

## Regulatory Impact Analysis of Amendments to Section .0100 Right of Way Rules

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Agency	North Carolina Department of Transportation
Citation	19A NCAC 02B .0150, .0152, .0153, .0154, .0156, .0157, .0158
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Authority	<u>19A NCAC 02B .0150</u> <i>G.S. 136-18(5); 136-18(11); 136-20; 150B-2(8a)(h).</i> <u>19A NCAC 02B.0152</u> <i>G.S. 136-18(5); 136-18(11); 136-20; 150B-21.3A;</i> <u>19A NCAC 02B.0153</u> <i>G.S. 136-18(5); 136-18(11); 136-20; 136-20.1; 136-66.1; 136-195;</i> <u>19A NCAC 02B.0154</u> <i>G.S.136-18(5); 136-18(11); 136-20.</i> <u>19A NCAC 02B.0156</u> <i>G.S.136-18(5); 136-18(11); 136-20.</i> <u>19A NCAC 02B.0157</u> <i>G.S.136-18(5); 136-18(11); 136-20.</i> <u>19A NCAC 02B.0158</u> <i>G.S.136-18(5); 136-18(11); 136-20.</i>
Necessity	The proposed changes within these Rules are necessary to reflect current practices, deliver a logical organization structure, and provide helpful information to the regulated public. In their current form, the Rules address issues that could be grouped in a more logical way. As proposed, the Rules will provide definitive categories where all related provisions may be easily accessed: definitions, new at-grade crossings, existing at-grade crossings, separation structures, surfacing, elevation changes, and grade changes. The new provisions (1) establish a formal manner by

which the Department may offer helpful input to municipalities and private developers.

Fiscal Impact Summary	State government:	Yes
	Local government:	Yes
	Substantial impact:	No
	Private entities:	Yes

## **Introduction and Background**

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In their current form, these Rules pertain to railroad construction, reconstruction, maintenance, required approvals, funding responsibilities, and other requirements. Specifically, the Rules, in their current form, address required approvals when a railroad track intersects the State highway system, grade separations, signalizations, separation structures, construction, maintenance, surfacing, changes in elevation, and changes in grade.

The Department is proposing these Rules be amended through readoption to reflect current practices, deliver a logical organization structure, and provide helpful information to the regulated public. As proposed, the Department is making technical changes and revising the formatting and organization of the Rules to provide definitive categories where all related provisions may be easily accessed: definitions, new at-grade crossings, existing at-grade crossings, separation structures, surfacing, elevation changes, and grade changes. The Department is proposing new provisions that (1) establish a formal manner by which the Department may offer helpful input to municipalities and private developers.

These rules are proposed for re-adoption with amendments in accordance with G.S. 150B-21.3A, which requires the periodic review of existing rules.

## **Rule Amendments Summary and Analysis**

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### **I. The following rules are being amended with technical changes only and no economic impact.**

#### 19A NCAC 02B .0150

Original text from 19A NCAC 02B .0150 transferred to the new 19A NCAC 02B .0153(a) and updated to reflect the current approving authority. This change is technical because Department staff are clarifying the current requirements of the Rule and does not result in a change in the Rule's enforcement:

*Original:* “It shall be unlawful to construct a railroad track across any portion of the State Highway System, without the written permission of the Chief Engineer or his authorized agent.”

*New:* “It shall be unlawful to construct a railroad track across any portion of the State highway system without the Secretary of Transportation or the Secretary’s designee providing a written statement of approval.”

All other definitions are new text, if not mentioned below, and some of which were requested by the Office of Administrative Hearings.

19A NCAC 02B .0152

Original 19A NCAC 02B .0152 is proposed for repeal through readoption.

Definitions for “separated,” “separation structure,” and “grade point” transferred to the new 19A NCAC 02B .0150(10), (11), and (7).

Original text from 19A NCAC 02B .0152(d) transferred to new 19A NCAC 02B .0154(a)(2):

*Original:* “Where a grade crossing that was in existence prior to December 3, 1966, shall be separated, the railroad shall pay five percent of the cost of the separation structure and approaches from grade point to grade point.”

*New:* “Where a grade crossing that was in existence prior to December 3, 1966, shall be separated, the railroad shall pay five percent of the cost of the separation structure and approaches from grade point to grade point.”

19A NCAC 02B .0153

Definitions for “crossing agreement” transferred to new 19A NCAC 02B .0150(3).

Original text from 19A NCAC 02B .0153(a) text updated and transferred to the new 19A NCAC 02B .0153(b), with the “written permission” requirement of the original 19A NCAC 02B .0150 (new 19A NCAC 02B .0153(a)) given a label here (“crossing agreement”):

*Original:* “For purposes of this Rule, the term "crossing agreement" is a formal written agreement between the N.C. Department of Transportation and a railroad company. The railroad company permits the Department of Transportation to build a road across the railroad company's tracks. The agreement also lists responsibilities of each party with regard to the construction, maintenance, and funding of the new crossing.

*New:* “A crossing agreement shall be required for any construction or relocation of railroad track across the State highway system, and any construction or relocation of the State highway system across already existing railroad track. The crossing agreement lists the construction, maintenance, safety device installation, and funding responsibilities of each party.”

Original 19A NCAC 02B .0153(b) text condensed and transferred to the new 19A NCAC 02B .0153(c):

*Original:* “Where the construction of a new road or the relocation of an existing road involves an additional or a new crossing and does not involve the elimination of an existing crossing, the railroad will not be required to bear any costs of signalization or separation, either at the time of the initial construction or within a 20 year period from the execution of the crossing agreement if the Department of Transportation determines during said 20 year period that a signalization or a separation structure is required.”

*New:* “Where the construction of a new road or the relocation of an existing road involves an additional or a new crossing and does not involve the elimination of an existing crossing, the railroad shall not be required to bear any costs of signalization or separation, either at the time of the initial construction or within a 20-year period from the execution of the Crossing Agreement if the Department determines during that 20-year period that a signalization or a separation structure shall be required.”

Original 19A NCAC 02B .0153(b) text updated and transferred to new 19A NCAC 02B .0153(d):

*Original:* “If a crossing in existence prior to December 3, 1966 is eliminated by the relocation of an existing road, the policy stated in Rule .0152 of this Section shall apply.”

*New:* “If a crossing in existence prior to December 3, 1966, shall be eliminated by the relocation of an existing road, Rule .0155 of this Section shall apply.”

New text at 19A NCAC 02B .0153(e) address below, in Section II of this Fiscal Note.

19A NCAC 02B .0154

Original 19A NCAC 02B .0154 text transferred to new 19A NCAC 02B .0154(a)(1):

*Original:* “Whenever any highway project provides for the construction of a separation structure over or under the railroad, the Department of Transportation will construct the separation structure to provide for an additional track upon the request of the railroad and the furnishing of the proper justification or enter into an agreement with the railroad to provide for the additional track if such tracks are constructed and placed in use within a 20 year period from the signing of the agreement.”

*New:* “Whenever any highway project provides for the construction of a separation structure over or under the railroad, the Department shall construct the separation structure to provide for an additional track upon the request of the railroad and the furnishing of the proper justification or enter into an agreement with the railroad to provide for the additional track if such tracks are constructed and placed in use within a 20-year period from the signing of the agreement.”

Original 19A NCAC 02B .0154 text transferred to new 19A NCAC 02B .0154(a)(3):

*Original:* “If the separation structure eliminated the crossing at grade, the railroad will be required to pay five percent of the total costs of the separation structure and approaches from grade point to grade point as constructed initially and five percent of the costs of the widening of the structure within the aforementioned 20-year period.”

*New:* “If the separation structure eliminated the crossing at-grade, the railroad shall pay five percent of the total costs of the separation structure and approaches from grade point to grade point as constructed initially and five percent of the costs of the widening of the structure within the 20-year period.”

Original 19A NCAC 02B .0154 text transferred to new 19A NCAC 02B .0154(a)(4):

*Original:* “If the separation structure is an additional or new crossing and no existing crossing is closed, the Board of Transportation will pay the entire cost of the structure including the provision for additional tracks on request by the railroad with proper justification, or will pay the entire cost of widening the structure within the aforementioned 20 year period.”

*New:* “If the separation structure is an additional or new crossing and no existing crossing is closed, the Board of Transportation will pay the entire cost of the structure including the provision for additional tracks on request by the railroad with proper justification, or will pay the entire cost of widening the structure within the aforementioned 20 year period.”

19A NCAC 02B .0155

Original 19A NCAC 02B .0155 text condensed and transferred to new 19A NCAC 02B .0155(a):

*Original:* “Whenever any road, street or highway forming a part of the State Highway System shall cross or intersect any railroad, including an industrial siding, at the same level or grade, the railroad owner shall be responsible for the construction and maintenance of the crossing and the area between the ends of the ties and the edge of the pavement of the main traveled lanes plus a maximum of 10 feet of the usable shoulders. The railroad owner shall assume the construction cost of the crossing for the pavement width and shall maintain the entire area herein described at its own expense.”

*New:* “If the construction, reconstruction, or maintenance of an existing at-grade crossing causes any road, street, or highway, forming a part of the State highway system, to cross or intersect any railroad, including an industrial siding, at the same level or grade, then the railroad shall be responsible for the following: (1) construction and maintenance of the crossing and the area between the ends of the ties and the edge of the pavement of the main traveled lanes plus a maximum of 10 feet of the usable shoulders; and (2) construction cost of the crossing for the pavement width and maintenance for the entire area herein described at its own expense.”

New text at 19A NCAC 02B .0155(c) is nonbinding and descriptive in nature, providing information to the regulated public regarding the already established procedure for any railroad, county, city, or other political subdivision of the State to identify and propose to the Department at-grade crossings for potential closure. This addition is the current practice of the Rail Division and is being proposed for addition to this Rule for informational purposes only. As there is no requirement in this new text that an external party propose the closure of a crossing, there is no change in financial responsibility. Because this is the already established procedure and practice for any railroad, county, city, or other political subdivision of the State to identify and propose at-grade crossings for potential closure, there is no change in procedural requirements, nor any change in the Department’s decision process. Finally, because this addition is descriptive of an already established process, there will not be any increase or decrease in transportation impacts on local governments.

19A NCAC 02B .0156

Original 19A NCAC 02B .0156 updated with “flange guards” text to replace “timbers” as “flange guards” is a more accurate description, encompassing all protective edges, ribs, and rims, including those made of timber.

*Original:* “When any road, street, or highway forming a link in the State highway system is being surfaced or resurfaced, the Department shall, if in such instances requested to do so by the railroad, pave the roadway surface across the crossing, but the railroad shall provide and place at its own expense, the necessary crossing timbers on rail guards and otherwise adjust its facilities to meet the level of the finished road surface.”

*New:* “When any road, street, or highway forming a link in the State highway system is being surfaced or resurfaced, the Department shall, if in such instances requested to do so by the railroad, pave the roadway surface across the crossing, but the railroad shall provide and place at its own expense, the necessary crossing flange guards on rail guards and otherwise adjust its facilities to meet the level of the finished road surface.”

19A NCAC 02B .0157 and .0158

Original 19A NCAC 02B .0157 and .0158 are proposed for readoption with no changes.

**II. The following sections of this report will analyze the substantive rule amendments having insubstantial economic impact.**

19A NCAC 02B .0153(e) – Notice Requirements for new at-grade crossings

This section is new, and has been coordinated with the League of Municipalities. This part of the Rule lays out three scenarios where notice will be required within 60 days of execution of the agreement:

- (1) the municipality must give notice if that municipality and a railroad seek to enter into an agreement for the construction of a new municipal street across a railroad track, at-grade;
- (2) the municipality must give notice if that municipality and railroad seek to enter into an agreement for the construction of a new railroad track across the municipal street system, at-grade; and
- (3) the private developer must give notice if that private developer and a railroad seek to enter into an agreement for the construction of a railroad track across the municipal street system, at-grade.

This is proposed solely for the benefit of the municipality or private developer. N.C. Gen. Stat. § 136-195 authorizes the Department as follows:

“[t]he Department may require the raising or lowering of any tracks or roadway at any grade crossing in a road or street not forming a link in or part of the State highway system and designate who shall pay for the same by partitioning the cost of said work and the maintenance of such crossing among the railroads and municipalities interested in accordance with the formula provided for grade crossing alterations or eliminations on the State highway system in G.S. 136-20(b).”

Pursuant to this authorization, and once a grade crossing is constructed, the Department may require changes to the crossing if it is not to Department standards. This proposed text seeks to proactively facilitate coordination between municipalities or private developers and the Department before construction so that future issues are mitigated. The Rail Division may not force or require either party to make any particular change, but with this notice, the Rail Division would be able to advise and assist the notifying party of any potential problems.

Municipalities and private developers will incur additional administrative costs to comply with these notice requirements. These costs are expected to be minimal as the required information, outlined in part (e)(5) of the rule, should be readily available and notice may be submitted via email or several other minimally priced means.

The Department expects these provisions to provide a net benefit to these entities. Under the current regulatory baseline, there are potential costs to the municipality/private developer if, after the grade crossing is constructed, the Department finds that it is not to Department standards. Once the crossing is constructed, the Department will assess the crossing, and may require changes to the crossing. If changes are deemed necessary, associated costs would be the responsibility of the municipality or developer.

If the provision is included and notice is given, the municipality and the private developer will benefit in that they have coordinated with the Department and know that the crossing is being constructed according to Department standards. There will be far less chance that issues remain.

The net costs and benefits of these provisions are not quantifiable because it is uncertain whether the crossing would have been constructed in conflict with Department standards if notice was not required. If the proposed text is not included, it is entirely possible that, even without notice or coordination with the Department, a newly constructed crossing on a municipal street would be constructed in accordance with Department standards and not require further updates. Alternatively, without including the provision, it is possible that a newly constructed crossing would not be constructed in accordance with Department standards and would require further updates. However, if the provision is included, the chance of a newly constructed crossing being in conflict with Department standards is greatly reduced, if not eliminated.

## **Appendix – Proposed Rule Text**

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Proposed Rules attached.