

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):

R930-5-8

Filing No. 53184

Agency Information

1. Department:	Transportation	
Agency:	Preconstruction	
Room no.:	Administrative Suite, First Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state:	Taylorsville, UT	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	ledwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R930-5-8. Maintenance
3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):
The Department of Transportation (Department) proposes this change to Section R930-5-8 to clarify the Department's intent when it originally promulgated this rule. The Department filed proposed changes to this rule as Filing No. 53084 on September 23, 2020. The Office of Administrative Rules published the proposed changes in the October 15, 2020, Utah State Bulletin (2020-20). The Department subsequently received informal comments on the analysis that made the Department realize parts of the analysis may be confusing, misleading, or inaccurate. The Department is filing this amendment with a rewritten analysis that removes confusing, misleading, or inaccurate statements, and will let Filing No. 53084 lapse.
4. Summary of the new rule or change:
The Department proposes changing Subsection R930-5-8(1) to clarify the Railroads' and Highway Authorities' allocated responsibility for performing and paying the costs of maintenance described in Subsection R930-5-8(1) and the exception to the allocation, which is a prior signed written agreement that changes the responsibilities.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This proposed rule change will not lead to additional costs or savings to the state's budget because it only clarifies regulations the state is already responsible for enforcing.
B) Local governments:
This proposed rule change will not lead to additional costs to local governments. However, the proposed change may save local governments from incurring new costs to maintain railroad crossings that affect local governments' highways.
C) Small businesses ("small business" means a business employing 1-49 persons):

This proposed rule change will not lead to additional costs or savings to small businesses because it only applies to railroad companies. The proposed rule change will not lead to new expenses to railroads that are small businesses. Historically, railroad companies have paid the costs to maintain their crossings that affect highway authorities.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

This proposed rule change will not lead to additional costs or savings to non-small businesses because it only applies to railroad companies. The proposed rule change will not lead to new costs to large business railroads. Historically, railroad companies have paid the costs to maintain their crossings that affect highway authorities.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This proposed rule change will not lead to additional costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because it only applies to railroads and government entities.

F) Compliance costs for affected persons:

This proposed rule change will not lead to compliance costs for persons affected by this proposed rule change that they do not already experience. This proposed change only clarifies existing requirements.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

Carlos M. Braceras, PE, Executive Director of the Department of Transportation, approves this regulatory impact analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This proposed rule change will not have a fiscal impact on businesses, generally.

B) Name and title of department head commenting on the fiscal impacts:

Carlos M. Braceras, PE, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 41-6a-1205	Section 54-4-14	Section 54-4-15
Section 72-1-201		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy): 12/31/2020

10. This rule change MAY become effective on (mm/dd/yyyy): 01/07/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, PE, Executive Director	Date (mm/dd/yyyy):	11/05/2020
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R930. Transportation, Preconstruction.

R930-5. Establishment and Regulation of At-Grade Railroad Crossings.

R930-5-8. Maintenance.

(1) Responsibility for maintenance is as described in this section unless a [separate]prior signed written agreement applies. Responsibility means the obligation to perform and pay for the maintenance.

(a) The Railroad is responsible for the maintenance of all Railroad Passive Warning Devices and Active Warning Devices within the Railroad right-of-way.

(b) If the Railroad has a property interest in the right-of-way, the Railroad is responsible for the maintenance of Crossing material within the Railroad right-of-way and two feet beyond each outside rail for Crossings without concrete crossing panels or edge of concrete crossing panel.

(c) On a temporary Highway Detour Crossing, the Railroad shall be responsible for the maintenance of pavement, Active Warning Devices, and Passive Warning Devices within the Railroad right-of-way at expense of the Highway Authority.

(d) When the Railroad alters the railway due to track and ballast maintenance, the Railroad shall coordinate their work with the Highway Authority so the pavement approaches can be adjusted to provide a smooth and level Crossing surface.

(e) When the Highway Authority changes the Highway profile, through construction or maintenance activities, the Highway Authority shall coordinate their work with the Railroad so the tracks can be adjusted to provide as smooth and level a Crossing surface as possible.

(f) Where a Highway structure overpasses a Railroad, the Highway Authority is responsible for the maintenance of the entire structure and its approaches.

(g) Where a Highway underpasses a Railroad and the Railroad owns the right-of-way in fee title, the Highway Authority is responsible for the maintenance of the Highway and the entire structure below and including the deck plate, girders, handrail, and parapets. The Railroad is responsible for the maintenance of the ballast, ties, rails and any portion of the supporting structure above the top of the ballast deck plate between parapets.

(i) If the Highway Authority owns the right-of-way in fee title, the Railroad is responsible for the maintenance of the entire structure unless a [separate]prior signed written agreement applies.

(ii) Cost of repairing damages to a Highway or a Highway structure, occasioned by collision, equipment failure, or derailment of the Railroad's equipment shall be borne by the Railroad.

(h) Responsibility for maintenance of private industrial trackage not owned by a Railroad that crosses a Highway shall be as follows:

(i) When a facility, plant, or property owner receives goods and services from a Railroad over private industrial trackage that crosses a Highway, maintenance of the Crossing shall be the responsibility of the industry owning the trackage, or as agreed to by the parties.

(ii) When the Crossing becomes a safety hazard to vehicles and is not maintained, the [D]department [and/or] the Railroad shipping the goods and services shall notify the industry owning the trackage in writing to maintain or replace the Crossing material.

(iii) If the industry owning the trackage does not maintain or replace the Crossing material by a specified date, the [D]department shall order the Railroad to cease and desist operations across the Crossing.

(iv) If the industry owning the trackage does not respond to the order to maintain or replace the Crossing material the [D]department shall arrange to have the Crossing material replaced and bill the industry owning the trackage for the expenses to repair the trackage.

KEY: railroad, crossing, transportation, safety

Date of Enactment or Last Substantive Amendment: ~~April 21, 2011~~ 2021

Notice of Continuation: November 2, 2016

Authorizing, and Implemented or Interpreted Law: 41-6a-1205; 54-4-14; 54-4-15; 72-1-201

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