

Decision No. R05-0479

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04R-285R

IN THE MATTER OF THE PROPOSED REPEAL AND REENACTMENT OF ALL RULES REGULATING RAILROADS, TRANSPORTATION BY RAILROAD, RAIL FIXED GUIDEWAYS, RAIL CROSSINGS, AND STANDARDS FOR EMPLOYMENT OF CLASS 1 RAILROAD PEACE OFFICERS, AS FOUND IN 4 CCR 723-14, 20 AND 26.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
ADOPTING RULES**

Mailed Date: April 29, 2005

I. STATEMENT

1. By Decision No. C04-0586, mailed on June 14, 2004, the Commission issued Notice of Proposed Rulemaking. The Commission stated that the intent of the proposed rules is to repeal and reenact, with modifications and additions to the current rules found at 4 *Code of Colorado Regulations* (CCR) 723-14, 20 and 26.

2. The proposed repeal and reenactment involves an effort by the Commission to revise and recodify the current rules. The Commission stated that the proposed repeal and reenactment is intended to update the existing rules relating to railroads; to establish consistency with other Commission rules; to improve administration and enforcement of relevant provisions of Title 40 of the Colorado Revised Statutes; to eliminate unnecessary or burdensome regulations and to improve the regulation of proceedings before the Commission.

3. Because this rulemaking proceeding is part of a comprehensive effort by the Commission to revise its rules, the Commission believed it was important to coordinate the instant rulemaking with other rulemaking proceedings currently pending before the Commission.

4. The Commission referred the instant rulemaking docket to an administrative law judge, and scheduled the first hearing for August 16 and 17, 2004.

5. Written comments were filed with the Commission by the Regional Transportation District (RTD); the Burlington Northern and Santa Fe Railway Company (BNSF); the Union Pacific Railroad Company (UP); the City and County of Denver (Denver); the Colorado Department of Transportation (CDOT); the Town of Castle Rock (Castle Rock); Douglas County; Colorado Counties, Inc. (CCI); the City of Commerce City (Commerce City); the City of Grand Junction (Grand Junction); the City of Brighton (Brighton); the City of Trinidad (Trinidad); the Colorado Municipal League (CML); the City of Fort Collins (Fort Collins); Mesa County; the County of Boulder (Boulder); Kyle Railroad Company (Kyle); San Luis and Rio Grande Railroad, Inc. (SLRG); the Durango and Silverton Narrow Gauge Railroad Company (Durango and Silverton); the Rio Grande Ski Train; and the City of Arvada (Arvada).

6. The first hearing was held as scheduled on August 16 and 17, 2004. Appearances were entered on behalf of BNSF; UP; Denver; CCI; RTD; Castle Rock; and Staff of the Public Utilities Commission (Staff). Oral comments were received from interested parties at this time. At the conclusion of the hearing, it was orally announced that the hearing would be continued for an additional hearing on October 21, 2004. Written notice of the additional hearing date of October 21, 2004 was given by Decision No. R04-1002-I, mailed on August 26, 2004.

7. The additional hearing was held as scheduled. Appearances were entered on behalf of UP; BNSF; Durango and Silverton; RTD; CDOT; Castle Rock; and Staff. Oral comments were received at this hearing. At the conclusion of the hearing, it was orally announced by the ALJ that an additional and final hearing would be held on March 16, 2005. Written notice of the additional hearing date of March 16, 2005 was issued by Decision No. R04-1245-I (mailed on October 22, 2004).

8. The final hearing was held on March 16, 2005 as scheduled. Appearances were entered on behalf of UP; BNSF; RTD; Castle Rock; and Staff.

9. Pursuant to § 40-6-109, C.R.S., the record of this proceeding and a written recommended decision are transmitted to the Commission.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. The statutory authority for the proposed rules is found at §§ 40-2-108, 40-2-119, 40-2-120, 40-3-101(1), 40-3-102, 40-3-103, 40-3-110, 40-4-101(1), 40-4-101(2), 40-4-106, 40-5-103, 40-5-105, 40-6-111(3), 40-9-108(2), 40-18-102, 40-18-103, 40-29-110, and 40-32-10, C.R.S.

11. Attachment A of this Recommended Decision represents the existing rules that are proposed to be repealed. Attachment B represents the proposed rules as modified by this Recommended Decision.

12. The proposed rules are a complete and comprehensive revision to the existing rules pertaining to railroads. The notable and major areas of proposed substantive change are as follows:

- (a) Rule 7000(b) provides Commission jurisdiction over statutory transportation districts;

- (b) The term “rail carrier” is no longer used or defined in the proposed rules;
- (c) Rule 7001(b) in the definition of “rail fixed guideway” includes possession of rail fixed guideway systems facilities by ownership or lease;
- (d) Proposed Rule 7001(c) is expanded to include street railroads, street railways, and electric railroads;
- (e) Rule 7001(d) the definition of “railroad” excludes rail fixed guideways and rail fixed guideways systems;
- (f) Rule 7006, railroad class distinctions have been removed;
- (g) Rule 7100 is new concerning the applicability of rules in the operating authority section;
- (h) Rules 7101 and 7102 list requirements for applications for certificates of public convenience and necessity;
- (i) Rule 7103 establishes regulations on transfers, mergers, and encumbrances of stock, assets, and control of rail utilities and their certificates;
- (j) Rule 7104 establishes regulations on tariffs and format that is to be used;
- (k) Rule 7200 concerns applicability of rules regarding crossings and warning devices;
- (l) Rules 7201 (b), (c) and (e) contain new definitions of “arterial”, collector and “freeway”.
- (m) Rule 7202 incorporates by reference the 2001 editions of the National Electric Safety Code published by the Institute of Electrical and Electronics Engineers on August 1, 2001 as well as Chapter 1 (Highway Functions; Systems and Classifications) of the 2001 addition of a Policy on Geometric Design of Highways and Streets published by the American Association of State Highway and Transportation Officials;
- (n) Rule 7203(b) contains modified language concerning those who may apply for authority to construct a railroad crossing;
- (o) Rules 7204(a) and 7205(a) state that engineering schematics, plans, drawings, and maps must be submitted on pages no larger than 11x17 inches;
- (p) Rule 7204(b) contains new language concerning the content of applications;
- (q) Rule 7204(b)(VI) requires submission of five-year projection and longer if available of increases or decreases of train vehicle traffic;

- (r) Rule 7204(b)(VII)(A) contains new language concerning the filing of final agreements for construction, alteration, or abolishment of railroad crossings;
- (s) Rule 7204(b)(VIII)(A) requires Applicant to submit a statement containing a description of the highway design, crossing warning devices, and traffic signal interconnection and preemption;
- (t) Rule 7204(b)(XI), (XII), (XIV), and (XV) establishes requirements that applications regarding crossings and warning devices must contain a map which includes proposed project limits, a detailed plan drawing showing the grade crossing, a schematic diagram on the crossing warning device, and a traffic signal phasing diagram;
- (u) Rule 7204(b)(XVI) requires the filing of names and addresses of adjacent property owners whose property border the right-of-way for one quarter mile;
- (v) Rule 7204(c) requires filing of maps, drawings, plans, and schematics within ten days of any change;
- (w) Rule 7207(a)(II) contains new requirements on factors the Commission must consider when allocating costs of grade separations;
- (x) Rule 7207(b) provides additional language that sets forth the Commission's discretion to treat separation of roadways on a new alignment as if there were an existing at-grade crossing necessary for grade separation;
- (y) Rule 7208 no longer contains provisions found in current Rule 4 CCR 723-1-69(d)(e), on changing a hearing date;
- (z) Rule 7211 provides rules that govern the construction and maintenance of crossings;
- (aa) Rule 7301 establishes rules on the installation and maintenance of crossing warning devices;
- (bb) Rule 7301(b) requires that whenever crossing warning devices are interconnected to standard highway traffic signals, the highway traffic signals shall be maintained by the public highway authority and interest;
- (cc) Rule 7302 sets forth regulations regarding notification of accidents;
- (dd) Rules 7320 through 7328 establishes standards for railroad clearances;
- (ee) Rule 7344(d) provides that if the Commission finds that a revised system safety program plan is not in compliance with Rule 7343, the Commission shall set the application for hearing;

- (ff) Rule 7345(a) states that with respect to investigations and reporting procedures for accidents and hazardous conditions, the definitions of accident and unacceptable hazardous conditions shall have the meaning set forth in 49 C.F.R. 659.5;
- (gg) Rule 7345(d)(III) requires that a transit agency must investigate any unacceptable hazardous condition;
- (hh) Rule 7345(d)(IV) requires that transit agencies shall submit a written report within 30 days of an accident or unacceptable hazardous condition is discovered;
- (ii) Rule 7345(d)(VI) provides new language on accident and unacceptable hazard condition reports to the Commission;
- (jj) Rule 7401 establishes definitions concerning employment of railroad peace officers by Class 1 railroads and incorporates the requirements of House Bill 03-1266;
- (kk) Rule 7402 adds certification by the Peace Officer Standards and Training Board to the list of minimum requirements that must be met by individuals who wish to become a class 1 railroad peace officer.

13. The proposed rules generated considerable comment by interested parties. Although not all of the comments of the interested parties will be repeated here, each comment was considered in the recommended decision.

14. UP commented that the Commission should consider adding additional definitions to Rule 7001 in order to give the rules more clarity. For example, UP states that the terms public highway, roadway, public utility, quadrant, quasi-governmental, rail crossing, and other terms should be defined. The Rule 7001 definitions appear to be adequate for the purposes of the rules and the addition of some of the terms suggested by UP are unnecessary since they are already defined, such as public utility in Colorado Revised Statutes or other Commission rules.

15. The proposed definition of “railroad” found in Rule 7001(d) is problematical for some of the railroads. UP comments that the proposed definition of “railroad” includes facilities not just operating entities. The proposed rule in subsection (B) includes “any person possessing such facilities by ownership or lease”. Durango and Silverton comments that the proposed

definition of “railroad” is confusing and contrary to the Colorado Constitution and the definitions contained in §§ 40-1-102(3)(a)(ii) and 40-1-103(1)(a), C.R.S. Durango and Silverton also comments that the proposed rule appears to bring all the facilities of a railroad under regulation whether the railroad is the owner of the facilities or not. The definition of “Railroad” is intended to apply only to the proposed rules. The suggestions will not be adopted.

16. UP comments that proposed Rule 7001(f) “railway” is synonymous with “railroad” and should be deleted. UP believes that it is important to not have alternate meanings to a defined word. The suggestion of UP is well taken and will be adopted. Proposed Rule 7001(f) will be deleted.

17. BNSF and UP comment that proposed Rule 7006 requiring the filing of an annual report is preempted by federal law, ICCTA, 49 U.S.C. §§ 11141-11145 which gives the Surface Transportation Board authority over railroad accounting and reports. BNSF and UP are correct in their comments, and that an annual report should not be required as proposed in Rule 7006. However, the proposed rule in subsection (a) provides that in lieu of an annual report, a Federal R-1 form may be submitted to the Colorado Commission. BNSF supports this alternate provision if the Commission adopts the rule. Since there is an alternative prescribed in the rule, proposed Rule 7006(a) will be adopted.

18. BNSF comments that a provision should be added to proposed Rule 7006(b) that allows the railroad to comply with this rule by posting its Form 10-K on a website accessible to the general public rather than providing a hard copy to the Commission. This suggestion will not be adopted. It would not appear to be unduly burdensome for the railroad to provide a hard copy with the Commission.

19. Kyle and SLRG comment that proposed Rule 7006 implies that all railroads including short line railroads such as Kyle and SLRG have accounting systems required of Class 1 railroads. Kyle and SLRG contend that it would be burdensome for the short lines to implement Class 1 railroad accounting. There will be no change in the proposed rule to recognize the difference pointed out by Kyle and SLRG. The short line railroads can comply with the rule by providing an annual report to the Commission.

20. Proposed Rule 7104 is a new provision concerning tariffs containing rates and charges. Durango and Silverton in its comments correctly asserts that the Commission does not have jurisdiction over rates and charges. Section 40-3-104.5, C.R.S., states that:

Notwithstanding section 40-3-105 and any other provision of this title to the contrary, the commission shall not exercise any jurisdiction over rates with respect to intrastate rail carriers.

Proposed Rule 7104 will not be adopted.

21. Proposed Rule 7201(i) uses the term “substantial evidence”. BNSF states that the term “substantial evidence” is not an evidentiary standard recognized in the law. BNSF recommends that instead of the term “substantial evidence” the term “preponderance of evidence” should be used to describe the burden of proof standard. The suggestion of BNSF will not be adopted. The term “substantial evidence” is an evidentiary standard recognized in the state of Colorado. See *Colorado Municipal League V. Mountain States Telephone and Telegraph Co.*, 759 P.2d 40, 44 (Colo. 1988).

22. BNSF and UP comment that some of the standards used in proposed Rule 7201(i) defining “reasonably adequate facility” should be changed. For example, the provision in proposed Rule 7201(i)(V)(VI) providing for 15-foot centers for passing tracks. BNSF states that the 15-foot center should be changed to 25 feet. UP suggests that the centers should be 20 feet

rather than 15 feet. RTD comments that the provision of 15-foot centers is acceptable for its facilities. The definition for reasonably adequate facility establishes minimums. The proposed rule will not be changed.

23. BNSF comments that a new subsection (e) should be added to proposed Rule 7203 to state that “The highway agency or authority with jurisdiction and the Commission shall jointly determine the need and selection of devices at a highway-rail grade crossing.” The suggestion will not be adopted. The Commission has the sole statutory authority to make this determination.

24. BNSF states that in proposed Rule 7204(b)(VI)(A), the word “timetable” should be inserted so that the proposed rule reads “the existing number, character, and timetable speed of trains and vehicles passing the crossing each day, ...” The suggestion will be adopted.

25. Castle Rock comments that proposed Rule 7204(b)(VII)(A) be removed from the rules in its entirety or alternatively rewritten. Castle Rock comments that the Commission cannot lawfully delegate its statutory authority by requiring that in the case of applications, an applicant filing an application to construct, alter, or abolish a railroad crossing, the applicant must file a copy of the final agreement between the applicant and the railroad corporation within 180 days of the date the Commission deems the application complete, that the final agreement must cover the construction, cost allocation, operation, and maintenance of the crossing, and that if applicant fails to file the final agreement the Commission may dismiss the application. The suggestion of Castle Rock will be adopted. The proposed rule as written, places the burden on applicant to arrange for a final agreement which in some cases is not possible. This section of the proposed rule appears to improperly delegate the Commission’s statutory authority to the

applicant and railroads. The parties can always produce a final agreement for the Commission's approval, but it should not be a requirement to maintaining an application.

26. Staff recommends a change to Proposed Rule 7204 (b) (XV). Staff recommends that the words "worst-case and best-case operating scenario" be deleted, and in its place the addition of the following: "maximum right of way transfer time and minimum right of way transfer time as found in AREMA and C and S manual Part 3.1.10(E)(7). The suggestion will be adopted.

27. RTD recommends that in proposed Rule 7204(b)(XVI), that the following be removed from the proposed rule: "Whose property borders the railroad right-of-way one quarter mile in each direction from the crossing". RTD comments that the proposed requirement that an applicant determine adjacent property owners within one quarter mile of each direction of the crossing exceeds the provision of § 40-4-106(3)(a), C.R.S., that states that owners of adjacent property are parties in interest. RTD states that it places an administrative burden on applicants to make this determination and would involve "intervention in proceedings by persons who the legislature did not contemplate would be parties in interest." The recommendation of RTD will be adopted.

28. UP comments that proposed Rule 7205(b) be modified by adding the words "as applicable" to the sentence. Thus 7205(b) would read:

In the case of applications concerning railroad-highway grade separations for which contribution from one or more railroad corporations is requested, the applicant shall, in addition to the information required by paragraph 7204(b), [as applicable] include the following additional information in the application.

The suggestion will be adopted.

29. Considerable comment was received from interested parties concerning proposed Rule 7207, cost allocation for grade separation. BNSF, UP, and Kyle object to the proposed

presumptive 50 percent cost allocation. The railroads believe that the 50 percent cost allocation is contrary to statute. BNSF states that the statute provides that in determining the cost allocation and the amounts paid by the parties for grade separation, “consideration shall be given to the benefits, if any, which accrue from the grade separation project and the responsibility for need, if any, for such project.” The Cities of Arvada, Fort Collins, Brighton, Trinidad, Grand Junction, Commerce City, Castle Rock, Denver, Boulder, CML, CCI, Douglas County, and CDOT believe that the 50 percent presumptive cost allocation is appropriate and should not be changed. Denver and RTD request that the 50 percent cost allocation not be applicable to fixed rail guideways. The 50 percent presumptive cost allocation will not be changed. The 50 percent presumption is only the starting point. The rule provides that a different allocation is allowable if demonstrated by substantial evidence of benefit and need. Taking the rule in its entirety, the proposed rule is consistent with § 40-4-106(3)(b)(III), C.R.S.

30. The suggestion of RTD and Denver to remove the phrase “and/or rail fixed guideway” from proposed Rule 7207(a)(I) should be adopted. Denver states that § 40-4-106(3)(a), C.R.S., grants authority to the Commission to allocate costs for grade separation structures between railroad corporations and the state, county, municipality, or public authority in interest. The statute does not include rail fixed guideways. The phrase “and/or rail fixed guideway” will be removed from proposed Rule 7207(a)(I).

31. BNSF, UP, Castle Rock, Douglas County, and Grand Junction recommend that the term “substantial evidence” contained in proposed Rule 7207(a)(ii) be removed and its place, “preponderance of evidence” be substituted. The suggestion will not be adopted.

32. RTD comments that proposed Rule 7211(g) requiring sidewalk and/or bike path crossings of mainline tracks be grade separated except at locations of existing railroad-highway

grade crossings, is not appropriate for light rail, therefore RTD's light rail should be exempted. RTD comments that at its light rail stations, people often access light rail vehicles by crossing RTD tracks. RTD states that it would be impracticable to build grade separations for boarding passengers at each light rail station. The suggestion will be adopted and rail fixed guideway systems will be exempted from this rule.

33. Proposed Rule 7301 applies to installation and maintenance of crossing warning devices. Rule 7301(c) requires that: "every person to whom this rule applies shall at all times keep its right-of-way free and clear from all obstructions which substantially interfere with the safe sight distance of approaching trains at railway crossings, railroad- highway crossings, ..." UP and BNSF object to the term "safe sight distance." The railroads recommend that rather than the phrase "safe sight distance", the Commission adopt a specific standard such as a 500-foot triangle or other standard adopted by various states. RTD comments that because of the unique characteristics of an urban light rail system, a specific standard should not be adopted. RTD comments that the phrase "safe sight distance" in the rule is sufficient since ultimately the Commission must approve the distance. Several parties also commented that 7301(c) should only be applicable to grade crossings that do not have warning devices. Since each crossing has unique characteristics, a specific standard should not be adopted. RTD correctly states that the "safe sight distance" standard is sufficiently flexible for each grade crossing and that the Commission ultimately approves the safe sight distance standards as applicable to crossings on a case-by-case basis.

34. Proposed Rules 7321 through 7338 deal with railroad clearances. Durango and Silverton comments that the clearances contained in Rules 7321 through 7337 are inappropriate clearances for narrow gauge railroads. Durango and Silverton recommends that the railroad

clearance rules should not apply to narrow gauge railroads. The recommendation will be adopted. Proposed Rule 7320 will read: “Rules 7321 through 7328 apply to all standard gauge railroads, and railroad corporations.”

35. UP and BNSF recommend changes to the clearances stated in proposed Rule 7324, overhead clearances; 7325 side clearances; and 7326, track clearances. The railroads recommend adoption of different clearances than stated in the rules. The clearances found in the above rules are minimum standards.

36. It is found and concluded that the proposed rules as modified by this recommended decision are reasonable and should be adopted.

37. Pursuant to the provisions of § 40-6-109, C.R.S., it is recommended that the Commission adopt the attached rules.

III. ORDER

A. The Commission Orders That:

1. The proposed rules regarding railroads attached to this Recommended Decision are adopted.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

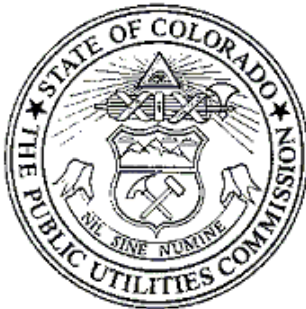
3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

WILLIAM J. FRITZEL

Administrative Law Judge

~~THE~~
~~PUBLIC UTILITIES COMMISSION~~
~~OF THE~~
~~STATE OF COLORADO~~

~~RULES REGARDING~~
~~SYSTEM SAFETY PROGRAM STANDARDS FOR~~
~~RAIL FIXED GUIDEWAY SYSTEMS~~

~~4 CODE OF COLORADO REGULATIONS (CCR) 723-14~~

~~BASIS, PURPOSE, AND STATUTORY AUTHORITY~~

~~The basis and purpose of these rules is to establish a system safety program standard for rail fixed guideway systems operating within the State to assist in the development of a system safety program plan for each operator of a rail fixed guideway system.~~

~~These rules are also intended to establish an oversight program by the Commission for the safety and security of rail fixed guideway systems in accordance with Section 28 of the "Intermodal Surface Transportation Efficiency Act of 1991", 49 U.S.C. sec. 5330, and 49 C.F.R. 659, "Rail Fixed Guideway Systems; State Safety Oversight". (Federal Transit Administration, U.S. Department of Transportation.)~~

~~The statutory authority for adoption of these rules is § 40-18-101 through § 40-18-105, § 32-9-119(1)(t), and § 40-2-108 C.R.S.~~

[Omitted Material: All the current rules found in 4 CCR 723-14, are proposed to be repealed and reenacted. Therefore, all the remaining pages of the current rules are omitted.]

DEPARTMENT OF REGULATORY AGENCIES

PUBLIC UTILITIES COMMISSION

APPLICATIONS FOR RAILROAD-HIGHWAY GRADE SEPARATIONS

4-CCR-723-20

Colorado Public Utilities Commission Rules for Railroad-Highway Grade Separation Applications

1.0 Statement of Basis and Purpose.

The basis and purpose of Rules 2.0 through 5.2 is that the Commission has no current rules governing applications for railroad-highway grade separations due to the fact that the former rules governing applications for railroad-highway grade separations were repealed as a result of the enactment into law of Senate Bill 123 on April 21, 1986, which repealed previously existing rules which had been established to comply with House Bill 1569 which had been enacted by the General Assembly in 1983.

On April 21, 1986, the Governor of the State of Colorado signed into law Senate Bill 123 (S.B. 123). S.B. 123 eliminates the annual application procedure previously established by H.B. 1569. Thus, the Commission is no longer required to consolidate a list in order of priority of individual grade separation construction projects, but retains its authority to approve or disapprove individual projects and to allocate the funding of individual projects. These rules implement the information required for a railroad-highway grade separation project and set forth the minimum criteria for grade separation cost allocation in order to implement S.B. 123. The specific statutory authority for the adoption of these rules is § 40-2-108, C.R.S.

[Omitted Material: All the current rules found in 4 CCR 723-20, are proposed to be repealed and reenacted. Therefore, all the remaining pages of the current rules are omitted.]

DEPARTMENT OF REGULATORY AGENCIES

PUBLIC UTILITIES COMMISSION

CLASS 1 RAILROAD PEACE OFFICERS

~~4 CCR 723-26~~

~~RULES GOVERNING STANDARDS FOR THE EMPLOYMENT OF CLASS I RAILROAD PEACE OFFICERS~~

~~I. Basis and Purpose of These Rules~~

~~The basis and purpose of these rules is to promulgate rules in compliance with the revisions in § 40-32-108(2), C.R.S., as mandated by Senate Bill 51, which was enacted by the General Assembly during its 1987 session and signed into law on April 30, 1987.~~

~~II. Applicability of Rules~~

- ~~A. These rules are applicable to all Class I railroads operating in the State of Colorado which employ railroad peace officers, which are defined as any person employed by a Class I railroad corporation operating within the State of Colorado to protect and investigate offenses against railroad corporation.~~
- ~~B. These rules are in addition to the Class I railroad's standard employment rules and regulations.~~
- ~~C. These rules apply to a railroad peace officer employed on or after the effective date of these rules.~~

~~III. Minimum Requirements New Employees~~

~~A Class I railroad shall not employ an individual as a railroad peace officer unless he or she:~~

[Omitted Material: All the current rules found in 4 CCR 723-26, are proposed to be repealed and reenacted. Therefore, all the remaining pages of the current rules are omitted.]

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-7

PART 7

RULES REGULATING RAILROADS, RAIL FIXED GUIDEWAYS, TRANSPORTATION BY RAIL, AND RAIL CROSSINGS

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BASIS, PURPOSE, AND STATUTORY AUTHORITY

The basis for and purpose of these rules is to describe the manner of regulation over railroads, railroad corporations, rail fixed guideways, rail fixed guideway systems, transit agencies, persons holding a certificate of public convenience and necessity to operate by rail, any other person operating by rail, governmental or quasi-governmental entities that own and/or maintain public highways at rail crossings, railroad peace officers, and to Commission proceedings concerning such entities. These rules address a wide variety of subject areas including, but not limited to, applications, petitions, annual reporting, formal and informal complaints, operating

authority, transfers of operating authority, mergers, tariffs, crossings and warning devices, cost allocation for grade separations, crossing construction and maintenance, railroad clearances, system safety program standards for rail fixed guideway systems, and employment of railroad peace officers.

The statutory authority for the promulgation of these rules can be found at §§ 40-2-108, 40-2-119, 40-3-101(1), 40-3-102, 40-3-103, 40-3-110, 40-4-101(1), 40-4-101(2), 40-4-106, 40-5-105, 40-6-111(3), 40-9-108(2), 40-18-102, 40-18-103, 40-29-110, and 40-32-108, C.R.S.

GENERAL PROVISIONS

7000. Scope and Applicability.

- (a) The rules in this Part 7, the "7000" series, apply to railroads, railroad corporations, rail fixed guideways, rail fixed guideway systems, transit agencies, persons holding a certificate of public convenience and necessity to operate by rail, any other person operating by rail, governmental or quasi-governmental entities that own and/or maintain public highways at rail crossings, railroad peace officers, and to all Commission proceedings concerning such entities.
- (b) Except as otherwise required by law, the Commission's jurisdiction over statutory transportation districts (e.g., Regional Transportation District) shall be limited to matters concerning the following rules:
 - (I) 7001 - 7003;
 - (II) 7007;
 - (III) 7200 - 7211;
 - (IV) 7301; and
 - (V) 7340 - 7349.
- (c) Specific applicability provisions are found in rules 7100, 7200, 7300, 7320, 7340, and 7400.

7001. Definitions.

The following definitions apply throughout this Part 7, except where a specific rule or statute provides otherwise:

- (a) "Common carrier" is defined by § 40-1-102(3)(a)(II), C.R.S.
- (b) "Rail fixed guideway" means any person possessing rail fixed guideway system facilities by ownership or lease.

- (c) "Rail fixed guideway system" means "rail fixed guideway system," as defined by § 40-18-101(3), C.R.S. Rail fixed guideway systems include "street railroads," "street railways," and "electric railroads," as those terms are used in Article 24 of Title 40, C.R.S.
- (d) "Railroad:"
 - (I) "Railroad" means either of the following, as the context may require:
 - (A) facilities, including without limitation: tracks; track roads; bridges used or operated in connection therewith; switches; spurs; and terminal facilities, freight depots, yards, and grounds, including rights-of-way, used or necessary for the transportation of passengers or property; or
 - (B) any person possessing such facilities by ownership or lease.
 - (II) "Railroad" does not include rail fixed guideways or rail fixed guideway systems.
- (e) "Railroad corporation" means five or more persons associating to form a company for the purpose of constructing and operating a railroad, in accordance with the provisions of § 40-20-101, C.R.S.
- ~~(f) "Railway" is synonymous with "railroad".~~
- ~~(g)~~ (f) "Transit agency" means "transit agency," as defined by § 40-18-101(6), C.R.S.

7002. Applications.

Commission action may be sought regarding any of the following matters through the filing of an appropriate application:

- (a) For a certificate of public convenience and necessity, as provided in rule 7101.
- (b) To amend a certificate of public convenience and necessity, or to change, extend, curtail, abandon, or discontinue any service, as provided in rule 7102.
- (c) For authority to transfer a certificate of public convenience and necessity, to obtain a controlling interest in any utility, to transfer assets or stock, or to merge a utility with another entity, as provided in rule 7103.
- (d) For authority to construct, alter, or abolish a utility crossing, a railroad-highway crossing, a railroad crossing, or a

highway-railroad crossing; or for authority to install or modify crossing warning devices, as provided in rule 7204

- (e) For authority to allocate costs for railroad-highway grade separations, as provided in rule 7205.
- (f) For approval of a transit agency's system safety program plan, as provided in rule 7344.
- (g) For any other matter provided by statute or rule but not specifically described in this rule.

7003. Petitions.

Commission action may be sought regarding any of the following matters through the filing of an appropriate petition:

- (a) For a variance of any rule, as provided in rule 1003.
- (b) For a declaratory order, as provided in paragraph 1304(i).

7004. [Reserved].

7005. [Reserved].

7006. Annual Report.

- (a) Each railroad, railroad corporation, and holder of a certificate of public convenience and necessity to operate by rail shall, on or before April 30th of each year, file an annual report for the preceding calendar year. The annual report shall be submitted on forms prescribed by the Commission. The annual report shall be verified and signed by a person authorized to do so. Submission of a federal R-1 form in lieu of the form prescribed by the Commission shall be sufficient as long as a Colorado supplement containing apportioned Colorado information is also filed.
- (b) If the railroad, railroad corporation, or holder of the certificate of public convenience and necessity publishes an annual report or annual statistical report for the federal government, a federal agency, stockholders, other security holders, or members, or receives an annual report from a certified public accountant, it shall file a copy of such report(s) within 30 days after publication or receipt. It shall also include a Colorado-specific supplement detailing Colorado revenues.
- (c) If the railroad, railroad corporation, or holder of the certificate of public convenience and necessity is granted an extension of time to file its annual report, it must nevertheless file, on or before April 30th, its total gross operating revenue from intrastate business transacted in Colorado for the preceding calendar year.

- (d) The annual report shall disclose the method of depreciation used.

7007. Formal and Informal Complaints.

Formal and informal complaints may be filed or made pursuant to the Commission's Rules Regulating Practice and Procedure.

7008. - 7099. [Reserved].

OPERATING AUTHORITY

7100. Applicability.

Rules 7101 through 7104 apply to all common carriers that:

- (a) operate on intrastate lines that are not connected to the interstate system of lines;
- (b) are not railroad corporations; and
- (c) do not operate under authority from the United States Surface Transportation Board.

7101. Certificate Applications.

An application for the issuance of a certificate of public convenience and necessity, including authority for approval of the exercise of franchise rights, must include all of the following information, as applicable:

- (a) The applicant's name and complete physical and mailing addresses.
- (b) The trade name under which the applicant's operations are being or will be conducted.
- (c) If the applicant is a corporation: the name of the state in which it is incorporated; the location of its principal office, if any, in Colorado; the names of its directors and officers; the name and address of its Colorado agent for service of process; and a certified copy of its certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the application. If the applicant does not possess authority qualifying it to do business in Colorado, the applicant shall:
 - (I) acknowledge that the Commission will not grant the application without such authority, and
 - (II) file such authority as soon as possible.
- (d) If the applicant is a limited liability company: a statement of that fact; the name of the state in which it is organized; the complete mailing address and physical address of its principal

office; the name of its managers; and a certified copy of its certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the application. If the applicant does not possess authority qualifying it to do business in Colorado, the applicant shall:

- (I) acknowledge that the Commission will not grant the application without such authority, and
 - (II) file such authority as soon as possible.
- (e) If the applicant is a partnership: the names, titles, and addresses of all general and limited partners; and a copy of the partnership agreement establishing the partnership and all subsequent amendments.
 - (f) The name, address, and phone number of the applicant's representative to whom all inquiries concerning the application may be made.
 - (g) A statement describing the authority sought, or franchise rights proposed to be exercised. The statement shall include a description of the type of utility service to be rendered and a description of the area sought to be served. The statement also shall include a description of applicant's existing operations and general service area.
 - (h) A statement describing in detail the extent to which the applicant is affiliated with any other company and the extent to which the applicant, or any person affiliated with applicant, holds authority duplicating in any respect the authority sought.
 - (i) A copy of the applicant's most recent balance sheet, covering a period ending not earlier than six months before the date of the filing of the application.
 - (j) Statements of income and retained earnings, if available, for the same time period as the balance sheet referred to in paragraph (i) of this rule.
 - (k) A statement disclosing whether the applicant or any affiliate of the applicant is currently in violation of any provision of Title 40, C.R.S., or any Commission rule or order. The disclosure, if applicable, shall include a description of the violations.
 - (l) A statement that the applicant understands it must present evidence at the hearing to show its qualifications to conduct the operations proposed in the application.
 - (m) A statement of the facts (not conclusory statements) relied upon by the applicant to show that the public convenience and necessity require the granting of the application.

- (n) Where the application is to exercise franchise rights: a certified copy of the franchise ordinance; and proof of publication, adoption, and acceptance by the applicant.
- (o) A statement indicating the town or city where the applicant prefers any hearing regarding the application to be held, as well as any alternative choices.
- (p) A statement indicating the applicant's understanding that the mere filing of the application does not, by itself, constitute authority to operate.
- (q) A verified statement or affidavit, signed by an officer, partner, or owner, as applicable, who is authorized to act on behalf of the applicant, stating that the contents of the application and supporting documentation are true, accurate, and correct.

7102. Revocation or Amendment of Certificate; Changing, Extending, Curtailing, Abandoning, or Discontinuing Service.

- (a) The Commission may, after at least ten days' notice to the common carrier, hold a hearing to revoke, alter, or amend said common carrier's certificate of public convenience and necessity for any of the following reasons:
 - (I) Failure to comply with any statutory requirement;
 - (II) Failure to comply with the terms and conditions of, or exceeding the authority granted in, the certificate of public convenience and necessity; or
 - (III) Failure to comply with any lawful order, rule, or regulation of the Commission.
- (b) Except as provided in paragraph (c) of this rule, an application to amend a certificate of public convenience and necessity, or to change, extend, curtail, abandon, or discontinue any service, must contain all of the information required under rule 7101.
- (c) For applications to curtail or abandon any service, or for applications to in any manner restrict a certificate of public convenience and necessity:
 - (I) The applicant shall indicate the requested effective date for the curtailment, abandonment, or restriction.
 - (II) The applicant's response to paragraph 7101(g) shall contain a statement describing the curtailment, abandonment, or restriction sought. The statement shall include maps, as applicable. The statement shall also include a description of the applicant's existing operations and general service area.
 - (III) The applicant need not respond to paragraph 7101(h).

- (IV) The applicant's response to paragraph 7101(l) shall contain a statement that the applicant understands it must present evidence at the hearing showing how the public interest will be affected by the grant of the application.
- (V) The applicant's response to paragraph 7101(p) shall contain a statement indicating the applicant's understanding that the mere filing of the application does not, by itself, constitute authority to curtail or abandon any service, or to restrict a certificate of public convenience and necessity.
- (VI) In addition to the notice requirements of the Rules Regulating Practice and Procedure, the applicant shall prepare a written notice as provided in subparagraph (VII) of this paragraph and shall mail or deliver the notice at least 30 days before the application's requested effective date to the Board of County Commissioners of each affected county, and to the mayor of each affected city, town, or municipality.
- (VII) The notice of subparagraph (VI) of this paragraph shall contain all of the following:
 - (A) The name of the applicant.
 - (B) A statement detailing the requested curtailment, abandonment, or restriction, and its requested effective date.
 - (C) A statement indicating that any person may file a written objection with the Commission no later than ten days prior to the requested effective date; but that a written objection alone will not preserve any right to participate as a party in any Commission proceeding on the matter.
 - (D) A statement indicating that in order for any person to participate as a party, such person must file an appropriate and timely intervention according to the Commission's Rules Regulating Practice and Procedure.
 - (E) The Commission's full address.
- (VIII) Prior to 15 days before the requested effective date, the applicant shall file with the Commission a written affidavit stating its compliance with the notice requirements of subparagraphs (VI) and (VII) of this paragraph. The affidavit shall state the date the notice was completed and the method used to give notice. The applicant shall attach a copy of the notice to the affidavit.

- (d) No proposed amendment, change, extension, curtailment, or abandonment shall be effective unless and until the Commission has entered an order approving it.

7103. Transfers, Mergers, and Encumbrances.

- (a) For purposes of this rule, "transferee" means any entity newly acquiring control of operations under a certificate of public convenience and necessity.
- (b) An application to transfer or encumber a certificate of public convenience and necessity, to obtain a controlling interest in any utility, to transfer assets or stock, or to merge a utility with another entity, shall take the form of a joint application if possible, and must include:
 - (I) Each applicant's name, trade name if applicable, physical address, and mailing address.
 - (II) The name, address, and phone number of each applicant's representative to whom all inquiries concerning the application may be made.
 - (III) A statement detailing the purpose of the application.
 - (IV) In the case of an application to transfer a certificate of public convenience and necessity, to obtain a controlling interest in any utility, or to merge a utility with another entity:
 - (A) The transferee's most recent balance sheet, covering a period ending not earlier than six months before the date of the filing of the application;
 - (B) The transferee's statements of income and retained earnings, if available, for the same time period as provided by subparagraph (IV)(A); and
 - (C) The transferee's statement that it understands it must present evidence at the hearing to show its qualifications to operate under the certificate of public convenience and necessity.
 - (V) A statement disclosing whether any applicant or any affiliate of an applicant is currently in violation of any provision of Title 40, C.R.S., or any Commission rule or order. The disclosure, if applicable, shall include a description of the violations.
 - (VI) Copies of any agreement or contract and all documents pertaining to the transfer, encumbrance, or merger.
 - (VII) Facts showing that the transfer, encumbrance, or merger is in the public interest, and an evaluation of the benefits

and detriments, if any, to the customers of each party and to all other persons who will be affected by the transaction.

- (VIII) A comparison of the kinds and costs of service rendered before and after the proposed transaction.
 - (IX) A statement indicating the town or city where the applicant(s) prefer(s) any hearing regarding the application to be held, and any alternative choices.
 - (X) A verified statement or affidavit, signed by an officer, partner, or owner of each applicant, as applicable, who is authorized to act on behalf of the applicant, stating that the contents of the application and supporting documentation are true, accurate, and correct.
- (c) When control of a utility is transferred to another utility, or the name is changed, the utility that will afterwards operate under the certificate shall file an adoption notice with the Commission and have the adoption notice available for public inspection at each local office. Adoption notice forms are available from the Commission. The adoption notice shall contain all of the following information:
- (I) The name, phone number, and complete address of the adopting utility.
 - (II) The name of the previous utility.
 - (III) The number of the tariff adopted, and the description or title of the tariff adopted.
 - (IV) A statement that the adopting utility is making its own all rates, rules, terms, conditions, agreements, concurrences, instruments, and all other provisions that have been filed or adopted by the previous utility.
- (d) Upon approval of a transfer application, the transferor and transferee shall file an acceptance of transfer form, which form shall be provided by the Commission. The form shall be signed by both parties, indicating acceptance of the terms and conditions of the Order authorizing the transfer. The acceptance of transfer shall contain a statement indicating that the transferee has complied with all provisions of the agreement of sale, lease, or other transfer.
- (e) A transferee shall not begin operations until after the Commission has advised the transferee that it is in compliance with all requirements and is authorized to begin operations.
- (f) A transferor shall not cancel its tariffs until the Commission has approved the transfer, the transferee has filed all required

documents in the transferee's own name, and the Commission has advised the transferee that it is authorized to begin operations.

~~7104.723 New Tariffs.~~

~~The following provisions apply to common carriers subject to this rule under the applicability provisions of rule 7100.~~

~~(a) Common carriers shall keep on file with the Commission, at all times, approved tariffs clearly revealing the rates and charges to be assessed for all transportation and accessorial services and clearly revealing all rules and conditions relating to rates or service.~~

~~(b) No common carrier may operate without having approved tariffs on file with the Commission. No carrier shall disseminate to any person information contrary to the information contained in its approved tariff. No carrier shall operate in conflict with its approved tariff.~~

~~(c) A common carrier shall ensure that a copy of its approved tariff is available for public inspection, at all reasonable times, in each of the common carrier's offices or terminals transacting business with the public.~~

~~(d) At a minimum, tariffs shall contain the following:~~

~~(I) The front cover of the tariff shall take the form of a title page and shall contain the following information:~~

~~(A) In the upper right corner, a tariff number, running consecutively for each subsequent tariff filing.~~

~~(B) Immediately below the tariff number, the number or numbers of the canceled tariff or tariffs.~~

~~(C) In the central portion of the page, the name and, if applicable, trade name of the carrier.~~

~~(D) In the lower right corner, the date when the tariff provisions become effective. A tariff containing provisions effective on a date different from the general effective date of the tariff shall, beneath the tariff's general effective date, contain the phrase "except as otherwise provided herein." A tariff containing provisions effective on less than [number] days' notice by authority of Decision No. .~~

~~(E) Beneath the effective date, but only if applicable, a statement that the tariff "expires on [date] , unless earlier canceled, changed, or extended."~~

- ~~(F)At the bottom center of the page, the name, title, address, signature, and phone number of the person issuing the tariff.~~
- ~~(II)The pages following the cover page shall contain the following information:~~
- ~~(A)A statement of the scope of the tariff, describing the territory or points to which the tariff provisions apply.~~
- ~~(B)An explanation of the symbols, reference marks, and abbreviations used.~~
- ~~(C)The provisions governing the tariff, including without limitation all terms, conditions, rules, rates, fares, charges, and time schedules. If a certain provision is to expire on a given date, the date shall be set forth with any appropriate explanation.~~
- ~~(e)A common carrier shall file with the Commission an original and one copy of each tariff or amendment.~~
- ~~(f)Common carriers amending a tariff shall only do so by supplement, page reissuance, or tariff reissuance. Common carriers shall note amendments by using the following uniform symbols:~~
- ~~(I)to denote rate or charge reductions, "(R)";~~
- ~~(II)to denote rate or charge increases, "*" or "(I)";~~
- ~~(III)to denote wording changes resulting in neither increases nor reductions in rates or charges, "(C)";~~
- ~~(IV)to denote additions, "+" or "(A)"; and~~
- ~~(V)to denote deletions, "(D)".~~
- ~~(g)A common carrier proposing a tariff amendment shall file, concurrently with the proposed amendment, a statement justifying the amendment. The justification shall include an explanation of all circumstances and data relied upon in requesting approval of the proposed amendment.~~
- ~~(h)In addition to the notice required by § 40-3-104, C.R.S., and the notice requirements of the rules of practice and procedure, a common carrier proposing an amended tariff shall give notice as follows:~~
- ~~(I)The common carrier shall, concurrently with the filing of the proposed amendment with the Commission, post in a prominent public place in each terminal facility and office of the common carrier and in the passenger compartment of each vehicle used in the transportation of passengers affected by~~

~~the proposed amendment, for a duration equal to the objection or intervention period, whichever is longer, a printed notice of the proposed tariff amendment.~~

~~(II)The common carrier shall include in such notice: the proposed changes; the effective date; a statement that the Commission may suspend the effective date and hold a hearing regarding the proposed amendment; a statement that a written objection may be filed with the Commission; the date for filing such an objection; a statement that the filing of an objection by itself will not allow a person to participate in the hearing, unless the party has also filed a written intervention and received leave of the Commission to intervene; and the Commission's address where objections or interventions may be filed.~~

~~(III)If a proposed tariff amendment results in an increase in rates, fares, or charges, a common carrier shall also publish notice in one or more newspapers. The form of notice shall be available from the Commission. The carrier shall ensure that the newspapers' circulations cover the localities or areas of the state where people affected by the proposed tariff reside. A common carrier having a choice under this rule between a local newspaper and a newspaper of general statewide circulation shall place the notice in the local newspaper and may place the notice in the newspaper of general statewide circulation. The notice shall appear in the newspaper at least 20 days prior to the proposed tariff amendment's effective date. The common carrier shall file with the Commission, at least 15 days prior to the proposed tariff amendment's effective date, an affidavit of publication prepared by the newspaper.~~

~~(i)An application to amend a tariff on less than 30 days notice shall only be granted for good cause. The application shall contain information fully explaining why the tariff amendment is sought, why it is sought on less than 30 days notice, and how the tariff change will affect the public if approved. Except as provided by Commission Order, such an application shall not be subject to the notice provisions of paragraph (h) of this rule. If the Commission approves the application, it shall do so by written order.~~

~~(j)Any person affected by a tariff amendment proposed under this rule may submit a written objection to the proposed amendment. Unless otherwise ordered by the Commission, an objection shall not be considered unless it is filed with the Commission at least 10 days before the effective date of the proposed tariff.~~

~~(k)If the Commission suspends and sets any tariff for hearing:~~

~~(I)Any entity desiring to participate as a party shall intervene in the proceeding.~~

~~(II)The Commission shall send the order suspending the tariff to the carrier and any person who has filed an objection. The order shall specify when the matter is set for hearing, that an objection without an intervention is insufficient to participate as a party in the hearing, and the due date for interventions.~~

~~(l)If the Commission suspends a proposed tariff amendment, the carrier shall file with the Commission a suspension supplement. The suspension supplement shall be on a form deemed proper by the Commission or its staff.~~

~~(m)If the Commission rejects a tariff or amendment, the tariff number contained in it shall not be used again. The tariff or amendment shall not be referred to afterwards as canceled, amended, or otherwise. A tariff or amendment that is issued to take the place of the rejected tariff or amendment shall contain the following statement:~~

~~Issued in lieu of Tariff No. _____ [or Revised Page No. _____], which was rejected by the Commission.~~

~~(n)If the Commission issues a decision prescribing any tariff change, the affected carrier shall file, within 10 days of the effective date of the Commission decision, a revised tariff or revised tariff sheets, as applicable, reflecting the prescribed change. Such a filing shall be clearly marked with the following statement:~~

~~Filed in compliance with Public Utilities Commission Decision No. _____.~~

~~(o)The Commission may reject any filed tariff that does not comport with the form required by this rule, pursuant to § 40-6-111(3).~~

7105-7104. - 7199 [Reserved].

CROSSINGS AND WARNING DEVICES

7200. Applicability.

- (a) Rules 7201 through 7211 apply to railroads, railroad corporations, rail fixed guideways, and transit agencies.
- (b) Rules 7201 through 7211 apply to all governmental or quasi-governmental entities that own and/or maintain public highways at rail crossings.

7201. Definitions.

The following definitions apply only in the context of rules 7200 through 7211.

- (a) "ADT" means average daily traffic.
- (b) New "Arterial" means "arterial," as that term is used in Chapter 1 (Highway Functions: Systems and Classifications) of the 2001 edition of A POLICY ON GEOMETRIC DESIGN OF HIGHWAYS AND STREETS, published by the American Association of State Highway and Transportation Officials.
- (c) "Collector" means "collector," as that term is used in Chapter 1 (Highway Functions: Systems and Classifications) of the 2001 edition of A POLICY ON GEOMETRIC DESIGN OF HIGHWAYS AND STREETS, published by the American Association of State Highway and Transportation Officials.
- (d) "Exposure factor" means the ADT multiplied by the average daily number of train movements.
- (e) "Freeway" means "freeway," as that term is used in Chapter 1 (Highway Functions: Systems and Classifications) of the 2001 edition of A POLICY ON GEOMETRIC DESIGN OF HIGHWAYS AND STREETS, published by the American Association of State Highway and Transportation Officials.
- (f) "Highway-railroad crossing" means:
 - (I) the point at which any public highway may be constructed across the tracks or other facilities of any railroad corporation, railroad, or rail fixed guideway, at, above, or below grade; or
 - (II) the location point at which any public highway may be constructed across private tracks, over which any railroad corporation, railroad, or transit agency may operate, at, above, or below grade.
- (g) "Railroad crossing" means the point at which the tracks or other facilities of any railroad corporation, railroad, or rail fixed guideway may be constructed across the tracks or other facilities of any other railroad corporation, railroad, or rail fixed guideway.
- (h) "Railroad-highway crossing" means:
 - (I) the point at which the tracks or other facilities of any railroad corporation, railroad, or rail fixed guideway may be constructed across any public highway at, above, or below grade; or
 - (II) the point at which private tracks, over which any railroad corporation, railroad, or transit agency may operate, may be constructed across any public highway at, above, or below grade.

- (i) "Reasonably adequate facility," except as may be otherwise demonstrated by substantial evidence, means:
 - (I) A rural collector roadway that allows for two 12-foot travel lanes with two 5-foot shoulders;
 - (II) A rural arterial roadway that allows for two 12-foot travel lanes with two 8-foot shoulders and an 8-foot pedestrian-bikeway;
 - (III) An urban collector roadway that allows for two 12-foot travel lanes with two 10-foot parking lanes and an 8-foot pedestrian-bikeway;
 - (IV) An urban arterial roadway that allows for four 12-foot travel lanes with an 11-foot median and an 8-foot pedestrian-bikeway on one side;
 - (V) A single main line track that allows for mainline line track, one passing track on 15-foot centers and a 12-foot maintenance road or a 4-foot walkway on one side;
 - (VI) A double mainline track that allows for two mainline tracks and one passing track on 15-foot centers and a 12-foot maintenance road or a 4-foot walkway on one side; and
 - (VII) Railroad yards or terminals that allow for currently existing tracks and service facilities.
- (j) "Utility crossing" means the point at which the tracks or other facilities of any public utility may be constructed across the tracks or other facilities of any other public utility at, above, or below grade, or at the same or different levels.

7202. Incorporation by Reference.

- (a) The Commission incorporates by reference the August 2001 edition of the National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers on August 1, 2001 and endorsed by the American National Standards Institute. No later amendments to or editions of the National Electrical Safety Code are incorporated into these rules. Any person seeking information regarding how the incorporated material may be obtained or examined may contact the Chief of Utilities, Colorado Public Utilities Commission, Office Level 2, 1580 Logan Street, Denver, Colorado 80203. The material incorporated by reference may be examined at any state publications depository library.
- (b) The Commission incorporates by reference Chapter 1 (Highway Functions: Systems and Classifications) of the 2001 edition of A POLICY ON GEOMETRIC DESIGN OF HIGHWAYS AND STREETS, published by the American Association of State Highway and Transportation Officials. No later amendments to or editions of the incorporated material are incorporated into these rules. Any

person seeking information regarding how the incorporated material may be obtained or examined may contact the Director or his/her designee, Colorado Public Utilities Commission, Office Level 2, 1580 Logan Street, Denver, Colorado 80203. The material incorporated by reference may be examined at any state publications depository library.

7203. Who May Apply.

- (a) An application for authority to construct a railroad crossing or a railroad-highway crossing may be made by the railroad, rail fixed guideway, or other person, firm, or corporation that will own the tracks proposed to be constructed.
- (b) An application for authority to construct a highway-railroad crossing may be made by the appropriate municipality, county, state agency, or other governmental entity.
- (c) An application for authority to alter or abolish a railroad-highway crossing or a highway-railroad crossing may be made by the appropriate railroad corporation, railroad, rail fixed guideway, municipality, county, state agency, or other governmental entity.
- (d) An application for authority to install or modify signal lights or other warning devices may be made by a railroad corporation, railroad, rail fixed guideway, municipality, county, state agency, or other governmental entity.

7204. Application Contents – Generally.

- (a) Any engineering schematics, plans, drawings, or maps submitted pursuant to this rule shall be submitted on pages no larger than 11" x 17".
- (b) In the case of an application (other than to modify or replace the existing crossing surface without changing the width or configuration of a crossing) to construct, alter, or abolish a utility crossing, a railroad-highway crossing, a railroad crossing, or a highway-railroad crossing, or to install or modify crossing warning devices, the applicant shall submit the information required by this paragraph, to the extent applicable, either in the application or in appropriately identified attached exhibits. If the applicant is unable to provide certain information required by this paragraph, or if the applicant believes certain required information is excessive compared to the scope of the proposed project, the applicant may omit the required information provided that the application specifically justifies the omission. If the applicant desires Commission approval of special application procedures not otherwise contemplated by this paragraph (e.g., a design-build process or expedited approval), the application shall so state, shall specify the relief sought, and shall justify the request. Applications shall contain the following:

- (I) the applicant's name and mailing address;
- (II) if the applicant is a corporation or limited liability company: the name of the state in which the applicant is incorporated or incorporated and the location of its principal office, if any, in Colorado;
- (III) if the applicant is a partnership: the names and addresses of all general and limited partners;
- (IV) the name and address of applicant's representative, if any, to whom inquiries concerning the application may be made;
- (V) a detailed statement as to the nature of and need for the construction, alteration, abolition, installation, or modification for which approval is sought;
- (VI) a statement of:
 - (A) the existing number, character, and timetable speed of trains and vehicles passing the crossing each day, and
 - (B) the five-year projection, and the ten-year or twenty-year projections if available, of increases or decreases of the number, character, and speed of such trains and vehicles, if any;
- (VII) in the case of an application to construct, alter, or abolish a railroad crossing:
 - ~~(A) 723 1 51(d)(1) a statement that the applicant understands:~~
 - ~~(i) that, within 180 days of the date the Commission deems the application complete (or 90 days if testimony and exhibits are filed with the application), the applicant must file a copy of the final agreement between the applicant and the railroad corporation, railroad, rail fixed guideway, or transit agency;~~
 - ~~(ii) that the final agreement must cover the construction, cost allocation, operation, and maintenance of the crossing; and~~
 - ~~(iii) that if the applicant fails to timely file the final agreement, the Commission may dismiss the application;~~
 - (B) (A) a detailed description of the installation and operation of any lights, block, interlocking, or other system of signaling proposed to be constructed at the crossing; and

(C)(B)_____a statement of the operating rules and |
procedures that will govern the movement of trains
over the crossing;

- (VIII) a statement of the scope of the project, including without limitation:
- (A) highway design, crossing warning devices, and traffic signal interconnection and preemption;
 - (B) the itemized estimated cost of the proposed construction, alteration, abolition, or crossing warning device installation or modification; and
 - (C) how applicant proposes to provide for the cost, explaining the proposed apportionment between or among the parties in interest if applicable;
- (IX) in the case of an application for the installation or modification of crossing warning devices, a statement describing the type of crossing warning devices the applicant proposes to install (reference may be made to recommended standards on railway-highway grade crossing warning devices as published in current revisions of the Manual on Uniform Traffic Control Devices and/or A.R.E.M.A.'s Signal Manual of Recommended Practice);
- (X) a statement of the estimated start and completion dates for the construction, alteration, abolition, or crossing warning device installation or modification, and a statement of the estimated date for crossing's commencement of operation;
- (XI) a vicinity map that includes the proposed project limits (i.e., a map that includes the general area circumscribing the project);
- (XII) detailed plans/drawings of a suitable scale, showing the grade crossing, including signing and striping, tracks, buildings, structures, property lines, and public highways within the right-of-way limits of the railroad, railroad corporation, or rail fixed guideway;
- (XIII) a profile drawing showing grade lines and proposed grade lines of approaches on the public roads, highways, streets railroads, or rail fixed guideway systems that may be affected by the proposed or existing railroad-highway crossing or railroad crossing;
- (XIV) the schematic diagram of the crossing warning devices (commonly known as the "front sheet");
- (XV) the traffic signal phasing diagram, if any, including the railroad (train) clearance phase, the preemption phase, and the analysis of the maximum right-of-way transfer time and minimum right-of-way transfer time as found in AREMA C and S Manual, Part 3.1.10(E)(7); ~~worst case and best case operating scenario;~~

- (XVI) the names and mailing addresses of all persons, including adjacent property owners ~~whose property borders the railroad right of way one-quarter mile in each direction from the crossing,~~ public utilities, and municipalities, that may be interested in or affected by the application;
 - (XVII) if the crossing is at grade: a statement fully justifying why a separation of grades is not practicable under the circumstances; and
 - (XVIII) a certificate of service showing that a true and complete copy of the application has been served by U.S. mail upon those persons the applicant lists in response to subparagraph (b)(XVI), and showing the manner of such service.
- (c) If there is a substantive change to any map, drawing, plan, or schematic that has been filed with the application, the applicant shall file the new map, drawing, plan, or schematic within ten days of the change. In all cases, the applicant shall submit final maps, drawings, plans, or schematics, as applicable, within ten days of the availability of such final maps, drawings, plans, and schematics. For each filing made pursuant to this paragraph, the applicant shall attach a certificate of service showing that a true and correct copy of the filing has been served upon those persons the applicant has listed in response to subparagraph (b)(XVI) of this rule, and showing the manner of such service.
 - (d) An applicant complying with the notice provisions contained in subparagraph (b)(XVIII) and paragraph (c) need not comply with rule 1206(h) of the Commission's Rules Regulating Practice and Procedure.

7205. Additional Application Contents for Cost Allocation Requests in Grade Separation Applications.

- (a) Any engineering schematics, plans, drawings, or maps submitted pursuant to this rule shall be submitted on pages no larger than 11" x 17".
- (b) In the case of applications concerning railroad-highway grade separations for which contribution from one or more railroad corporations is requested, the applicant shall, in addition to the information required by paragraph 7204(b), as applicable include the following additional information in the application:
 - (I) a complete description of the scope of the proposed separation project;
 - (II) a preliminary set of construction plans, including engineering costs;
 - (III) a preliminary engineer's cost estimate, including engineering costs;

- (IV) the estimated costs of right-of-way, parcel by parcel, including railroad right-of-way;
- (V) a proposed construction timetable;
- (VI) a list of affected railroad corporations;
- (VII) a preliminary design of the theoretical structure for a reasonably adequate facility; and
- (VIII) a cost estimate of the theoretical structure, including the costs described in subparagraphs (III) and (IV) of this paragraph.

7206. Grade Separations – Minimum Criteria for Cost Allocation Consideration.

- (a) For a railroad-highway grade separation application to be considered for cost allocation, the following minimum criteria shall be met:
 - (I) Exposure factor, actual or projected, shall exceed 75,000 at urban locations and 35,000 at rural locations;
 - (II) The roadway shall be a collector, arterial, or freeway with an actual or projected traffic volume of 5,000 ADT or greater for urban locations or 2,500 ADT or greater for rural locations; and
 - (III) Any rail lines shall have an actual or projected volume of four train movements per day or greater.
- (b) The Commission may consider other locations for cost allocation, if warranted by unusual conditions or circumstances.

7207. Cost Allocation for Grade Separation.

- (a) Upon receipt of an application for a railroad grade-separation project, which application meets the criteria of rule 7206, the Commission may allocate the costs of right-of-way acquisition, engineering, and construction of the minimum project that separates a reasonably adequate road-way facility from a reasonably adequate railroad facility. The Commission shall impose allocation of costs in the following manner:
 - (I) Except as provided in subparagraph (II) of this paragraph, 50 percent of the cost shall be borne by the railroad corporation or corporations ~~and/or rail fixed guideway~~, and 50 percent of the cost shall be borne by the State, County, Municipality, or public authority in interest.
 - (II) Notwithstanding subparagraph (I) of this paragraph, the Commission may impose a different allocation if demonstrated by substantial evidence of benefit and need. Among other things, the Commission shall consider whether

piers or abutments of a roadway overpass hinder the construction of future additional rail lines within the railroad right-of-way and whether the projected life of the overpass structure exceeds the anticipated construction date of the additional rail lines.

- (b) The Commission may determine whether to treat the replacement or realignment of existing grade separations as if there were an at-grade crossing requiring separation. The Commission may determine whether to treat grade separation of roadways on a new alignment as if there were an existing at-grade crossing requiring separation.

7208. Notice.

The Director shall give notice of any application filed under rules 7204 and/or 7205. The Director shall mail said notice to all persons who, in the opinion of the Commission, would be interested in or affected by the grant or denial of the application, including those interested persons the applicant lists in its application.

- (a) The notice mailed by the Commission shall take the form of a Notice and Order, and shall contain the following information:
 - (I) The name of the applicant;
 - (II) The docket number assigned to the application;
 - (III) The application's caption, which shall include the crossing's designation, if any;
 - (IV) The date of the notice;
 - (V) A statement that any person desiring to participate as a party in any proceedings to be held must file an appropriate intervention as required under the Commission's Rules Regulating Practice and Procedure;
 - (VI) The date by which interventions must be filed which shall ordinarily be not less than 30 days after mailing of the notice;
 - (VII) A statement regarding whether the application has been deemed complete as of the date of the notice;
 - (VIII) A statement that the Commission may, without a hearing, issue an order granting or denying the application, if no intervention contesting the application has been timely filed;
 - (IX) A statement that if a hearing regarding the application is set, the parties will be notified of the setting; that applicants must appear at the hearing to present evidence

in support of the application; and that other parties may appear to present evidence in support of their positions;

- (X) A statement that, unless previously filed, the applicant shall file an original and three copies of its list of witnesses and an original and three copies of its exhibits at least 15 days prior to the first day of hearing; and that the applicant shall serve each party and Commission staff with its list of witnesses and copies of its exhibits;
 - (XI) A statement that each intervenor shall file an original and three copies of its list of witnesses and an original and three copies of its exhibits at least seven days prior to the first day of hearing; and that each intervenor shall serve each party and Commission staff with its list of witnesses and copies of its exhibits; and
 - (XII) Any other information that the Commission deems appropriate.
- (b) Where the application is for authority to install or modify crossing warning devices under § 40-4-106(2)(b), C.R.S., the notice shall state, in addition to the requirements of paragraph (a) of this rule, that the question of how costs will be borne and paid will be considered at and determined as a result of the hearing.

7209. Uncontested Applications.

Except as provided by § 40-4-106(2)(b), C.R.S., an uncontested and unopposed application may be processed as such under the Commission's Rules Regulating Practice and Procedure.

7210. Failure to Provide Required Information.

If an application does not provide the information required by rules 7204 and 7205, as applicable, the Commission may summarily dismiss the application and close the docket.

7211. Crossing Construction and Maintenance.

- (a) A railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track shall maintain at its own expense, the grade crossing surface from the outside end of the tie to the outside end of the tie at single track crossings. However, railroads, railroad corporations, rail fixed guideways, transit agencies, and owners of the track shall promptly assist any roadway authority to the extent required to maintain the roadway surface between tracks at multiple track crossings.
- (b) The crossing surface shall be of plank, concrete, rubber, flangeway and asphalt, or other suitable material that is compatible with the highway approaches, and shall be of the same

width as the pavement or other surfacing material in the approaches of the adjacent highway including the roadway shoulders. The crossing surface material shall make a reasonably smooth riding surface over the track or tracks and be approximately level with the top of the rails. Wherever practicable, the tracks at multiple track crossings shall be level with the mainline track.

- (c) The governmental or quasi-governmental entity that owns the highway shall maintain at its own expense the highway approaches up to the outside end of the ties.
- (d) Whenever a grade crossing is widened the governmental or quasi-governmental entity that owns the highway shall pay the cost of the highway improvement, including the highway approaches and the initial cost of the necessary crossing surface extension.
- (e) Whenever a track is constructed at, or removed from a railroad-highway crossing, the owner of the track shall pay the cost of the track construction or removal, including the crossing surface and the highway approaches.
- (f) Wherever practicable, sidewalks and/or bike paths should be detached from the curb and constructed behind the crossing signal mast. The crossing surface material for said sidewalks and/or bike paths need not be continuous with the crossing surface material of the vehicle travel lanes.
- (g) Except at locations of existing railroad-highway grade crossings, sidewalk and/or bike path crossings of mainline trackage shall be grade separated. Rail fixed guideway systems are exempted from this requirement. Sidewalk and/or bike path crossings under railroad open deck bridges or trestles shall have a protective cover (roof) extending a reasonable distance beyond the edges of the bridge or trestle to prevent material or debris from striking users of the sidewalk and/or bike path crossings.
- (h) Every railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track, at all points in Colorado where its tracks cross at grade any public highway, shall remove all obstructions along the tracks that block the view of motorists for a safe distance. Safe distance is determined by the circumstances at the crossing. The Commission may determine what obstructions are to be removed to secure reasonable safety.
- (i) The Commission may determine the materials to be used in a crossing at the time the Commission considers the application regarding the crossing.

7212. - 7299. [Reserved].

SAFETY

GENERALLY

7300. Applicability.

Rules 7301 through 7302 apply to all railroads, railroad corporations, rail fixed guideways, and transit agencies. Additionally, rule 7302 applies to common carriers.

7301. Case No. 5032-Rule 3. Installation and Maintenance of Crossing Warning Devices.

- (a) All crossing warning devices, whether electrically operated or otherwise, and of whatsoever nature, which have been installed at railroad crossings, railroad-highway crossings, or highway-railroad crossings in the state of Colorado, shall be efficiently maintained and kept in good operating condition by the entity owning the track at the crossing.
- (b) Whenever crossing warning devices are interconnected to standard highway traffic signals, the highway traffic signal shall be efficiently maintained and kept in good operating condition by the public highway authority in interest.

- (c) Every person to whom this rule applies shall at all times keep its right-of-way free and clear from all obstructions which substantially interfere with the safe sight distance of approaching trains at railroad crossings, railroad-highway crossings, and highway-railroad crossings; provided, however, that this rule shall not apply to:
 - (I) Existing buildings, permanent structures, and natural obstructions other than trees and vegetation; or
 - (II) Rolling stock or materials temporarily on the right-of-way in connection with switching movements or with the loading or unloading of shipments.
- (d) No grain elevators, storage tanks, warehouses or other buildings which substantially obstruct the view of approaching trains at crossings shall be built on the right-of-way unless and until the railroad complies with any requirements which the Commission may impose as to signals or other safety installation in connection with such obstruction.

7302. Case No. 5032-Rule 5. Notification of Accidents.

Except as preempted by federal law or as otherwise provided by rules 7340 through 7349, the following provisions apply with regard to accident notification to the Commission.

- (a) Facsimile or telephone notification. When any wreck, collision of trains, or collision of trains with vehicles or pedestrians, results in loss of life or injury to persons and occurs upon the line of any person to whom this rule applies, such person shall notify the Commission by facsimile or telephone as soon as practicable. The notification shall disclose the details of such accident, stating the location and the nature of the accident, the number of persons killed or injured, and the name of the railroad involved.
- (b) Supplemental letter. As soon as possible after the notification, such person shall supplement the notification by letter to the Commission. The supplemental letter shall describe in detail:
 - (I) the date, time, and location of the accident;
 - (II) the vehicles involved, and the vehicles' approximate speeds;
 - (III) the extent of injuries and other damages;
 - (IV) the names of all parties involved; and
 - (V) the circumstances relative to accident, including weather, visibility, type of safety protection, and any other pertinent information.

- (c) Notification of formal investigation. Every person to whom this rule applies, upon the setting of any formal investigation by either the Federal Railroad Administration or the National Transportation Safety Board, shall notify the Commission by telephone or facsimile of the date, time, and place of such investigation.

7303. - 7319. [Reserved].

RAILROAD CLEARANCES

7320. Applicability.

Rules 7321 through 7328 apply to all standard gauge railroads, and railroad | corporations.

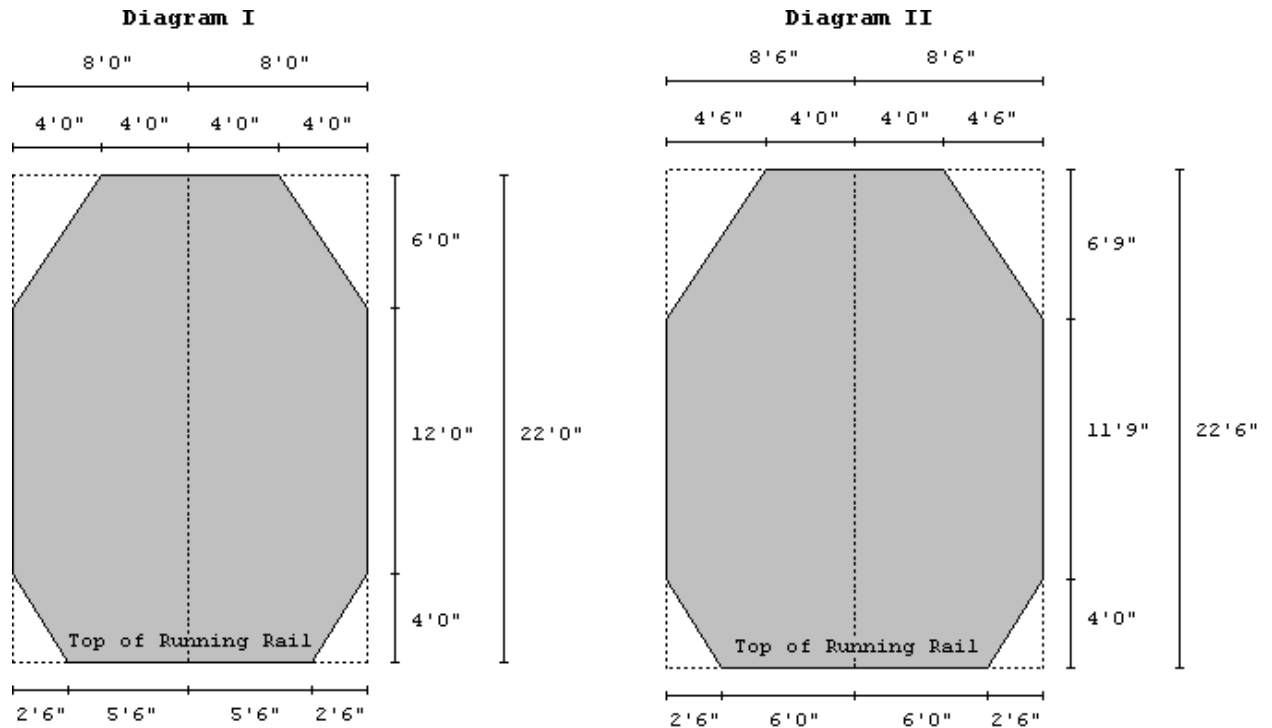
7321. Definitions.

The following definitions apply only in the context of rules 7321 through 7328.

- (a) "Overhead clearance" means the vertical distance from the top of the highest rail to a structure or obstruction above.
- (b) "Side clearance" means the shortest horizontal distance from the center line of track to a structure or obstruction at the side of the track.
- (c) "Track clearance" means the shortest horizontal distance between the center lines of adjacent tracks.

7322. Diagrams.

The following two diagrams are referenced in rules 7321 through 7328 as "Diagram I" and "Diagram II":



- (a) Diagram I is described as follows: starting at the center line of track at top of rail and extending 5'6" both sides horizontally and level therewith, thence upward diagonally to a point 4'0" above top of rail and 8'0" laterally from center line of track, thence vertically to a point 16'0" above top of rail, thence diagonally upward to a point 22'0" above top of rail and 4'0" horizontally from center of track, thence horizontally to center of track.
- (b) Diagram II is described as follows: starting at the center of track at top of rail and extending 6'0" both sides horizontally and level therewith, thence diagonally upward to a point 4'0" above top of rail and 8'6" laterally from center line of track, thence vertically upward to a point 15'9" above top of rail, thence diagonally upward to a point 22'6" above top of rail and 4'0" horizontally from center of track, thence horizontally to center of track.

7323. Special Provisions.

- (a) All existing structures, operating appurtenances, pole lines, service facilities, and track arrangements shall be exempt from these rules, except as hereinafter provided.

- (b) No change in existing track location or elevation shall be made which will reduce existing vertical or horizontal structural clearance below the minimum specified in rules 7320 through 7328.
- (c) No repair or maintenance work shall be done on structures, facilities or appurtenances adjacent to tracks which will reduce existing vertical or horizontal structural clearance below the minimum specified in rules 7320 through 7328.
- (d) As used in paragraphs (b) and (c), minimum clearance shall be as in Diagram I.
- (e) Where an existing structure does not provide clearance equal to the minimum of paragraph (d) or such other minima less than that which may be herein specified, the portion of the structure producing the impaired clearance may be repaired and maintained by partial replacements, which shall in no case reduce the clearance available at the time this order takes effect.
- (f) When the owner shall replace in its entirety the portion of a structure which has not previously provided standard clearance, the rebuilt portion must, when complete, provide the full standard clearance of this order unless otherwise ordered by the Commission.
- (g) Existing tracks.
 - (I) Existing tracks of all kinds may be maintained by reballasting, resurfacing, and replacing rails and ties subject to the limitations of paragraph (b). Where existing yards are completely replaced or are partially replaced as a unit or section of a master plan, the arrangement must meet the provisions of this order both as to track centers and clearances to structures and other facilities being built in connection with and as a part of such plan. Existing structures which are to remain and which do not provide the minimum clearance of paragraph (d) with respect to the proposed new tracks must be approved by the Commission for exemption from the terms of this order.
 - (II) Existing tracks having less vertical clearance than that specified in paragraph (d) may be maintained but the top of rail may not be raised without a corresponding raise of the overhead structure so as to maintain the existing available clearance.
 - (III) Existing tracks having less horizontal clearance between them than is herein specified for new construction or having less horizontal clearance to structures than is specified in paragraph (d) may be maintained but they may not be shifted horizontally to reduce either the existing track centers or the existing structural clearance.

7324. Overhead Clearances.

- (a) Generally.
 - (I) Overhead clearance generally shall be at least 22'6".
 - (II) Overhead clearances may be reduced to comply with paragraphs (d) and (e).
- (b) Inside enclosed buildings.
 - (I) Overhead clearance inside of enclosed buildings may be reduced to 18'0", provided that this clearance shall apply only to tracks terminating within the building or in the immediate plant area if said tracks should extend through the building.
 - (II) Overhead clearance of doors may be reduced to 17'0".
- (c) Tunnels.
 - (I) The minimum overhead clearance in tunnels shall be 23'0".
 - (II) The clearance may be decreased to the extent defined by the half-circumference of a circle having a radius of 8'0" and tangent to a horizontal line 23'0" above the top of rail at a point directly over the center line of track.
- (d) Through Bridges.
 - (I) The minimum overhead clearance in through bridges shall be 22'0".
 - (II) See paragraph 7323(d) and Diagram I.
- (e) All other structures.
 - (I) The minimum overhead clearance for all other structures shall be 22'6".
 - (II) Except as herein specifically provided, all other structures shall have at least the clearances illustrated by Diagram II.
 - (III) Overhead clearance for structures other than buildings may be reduced if approved by the Commission.
- (f) Wires.
 - (I) The Commission incorporates by reference the August 2001 edition of the National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers on August 1, 2001 and endorsed by the American National Standards Institute. No later amendments to or editions of

the National Electrical Safety Code are incorporated into these rules. Any person seeking information regarding how the incorporated material may be obtained or examined may contact the Chief of Utilities, Colorado Public Utilities Commission, Office Level 2, 1580 Logan Street, Denver, Colorado 80203. The material incorporated by reference may be examined at any state publications depository library.

(II) All wires in general shall have a minimum vertical clearance of not less than that specified by the National Electrical Safety Code.

(g) Engine houses and shop buildings are exempt from paragraphs (a) through (e) of this rule.

7325. Side Clearances.

(a) Generally.

(I) Side clearance generally shall be at least 8'6".

(II) Wherever practicable, all posts, pipes, warning signs, and other small obstructions should be given a side clearance of at least 10'0".

(III) Side clearance may be reduced to comply with provisions of subparagraph (c)(I).

(b) Platforms.

(I) The side clearances in this paragraph to apply to both main line and side tracks unless otherwise indicated.

(II) The minimum side clearance for platforms that are 8" or less above top of rail shall be 5'0".

(III) For platforms that are greater than 8" above top of rail and 4'0" or less above top of rail:

(A) The minimum side clearance for freight platforms on side tracks shall be 6'3" or 8'0".

(B) If side clearance is reduced to 6'3" on one side, a full clearance of 8'0" shall be maintained on the opposite side.

(C) No intermediated clearance is permitted, except compensation for curvature under paragraph (i).

(D) The minimum side clearance for freight platforms on main line tracks or passing tracks shall be 8'6".

- (IV) For platforms that are greater than 4'0" above top of rail:
 - (A) The minimum side clearance on side tracks shall be 8'0".
 - (B) The minimum side clearance on main line and passing tracks shall be 8'6".
- (V) Combination platforms. Platforms covered under subparagraph (b)(II) may be combined with platforms covered under either subparagraph (b)(III) or (b)(IV) provided that the lower platform presents a level surface to the face of the wall of the platform with which it is combined. No other combinations are permitted.
- (VI) The minimum side clearance for all other platforms shall be 8'0".
 - (A) This subparagraph (VI) applies to side tracks only.
 - (B) Retractable platforms, either sliding or hinged, which are attached to a permanent structure, must be so constructed that, when retracted or in a non-working position and firmly secured or anchored, the resulting clearance shall not be less than clearances mandated by rules 7321 through 7328.
- (c) The minimum side clearance for bridges and tunnels shall be 8'0".
 - (I) Lower section of bridges and structures of bridges.
 - (A) This subparagraph applies to those sections of bridges and structures of bridges that are at or below 4'0" above top of rail.
 - (B) Hand rails, water barrels and refuge platforms on bridges and trestles, water columns, oil columns, block signals, or cattle guards, or portions thereof, which are 4'0" or less above top of rail, may have clearances decreased to the extent defined by a line extending diagonally upward from a point level with the top of rail and 5'6" distant laterally from center line of track to a point 4'0" above top of rail and 8'0" distant laterally from center line of track.
 - (C) The clearances authorized in this subparagraph (I) are not permitted on through bridges where the work of train-men or yardmen require them to be upon the decks of such bridges for the purpose of coupling or uncoupling cars in the performance of switching service on a switching lead.
 - (II) Upper section of bridges and tunnels.

- (A) This subparagraph applies to those sections of bridges, structures of bridges, and tunnels that are greater than 16'0" (Diagram I) or 15'9" (Diagram II) above top of rail.
 - (B) Side clearances in tunnels and through bridges may be decreased to the extent permitted by paragraphs 7324(c) and (d).
- (d) The minimum side clearance for all of the following shall be 3'0":
- (I) switch boxes that project 4" or less above top of rail;
 - (II) switch operating mechanisms that are necessary for the control and operation of signals and that project 4" or less above top of rail; and
 - (III) interlockers that project 4" or less above top of rail.
- (e) The minimum side clearance for mail cranes and train order stands shall be 8'6", but only when such cranes or stands are not in an operative position.
- (f) The minimum side clearance for oil and water columns shall be 8'0", except as provided by subparagraph 7325(c)(I)(B).
- (g) Signals or switch stands.
- (I) The minimum side clearance for signals and switch stands shall be 6'0", if such signals or switch stands are 3'0" high or less above top of rail when located either between tracks or where it is not practicable to provide clearances as otherwise prescribed in rules 7321 through 7328.
 - (II) The minimum side clearance for signals or switch stands that are over 3'0" high shall be 8'3".
 - (III) Signals and signal poles higher than 3'0" above top of rail shall, for the portions thereof that are higher than 4'0" above top of rail and less than 16'0" above top of rail, keep such portions 8'6" from center of track. The portions thereof that are below 4'0" and over 16'0" shall not encroach on the limits illustrated by Diagram II.
- (h) Buildings and entrances.
- (I) The minimum side clearance inside buildings shall be 8'0".
 - (II) At elevations of 4'0" or less above top of rail inside of buildings, the minimum side clearance may be reduced on one side of the track to five 6'3", provided that 8'0" is maintained on the opposite side.

- (III) The minimum side clearance at building doors shall be 7'0".
- (IV) Side clearance at doors may be reduced to 5'9" on one side of track only, provided a full clearance of 8'3" is maintained on the opposite side.
- (i) Curved track. The horizontal clearances specified in rules 7320 through 7328 relate to tracks on tangent. On curved track the clearances shall be increased to allow for the over-hang and the tilting of a car 85 feet long, 60 feet between centers of trucks, and 14 feet high.
- (j) The minimum side clearance for material, merchandise, or other articles adjacent to tracks shall be 8'6".
- (k) Engine houses, shop buildings, and passenger platforms, at car floor height, are exempt from this rule.

7326. Track Clearances.

- (a) Generally. The minimum distance between the center lines of parallel standard gauge railroad tracks, which are used or proposed to be used for transporting freight cars, shall be 14'0", except as hereinafter prescribed.
- (b) Main and subsidiary tracks.
 - (I) The minimum distance between two parallel main tracks shall be 14'0".
 - (II) The minimum distance between main and passing tracks shall be 15'0".
 - (III) When another track is constructed adjacent to a passing track the clearance may be as prescribed in paragraph (a).
- (c) The minimum clearance between center lines of parallel team, house, or industry tracks shall be 13'0".
- (d) Ladder tracks.
 - (I) The minimum clearance between a ladder track and any parallel track, except another ladder track, shall be 17'0".
 - (II) The minimum clearance between a ladder track and another parallel ladder track shall be 20'0".
- (e) Existing tracks. Existing tracks may be extended at clearances prevailing prior to June 1, 1952.

7327. Public Roads, Highways, and Street Crossings.

- (a) Where a public road, highway, or street crosses above any railroad or street railroad track used or proposed to be used for transporting freight cars, minimum overhead and side clearances as set forth in this rule must be observed.
- (b) Overhead clearances.
 - (I) Where a railroad or street railroad crosses above any public road, highway or street, a minimum overhead clearance of 14'0" shall be provided above the surface of such road, highway, or street.
 - (II) Where a railroad or a street railroad crosses any highway of the State Highway System or any Federal Aid Highway, a minimum overhead clearance of 16'0" shall be provided above the surface of such highway or street.
- (c) Minimum opening clearances.
 - (I) Where a railroad or street railroad crosses above any public road, highway, or street on a single supporting span, a minimum width of 26'0" shall be provided for the opening for such public road, highway, or street.
 - (II) Where a railroad or street railroad crosses any highway of the State Highway System, or any Federal Aid Highway, on a single supporting span, a minimum width of 30'0" shall be provided for the opening of such highway or street.
 - (III) Where two or more supporting spans are used for such an opening, the minimum widths specified in subparagraphs (I) and (II) of this paragraph shall be provided for each of such supporting spans.

7328. General Conditions.

- (a) No restricted clearance set out in rules 7320 through 7328 shall apply to falsework, shoo-fly tracks, or other temporary emergency conditions caused by derailments, washouts, slides, or other unavoidable disasters.
- (b) No restricted clearances set out in rules 7320 through 7328 shall apply to ballast, track material, or construction material unloaded on and adjacent to tracks for contemplated use thereon or in the immediate vicinity, nor shall they apply to falsework or temporary construction necessary on any construction project.

7329. - 7339. [Reserved].

SYSTEM SAFETY PROGRAM STANDARDS FOR RAIL FIXED GUIDEWAY SYSTEMS

7340. Applicability.

Rules 7341 through 7349 apply to all transit agencies and rail fixed guideway systems operating within the State of Colorado, which systems are regulated by the Commission pursuant to Title 40, Article 18, C.R.S.

7341. Definitions.

The following definitions apply only in the context of rules 7341 through 7349:

- (a) "FTA" means the Federal Transit Administration, an agency of the United States Department of Transportation.
- (b) "System safety program plan" ("SSPP") means a document adopted by a transit agency that details its safety and security policies, objectives, responsibilities, and procedures.
- (c) "System safety program standard" ("SSPS") means a safety standard developed by the Commission in conformance with 49 C.F.R. Part 659. This standard defines the relationship between the Commission and the transit agency, guides the development of the SSPP, and details required components of the transit agency's SSPP.

7342. Incorporation by Reference.

References in these rules to 49 C.F.R. 659 are rules issued by the FTA and are hereby incorporated by reference in these rules. These rules may be found at 49 C.F.R. 659, revised as of October 1, 2002. References to 49 C.F.R. 659 do not include later amendments to, or editions of, 49 C.F.R. 659. References in these rules to standards of the American Public Transit Association are standards contained in its "Manual for the Development of Rail Transit System Safety Program Plans" published on August 20, 1991. References to standards of the American Public Transit Association do not include later amendments to, or editions of, this Manual. A copy of all material that has been incorporated by reference is maintained at the offices of the Colorado Public Utilities Commission, 1580 Logan Street, Office Level 2, Denver, Colorado 80203, and is available for inspection during normal business hours. Copies of the incorporated rules shall be provided at cost upon request. The Director of the Commission, 1580 Logan, Office Level 2, Denver, Colorado 80203, will provide information regarding how 49 C.F.R. 659 and the "Manual for the Development of Rail Transit System Safety Program Plans" may be obtained or examined. This incorporated material may be examined at any state publications depository library.

7343. System Safety Program Plan and Standard.

Every transit agency shall establish and maintain a system safety program plan that complies with the following system safety program standard:

- (a) Introduction. The Introduction section of the SSPP shall contain the following:
 - (I) A policy statement supporting the SSPP from the General Manager/Executive Director of the transit agency.
 - (II) A statement of the legal authority for the SSPP.
 - (III) A description of the purpose and scope of the SSPP.
 - (IV) Goals and Objectives of the SSPP.
 - (V) Specifications of policies in place to support implementation of the safety and security portions of the SSPP.
 - (VI) Identification of the procedures for updating/modifying the SSPP.
- (b) System Description. The system description section of the SSPP shall include the following:
 - (I) A brief history of the system(s) operated by the transit agency.
 - (II) The scope of service the transit agency provides.
 - (III) A description of the organizational structure of the transit agency, including organizational diagrams of the transit agency and the system safety unit that identify the lines of communications and define responsibilities within the organization.
 - (IV) A description of the physical plant including track, signal and communication system, vehicle type and operating characteristics, station facilities and maintenance facilities.
 - (V) A description of the process to modify the system. The system modification review and approval process shall include the following:
 - (A) The identification of the unit or group of the transit agency responsible for ensuring that the hazards associated with system expansions or modifications are included in the American Public Transit Association's ("APTA") Hazard Resolution Process.

- (B) Participation of operating and safety department personnel in the design review process for new equipment and system expansions or modifications.
 - (C) A sign-off and certification process for verification of operational readiness of new equipment and system expansions or modifications prior to entering revenue service.
 - (D) Documentation of responsibility and authority for approval of modification exceptions to established design criteria for new equipment and system expansions.
 - (E) Procurement procedures that preclude the introduction into the rail fixed guideway system of unauthorized hazardous materials and supplies, as well as defective or deficient equipment.
- (c) System Safety Department Activities of the Transit Agency. The system safety department activities of the transit agency section of the SSPP shall contain the following:
- (I) A description of the responsibilities of those in charge of managing the system safety process within the transit agency.
 - (II) A methodology for hazard identification and a resolution process. This process shall include the following:
 - (A) A description of the process used to identify and document hazards associated with operations, maintenance, and engineering.
 - (B) A description of the process by which the identified hazards are categorized, analyzed, and resolved for operations, maintenance, and engineering. This process shall include analysis of hazard severity, hazard probability, and use of APTA's Hazard Resolution Matrix.
 - (C) Documentation of all maintenance activities associated with inspection and testing of facilities/equipment with safety related characteristics.
 - (D) Written rules and procedures for the operation and maintenance of the rail fixed guideway system. These procedures shall be monitored, reviewed, and changed or revised as necessary to maximize system safety.

- (III) A procedure for accident/incident reporting and investigation. This procedure shall include the following:
 - (A) The criteria for determining which accidents/incidents require investigation and who is going to conduct the investigation.
 - (B) A description of the procedures used for conducting investigations which include the reporting of findings, conclusions, recommended corrective action and follow up to verify corrective action implementation.
- (IV) An employee safety program including training and certification, drug and alcohol testing, as well as information about drug and alcohol abuse. The employee certification and training program shall include a description of the training material and documentation of training test scores and dates.
- (V) A process for internal safety inspection of operation and maintenance facilities including audits and review of procedures.
- (VI) An emergency plan that includes planning updates, coordination and training. This plan shall include liaison with outside agencies and documentation of emergency drills, which may include assistance from these outside agencies.
- (VII) A program to identify and mitigate hazardous materials usage.
- (VIII) A contractor safety coordination program.
- (IX) A matrix of safety related tasks that shows responsibility.
- (d) Safety-related Activities of Other Departments of the Transit Agency. The safety-related activities of other departments of the transit agency section of the SSPP shall contain the following:
 - (I) A process of coordination of safety related tasks with other departments.
 - (II) A matrix of safety related tasks that shows department responsibility.

- (e) System Safety Program Plan Implementation and Maintenance. The system safety program plan implementation and maintenance section of the SSPP shall contain the following:
 - (I) Program schedule for implementation and maintenance of the SSPP which shall contain the following:
 - (A) Specified time intervals between SSPP reviews to determine whether or not the SSPP needs to be revised because of changed operating conditions and/or system modifications.
 - (B) A detailed description of the SSPP revision process including the identification of the persons responsible for initiating, developing, and approving changes to the SSPP.
 - (C) A statement that the Commission will be notified of all changes to the SSPP and supplied with a copy of all revised pages.
 - (II) A procedure for conducting internal safety audits including the review and modification of the SSPP based upon audit results. This procedure shall contain the following:
 - (A) The transit agency's schedule for conducting internal audits.
 - (B) A description of the auditing procedure including written checklists.
 - (C) Written documentation of the audit findings including an evaluation of the adequacy and effectiveness of the SSPP.
 - (D) An annual audit report, a copy of which must be submitted to the Commission by February 15 each year, which summarizes the results of the internal audits performed during the previous year, including a summary of required corrective actions taken, if any, and provision for follow up to ensure timely implementation and to determine effectiveness.
- (f) System Safety Program Plan Verification. The system safety program plan verification section of the SSPP shall contain the following:
 - (I) A process to ensure that the design and construction of new systems and/or extensions comply with the SSPP.
 - (II) A process to ensure compliance of existing operating systems with the SSPP.

- (III) A process to ensure that safety audits and review of the SSPP are conducted including consideration of occupational safety and health, fire protection, safety training, and safety information and reporting.
- (g) Management of Security Activities. The management of security activities section of the SSPP shall contain the following:
 - (I) A security program that shows the division of security responsibilities.
 - (II) A plan for proactive and reactive response.
- (h) Security Roles and Responsibilities. The security roles and responsibilities section of the SSPP shall contain the following:
 - (I) Security planning activities including proactive and reactive measures.
 - (II) Emergency response training, coordination and management both internal and external.
 - (III) A process for threat and vulnerability identification, assessment and resolution.
 - (IV) A process for the collection and analysis of security data.
 - (V) A matrix of security related tasks that shows responsibility.
- (i) Security-related Activities of Other Departments. The security-related activities of other departments section of the SSPP shall contain the following:
 - (I) Security related activities of other departments of the transit agency.
 - (II) A matrix of security related tasks that shows department responsibility.
- (j) Evaluation of Security Component of the SSPP. The evaluation of security component of the SSPP section of the SSPP shall contain the following:
 - (I) An internal review process.
 - (II) An external review process.

7344. Submittal and Review of the System Safety Program Plan.

- (a) On or before November 1 of the first year of operation for new systems, and each November 1 thereafter, each transit agency subject to these rules shall file its SSPP as an application for

Commission approval. The Commission shall give ten days notice of the filing of the application.

- (b) On or before December 20th of the year in which any applications for SSPP approval are filed, the Commission shall review each plan and shall approve those plans that comply with rules 7340 through 7349.
- (c) In the event that the Commission finds that the SSPP does not comply with rule 7343, the Commission shall specify the sections not in compliance, recommend appropriate modifications and/or additions necessary to bring the SSPP into compliance, and set a time frame for bringing the SSPP into compliance.
- (d) On or before January 1st of each year, the Commission shall certify to the FTA that each rail fixed guideway system subject to 49 C.F.R. Part 659 has a SSPP that conforms to the SSPPS set forth in rule 7343, or in the alternative, when the rail fixed guideway system will have the SSPP revised and in compliance. Upon receipt of the revised SSPP, the Commission will review the revised SSPP. If the Commission finds that the revised SSPP is in compliance with rule 7343, the Commission shall approve the SSPP and certify to the FTA that the SSPP is in compliance. If the Commission finds that the revised SSPP is not in compliance, the Commission shall set the application for hearing and enter an appropriate order resolving the matter.

7345. Investigation and Reporting Procedures for Accidents and Unacceptable Hazardous Conditions.

- (a) For purposes of this rule, the terms "accident" and "unacceptable hazardous condition" shall have the meanings given by 49 C.F.R. 659.5.
- (b) Reportable accidents and unacceptable hazardous conditions are those that are associated with the revenue service operation of rail transit vehicles and that meet or exceed the following thresholds:
 - (I) any accident resulting in a fatality or serious injury requiring immediate medical treatment away from the scene of the accident;
 - (II) any accident, collision, derailment, or fire that causes property damage in excess of \$100,000; or
 - (III) any unacceptable hazardous condition that has been identified by the transit agency and that could cause death or injury to passengers or employees if not immediately corrected.
- (c) Each transit agency shall notify the Commission's staff of reportable accidents and unacceptable hazardous conditions by

telephone or facsimile as soon as practicable, but not later than 24 hours from the time of occurrence or discovery.

- (d) Investigating accidents and unacceptable hazardous conditions.
 - (I) Each transit agency shall investigate reportable accidents and unacceptable hazardous conditions on behalf of the Commission's staff. The Commission's staff may also perform separate, independent investigations at its own discretion.
 - (II) When investigating an accident that resulted in a fatality or serious injury, as those terms are used in subparagraph (b)(I) of this rule, the transit agency shall give prior telephone or facsimile notice to the Commission's staff of the times that an accident investigation team will convene to conduct interviews, inspections, examinations, or tests to determine the cause of the accident.
 - (III) The transit agency shall investigate each unacceptable hazardous condition in compliance with the procedures contained in the transit agency's approved SSPP.
 - (IV) The transit agency shall document its investigation in a written report. The transit agency shall submit the report to the Commission on forms available from the Commission. The report shall be submitted within 45 days after the accident occurred or the unacceptable hazardous condition was discovered. Reports shall be submitted for all reportable accidents and unacceptable hazardous conditions. The Accident/Unacceptable Hazardous Condition Report shall contain the following:
 - (A) The name of the transit agency, and the name of the rail fixed guideway if different.
 - (B) An indication showing whether the report concerns an accident or whether it concerns an unacceptable hazardous condition.
 - (C) The following accident data, if applicable: the accident date and time; the accident's location; the type of accident; whether the accident occurred at a grade crossing; the number of fatalities; the number of injuries; and the estimated damage in dollars to the rail fixed guideway system or vehicles.
 - (D) The following unacceptable hazardous condition data, if applicable: the date the condition was identified; the location of the condition; the type of condition; the severity of the condition; the name of the person who identified the condition; the manner in which such person identified the condition; and the probability that the condition could cause

death or injury to passengers or employees if not immediately corrected. Ratings of Severity and Probability shall be given in accordance with checklist item No. 7 (Hazard Identification/Resolution Process), in the American Public Transit Association's "Manual for the Development of Rail Transit System Safety Program Plans" (see rule 7342).

- (E) A written description of the accident or unacceptable hazardous condition.
- (F) A diagrammatic sketch of the accident or unacceptable hazardous condition.
- (G) An explanation of the accident or unacceptable hazardous condition's most probable cause and any additional contributing causes.
- (H) A corrective action plan to prevent reoccurrence of the accident or to eliminate the unacceptable hazardous condition, if a determination is made that a corrective action plan is warranted, or a statement that a corrective action plan is not necessary.
- (I) A copy of the schedule for the implementation of the corrective action plan if a corrective action plan is warranted.
- (J) A signature and title of the person authorized to certify the accuracy of the report, together with the date the report is signed.
- (K) Copies of all photographs regarding the accident or unacceptable hazardous condition, or a statement that no such photographs exist.
- (L) A copy of any evidence that exists in the form of magnetic media, such as video or audio recordings of the event, or a statement that none exists.
- (M) Copies of any report from an outside agency that was involved in the investigation (e.g., local police investigation reports or coroners' reports), or a statement explaining why none is available. Copies of police reports must include, if available, information regarding whether a citation or notice of violation was issued and to whom it was issued.
- (N) A statement regarding whether drug and/or alcohol testing was performed on any transit agency employees or contractors in connection with the accident, and copies of the results of any such drug and/or alcohol tests or an affidavit reporting the results of any such testing.

- (O) Copies of any witness statements.
- (P) Copies of any other information, reports, or statements that would aid in the formation of a conclusion as to the cause of the accident.
- (V) The transit agency shall submit its investigation report, including its corrective action plan and implementation schedule, to the Rail/Transit Safety Section of the Commission. Such report shall be submitted under seal in compliance with the confidentiality provisions of the Commission's Rules Regulating Practice and Procedure. The Commission and its staff shall treat such reports as confidential pursuant to § 40-18-104, C.R.S.
- (VI) Commission staff may request that the Commission consider the transit agency's investigation and report thereon. The Commission may, after considering the transit agency's investigation and report, make such order as it deems necessary, including an order mandating a staff investigation. If a staff investigation is ordered, the Commission shall consider staff's report and issue an appropriate order. Nothing in this subparagraph shall preclude Commission staff from, in its discretion, performing its own investigation without an order of the Commission.
- (e) The threshold for the Commission's investigation of accidents or unacceptable hazardous conditions is the same as the transit agency's threshold for reporting accidents and unacceptable hazardous conditions pursuant to paragraph (b).

7346. Safety Reviews.

At least every three years, the Commission shall complete an on-site safety review of each transit agency's implementation of its SSPP and prepare and issue a report containing findings and recommendations resulting from that review, which at a minimum must include an analysis of the SSPP and a determination of whether it should be updated.

7347. Inspection of Records.

All transit agency records required by these rules shall be made available upon request to authorized personnel of the Commission.

7348. Safety Data Acquisition/Analysis.

The transit agency shall review and analyze all information and documentation required by these rules. The information or data collected shall be analyzed for potential safety impacts, and identified areas of concern shall be reported to appropriate personnel for investigation and resolution.

7349. Variances.

A transit agency may request a variance from these rules. A transit agency seeking such a variance shall comply with the variance request procedures contained in Commission's Rules Regulating Practice and Procedure.

7350. - 7399. [Reserved].

MISCELLANEOUS

EMPLOYMENT OF CLASS I RAILROAD PEACE OFFICERS

7400. Applicability.

- (a) Rules 7401 through 7404 are applicable to all Class I railroads operating in the State of Colorado that employ railroad peace officers.
- (b) Rules 7401 through 7404 are in addition to the Class I railroad's standard employment rules and regulations.
- (c) Rules 7401 through 7404 apply to railroad peace officers employed on or after January 30, 1988.

7401. Definitions.

The following definitions apply only in the context of rules 7401 through 7404:

- (a) "Railroad peace officer" means any person employed by a Class I railroad corporation operating within the State of Colorado to protect and investigate offenses against the railroad corporation.
- (b) "CLETA" means the Colorado Law Enforcement Training Academy.
- (c) "POST Board" means the Peace Officer Standards and Training Board.

7402. Minimum Requirements.

A Class I railroad shall not employ an individual as a railroad peace officer unless such individual meets all of the following requirements:

- (a) Meets any of the following criteria:
 - (I) has a minimum of four years education at an accredited college or university,
 - (II) has a minimum of two years experience in public law enforcement or as a railroad peace officer,

- (III) has any combination of education at an accredited college or university and law enforcement experience totaling four years,
 - (IV) has completed a basic training course at a training academy approved by CLETA, or
 - (V) has been certified by the POST Board, or holds a current equivalent certification from another state.
- (b) Has been fingerprinted by the railroad.
- (c) Has been investigated by the railroad, in local, state, and national files, to disclose any criminal record. (Pursuant to § 24-5-101, C.R.S., prior conviction of a felony or other offense involving moral turpitude shall not, in and of itself, preclude employment).

7403. Transfer to Colorado.

A railroad peace officer transferring into Colorado from another state shall meet the requirements of rule 7402 at the time of transfer.

7404. Variance.

A Class I railroad may request a variance from rules 7402 and/or 7403. A railroad making such a request shall comply with the variance provisions of the Commission's Rules Regulating Practice and Procedure. In addition to the standards set forth in the Commission's Rules Regulating Practice and Procedure, the Commission shall consider whether granting the variance will endanger the public peace, health, or safety.