# Chapter 824

## 2005 EDITION

# Railroads


FUNDS, ACCOUNTS AND FEES

824.010 Annual fees payable by railroads; audit
824.012 Failure to pay fees; penalty
824.014 Railroad Fund; sources; use
824.016 State Rail Rehabilitation Fund; use
824.018 Grade Crossing Protection Account; use; limits
824.019 Grade Crossing Safety Improvement Fund

GENERAL PROVISIONS

824.020 Definitions for ORS 824.020 to 824.042
824.022 Applicability of ORS 824.020 to 824.042, 824.050 to 824.110 and 824.200 to 824.256
824.024 Procedure for construction of side lines and extensions

INSPECTORS; REPORTS

824.026 Railway inspectors required; powers and duties
824.028 Qualifications of inspectors
824.030 Annual report to department; penalty

ACQUISITION OR ABANDONMENT OF LINES

824.040 Government acquisition of lines; permitted actions
824.042 Department to participate in contested abandonment proceedings

SAFETY PROGRAM STANDARD

824.045 Department establishment of system safety program for rail fixed guideway system; fee; rules

FACILITIES AND TRACKS

824.050 Inspection of, recommendations on and orders concerning railroad equipment and facilities
824.052 Track clearances
824.054 Cooperation with federal agencies on matters of safety; disclosure of reports if required by federal law
824.056 Walkway standards; rules; variances
824.058 Track improvement and rehabilitation program

EQUIPMENT

824.060 First aid kits required on locomotives and caboose cars
824.062 Equipment required on track motor cars
824.064 Self-propelled vehicles used in yards or terminals
824.066 Helper unit operation restrictions
824.068 Water quality and sanitation facility standards for locomotives and caboose cars

HAZARDOUS MATERIALS

824.080 "Hazardous materials" defined
824.082 Notice of movement of hazardous materials; confidentiality of notice information
824.084 Visual external inspections required on cars standing in rail yards or stations more than two hours
824.086 Designation of hazardous materials and notice requirements; rules
824.088 Notifying Office of Emergency Management of reportable incident, derailments and fires; radio gear
824.090 Department to set standards for safe transportation of hazardous wastes; rules; civil penalty
824.092 Disclosure of hazardous waste reports and information to Environmental Protection Agency

CABOOSE REQUIREMENTS

824.100 Definitions for ORS 824.102 to 824.110
824.102 Application of requirements
824.104 Fire extinguishers; exemption
824.106 Use of noncomplying caboose prohibited; equipment failure; repair
824.108 Register for reporting failures of equipment or maintenance standards; rules for use
824.110 Administrative authority of department; rules

RAILROAD CROSSINGS

824.200 Definitions for ORS 824.200 to 824.256
824.202 Policy; authority vested in state and department
824.204 Authority to construct grade crossings; protective devices
824.206 Elimination, relocation or alteration of grade crossing; installation or alteration of protective devices
824.208 Authority to fix speeds and regulate sounding of train warning devices at crossings
824.210 Construction and alteration of crossings above or below grade
824.212 Specifications for construction and maintenance of crossings; application of specifications; priorities; compliance
824.214 Procedure to obtain permission for crossings; rules
824.216 Procedure to compel compliance with orders
824.218 Work and materials furnished by railroad company; supervision of work
824.220 Protective devices; rules
824.222 Authority over duration that grade crossing may be blocked; penalty
824.223 Authority to regulate distance from grade crossing at which railroad may stop or park equipment; penalty

**824.224** When stop signs are to be installed by railroad; exemption; grade crossing alteration, relocation or closure

**824.226** Dangerous grade crossings; notice; hearing; order to install protective devices; apportioning of cost

**824.228** Procedure for determining mode of track crossing of intersecting railroads

**824.230** Installation of protective devices where railroads intersect at grade

**824.232** Forfeiture for noncompliance

**824.234** Use of findings of department regarding hazards at crossings

**824.236** Protective devices at unauthorized railroad-highway crossing; apportionment to railroad; reimbursement; closure

COST APPORTIONMENTS

**824.238** Division of costs between railroad and public authority

**824.240** Payment when public highway involved

**824.242** Apportionment of costs for installation of protective devices

**824.244** Apportionment of costs for maintenance of protective devices

**824.246** Apportionment of costs of crossing closure

**824.248** Apportionments for crossings above or below grade

**824.250** Apportionment when federal funds available

**824.252** Procedure when disagreement as to apportionment exists

**824.254** Reimbursement procedure for railroad and public authority

**824.256** Expense contributed by public held in trust by railroad company

EMPLOYEE SAFETY REGULATIONS

**824.300** Required crews on trains; exception

**824.302** Qualification of flagger

**824.304** Guarding frogs, switches and guardrails

**824.306** Shelter of car repairers

**824.308** Railroads to provide first aid training for employees

**824.310** Immunity from liability of persons providing first aid treatment

PENALTIES

**824.990** Civil penalties

**824.992** Criminal penalties

## FUNDS, ACCOUNTS AND FEES

**824.010 Annual fees payable by railroads; audit.** (1) Subject to the provisions of subsections (3) and (4) of this section, each railroad shall pay to the Department of Transportation in each year, such fee as the department finds and determines to be necessary, with the amount of all other fees paid or payable to the department by such railroads in the current calendar year, to defray the costs of performing the duties imposed by law upon the department in respect to such railroads and to pay such amounts as may be necessary to obtain matching funds to implement the program referred to in ORS 824.058.

(2) In each calendar year the percentage rate of the fee required to be paid shall be determined by orders entered by the department on or after March 1 of each year, and notice thereof shall be given to each railroad. Such railroad shall pay to the department the fee or portion thereof so computed upon the date specified in such notice, which date shall be at least 15 days after the date of mailing such notice.

(3) Fifty percent of the cost of carrying out the duties, functions and powers imposed upon the department by ORS 824.200 to 824.256 shall be paid from the Grade Crossing Protection Account.

(4) The department shall determine the gross operating revenues derived within this state in the preceding calendar year by Class I railroads as a whole and by other railroads individually subject to the following limitations:

(a) The total of the fees payable by Class I railroads shall not exceed thirty-five hundredths of one percent of the combined gross operating revenues of Class I railroads derived within this state. The fee paid by each Class I railroad shall bear the same proportion to the total fees paid by Class I railroads as such railroad's share of railroad-highway crossings, track miles and gross operating revenues derived within the state, weighted equally, bears to the total amount of Class I railroad-highway crossings within the state, track miles within the state and gross operating revenues derived within the state.

(b) The fees payable by other railroads shall not exceed thirty-five hundredths of one percent of any such railroad's gross operating revenues.

(5) Payment of each fee or portion thereof provided for in subsections (1) to (4) of this section shall be accompanied by a statement verified by the railroad involved showing its gross operating revenues upon which such fee or portion thereof is computed. This statement shall be in such form and detail as the Department of Transportation shall prescribe and shall be subject to audit by the department. The department may refund any overpayment of any such fee in the same manner as other claims and expenses of the department are payable as provided by law. [1995 c.733 §§29,30]

**824.012 Failure to pay fees; penalty.** Every person who fails to pay any fees provided for in ORS 824.010 after they are due and payable shall, in addition to such fees, pay a penalty of two percent of such fees for each and every month or fraction thereof that they remain unpaid. If, in the judgment of the Department of Transportation, action is necessary to collect any unpaid fees or penalties, the department shall bring such action or take such proceedings as may be necessary thereon in the name of the State of Oregon in any court of competent jurisdiction, and be entitled to recover all costs and disbursements incurred therein. [1995 c.733 §31]

**824.014 Railroad Fund; sources; use.** (1) The Railroad Fund is established separate and distinct from the General Fund. Interest earned, if any, shall inure to the benefit of the Railroad Fund.

(2) All fees, fines, penalties and other moneys collected by the Department of Transportation under ORS 824.010 and 824.012 shall be paid by the department into the State Treasury within 30 days after the collection thereof, and shall be placed by the State Treasurer to the credit of the Railroad Fund created by subsection (1) of this section. The fees, fines, penalties and other moneys collected from railroads shall be used only for the purpose of paying the expenses of the department in performing the duties imposed by law upon the department in respect to railroads. [1995 c.733 §§31a,32]

**824.016 State Rail Rehabilitation Fund; use.** (1) The State Rail Rehabilitation Fund is established as an account in the General Fund of the State Treasury. All moneys in the account are appropriated continuously to the Department of Transportation for expenditures for any or all of the following:

(a) Acquisition of a railroad line.

(b) Rehabilitation or improvement of rail properties.

(c) Planning for rail services.

(d) Any other methods of reducing the costs of lost rail service in this state.

(2) The program developed by the Department of Transportation under this section to provide funds for rail projects shall include:

(a) Development of a formula for determining a minimum cost to benefit ratio necessary for project funding;

(b) Supervision and monitoring of railroad acquisitions and the awarding of rehabilitation contracts;

(c) Continuing inspection of all railroad rehabilitation projects; and

(d) Auditing financial records of all railroad acquisition and rehabilitation projects.

(3) The Department of Transportation shall provide funds for railroad projects under this section only with the approval of the Oregon Transportation Commission. [Formerly 760.620; 2005 c.612 §7]

**824.018 Grade Crossing Protection Account; use; limits.** (1) There is established in the State Highway Fund an account to be known as the Grade Crossing Protection Account. There shall be credited to the account each fiscal year, from funds received by the State Highway Fund from the registration of vehicles and licensing of drivers under the Oregon Vehicle Code, the sum of $300,000 plus an amount equal to 50 percent of the cost of carrying out the duties, functions and powers imposed upon the Department of Transportation by ORS 824.200 to 824.256. State-shared highway fund revenues for cities and counties, as well as Department of Transportation expenditures for the elimination of hazardous railroad-highway crossings, shall be computed and allocated prior to any appropriation or transfer to the account. The amount of $300,000 credited to the account is continuously appropriated and shall be expended for railroad-highway crossing safety as authorized by ORS 824.242 to 824.248 and subsection (2) of this section. The amount credited to the account for paying the cost of carrying out the duties, functions and powers of the department by ORS 824.200 to 824.256 is transferred and appropriated to the Department of Transportation and shall be used as provided in ORS 824.010 (3). No more than $100,000 in the aggregate shall be allocated from the account in any one fiscal year for costs of construction, reconstruction, alteration or relocation of separated crossings; provided however the unapportioned amount in the Grade Crossing Protection Account at the end of each fiscal year may be allocated for costs of reconstruction, alteration or relocation of separated crossings.

(2) Moneys credited to the account may also be allocated for such highway purposes as the Department of Transportation deems appropriate in order to enhance safety at railroad-highway crossings. The Department of Transportation may allocate no more than $100,000 annually to railroads to defray the costs of maintenance of protective devices at railroad-highway crossings.

(3) As used in this section, "highway," "maintenance costs," "protective device" and "railroad" have the meaning given those terms in ORS 824.200. [Formerly 763.330; 1997 c.249 §245]

**824.019 Grade Crossing Safety Improvement Fund.** (1) The Grade Crossing Safety Improvement Fund is established separate and distinct from the General Fund. Interest earned by the Grade Crossing Safety Improvement Fund shall be credited to the fund.

(2) Notwithstanding ORS 823.991, all civil penalties collected under ORS 824.222 and 824.223 shall be paid by the Department of Transportation into the State Treasury within 30 days after the collection thereof and shall be placed by the State Treasurer to the credit of the Grade Crossing Safety Improvement Fund. Moneys in the fund are continuously appropriated to the Department of Transportation for the purpose of grade crossing safety improvement projects. [2001 c.909 §4]

**Note:** 824.019 was enacted into law by the Legislative Assembly but was not added to or made a part of the Oregon Vehicle Code or any chapter or series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## GENERAL PROVISIONS

**824.020 Definitions for ORS 824.020 to 824.042.** As used in ORS 824.020 to 824.042, unless the context requires otherwise:

(1) "Class I railroad" has the meaning given that term in rules adopted by the Department of Transportation. The definition of "Class I railroad" in rules adopted by the Department of Transportation shall be consistent, insofar as practicable, with the definition of the term under federal law and regulations.

(2) "Railroad" means all corporations, municipal corporations, counties, companies, individuals, associations of individuals and their lessees, trustees or receivers, that:

(a) Own, operate by steam, electric or other motive power, manage or control all or part of any railroad or interurban railroad as a common or for hire carrier in this state, or cars or other equipment used thereon, or bridges, terminals or sidetracks used in connection therewith, whether owned or operated under a contract, agreement, lease or otherwise.

(b) Are engaged in the ownership, management or control of terminals in this state, which corporations, municipal corporations, counties, companies, individuals and associations hereby are declared to be common and for hire carriers, or the transportation of

property within this state by express. [Formerly 760.005]

**824.022 Applicability of ORS 824.020 to 824.042, 824.050 to 824.110 and 824.200 to 824.256.** (1) ORS 824.020 to 824.042, 824.050 to 824.110 and 824.200 to 824.256 apply to:

(a) The transportation of passengers and property.

(b) The receiving, delivering, switching, storing, elevation and transfer in transit, ventilation, refrigeration or icing, and handling of such property, and all charges connected therewith.

(c) All railroad, terminal, car, tank line, freight and freight line companies.

(d) All associations of persons, whether incorporated or otherwise, that do business as common or for hire carriers upon or over any line of railroad within this state.

(e) Any common or for hire carrier engaged in the transportation of passengers or property wholly by rail or partly by rail and partly by water.

(2) ORS 824.020 to 824.042 do not apply to logging or other private railroads not doing business as common carriers.

(3) ORS 824.020 to 824.042 and 824.050 to 824.110 do not apply to corporations, companies, individuals, associations of individuals and their lessees, trustees or receivers that:

(a) Are primarily involved in a business enterprise other than rail transportation;

(b) Conduct rail operations 50 percent or more of which are for the purpose of providing transportation to the primary business enterprise;

(c) Operate on less than 10 miles of track; and

(d) Provide for hire rail transportation service to no more than five persons. [Formerly 760.010]

**824.024 Procedure for construction of side lines and extensions.** If any railway company owning or operating a railway within this state desires to construct any branch line or side line, or to build an extension of the main line, its board of directors shall adopt a resolution defining the branch, side line or extension, and designating the termini thereof, and shall cause a copy of such resolution, certified by its secretary, to be filed in the office of the Secretary of State, and in the office of each county clerk in or through whose county such branch or side line or extension is to be constructed. Thereupon such corporation has the right to build and construct such branch, side line or extension, and to exercise the right of eminent domain as provided by law, and the termini so designated in such resolution shall be a sufficient designation thereof for the purpose of exercising such right of eminent domain. [Formerly 760.060]

## INSPECTORS; REPORTS

**824.026 Railway inspectors required; powers and duties.** (1) The Department of Transportation shall employ at least three full-time railroad inspectors to assist the department as the department may prescribe in:

(a) Inquiring into any neglect or violation of and enforcing any law of this state or any law or ordinance of any municipality thereof relating to railroad safety;

(b) Inquiring into any neglect or violation of and enforcing any rule, regulation, requirement, order, term or condition issued by the department relating to railroad safety; and

(c) Conducting any investigative, surveillance and enforcement activities that the department is authorized to conduct under federal law in connection with any federal law, rule, regulation, order or standard relating to railroad safety.

(2) A railroad inspector may stop and detain any train and the contents thereof that the railroad inspector reasonably believes is being operated in violation of any law, ordinance, rule, regulation, requirement, order, standard, term or condition referred to in subsection (1) of this section. [Formerly 760.070]

**824.028 Qualifications of inspectors.** A person employed by the Department of Transportation as a railroad inspector shall:

(1) Have passed an examination, which the department shall prescribe, concerning physical fitness, mental fitness, the rules of the department and the laws of this state relating to railroads; and

(2) Have at least five years of experience as a railroad train service, engine service, maintenance of way or mechanical department employee. College education with major work in engineering may be substituted for not more than two years of the required experience on the basis of two years of college being equivalent to one year of experience. [Formerly 760.075]

**824.030 Annual report to department; penalty.** (1) Every railroad shall annually, on or before May 1, unless additional time is granted, file with the Department of Transportation a report verified by a duly authorized officer, in such form and containing such information as the department shall prescribe, covering the year ending December 31 next preceding.

(2) Any railroad failing to make such report shall forfeit to the state, for each day's

default, a sum not to exceed $100, to be recovered in a civil action in the name of the State of Oregon. [Formerly 760.305]

## ACQUISITION OR ABANDONMENT OF LINES

**824.040 Government acquisition of lines; permitted actions.** (1) The State of Oregon, a city, county, county service district, mass transit district organized under ORS 267.010 to 267.390, a transportation district organized under ORS 267.510 to 267.650 or a port may acquire, own, reconstruct, rehabilitate, operate or maintain a railroad line for the benefit and use of its inhabitants and for profit.

(2) In the exercise of the power granted under subsection (1) of this section, this state, a city, county, county service district, mass transit district, transportation district or port may:

(a) Acquire, by purchase or otherwise, own, reconstruct, rehabilitate or operate a railroad as described in subsection (1) of this section within and outside its boundaries and the boundaries of this state and running from the city, county, district or port to other points within and outside its boundaries and the boundaries of this state.

(b) Acquire rights of way, easements or real property within and outside its boundaries and the boundaries of this state when necessary or convenient for the acquisition and operation of the railroad line.

(c) Enter into contracts with any person for the reconstruction, rehabilitation, operation or maintenance of the railroad line by such person for the city, county, district or port.

(3) Nothing in this section shall be construed as expanding or diminishing the power of eminent domain conferred upon public bodies, designated in subsection (1) of this section, by ORS 368.116 or any other provision of law. [Formerly 760.610]

**Note:** 824.040 was added to and made a part of ORS chapters 823, 824, 825 and 826 by legislative action but was not added to ORS chapter 824 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

**824.042 Department to participate in contested abandonment proceedings.** The Department of Transportation shall participate before the appropriate federal agency in all contested railroad line abandonment proceedings involving the proposed abandonment of any railroad line in this state. Prior to such participation, the department shall consult with public entities and users of railroad service affected by the proposed abandonment. [Formerly 760.630]

## SAFETY PROGRAM STANDARD

**824.045 Department establishment of system safety program for rail fixed guideway system; fee; rules.** (1) Except as provided in ORS 479.950, the Department of Transportation, by rule, shall establish a system safety program standard that applies to any municipal corporation that owns or operates a rail fixed guideway system that is not regulated by the Federal Railroad Administration. The Department of Transportation is designated as the state agency to monitor compliance with the standard, as required by federal law.

(2) As used in this section, "municipal corporation" means:

(a) A county;

(b) A city;

(c) A special district organized under ORS 198.705 to 198.845;

(d) A mass transit district organized under ORS 267.010 to 267.390;

(e) A transportation district organized under ORS 267.510 to 267.650;

(f) A metropolitan service district organized under ORS chapter 268;

(g) A port organized under ORS 777.005 to 777.725 or 777.915 to 777.953; or

(h) The Port of Portland created by ORS 778.010.

(3) The department shall set an annual fee for operators of rail fixed guideway systems to defray the costs of the safety program described in subsection (1) of this section and the costs associated with department responsibilities under ORS 267.230 (2). The department shall establish by rule the manner and timing of the collection of the fee. Fees collected by the department that are in excess of the combined actual cost of the safety program and the costs associated with department responsibilities under ORS 267.230 (2) shall be refunded to operators of rail fixed guideway systems within one year following the end of the fiscal year in which the department collected the excess fees. In lieu of a refund, an operator of a rail fixed guideway system may choose to have the excess fees credited against the subsequent year's fee payment. [1995 c.29 §3; 1997 c.275 §43; 2001 c.522 §11]

## FACILITIES AND TRACKS

**824.050 Inspection of, recommendations on and orders concerning railroad equipment and facilities.** (1) Except as provided in subsection (2) of this section, the Department of Transportation shall examine and inspect the physical condition of all railroad facilities in the state, including roadbeds, stations and equipment. Whenever

it appears from such inspection that the safety of the public or the employees of such railroad may be threatened, notice of the condition or practice under investigation shall be given to the railroad and any person responsible for the maintenance or use of the railroad facility. If such condition or practice is not corrected to the department's satisfaction, the department shall set the matter for hearing. Following such hearing the department shall order the railroad or person responsible for the maintenance or use of the railroad facility to make any repairs, alterations, or changes necessary to correct or eliminate any condition or practice found to threaten the safety of the public or the employees of the railroad. If in the opinion of the Department of Transportation a condition or practice is so hazardous as to place the employees of the railroad in immediate danger the department may issue, after hearing, upon 48 hours' written notice given the railroad, an order prohibiting the use of the facility until such time as necessary repair, alterations or changes are made.

(2) This section does not apply to a penalty imposed under ORS 824.090 or 824.992 (7) and (8). [Formerly 761.120; 1997 c.275 §12]

**824.052 Track clearances.** The Department of Transportation, upon own motion or upon application of any person, and with or without hearing:

(1) May enter an order prescribing standard track clearances for railroads.

(2) Upon finding good cause, may enter an order granting authority for a railroad to operate at particular points with clearances different from those prescribed as standard track clearances. [Formerly 761.180]

**824.054 Cooperation with federal agencies on matters of safety; disclosure of reports if required by federal law.** (1) The Department of Transportation may cooperate with, make certifications to, and enter agreements with the Secretary of Transportation of the United States, or any other federal agency with jurisdiction over railroads, under the Federal Railroad Safety Act of 1970, as amended through the effective date of that Act.

(2) The Department of Transportation may assume responsibility for and carry out on behalf of the Secretary of Transportation of the United States, or any other federal agency with jurisdiction over railroads, regulatory jurisdiction over the safety practices applicable to railroad facilities and operations in Oregon not otherwise subject to the jurisdiction of any other agency of this state.

(3) Notwithstanding any other provisions of law to the contrary, the Department of Transportation shall make public such reports as are required to be made public under the Federal Railroad Safety Act of 1970, as amended through the effective date of that Act and shall provide such information as is required thereunder to the Secretary of Transportation of the United States. [Formerly 761.190]

**824.056 Walkway standards; rules; variances.** (1) The Department of Transportation, upon the department's motion or upon application of any person, shall adopt rules that prescribe standards for walkways alongside railroad tracks where necessary for the safety of railroad employees.

(2) The department may for good cause shown permit variances from the standards so prescribed. [Formerly 761.200; 1997 c.275 §13]

**824.058 Track improvement and rehabilitation program.** The Department of Transportation may:

(1) Identify segments of railroad track in this state that:

(a) Are abandoned, threatened with abandonment or have physical characteristics that reduce freight service; and

(b) Have the potential for providing renewed, continued or improved rail service that would benefit the state or community beyond the cost involved.

(2) Develop and implement programs to encourage improvement of service over segments of railroad track identified under subsection (1) of this section.

(3) With the prior approval of the Oregon Transportation Commission, enter into agreements with the United States Government, a political subdivision in this state or any person to:

(a) Continue existing rail service on a segment of railroad track identified under subsection (1) of this section;

(b) Acquire a segment of railroad track identified under subsection (1) of this section to maintain existing or provide for future rail service;

(c) Rehabilitate or improve, to the extent necessary to permit more adequate and efficient rail service, railroad property on a segment of railroad track identified under subsection (1) of this section; or

(d) Provide funding for less expensive alternatives to rail service over a segment of railroad track identified under subsection (1) of this section.

(4) Do any act required of this state under rules adopted by the United States Secretary of Transportation under section 1654, title 49, United States Code, for allocation and distribution of funds to any state under section 1654, title 49, United States Code, for

preserving or improving rail freight service in this state. [Formerly 761.205]

**Note:** 824.058 was added to and made a part of ORS chapters 823, 824, 825 and 826 by legislative action but was not added to ORS chapter 824 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

## EQUIPMENT

**824.060 First aid kits required on locomotives and caboose cars.** Every locomotive and caboose of every railroad operating in this state shall be equipped with a first aid kit. [Formerly 761.315]

**824.062 Equipment required on track motor cars.** (1) Every person operating or controlling any railroad which is a common carrier shall equip each of its track motor cars operating during the period 30 minutes before sunset and 30 minutes after sunrise with:

(a) An electric headlight of sufficient candle power to enable the operator of the car to plainly discern any track obstruction, landmark, warning sign or grade crossing at a distance not less than 300 feet.

(b) A red rear electric light with sufficient candle power to be plainly visible at a distance not less than 300 feet.

(c) A windshield equipped with a device, which must be kept in good working order, with which the operator can clean rain, snow and other moisture from the windshield.

(d) A canopy or top adequate to protect the occupants of the car from sun, rain, snow or other inclement weather.

(2) As used in this section, "track motor car" means all power-propelled speeders and motor cars which can be lifted on and off the track by hand. [Formerly 761.320]

**824.064 Self-propelled vehicles used in yards or terminals.** (1) No railroad shall permit or require an employee to use a self-propelled vehicle in its yards or terminals for inspecting trains, equipment or facilities or transporting employees or materials for the repair of trains, equipment or facilities, unless the vehicle is designed, constructed and operated in accordance with the safety orders and regulations adopted under ORS 654.001 to 654.170 and 654.202 to 654.216.

(2) As used in subsection (1) of this section, "railroad" means a railroad as defined by ORS 824.020 and 824.022. [Formerly 761.325]

**Note:** 824.064 was added to and made a part of ORS chapters 823, 824, 825 and 826 by legislative action but was not added to ORS chapter 824 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

**824.066 Helper unit operation restrictions.** (1) Except for operation in its yards or terminals, no railroad shall permit or require a helper unit that is not attached to a train to be operated with a crew of fewer than two people.

(2) As used in this section, "helper unit" means a locomotive power unit placed near the middle of or at the rear of a train to help the train traverse steep grades.

(3) A violation of this section is a Class A violation. [Formerly 761.331; 1999 c.1051 §231]

**824.068 Water quality and sanitation facility standards for locomotives and caboose cars.** (1) The Department of Transportation shall prescribe standards for water quality and sanitation facilities on railroad locomotives and cabooses in this state.

(2) The department may for good cause shown permit variances from the standards so prescribed. [Formerly 761.365]

## HAZARDOUS MATERIALS

**824.080 "Hazardous materials" defined.** As used in ORS 824.082 to 824.090 "hazardous materials" means those substances designated by the Department of Transportation pursuant to ORS 824.086 (1). [Formerly 761.370]

**824.082 Notice of movement of hazardous materials; confidentiality of notice information.** (1) Before transporting hazardous materials into this state or from a railroad terminal located within this state, a railroad shall, as soon as reasonably possible after it has notice of such train movement, provide such notification thereof as the Department of Transportation determines pursuant to ORS 824.086. If the information necessary for the notification is not available before beginning the train movement, or if hazardous materials are added to the train while en route, notification shall be given as soon as the information is available. For the purposes of this subsection, "train movement" does not include a switching or transfer movement.

(2) Except to the extent that the Department of Transportation determines is necessary to provide for the safe transportation of the hazardous materials, the department, an employee of the department and any person receiving information pursuant to this section shall not divulge or make known the information contained in the notification at any time before or during the transportation of the hazardous materials for which the notification is provided. [Formerly 761.380]

**824.084 Visual external inspections required on cars standing in rail yards or stations more than two hours.** Each railcar containing hazardous materials for which an "Explosives A," "Flammable Gas" or "Poison Gas" placard is required by federal regulation, and which remains in a rail yard or station for more than two hours shall be visually inspected externally by the transporting railroad within two hours of the car's arrival and within two hours prior to the car's departure. [Formerly 761.395]

**824.086 Designation of hazardous materials and notice requirements; rules.** After consultation with the State Fire Marshal the Department of Transportation shall determine:

(1) What material and quantity thereof the transportation of which is hazardous to public health, safety or welfare and shall designate by rule such materials and quantities as hazardous materials. In defining hazardous materials the department shall adopt definitions in conformity with the federal rules and regulations. Rules adopted under this subsection shall be applicable to any person who transports, or causes to be transported, any hazardous material.

(2) What notification required by ORS 824.082 (1) is necessary to provide for the safe transportation of hazardous materials, including but not limited to the time, content and manner of notification. [Formerly 761.400]

**824.088 Notifying Office of Emergency Management of reportable incident, derailments and fires; radio gear.** (1) Each railroad that gives notice to the United States Department of Transportation of an incident that occurs during the course of transporting hazardous materials as defined by federal regulations shall also give notice of the incident to the Director of the Office of Emergency Management of the Department of State Police.

(2) As soon as reasonably practicable, each railroad shall notify the Director of the Office of Emergency Management of the Department of State Police by telephone or similar means of communication of any derailment or fire involving or affecting hazardous material.

(3) To facilitate expedited and accurate notice to the director under this section, each train transporting hazardous materials in this state shall be equipped with at least two radio transmitter-receivers in good working order. In addition, 18 months after October 4, 1977, trains over 2,000 feet in length that are transporting hazardous materials shall be equipped with a radio handset in good working order capable of communicating with the radio transmitter-receivers. If the equipment required under this section does not function while the train is en route, the train may proceed to the next point of crew change where the equipment shall be replaced or repaired. [Formerly 761.405]

**824.090 Department to set standards for safe transportation of hazardous wastes; rules; civil penalty.** (1) The Department of Transportation shall adopt rules setting standards for the safe transportation of hazardous wastes, as defined in ORS 466.005, by all transporters.

(2) The authority granted under this section:

(a) Is in addition to any other authority granted the department.

(b) Does not supersede the authority of the Energy Facility Siting Council to regulate the transportation of radioactive materials under ORS 469.550, 469.563, 469.603 to 469.619 and 469.992.

(3) In addition to any other penalty for violation of a rule adopted under this section, the department, in the manner provided in ORS 183.745, may impose a civil penalty of not more than $10,000 for violation of a rule adopted under this section. Each day of noncompliance with a rule is a separate violation.

(4) As used in this section, "transporter" has the meaning given that term in ORS 466.005. [Formerly 761.415; 1997 c.275 §14]

**824.092 Disclosure of hazardous waste reports and information to Environmental Protection Agency.** Records, reports and information obtained or used by the Department of Transportation in administering the hazardous waste program under ORS 824.090 shall be available to the United States Environmental Protection Agency upon request. If the records, reports or information has been submitted to the department under a claim of confidentiality, the state shall make that claim of confidentiality to the Environmental Protection Agency for the requested records, reports or information. The federal agency shall treat the records, reports or information that is subject to the confidentiality claim as confidential in accordance with applicable federal law. [Formerly 761.421]

## CABOOSE REQUIREMENTS

**824.100 Definitions for ORS 824.102 to 824.110.** As used in ORS 824.102 to 824.110:

(1) "Caboose" means any car or coach used on a train to carry a train crew.

(2) "Marker" means any lamp providing illumination by electrical power which is designed to be displayed on a railroad car or coach for safety purposes.

(3) "Terminal" means a system of tracks, the boundaries of which are set by a railroad for the purpose of coupling or uncoupling cars. [Formerly 761.600]

**824.102 Application of requirements.** The provisions of ORS 824.102 to 824.110 shall apply to all cabooses except those used in terminal service or in road service for a distance not to exceed three miles, and shall not apply to logging railways. [Formerly 761.605; 1999 c.59 §246]

**824.104 Fire extinguishers; exemption.** (1) All cabooses shall be equipped with fire extinguishers meeting the following requirements:

(a) Each caboose shall have at least one portable fire extinguisher.

(b) Fire extinguishers may be of a foam, dry chemical or carbon dioxide type.

(c) The fire extinguishers in each caboose shall provide a minimum capacity of one and one-quarter gallons or five pounds. More than one fire extinguisher may be used to comply with the minimum capacity requirement under this paragraph.

(d) Fire extinguishers shall be placed in readily accessible locations.

(e) Fire extinguishers shall be maintained in working order.

(2) A railroad may apply for a temporary exemption from the provisions of subsection (1) of this section. The Department of Transportation will consider the application of the railroad for a temporary exemption when accompanied by a full statement of the conditions existing and the reasons for the exemption. Any exemption so granted will be limited to a stated period of time. [Subsection (1) formerly 761.620; subsection (2) formerly 761.625]

**824.106 Use of noncomplying caboose prohibited; equipment failure; repair.** A caboose shall not be placed in service unless it is in compliance with all of the provisions of ORS 824.102 to 824.110 relating to required equipment and standards of maintenance. In the event a failure of required equipment or standards of maintenance occurs after a caboose has departed from a terminal and a member of the train crew has boarded the caboose, the railroad operating the caboose shall not be deemed to be in violation of ORS 824.102 to 824.110 if such failure of equipment or standard of maintenance is corrected at the first point at which maintenance supplies are available or, in the case of repairs, the first point at which repair facilities are available and repairs can reasonably be made or the defective equipment replaced. [Formerly 761.630; 1999 c.59 §247]

**824.108 Register for reporting failures of equipment or maintenance standards; rules for use.** A register for the reporting of failures of required equipment or standards of maintenance shall be maintained on all cabooses. The register shall contain sufficient space to record the dates and particulars of each failure. The Department of Transportation shall provide rules for the use of this register, including a requirement that the record of reported failures be maintained not less than 80 days from the date of the most recent failure. [Formerly 761.635]

**824.110 Administrative authority of department; rules.** The Department of Transportation shall regulate and enforce all sections of ORS 824.102 to 824.110 and shall promulgate all rules necessary for the enforcement of ORS 824.102 to 824.110. [Formerly 761.640; 1999 c.59 §248]

**824.112** [Subsections (1) to (4) formerly 761.900; subsections (5) to (8) formerly 761.905; 1997 c.249 §246; 1997 c.275 §15a; renumbered 824.990 in 1997]

**824.114** [Subsections (1) to (5) formerly 761.990; subsection (6) formerly 761.992; subsections (7) and (8) formerly 761.994; 1997 c.249 §248; renumbered 824.992 in 1997]

## RAILROAD CROSSINGS

**824.200 Definitions for 824.200 to 824.256.** As used in ORS 824.200 to 824.256, unless the context requires otherwise:

(1) "High speed rail system" means a fixed guideway passenger transportation system capable of transporting passengers at speeds exceeding 79 miles per hour and connecting two or more urban areas, including but not limited to any such system that utilizes or incorporates, in whole or in part, existing rail transportation facilities and any necessary upgrades of or modifications to existing rail transportation facilities.

(2) "Highway" includes all roads, streets, alleys, avenues, boulevards, parkways and other places in this state actually open and in use, or to be opened and used for travel by the public.

(3) "Installation costs," when used in the context of protective devices, includes costs of acquiring, assembling and rendering operational the device and its attendant controls, circuitry and fail-safe mechanisms.

(4) "Maintenance costs," when used in the context of protective devices, includes preventive maintenance, repair and replacement of the device and its attendant controls, circuitry and fail-safe mechanisms.

(5) "Protective device" means a sign, signal, gate or other device to warn or protect the public, installed at or in advance of a railroad-highway crossing.

(6) Except in proceedings under ORS 824.236, "public authority in interest" means the state, county, municipal or other governmental body with jurisdiction over the highway crossing the railroad track. In proceedings under ORS 824.236, "public authority in interest" means the county, municipal or other governmental body that has primary zoning authority over the lands served by the crossing.

(7) "Railroad" has the meaning given that term in ORS 824.020, and includes logging and other private railroads.

(8) "Railroad company" includes every corporation, company, association, joint stock association, partnership or person, and their lessees, trustees or receivers, appointed by any court whatsoever, owning, operating, controlling or managing any railroad.

(9) "Unauthorized railroad-highway crossing" means a crossing at grade that is actually open and in use, or to be opened and used for travel by the public, and that has not been authorized under ORS 824.204. [Formerly 763.010; 2005 c.22 §517]

**824.202 Policy; authority vested in state and department.** It is the policy of this state to achieve uniform and coordinated regulation of railroad-highway crossings and to eliminate crossings at grade wherever possible. To these ends, authority to control and regulate the construction, alteration, and protection of railroad-highway crossings is vested exclusively in the state, and in the Department of Transportation as provided in ORS 824.200 to 824.256. [Formerly 763.013]

**824.204 Authority to construct grade crossings; protective devices.** (1) Except for the repair of lawfully existing roads and highways or the replacement of tracks, no highway shall be constructed across the track of any railroad company at grade, nor shall the track of any railroad company be constructed across a highway at grade, without having first secured the permission of the Department of Transportation.

(2) Whenever any railroad company desires to cross any established and existing highway at grade or any public authority desires to lay out and extend any highway over and across any established and existing railroad at grade, it shall file with the department its application setting forth the objections and difficulties of making such crossing either above or below the grade of the existing highway or railroad.

(3) Upon receipt of the above application the department, after hearing, unless a hearing is not required under ORS 824.214, shall:

(a) Determine whether the public safety, public convenience and general welfare require a grade separation; and

(b) In the event a grade separation is not required, determine whether the application should be refused or granted, and upon what terms and conditions.

(4) If the grade crossing is approved, the department shall determine and prescribe the manner of its construction, maintenance and use, the kind and location of protective devices to be installed, the allocation of costs and the place of the crossing. [Formerly 763.020]

**824.206 Elimination, relocation or alteration of grade crossing; installation or alteration of protective devices.** (1) The Department of Transportation may, upon its own motion or upon application by a railroad or the public authority in interest, subsequent to a hearing, unless a hearing is not required under ORS 824.214, and upon finding that such action is required by the public safety, necessity, convenience and general welfare:

(a) Eliminate a grade crossing by relocation of the highway;

(b) Alter or abolish any grade crossing or change the location thereof, or require a separation of grades at any such crossing;

(c) Alter or change any existing crossing at separated grades; and

(d) Require installation or alteration of protective devices.

(2) The department shall prescribe the time and manner of such alteration, change, installation or alteration, and the terms and conditions thereof. [Formerly 763.030; 1997 c.249 §250; 1997 c.275 §16]

**824.208 Authority to fix speeds and regulate sounding of train warning devices at crossings.** (1) The power to fix and regulate the speed of railway trains and to regulate the sounding of railway train warning devices at public railroad-highway crossings is vested exclusively in the state.

(2) Upon petition of any public authority in interest or of any railroad or upon the Department of Transportation's own motion, the Department of Transportation shall, after due investigation and hearing, unless a hearing is not required under ORS 824.214 enter an order fixing and regulating the speed of railway trains or regulating the sounding of railway train warning devices.

(3) The speed limits fixed by the department shall be maximum speed limits and shall be commensurate with the hazards presented and the practical operation of the trains. [Formerly 763.035]

**824.210 Construction and alteration of crossings above or below grade.** No highway shall be constructed across the track of any railroad company above or below grade, nor shall the track of any railroad company

be constructed across a highway above or below grade, without having first secured the permission of the Department of Transportation. If permission is granted, the department shall, after a hearing, unless hearing is not required under ORS 824.214, prescribe the terms and conditions upon which such crossing shall be made and shall allocate the cost of construction and maintenance. [Formerly 763.040]

**824.212 Specifications for construction and maintenance of crossings; application of specifications; priorities; compliance.** (1) The Department of Transportation shall adopt regulations prescribing specifications for the construction and maintenance of railroad-highway crossings, both at grade level and at separated grades. The specifications shall be developed in consultation with representatives of cities and counties and shall conform to nationally recognized and commonly used standards to ensure that the crossings are constructed and maintained in a manner that conforms to the public safety, necessity, convenience and general welfare, including but not limited to the projected transportation needs.

(2) Specifications for separate crossings adopted under subsection (1) of this section do not apply to crossings in existence on the effective date of the regulation prescribing the specifications. However, within a reasonable period after the effective date, crossings shall be altered or reconstructed to comply with the regulations in effect at the time of the alteration or reconstruction.

(3) Priorities for such alterations or reconstruction shall be established by the Department of Transportation, based upon the expressed need of the public authority in interest, and upon such other factors as danger or inconvenience to motorists, age of the structure, frequency of reported accidents and degree of noncompliance with regulations.

(4) If the public authority in interest or the railroad company fails to so alter or reconstruct a crossing, the department, after following the procedures specified in ORS chapter 183 for contested cases, may order the alteration or reconstruction and proceed in accordance with ORS 824.216. [Formerly 763.055; 1997 c.249 §251; 1997 c.275 §17]

**824.214 Procedure to obtain permission for crossings; rules.** (1) Proceedings to carry out ORS 824.204, 824.206, 824.210 to 824.218, 824.224, 824.226 to 824.230, 824.238, 824.240 and 824.256, including the right to review any order of the Department of Transportation, shall be those specified in ORS chapter 183 for contested cases. If the final order of the department, in a proceeding initiated under ORS 824.206 or 824.226 by a city or county, is appealed and the city or county prevails, it shall be entitled to costs and reasonable attorney fees.

(2) The department may adopt rules to govern the procedure, and to regulate the mode and manner of all investigations under ORS 824.204, 824.206, 824.210 to 824.218, 824.224, 824.226 to 824.230, 824.238, 824.240 and 824.256.

(3) The authority granted the department by ORS 824.200 to 824.256 is in addition to and not in lieu of the authority of any city, county or other political subdivision of the state to use other remedies and procedures to provide public highways for the traveling public. [Formerly 763.080; 1997 c.249 §252; 1997 c.275 §18]

**824.216 Procedure to compel compliance with orders.** (1) The railroad company, public authority or person to whom an order of the Department of Transportation is directed under ORS 824.200 to 824.256 shall comply with such order within such reasonable time as may be prescribed by the department. In case of failure to comply, the department shall thereupon take proceedings to compel obedience to such order.

(2) The circuit court has power in case of all such orders by the department to compel obedience therewith by mandamus, brought in the name of the state, subject, however, to appeal to the Court of Appeals in the same manner and with like effect as provided in cases of appeal from the order of the circuit court. [Formerly 763.090; 1997 c.275 §19]

**824.218 Work and materials furnished by railroad company; supervision of work.** All work and the material for work done under ORS 824.200, 824.204, 824.206, 824.210 to 824.218, 824.226 to 824.230, 824.238, 824.240 and 824.256 within the limits of railroad rights of way shall, if the railroad company so desires, be furnished and done by the railroad company. However, the Department of Transportation shall have supervision of the work and may decide the kind of material to be used. [Formerly 763.100; 1997 c.249 §253]

**824.220 Protective devices; rules.** The Department of Transportation shall adopt rules prescribing specifications for the design and location of protective devices. [Formerly 763.110; 1997 c.249 §254]

**824.222 Authority over duration that grade crossing may be blocked; penalty.** (1) The power to fix and regulate the length of time a public railroad-highway grade crossing may be blocked by railroad equipment is vested exclusively in the state.

(2)(a) Upon petition of the public authority in interest, or of any railroad or upon the Department of Transportation's own motion, the department shall, after due investigation

and hearing, unless hearing is not required under ORS 824.214, enter an order fixing and regulating the length of time a public railroad-highway grade crossing may be blocked by railroad equipment.

(b) Upon petition of a person, the department shall investigate and may hold a hearing and, following a hearing, may enter an order fixing and regulating the length of time a public railroad-highway grade crossing may be blocked by railroad equipment.

(3) The time limits fixed by the department shall be maximum time limits and shall be commensurate with reasonable requirements of train and vehicular traffic operations.

(4) Violation of a time limit fixed by the department under this section is punishable by a civil penalty of not less than $100 nor more than $3,000 for each offense. [Formerly 763.120; 2001 c.909 §1]

**824.223 Authority to regulate distance from grade crossing at which railroad may stop or park equipment; penalty.** (1) The power to regulate the distance from a public railroad-highway grade crossing at which a railroad may stop or park equipment is vested exclusively in the state.

(2)(a) Upon petition of the public authority in interest, or of any railroad or upon the Department of Transportation's own motion, the department shall, after due investigation and hearing, unless hearing is not required under ORS 824.214, enter an order establishing a safe distance from a public railroad-highway grade crossing at which a railroad may stop or park equipment.

(b) Upon petition of a person, the department shall investigate and may hold a hearing and, following a hearing, may enter an order establishing a safe distance from a public railroad-highway grade crossing at which a railroad may stop or park equipment.

(3) In determining what constitutes a safe distance under subsection (2) of this section, the department shall consider issues including, but not limited to, hazards associated with public railroad-highway grade crossings that do not have active protective devices.

(4) Violation of an order issued under subsection (2) of this section is punishable by a civil penalty of not less than $100 nor more than $3,000 for each offense. [2001 c.909 §3]

**824.224 When stop signs are to be installed by railroad; exemption; grade crossing alteration, relocation or closure.** (1) At every farm or private grade crossing of a railroad where no automatic grade crossing protective device is installed, the railroad shall cause to be installed and maintained, as a means of protecting the crossing, one or more stop signs.

(2) The Department of Transportation shall, after hearing, unless hearing is not required under ORS 824.214, prescribe the number, type and location of the stop signs and may exempt a farm or private grade crossing if the department finds that the installation of such sign or signs at the crossing would create a hazard or dangerous condition that would not otherwise exist.

(3) After notice to any affected landowner and opportunity for a hearing, unless a hearing is not required under ORS 824.214, the Department of Transportation may alter, relocate or close any farm or private grade crossing on any line designated as a high speed rail system.

(4) If the department decides to alter, relocate or close a farm or private grade crossing in such a manner as to constitute a taking of private property, the department shall exercise its power of eminent domain to acquire such property as is necessary to carry out the decision. A department order under this subsection shall constitute a resolution of necessity for exercise of the department's power of eminent domain.

(5) If the department exercises its power of eminent domain under subsection (4) of this section, the department shall use any combination of state or federal funds allocated for high speed rail systems to pay any settlement with or judgment in favor of an owner of a farm or private grade crossing. The department shall have discretion to determine whether to reach a settlement with an owner of a farm or private grade crossing.

(6) The costs of implementing a department order issued under subsection (3) of this section shall be apportioned to any combination of state or federal funds specifically allocated for high speed rail systems as the department determines appropriate in order to eliminate farm or private grade crossings or to enhance safety at such crossings. [Formerly 763.130; 1997 c.249 §255; 1997 c.275 §20]

**824.226 Dangerous grade crossings; notice; hearing; order to install protective devices; apportioning of cost.** (1) The Department of Transportation on its own motion may, or upon application by the common council or mayor of any city, or any county judge or county commissioner or county roadmaster, or by five or more residents and taxpayers in any city, county or road district to the effect that a public highway and a railroad cross one another in such city, county or road district at the same level, and that such grade crossing is unsafe and dangerous to travelers over such highway or railroad, shall, give notice to the

railroad company, of the filing of such application, and furnish a copy of the same to the railroad company, and order a hearing thereon in the manner provided for contested case hearings under ORS chapter 183.

(2) If upon such hearing it appears to the satisfaction of the department that the crossing complained of is unsafe and dangerous to human life, the department may order the crossing closed or order and direct the railroad or public authority to install and maintain proper protective devices, and establish a date by which such devices are to be installed and placed into operation. The department shall apportion the installation and maintenance costs thereof in accordance with ORS 824.242 to 824.246, and, notwithstanding the provisions of ORS chapter 183, shall suspend the effective date of the order until the public authority in interest has consented to the apportionment and has agreed to comply therewith. [Formerly 763.170; 1997 c.275 §21]

**824.228 Procedure for determining mode of track crossing of intersecting railroads.** (1) Whenever it becomes necessary for the track of one railroad to cross the track of another railroad, the Department of Transportation shall ascertain and define either on the application of a railroad or on its own motion and after notice to the affected railroads, in the manner provided for contested cases in ORS chapter 183, the mode of such crossing that occasions the least probable injury upon the safety, welfare and interests of the public and the rights of the company owning the road that is intended to be crossed.

(2) The department shall also determine the compensation to be paid by the railroad so seeking to cross the other, if the railroads are unable to agree thereon, and the points and manner of such connection.

(3) If it appears to the department that it is reasonable and practicable to avoid a grade crossing, the department shall by order prevent the same, and shall prescribe the manner of such crossing.

(4) If any railroad seeks to cross at grade with its tracks the tracks of another railroad, the railroad seeking to cross at grade shall be compelled to pay all damages caused by such crossing, and to interlock or protect such crossing by safety devices to be designated by the department, and to pay all costs of appliances, together with the expenses of putting them in and maintaining them. This requirement does not apply to crossings of sidetracks. [Formerly 763.180; 1997 c.275 §22]

**824.230 Installation of protective devices where railroads intersect at grade.** (1) In any case where the tracks of two or more railroads cross each other at a common grade in this state, the railroads, when ordered by the Department of Transportation, shall protect such crossings by interlocking or other safety devices, under regulations to be designated by the department, to prevent trains colliding at such crossings. An order may be issued under this section only after notice to the affected railroads and a proceeding under ORS chapter 183 initiated by the department on its own motion or upon application by one of the railroads.

(2) The department in making such order shall designate the manner of such interlocking protection, and shall apportion the cost of installing and maintaining the same between the several railroads, if such railroads are unable to agree upon the same between themselves. [Formerly 763.190; 1997 c.275 §24]

**824.232 Forfeiture for noncompliance.** Any company, corporation, person or receiver operating any railroad who neglects to comply with any order made by the Department of Transportation pursuant to ORS 824.228 or 824.230 shall forfeit and pay to the state a penalty of $500 per week for each week of such neglect. [Formerly 763.200]

**824.234 Use of findings of department regarding hazards at crossings.** The determinations of the Department of Transportation under ORS 824.200 to 824.256 as to hazards at crossings shall not be admissible in any civil action for damages. [Formerly 763.210]

**824.236 Protective devices at unauthorized railroad-highway crossing; apportionment to railroad; reimbursement; closure.** (1) Except as provided in subsection (2) of this section, the Department of Transportation may, under ORS 823.033, order a railroad to install and maintain protective devices at an unauthorized railroad-highway crossing and order the public authority in interest to install and maintain stop signs at and other protective devices in advance of an unauthorized railroad-highway crossing.

(2) The department may not order the railroad to install at an unauthorized railroad-highway crossing devices which are activated immediately in advance of, and during, each train movement over the crossing unless the department determines that the railroad intentionally created the unauthorized crossing after June 2, 1995.

(3) Except as provided in subsection (4) of this section, in any proceeding under subsections (1) and (2) of this section, or unless the parties agree otherwise, installation and maintenance costs of protective devices shall be apportioned to the railroad.

(4) The railroad may seek reimbursement or indemnity from third parties.

(5) Under ORS 823.033, the department may open an investigation to consider closure of an unauthorized railroad-highway crossing. If the department decides to open an investigation, it shall post notice of the investigation at the crossing at least 30 days prior to opening the investigation. If the department is unable to complete an investigation within two years from the date it was opened, the department shall order the crossing closed within one year from the expiration of the two-year period allowed for investigation unless closure of the unauthorized railroad-highway crossing would remove the only access to any land. [Formerly 763.220; 2003 c.145 §3]

## COST APPORTIONMENTS

**824.238 Division of costs between railroad and public authority.** The following costs shall be divided between the railroad and the public authority in interest in such proportion as the Department of Transportation finds just and equitable under the circumstances in each case:

(1) That portion of the cost of any alteration or change resulting in the elimination of a grade crossing under ORS 824.206 (1) by reason of relocation of the highway which is directly chargeable to the grade elimination.

(2) The costs of construction, change, alteration, abolition and relocation of any grade crossing involved in a proceeding arising under ORS 824.204, 824.206 or 824.226.

(3) The costs of maintenance of crossings above or below grade under ORS 824.206 and 824.210.

(4) Any cost otherwise apportionable under the terms of ORS 824.242 to 824.246 or 824.248 (1) to the extent that funds are not available from the Grade Crossing Protection Account. [Formerly 763.250]

**824.240 Payment when public highway involved.** (1) As to all crossings above or below grade constructed on state highways, the proportion of expense to be borne by public authority in interest shall be paid from the state highway funds.

(2) Any public authority in interest acting through its governing body may, at its option, by agreement with the Department of Transportation, bear a share of the expense of constructing any railroad crossing above or below grade on a state highway.

(3) If federal funds allocated specifically for removal of hazards at hazardous railroad-highway crossings are available for any part of the work to be performed, the Department of Transportation shall cause such funds to be used for such purposes. [Formerly 763.260]

**824.242 Apportionment of costs for installation of protective devices.** In any grade crossing proceeding arising under ORS 824.204, 824.206 or 824.226, unless the parties agree otherwise, installation costs of protective devices shall be apportioned as follows:

(1) At an existing crossing, a crossing relocated pursuant to ORS 824.206 or 824.226, or a crossing previously closed by order of the Department of Transportation and reopened in a proceeding under ORS 824.204:

(a) For devices to be installed at or in advance of the crossing and which are activated immediately in advance of, and during, each train movement over the crossing:

(A) Seventy-five percent to the Grade Crossing Protection Account;

(B) Five percent to the public authority in interest; and

(C) Twenty percent to the railroad company.

(b) For devices which are primarily designed for the purpose of illuminating the crossing or its approaches during hours of darkness:

(A) Not less than 90 percent to the Grade Crossing Protection Account;

(B) Not more than five percent to the public authority in interest; and

(C) Not more than five percent to the railroad company for such devices to be installed at the crossing.

(c) For all other protective devices:

(A) Seventy-five percent to the Grade Crossing Protection Account; and

(B) Twenty-five percent to the public authority in interest for such devices to be installed by it at or in advance of the crossing; or

(C) Twenty-five percent to the railroad company for such devices to be installed by it at the crossing.

(2) Except as provided in subsection (4) of this section, at a new crossing requested by a public authority, 100 percent of the installation costs shall be paid by the public authority in interest.

(3) Except as provided in subsection (4) of this section, at a new crossing requested by a railroad company, 100 percent of the installation costs shall be paid by the railroad company.

(4) If the Department of Transportation converts an unauthorized railroad-highway crossing to a crossing authorized under ORS 824.204, the department shall apportion installation costs of protective devices as provided in subsection (1) of this section, or, if federal funds are available, installation costs

may be apportioned as provided in ORS 824.250. [Formerly 763.271]

**824.244 Apportionment of costs for maintenance of protective devices.** Unless the parties agree otherwise, maintenance cost of protective devices at grade crossings installed pursuant to ORS 824.204, 824.206 or 824.226 shall be apportioned as follows:

(1) One hundred percent to the railroad company for devices at the crossing actually installed and maintained by the railroad.

(2) One hundred percent to the public authority in interest for devices at or in advance of the crossing actually installed and maintained by the authority, except as provided under subsection (3) of this section.

(3) Fifty percent to the railroad company, and 50 percent to the public authority in interest, for devices at the crossing installed and maintained by the public authority which are primarily designed for the purpose of illuminating the crossing during hours of darkness and which are not activated immediately in advance of, or during, each train movement. [Formerly 763.273]

**824.246 Apportionment of costs of crossing closure.** If in any grade crossing proceeding arising under ORS 824.204, 824.206 or 824.226, the Department of Transportation requires the closure of any existing crossing within the jurisdiction of the public authority in interest, the department may apportion to the railroad company, for such crossing closed, an amount not to exceed five percent of the cost of installation of protective devices at any new or other existing crossing within the jurisdiction of the public authority in interest. Any additional costs paid by the railroad company shall reduce the share otherwise apportionable to the public authority in interest. [Formerly 763.275]

**824.248 Apportionments for crossings above or below grade.** In any proceeding involving a crossing above or below grade arising under ORS 824.206 or 824.210, unless the parties agree otherwise, the cost of construction, reconstruction, or alteration of such crossings shall be apportioned as follows:

(1) At existing crossings above or below grade: 10 percent of the cost of reconstruction or alteration to the public authority in interest and all remaining costs of reconstruction or alteration to the Grade Crossing Protection Account and the railroad in interest as is just and equitable under the circumstances in each case.

(2) At a new crossing requested by a public authority: All construction costs to the public authority in interest.

(3) At a new crossing requested by a railroad company: All construction costs to the railroad company. [Formerly 763.280]

**824.250 Apportionment when federal funds available.** In the event any protective device is to be installed or altered at an existing or relocated crossing or any reconstruction or alteration is made at an existing separation structure, with the aid of any federal funds administered by the Federal Highway Administration of the United States Department of Transportation, the Oregon Department of Transportation shall, unless the parties agree otherwise:

(1) Apportion the amount of such federal funds to payment of installation, reconstruction, or alteration costs; and

(2) Apportion the remaining costs of installation, reconstruction, alteration, and maintenance as provided by ORS 824.238 and 824.242 to 824.248; however, in a case where the federal fund assistance equals or exceeds 75 percent of the cost of installing, altering and reconstructing protective devices at an existing or relocated crossing, the remaining costs, except for maintenance costs, may be allocated entirely to the Grade Crossing Protection Account. [Formerly 763.290]

**824.252 Procedure when disagreement as to apportionment exists.** (1) In any proceeding under ORS 824.206 or 824.226, where the application to the Department of Transportation states that the parties are not in agreement as to apportionment of costs, but the applicant is willing to advance the amount of money reasonably necessary to enable the respondent to complete the work which must be done by it or the amount reasonably necessary is available and can be advanced from the Grade Crossing Protection Account, the department shall set the application for hearing as soon as the calendar of the department permits on the questions of:

(a) The necessity for the project;

(b) The approval of the location and the engineering plans, including provisions for handling traffic during construction and the work to be performed by each party; and

(c) The sum to be advanced by the applicant or the account for the work to be done by the respondent.

(2) The Department of Transportation shall render as promptly as possible an interim order, effective within 20 days on such questions, reserving for later hearing and decision the question of the apportionment of costs. The interim order shall also direct the respondent to proceed upon receipt of the sum to be advanced by the applicant or the account without delay to perform the work to be done by respondent, integrating the work with that of the applicant or its con-

tractor in such manner that neither will unreasonably obstruct or delay the work of the other, to the end that the people of the state may have the use of the project at the earliest possible date.

(3) In the final order apportioning costs, the sum advanced by the applicant or the account shall be credited against its share of the costs. In the final order there shall also be credited against applicant's share of the costs any increase in the costs found by the Department of Transportation to be directly attributable to respondent's willful failure or refusal, after the effective date of the interim order, to proceed with its own work or to integrate the work with that of applicant or its contractor. [Formerly 763.300]

**824.254 Reimbursement procedure for railroad and public authority.** (1) Upon issuance of an order apportioning costs to the Grade Crossing Protection Account, the railroad company or the public authority in interest may submit to the Department of Transportation progress claims, not to exceed 80 percent of the apportionment, for reimbursement for the cost of labor, and other services provided to date of billing, and for the costs of materials stockpiled at the project site or specifically purchased and delivered for use on the project. Upon completion of the construction, reconstruction or alteration of a crossing, or of the installation or alteration of grade crossing warning or safety devices at a crossing, the railroad company or the public authority in interest shall present to the department for approval its claim for reimbursement for the costs thereof in the amount apportioned to the Grade Crossing Protection Account less progress payments previously made. When a claim is approved, the department shall, as funds become available, order the claim paid from the account.

(2) The department may make such audit as the department considers necessary before or after each such disbursement for the purpose of determining that the money is expended for the purposes and under the conditions authorized by ORS 824.242 to 824.248. By presentation of its claim, the railroad company and the public authority consent to make pertinent records showing costs of labor and materials available to the department.

(3) Notwithstanding subsection (1) of this section, upon issuance of an order apportioning costs to the Grade Crossing Protection Account, and upon agreement with the Department of Transportation, the railroad company or public authority in interest shall submit an estimate of the costs of the project. The railroad company or public authority in interest may submit statements for lump-sum reimbursement from the account during and at the completion of the construction, reconstruction or alteration of a crossing, or of the installation or alteration of a grade crossing warning or safety device at a crossing. [Formerly 763.310; 1997 c.249 §256; 1999 c.596 §1]

**824.256 Expense contributed by public held in trust by railroad company.** Any portion of the cost or expense that is contributed or borne by any public authority under ORS 824.200, 824.204, 824.206, 824.210 to 824.218 and 824.226 shall forever be considered as held in trust by the railroad company receiving the same or the benefits thereof, and no part thereof shall be considered a part of the value of the property of the railroad company upon which it is entitled to receive a return. [Formerly 763.320]

**824.258** [Formerly 763.900; repealed by 1997 c.249 §257]

## EMPLOYEE SAFETY REGULATIONS

**824.300 Required crews on trains; exception.** No person or officer of court operating any railroad or railway in this state engaged as a common carrier in the transportation of freight or passengers shall operate over its road, or any part thereof, in excess of 15 continuous miles, or suffer or permit to be run over the same, outside of yard switching limits, any passenger, mail or express train propelled by any form of motive power and consisting of four or more cars with less than a full passenger crew consisting of one engineer, one apprentice engineer, one conductor, one brakeman and one flagger. None of said crew shall be required or permitted to perform the duties of train baggage handler or express messenger while on such road. This section shall not apply to operations in which lesser crew requirements are established by agreement between the common carrier and the organizations representing railroad employees. [Formerly 764.110; 1997 c.249 §258]

**824.302 Qualification of flagger.** The flagger in the crews required under ORS 824.300 shall have had at least six months' experience in train service. [Formerly 764.130; 1997 c.249 §259]

**824.304 Guarding frogs, switches and guardrails.** (1) Every person owning or operating a railroad in this state, shall so adjust, fill, block and securely guard the frogs, switches and guardrails of their roads as to protect and prevent the feet of employees and other persons from being caught therein.

(2) Any person owning or operating a railroad in this state shall be liable for any damage caused from a failure to comply with this section. [Formerly 764.140]

**824.306 Shelter of car repairers.** (1) No person owning, controlling or operating any line of railroad in this state shall build, construct, reconstruct or repair railroad car equipment or motive power in the state without first erecting and maintaining at every division terminal, or other point where five employees or more are regularly employed on such work, a shed over a sufficient portion of the tracks used for such work, so as to provide that all employees regularly employed in such work are sheltered and protected from rain and other inclement weather.

(2) This section does not apply at points where fewer than five employees are regularly employed in such work, nor at points where it is necessary to make light repairs only on equipment or motive power, nor to equipment loaded with time or perishable freight, nor to equipment when trains are being held for the movement of equipment. As used in this subsection, "light repairs" does not include repairs usually made in roundhouse, shop or shed upon well-equipped railroads. [Formerly 764.150]

**824.308 Railroads to provide first aid training for employees.** (1) Every railroad operating in this state shall provide to any employee who is an engineer, conductor or yard foreman a first aid training course that conforms to standards at least equivalent to the American Red Cross eight-hour first aid training course and cardiopulmonary resuscitation course.

(2) Railroads shall bear all costs incurred for the first aid training course described in subsection (1) of this section and shall pay wages to employees who are attending the course. [Subsection (1) formerly 764.170; subsection (2) formerly 764.180]

**824.310 Immunity from liability of persons providing first aid treatment.** No person may recover in an action against a railroad or employee who has received the first aid training described in ORS 824.308 (1) for any damages directly or indirectly resulting from first aid treatment rendered by such employee unless the complaining party establishes that the treatment violates the standards of reasonable care under the circumstances including the existence of emergency conditions in which the treatment was rendered. [Formerly 764.190]

**824.312** [Formerly 764.900; repealed by 1997 c.249 §260]

**824.314** [Formerly 764.990; repealed by 1997 c.249 §260]

## PENALTIES

**824.990 Civil penalties.** (1) In addition to all other penalties provided by law:

(a) Every person who violates or who procures, aids or abets in the violation of ORS 824.060, 824.084, 824.088, 824.304 (1) or 824.306 (1) or any order, rule or decision of the Department of Transportation shall incur a civil penalty of not more than $1,000 for every such violation.

(b) Every person who violates or who procures, aids or abets in the violation of any order, rule or decision of the department promulgated pursuant to ORS 824.052 (1), 824.056 (1), 824.068, 824.082 (1) or 824.208 shall incur a civil penalty of not more than $1,000 for every such violation.

(2) Each such violation shall be a separate offense and in case of a continuing violation every day's continuance is a separate violation. Every act of commission or omission that procures, aids or abets in the violation is a violation under subsection (1) of this section and subject to the penalty provided in subsection (1) of this section.

(3) Civil penalties imposed under subsection (1) of this section shall be imposed in the manner provided in ORS 183.745.

(4) The department may reduce any penalty provided for in subsection (1) of this section on such terms as the department considers proper if:

(a) The defendant admits the violations alleged in the notice and makes timely request for reduction of the penalty; or

(b) The defendant submits to the department a written request for reduction of the penalty within 15 days from the date the penalty order is served. [Formerly 824.112]

**824.992 Criminal penalties.** (1) Violation of ORS 824.062 is a Class D violation.

(2) Violation of ORS 824.064 is a misdemeanor.

(3) Violation of ORS 824.082 (1), 824.084 or 824.088 by a railroad is a Class A violation.

(4) Violation of ORS 824.082 (2) is a Class A violation.

(5) As used in subsection (3) of this section, "railroad" means a railroad as defined by ORS 824.020 and 824.022.

(6) Subject to ORS 153.022, violation of ORS 824.104 (1), 824.106 or 824.108 or any rule promulgated pursuant thereto is a Class A violation, and upon conviction the court shall impose a fine of not less than $100.

(7) A person is subject to the penalties under subsection (8) of this section if the person knowingly:

(a) Transports by railroad any hazardous waste listed under ORS 466.005 or rules adopted thereunder to a facility that does not have appropriate authority to receive the waste under ORS 466.005 to 466.385 and 466.992.

(b) Disposes of any hazardous waste listed under ORS 466.005 or rules adopted thereunder without appropriate authority under ORS 466.005 to 466.385 and 466.992.

(c) Materially violates any terms of permit or authority issued to the person under ORS 466.005 to 466.385 and 466.992 in the transporting or disposing of hazardous waste.

(d) Makes any false material statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with requirements under ORS 824.050 to 824.110 for the safe transportation of hazardous wastes.

(e) Violates any rules adopted by the Department of Transportation concerning the transportation of hazardous wastes.

(8) Subject to ORS 153.022, violation of subsection (7) of this section is subject to the penalty of a fine of not more than $10,000 for each day of violation, imprisonment of not more than six months, or both.

(9) Violation of ORS 824.300 or 824.302 is a Class D violation.

(10) Violation of ORS 824.304 is punishable, upon conviction, by a fine of not less than $500 nor more than $2,000.

(11) Violation of ORS 824.306 by any railroad company or officer or agent thereof, or any other person is a Class D violation. Each day's violation is a separate offense. [Formerly 824.114; 1999 c.1051 §232]