

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16R-0952R

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES REGULATING
RAILROADS, RAIL FIXED GUIDEWAYS, TRANSPORTATION BY RAIL, AND RAIL
CROSSINGS, 4 CODE OF COLORADO REGULATIONS 723-7.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: December 15, 2016

Adopted Date: December 14, 2016

TABLE OF CONTENTS

I. BY THE COMMISSION	2
A. Statement	2
B. Proposed Rule Changes	3
1. General Provisions – Scope and Applicability	3
2. Definitions	3
3. Incorporation by Reference	4
4. Who May Apply	4
5. Application Content	4
6. Additional Application Contents for Cost Allocation Requests in Grade Separation Applications	5
7. Grade Separations – Minimum Criteria for Cost Allocation Consideration	6
8. Cost Allocation for Grade Separation	6
9. Notice	6
10. Crossing Construction and Maintenance	6
11. Crossing Safety Diagnostics and Cost Estimates	7
12. Minimum Crossing Safety Requirements	7
13. Installation and Maintenance of Crossing Warning Devices	7
14. Public Highway and Pathway Crossings	7
15. Other Proposed Rule Changes	7
C. Conclusion	8

II. ORDER.....	9
A. The Commission Orders That:	9
B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING DECEMBER 14, 2016. ..	10

I. **BY THE COMMISSION**

A. **Statement**

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NPR) to amend the Rules Regulating Railroads, Rail Fixed Guideways, Transportation By Rail, and Rail Crossings contained in 4 Code of Colorado Regulations (CCR) 723-7. The proposed rules implement House Bill 13-1103; incorporate changes in the 2009 Manual on Uniform Traffic Control Devices and the Colorado Supplement to the Federal Manual on Uniform Traffic Control Devices 2009, as adopted by the Transportation Commission of Colorado on December 15, 2011, and updated February 26, 2016; adopt temporary safety measures and implement minimum crossing safety requirements in Colorado; add definitions and change application requirements so only necessary information is provided by type of authority being sought; and amend the current rules to make them consistent with the remaining Commission rules.

2. We do not propose amendments to Rules 7302-7319 (General Safety), 7320-7326 and 7328-7339 (Railroad Clearances), and 7400-7404 (Employment of Class I Railroad Peace Officers) because there are no changes required through the above-mentioned authorities. Additionally, we do not propose amendments to Rules 7340-7399 (System Safety Program Standard for Rail Fixed Guideway Systems) because Rules 7340-7399 will be the subject of a future rulemaking to implement requirements of the "Moving Ahead for Progress in the 21st Century Act" (MAP-21) and the new requirements of 49 CFR Parts 673-674.

3. We welcome comments from interested participants. To the extent a participant disagrees with the proposed rules, comments should include suggested rules revisions in legislative format.

B. Proposed Rule Changes

4. We specifically request that interested parties, including road authorities, railroads, railroad corporations, rail fixed guideways, rail fixed guideway systems, and transit agencies regulated by these rules comment on the following rules and propose any alternative rules, in legislative format, that are consistent with the statutory and rule changes.

1. General Provisions – Scope and Applicability

5. Proposed Rule 7000(a) adds that the scope and applicability of the rules applies to both public highways and public pathways.

6. Proposed Rule 7000(b) removes any ambiguity regarding which rules apply to the Regional Transportation District (RTD) commuter rail and light rail crossings and which rules apply to State Safety Oversight of RTD's rail fixed guideway system. The enabling statutes for the Commission to oversee safety of rail fixed guideway systems are specific to the mode of transportation (a rail fixed guideway system) and not the type of agency (a statutory transportation district). This proposed rule and changes in proposed Rule 7006 also enact the changes resulting from the MAP-21 legislation and resulting statutory changes in House Bill 13-1103 regarding annual reporting requirements and payment into the Fixed Utility Fund.

2. Definitions

7. Changes are proposed to Rules 7001 and 7201 to add and change definitions. A definition for "road authority" is added as to Rule 7001(f) to specifically define the Commission's jurisdiction of the public highway or public pathway at a crossing.

8. A substantial number of definitions have been added to proposed Rule 7201 to define terms used in the proposed rule changes to crossing and warning device applications. We have also proposed new definitions for the terms “public crossing” and “private crossing” to provide definition to terms that are used frequently by the Commission and the industry. We have also updated our definition for “reasonably adequate facility” and have added a definition for “theoretical structure” based on federal use of this term and including a specific reference to the Colorado Department of Transportation Bridge Design manual for use in the design of a theoretical structure for grade separation cost allocation request applications and comments from the 2008 rail rules workshop.

3. Incorporation by Reference

9. References incorporated into these rules are updated in proposed Rule 7008. Additionally, references included in current Rule 7202 are moved to proposed Rule 7008, updated, and current rule 7202 is removed from the proposed rules.

4. Who May Apply

10. Changes were made to Rule 7203 to incorporate the new definition for “road authority” and to clarify all entities that may apply for specific types of authorities.

5. Application Content

11. Changes were made to Rules 7002, 7101, 7102, 7103, and 7204 to make these rules consistent with the remaining Commission rules involving applications. Rule 7002 contains information that is required in all types of rail-related applications to the Commission and removes this similar information from Rules 7101, 7102, 7103, and 7204.

12. In Proposed Rule 7204, major changes have been made in an attempt to limit and target the information provided in applications to only that information required by the Commission to make a determination on specific types of authorities.

This proposed rule removes the 20 items currently required in all applications for crossings and warning devices and changes the information requirements to authority-specific information. Rule 7204(a)(I) outlines information required in all crossing warning device applications. Rule 7204(a)(II-XIV) outlines the additional information to provide for applications requesting specific items, including:

- 7204(a)(II) - applications requesting a new at-grade crossing;
- 7204(a)(III) - applications to widen, narrow, or relocated existing crossings;
- 7204(a)(IV) - applications to close a crossing by removal of tracks;
- 7204(a)(V) - applications to close a crossing by removal of the roadway or pathway;
- 7204(a)(VI) - applications to install or change passive warning devices at crossings;
- 7204(a)(VII) - applications for installation of new active warning devices, replacement of existing active warning devices, or replacement of existing train detection circuitry at crossings;
- 7204(a)(VIII) - applications for installation of four quadrant gate active warning devices;
- 7204(a)(IX) - applications involving interconnection to traffic signals or queue cutter signals and preemption by active warning signals;
- 7204(a)(X) - applications involving cost allocation to the Highway-Rail Crossing Signalization Fund or Federal Section 130 fund;
- 7204(a)(XI) - applications changing an existing crossing from a public crossing to a private crossing;
- 7204(a)(XII) - applications changing an existing crossing from a private crossing to a public crossing;
- 7204(a)(XIII) - applications to construct a grade separated crossing; and
- 7204(a)(XIV) - applications for a utility crossing.

13. Proposed Rule 7204(d) incorporates the temporary rule regarding applications for proposed temporary safety measures.

6. Additional Application Contents for Cost Allocation Requests in Grade Separation Applications

14. Proposed Rule 7205 makes minor changes to theoretical structure requirements based on the workshops held in 2008 regarding grade separation cost allocation.

7. Grade Separations – Minimum Criteria for Cost Allocation Consideration

15. Proposed Rule 7205 makes minor changes to theoretical structure requirements based on the workshops held in 2008 regarding grade separation cost allocation.

8. Cost Allocation for Grade Separation

16. New proposed Rule 7207(c) adds a description of how the Commission tracks the allocation of grade separation costs by railroad.

9. Notice

17. Changes are made in proposed Rule 7208(c) to codify how the Commission has been handling the simultaneous provision of notice of a proposed crossing closure to those entities identified in the application and posting of the notice of closure at the crossing.

10. Crossing Construction and Maintenance

18. Proposed Rule 7211 makes changes to the rules regarding crossing construction and maintenance. Proposed Rule 7211(a) requires railroads, railroad corporations, rail fixed guideway, transit agencies, and owners of track to pay for the cost and installation of replacing crossing surfaces and requiring road authorities to pay for the cost of railroad flagging required to maintain the roadway surface between tracks at multiple track crossings. Proposed Rule 7211(b) requires the road authority to bear the cost of materials and labor to install crossing surfaces at new crossings, or when widening crossings, except for extensions of crossing surfaces to provide for sidewalks. Proposed Rule 7211(c) requires the road authority to bear the cost of construction traffic control for the installation of new crossings, widening of existing crossings, or maintenance, repair, or replacement of existing crossing surfaces. Railroads, railroad corporations, rail fixed guideway, transit agencies, and owners of track are required to provide sufficient advance notice and coordinate with road authorities to schedule and obtain necessary permits for such work. Proposed Rule 7211(h) adds fencing attached to

bridge structures as an option to providing protective covers over sidewalk and pathway crossings. Pathway crossing information is added throughout Rule 7211, and there are some other minor wording and word definition changes.

11. Crossing Safety Diagnostics and Cost Estimates

19. New proposed Rule 7212 adds rules regarding requirements for crossing safety diagnostics, requirements for a more timely provision of cost estimates to be included in applications, and requirements for applicants to work with Commission Staff on preemption timing calculations and four quadrant gate crossings.

12. Minimum Crossing Safety Requirements

20. Proposed Rule 7213 adopts the temporary rules regarding minimum crossing safety requirements adopted by the Commission in proceeding No. 16R-0674R effective September 7, 2016, and adds some additional minimum crossing safety requirements regarding use of pavement markings and requirements for crossings with limited storage distance.

13. Installation and Maintenance of Crossing Warning Devices

21. Proposed changes to Rule 7301 include clarifying rules that apply to both passive and active warning crossings, defining which entity is responsible for what maintenance, and clarifying that the rules apply to both highway-rail and pathway crossings.

14. Public Highway and Pathway Crossings

22. Proposed changes and additions to Rule 7327 include adding pathway crossings to the definition, changing references to street railroad to rail fixed guideway systems, and adding new minimum requirements for pathway crossings.

15. Other Proposed Rule Changes

23. There are proposed changes throughout the rules that provide minor wording and format changes that do not affect the content of these rules.

C. Conclusion

24. The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.*; 40-1-103, 40-2-108, 40-2-119, 40-3-101, -102, -110, 40-4-101, -106, 40-5-102, -103, -105, -106, 40-6-108(2), and 40-29-110, C.R.S.

25. The proposed rules in legislative (i.e., ~~strikeout~~/underline) format (Attachment A) and final format (Attachment B) are available through the Commission's Electronic Filings (E-Filings) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=16R-0952R.

26. The Commission encourages and invites public comment on all proposed rules. We request that commenters propose any changes in legislative redline format.

27. This matter is referred to an Administrative Law Judge (ALJ) for the issuance of a recommended decision.

28. The ALJ will conduct a hearing on the proposed rules and related issues on January 30, 2017.

29. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that comments be filed no later than January 17, 2017, and that any pre-filed comments responsive to the initial comments be submitted no later than January 23, 2017. The Commission prefers that comments be filed using its E-Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this proceeding. The Commission will consider all submissions, whether oral or written.

30. Interested persons may provide oral comments at the public hearing unless the ALJ deems oral presentations unnecessary.

II. ORDER**A. The Commission Orders That:**

1. This Notice of Proposed Rulemaking (including Attachment A and Attachment B) attached hereto, shall be filed with the Colorado Secretary of State for publication in the December 25, 2016, edition of *The Colorado Register*.

2. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

3. A hearing on the proposed rules and related matters shall be held as follows:

DATE January 30, 2017

TIME: 9:00 a.m. until not later than 5:00 p.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the ALJ deems oral presentation unnecessary. The Commission prefers and encourages interested persons to pre-file comments through its E-Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this proceeding (16R-0952R).

5. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than January 17, 2017, and that any pre-filed comments responsive to the initial comments be submitted no later than January 23, 2017. The Commission will consider all submissions, whether oral or written.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
DECEMBER 14, 2016.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

GLENN A. VAAD

FRANCES A. KONCILJA

Commissioners