

Decision No. R07-0140

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 06R-506R

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

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
ADOPTING RULES**

Mailed Date: February 20, 2007

I. STATEMENT

1. This proceeding was instituted when the Commission gave a Notice of Proposed Rulemaking (NPR) regarding its Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (CCR) 723-7 in Decision No. C06-1074, September 13, 2006.

2. The Commission repealed and reenacted its entire body of rules on April 1, 2006. Due to the complexity of such an undertaking, the need for additional improvements to these rules is necessary.

3. In Decision No. C06-1074, the Commission stated that the basis and purpose of the proposed amendments were to simplify definitions, add rules that were inadvertently omitted during the preceding rulemaking, remove a requirement that is burdensome to applicants, request additional contact information on applications, and provide technical corrections to a few of the current railroad rules.

4. A hearing on the proposed rules was set for November 7, 2006 at 9:00 a.m. in a Commission hearing room in Denver, Colorado. Prior to the hearing written comments were filed by the BNSF Railway Company (BNSF), the Regional Transportation District (RTD), the Colorado Department of Transportation (CDOT), and the Union Pacific Railroad Company (UPRR).

5. At the assigned place and time the undersigned Administrative Law Judge called the matter for hearing. Oral comments were given by Staff of the Commission, BNSF, RTD, and UPRR. In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record of this proceeding along with a written recommended decision.

II. DISCUSSION

6. The statutory authority for the proposed rules is found in §§ 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.

7. Current rules incorporate the National Electrical Safety Code in two separate places. These proposed rules would reduce the incorporations by reference in this regard to one instance, namely, to rule 7008. This change will be adopted.

8. The current rules have definitions for highway-railroad and railroad-highway crossings. The only difference in these two definitions is whether the highway preexisted the railroad. Highway-rail crossing is the more standard term of use. Rule 7201 is proposed to be modified to remove the two existing definitions and create a new definition for highway-rail crossing. Appropriate changes are made throughout the rules to remove highway-railroad and railroad-highway references, and to replace them with the new term highway-rail. These changes will be adopted.

9. Proposed Rule 7203 adds categories of persons or entities that may apply for railroad crossings and utility crossings. These categories do not exist in the current rules. Several commenters suggested that the rule as proposed be amended by adding the word “only” after the word “may” and before the phrase “be made” in each of subsections (a) – (f). No one opposed this suggestion and it will be adopted.¹

10. Rule 7204 is proposed to be modified to add additional information originally excluded, rearrange the listed order of requirements, and correct technical specifications of required information for interconnection and preemption at a highway traffic signal. These proposals will be adopted.

11. Rule 7208 is proposed to be modified to include certain notice requirements, which were inadvertently omitted in the preceding rulemaking, for applications seeking authority to close a highway-rail crossing. Several commenters noted that the proposals lack detail as to when the notice is to be posted or for how long. At hearing, staff proposed additional language to address this shortcoming, and the proposal, as amended at hearing, will be adopted.

12. Finally, it was proposed in the NOPR that all rules concerning applications require facsimile number and e-mail address information for the applicant representative. This proposal will be adopted.

13. CDOT, in its written comment filed prior to hearing, requested that Rule 7211 (a) be modified in this proceeding. The current rule requires that the roadway authority bear the cost of materials to maintain, repair, or replace the crossing surface. CDOT seeks to shift this cost to the railroad corporation, rail fixed guideway, transit agency, or owner of the track. The currently

¹ Should an entity other than one authorized to file an application in these subsections seek a change in the level of crossing protection, a complaint would be the proper avenue.

existing allocation was determined in the recent recodification of these rules that went into effect April 1, 2006. CDOT offers no reasoning or rationale for changing what was determined in the last rulemaking. In Decision No. C06-1074 opening this docket, the Commission indicated that “The instant rulemaking should not be construed as an opportunity to reopen contentious issues that have already been resolved in preceding rulemakings.” The allocation that CDOT seeks to change was previously resolved and no change to Rule 7211 (a) will be made. Even had the Commission not precluded such a change, CDOT put forth no evidence that would support its proposal.

14. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.

III. ORDER

A. The Commission Orders That:

1. The changes to the Commission’s Rules Regulating Railroads, Rail Fixed Guideways, Transportation By Rail, and Rail Crossings, 4 Code of Colorado Regulations 723-7, set forth in Attachment A to this decision, are hereby 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.

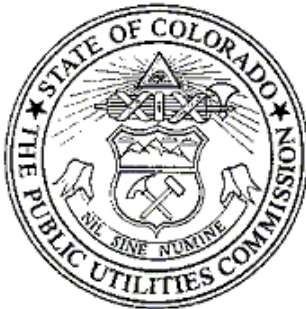
3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

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

KEN F. KIRKPATRICK

Administrative Law Judge

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 standard 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:
 - (l) 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) "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 ~~highway-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 7343, or system security 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. Incorporation by Reference.

The Commission incorporates by reference the National Electrical Safety Code, C2-2002 edition, published by the Institute of Electrical and Electronics Engineers 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 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.

7009. – 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 tele~~phone number, facsimile number, and e-mail address 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 telephone number~~, facsimile number, and e-mail address of ~~the 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. – 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~~ 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~~ 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~~ 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 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~~
 - ~~(III) the point location 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; or~~
 - ~~(IV) 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.~~
- (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.~~
- ~~(hi)~~ "Reasonably adequate facility," except as may be otherwise demonstrated, 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 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-highway-rail~~ crossing where the highway currently exists may only 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-rail~~road~~ crossing where the tracks or other facilities currently exist may only be made by the appropriate municipality, county, state agency, or other governmental entity.
- (c) An application for authority to alter or abolish a ~~highway-rail railroad-highway~~ crossing ~~or a highway-railroad crossing~~ may only 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 only be made by a railroad corporation, railroad, rail fixed guideway, municipality, county, state agency, or other governmental entity.

- (e) An application for authority to construct, alter or abolish a railroad crossing may only be made by the appropriate railroad corporation, railroad, or rail fixed guideway.
- (f) An application for authority to construct, alter or abolish a utility crossing may only be made by the appropriate public utility, railroad, rail fixed guideway, or other person, firm, or corporation that will own the tracks or other facilities proposed to be constructed.

7204. Application Contents — Generally.

- (a) For purposes of this rule only, the Commission incorporates by reference Section 8A.01 of the 2003 Edition of the Manual on Uniform Traffic Control Devices for Streets and Highways and the Colorado Supplement to the Federal Manual on Uniform Traffic Control Devices 2003 as adopted by the Transportation Commission of Colorado on September 14, 2004. No later amendments to or editions of the Manual on Uniform Traffic Control Devices 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.
- (ab) Any engineering schematics, plans, drawings, or maps submitted pursuant to this rule shall be submitted on pages no larger than 11" x 17".
- (bc) 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 ~~highway-rail railroad-highway~~ crossing, or 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 organized 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, telephone number, facsimile number, and e-mail address of the applicant's representative, ~~if any,~~ to whom all inquiries concerning the application may be made;

- (V) the U.S. Department of Transportation National Inventory Number of the crossing, the railroad or rail fixed guideway milepost, and the roadway milepost;
- (VI) a detailed statement as to the nature of and need for the construction, alteration, abolition, installation, or modification for which approval is sought;
- (VII) 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) 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~~
- ~~(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 highway-railway-highway grade crossing warning devices as published in current revisions of the Manual on Uniform Traffic Control Devices and/or American Railway Engineering and Maintenance-of-Way Association's ~~(AREMA)~~ 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 highway-rail~~railroad-highway~~ crossing or railroad crossing;
- (XIV) the schematic diagram of the crossing warning devices (commonly known as the "front sheet");
- (XV) in the case of an application to install or modify interconnection and preemption at a highway traffic signal:
 - (A) the traffic signal timings (e.g. signal cycle length, yellow change, red clearance) and traffic signal phasing diagram including preemption sequence, if any;
 - (B) a statement of the type of preemption (e.g. simultaneous, advance)
 - (C) an analysis of the following timings as defined in Section 8A.01 of the Manual on Uniform Traffic Control Devices:
 - (i) the maximum highway traffic signal preemption time;
 - (ii) the right-of-way transfer time;
 - (iii) the queue clearance time;
 - (iv) the separation time;
 - (v) the minimum warning time – through train movements;
 - (vi) the advance preemption time, if applicable;
 - (vii) the exit gate clearance time (required for four-quadrant gate systems only) 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); and
 - (viii) any additional timings the Commission may request.
- (XVI) the names and mailing addresses of all persons, including adjacent property owners, public utilities, ~~and~~ municipalities, counties, and state 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) in the case of an application to construct, alter, or abolish a railroad crossing:

(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

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

~~(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; a statement that the applicant agrees to respond to all questions propounded by the Commission or its Staff concerning the application;-

(XX) a statement indicating the town or city, and any alternate town or city, where the applicant prefers any hearings to be held; and

(XXI) a sworn statement verifying and attesting to the facts stated in the application as described in rule 1403(a).

(ed) If the applicant adopts 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 (bc)(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 highway-rail~~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(bc), 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 ~~highway-rail~~~~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 ~~highway-railroad~~ grade-separation project, which application meets the criteria of rule 7206, the Commission ~~shall~~~~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 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 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 in addition to the information required by rule 1206(b):
- (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 20 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 10 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.

(c) Where the application is for authority to close a highway-rail crossing, the applicant shall give notice by posting notice of the closing on both sides of the trackage of the crossing proposed to be closed. The notice shall be posted at the crossing 15 days after the application is filed with the Commission. The Commission shall mail the Notice of Application Filed 15 days after receiving the application. The notice is to be posted at the crossing for a period of 30 days. The applicant shall file a written affidavit stating the date the notice was posted at the crossing and shall attach a copy of the notice posted at the crossing to the affidavit.

(I) The notice shall contain, at a minimum, the following information:

(A) The title: Notice of Proposed Closing of This Crossing;

(B) A statement that an application to close the crossing has been filed with the Colorado Public Utilities Commission;

(C) The current correct address of the Commission;

(D) The date the closing of the crossing is requested;

(E) The U.S. DOT National Crossing Inventory number of the crossing;

(F) A sufficient description of the crossing so as to identify it, or the Docket Number assigned to the application;

(G) A statement that parties have the right to file written interventions or objections with the Commission at the address stated on the notice; and

(H) A statement of the last date for filing interventions or objections.

(II) The notice must meet the following requirements:

(A) The posted notice to close the crossing shall be printed on a substantial placard, no less than 18" x 24";

(B) The title: Notice of Proposed Closing of This Crossing shall be printed in letters no less than one inch in height;

(C) All other information printed on the notice shall be in letters no smaller than one half inch in height;

(D) The background of the notices shall be white; and

(E) The letters of the notice shall be black.

(III) The notices shall be posted so as to be clearly visible from a distance of no less than 100 feet from the notice, and shall not be posted so as to obstruct the vision of motorists or trains at the crossing.

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 the grade crossing surface from the outside end of the tie to the outside end of the tie at single track crossings. The roadway authority shall bear the cost of materials to maintain, repair, or replace the crossing surface. The railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track shall bear the cost of installation, maintenance, repair, or replacement of the crossing surface. 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 highway-~~road-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 ~~highway-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 as outlined in rule 7301(c). 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. 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:
 - (l) This paragraph (c) shall not apply to existing buildings, permanent structures, and natural obstructions other than trees and vegetation.

- (II) This paragraph (c) shall not apply to rolling stock or materials temporarily on the right-of-way in connection with switching movements or with the loading or unloading of shipments.
- (III) This paragraph (c) shall not apply to railroad crossings, ~~railroad-highway crossings~~, and highway-railroad crossings, which are protected by automatic signals and gates. The exception provided by this subparagraph (III) shall only be applicable if such automatic signals and gates are kept free and clear of all obstructions interfering with either:
 - (A) the operation of the automatic signals and gates; or
 - (B) the ability of drivers to detect the automatic signals and gates.
- (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. 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 ~~devices~~ 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 railroads and railroad corporations which operate on standard gauge railroad track.

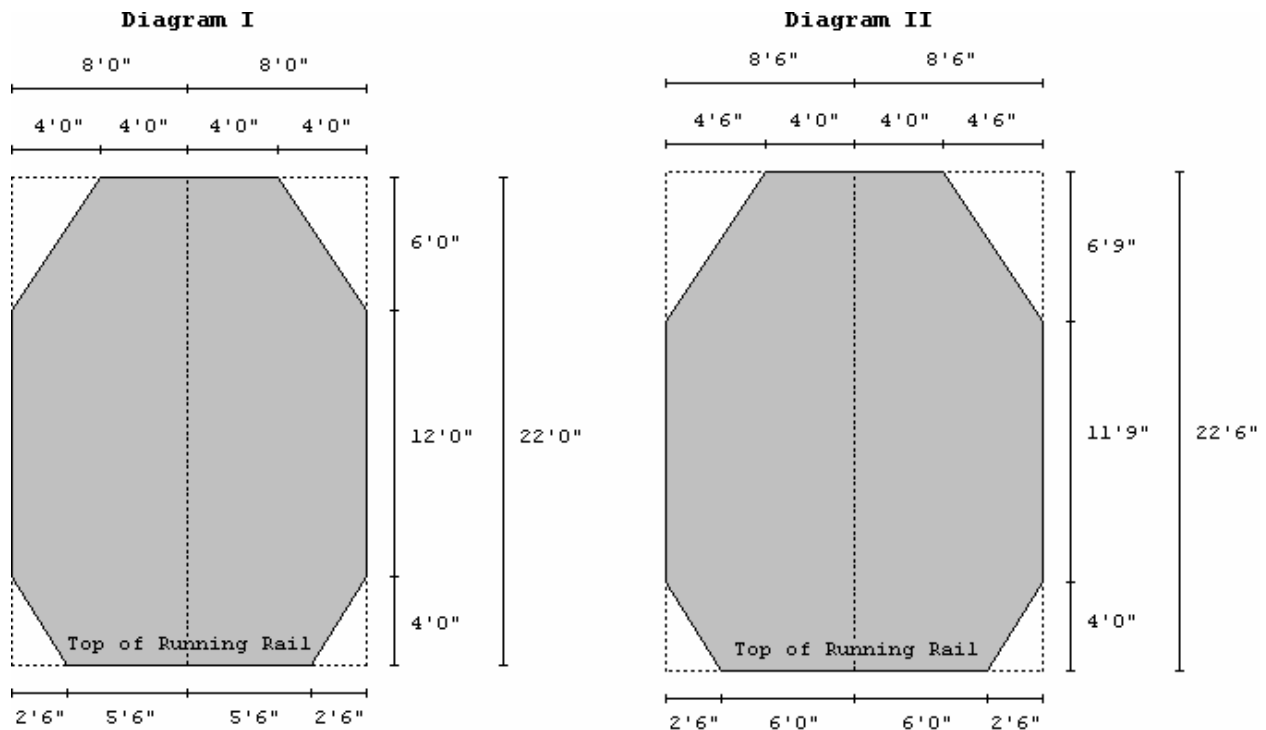
7321. Definitions.

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.~~ All wires in general shall have a minimum vertical clearance of not less than that specified by the National Electrical Safety Code, as incorporated by reference in rule 7008.

~~(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 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 built prior to June 1, 1952 may be extended at the railroad company clearances prevailing at the time the tracks were built ~~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].

* * *

[Rules 7340 – 7399 do not constitute a portion of these proposed rules.]