

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

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

The preamble and the adopted 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 new §§7.101 - 7.106 and the repeal of §§25.70 - 25.76 are adopted and are authorized for filing with the Office of the Secretary of State.

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

Submitted and reviewed by:



Director, Rail Division

Recommended by



Executive Director

113282 SEP 27 12

Minute Number Date Passed

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

22
23 New §7.102, Warning Sign Visibility at Railroad Grade Crossings,
24 is substantively the same as current §25.73. The statutory
25 reference has been updated. The definition of "local

1 jurisdiction" contained in current §25.71(9) has been integrated
2 into the wording of new §7.102(e)(2) and that definition has
3 been deleted as unnecessary. The new section clarifies that the
4 Texas Manual on Uniform Traffic Control Devices provides the
5 standard currently used by the department and railroads for the
6 installation and use of the retro-reflective material on the
7 crossbuck sign assemblies rather than the information provided
8 by Appendix A to current §25.73. Appendix A and references to
9 it have been deleted in new §7.102.

10

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

21

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

1 current §25.71 is not used in the new rules and has been
2 deleted.

3

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

12

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

18

19 COMMENTS

20 No comments on the proposed new sections were received.

21

22 STATUTORY AUTHORITY

23 The new sections are adopted under Transportation Code,
24 §201.101, which provides the Texas Transportation Commission
25 with the authority to establish rules for the conduct of the

1 work of the department, and more specifically, Transportation
2 Code, §471.004, which requires the department to adopt rules
3 governing the installation and maintenance of reflecting
4 material at grade crossings, and Transportation Code, §471.005,
5 which authorizes the department to adopt rules related to the
6 dismantling of warning signals at a grade crossing on an active
7 rail line and to define "active rail line."

8

9 CROSS REFERENCE TO STATUTE

10 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 Adoption Preamble

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

4 The repeal of §§25.70-25.76 are adopted without changes to the
5 proposed text as published in the July 13, 2012 issue of the
6 *Texas Register* (37 TexReg 5255) and will not be republished.

7

8 EXPLANATION OF ADOPTED REPEALS

9 In 1998 the rules relating to railroad grade crossings were
10 moved to 43 TAC Chapter 25, Traffic Operations, because at that
11 time the responsibility for railroad crossings was assigned to
12 the Traffic Operations Division of the department. The
13 department's Rail Division, which was established in December
14 2009, currently has responsibility for the oversight of railroad
15 crossings. The purpose of these changes is to move rules
16 pertaining to the department's oversight of railroad crossings
17 from 43 TAC Chapter 25, Traffic Operations, to 43 TAC Chapter 7,
18 Rail Facilities, to revise the statutory citations contained in
19 the rules, and to update the language of the new rules to make
20 them easier to read and understand. The changes repeal 43 TAC
21 §§25.70-25.76 and simultaneously add new sections which will be
22 in Chapter 7, new Subchapter F, Railroad Grade Crossings.

23

24 COMMENTS

25 No comments on the proposed repeals were received.

1

2 STATUTORY AUTHORITY

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

13

14 CROSS REFERENCE TO STATUTE

15 Transportation Code, §§471.004 and 471.005.

1 SUBCHAPTER E. RAILROAD GRADE CROSSINGS

2 §25.70. Purpose and Scope.

3 §25.71. Definitions.

4 §25.72. Dismantling Warning Signals at Railroad Grade
5 Crossings.

6 §25.73. Warning Sign Visibility at Railroad Grade Crossings.

7 §25.74. Maintenance of Railroad Underpasses.

8 §25.75. Spur Tracks Crossing Existing Highways.

9 §25.76. Crossing and Maintenance of Highway-Railroad Grade
10 Crossings.