle an active warning device at a grade crossing may
6 submit to the district office of the district in which the
7 warning device is located a request for the department to
8 determine:

9 (1) which governmental entity is responsible for
10 maintaining the roadway at which the warning device is located;
11 and

12 (2) whether any part of the cost of the warning device
13 was originally paid from public funds.

14 (e) Permit application. An applicant for a permit to
15 dismantle an active warning device located at the intersection
16 of a rail line with a roadway maintained by the department must
17 submit an application, on a form prescribed by the department,
18 to the district office of the district in which the device is
19 located. The application must be accompanied by a statement
20 that justifies the request. If the applicant is a corporation,
21 the application must be accompanied by a resolution from the
22 board of directors certifying the justification.

23 (f) Conditional approval. The district engineer of the

1 district in which the active warning device is located will
2 approve the application, conditioned on payment of salvage value
3 of the equipment, if, based on information provided in the
4 permit application and the accompanying justification and after
5 considering the factors set out by subsection (g) of this
6 section, the district engineer determines that removal of the
7 active warning device would not adversely affect public safety.

8 (g) Factors. In determining if removal of the active
9 warning device would adversely affect public safety, the
10 district engineer will consider:

11 (1) the current and projected average daily vehicle
12 traffic using the grade crossing;

13 (2) the nature or type of vehicle traffic using the grade
14 crossing;

15 (3) the total number and speed of trains conducted
16 through the grade crossing daily;

17 (4) the nature or type of train operations conducted
18 through the grade crossing;

19 (5) the sight distance in each quadrant on the roadway
20 approaches to the grade crossing; and

21 (6) the history of crashes at the grade crossing,
22 including crashes in which trains were involved and in which
23 trains were not involved.

1 (h) Salvage value. After conditional approval of an
2 application under subsection (f) of this section, the department
3 will determine and inform the applicant of the salvage value of
4 the active warning device. The salvage value is the total
5 monetary value that is expected to be derived from the device
6 proposed to be dismantled plus any material that is necessary
7 for the device's operation. The salvage value includes:

8 (1) the depreciated value of:

9 (A) reusable electrical equipment, such as signal
10 controllers, relays, rectifiers, and batteries;

11 (B) equipment, such as signal heads, lenses, signal
12 hoods and backgrounds, light bulbs, crossbuck signs, gate arm
13 mechanisms, gate arms, lights, and counterweights; and

14 (C) track circuit equipment, such as termination
15 shunts, capacitors, chokes, tuned joint couplers, and insulated
16 joints; and

17 (2) the scrap value of items described by paragraph (1)
18 of this subsection and other components, such as signal masts or
19 cantilevers, gate mechanisms, counterweights, signal cabins, and
20 signal cases if there is no reasonable prospect of the sale of
21 those items.

22 (i) Permit issuance. The department will issue a permit
23 for removal of the active warning device after the department

1 receives an amount equal to the salvage value of the device.

2 (j) Appeals.

3 (1) An applicant for a permit under this section may
4 appeal to the director of the department's rail division:

5 (A) the denial of a permit under this section; or

6 (B) the amount of the salvage value of the device
7 determined under subsection (h) of this section.

8 (2) An applicant may appeal an adverse decision of the
9 director of the department's rail division under paragraph (1)
10 of this subsection by filing a petition for an administrative
11 hearing under 43 TAC §§1.21, et seq. (relating to Procedures in
12 Contested Case).

13

14 §7.104. Maintenance of Railroad Underpasses.

15 (a) Definition. In this section, "railroad underpass"
16 means a grade separated structure that allows a roadway to cross
17 under a railroad track.

18 (b) Maintenance responsibilities. The department will pay
19 for the maintenance of railroad underpass substructure units,
20 which consist of the piers, abutments, and wing walls, but
21 exclude any existing timber substructure for approach spans. A
22 railroad company shall pay for the maintenance of the railroad
23 underpass superstructure, including the beams, bearings, deck,

1 waterproofing, and track structure, except as provided in
2 subsection (c) of this section.

3 (c) Payment for repair of damage to superstructure by
4 highway traffic. If a railroad underpass superstructure is
5 damaged by highway traffic, the department will pay the cost of
6 repairs to the extent agreed to by the representative of the
7 railroad company and the district engineer of the district in
8 which the underpass is located. On notification by the railroad
9 company, the department will prepare an agreement for execution
10 and a job set up based on the estimated cost of repairs. The
11 repair work will be performed by railroad forces or under
12 contract, as agreed on by the railroad representative and the
13 district engineer. In an extreme emergency, the railroad
14 company, on approval of the district engineer, may undertake the
15 work before the department and the railroad company execute a
16 formal agreement to cover the proposed repairs. However, the
17 department will not pay for work that is undertaken before the
18 district engineer issues a work order.

19 (d) Applicability limitations. The provisions of this
20 section related to the maintenance of underpass substructure
21 units and the assumption of costs for repair of damage to
22 superstructure caused by highway traffic, apply only to
23 underpass structures constructed or reconstructed after October

1 28, 1960.

2

3 §7.105. Spur Tracks Crossing Existing Highways.

4 (a) Grade crossing by spur rail line. Grade crossing of
5 any highway or road by a railroad spur track is discouraged.

6 (b) Requirements for major routes. The department will
7 allow a spur track crossing on an interstate highway or other
8 major route only with initial separation of grades. The person
9 requesting the crossing shall pay the total cost of constructing
10 and maintaining such a grade separation.

11 (c) Requirements for other roadways. The department may
12 allow a spur track grade crossing on a roadway, other than a
13 roadway to which subsection (b) of this section applies,
14 including a frontage road if technically feasible, if the
15 department determines that the anticipated volumes of train and
16 vehicular traffic and other pertinent factors indicate that the
17 crossing will not be unduly hazardous to the traveling public.
18 If a grade crossing is allowed, the person requesting the
19 crossing shall pay all costs of crossing pavement, highway
20 adjustment, and crossing warning protection, including active
21 warning devices that the department considers appropriate for
22 the crossing. Additionally, the department may specify
23 conditions, such as changes in conditions or volumes of

1 vehicular or train traffic, that will require future separation
2 of grades, at no expense to the state.

3

4 §7.106. Crossing and Maintenance of Highway-Railroad Grade
5 Crossings.

6 (a) Grade crossings. The department, in the expansion,
7 construction, reconstruction, and maintenance of the state
8 highway system, finds it necessary from time to time to cross
9 the tracks of a railroad at grade or to improve existing
10 highway-railroad grade crossings. This section applies to those
11 grade crossings.

12 (b) Responsibilities. The railroad companies shall furnish
13 to the department, free of cost, the necessary right of way,
14 easement, or license for such a grade crossing. In recognition
15 of those rights, the department will pay from available revenues
16 the cost of construction and reconstruction of a highway or
17 farm-to-market road at grade crossings with an existing
18 railroad. The railroad company shall maintain the grade
19 crossing surface over the tracks of the railroad from one end of
20 the railroad ties to the other end. On a new farm-to-market
21 road project, a county is responsible for the clearing of the
22 right of way, including utility line adjustments and cattle
23 guard adjustments, for the segment of the road located in the

1 county.

2 (c) Crossing pavement on existing crossings. On existing
3 highway-railroad grade crossings, the department will pay, from
4 available funds, for renewing the crossing approaches and
5 crossing surface to provide a satisfactory riding surface for
6 highway traffic. Asphalt or asphaltic concrete crossings are
7 generally not acceptable. Full-depth concrete panels extending
8 to the ends of railroad ties for the full crown width of the
9 highway are the standard. Full-depth timber pavement or other
10 more durable materials will be used if the railroad company and
11 the department agree to their use.

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes the
3 repeal of §§25.70-25.76 concerning Railroad Grade Crossings.

4

5 EXPLANATION OF PROPOSED REPEALS

6 In 1998 the rules relating to railroad grade crossings were
7 moved to 43 TAC Chapter 25, Traffic Operations, because at that
8 time the responsibility for railroad crossings was assigned to
9 the Traffic Operations Division of the department. The
10 department's Rail Division, which was established in December
11 2009, currently has responsibility for the oversight of railroad
12 crossings. The purpose of these changes is to move rules
13 pertaining to the department's oversight of railroad crossings
14 from 43 TAC Chapter 25, Traffic Operations, to 43 TAC Chapter 7,
15 Rail Facilities, to revise the statutory citations contained in
16 the rules, and to update the language of the new rules to make
17 them easier to read and understand. The proposed changes repeal
18 43 TAC §§25.70-25.76 and simultaneously add new sections which
19 will be in Chapter 7, new Subchapter F, Railroad Grade
20 Crossings.

21

22 FISCAL NOTE

23 James Bass, Chief Financial Officer, has determined that for
24 each of the first five years in which the repeals as proposed
25 are in effect, there will be no fiscal implications for state or

1 local governments as a result of enforcing or administering the
2 repeals.

3
4 William E. Glavin, P.E., Director, Rail Division, has certified
5 that there will be no significant impact on local economies or
6 overall employment as a result of enforcing or administering the
7 repeals.

8

9 PUBLIC BENEFIT AND COST

10 Mr. Glavin has also determined that for each year of the first
11 five years in which the sections are in effect, the public
12 benefit anticipated as a result of enforcing or administering
13 the repeals will be better organization of the department's
14 rules and a clear statement of the policies and procedures
15 governing the department's projects and statutory
16 responsibilities at railroad crossings. There are no
17 anticipated economic costs for persons required to comply with
18 the sections as proposed. There will be no adverse economic
19 effect on small businesses.

20

21 SUBMITTAL OF COMMENTS

22 Written comments on the proposed repeal of §§25.70-25.76 may be
23 submitted to William E. Glavin, P.E., Director, Rail Division,
24 Texas Department of Transportation, 125 East 11th Street,
25 Austin, Texas 78701-2483. The deadline for receipt of comments

1 is 5:00 p.m. on August 13, 2012. In accordance with
2 Transportation Code, §201.811(a)(5), a person who submits
3 comments must disclose, in writing with the comments, whether
4 the person does business with the department, may benefit
5 monetarily from the proposed changes, or is an employee of the
6 department.

7

8 STATUTORY AUTHORITY

9 The repeals are proposed under Transportation Code, §201.101,
10 which provides the Texas Transportation Commission with the
11 authority to establish rules for the conduct of the work of the
12 department, and more specifically, Transportation Code,
13 §471.004, which requires the department to adopt rules governing
14 the installation and maintenance of reflecting material at grade
15 crossings, and Transportation Code, §471.005, which authorizes
16 the department to adopt rules related to the dismantling of
17 warning signals at a grade crossing on an active rail line and
18 to define "active rail line."

19

20 CROSS REFERENCE TO STATUTE

21 Transportation Code, §§471.004 and 471.005.

1 SUBCHAPTER E. RAILROAD GRADE CROSSINGS

2 §25.70. Purpose and Scope. The sections under this subchapter
3 describe the policies and procedures governing the department's
4 projects and statutory responsibilities at railroad crossings.

5
6 §25.71. Definitions. The following words and terms, when used
7 in this subchapter, shall have the following meanings, unless
8 the context clearly indicates otherwise.

9 (1) Active rail line--Any railroad tracks that are
10 classified by the United States Department of Transportation to
11 carry freight or passenger trains, and are currently being
12 operated and maintained by a railroad company or railroad
13 carrier.

14 (2) Active warning device--A bell, flashing light, gate,
15 wigwag, or other automatically activated warning device.

16 (3) Applicant--A person applying to the department for a
17 permit issued under §25.72 of this title (relating to
18 Dismantling Warning Signals at Railroad Grade Crossings).

19 (4) Crossbuck--A standard railroad/highway crossing sign
20 design as Number R 15-1, and described in the Manual of Uniform
21 Traffic Control Devices (MUTCD), issued by the United States
22 Department of Transportation, Federal Highway Administration.

23 (5) Department--The Texas Department of Transportation.

1 (6) Director--The director of the department's Traffic
2 Operations Division.

3 (7) District--One of the 25 geographical areas, managed
4 by a district engineer, in which the department conducts its
5 primary work activities.

6 (8) Grade crossing--The intersection of a railroad and a
7 public roadway at grade.

8 (9) Local jurisdiction--A city or county government
9 responsible for the building and maintenance of public roadways.

10 (10) Nonsignalized crossing--A grade crossing not
11 protected by active warning devices.

12 (11) On-system--A public roadway designated as part of
13 the state highway system.

14 (12) Off-system--A public roadway not designated as part
15 of the state highway system.

16 (13) Person--An individual, corporation, organization,
17 government or governmental subdivision or agency, business
18 trust, estate, trust, partnership, association, or any other
19 legal entity.

20 (14) Public roadway--A roadway built and maintained with
21 public funds.

22 (15) Railroad company--A business operating and
23 maintaining rail transportation of freight and passengers.

1 (16) Railroad Overpass--A grade separated structure where
2 a roadway crosses over a railroad track or tracks.

3 (17) Railroad Underpass--A grade separated structure
4 where a roadway crosses under a railroad track or tracks.

5 (18) Retroreflectorized material--Material that reflects
6 light so that the paths of the reflected light rays are parallel
7 to those of the incident rays.

8 (19) Salvage value--Any monetary value that may be
9 derived from signal equipment being retired or removed or any
10 material necessary for its operation, including but not limited
11 to the following:

12 (A) the depreciated value of reusable electrical
13 equipment, such as signal controllers, relays, rectifiers,
14 batteries, etc.;

15 (B) signal equipment, such as signal heads, lenses,
16 signal hoods and backgrounds, light bulbs, crossbuck signs, gate
17 arm mechanisms, gate arms, lights, counterweights, etc.;

18 (C) track circuit equipment, such as termination
19 shunts, capacitors, chokes, tuned joint couplers, insulated
20 joints, etc.; and/or

21 (D) the scrap value of all of the above, including all
22 material or aluminum components, such as signal masts or
23 cantilevers, gate mechanisms, counterweights, signal cabins or

1 signal cases.

2 (20) Warning device--An active warning device, crossbuck,
3 or other traffic control sign, the purpose of which is to alert
4 motorists of a grade crossing.

5 (21) Warning signal--A traffic control device that is
6 activated by the approach or presence of a train, including a
7 flashing light signal, automatic gate, or similar device that
8 warns motorists of the approach or presence of a train.

9

10 §25.72. Dismantling Warning Signals at Railroad Grade
11 Crossings.

12 (a) Purpose. In accordance with Texas Civil Statutes,
13 Article 6370d, a person may not dismantle a warning signal at a
14 grade crossing on an active rail line, as defined in §25.71 of
15 this title (relating to Definitions), if the cost of the warning
16 signal was originally paid either entirely or partly from public
17 funds, unless the person:

18 (1) obtains a permit from the governmental entity that
19 maintains the road or highway that intersects the rail line at
20 the grade crossing; and

21 (2) pays to the governmental entity that maintains the
22 road or highway that intersects the rail line at the grade
23 crossing an amount equal to the present salvage value of the

1 warning signal, as determined by the governmental entity under
2 applicable law.

3 (b) Permit application.

4 (1) This subsection applies to warning signals at
5 railroad grade crossings on a rail line that intersects a
6 highway maintained by the department.

7 (2) An applicant for a permit to dismantle a warning
8 signal must submit an application, on a form prescribed by the
9 department, to the department's district office in the district
10 where the warning signal is located. The application must be
11 accompanied by a statement certifying the justification for the
12 request to dismantle the warning signal. If the applicant is a
13 corporation, the application must be accompanied by a resolution
14 from the board of directors certifying the justification for the
15 request to dismantle the warning signal.

16 (c) Conditional approval.

17 (1) The district engineer will approve the application
18 conditioned on payment of salvage value if, based on information
19 provided in the permit application and the accompanying
20 justification, he or she determines that removal of the warning
21 signal would not adversely affect public safety.

22 (2) The district engineer will consider the following
23 factors in determining if removal of the warning signal would

1 adversely affect public safety:

2 (A) current and projected average daily vehicle traffic
3 using the grade crossing;

4 (B) the nature or type of vehicle traffic using the
5 grade crossing;

6 (C) the total daily number and speed of trains
7 conducted through the grade crossing;

8 (D) the nature or type of train operations conducted
9 through the grade crossing;

10 (E) the sight distance in each quadrant on the roadway
11 approaches to the grade crossing; and

12 (F) train-involved and non-train-involved crash history
13 at the grade crossing.

14 (d) Salvage value. Upon approval of an application, the
15 department will assess the salvage value of the warning signal
16 and inform the applicant of its assessment.

17 (e) Permit issuance. Upon receipt of payment of the
18 assessed salvage value of the signal, the department will issue
19 a permit for removal of the warning signal.

20 (f) Appeal process. An applicant may appeal the denial of
21 a permit or the assessment of salvage value to the director. An
22 applicant may appeal an adverse decision of the director by
23 filing a petition for an administrative hearing pursuant to

1 §§1.21, et seq. of this title (relating to Contested Case
2 Procedure).

3 (g) Other governmental entities. A person desiring to
4 dismantle a warning signal at a grade crossing may request the
5 department to determine what governmental entity is responsible
6 for maintaining the intersecting road or highway and whether the
7 warning signal was originally paid either entirely or partly
8 from public funds by submitting a request to the department's
9 district office in the district where the warning signal is
10 located.

11 (h) Exempt railroads. The provisions of this section shall
12 not apply to Class I or Class II railroads as defined by United
13 States Department of Transportation rules and regulations.

14
15 §25.73. Warning Sign Visibility at Railroad Grade Crossings.

16 (a) Purpose. In accordance with Texas Civil Statutes,
17 Article 6370b, the department is authorized to develop
18 guidelines and specifications for the installation and
19 maintenance of retroreflectorized material at all public
20 railroad grade crossings not protected by active warning
21 devices. This section prescribes the requirements and
22 procedures for installation and maintenance to implement the
23 provisions of the Act.

1 (b) Installation.

2 (1) Retroreflectorized material shall be affixed to the
3 back of crossbucks and support posts at all public railroad
4 grade crossings not protected by active warning devices in a
5 manner that retroreflects light from vehicle headlights to focus
6 attention to the presence of a nonsignalized crossing.

7 (2) Each railroad company owning or operating a
8 nonsignalized crossing shall permit, by written letter
9 agreement, department personnel to enter railroad company
10 property at nonsignalized grade crossings for the purpose of
11 affixing retroreflectorized material to the backs of crossbucks
12 and support posts.

13 (3) The retroreflectorized material shall satisfy the
14 specifications shown in Appendix A of this section.

15 (4) All new installations or replacements of crossbucks
16 and supports shall meet the current design standards and
17 retroreflectorized material requirements of the department and
18 MUTCD. The current design standards and retroreflectorized
19 material requirements of the department and MUTCD are available
20 upon request, free of charge, from the department at the
21 following address: Texas Department of Transportation, Traffic
22 Operations Division, 125 East 11th Street, Austin, Texas 78701-
23 2483.

1 (c) Maintenance. Subject to subsection (d) of this
2 section, maintenance of crossbucks, support posts, and
3 retroreflectorized material shall be the responsibility of the
4 railroad company owning or operating the crossing.

5 (d) Costs.

6 (1) The initial cost of affixing the retroreflectorized
7 material shall be paid from money appropriated to the department
8 for the purpose of installing safety devices at public grade
9 crossings.

10 (2) Subsequent maintenance costs of retroreflectorized
11 material installed by the department pursuant to this section
12 shall be the responsibility of:

13 (A) the department for on-system crossings; or

14 (B) the local jurisdiction for off-system crossings.

15 (e) Specifications. The following Appendix A indicates the
16 design specifications and installation instructions for
17 retroreflectorized material.

18

19 §25.74. Maintenance of Railroad Underpasses.

20 (a) The department assumes the maintenance of railroad
21 underpass substructure units, consisting of the piers, abutments
22 and wingwalls but excluding any existing timber substructure for
23 approach spans. Except as provided in subsection (b) of this

1 section, the railroad companies have the maintenance
2 responsibility for the underpass superstructure, including the
3 beams, shoes, deck, waterproofing, and track structure.

4 (b) In the event of damage to the underpass superstructure,
5 beams and/or deck, by highway traffic, the state will assume the
6 cost of repairs. In such cases it will be necessary for the
7 railroad representative and the district engineer to agree on
8 the extent of repairs. Upon notification by the railroad
9 company, an agreement will be prepared for execution and a job
10 set up based on the estimated cost of repairs. This work will
11 be performed by railroad forces or contract as may be agreed
12 upon by the railroad representative and the district engineer.
13 Work of an extreme emergency nature may be undertaken by the
14 railroad company upon approval of the district engineer prior to
15 execution of a formal state-railroad agreement to cover the
16 proposed repairs. However, no work will be paid for by the
17 state which is undertaken by the railroad company prior to
18 issuance of a work order by the district engineer.

19 (c) These provisions for maintenance of underpass
20 substructure units and assumption of costs for repair of damage
21 to superstructure spans caused by highway traffic, as noted in
22 subsection (b) of this section, apply only to underpass
23 structures constructed or reconstructed after October 28, 1960.

1

2 §25.75. Spur Tracks Crossing Existing Highways.

3 (a) Grade crossing of any highway or road by a railroad
4 spur track is discouraged. On interstate highways and other
5 major routes a crossing will be allowed only with initial
6 separation of grades. The total cost of constructing and
7 maintaining such a grade separation will be borne by others.

8 (b) On other than interstate highway facilities (including
9 frontage roads when technically feasible), a spur track grade
10 crossing may be allowed if, in the opinion of the department,
11 the anticipated volumes of train and vehicular traffic and other
12 pertinent factors indicate that the crossing will not be unduly
13 hazardous to the traveling public. If a crossing is allowed,
14 all costs of crossing pavement, highway adjustment and warning
15 protection will be borne by others. Also, conditions may be
16 specified whereby a change in traffic or train conditions or
17 volumes will require a future separation of grades, all at no
18 expense to the state.

19

20 §25.76. Crossing and Maintenance of Highway-Railroad Grade
21 Crossings.

22 (a) The department, in the expansion, construction,
23 reconstruction, and maintenance of the State Highway System,

1 finds it necessary from time to time to cross the tracks of a
2 railroad at grade or to improve existing highway-railroad grade
3 crossings.

4 (b) The railroad companies will furnish to the department,
5 free of cost, the necessary right of way, easement, or license
6 for such grade crossings. In recognition of these rights, the
7 department will pay, from available revenues, the cost of
8 construction and reconstruction of all highways and farm-to-
9 market roads at their grade crossings with existing railroads.
10 The obligation of maintenance is to remain with the railroad
11 company on that portion from end to end of the railroad ties.
12 On new farm-to-market road projects the clearing of the right of
13 way, including utility line adjustments, cattle guard
14 adjustments, etc., is the responsibility of the county involved.

15 (c) On existing highway-railroad grade crossings, the
16 department will pay, from available funds, for renewing the
17 crossing pavement to provide a satisfactory riding surface for
18 highway traffic. Asphalt or asphaltic concrete crossings are
19 generally not acceptable. As a minimum standard, full depth
20 timber pavement extending to the ends of railroad ties for the
21 full crown width of the highway will be used. Other more
22 durable materials will be used if mutually agreed to by the
23 railroad company and the department.