

# 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, 40-6-108(2), 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 and/or public pathways 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 rail fixed guideway systems shall be limited to matters concerning the following rules:
  - (I) 7001 – 7003;
  - (II) 7006 - 7007;
  - (III) 7200 – 7213;
  - (IV) 7301; and
  - (V) 7340 – 7354.
- (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) "Road authority" means any municipality, county, state agency, federal agency, or other governmental or quasi-governmental entity that owns and/or maintains the public highway at the highway-rail crossing or the public pathway at the pathway crossing.
- (g) "Transit agency" means "transit agency," as defined by § 40-18-101(6), C.R.S.

**7002. Applications.**

- (a) Commission action may be sought regarding any of the following matters through the filing of an appropriate application:
  - (I) for a certificate of public convenience and necessity, as provided in rule 7101;
  - (II) to amend a certificate of public convenience and necessity, or to change, extend, curtail, abandon, or discontinue any service, as provided in rule 7102;
  - (III) 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;
  - (IV) for authority to construct, alter, or abolish a utility crossing, or a highway-rail or pathway crossing; or for authority to install or modify crossing warning devices, as provided in rule 7204;
  - (V) for authority to allocate costs for highway-rail grade separations, as provided in rule 7205;
  - (VI) for approval of a transit agency's system safety program plan, as provided in rule 7343, system security plan, as provided in rule 7344, or annual report, as provided in rule 7349; or
  - (VII) for any other matter provided by statute or rule but not specifically described in this rule.
- (b) In addition to the requirements of specific rules, all applications shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attachments:
  - (I) the name and mailing address of the applicant;
  - (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, titles and addresses of all general and limited partners;
- (IV) the name, address, telephone number, and e-mail address of the applicant's representative to whom all inquiries concerning the application may be made;
- (V) a statement that the applicant agrees to respond to all questions propounded by the Commission or its staff concerning the application;
- (VI) a statement indicating the town or city, and any alternative town or city, where the applicant prefers any hearings to be held;
- (VII) a statement that the applicant understands that, if any portion of the application is found to be false or to contain material misrepresentations, any authorities granted pursuant to the application may be revoked upon Commission decision;
- (VIII) acknowledgment that by signing the application, the applicant understands that:
  - (A) the filing of the application does not by itself constitute approval of the application for the requested action;
  - (B) if the application is granted, the applicant shall not commence the requested action until the applicant complies with applicable Commission rules and any pre-construction conditions established by Commission decision granting the application;
  - (C) if a hearing is held, the applicant must present evidence at the hearing to establish its qualifications to undertake, and its right to undertake, the requested action; and
  - (D) in lieu of the statements contained in subparagraphs (b)(VIII)(A) through (C) of this paragraph, an applicant may include a statement that it has read, and agrees to abide by, the provisions of subparagraphs (b)(VIII)(A) through (C) of this paragraph.
- (IX) An attestation which is made under penalty of perjury; which is signed by an officer, a partner, an owner, an employee of, an agent for, or an attorney for the applicant, as appropriate, who is authorized to act on behalf of the applicant; and which states that the contents of the application are true, accurate, and correct. The application shall contain the title and the complete address of the affiant.

### **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; or
- (b) for a declaratory order, as provided in paragraph 1304(i).

**7004. - 7005. [Reserved].**

**7006. Annual Report.**

- (a) Each railroad, railroad corporation, rail fixed guideway, transit agency 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, rail fixed guideway, transit agency 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, rail fixed guideway, transit agency 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.**

- (a) The Commission incorporates by reference the Sections 1A.13, 4L.03, and 8 of the 2009 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 2009 (collectively MUTCD) as adopted by the Transportation Commission of Colorado on December 15, 2011 and updated February 26, 2016. No later amendments to or editions of the MUTCD are incorporated into these rules. The Commission also incorporates by reference Chapter 1 (Highway Functions) of the 2011 edition of the American Association of State Highway and Transportation Officials A Policy on Geometric Design of Highways and Streets (AASHTO Green Book). No later amendments to or editions of the AASHTO Green Book are incorporated into these rules. The Commission also incorporates by reference the National Electrical Safety Code, 2012 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.

- (b) The Commission incorporates by reference the Colorado Department of Transportation Staff Bridge Design Manual adopted October 1987 with all updates up to and including the effective date of January 6, 2017 published by the Colorado Department of Transportation Staff Bridge Section (CDOT Bridge Design Manual) for purposes of the design of the theoretical structure defined in rule 7201(oo) for grade separation cost allocation only. No later amendments to or editions of the CDOT Bridge Design Manual are incorporated into these rules.
- (c) 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, 1560 Broadway, Suite 250, Denver, Colorado 80202. 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 trade name under which the applicant's operations are being or will be conducted;
- (b) if the applicant is a corporation: the names of its directors and officers; the name and address of its Commission designated 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.
- (c) If the applicant is a limited liability company: a statement of that fact; 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.
- (d) If the applicant is a partnership: a copy of the partnership agreement establishing the partnership and all subsequent amendments;
  - (e) 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;
  - (f) 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;
  - (g) 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;
  - (h) statements of income and retained earnings, if available, for the same time period as the balance sheet referred to in paragraph (g);
  - (i) 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;
  - (j) a statement of the facts (not conclusory statements) relied upon by the applicant to show that the public safety, convenience and necessity require the granting of the application; and
  - (k) 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.

**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 by paragraph 7002(b) and rule 7101.
- (c) Applications to curtail or abandon any service and applications to in any manner restrict a certificate of public convenience and necessity must include all of the information in paragraph 7002(b) and the following information:
  - (I) the requested effective date for the curtailment, abandonment, or restriction;
  - (II) 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; and
  - (III) in addition to the notice requirements of the Rules Regulating Practice and Procedure, the applicant shall prepare a written notice as provided in subparagraph (IV) 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.
  - (IV) The notice of subparagraph (III) 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; and
    - (E) the Commission's full mailing address.
  - (V) 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 (III) and (IV) 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 all of the information in paragraph 7002(b) and the following:
  - (I) each applicant's name, trade name if applicable, physical address, and mailing address;
  - (II) a statement detailing the purpose of the application; and
  - (III) 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 (III)(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.
  - (IV) 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;
  - (V) any agreement or contract and all documents pertaining to the transfer, encumbrance, or merger;
  - (VI) 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; and
  - (VII) a comparison of the kinds and costs of service rendered before and after the proposed transaction.
- (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; and
  - (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 7213 apply to railroads, railroad corporations, rail fixed guideways, rail fixed guideway systems and transit agencies.
- (b) Rules 7201 through 7213 apply to all road authorities that own and/or maintain public highways at highway-rail crossings or public pathways at pathway crossings.

### **7201. Definitions.**

The following definitions apply only in the context of rules 7200 through 7213, 7301, and 7327.

- (a) "Accident report" means the U.S. Department of Transportation Highway-Rail Grade Crossing Accident/Incident Report containing information about accidents/incidents that have occurred at a highway-rail or pathway grade crossing available from the Federal Railroad Administration Office of Safety Analysis.
- (b) "Active warning" means traffic control devices and equipment that are activated upon the detected presence of a train including but not limited to, flashing light signals, with or without warning gates, traffic signals, queue cutter signals, wayside horns, and/or blank-out signals that are used to regulate, warn and inform highway or pathway users of the approach or presence of rail traffic at grade crossings.

- (c) “Advance preemption” means “advance preemption” as that term is defined in Section 1A.13 of the MUTCD.
- (d) “Advance preemption time” means the period of time that is the difference between the required maximum highway traffic signal preemption time and the activation of the railroad or rail fixed guideway system active warning devices.
- (e) “Advance warning sign” means a MUTCD W10-1, W10-2, W10-3, and/or W10-4 sign that gives notice to highway and/or pathway users of the presence of an upcoming crossing.
- (f) "ADT" means average daily traffic.
- (g) "Arterial" means "arterial," as that term is used in Chapter 1 (Highway Functions) of the AASHTO Green Book.
- (h) “Buffer time” means a discretionary time that may be provided in the total warning time to accommodate for minor variations in train handling, track circuit variability and allowable tolerance within locomotive speed measurement apparatus.
- (i) “Clear storage distance” means “clear storage distance” as that term is defined in Section 1A.13 of the MUTCD.
- (j) “Clearance time” means additional time included in the total warning time to account for crossing site specific needs including, but not limited to, widths at multiple track crossings, additional gate delay time, and additional time for simultaneous preemption.
- (k) "Collector" means "collector," as that term is used in Chapter 1 (Highway Functions) of the AASHTO Green Book.
- (l) “Crossing” means either a highway-rail crossing or a pathway crossing.
- (m) “Crossing safety diagnostic” means a gathering of safety and traffic professionals at an existing or proposed highway-rail or pathway crossing including Commission staff and representatives from the road authority and railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track to evaluate the highway-rail crossing or pathway crossing conditions or proposed conditions and determine the appropriate safety mitigation measures for the existing or proposed highway-rail or pathway crossing.
- (n) “Cycle length” means “cycle length” as that term is defined in Section 1A.13 of the MUTCD.
- (o) “Dynamic envelope” means “dynamic envelope” as that term is defined in Section 1A.13 of the MUTCD.
- (p) “Dynamic exit gate operating mode” means “dynamic exit gate operating mode” as that term is defined in Section 1A.13 of the MUTCD.
- (q) “Equipment response time” means the time necessary for the active warning equipment to respond to detection of a train.

- (r) "Exit gate clearance time" means "exit gate clearance time" as that term is defined in Section 1A.13 of the MUTCD.
- (s) "Exposure factor" means the ADT multiplied by the average daily number of train movements.
- (t) "Freeway" means "interstate highway," "other freeway," and "expressway" as those terms are used in Chapter 1 (Highway Functions) of the AASHTO Green Book.
- (u) "Highway" means any roadway classified as an arterial, collector, freeway or local road.
- (v) "Highway-rail crossing" means:
  - (I) the point at which any public highway may be constructed across the tracks or other facilities of any railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, or transit agency at, above, or below grade; or
  - (II) the point at which the tracks or other facilities of any railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, or transit agency may be constructed across any public highway at, above, or below grade; or
  - (III) the point at which any public highway may be constructed across private tracks, over which any railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, or transit agency may operate, at, above, or below grade; or
  - (IV) the point at which private tracks, over which any railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, or transit agency may operate, may be constructed across any public highway at, above, or below grade.
- (w) "Local road" means "local road" as that term is used in Chapter 1 (Highway Functions) of the 2011 edition of the AASHTO Green Book.
- (x) "Maximum highway traffic signal preemption time" means "maximum highway traffic signal preemption time" as that term is defined in Section 1A.13 of the MUTCD.
- (y) "Minimum track clearance distance" means "minimum track clearance distance" as that term is defined in Section 1A.13 of the MUTCD.
- (z) "Minimum warning time" means the least amount of time active warning devices shall operate prior to the arrival of rail traffic at a crossing, which shall be a minimum of 20 seconds.
- (aa) "National Inventory Form" means the U.S. Department of Transportation Crossing Inventory Information form containing specific crossing information available from the Federal Railroad Administration Office of Safety Analysis.
- (bb) "National Inventory Number" means the U.S. Department of Transportation six digit and one letter crossing identification number assigned to a highway-rail or pathway crossing.

- (cc) “Passive warning” means traffic control devices including signs and/or markings that are used to inform, regulate and warn highway or pathway users of the presence of a highway-rail or pathway crossing and the requirement to take appropriate action at the crossing.
- (dd) “Pathway” means a general term denoting a public way for purposes of travel by authorized users outside the traveled way and physically separated from a highway by an open space or barrier, either within the highway right-of-way or within an independent alignment. Pathways are intended for use by non-vehicular traffic including pedestrians, bicyclists, and others and use can be shared by more than one type of authorized user. Pathways include shared-use paths, but do not include sidewalks contiguous with, or separated but adjacent to and within 25 feet of highway-rail crossings.
- (ee) "Pathway crossing" means:
  - (I) the point as which any public pathway may be constructed across the tracks or other facilities of any railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, or transit agency at, above, or below grade; or
  - (II) the point at which the tracks or other facilities of any railroad, railroad corporation, railroad, rail fixed guideway, rail fixed guideway system, or transit agency may be constructed across any public pathway at, above, or below grade; or
  - (III) the point at which any public pathway may be constructed across private tracks, over which any railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, or transit agency may operate, at, above, or below grade; or
  - (IV) the point at which private tracks, over which any railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, or transit agency may operate, may be constructed across any public pathway at, above, or below grade.
- (ff) “Pavement marking” means a retroreflectorized white marking in advance of an at-grade crossing that consists of an X, the letters RR as shown in Figure 8B-7 of the MUTCD.
- (gg) "Private crossing" means a highway-rail or pathway crossing where the highway or pathway on either side or both sides of the crossing is privately owned, and/or maintained, is intended for use by the owner or by the owner’s licenses and invitees, and is not permitted to be used by the public.
- (hh) "Public crossing" means a highway-rail or pathway crossing where the highway or pathway on both sides of the crossing is under the jurisdiction of and/or maintained by a road authority and open to public travel.
- (ii) "Reasonably adequate facility," except as may be otherwise demonstrated, means the bridge structure designed for purposes of grade separation cost allocation that is designed to include:
  - (I) for the highway facility:
    - (A) a rural collector roadway that allows for two 12-foot travel lanes with two 5-foot shoulders; or

- (B) a rural arterial roadway that allows for two 12-foot travel lanes with two 8-foot shoulders and an 8-foot pedestrian-bikeway; or
  - (C) an urban collector roadway that allows for two 12-foot travel lanes with two 10-foot parking lanes and an 8-foot pedestrian-bikeway; or
  - (D) 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; and
  - (E) collector roadways shall be designed for a 35 mile per hour design speed and arterial roadways shall be designed for a 45 mile per hour design speed;
- (II) for the railroad facility:
- (A) a single main line track that allows for one mainline track, one passing track on 15-foot centers and a 12-foot maintenance road under bridge structures on one side, or a 4-foot walkway on bridge structures on one side; or
  - (B) a double mainline track that allows for two mainline tracks and one passing track on 15-foot centers and a 12-foot maintenance road under bridge structures on one side, or a 4-foot walkway on bridge structures on one side; or
  - (C) railroad yards or terminals that allow for currently existing tracks and service facilities.
- (jj) “Right-of-way transfer time” means “right-of-way transfer time” as that term is defined in Section 1A.13 of the MUTCD.
- (kk) “Rural” means “rural” as that term is used in Chapter 1 (Highway Functions) of the AASHTO Green Book.
- (ll) “Separation time” means “separation time” as that term is defined in Section 1A.13 of the MUTCD.
- (mm) “Sidewalk” means “sidewalk” as that term is defined in §42-1-102(90), C.R.S.
- (nn) “Simultaneous preemption” means “simultaneous preemption” as that term is defined in Section 1A.13 of the MUTCD.
- (oo) “Theoretical structure” means the structure and approaches required to transition to the reasonably adequate facility in accordance with the design standards outlined in the CDOT Bridge Design Manual and shall be designed to include the following requirements:
- (I) without consideration to the presence of other adjacent highway or waterway facilities located within the limits of the grade separation project that would also require a bridge structure;
  - (II) using the same selected structure and abutment type as the actual proposed bridge structure;

- (III) along the same alignment as the actual proposed bridge structure;
  - (IV) to the same minimum horizontal and vertical clearances as the actual proposed bridge structure; and
  - (V) to the CDOT Bridge Design Manual preliminary plan stage (30 percent design stage including construction design and phasing costs).
- (pp) "Timed exit gate operating mode" means "timed exit gate operating mode" as that term is defined in Section 1A.13 of the MUTCD.
- (qq) "Total warning time" means the sum of the minimum time, clearance time, and buffer time.
- (rr) "Urban" means "urban" as that term is used in Chapter 1 (Highway Functions) of the AASHTO Green Book.
- (ss) "Utility crossing" means the point at which the tracks or facilities of any public utility may be constructed across the facilities of any other public utility at, above, or below grade, or at the same or different levels.

**7202. [Reserved].**

**7203. Who May Apply.**

- (a) An application for authority to construct a crossing where the highway or pathway currently exists may be made by the railroad, railroad corporation, rail fixed guideway, transit agency, or other person, firm, or corporation that will own the tracks proposed to be constructed.
- (b) An application for authority to construct a crossing where the tracks or other facilities currently exist may be made by the appropriate road authority that will own the highway or pathway.
- (c) An application for authority to alter or abolish a crossing may be made by the appropriate railroad, railroad corporation, rail fixed guideway, or transit agency that owns the tracks at the crossing, or road authority that owns the highway or pathway at the crossing.
- (d) An application for authority to install or modify active warning or passive warning devices may be made by a railroad, railroad corporation, rail fixed guideway, or transit agency that owns the tracks at the crossing, or road authority that owns the highway or pathway. The Colorado Department of Transportation may make application for Federal Section 130 crossing projects in conjunction with, or on behalf of the road authority.
- (e) An application for authority to construct, alter or abolish a utility crossing may be made by the appropriate public utility, railroad, railroad corporation, rail fixed guideway, transit agency or other person, firm, or corporation that will own or owns the tracks or other facilities proposed to be constructed. Applications for utility crossings can be made if the public utility and railroad, railroad corporation, rail fixed guideway, transit agency or other person, firm or corporation that will own or owns the tracks or other facilities proposed to be constructed are unable to reach agreement on the terms and conditions of a negotiated agreement.



- (f) An application that includes a request for authority to install temporary safety measures as part of an application to install or modify active warning or passive warning devices may be made by a railroad, railroad corporation, rail fixed guideway, transit agency, or road authority. The Colorado Department of Transportation may make application that includes a request for temporary safety measures for Federal Section 130 crossing projects in conjunction with, or on behalf of the road authority.

**7204. Application Contents.**

- (a) An application may be filed for final approval of plans/drawings or for preliminary approval of conceptual level design plans/drawings (plans at any level other than final design). If a request for preliminary approval is included, an additional filing of final plans and estimates for final Commission approval will be required in the same proceeding. 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 crossing, a utility crossing, or to install or modify active or passive crossing warning devices, the application shall include, in the following order and specifically identified, the information, as applicable to the specific type of application, in the application or in appropriately identified attachments.
- (l) All crossing applications shall contain the following information:
- (A) the contact person name, mailing address and e-mail address to whom the Commission notice is to be sent:
    - (i) for each railroad, railroad corporation, rail fixed guideway, or transit agency that owns the tracks affected by an application filed by a road authority;
    - (ii) for each road authority that owns the roadway affected by the application filed by a railroad, railroad corporation, rail fixed guideway, transit agency, or other person, firm, or corporation that will own the tracks affected by the application;
  - (B) the railroad and/or rail fixed guideway line name and milepost number where the crossing that is subject of the application is located;
  - (C) the National Inventory Number and the National Inventory Form for an existing crossing, or a statement that no National Inventory Number and/or National Inventory Form exists for a new crossing;
  - (D) all accident reports for the crossing and/or a listing of all accidents for any rail fixed guideway tracks through the crossing, or a statement that no accident reports and/or listing of rail fixed guideway accidents exist for the crossing;
  - (E) a statement of the date that the required crossing safety diagnostic occurred, or a copy of written correspondence from Commission staff that a crossing safety diagnostic was not required;
  - (F) a statement of:

- (i) the existing number and character of trains (e.g., through movements, switching movements) passing through the crossing each day if the National Inventory Form has not been updated within three years from the date of the filing of the application, or the existing number, character, and timetable speed of trains as shown on the National Inventory Form if the form has been updated within three years from the date of the filing of the application;
  - (ii) the five-year projection of increases or decreases of the number and character of trains using the crossing; and
  - (iii) the maximum timetable speed of trains using the crossing.
- (G) A detailed statement as to the nature of and need for the construction, alteration, abolition, installation, or modification for which approval is sought;
- (H) a statement of the scope of the project, including without limitation:
  - (i) the highway design, pathway design, crossing warning devices, and necessary traffic signal interconnection and preemption;
  - (ii) the detailed itemized estimated cost of the proposed construction, alteration, abolition, or highway-rail or pathway crossing warning device installation or modification;
  - (iii) how applicant proposes to provide for the cost, explaining the proposed apportionment between or among the parties in interest if applicable; and
  - (iv) if the funds necessary for the project are currently available and encumbered.
- (I) A statement of the estimated month and year for:
  - (i) the start date for the construction, alteration, abolition, or crossing warning device installation or modification;
  - (ii) the completion date for the construction, alteration, abolition, or crossing warning device installation or modification; and
  - (iii) the date for commencement of operations through the crossing for new crossings.
- (J) A vicinity map that includes the proposed project limits (i.e., a map that includes the general area circumscribing the project);
- (K) the names and mailing addresses of all persons, including adjacent property owners, public utilities, and local government agencies that may be interested in or affected by the application;

- (L) if the crossing is at-grade: a statement fully justifying why a separation of grades is not practicable under the circumstances.
  - (M) a statement if the application is seeking preliminary approval of conceptual level design plans, or if the application is seeking final approval of final design plans; and
  - (N) a statement if the application includes a request to install a temporary safety measure.
- (II) Applications for all highway-rail crossings shall include:
- (A) the existing ADT volume and character of vehicles (including, but not limited to estimated percentage of heavy vehicles and a statement about whether school buses use the crossing) passing through the highway-rail crossing each day if the traffic volume on the National Inventory Form has not been updated within three years from the date of the filing of the application, or the existing ADT volume and character of vehicles passing through the highway-rail crossing each day as shown on the National Inventory Form if the traffic volume on the form has been updated within three years from the date of the filing of the application. If the ADT volume has not been updated within three years from the date of the filing of the application, the road authority will be responsible for paying for the cost of the updated ADT count;
  - (B) the five-year and twenty-year ADT volume projections of vehicles using the highway-rail crossing; and
  - (C) the posted or unposted speed limit for the vehicles traveling through the highway-rail crossing.
- (III) Applications for all pathway crossings shall include:
- (A) the existing or estimated number of pedestrians and bicycles passing through the pathway crossing each day and a statement if the number is based on an actual count or an estimate; and
  - (B) the five-year and twenty-year projections of the number of pedestrians and bicycles using the pathway crossing.
- (IV) Applications that include a request for temporary safety measures filed pursuant to paragraph 7203(f) shall include:
- (A) a statement of the temporary safety measure being sought;
  - (B) schematic plans of the temporary measure to be implemented;
  - (C) the diagnostic notes including a list of all in attendance; and

- (D) a statement that the diagnostic team is in consensus with the temporary safety measure being sought.
- (V) Applications for preliminary or final approval of new at-grade crossing shall include:
  - (A) detailed plans/drawings of a suitable scale, showing the at-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, rail fixed guideway, rail fixed guideway system, or transit agency;
  - (B) a profile drawing showing grade lines and proposed grade lines of approaches on the public highway or pathway, and the tracks being crossed that may be affected by the proposed or existing crossing;
  - (C) proposed roadway classification (e.g., local road, collector, arterial, freeway) and a cross-section drawing of the road authority's standards for that roadway classification or cross-section drawing of the pathway; and
  - (D) the following documentation for all existing crossings within one-mile of the proposed location of the new crossing in urban locations or within towns, or the two crossings nearest the proposed crossing in rural locations:
    - (i) the National Inventory Number and National Inventory Form;
    - (ii) all accident reports or a statement that no accident reports are available; and
    - (iii) the existing ADT volume and character of vehicles (including, but not limited to, estimated percentage of heavy vehicles and a statement about whether school buses use the crossing) passing through the highway-rail crossing each day if the traffic volume on the National Inventory Form has not been updated within three years from the date of the filing of the application, or the existing ADT volume and character of vehicles passing through the highway-rail crossing each day as shown on the National Inventory Form if the traffic volume on the form has been updated within three years from the date of the filing of the application. If the ADT volume has not been updated within three years from the date of the filing of the application, the road authority will be responsible for paying for the cost of the updated ADT count.
- (VI) Applications for preliminary or final approval to widen, narrow, or relocate an existing crossing shall include:
  - (A) 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, rail fixed guideway, rail fixed guideway system, or transit agency;

- (B) a profile drawing showing grade lines and proposed grade lines of approaches on the public highway or pathway and the tracks being crossed that may be affected by the proposed or existing crossing;
  - (C) existing roadway classification (e.g., local, collector, arterial, freeway) and a cross-section drawing of the roadway authority's standards for that roadway classification or cross-section drawing of the pathway; and
  - (D) proposed roadway classification (e.g., local road, collector, arterial, freeway) and a cross-section drawing of the roadway authority's standards for that roadway classification or cross-section drawing of the pathway;
- (VII) Applications for preliminary or final approval to close a crossing by removal of the tracks shall include:
- (A) detailed plans/drawings of a suitable scale showing the details of the crossing closure plan;
  - (B) a copy of the notice of proposed closure of the crossing as required under paragraph 7208(c); and
  - (C) traffic volumes required under (II) are not required.
- (VIII) Applications to close a crossing by removal of the roadway or pathway shall include:
- (A) the following documentation for all existing crossings within one-mile of the proposed location of the crossing to be closed in urban locations or within towns, or the two crossings nearest the proposed crossing to be closed in rural locations:
    - (i) the National Inventory Number and National Inventory Form;
    - (ii) all accident reports or a statement that no accident reports are available;
    - (iii) the existing ADT volume and character of vehicles (including, but not limited to, estimated percentage of heavy vehicles and a statement about whether school buses using the crossing) passing through the highway-rail crossing each day if the traffic volume on the National Inventory Form has not been updated within three years from the date of the filing of the application, or the existing ADT volume and character of vehicles passing through the highway-rail crossing each day as shown on the National Inventory Form if the traffic volume on the form has been updated within three years from the date of the filing of the application. If the ADT volume has not been updated within three years from the date of the filing for the application, the road authority will be responsible for paying for the cost of the updated ADT count;
  - (B) detailed plans/drawings of a suitable scale showing the details of the crossing closure plan; and

- (C) the notice of proposed closure of the crossing as required under paragraph 7208(c).
- (IX) Applications for preliminary or final approval to install or change passive warning devices at crossings shall include:
  - (A) a description of the type of warning device the applicant proposes to install; and
  - (B) the detailed railroad cost estimate of the crossing warning devices;
- (X) Applications for preliminary or final approval for installation of new active warning devices, replacement of existing active warning devices, or replacement of existing train detection circuitry at crossings shall include:
  - (A) detailed plans/drawings of a suitable scale, showing the crossing, including signing and striping, tracks, buildings, structures, property lines, and public highways within the right-of-way limits of the railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, or transit agency;
  - (B) a description of the type of warning devices the applicant proposes to install (reference may be made to recommended standards on highway-rail grade crossing warning devices as published in current editions of the MUTCD and/or the American Railway Engineering and Maintenance-of-Way Association's Signal Manual of Recommended Practice);
  - (C) the detailed railroad cost estimate of the crossing warning devices; and
  - (D) the schematic diagram of the crossing warning devices (commonly referred to as the "front sheet") and shall specifically identify the equipment response time, advanced preemption time, minimum warning time, clearance time, buffer time, and total warning time.
- (XI) Applications for preliminary or final approval involving installation of four quadrant gate active warning devices shall include:
  - (A) a description of the type of four quadrant exit gate operating mode proposed (e.g., timed, dynamic exit gate vehicle detection, or timed/dynamic combination);
  - (B) for timed exit gate operating mode, the proposed exit gate clearance time, a description of the methodology used to determine the exit gate clearance time and the calculations performed to determine the exit gate clearance time;
  - (C) for dynamic exit gate operating mode, a description of the type of vehicle detection proposed, a plan drawing showing the proposed vehicle detector placement(s) and description and timings of how the vehicle detection will operate; and

- (D) a letter of concurrence from Commission staff regarding the proposed four-quadrant operations and timings, or a statement that Commission staff does not concur with the proposed four-quadrant operations and timings.
- (XII) Applications for preliminary or final approval involving interconnection to traffic signals or queue cutter signals and preemption by active warning signals shall include:
- (A) a statement of the proposed preemption operations (e.g., simultaneous, advanced);
  - (B) the traffic signal timings, including:
    - (i) the traffic signal cycle length;
    - (ii) minimum green time for each signal phase and pedestrian phase;
    - (iii) green times for each signal phase;
    - (iv) yellow change times for each signal phase;
    - (v) red clearance times for each signal phase;
    - (vi) walk times for each pedestrian phase;
    - (vii) flashing don't walk times for each pedestrian phase;
    - (viii) the traffic signal phasing diagram including the preemption sequence; and
    - (ix) a statement of whether and what type of gate down circuitry will be used.
  - (C) A list of and calculations for the following distances and timings:
    - (i) minimum track clearance distance;
    - (ii) design vehicle designation and length;
    - (iii) clear storage distance;
    - (iv) preemption delay time;
    - (v) controller response time to preemption call;
    - (vi) worst case conflicting vehicle time and worst case conflicting pedestrian time;
    - (vii) maximum highway traffic signal preemption time;
    - (viii) right-of-way transfer time;

- (ix) queue clearance time;
  - (x) clearance time;
  - (xi) separation time;
  - (xii) advance preemption time;
  - (xiii) minimum warning time; and
- (D) a letter of concurrence from Commission staff regarding the proposed preemption operations and timings, or a statement that Commission staff does not concur with the proposed preemption operations and timings.
- (XIII) Applications requesting cost allocation to the Highway-Rail Crossing Signalization Fund or projects for which the Colorado Department of Transportation has appropriated Federal Section 130 Fund shall contain specific information regarding the requested apportionment of costs between the railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, or transit agency, the road authority, and the Highway-Rail Crossing Signalization Fund or Federal Section 130 Fund.
- (XIV) Applications for preliminary or final approval to change an existing crossing from a public crossing to a private crossing shall include:
- (A) the following documentation for all existing crossings within one-mile of the proposed location of the new crossing in urban locations or within towns, or the two crossings nearest the proposed crossing in rural locations:
    - (i) the National Inventory Number and National Inventory Form;
    - (ii) copies of all accident reports or a statement that no accident reports are available for those crossings; and
    - (iii) the existing ADT volume and character of vehicles passing through the highway-rail crossing each day if the traffic volume on the National Inventory Form has not been updated within three years from the date of the filing of the application, or the existing ADT volume and character of vehicles passing through the highway-rail crossing each day as shown on the National Inventory Form if the traffic volume on the form has been updated within three years from the date of the filing of the application.
  - (B) Documentation (ordinance, ruling, etc.) showing that the road authority agency is proposing to remove the road from its network of ownership, operation, and maintenance; and
  - (C) documentation showing the person that will be owning, operating, and maintaining the private roadway.



- (XV) Applications for preliminary or final approval to change an existing crossing from a private crossing to a public crossing shall include:
- (A) proposed roadway classification (e.g., local road, collector, arterial, freeway) and a cross-section drawing of the road authority's standards for that roadway classification or cross-section of the pathway;
  - (B) a statement that the existing crossing meets the standards of the proposed roadway classification or a statement that the roadway will be changed to meet the current roadway classification standards; and
  - (C) documentation (ordinance, ruling, etc.) showing that the road authority is accepting the road into its network for ownership, operation, and maintenance.
- (XVI) Applications for preliminary or final approval to construct a grade separated crossing shall include:
- (A) detailed plans/drawings of a suitable scale, showing the crossing, including signing and striping, tracks, buildings, structures, property lines, and public highways within the right-of-way limits of the railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, or transit agency;
  - (B) a profile drawing showing grade lines and proposed grade lines of approaches on the public roadway, highways, streets, or pathways and the tracks being crossed that may be affected by the proposed or existing crossing;
  - (C) bridge plan drawings that show, at a minimum:
    - (i) the total length of the bridge structure;
    - (ii) the length of each individual span for multiple span bridge structures;
    - (iii) the location of all existing and any possible proposed future tracks in relation to the bridge structure;
    - (iv) the minimum vertical clearance from the top of rail or pavement to the bottom of structure;
    - (v) the minimum horizontal clearance from centerline of track to face of pier or abutment if track is under the bridge structure; and
    - (vi) the cross-section of the bridge showing information regarding the roadway, pathway or railroad configuration including, but not limited to, out-to-out distance, fencing, lane widths, walkway widths and median widths.
- (XVII) Applications for any preliminary approval of plans/drawings shall include:

- (A) the date by which all final plans/drawings for which preliminary or conceptual level plans/drawings were provided with the application will be filed for approval; and
- (B) a waiver of the applicable statutory period in §40-6-109.5, C.R.S. regarding the time limit for decisions.

(XVIII) Applications for a utility crossing shall include:

- (A) the contact person name, mailing address and e-mail address to whom the Commission notice is to be sent:
  - (i) for each railroad, railroad corporation, rail fixed guideway, or transit agency that owns the tracks affected by an application filed by a utility; and
  - (ii) for each utility affected by the application filed by a railroad, railroad corporation, rail fixed guideway, transit agency, or other person, firm, or corporation that will own the tracks affected by the application.
- (B) The railroad and/or rail fixed guideway line name and milepost number where the crossing that is subject of the application is located;
- (C) a detailed statement as to the nature of and need for the construction, alteration, abolition, installation, or modification for which approval is sought;
- (D) a statement of the scope of the project, including without limitation:
  - (i) the utility construction location;
  - (ii) the detailed itemized estimated cost of the proposed utility crossing construction, alteration, abolition, or modification;
  - (iii) how applicant proposes to provide for the cost, explaining the proposed apportionment between or among the parties in interest if applicable; and
  - (iv) if the funds necessary for the project are currently available and encumbered.
- (E) A statement of the estimated month and year for:
  - (i) the start date for the utility crossing construction, alteration, abolition, or modification; and
  - (ii) the completion date for the utility crossing construction, alteration, abolition, or modification.
- (F) A vicinity map that includes the proposed project limits (i.e., a map that includes the general area circumscribing the project);

- (G) the names and mailing addresses of all persons, including adjacent property owners, public utilities, and local government agencies that may be interested in or affected by the application;
  - (H) detailed plans/drawings of a suitable scale, showing the utility crossing, tracks, buildings, structures, and property lines within the right-of-way limits of the railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, or transit agency; and
  - (I) a profile drawing showing grade lines and proposed grade lines of the utility in relation to the tracks being crossed.
- (b) Any engineering schematics, plans, drawings, or maps submitted pursuant to this rule shall be submitted on pages no larger than 11" x 17". All engineering schematics, plans, drawings and maps must be legible. All plan and profile drawings submitted must be able to be printed to and measured by the identified scale.
  - (c) 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.
  - (d) An application filed pursuant to paragraph 7203(f), may only be filed subsequent to discussion of the temporary safety measure and consensus of a diagnostic team consisting of the road authority, the railroad, railroad corporation, rail fixed guideway, or transit agency, Commission staff, and the Colorado Department of Transportation if the project is a Section 130 project Notice of the temporary safety measure is provided pursuant to paragraph 7208(d).

**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". All engineering schematics, plans, drawings and maps must be legible. All plan and profile drawings submitted must be able to be printed to and measurable by the identified scale.
- (b) In the case of applications concerning highway-rail 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(a), include the following additional information in the application in the following order and specifically identified either in the application or in appropriately identified attachments:
  - (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 and including a 20 percent contingency.

**7206. Grade Separations — Minimum Criteria for Cost Allocation Consideration.**

- (a) For a highway-rail grade separation application to be considered for cost allocation, the following minimum criteria shall be met:
  - (I) exposure factor, actual or projected, shall exceed 85,000 at urban locations and 35,000 at rural locations;
  - (II) the roadway shall be a collector, arterial, or freeway with an actual or no greater than five-year projected ADT volume of 6,000 vehicles per day or greater for urban locations or 2,500 vehicles per day 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-rail grade-separation project, which application meets the criteria of rule 7206, the Commission shall allocate the costs of right-of-way acquisition, engineering, and construction of the theoretical structure that separates a reasonably adequate highway 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.
- (c) The Commission shall order the total allocation of grade separation expenses and the railroad allocated share of the theoretical structure expenses by year to a railroad through Commission Decision for the approved grade separation project. The Commission shall allocate and track expenses for the approved grade separation project by railroad starting in the first calendar year in which allocation dollars are available, and for each successive calendar year until the railroads allocated share of the theoretical structure has been fully allocated to the railroad. Total tracked expenditures for a single calendar year shall not exceed two million five hundred thousand dollars per railroad.

**7208. Notice.**

The Director shall give notice of any application filed under rules 7204 and/or 7205. The Director shall provide 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 provided 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 paragraph 1206(b):
  - (I) the name of the applicant;
  - (II) the proceeding 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 date of the notice, except as to temporary safety measures addressed in subparagraph (d);
  - (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 either file through the E-Filings System or shall file an original and three copies of its list of witnesses and an original and three copies of its attachments at least 20 days prior to the first day of hearing; and that the applicant shall serve each party with its list of witnesses and copies of its attachments;
  - (XI) a statement that each intervenor shall either file through the E-Filings System or shall file an original and three copies of its list of witnesses and an original and three copies of its attachments at least ten days prior to the first day of hearing; and that each intervenor shall serve each party with its list of witnesses and copies of its attachments; 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 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 and the Commission shall provide notice to the affected parties listed in the application. The posting of notice at the crossing and the Commission notice shall occur on the same day. The notice shall be posted at the crossing and the Commission shall send the Notice of Application Filed 15 days after the application is filed with the Commission, unless the 15th day falls on a weekend or holiday in which case the notice shall be posted on the last business day prior to the weekend or holiday. 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 National Inventory Number of the crossing;
    - (F) a sufficient description of the crossing so as to identify it, and the proceeding 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.
- (d) If an application contains a request to install a temporary safety measure made pursuant to paragraph 7203(f), the time period listed in subparagraph (a)(VI) shall be reduced to 14 days for the temporary safety measure only.

**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 proceeding.

**7211. Crossing Construction and Maintenance.**

- (a) Whenever a highway, pathway, or sidewalk is removed at an existing crossing or constructed at a new crossing, or the highway, pathway, or sidewalk portion of an existing crossing is widened, the road authority shall bear all costs to remove, construct or widen crossing surfaces at the crossing including the cost of the crossing surface; the highway, pathway, and/or sidewalk approaches; and highway and/or pathway construction traffic control. Extensions of crossing surfaces for the addition of sidewalks to an existing crossing require only the addition of crossing surface panels for the sidewalks and do not require the entire crossing surface to be replaced.
- (b) Whenever a track is removed at an existing crossing, or constructed at a new crossing, or the track portion of an existing crossing is widened, the railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track shall bear all costs to remove, construct or widen the track including the cost of the crossing surface; the highway, pathway, and or sidewalk approaches; and highway and/or pathway construction traffic control..
- (c) In addition to projects described in paragraph 7211(b), railroads, railroad corporations, rail fixed guideways, transit agencies, or owners of the track shall bear all costs of their initiated projects (e.g., capital improvement projects) involving crossings.
- (d) The crossing surface shall be of plank, concrete, rubber, flangeway and asphalt, or other suitable material that is compatible with the highway approached, 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.
- (e) The Commission may determine the materials to be used in a crossing at the time the Commission considers the application regarding the crossing.
- (f) Whenever practicable, sidewalks should be detached from the curb and constructed behind the crossing signal mast. The crossing surface material for sidewalks need not be continuous with the crossing surface material of the vehicle travel lanes.
- (g) Pathway crossings of mainline trackage shall be grade separated. Rail fixed guideway and rail fixed guideway systems are exempted from this requirement. Sidewalks or pathway 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 or pathway crossings. Sidewalks and pathway crossings under closed deck bridges may have either a protective cover extending a reasonable distance beyond the edges of the bridge or may have fencing attached to the bridge structure to prevent material or debris from striking users of the sidewalk or pathway crossing.
- (h) 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. Railroads, railroad corporations, rail fixed guideways, transit agencies, and owners of the track shall promptly assist any road authority to the extent required to maintain the road surface between tracks at multiple track crossings. The road authority shall bear the



cost of railroad flagging required to maintain the roadway surface between tracks at multiple track crossings.

- (i) The road authority that owns the highway shall maintain at its own expense the highway approaches up to the outside end of the ties.
- (j) The total costs to maintain an existing crossing surface, including, but not limited to, materials, labor, traffic control, railroad flagging, and any necessary permits shall be shared equally between the railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track and the road authority.
- (k) Every railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track, at all points in Colorado where its tracks cross any public highway or public pathway at-grade, shall remove all obstructions along the tracks that block the view of motorists, bicycles, and/or pedestrians as outlined in rule 7301(c). The Commission may determine what obstructions are to be removed to secure reasonable safety.

**7212. Crossing Safety Diagnostics and Cost Estimates.**

- (a) A railroad, railroad corporation, rail fixed guideway, transit agency, owner of the track, road authority, or Commission staff may request a crossing safety diagnostic at any existing or proposed crossing to assess the condition of the existing crossing, to discuss proposed changes to an existing crossing, or to discuss a proposed new crossing. A crossing safety diagnostic must be held at least 30 days prior to the filing of an application for a new crossing, for changes to an existing crossing, or for closure of an existing crossing. If the railroad, railroad corporation, rail fixed guideway, transit agency, owner of the track, road authority, and Commission staff determine jointly that a crossing safety diagnostic for a specific project for which an application will be sought is not necessary, Commission staff shall provide written correspondence to the railroad, railroad corporation, rail fixed guideway, transit agency, owner of the track, and road authority memorializing such determination for use in any future application within fourteen days of the date of the joint determination. Applications may be filed 30 days after receipt of either the written correspondence from Commission staff or from the date by which written correspondence is to be received from Commission staff.
- (b) Commission staff will be required to assist and review any proposed simultaneous or advance preemption timings at crossings for which interconnection and preemption exists or will be requested, and with proposed exit gate operations and timings at crossings for which four-quadrant gate systems exist or are proposed to be installed. If Commission staff concurs with the proposal, a letter of concurrence shall be provided. Commission staff's assistance, review and concurrence, if any, must occur more than 30 days prior to the filing date of the application.

**7213. Minimum Crossing Safety Requirements.**

- (a) All public crossings in the state of Colorado shall have posted, at a minimum, one MUTCD R15-1 crossbuck sign, one MUTCD R15-2P number of tracks sign for crossings with more than one track, and one MUTCD R1-2 yield sign, mounted on the same support, for each direction of vehicle and/or pedestrian traffic that crosses the tracks. Any signage configuration different from these minimum standards require approval from the Commission through the filing and granting of an application.

- (b) All public crossings shall have posted, at a minimum, one advance warning sign applicable to the roadway geometry posted for each direction of traffic that crosses the tracks. Applicable advance warning signs include MUTCD signs W10-1, W10-2, W10-3, and W10-4. The road authority may install warning beacons on advance warning signs in accordance with Section 4L.03 of the MUTCD.
- (c) All public highway-rail crossings where the measured storage distance between the dynamic envelope of the crossing and the stop bar location, leading edge of the pedestrian crosswalk, or the edge of the parallel roadway, whichever is less, for the intersection downstream from the crossing is less than 80 feet shall post in advance of the highway-rail crossing a MUTCD W10-11 storage space sign with a MUTCD W10-11a supplemental word message storage distance sign indicating the length of storage between the dynamic envelope and the stop bar for the highway.
- (d) Highway-rail grade crossing pavement markings shall be installed on all paved approach lanes to the highway-rail grade crossing for roadways with a posted or statutory speed limit of 40 miles per hour or greater. Highway-rail grade crossing pavement markings should be installed on all paved approach lanes to highway-rail grade crossings for roadways with a posted or statutory speed limit of less than 40 miles per hour. Grade crossing pavement markings may be installed on all approaches to a pathway crossing. Pavement markings shall be installed only on approach lanes where all vehicles will cross the crossing.

**7214. – 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 passive and active crossing warning devices, whether electrically operated or otherwise, and of whatsoever nature, which have been installed at public crossings in the state of Colorado, shall be installed, and efficiently maintained and kept in good condition or good operating condition by the railroad, railroad corporation, rail fixed guideway, transit agency, or owner the track at the crossing at the railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, transit agency, or owner of the track's expense for the life of the crossing.
- (b) Whenever active 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 road authority agency in interest at the road authority's expense for the life of the crossing.
- (c) All advance warning signs and pavement markings which have been installed at public crossings in the state of Colorado shall be efficiently maintained and kept in good condition by the road authority owning and maintaining the roadway at the crossing at the road authority's expense for the life of the crossing.

- (d) 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 crossings; provided, however, that:
  - (I) this paragraph (d) shall not apply to existing buildings, permanent structures, and natural obstructions other than trees and vegetation;
  - (II) this paragraph (d) 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 (d) shall not apply to crossings at which automatic signals and gates are installed. 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.
- (e) 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.

\* \* \*

**[indicates omission of unaffected rules]**

**7327. Public Highway and Pathway Crossings.**

- (a) Where a public highway or pathway crosses above any railroad or rail fixed guideway system track used or proposed to be used for transporting freight cars or passenger cars, minimum overhead and side clearances as set forth in this rule must be observed.
- (b) Overhead clearances.
  - (I) Where a railroad or rail fixed guideway system crosses above any public highway, a minimum overhead clearance of 14'0" shall be provided above the surface of such highway.
  - (II) Where a railroad or rail fixed guideway system crosses any public 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.

(III) Where a railroad or rail fixed guideway system crosses above any public pathway, a minimum overhead clearance of 10'0" shall be provided above the surface of such pathway.

(c) Minimum opening clearances.

(I) Where a railroad or rail fixed guideway system crosses above any public highway on a single supporting span, a minimum width of 26'0" shall be provided for the opening for such highway.

(II) Where a railroad or rail fixed guideway system crosses any public 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.

(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.

(IV) Where a railroad or rail fixed guideway system crosses above any public pathway, on a single supporting span, a minimum clear width of 8'0" shall be provided for the opening of the pathway if the pathway is for pedestrian use only, and a minimum clear width of 12'0" shall be provided for the opening of the pathway if the pathway is a shared use pathway for pedestrian and bicycle use.

\* \* \*

**[indicates omission of unaffected rules]**