

Effective 3/31/2024

Chapter 17 Rail Safety

Part 1 Office of Rail Safety

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72-17-101 Office of Rail Safety -- Creation -- Applicability.

- (1) The provisions in this section apply beginning on May 7, 2025.
- (2) In accordance with 49 C.F.R. Part 212, State Safety Participation Regulations, there is created within the department an Office of Rail Safety.
- (3) As described in 49 C.F.R. Secs. 212.105 and 212.107, to organize the Office of Rail Safety, the executive director shall:
 - (a) enter into an agreement with the Federal Railroad Administration to participate in inspection and investigation activities; and
 - (b) obtain certification from the Federal Railroad Administration to undertake inspection and investigative responsibilities and duties.
- (4) In establishing the Office of Rail Safety in accordance with the duties described in 49 C.F.R. Part 212, the department may hire personnel and establish the duties of the office in phases.
- (5) This chapter applies to:
 - (a) a class I railroad; and
 - (b) commuter rail.

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72-17-102 Definitions.

As used in this chapter:

- (1) "Class I railroad" means the same as that term is defined in 49 U.S.C. Sec. 20102.
- (2) "Commuter rail" means the same as that term is defined in Section 63N-3-602.

- (3) "Federal Railroad Administration" means the Federal Railroad Administration created in 49 U.S.C. Sec. 103.
- (4) "Office" means the Office of Rail Safety created in accordance with Section 72-17-101.
- (5) "Railroad" means the same as that term is defined in 49 C.F.R. Sec. 200.3.
- (6) The provisions in this section apply beginning on May 7, 2025.

72-17-102 Definitions.

As used in this part:

- (1) "Class I railroad" means the same as that term is defined in 49 U.S.C. Sec. 20102.
- (2) "Commuter rail" means the same as that term is defined in Section 63N-3-602.
- (3) "Federal Railroad Administration" means the Federal Railroad Administration created in 49 U.S.C. Sec. 103.
- (4) "Office" means the Office of Rail Safety created in accordance with Section 72-17-101.
- (5) "Railroad" means the same as that term is defined in 49 C.F.R. Sec. 200.3.
- (6) The provisions in this section apply beginning on May 7, 2025.

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72-17-103 Duties of the Office of Rail Safety.

- (1) The provisions in this section apply beginning on May 7, 2025.
- (2) In accordance with 49 C.F.R. Part 212, and the authorization granted from the Federal Railroad Administration, the office shall perform the inspection, compliance, and enforcement duties in the following areas:
 - (a) grade crossings;
 - (b) hazardous materials;
 - (c) motive power and equipment;
 - (d) operating practices;
 - (e) signal and train control; and
 - (f) track.
- (3) As part of the responsibilities described in Subsection (2), the office shall:
 - (a) inspect and investigate railroad rights-of-way, facilities, equipment, and operations of railroads in this state;
 - (b) notify a railroad of any violation or lack of compliance with applicable state and federal laws, rules, regulations, orders, and directives;
 - (c) enforce applicable state and federal laws, rules, regulations, orders, and directives relating to the transportation by rail of persons or commodities; and
 - (d) issue orders to require compliance with state and federal laws, rules, regulations, orders, and directives.
- (4) The office shall employ a sufficient number of federally certified inspectors and staff to ensure that railroad equipment, facilities, and tracks are inspected as frequently as reasonably required to ensure compliance and safety as required under state and federal law.
- (5)
 - (a) The office shall investigate railroad practices related to the length of time a railroad blocks a highway-railroad grade crossing.
 - (b) Upon petition of a political subdivision, or upon the office's own motion, the office may:
 - (i) conduct an investigation of the conditions related to a grade crossing; and

- (ii) if necessary, conduct a hearing, make findings, and issue an order to determine whether highway-railroad crossing blocking practices of the railroad are reasonable.
- (c)
 - (i) The office shall examine and inspect the physical condition of all railroad facilities in this state to ensure compliance with safety requirements.
 - (ii) As part of the inspection and examination of railroad facilities and crossings, the office shall include an examination and inspection of:
 - (A) the condition of railroad facilities and crossing infrastructure;
 - (B) whether expansion of grade crossing infrastructure or other changes are justified based on the traffic and safety conditions; and
 - (C) other safety considerations required by federal law.
 - (d) If the office determines that a railroad's highway-railroad crossing blocking practices are unreasonable, the office shall:
 - (i) request the Federal Railroad Administration take enforcement actions pursuant to 49 C.F.R. Sec. 212.115; and
 - (ii) notify the Surface Transportation Board defined in 49 U.S.C. Sec. 10102 of the unsafe and unreasonable practices.
 - (e) If the office finds a violation of safety requirements as described in this section or in federal law, and the office requests an enforcement action and Federal Railroad Administration does not take enforcement action as described in 49 C.F.R. Sec. 212.115, the office may seek a civil penalty not less than \$500 and no more than \$10,000 for each offense.
- (6)
 - (a) The office shall examine and inspect the physical condition of all railroad facilities in this state to ensure compliance with safety requirements.
 - (b) If an inspector determines that a railroad facility is noncompliant, the office shall provide written notice to the railroad.
 - (c) If a railroad receives a notice described in Subsection (6)(b), the railroad shall remedy the condition or practice within 30 days of the date of the notice.
 - (d) If after 30 days from the date of the notice the railroad has not remedied the condition or practice to the office's satisfaction, the office may set the matter for hearing.
 - (e) After a hearing described in Subsection (6)(d), if the office determines that the condition or practice is noncompliant and the railroad has not made reasonable efforts to remedy the condition or practice, the office may issue an order requiring the railroad to:
 - (i) eliminate or remedy the unsafe or unlawful condition or practice; or
 - (ii) make any necessary repairs, alterations, or other changes to the relevant condition or practice to ensure compliance with state and federal law.
 - (f) In addition to any order issued under Subsection (6)(e), after a hearing described in Subsection (6)(d), if the office determines that the condition or practice is noncompliant and the railroad has not made reasonable efforts to remedy the condition or practice, and the condition or practice is so hazardous as to place a railroad employee or the public in immediate danger, the office may issue an order requiring the railroad:
 - (i) after 48 hours' written notice to the railroad, issue an order prohibiting:
 - (A) the unsafe or unlawful practice; or
 - (B) the use of the facility until completion of the necessary repair, alteration, or other necessary changes; and
 - (ii) pay a civil penalty of not more than \$10,000 per violation or per day of violation of state or federal law, or a rule made in accordance with Subsection (7) or Section 72-17-107.

- (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules necessary to:
- (a) establish the Office of Rail Safety as required in this part;
 - (b) establish and enforce rules regarding safe and reasonable procedures and standards regarding the blocking of grade crossings, which standards and limits shall be commensurate with reasonable requirements of train and vehicular traffic operations;
 - (c) enforce this part and relevant state and federal law related to this part; and
 - (d) administer the Office of Rail Safety as described in this part.

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72-17-104 Federal Railroad Administration grant program.

- (1) The provisions in this section apply beginning on May 7, 2025.
- (2) After reaching an agreement with and receiving the certification from the Federal Railroad Administration as described in Section 72-17-101, the office may apply for railroad safety grants as often as permitted by the Federal Railroad Administration.

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72-17-105 Establishment of administrative fees -- Payment -- Expenditures.

- (1) The provisions in this section apply beginning on May 7, 2025.
- (2) The office shall annually determine a fee to be paid by each railroad that operated within the state and is subject to the jurisdiction of the office on a pro rata basis as described in Subsection (3).
 - (a) The office and the department shall establish the annual fee to produce a total amount not less than the amount required to regulate railroads and carry out the duties described in this part.
 - (b) The office shall use the revenue generated by the fees paid by each railroad for the investigation and enforcement activities of the office as authorized under this part.
- (3)
 - (a) For grade crossings inspections and services, the office shall establish and each railroad shall pay a fee based on:
 - (i) as of January 1 of each year, the number of crossings the railroad operates within this state that cross a highway, whether at grade, by overhead structure, or subway; and
 - (ii) the frequency of use of each crossing the railroad operates, including:
 - (A) the frequency of train operation at the crossing; and
 - (B) the frequency of highway traffic at the crossing.
 - (b) For hazardous materials related inspections and services, the office shall establish and each railroad shall pay a fee based on the tonnage of hazardous materials transported in this state during a given year.
 - (c) For motive power and equipment related inspections and services, the office shall establish and each railroad shall pay a fee based on the number of motive power units and other equipment units operated by the railroad in this state.
 - (d) For track related inspections and services, the office shall establish and each railroad shall pay a fee based on the number of miles of track owned or operated by the railroad within this state.

- (e) For signal and train control inspections and services, as well as operating practices inspections and services, the office shall establish and each railroad shall pay a fee based on gross operating revenue of each railroad generated within this state.
- (f)
 - (i) For inspection services related to commuter rail, notwithstanding any other agreement, a county or municipality with commuter rail service provided by a public transit district may request local option transit sales tax in accordance with Section 59-12-2206 and spend local option transit sales tax in the amount requested by the office.
 - (ii) A county or municipality that requests local option transit sales tax as described in Subsection (3)(f)(i) may transmit to the office the funds requested under Subsection (3)(f)(i) and transmitted to the county or municipality under Subsection 59-12-2206(5)(b).
 - (iii) A county or municipality that requests local option transit sales tax as described in Subsection (3)(f)(i) may not request more local option transit sales tax than is necessary to carry out the safety inspection and functions under this chapter.
 - (iv) The office is not required to charge or collect a fee related to inspections of commuter rail.
- (4)
 - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to establish each of the fee amounts described in Subsection (3):
 - (i) according to the data described in Subsection (3); and
 - (ii) to collect an amount sufficient to cover the budget and costs to administer the duties of the office.
 - (b) The department shall annually adjust the fees established in accordance with Subsection (4) (a) to account for inflation and other budgetary factors.
- (5) Each railroad that operates within this state shall pay to the office the fees described and established by the office.

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72-17-106 Office of Rail Safety Account.

- (1) The provisions in this section apply beginning on May 7, 2025.
- (2) There is created an expendable special revenue fund called the Office of Rail Safety Account.
- (3) The account shall be funded by:
 - (a) deposits into the account by the Legislature;
 - (b) fees collected pursuant to Section 72-17-105; and
 - (c) other deposits or donations into the account.
- (4) The office shall provide a detailed budget to account for the office's expenditures related to the enforcement of this part, including:
 - (a) salaries, per diem, and travel expenses of employees performing the duties described in this part;
 - (b) expenditures for clerical and support staff directly associated with the duties described in this part;
 - (c) expenditures for legal staff who pursue and administer complaints and compliance issues related to this part; and
 - (d) reasonable overhead costs related to Subsections (4)(a) through (c).
- (5) The office, in performing the duties under this part:
 - (a) shall limit the expenditure of funds to the total amount of fees collected from the railroads as described in this section; and
 - (b) may not expend funds from other sources accessible to the department.

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72-17-107 Rulemaking regarding railroad clearances and walkways.

- (1) The provisions of this section apply beginning on May 7, 2025.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to establish safety standards related to:
 - (a) walkways adjacent to railroad track;
 - (b) clearances of structures and other obstructions near railroad track;
 - (c) the safety of office personnel conducting inspections in accordance with this part;
 - (d) railroad infrastructure and work spaces for railroad workers;
 - (e) signage related to railroad worker safety; and
 - (f) other safety standards as the department finds necessary.

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72-17-108 Agreements to indemnify in a railroad contract.

- (1) The provisions of this section apply beginning on May 7, 2025.
- (2) As used in this section:
 - (a) "Railroad contract" means a contract or agreement between:
 - (i) a railroad; and
 - (ii) another person that could be subject to a civil penalty or fine issued pursuant to this chapter.
 - (b) "Indemnification provision" means a covenant, promise, agreement, or understanding in, in connection with, or collateral to a railroad contract that requires the person to insure, hold harmless, indemnify, or defend the railroad against liability, if:
 - (i) the damages arise out of a civil penalty issued pursuant to this chapter; and
 - (ii) the damages are caused by or resulting from the fault of the railroad or the railroad's agents or employees.
- (3) Except as provided in Subsection (4), an indemnification provision in a railroad contract is against public policy and is void and unenforceable.
- (4) If an indemnification provision is included in a railroad contract, in any action for damages described in Subsection (2)(b)(i), the railroad may seek indemnification from another party to a railroad contract pro rata based on the proportional share of fault of each party, if:
 - (a) the damages are caused in part by the party other than the railroad; and
 - (b) the cause of the damages arose at a time when the party other than the railroad was operating pursuant to the railroad contract.
- (5) This section may not be construed to impair a contract in existence before May 3, 2023.

Part 2

Regulation of Highway-Railroad Grade Crossings

72-17-201 Definitions.

As used in this part:

- (1) "Highway-railroad grade crossing" means:
 - (a) an intersection where a railroad track crosses a highway at the same level; or

- (b) an intersection where the railroad track of a railroad entity crosses the railroad track of another railroad entity at the same level.
- (2) "Public Service Commission" means the Public Service Commission of Utah created in Section 54-1-1.
- (3) "Railroad entity" means an entity, a company, a person, or a public transit provider that owns, controls, operates, or manages a railroad.

Renumbered and Amended by Chapter 42, 2023 General Session, (Coordination Clause)

72-17-202 Regulation of highway-railroad grade crossings.

- (1) A railroad entity may not construct a new highway-railroad grade crossing without first obtaining written authorization from the department.
- (2) Subject to Subsection (4), the department may:
 - (a) determine and prescribe:
 - (i) the specific location of each highway-railroad grade crossing in the state; and
 - (ii) the terms of installation, operation, maintenance, use, and protection of each highway-railroad grade crossing in the state;
 - (b) alter or abolish any highway-railroad grade crossing upon such terms and conditions as the department prescribes;
 - (c) restrict the use of any highway-railroad grade crossing to certain types of traffic in the interest of public safety;
 - (d) when practicable, as determined by the department, require a separation of grades at any existing highway-railroad grade crossing in the state, and prescribe the terms of any separation of grades at an existing highway-railroad grade crossing; and
 - (e) allocate responsibilities, including costs, for the alteration, abolition, or separation of any highway-railroad grade crossing in the state between each affected railroad entity and highway authority.
- (3)
 - (a) The department shall allocate maintenance responsibilities, including costs, for each highway-railroad grade crossing in the state, including the maintenance of related safety devices and crossing materials, between each railroad entity and highway authority affected by the highway-railroad grade crossing.
 - (b) The department may base the allocation of maintenance responsibilities, including costs, on ownership and control of the right-of-way, crossing materials, signals and devices, or other factors the department determines are appropriate to protect public safety.
 - (c) If a railroad entity or a highway authority disagrees with the department's allocation of maintenance responsibilities, including costs, for a specific highway-railroad grade crossing:
 - (i) the railroad entity or highway authority may provide a written request to the department for a review of the allocation describing reasons for modification of the allocation; and
 - (ii) the department:
 - (A) shall conduct a review of the allocation; and
 - (B) at the department's discretion, may modify the allocation.
 - (d) Unless the department provides prior written approval, responsibility for the costs of maintenance at a highway-railroad grade crossing as allocated by the department may not be modified or waived by agreement between a railroad entity and a local highway authority.
 - (e) Unless the department enters into a written agreement with a railroad entity stating otherwise, the relevant railroad entity is responsible for using railroad employees to perform the physical

maintenance and labor at a highway-railroad grade crossing and shall comply with Code of Federal Regulations, Title 49, Transportation.

- (4)
- (a) The department may require or authorize the construction of a new highway-railroad grade crossing or the improvement of an existing highway-railroad grade crossing if:
 - (i) the new or improved highway-railroad grade crossing is to be funded solely by non-federal funds; and
 - (ii) the department determines, after consultation with any affected railroad entities and highway authorities, that the new or improved highway-railroad grade crossing will improve the safety of the public in accordance with requirements established by the department to determine the need, design, and impacts of the new or improved highway-railroad grade crossing.
 - (b) The railroad entity affected by the new or improved highway-railroad grade crossing shall timely enter into a written agreement with the department regarding the design and installation of the new or improved highway-railroad grade crossing.
 - (c) If a railroad entity does not make reasonable efforts to participate in determining the need, design, and impacts of a new or improved crossing, does not timely enter into an agreement with the department, or fails to timely provide a design and install improvements as described in an agreement, the department may impose and the railroad shall pay a penalty consistent with Section 54-7-25.
- (5) A railroad entity affected by a new or improved highway-railroad grade crossing may not require up-front payment of costs as a condition for the railroad entity's review, approval, or inspection of a new or improved highway-railroad grade crossing.
- (6) If the department determines that public convenience and necessity demand the establishment, creation, or construction of a crossing of a street or highway over, under, or upon the tracks or lines of any public utility, the department may by order, decision, rule, or decree require the establishment, construction, or creation of such crossing, and such crossing shall thereupon become a public highway and crossing.
- (7)
- (a) The Public Service Commission retains exclusive jurisdiction for the resolution of any dispute upon petition by any person aggrieved by any action of the department pursuant to this section, except as provided under Subsection (7)(b).
 - (b) If a petition is filed by a person or entity engaged in a subject activity, as defined in Section 19-3-318, the Public Service Commission's decision under Subsection (7)(a) regarding resolution of a dispute requires the concurrence of the governor and the Legislature in order to take effect.
 - (c) The department may:
 - (i) direct commencement of an action as provided for in Section 54-7-24 in the name of the state to stop or prevent a violation of a department order issued to protect public safety by a railroad entity; and
 - (ii) petition the Public Service Commission to assess and bring an action as provided for in Section 54-7-21 to recover penalties for failure of a railroad entity to comply with a final order of the department issued pursuant to the department's authority under this section.

Renumbered and Amended by Chapter 42, 2023 General Session, (Coordination Clause)