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ARKANSAS REGISTER

Transmittal Sheet

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Secretary of State
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For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas State Highway Commission

Department Legal Division

Contact David S. Long E-mail David.Long@ahtd.ar.gov Phone 501-569-2158

Statutory Authority for Promulgating Rules A.C.A. § 27-65-107(a)(13)

Rule Title: SEE ATTACHED

Intended Effective Date (Check One)

- ☐ Emergency (ACA 25-15-204)
- ☒ 30 Days After Filing (ACA 25-15-204)
- ☐ Other _____ (Must be more than 30 days after filing date.)

	Date
Legal Notice Published	April 12-14, 2012
Final Date for Public Comment	May 16, 2012
Reviewed by Legislatice Council	
Adopted by State Agency	Sep 11, 2012

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Lakeysha Walker (Contact Person) Lakeysha.Walker@ahtd.ar.gov (E-mail Address) Sep 24, 2012 (Date)

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501-569-2158 (Phone Number) David.Long@ahtd.ar.gov (E-mail Address)

Staff Attorney
Title

Sep 24, 2012
Date

Revised 7/2011 to reflect new legislation passed in 2011.

1.

RAILROAD SAFETY AND REGULATORY RULES PROMULGATED UNDER ACT 726 OF 1993 AS AMENDED BY ACT 668 OF 1995

MAINTENANCE OF RAILROAD CROSSINGS

2.

OBSTRUCTION OF PUBLIC HIGHWAYS, ROADS, STREETS OR OTHER RAILROAD CROSSINGS OR PUBLIC PROPERTY

ARKANSAS STATE HIGHWAY COMMISSION

MINUTE ORDER

District: Statewide

Category: Commission Policy

WHEREAS, the Arkansas State Highway Commission promulgated Railroad Safety and Regulatory Rules (Rules) under Act 726 of "The Railroad Regulatory and Safety Act of 1993"; and

WHEREAS, Act 726 of 1993 was amended by Act 668 of 1995 "to provide more realistic time frames for investigations and other procedures regarding the maintenance or obstruction of railroad crossings ..."; and

WHEREAS, the Rules promulgated in 1993 have been revised accordingly as reflected in the attached Exhibit A.

NOW THEREFORE, the Director is authorized to submit the revised Rules for approval by the Administrative Rules and Regulations Subcommittee of the Arkansas Legislative Council.

Approved:

Chairman

Vice-Chairman

Member

Member

Member

ACE-P

Submitted By:

Assistant Chief Engineer - Planning

Approved:

Director

Minute Order No. 2012 083

Date Passed SEP 11 2012

Form 19-456
Rev. 05/11/2010

RAILROAD SAFETY AND REGULATORY RULES
PROMULGATED UNDER ACT 726 OF 1993
AS AMENDED BY ACT 668 OF 1995

MAINTENANCE OF RAILROAD CROSSINGS

Rule M-1.1

Each railroad company operating within the State of Arkansas shall be responsible for the maintenance of that portion of the crossing lying between the rails of the tracks and to the ends of crossties on each side. To the extent practicable, the railroad company shall maintain this area in a good state of repair, equal to or better than the adjoining portions of the roadway.

The surface of each grade crossing shall conform to the plane of the tops of the rails and be constructed and maintained in a reasonably smooth condition. The public authority with jurisdiction over the roadway at the crossing shall be responsible for maintaining the remaining portion of the roadway at the crossing beyond the ends of crossties. Maintenance of grade crossings shall be the responsibility of the parties as found above unless otherwise ordered by the Arkansas State Highway Commission or agreed to by the parties involved.

Rule M-1.2

No crossing at grade shall be required to be maintained by the railroad company at a standard that is higher than the condition of the approach to that crossing as maintained by the public authority with jurisdiction over that roadway.

Rule M-1.3

(a) Each railroad company shall notify in writing by certified mail the public authority with jurisdiction over the roadway in question at least two (2) weeks in advance of the date that it intends to raise or lower the elevation of one or more tracks at any crossing.

(b) (1) No scheduled or programmed maintenance or construction shall begin on a railroad crossing which will cause the crossing to be blocked for a period in excess of the time allowed in these rules until the railroad company has notified in writing by certified mail and received approval from the public authority with jurisdiction over the roadway in question. Said notice shall be provided to the public authority with jurisdiction over the roadway not less than thirty (30) days in advance of the date work is scheduled to begin.

(b) (2) In the event that the public authority with jurisdiction over the roadway fails to act on the request within one (1) week of the date work is scheduled to begin, the railroad company may begin the scheduled maintenance or construction after filing with

the Commission a copy of the certified mail and return receipt requesting approval of the blocking of the crossing for a period in excess of the time allowed in these rules.

(b) (3) In the event the public authority with jurisdiction over the roadway disapproves the request to block the crossing, the railroad company may petition the Commission for a hearing requesting approval of the obstruction. Notice of the hearing shall be served on the public authority having jurisdiction over the roadway. All parties shall have the right to appear and present evidence regarding the necessity for the blocking and/or the reasons for not approving the blocking. At the conclusion of the hearing, the Commission or its hearing officer shall make findings of fact and enter an order in conformance with those findings. All decisions by the Commission under this rule shall be appealable to the circuit courts of the county in which the crossing is situated.

(c) In no event shall the provisions of this rule apply to situations where a crossing is blocked for emergency maintenance or construction by the railroad company required to make the crossing accessible to the traveling public.

(d) When any maintenance or construction, whether scheduled or emergency in nature, shall require the obstruction or closing of the crossing in excess of thirty (30) minutes, the railroad company shall be responsible for the placement of signs showing the designated alternative or detour route. Such alternative route shall conform to the requirements of Rule X-1.2(b)(2) and (c) in all respects.

Rule M-1.4

The Arkansas State Highway and Transportation Department will establish a Railroad Crossing Investigation Team. The team will initiate an investigation when a complaint concerning the maintenance of a railroad crossing has been filed with the Commission. The team will be responsible for compiling a report to be presented to the Commission or its hearing officer. When the written report has been completed, it will be made available to the public authority and the railroad company, upon request, in advance of the date set for any hearing on the complaint.

The investigation will include an on-site inspection of the crossing in question. If the Railroad Crossing Investigation Team deems it appropriate and useful to their investigation, representatives of the railroad company and the public authority having jurisdiction over the roadway may be invited to join the team at its on-site inspection of the crossing in question. In no event shall the team invite representatives from one party without extending the invitation to the other party.

Rule M-1.5

When any state, municipal, or county official files a complaint with the railroad company, the official in question shall notify the railroad company in writing of the exact location of the crossing and the nature of the problem giving rise to the complaint. The letter shall include at a minimum the AAR-DOT number of the crossing, as well as the public highway number, road number, or street name on which the crossing is located, and the fact that the complaint is being brought pursuant to Act 726 of 1993 and Act 668

of 1995, as found in Ark. Code Ann. §23-12-1001 et seq. Said complaint shall be filed with the railroad company by certified mail.

Within forty-five (45) days after the receipt of the certified mail by the railroad company, the railroad company shall respond to the claim or complaint in writing by certified mail. The response by the railroad company shall state with specificity what action it has taken or plans or intends to take to correct the situation including the timeframe for its completion, why it believes no action should be taken, or any defense to which the railroad company believes it is entitled.

Every claim or complaint filed by any state, municipal, or county official shall also be served on the Commission. The response by the railroad company shall also be served on the Commission. The copies filed with the Commission shall be for information only at this stage of the proceedings.

Rule M-1.6

Each railroad company shall designate an agent for service of complaints pursuant to these rules. The name and address of the designated agent shall be supplied to the Commission, and shall be updated by the railroad company upon any change being made.

Rule M-2.1

When any state, municipal, or county official has requested action by a railroad company and the railroad company has failed to comply with these regulations pursuant to the provisions of Ark. Code Ann. §23-12-1001 et seq., or the complaint has not been resolved to the satisfaction of the state, municipal, or county official, said complaining official shall notify the Commission in writing. Said notification shall be by certified mail.

No complaint may be officially filed with the Commission until the state, municipal, or county official has filed a complaint in writing by certified mail to the designated agent of the railroad company in question and the time allowed for responding to the complaint has expired. If the railroad company has not responded to the claim or complaint in writing within the time allowed, stating the specific measures taken or to be taken to improve the crossing or why no action is deemed necessary, or in the event that the issue is not resolved to the satisfaction of the complaining official, the official may then file a complaint with the Commission in accordance with the procedures contained within these rules.

The complaining official shall enclose with the complaint filed with the Commission a certified copy of all correspondence between the municipality, county, or state agency involved and the railroad company. Copies of receipts for certified mail showing delivery of the complaint shall also be provided by the complaining official.

Rule M-2.2

Within sixty (60) days after the receipt of the complaint, the department will have completed an investigation of the complaint. The investigation will include a study of the

railroad crossing by the Railroad Crossing Investigation Team. It will include, at a minimum, an on-site inspection as well as the collection and presentation of data relating to the maintenance of the crossing. The investigation will follow written procedures established and published by the department. A written report will be presented to the Commission or its hearing officer.

Rule M-2.3

Upon receipt of the complaint from the official, the Commission will schedule a hearing on the complaint. Notice of the hearing will be given to the railroad company's designated agent and the complaining party at least twenty (20) days in advance of the hearing. The hearing will be held within sixty (60) days from the date the complaint is received by the Commission.

The Commission may designate that the hearing be held before its hearing officer, who will be vested with the authority to determine whether the crossing has been maintained in accordance with the requirements of the Railroad Safety and Regulatory Act of 1993 and these rules. The hearing shall be on the record. A transcript of the proceedings will be prepared at the conclusion of the hearing and filed with the Commission. Any order or decision of the hearing officer adopted or ratified by the Commission shall be a final order of the Commission.

Based on information presented at the hearing, if the Commission or its hearing officer makes a finding of inadequate action or unreasonable refusal on the part of the railroad in violation of the provisions of Ark. Code Ann. §23-12-1001 et seq. and these rules, the Commission will levy a penalty in accordance with the Railroad Regulatory and Safety Act of 1993.

Rule M-2.4

All orders of the Commission or its hearing officer shall be in writing and issued within ten (10) days after such hearing; they shall be served on all parties to the complaint and proceedings thereunder. Upon its own motion or upon the motion of any party filed within ten (10) days of entry of any order or decision rendered by the hearing officer, said order or decision may be reviewed by the Commission; the Commission may adopt the hearing officer's decision in whole or in part, may modify the decision, or reverse the decision as a result of its review.

Appeals of decisions of the Commission shall be lodged with the circuit clerk of the county in which the crossing is located within thirty (30) days after the written decision has been rendered. The decision of the Commission shall be final unless appealed. Notice of appeal shall be filed with the Commission. When notice of appeal is filed the department will begin preparation of the record in the matter. The record will include the transcript of the proceedings before the Commission or its hearing officer and all documents pertaining to the complaint, investigation, and hearing. The party lodging the appeal shall bear the cost of the preparation of the record in this matter.

Rule M-2.5

Any other proceeding authorized by Act 726 of 1993 as found in Ark. Code Ann. §23-12-1001 et seq. shall be initiated by the filing of a petition by the moving party, with service by certified mail on all other parties to the proceeding. Responses to petitions must be filed within ten (10) days after service on the Commission by all other parties wishing to respond.

Petitions for rehearing must be filed within ten (10) days after service of any order issued by the Commission or its hearing officer. Petitions for rehearing must allege an error of fact or law, and be verified by the party requesting the rehearing. The filing of a petition for rehearing does not stay the time for filing an appeal with the circuit court.

OBSTRUCTION OF PUBLIC HIGHWAYS, ROADS, STREETS OR OTHER RAILROAD CROSSINGS OR PUBLIC PROPERTY

Rule X-1.1

No railroad company operating in the State of Arkansas shall cause a public grade crossing to be blocked from the hours of 6:00 a.m. to 10:00 p.m. in excess of ten (10) continuous minutes from the time the first roadway user is blocked at the crossing. From the hours of 10:00 p.m. to 6:00 a.m., no public grade crossing shall be blocked in excess of fifteen (15) continuous minutes from the time the first roadway user is blocked at the crossing. Each period of crossing blockage shall be followed by a interval of time sufficient to allow the passage of all waiting traffic.

In the event the operations of any railroad company shall require a public grade crossing to be blocked in excess of the time allowed by these rules, said railroad shall cause the train to be cut and allow all traffic to move over the crossing until such time as the railroad is able to move the train from the crossing site in question.

Rule X-1.2

(a) Public grade crossings may be blocked for a period in excess of the time allowed in Rule X-1.1 provided there is an alternative unobstructed crossing available to the roadway users. In no event shall the crossing be blocked for a period in excess of thirty (30) minutes.

(b) (1) An alternative crossing shall be defined as a crossing that requires no more than one-half (1/2) additional mile of travel when the crossing is within city limits or one (1) additional mile of travel when the crossing is outside city limits as a detour for motorists altering their route as a result of a blocked crossing. The detour route to the alternative crossing must be a viable way of travel, comparable in condition and maintenance to the road being blocked. The detour must be visible or apparent to the motorist from the site of the blocked crossing.

(b) (2) In the event an alternative crossing is not available that complies with the provisions of this rule, the railroad company may petition the Commission for an exception to this rule. Such petition shall be filed with the Commission and shall state the reasons for the exception; a copy shall be served on the public authority having jurisdiction over the roadway in question. After notice to and a hearing involving all interested parties, the Commission may enter an order containing findings of facts granting or denying said exemption. Any party to the proceeding may appeal said order to the circuit court of the county in which the crossing is located.

(c) Any grant of an exemption by the Commission or its hearing officer shall be for the crossing in question and shall not apply to any other crossing. Said exemption may be reviewed at a later date, upon written petition by any of the parties, alleging that the facts and circumstances surrounding the exemption have changed. Upon filing of the petition, the notice and hearing procedures outlined above shall be followed. The Commission or its hearing officer will enter a written order as a result of the hearing. Upon its own motion or upon the motion of any party filed within ten (10) days of entry

of any order or decision rendered by the hearing officer, said order or decision may be reviewed by the Commission; the Commission may adopt the hearing officer's decision in whole or in part, may modify the decision, or reverse the decision as a result of its review. Any party to this proceeding may appeal said order to the circuit court of the county in which the crossing is located.

Rule X-1.3

(a) The permissible standing time for trains shall not include a moving train that is blocking a crossing. A moving train is defined as a train that is moving continuously in the same direction. A standing train for purposes of these rules shall include all switching operations that block a public grade crossing as well as standing trains, which are stopped on the track thereby causing a public grade crossing to be blocked.

(b) In the event that the railroad company must block a crossing in excess of the time allowed on a regular basis in order to serve its customers, perform switching operations, or other related reasons, the railroad company may petition the Commission for an exception to this rule. Said petition shall be in writing, and shall set forth the facts and circumstances justifying such exception. A copy of the petition shall be served on the public authority having jurisdiction over the roadway in question.

After notice to all parties and a hearing on the matter, the Commission or its hearing officer will enter an order granting or denying the petition. The order will contain findings of fact and will be served on all parties to the proceeding. Upon its own motion or upon the motion of any party filed within ten (10) days of entry of any order or decision rendered by the hearing officer, said order or decision may be reviewed by the Commission; the Commission may adopt the hearing officer's decision in whole or in part, may modify the decision, or reverse the decision as a result of its review. Any party to the proceeding may appeal the decision of the Commission to the circuit court of the county in which the crossing is located.

(c) Any grant of an exemption by the Commission shall be for the crossing in question and shall not apply to any other crossing. Said exemption may be reviewed at a later date, upon written petition by any of the parties, alleging that the facts and circumstances surrounding the exemption have changed. Upon filing of the petition, the notice and hearing procedures outlined above shall be followed. The Commission or its hearing officer will enter a written order as a result of the hearing. Upon its own motion or upon the motion of any party filed within ten (10) days of entry of any order or decision rendered by the hearing officer, said order or decision may be reviewed by the Commission; the Commission may adopt the hearing officer's decision in whole or in part, may modify the decision, or reverse the decision as a result of its review. Any party to this proceeding may appeal said order to the circuit court of the county in which the crossing is located.

Rule X-1.4

When any state, municipal, or county official files a complaint in writing with the railroad company, the official in question shall notify the railroad company of the exact

location of the crossing and the nature of the problem giving rise to the complaint, including but not limited to the dates, duration, beginning and ending times, and frequency of the blocking of the crossing. The complaint shall include at a minimum the AAR-DOT number of the crossing, as well as the public highway number, road number or street name on which the crossing is located, and the fact that the complaint is brought pursuant to Act 726 of 1993 and Act 668 of 1995, as found in Ark. Code Ann. §23-12-1001 et seq. Said complaint shall be served on the railroad company by certified mail.

Within forty-five (45) days after receipt of the certified mail by the railroad company, the railroad company shall respond to the claim or complaint in writing by certified mail. The response by the railroad company shall state what action it has taken or will be taken to correct the situation, why it believes no action should be taken, or any defense to the claim or complaint to which the railroad company believes it is lawfully entitled.

Every claim or complaint filed by any state, municipal, or county official shall also be served on the Commission. The response by the railroad company shall also be served on the Commission. The copies filed with the Commission shall be for information only at this stage of the proceedings.

Rule X-1.5

These rules shall not apply to any train continuously moving in the same direction during the entire time that it occupies the crossing, any instance where no vehicular or pedestrian traffic is waiting to cross the track at the crossing, or blockage caused by wrecks, derailments, acts of nature or other emergency conditions not under control of the railroad or during emergency operational procedures required by Federal law.

Rule X-1.6

Each railroad company shall designate an agent for service of complaints pursuant to these rules. The name and address of the designated agent shall be furnished to the Commission, and shall be updated by the railroad company upon any change being made.

Rule X-2.1

Complaints filed with the Commission regarding the obstruction of public highways, roads, streets or other crossings or public property by railroad equipment may be made by any state, municipal, or county official. The complaining party shall state in the complaint the exact location of the crossing and the nature of the problem giving rise to the complaint, including but not limited to the dates, duration, beginning and ending times, and frequency of the blocking of the crossing. The crossing shall be identified by its AAR-DOT number as well as the public highway number, road number or street name upon which the crossing is located. The complaint shall further identify the fact that the complaint is brought pursuant to Act 726 of 1993, as found in Ark. Code Ann. §23-12-1001 et seq. Such complaint shall be served on the Commission by certified mail by the state, municipal, or county official making the complaint.

Rule X-2.2

No complaint shall be officially filed with the Commission until the state, municipal or county official has filed a complaint in writing by certified mail to the designated agent of the railroad company in question and the forty-five (45) days allowed for responding to the complaint has expired. If the railroad company has not responded to the claim or complaint in writing within the time allowed, stating the specific reasons for obstructing the crossing for a period in excess of the allowable time or alleging a defense to the complaint, or in the event that the issue is not resolved to the satisfaction of the complaining official, the official may then file a complaint with the Commission according to the procedures contained within these rules. The complaining official shall enclose with the complaint filed with the Commission a copy of all correspondence between the official and the railroad company, including copies of receipts for certified mail showing delivery of the complaint.

Rule X-2.3

Upon receipt of a complaint filed alleging non-compliance with these rules, the department will make an investigation of the crossing. The investigation will include but not be limited to the reasonable availability of an alternative crossing, as defined in these rules, for vehicular or pedestrian traffic. The District Engineer or his designee will investigate the availability of an alternative crossing, the travel distance required, and the suitability of the alternative crossing for vehicular or pedestrian traffic. A written report containing this information will be forwarded to the Railroad Crossing Coordinator by the District Engineer. Information including but not limited to the average daily traffic count compiled by the department for the crossing in question will be added to the report prepared by the Railroad Crossing Coordinator. The Railroad Crossing Coordinator will present the report to the Commission or its hearing officer.

Written information shall be supplied by the state, municipal, or county official making the complaint. Such information shall include all documentation contained in the original complaint, as well as information pertaining to the restriction of emergency and law enforcement vehicles using the crossing, the hours of frequent use of the crossing, and any other information relevant to an investigation of the obstruction of the public highway, road, street or other public property by a standing train.

Rule X-2.4

Upon receipt of the complaint from the complaining official, the Commission will schedule a hearing on the complaint. Notice of the hearing will be given to the railroad company and the complaining party at least twenty (20) days in advance of the hearing. The hearing will be held within sixty (60) days of receipt of the complaint by the Commission.

The Commission may designate that the hearing be held before its hearing officer, who is vested with the authority to determine whether the obstruction was for an unlawful

period of time under the circumstances. The hearing shall be on the record. A transcript of the proceedings of the hearing shall be prepared and filed with the Commission.

Based on the information presented at the hearing, if the Commission or its hearing officer makes a finding of unlawful delay, the Commission will levy a penalty in accordance with the terms of the Railroad Regulatory and Safety Act of 1993.

Rule X-2.5

All orders of the Commission or its hearing officer will be in writing and issued within ten (10) days of said hearing; they shall be served on all parties to the complaint and proceedings thereunder. Appeals of decisions of the Commission or its hearing officer shall be lodged with the circuit clerk of the county in which the crossing is located within thirty (30) days after the written decision has been rendered. Any decision of the Commission or its hearing officer made pursuant to these rules shall be final unless appealed. Upon its own motion or upon the motion of any party, any decision rendered by the hearing officer may be reviewed by the Commission; the Commission may adopt the hearing officer's decision in whole or in part, may modify the decision, or reverse the decision as a result of its review.

Notice of appeal shall be filed with the Commission. When notice of appeal is filed the department will begin preparation of the record in the matter. The record shall include the transcript of the proceedings before the Commission or its hearing officer and all documents pertaining to the complaint, investigation, and hearing, as well as any evidence or exhibits introduced into the record by any party. The party lodging the appeal shall bear the cost of the preparation of the record in this matter. The record shall not be lodged until the appellant has paid for the cost of the preparation of the record.

Rule X-2.6

Any other proceeding authorized by Act 726 of 1993 as found in Ark. Code Ann. §23-12-1001 et seq. shall be initiated by the filing of a petition by the moving party, with service by certified mail on all other parties to the proceeding. Responses to petitions must be filed within ten (10) days after service on the Commission by all other parties wishing to respond.

Petitions for rehearing must be filed within ten (10) days after service of any order issued by the Commission or its hearing officer. Petitions for rehearing must allege an error of fact or law, and be verified by the party requesting the rehearing. The filing of a petition for rehearing does not stay the time for filing an appeal with the circuit court.