

**RULES
OF
TENNESSEE DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION, WATERWAYS AND RAIL DIVISION**

**CHAPTER 1680-9-1
RAILROAD GRADE CROSSING STANDARDS**

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1680-9-1-.01 PURPOSE.

The purpose of these Rules is to implement Chapter 315 of the Tennessee Public Acts of 2001, Tenn. Code Ann. § 65-11-101(c), by establishing standards for the construction of railroad grade crossings on public roads, and for the conversion of private crossings to public crossings, within the State of Tennessee. These Rules also establish procedures for the approval of plans for the construction or conversion of grade crossings and for the inspection of these crossings by the Department before they are opened to vehicular traffic.

Authority: T.C.A. §65-11-101. *Administrative History:* Original rule filed April 5, 2002; effective June 19, 2002. Rule has been assigned a new control number from 1680-12-1-.01 filed and effective February 1, 2003.

1680-9-1-.02 APPLICABILITY.

- (1) Construction or Conversion of Crossings After July 1, 2001.

After July 1, 2001, there shall be no construction of any public crossing, and no conversion of a private crossing to a public crossing, anywhere within the State of Tennessee without the prior review and approval of the Department as provided in these Rules. In addition, no such crossing shall be opened to vehicular traffic until it has been inspected by the Department to assure that it has been constructed or converted in accordance with the plans previously approved by the Department. In those cases where the construction or conversion of a crossing occurs at or on an existing public or private roadway, the crossing shall not be opened to vehicular traffic prior to the Department's final inspection of the construction or conversion, except in accordance with a temporary traffic control plan approved by the Department under these Rules.

- (2) Scope of Review and Approval.

The Department's approval authority under these Rules is limited to the review and approval of plans for the construction of public crossings, or the conversion of private crossings, and the inspection of such crossings before they are opened to traffic. Apart from its responsibility under these Rules to approve the plans and to inspect the completed construction or conversion, the Department does not have any other authority to permit or require the construction or conversion of grade crossings on roads not designated as being on the state highway system. The decision to construct a public crossing, or to convert a private crossing to a public crossing, on any road not included in the state highway system shall remain with the governmental entity, person and/or railroad having jurisdiction over the road or crossing.

- (3) No Retroactive Effect.

(Rule 1680-9-1-.02, continued)

These Rules shall not apply to any grade crossing constructed prior to July 1, 2001, except insofar as the standards established in these Rules may provide the pertinent governmental authority, person or railroad with guidance in evaluating such grade crossings for possible closure.

Authority: T.C.A. §65-11-101. **Administrative History:** Original rule filed April 5, 2002; effective June 19, 2002. Rule has been assigned a new control number from 1680-12-1-.02 filed and effective February 1, 2003.

1680-9-1-.03 DEFINITIONS.

- (1) "AASHTO" means the American Association of State Highway and Transportation Officials.
- (2) "AASHTO Design Manual" means the most current edition and revisions of the AASHTO publication "A Policy on Geometric Design of Highways and Streets."
- (3) "Active warning device" means a traffic control device at a grade crossing activated by the approach or presence of a train, such as flashing light signals, bells, automatic gates, or similar devices, that warn motorists and pedestrians of the approach or presence of a train at the crossing.
- (4) "ADT" means average daily traffic.
- (5) "Commissioner" means the Commissioner of the State of Tennessee Department of Transportation.
- (6) "Construction" when used in reference to the construction of a public crossing means any of the following:
 - (a) The actual physical construction of a new public crossing in a location where no grade crossing currently exists; or
 - (b) The addition of a lane or lanes to a public road at an existing grade crossing; or
 - (c) The addition of a railroad track or tracks at an existing public crossing.
- (7) "Conversion" when used in reference to a private crossing means a change in the use or legal status of the roadway at a grade crossing from a private road to a public road.
- (8) "Department" means the State of Tennessee Department of Transportation.
- (9) "Exposure" when used in reference to the standards for installing active warning devices at a grade crossing means the product of the average daily traffic on the roadway and the number of train crossings per day on the railroad track.
- (10) "FHWA" means the Federal Highway Administration, an agency of the United States Department of Transportation.
- (11) "FRA" means the Federal Railroad Administration, an agency of the United States Department of Transportation.
- (12) "FRA Highway-Rail Crossing Inventory Manual" means the most current edition and revisions of the FRA publication "Highway-Rail Crossing Inventory Instructions and Procedures Manual."
- (13) "Grade crossing" means the at-grade intersection of one or more railroad tracks with a public or private road.

(Rule 1680-9-1-.03, continued)

- (14) "Grade separation" means a bridge, trestle, tunnel, culvert or other structure enabling one or more railroad tracks to cross over or under a public road or private road.
- (15) "Interconnection" means the communication connection between an active warning device and the roadway traffic controller assembly for the purpose of preemption.
- (16) "MUTCD" means the most current edition and revisions of the "Manual on Uniform Traffic Control Devices," which is published by the Federal Highway Administration.
- (17) "Passive warning device" means a traffic control device, such as a highway sign or marking, located at or in advance of a grade crossing to indicate the presence of a grade crossing but which does not activate or change upon the approach or presence of a train.
- (18) "Preemption" means the transfer of the normal operation of roadway traffic signals to a special control mode as a result of a signal received from a railroad active warning device system.
- (19) "Private crossing" means the at-grade intersection of one or more railroad tracks with a private road, where the roadway is a private road, as defined in this Rule, on both sides of the grade crossing. The purpose of this definition of "private crossing" is to identify the scope of the Department's authority to review plans for the proposed construction or conversion of a grade crossing under this Chapter, and it should not be construed to change or affect the legal status of a grade crossing as "public" or "private" for any other purpose.
- (20) "Private road" means a roadway owned by a private person or entity, or by a governmental entity in its proprietary capacity, that is not freely open to use by the public without permission but is available for use only by the owner or the owner's invitees (as may be evidenced by the presence of gates or no trespassing signs, maintenance by a private person or entity, or other relevant evidence indicative of private ownership and/or restricted use of the roadway) or any roadway determined to be a private road by a court of competent jurisdiction. The entrance of a private driveway onto a public road shall be considered a private road even though the entrance may be located on the public road right-of-way and may be maintained by a governmental entity, unless the private driveway is freely open to use by the public without permission.
- (21) "Public crossing" means the at-grade intersection of one or more railroad tracks with a public road, including any intersection where the roadway on either side of the grade crossing is a public road as defined in this Rule. The purpose of this definition of "public crossing" is to identify the scope of the Department's authority to review plans for the proposed construction or conversion of a grade crossing under this Chapter, and it should not be construed to change or affect the legal status of a grade crossing as "public" or "private" for any other purpose.
- (22) "Public road" means a roadway owned and/or maintained by a governmental entity or a private entity that is freely open to use by the public without permission, or any roadway determined to be a public road by a court of competent jurisdiction.
- (23) "Rail Safety Office" means the Rail Safety Office in the Public Transportation, Waterways and Rail Division of the State of Tennessee Department of Transportation, or any successor thereof as determined by the Department.
- (24) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, including the shoulder.

(Rule 1680-9-1-.03, continued)

- (25) "TDOT Standard Roadway Drawings" means the most current edition and revisions of the Department's "English Standard Roadway Drawings," or the most current edition and revisions of the Department's "Metric Standard Roadway Drawings," if applicable.
- (26) "TDOT Standard Specifications for Road and Bridge Construction" means the Department's publication "Standard Specifications for Road and Bridge Construction," 1995 edition, together with the "Supplemental Specifications" as revised and published by the Department.
- (27) "USDOT" means the United States Department of Transportation.
- (28) "USDOT-AAR crossing inventory" means the national inventory of all grade crossings, public and private, which is maintained by the Federal Railroad Administration.

Authority: T.C.A. §65-11-101. **Administrative History:** Original rule filed April 5, 2002; effective June 19, 2002. Rule has been assigned a new control number from 1680-12-1-.03 filed and effective February 1, 2003.

1680-9-1-.04 STANDARDS.

- (1) Railroad Track and Crossing Pad Standards.
 - (a) The crossing pad shall be constructed of any paved or panelized crossing surface material compatible with the current practices of the involved railroad, or of such material as the Department may require.
 - (b) Specifications and plans concerning the crossing surface material and use shall comply with the manufacturer's recommendations and the involved railroad's current standards and specifications.
 - (c) The width of the crossing pad at the grade crossing shall correspond to the width of the approach roadway cross section, including but not limited to the traffic lanes and any shoulders, pedestrian walkways and bicycle paths; provided, however, that the crossing pad shall have a minimum width of 32 feet.
 - (d) The crossing pad shall have the same number and width of traffic lanes and shoulders as the approach roadway.
 - (e) Roadway markings shall be provided on the crossing pad in accordance with the MUTCD.
 - (f) Flangeways of not less than 2½ inches nor more than 3 inches in width shall be provided between the rail and the crossing pad, except where track geometry or other track appliances may require otherwise. Flangeways shall be at least 2 inches in depth, except as the involved railroad may otherwise approve.
 - (g) Materials and specifications shall comply, at a minimum, with the following:
 - 1. Materials.

All track materials used - including but not limited to ties, crossing pads, fasteners, geotextile fabric, drainage tile and other track material - shall be new, except that rail may be No. 1 relay or new.
 - 2. Drainage.

(Rule 1680-9-1-.04, continued)

Adequate engineered drainage shall be provided. The drainage design for cross-drainage and trackside shall be based on a 50-year design frequency, checked for 100-year, or on the current design frequency standards of the involved railroad.

3. Ballast.

The ballast and sub-ballast shall be dug out and replaced to a minimum of 10 inches below the bottoms of the ties, a minimum of 2 feet beyond the ends of the ties, and a minimum of 20 feet beyond the end of the crossing pad.

4. Ties.

(i) Where a crossing system requires the use of track ties, the ties shall be made of preservative-treated No. 5 air-dried hardwood of not less than 9 inches wide and not less than 7 inches deep, or the ties shall be made of concrete, steel, plastic or other materials of suitable strength and dimensions, consistent with the standards of the involved railroad. The ties shall be installed through the limits of the crossing and beyond the crossing pad a minimum of 20 feet. The length and spacing of the ties shall conform to the type of grade crossing surface materials being used.

(ii) Where the crossing system design does not require track ties, the crossing system shall be adequate to maintain track gage, surface and alignment as defined by applicable FRA regulations.

5. Rail.

(i) Rail size of 112 pounds per yard, or the current size of rail used on the line, whichever is larger, shall be used through the limits of the crossing and beyond the crossing pad a minimum of 20 feet.

(ii) The rails throughout the crossing shall be installed to eliminate joints within the crossing. The nearest joint shall be not less than 20 feet from the end of the crossing pad. Where necessary, long rails shall be used or the rail ends shall be welded to form continuous rail through the crossing; provided, however, that no welded rail of greater than 400 feet in length shall be used without the approval of the involved railroad.

(iii) Any compromise joints (joints involving two different rail sizes) created by this crossing installation shall be welded or use transition rails or compromise rail joint bars of the proper size.

(iv) Torch cutting of rail ends or boltholes is prohibited.

6. Rail fasteners, plates and anchors.

Each tie system shall use the appropriate fastener and anchor systems to maintain gage and limit longitudinal rail movement. Where ties with spikes are used, they shall be fully tie-plated with a minimum of four spikes per tie plate, and they shall be fully box anchored, as allowed by the crossing surface material, through the crossing area and at least 20 feet beyond each end of the crossing pad. Where other systems are used, each tie must be fully attached to both rails in accordance with the system being used.

(Rule 1680-9-1-.04, continued)

(h) Railroad alignment design.

Where grade crossings have two or more tracks, the tops of the rails for all tracks shall be brought to the same plane, where practical. All surface geometry design shall be in full compliance with applicable FRA regulations and railroad standards.

(i) Lining and surfacing track.

Rails shall be spiked or fastened to line and the track machined or mechanically tamped and surfaced to the grade and alignment of the existing track and roadway. In order to achieve the optimum ballast compaction through the crossing area, lining and surfacing shall involve two passes at a minimum, allowing as many train movements as time will permit, across the grade crossing before final surface and alignment.

(2) Roadway Standards.

(a) Roadway alignment design.

1. Vertical alignment.

- (i) The surface of the roadway shall be in the same plane as the tops of the rails for a distance of at least 2 feet beyond the rails for either single or multiple-track crossings.
- (ii) The top of the rail plane shall be connected with the grade line of the roadway each way by vertical curves of such length as is required to provide riding conditions and sight distances normally applied to the roadway involved.
- (iii) Unless track superelevation dictates otherwise, the vertical alignment of the roadway shall comply with the current recommended practices stated in the AASHTO Design Manual.

2. Roadway surface cross slope.

- (i) Roadway surface cross slope should be eliminated within 10 feet of the rail at the grade crossing to ensure a proper meet between the roadway and crossing pad surfaces.
- (ii) Pavement transition lengths should be in accordance with TDOT Standard Roadway Drawings and the AASHTO Design Manual.
- (iii) The engineer shall ensure that elimination of the roadway surface cross slope does not cause ponding.
- (iv) Any proposed exceptions based on roadway curvature, superelevation, or other design considerations must be approved by the Department.

3. Horizontal alignment.

The roadway shall be designed to provide no less than a 75-degree approach at the grade crossing, and, if practical, the roadway should be designed to intersect with the railroad track or tracks at a right angle or as near to a right angle as possible. Any proposed

(Rule 1680-9-1-.04, continued)

exception must be based on an engineering study and approved by the Department. Railroad curves should be avoided when practical.

(b) Roadway surface.

1. Materials and placement.

The roadway shall be paved, at a minimum, within 150 feet of the nearest rail at the grade crossing. The depth and type of the pavement material used, and the placement of the base and pavement, shall comply with all requirements for base and pavement stated in the TDOT Standard Specifications for Road and Bridge Construction.

2. Roadway and lane width.

The width of the roadway at the grade crossing shall correspond to the width of the approach roadway, including traffic lanes and shoulders. The roadway at the grade crossing shall have the same number and width of traffic lanes and shoulders as the approach roadway. In the event that the approach roadway is less than 32 feet wide, a minimum paved approach of 32 feet shall be provided within 25 feet of the nearest rail at the grade crossing, with lane widths remaining the same as on the approach roadway.

3. Roadway markings.

At all paved approaches to the grade crossing, the roadway shall be marked in accordance with the MUTCD.

(c) Drainage.

1. Adequate engineered drainage shall be provided.

2. The following design frequencies based on roadway classification shall be used for drainage design:

(i) Culvert design frequency:

Multi-lane divided roadway:	50-yr.; check 100-yr.
Arterial and collector:	50-yr.; check 100-yr.
Local road:	50-yr.; check 100-yr.

(ii) Ditch design frequency:

Multi-lane divided roadway:	50-yr.
Arterial and collector:	10-yr.; 50 yr. in sags
Local roads:	10-yr.

(iii) Roadway freeboard:

All roadways:	50-yr.
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(iv) Inlet and sewer design frequency:

Multi-lane divided roadway:	50-yr.
Arterial and collector:	10-yr.; 50-yr. in sags

(Rule 1680-9-1-.04, continued)

Local roads:

10-yr.

3. The design frequency selected for cross drainage structures:
 - (i) Shall not significantly increase the flood hazard for adjacent property; and
 - (ii) Shall permit maintenance of vehicular traffic on roads and streets under design flood conditions.
4. The design frequency for roadway storm drainage structure design:
 - (i) Shall not significantly increase the flood hazard for adjacent property; and
 - (ii) Shall limit the encroachment onto the traveled lanes that could cause a hazard to vehicular traffic.
5. In situations where the grade of the approach roadway descends toward the grade crossing, provisions shall be made to intercept surface and subsurface drainage and discharge it laterally so that it will not be discharged onto the track area.

(3) Signage Standards.

(a) Railroad signs.

1. The railroad shall erect and maintain a whistling post or whistle board in each direction from the grade crossing along its track(s). The sign will serve to alert operating train crews to the upcoming crossing so that a whistle warning may be sounded. The location of the post or board shall comply with any applicable FRA regulations and railroad company standards or policies.
2. The railroad shall install and maintain an emergency notification sign at each grade crossing in accordance with the MUTCD. At a minimum, this sign shall show the USDOT-AAR crossing inventory number, the milepost (if available), the roadway name, and the telephone number to call to report an emergency.

(b) Roadway signing and marking.

1. Passive warning devices shall be installed and maintained on the roadway at grade crossings in accordance with the MUTCD.
2. When a grade crossing is located at or near a roadway-roadway intersection, signage shall be installed at the intersection in compliance with the MUTCD.

(4) Standards for Active Warning Devices.

- (a) The Department may require the installation of active warning devices at a grade crossing in accordance with the following minimum criteria, or as the Department may determine after conducting a diagnostic team field review:

<u>Type of Active Warning Device</u>	<u>Minimum Criteria</u>
1. Flashing-Light Signals (Post-	3,000 or more exposures,

(Rule 1680-9-1-.04, continued)

<p>Mounted) with Automatic Gates:</p>	<p style="text-align: center;"><u>or</u></p> <p>Inadequate sight distances, as determined in accordance with the AASHTO Design Manual,</p> <p style="text-align: center;"><u>Or</u></p> <p>The roadway at the grade crossing is a designated school bus route, commercial passenger vehicle route, or hazardous material route,</p> <p style="text-align: center;"><u>Or</u></p> <p>Two or more railroad tracks at the grade crossing that may allow concurrent rail operations,</p> <p style="text-align: center;"><u>Or</u></p> <p>The presence of a signalized highway intersection within 200 feet of the grade crossing.</p>
<p>2. Flashing-Light Signals (Overhead) with Automatic Gates:</p>	<p>Three or more lanes (including turning lanes) on the roadway at the grade crossing,</p> <p style="text-align: center;"><u>Or</u></p> <p>3,000 or more exposures <u>and</u> inadequate sight distances, as determined in accordance with the AASHTO Design Manual.</p>
<p>3. Flashing-Light Signals (Post-Mounted or Overhead as indicated above) with Automatic Four-Quadrant Gates and/or other safety devices as required by the Department:</p>	<p>20,000 or more exposures <u>and</u> the presence of any passenger train traffic on the railroad.</p>

- (b) All active warning devices required under this Rule shall be installed and maintained in accordance with the MUTCD.
- (c) Whenever a signalized grade crossing is to be located near a signalized highway intersection, preemption shall be provided for in compliance with the MUTCD.
- (d) Railroad Circuitry.

In connection with the installation of active warning devices at a grade crossing, the following types of circuitry shall be installed and maintained on the railroad tracks in accordance with the criteria specified below:

<u>Type of Circuitry</u>	<u>Criteria</u>
<p>1. Style C or AC/DC:</p>	<p>Infrequently used tracks.</p>
<p>2. Motion Sensors:</p>	<p>On regularly or frequently used tracks, where there is considerable switching,</p>

(Rule 1680-9-1-.04, continued)

	trains stopped or parked near the grade crossing, or consistent train speed.
3. Constant Warning Time:	On regularly or frequently used tracks with variable train speeds.

(5) Grade Separation.

- (a) Grade separation shall be required, and no grade crossing will be approved, on any roadway/railroad crossing where there is full control of access on the roadway.
- (b) The department may also decline to approve the proposed construction or conversion of a grade crossing where:
 - 1. A grade separation is feasible (based on topographic conditions, cost, and other relevant factors), and
 - 2. Special hazardous conditions exist, including but not limited to the presence of high-speed (75 mph or more) passenger train traffic on the railroad or where trains block the crossing for long periods of time.

(6) Pedestrian Walkways and Bicycle Paths.

- (a) Where federal funds are to be used in paying for all or any part of the costs of installing the grade crossing, provisions for pedestrian walkways and bicycle paths should be considered.
- (b) Any pedestrian walkway or bicycle path included in the grade crossing shall comply with FRA track safety standards, 49 C.F.R., Part 213, or as amended, and the Americans' With Disabilities Act accessibility guidelines contained in 28 C.F.R., Part 36, Appendix A, or as amended.

Authority: T.C.A. §65-11-101. **Administrative History:** Original rule filed April 5, 2002; effective June 19, 2002. Rule has been assigned a new control number from 1680-12-1-.04 filed and effective February 1, 2003.

1680-9-1-.05 PROCEDURES FOR APPROVALS AND INSPECTIONS.

(1) Application Requirement.

- (a) Whenever any person, railroad company, or governmental entity other than the Department proposes the construction of a public crossing, as defined in these Rules, or the conversion of a private crossing to a public crossing, as defined in these Rules, the person, railroad company or governmental entity proposing the construction or conversion must submit a written application for approval of the plans to the Rail Safety Office, or to such other office of the Department as the Commissioner may designate.
- (b) The current address of the Rail Safety Office is Suite 1800, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243, and the current telephone number is (615) 741-1341; however, the address and telephone number of the Rail Safety Office may be subject to change without amendment of these Rules.

(2) Information Required in Application.

(Rule 1680-9-1-.05, continued)

The applicant shall provide all relevant information regarding the proposed construction or conversion of the grade crossing, as determined by the Department. At a minimum, unless the Department expressly waives any item of information, the application shall contain:

- (a) The name, address, and telephone number of the applicant, and the identity of the contact person;
- (b) The name and address of the railroad company that owns and/or operates trains on the track(s) at the grade crossing, and the identity of the contact person, if known;
- (c) The name and address of the governmental entity having jurisdiction, or which will have jurisdiction, over the roadway at the grade crossing, and the identity of the contact person;
- (d) Maps or other documentation showing:
 1. The general and specific location of the proposed construction or conversion of the grade crossing;
 2. The USDOT-AAR crossing inventory number, if assigned, and the railroad milepost number for the crossing;
 3. The geodetic coordinates of the grade crossing;
 4. Existing patterns of traffic for:
 - (i) emergency vehicles;
 - (ii) school buses;
 - (iii) vehicles carrying hazardous materials; and
 - (iv) trucks;
 5. The distance in each direction along the roadway to any public road intersection within 2,500 feet of the grade crossing, the type of public roads, and the type of roadway signs and markings and/or traffic control devices, if any, at each such intersection; and
 6. The distance in each direction along the railroad track(s) to any public road intersection within one mile of the grade crossing, the type of public roads, the type of crossing (grade crossing or grade separation), and the type of passive warning devices and/or active warning devices, if any, at each such crossing;
 7. The distance in each direction along the railroad track(s) to any intersection or junction with another railroad track within two miles of the grade crossing;
 8. Sight distance calculations, consistent with the AASHTO Design Manual, for the presence of any objects or features that obstruct the view from a vehicle on the roadway to the grade crossing or the approaching train;
- (e) Plans for the construction or conversion showing:

(Rule 1680-9-1-.05, continued)

1. The present and proposed grade and alignment of the roadway within 500 feet of the grade crossing, or within 100 feet beyond the limit of work, whichever is less;
 2. The present and proposed grade and alignment of the railroad track(s) within 200 feet of the grade crossing;
 3. The present and proposed right-of-way limits of the roadway and railroad at the grade crossing; and
- (f) Construction details, including but not limited to the typical roadway cross-section;
 - (g) The temporary traffic control plan, or plan for the detour of vehicular traffic, during construction;
 - (h) The proposed schedule of construction or conversion;
 - (i) The existing ADT and the projected 5-year and 20-year ADT on the roadway at the grade crossing;
 - (j) The percentage of trucks at the grade crossing;
 - (k) The design speed of the roadway and the posted speed limits of vehicles using the roadway at the grade crossing;
 - (l) The existing frequency of trains, types of trains (passenger, freight or switching), and the maximum and average speeds of trains using the railroad track(s) at the grade crossing;
 - (m) The existing and proposed roadway signs, markings, or other traffic control devices, and any existing and/or proposed passive warning devices, active warning devices and interconnections, at the grade crossing; and
 - (n) A list of any alternatives to the proposed construction or conversion that have been considered by the applicant, including but not limited to the feasibility of a grade separation rather than at-grade crossing.
- (3) Preparation of Plans by Registered Engineer.

All engineering plans, specifications and calculations required by the Department, as in subparagraphs (2)(d) through (2)(n) above, shall be prepared by a registered engineer licensed in the State of Tennessee.

- (4) Review of Applications.
- (a) Upon receipt of an application, together with the required application fee as described in Rule 1680-9-1-.07 below, the Rail Safety Office, or such other office of the Department as the Commissioner may designate, shall promptly send notice of the application to the railroad company that owns and/or operates trains on the track(s) and the governmental entity having or which will have jurisdiction over the roadway at the location of the proposed construction or conversion of the grade crossing.
 - (b) The Rail Safety Office, or other designated office, shall review the application for the proposed construction or conversion in accordance with the standards established in these Rules. That office may obtain the assistance of other employees within the Department as it may deem

(Rule 1680-9-1-.05, continued)

appropriate, and, in accordance with any contract approved by the Commissioner, it may obtain the services of an independent consultant to assist in reviewing the application.

- (c) The Rail Safety Office, or other designated office, may determine, after reviewing the application or upon the request of the affected local government or affected railroad, that a field review by a diagnostic team is appropriate in order to conduct an adequate investigation and review of the proposed construction or conversion. The diagnostic team shall include such employees of the Department, or independent consultants hired by the Department, and such other persons, including employees of the affected local government and the affected railroad, as the Rail Safety Office, or other designated office, may deem appropriate in each case.
 - (d) Upon completing such review, the Rail Safety Office, or other designated office, shall make a preliminary recommendation to approve, reject, or request a modification of the proposed construction or conversion in accordance with the standards established in these Rules. The applicant shall be given notice of this preliminary recommendation and an opportunity, not to exceed 30 days, in which to respond to the preliminary recommendation.
 - (e) The preliminary recommendation shall also be submitted to the FHWA, the affected local government, and the affected railroad, if different than the applicant, and these entities shall be given an opportunity, not to exceed 30 days, in which to review and comment on the application and the Department's preliminary recommendation.
 - (f) The Rail Safety Office, or other designated office, shall consider any response received from the applicant and any comments received from the FHWA, the affected local government, and the affected railroad, if different from the applicant. Upon completing this final review and consideration, the Rail Safety Office, or other designated office, shall make a final recommendation to the Commissioner to approve, reject or modify the proposed construction or conversion.
 - (g) Upon receiving the final recommendation, the Commissioner shall make the decision to approve or reject the proposed construction or conversion, or to approve the proposed construction or conversion subject to modification. The Commissioner's decision shall be final. Notice of the Commissioner's decision shall be given to the applicant, the affected local government, and the affected railroad, if different from the applicant.
 - (h) Upon receiving the Commissioner's decision, the applicant shall notify the Rail Safety Office, or other designated office, regarding the applicant's intent to proceed with the construction or conversion as approved by the Department, including the date upon which the construction or conversion is expected to begin. The applicant shall also send a copy of this notice to the affected local government and the affected railroad, if different from the applicant.
- (5) Construction or Conversion by the Department.
- (a) In the case of any construction or conversion of a grade crossing proposed by the Department, the Department shall conduct an internal review of the proposed construction or conversion to assure compliance with the standards established under these Rules. This internal review shall be conducted in accordance with such policies and procedures as the Commissioner may deem appropriate. If the Department determines that a field review by a diagnostic team is appropriate in any particular case, the diagnostic team may include employees of the affected railroad and/or affected local government, if any, as well as employees or consultants of the Department and, where appropriate, representatives of FHWA.

(Rule 1680-9-1-.05, continued)

- (b) Before making a final decision to proceed with the proposed construction or conversion, the Department shall submit its proposal to the FHWA, the affected local government, and the affected railroad for review and comment as provided in paragraph (4)(e) above.
- (6) Inspections.
 - (a) At or near the completion of the proposed construction or conversion, the applicant shall notify the Rail Safety Office, or other designated office, of the completion date and request a final inspection before opening the completed grade crossing to vehicular traffic.
 - (b) The Rail Safety Office, or other designated office, shall perform a final inspection to assure that the construction or conversion of the grade crossing has been completed in accordance with the plans approved by the Department. That office may obtain the assistance of other employees within the Department as it may deem appropriate, and, in accordance with any contract approved by the Commissioner, it may obtain the services of an independent consultant to assist in performing the inspection. The Department shall charge the applicant an inspection fee, as provided in Rule 1680-9-1-.07 below.
 - (c) Upon completing the final inspection, the Rail Safety Office, or other designated office, shall send a written notice to the applicant, with a copy to the affected local government and the affected railroad, if different from the applicant, stating that:
 - 1. The construction or conversion has been completed in accordance with the plans approved by the Department and may be opened to vehicular traffic; or
 - 2. The construction or conversion has not been completed in accordance with the plans approved by the Department and may not be opened to vehicular traffic. In such a case, the Department shall identify the deficiency in the construction or conversion that the applicant must correct before the grade crossing may be opened to vehicular traffic. Upon correcting the deficiency, the applicant shall so notify the Department and again request a final inspection, subject to payment of an inspection fee, as provided in this Rule.

Authority: T.C.A. §65-11-101. **Administrative History:** Original rule filed April 5, 2002; effective June 19, 2002. Rule has been assigned a new control number from 1680-12-1-.05 filed and effective February 1, 2003.

1680-9-1-.06 COSTS OF CONSTRUCTION OR CONVERSION.

Any entity proposing the construction or conversion of a grade crossing shall be responsible for all costs associated with the construction or conversion of such crossing in compliance with the plans approved by the Department.

Authority: T.C.A. §65-11-101. **Administrative History:** Original rule filed April 5, 2002; effective June 19, 2002. Rule has been assigned a new control number from 1680-12-1-.06 filed and effective February 1, 2003.

1680-9-1-.07 FEES.

- (1) General.

The Department shall charge a fee for the review and approval of plans for the construction or conversion of grade crossings and for the inspection of the completed crossings. Such fees shall be sufficient to offset the cost to the Department of performing these services, and any such fee shall be paid by the applicant seeking approval of the plans for the crossing.

(2) Application Fee.

Each application to the Department requesting review and approval of plans for the construction of a public crossing or conversion of a private crossing in accordance with these Rules shall be accompanied by the payment of an application fee in the amount of \$3,000. This fee shall be made payable to the Department.

(3) Inspection Fee.

Each notice of request to the Department to perform a final inspection of the completed construction or conversion shall be accompanied by the payment of an inspection fee in the amount of \$1,000. This fee shall be made payable to the Department.

Authority: T.C.A. §65-11-101. **Administrative History:** Original rule filed April 5, 2002; effective June 19, 2002. Rule has been assigned a new control number from 1680-12-1-.07 filed and effective February 1, 2003.

1680-9-1-.08 ENFORCEMENT.

- (1) If a grade crossing is constructed or converted in violation of Section 65-11-101(c) of the Tennessee Code or this Chapter, the affected railroad may remove the grade crossing and recover the cost of such removal from the party that constructed or converted the grade crossing.
- (2) If the affected railroad, or any other interested party, has reason to believe that a grade crossing has been constructed or converted in violation of this Chapter, the affected railroad or other interested party may request, in writing, that the Department perform a search of its records to determine if the grade crossing was constructed or converted in compliance with this Chapter. As soon as reasonably possible after receiving such a written request, the Department shall perform the records search and advise the affected railroad or other interested party whether the grade crossing was constructed or converted in compliance with this Chapter.

Authority: T.C.A. §65-11-101. **Administrative History:** Original rule filed April 5, 2002; effective June 19, 2002. Rule has been assigned a new control number from 1680-12-1-.08 filed and effective February 1, 2003.