

**§9405-A. Railroad right-of-way; director may order flammable materials removed**

A person, firm or corporation operating a railroad on or through forest, brush, grass-covered land or areas of high-value property shall maintain its right-of-way according to the minimum standards established in this section by destroying, removing, or modifying so as not to be flammable any vegetation or other flammable material as defined in this section. The director or an authorized agent is the final authority as to whether material is considered a flammable material and whether a condition is considered a fire hazard. [PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Authorized agent" means any forest ranger of the State. [PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

B. "Authorized railroad representative" means a person designated by a railroad to accept a legal summons and other documents. [PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

C. "Distance" means horizontal distance and not slope distance. [PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

D. "Fire hazard" means a condition resulting from a combination of the factors of ease of ignition, heat yield, and rate of fire spread as influenced by particular vegetation and other flammable materials, weather and slope. [PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

E. "Fire-start area" means an area that has experienced one or more railroad-caused fires in the previous 5 calendar years. [PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

F. "Flammable material" includes, but is not limited to, grass, weeds, brush, logs, waste railroad ties, refuse material, debris, dead and desiccated vegetation, and all materials that burn easily. "Flammable material" does not include:

- (1) Wooden poles or towers and cross arms supporting switching circuits or other electrical power or communication conductors;
- (2) Wooden components of trestles, tunnels and other structures; or
- (3) Material that an authorized agent has evaluated and determines not flammable. [PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

G. "Forest, brush and grass-covered land" means land covered wholly or in part by timber, trees, brush, shrubs, grass, including grain and hay, and other natural vegetation. Cultivated agricultural land planted to crops other than grain or hay is not included. [RR 1993, c. 1, §37 (COR).]

H. "Operator" means the person or entity responsible for maintenance of the railroad right-of-way. [PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

I. "Railroad-caused fire" means a preventable fire resulting from operations upon a railroad right-of-way. It does not mean unpreventable fires such as those caused by wrecks, bombs or natural causes such as lightning or controlled burning for the purpose of destroying flammable materials. [RR 1993, c. 1, §37 (COR).]

J. "Right-of-way" means the strip of land, outside of yard limits, owned or controlled by the person or entity operating a railroad for a distance not exceeding 100 feet or to the property boundary measured at right angles to the axis of the rail at any given location. The distance must be measured from the outermost rail on both sides of the mainline or mainlines, on sidings, and also includes intervening strips between sidings and mainlines. [PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

K. "Towpath" means a narrow strip of right-of-way adjacent to each side of ballast that is commonly referred to as the walkway and is normally kept clear for personnel safety and is not less than 6 feet from outside rail to outer edge. [PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

L. "High-value property" means homes, structures, fuel tanks, cut forest products, equipment and other improvements that are near the right-of-way and at risk should a fire start on the right-of-way. [PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

[RR 1993, c. 1, §37 (COR).]

**2. Minimum standards.** A railroad right-of-way must be maintained and kept in compliance with the following minimum fire hazard reduction standards.

A. The area within 7 feet of outside of rail, including ballast and towpath, must be kept clear of flammable material that by its physical arrangement or its accumulation is likely to contribute to the propagation of railroad-caused fires. [PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

B. For a fire-start area, the area within 25 feet of outside of rail, including ballast and towpath, must be kept clear of flammable material that by its physical arrangement or its accumulation is likely to contribute to the propagation of railroad-caused fires. A linear distance of 1/4 mile on either side of an identified fire-start area must be maintained along both sides of the railroad track as specified in this paragraph. [PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

C. Where a right-of-way passes through an area of high-value property and the right-of-way contains sufficient flammable material so that a fire starting on the right-of-way could travel to and threaten the high-value property, the minimum 7-foot standard is extended to 25 feet. [PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

[PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

**3. Communications.** The bureau shall inform annually a railroad company operating within the State of the 5-year fire-start areas and the areas that are high-value property along its right-of-way. In addition, the bureau shall notify a railroad company of new forest fire occurrences and changes in high-value property as they are observed.

A railroad company shall notify the bureau of the name and mailing address of its authorized railroad representative on the effective date of this section and thereafter whenever the name or mailing address changes.

[RR 1993, c. 1, §38 (COR); PL 2011, c. 657, Pt. W, §7 (REV); PL 2013, c. 405, Pt. A, §23 (REV).]

**4. Failure to maintain.** Failure to maintain a railroad right-of-way as provided in this section constitutes a violation. For the purposes of this section, every day from January 1st of the calendar year in which the violation occurred and continuing until full compliance is achieved is a separate offense.

[PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

**5. Legal service.** Legal service of a summons under this section occurs when a legal summons is delivered in person or by certified mail, return receipt requested, to the railroad company's authorized representative.

[PL 1993, c. 271, §2 (NEW); PL 1993, c. 271, §4 (AFF).]

#### SECTION HISTORY

PL 1993, c. 271, §2 (NEW). PL 1993, c. 271, §4 (AFF). RR 1993, c. 1, §§37,38 (COR). PL 2011, c. 657, Pt. W, §7 (REV). PL 2013, c. 405, Pt. A, §23 (REV).

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