

Table of Contents

Fireguards, Fencing of Railroad Property, and Claims for Injury to Livestock

Chapter 3

Section 1	Purpose	3-1
Section 2	Definitions	3-1
Section 3	Application of Rules	3-2
Section 4	Fireguards	3-2
Section 5	Railroad Property Fencing	3-5
Section 6	Claims for Injury to Livestock	3-6
Section 7	Forms	3-8

Wyoming Department of Transportation
Fireguards, Fencing of Railroad Property, and Claims for Injury to Livestock

CHAPTER 3

Section 1. **Purpose.**

As required by W.S. 37-9-310, these rules are promulgated to ensure compliance with W.S. 37-9-301, et seq., by railroad companies responsible for maintaining railroad property and rights-of-way within Wyoming.

Section 2. **Definitions.**

The following definitions shall apply to this chapter:

(a) “Area” means the rights-of-way located between 2 stated railroad mileposts lying to the right or left side, or both sides, of the main track(s). Locations requiring fireguard treatment shall be designated by railroad mileposts.

(b) “Auto gate cattle guard” means, instead of a gate, an opening in a fence with a ground grill that stock will not cross.

(c) “Commission” means the Transportation Commission of Wyoming.

(d) “Commission agent” means the Wyoming State Forestry Division (WSFD) acting for and on behalf of the Commission.

(e) “Department” means the Wyoming Department of Transportation (WYDOT), Utilities and Railroads Section, 5300 Bishop Boulevard, Cheyenne, WY 82009-3340 (telephone 307-777-4859).

(f) “Fencing” means fences that meet or exceed Department fencing standards on both sides of the track.

(g) “Field inspection” means an inspection of any railroad right-of-way within Wyoming, except any railroad right-of-way within any town or city limit.

(h) “Fireguard” means a man-made or natural obstruction to prevent fire from spreading to lateral areas along railroad rights-of-way or the obstruction created by discing, blading, sterilizing, burning, or spraying.

(i) “Livestock or stock” means all classes of horses, asses, mules, cattle, sheep, swine, buffalo, llamas, beefalo, and other domesticated animals.

(j) “Milepost” means a physical marker installed by the railroad companies along their rights-of-way used for identifying distances measured in miles.

(k) “Person” means individuals, associations of individuals, firms, partnerships, companies, corporations, their lessees, trustees, or receivers, appointed by any court whatsoever in the singular number as well as the plural.

(l) “Property or rights-of-way” means all property acquired by the railroad company for the construction, operation, and maintenance of railroads and related facilities, whether or not a railroad has been constructed on it.

(m) “Specifications” means the treatment procedures, as determined by the Commission in consultation with the railroad, outlining the methods the railroad company shall use to establish a proper fireguard.

(n) “Suppression costs” means the costs (expressed in dollars and cents) established by the *Wyoming Fire Mobilization Guide* and interagency cooperative agreements for expenses incurred extinguishing fires in areas adjacent to railroad company rights-of-way, caused by or resulting from railroad company operations, except those rights-of-way lying within town or city limits.

(o) “State Forestry Division” means the State Forestry Division under the jurisdiction of the Office of State Lands and Investments.

(p) “Treatment” means the physical act of discing, blading, sterilizing, burning, or spraying.

Section 3. **Application of Rules.**

These rules shall apply to every company, corporation, business, or railroad company operating a line of track upon a right-of-way or any part thereof within Wyoming.

Section 4. **Fireguards.** (*See W.S. 37-9-301 through W.S. 37-9-303.*)

(a) The Commission shall designate the Wyoming State Forestry Division as the agent to act on the Commission’s behalf concerning railroad fireguard inspections.

(b) The Commission agent shall be responsible for the following within Section 4, Fireguards, of this rule and regulation:

- (i) Arranging for field inspections of railroad rights-of-way,
- (ii) Determining specific areas to be treated and establishing the season of the year for the treatment during the following year, and
- (iii) Determining the type of treatment required.

(c) The Commission, or its agent, shall issue additional periodic orders or directives to the railroad company(s) as circumstances require. These additional orders or directives may be for additional inspections or treatment(s). A report shall be submitted to the Commission on all findings.

(d) The Commission agent shall receive all inspection team reports and recommendations. The agent shall then recommend to the Commission areas needing fireguard improvement and identify the prescribed treatment methods. The agent shall also report to the Commission any violation of its directives.

(e) The inspection team may consist of at least 3 persons with the following representation:

- (i) One representative appointed by the Wyoming State Forestry Division.

- (ii) One representative appointed by the railroad company operating in the county to be inspected.

- (iii) One or more representatives appointed by the county, including, preferably first, the county fire marshal, or, secondly, the county weed and pest inspector.

(f) When deemed practical and necessary, the inspection team shall be responsible for the following:

- (i) Conducting annual inspections of railroad rights-of-way for fireguard inspection and evaluation;

- (ii) Conducting additional periodic inspections as required or as deemed necessary by the Commission agent or as requested; and

- (iii) Preparing and distributing inspection findings as described in Section 4(j) of these rules.

(g) The inspection team shall carry out its responsibilities under and by the direction of the Commission, the Commission agent, or the Commission's designee.

- (h) The following are Commission-approved treatment methods:
- (i) Method 1–Plowing or sterilizing a fireguard (14 to 16 feet or wider) on **one side** within the right-of-way, 50 feet from the center line of the main track (or the outer-most track for multiple tracks) where practical and necessary.
 - (ii) Method 2–Plowing or sterilizing a fireguard (14 to 16 feet or wider) on **both sides** within the right-of-way, 50 feet from the center line of the main track (or the outer-most track for multiple tracks) where practical and necessary.
 - (iii) Method 3–Burning within the right-of-way on **one side**, 50 feet from the center line of the main track (or the outer-most track for multiple tracks) where practical and necessary. All prescription burning shall comply with district, county, and state regulations.
 - (iv) Method 4–Burning within the right-of-way on **both sides**, 50 feet from the center line of the main track (or the outer-most track for multiple tracks) where practical and necessary. All prescription burning shall comply with district, county, and state regulations.
 - (v) Method 5–Sterilizing within the right-of-way on **one side** of the outer-most tracks where practical and necessary.
 - (vi) Method 6–Sterilizing within the right-of-way on **both sides** of the outer-most tracks where practical and necessary.
 - (vii) Method 7–Treating the right-of-way with herbicide (solely for fire prevention purposes) on **one side**, 50 feet from the center line of the main track (or the outer-most track for multiple tracks) where practical and necessary and then discing a fireguard 10 feet or wider on one side of the tracks within the right-of-way where practical and necessary.
 - (viii) Method 8–Treating the right-of-way with herbicide (solely for fire prevention purposes) on **both sides**, 50 feet from the center line of the main track (or the outer-most track for multiple tracks) where practical and necessary and then discing a fireguard 10 feet or wider on both sides of the tracks within the right-of-way where practical and necessary.
 - (ix) Method 9–Using other types of treatment as agreed upon by all the inspection team members.

(x) Method 10—Directing noxious weed problems to the Wyoming Department of Agriculture, 2219 Carey Avenue, Cheyenne, WY 82002-0100 (telephone 307-777-7321) or the local county weed and pest control district.

(i) When deemed practical and necessary, one of the preceding treatment methods shall be selected after considering fire occurrence maps, accessibility, land values, fuel types on the land, and other local factors influencing the likelihood of fires.

(j) The inspection teams shall use WYDOT Form 10B or another Department form designated as appropriate for inspection reports. The team shall prepare a minimum 4 copies of the form for each inspection. Each inspection team member shall retain a copy, and the team shall forward one copy to the Commission—by November 1 each year for annual inspections or upon completion of periodic inspections.

(k) State Forestry Division Form WSFD-2 shall be used for submitting damage or suppression costs to the railroad company.

Section 5. **Railroad Property Fencing.** *(See W.S. 37-9-304, W.S. 37-9-305, and W.S. 37-9-312.)*

(a) Immediate or urgent fencing repairs shall be resolved as directed by state law.

(b) Farmers, ranchers, or other landowners shall notify WYDOT at the following address when fencing along railroad property is found in disrepair, damaged, or missing: Utilities and Railroads Section, 5300 Bishop Boulevard, Cheyenne, WY 82009-3340 (telephone 307-777-4859).

(c) The farmer, rancher, or landowner shall provide the following information:

- (i) The specific area (railroad mileposts) fencing is needed,
- (ii) The type of repairs needed, and
- (iii) The type of fencing used.

(d) After notification, the Department shall inspect the area to be fenced by driving, walking, or riding through it.

(e) The following are Commission-approved methods of repairing or installing fence:

- (i) Stretching wires and stapling or tying wires to posts.

- (ii) Stretching wires, replacing posts, and stapling or tying wires to posts.
- (iii) Removing old fence materials and building new fencing that complies with W.S. 37-9-304, et seq.
- (iv) Repairing or installing fencing that meets or exceeds Wyoming Department of Transportation fencing standards.
- (f) Payment for immediate or urgent fencing repairs shall be as directed by state law.
- (g) Once the railroad is notified of the problem location or area and the type of immediate or urgent repair needed, the railroad shall comply with W.S. 37-9-312(a)(ii) and W.S. 37-9-312(b).
- (h) The work described in these rules shall be performed without interruption unless an emergency that requires temporarily withdrawing the railroad work force from the project occurs elsewhere on the railroad's system.
- (i) Railroad companies shall repair and clean cattle guards as needed on public at-grade railroad crossings.
- (j) Any railroad company failing to comply with W.S. 37-9-304(c) and the preceding fencing rules is subject to summons into the county or circuit court where the violation occurred in accordance with W.S. 37-9-302.

Section 6. Claims for Injury to Livestock. *(See W.S. 37-9-306 through W.S. 37-9-309.)*

- (a) Any railroad, its agents, servants, or employees who injure, maim, or kill any livestock within the railroad's rights-of-way shall notify immediately one of the following individuals:
 - (i) The livestock owner or owners,
 - (ii) The brand inspector, or
 - (iii) The WYDOT Utilities and Railroads Section at 5300 Bishop Boulevard, Cheyenne, WY 82009-3340 (telephone 307-777-4859).
- (b) Information concerning the county, date and time, milepost, direction of travel, engine number, number of injured or killed livestock, and the classes and breeds (if

known) shall be noted and reported to the individual or agency contacted from the preceding list.

(c) The individual or inspector making the incident report in the county of occurrence shall also notify WYDOT immediately by calling the Utilities and Railroads Section at 307-777-4859 with the following information:

- (i) The name of the inspector notified;
- (ii) The county where the incident occurred;
- (iii) The railroad company and engine number (if known);
- (iv) The railroad milepost number or other location identifier;
- (v) The direction of travel for the train and the approximate time of occurrence;
- (vi) The number of livestock injured or killed; and
- (vii) The species of livestock (if known).

(d) When notified by the inspector or the railroad, the Department shall immediately attempt to notify the livestock owner by any practical means including telephone and mail. The Department shall provide a claim form and contact information for the appropriate railroad company.

(e) Within 30 days of being notified of the injured or killed livestock, the owner shall file a claim form indicating the value of the livestock in accordance with W.S. 37-9-308. Forms are available from the railroad company or the WYDOT Utilities and Railroads Section at 5300 Bishop Boulevard, Cheyenne, WY 82009-3340 (telephone 307-777-4859). In addition to keeping one copy for his or her personal records, the owner of the injured or killed livestock shall distribute the railroad claim form in the following manner:

- (i) The original of the form shall be sent to the railroad company, and
- (ii) A copy shall be sent to the Wyoming Department of Transportation Utilities and Railroads Section at 5300 Bishop Boulevard, Cheyenne, WY 82009-3340.

(f) Within 30 days of notification from the owner or owners, the railroad shall comply with W.S. 37-9-307.

- (g) Payment shall comply with W.S. 37-9-309.
- (h) Notification of payment or settlement shall be sent to the Department. The value of the payment or settlement is not required on the notification sent to the Department.

Section 7. Forms.

(a) Information about forms described in this rule and regulation shall be available through the Wyoming Department of Transportation Utilities and Railroads Section, 5300 Bishop Blvd., Cheyenne, Wyoming, 82009-3340, telephone 307-777-4133.

(b) Please see the following page for an example of the fireguard inspection report form.

WYDOT FIREGUARD INSPECTION REPORT FORM

Four copies shall be prepared for each annual inspection or upon completion of periodic inspections. One copy to be retained by each member of the inspection team, and one forwarded to the Commission by September 1 of each year.

Date: _____

Agent: Wyoming State Forestry Division:

County: _____

Railroad: _____

INSPECTION PARTY

Signatures:

1. _____
Name Title
2. _____
Name Title
3. _____
Name Title

Railroad Mile Posts: (one area per form) _____

Treatment: Select one or combination of treatments from methods 1-10 of Section 4(h) of Chapter 3, Fireguards, Fencing of Railroad Property, and Claims for Injury to Livestock, of the Railroads and Transportation Tariffs Section of WYDOT's rules and regulations.

Recommended Completion Date:

Forwarded:

Commission Agent

For assistance in containment or notification of burning operations please contact:

Name: _____ **Title:** _____

Tel. No.: _____ **FAX:** _____