

## **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**

##### **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, civil penalties, 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), 40-18-101, 40-18-102, 40-18-103, 40-18-104, 40-20-302, 40-20-303, 40-20-308, 40-29-110, and 40-32-108, C.R.S.

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[indicates omission of unaffected rules]

##### **CIVIL PENALTIES**

###### **7009. Definitions.**

The following definitions apply to rules 7009 through 7011 unless a specific statute or rule provides otherwise. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) “Civil penalty” means a monetary penalty imposed by the Commission against a railroad, railroad corporation, rail fixed guideway, owner of the track, or transit agency that is not a political subdivision of the State of Colorado for failure to comply with the Colorado Constitution, a provision of articles 1 to 7 of title 40, C.R.S., or a Commission order or rule,
- (b) “Civil penalty assessment” means the act by the Commission of imposing a civil penalty.

- (c) “Civil penalty assessment notice” means the written document by which the Commission gives initial notice to a railroad, railroad corporation, rail fixed guideway, owner of the track, or transit agency that is not a political subdivision of the State of Colorado of an alleged failure to comply with the Colorado Constitution, a provision of articles 1 to 7 of title 40, C.R.S., or a Commission order or rule and sets forth the proposed civil penalty amount.

**7010. Civil Penalties.**

- (a) The Commission may impose a civil penalty against a railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track for failure to comply with the Colorado Constitution, a provision of articles 1 to 7 of title 40, C.R.S., a Commission order or rule, except for an order requiring payment of money, as authorized in §§ 40-4-106(1)(b) and 40-7-105, C.R.S. The Commission may impose a civil penalty against a railroad, as defined in § 40-20-302(20), C.R.S., if the railroad or any officer, agent, or employee of the railroad violates § 40-20-303, C.R.S. Before issuing a civil penalty assessment notice, the entity alleged to have failed to comply with the Colorado Constitution, a provision of articles 1 to 7 of title 40, C.R.S., § 40-20-303, C.R.S., or a Commission order or rule, must be provided written notice of the alleged violation(s), and an opportunity to cure the alleged violation(s) within a minimum of 14 calendar days. The Commission, in its discretion, may provide additional time to cure the alleged violation(s).
- (b) Civil penalty assessment notice.
- (I) The Director of the Commission or his or her designee has the authority to issue a civil penalty assessment notice for an alleged failure to comply with or violation(s) of the Colorado Constitution, a provision of articles 1 to 7 of title 40, C.R.S., § 40-20-303, C.R.S., or a Commission order or rule.
- (II) The civil penalty assessment notice must be served in person, by certified mail or by personal service and shall contain:
- (A) the name and address of the entity cited for the violation;
- (B) a citation to the specific constitutional provision, rule, statute or Commission order alleged to have been violated;
- (C) a brief description of each alleged violation, and the date and approximate location (as applicable) of the alleged violation;
- (D) the maximum penalty amount for each alleged violation and the maximum amount of the penalty surcharge imposed pursuant to § 24-34-108(2), C.R.S., if any. The penalty surcharge shall be equal to the percentage set by the Department of Regulatory Agencies on an annual basis;
- (E) a statement allowing for a reduced penalty of 50 percent of the maximum penalty amount and surcharge if paid within ten calendar days of the railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track’s receipt of the civil penalty assessment notice;

- (F) a place for the railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track to execute a signed acknowledgment of receipt of the civil penalty assessment notice;
  - (G) a place for the railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track to execute a signed acknowledgement of liability for the violation;
  - (H) a statement that if the prescribed penalty is not paid within ten calendar days of the railroad, railroad corporation, rail fixed guideway, transit agency or owner of the track's receipt of the civil penalty assessment notice, that the civil penalty assessment notice becomes a notice of complaint to appear before the Commission; and
  - (I) for alleged violations of § 40-20-303, C.R.S., the civil penalty assessment notice shall include a place for the railroad, as defined in § 40-20-302(20), C.R.S., to execute a signed acknowledgement of: (1) receipt of the civil penalty assessment notice, and (2) liability for the violation.
- (III) A civil penalty assessment notice may not be considered defective so as to provide cause for dismissal solely because of a defect in its content. Any defect in the content of a civil penalty assessment notice may be cured by a motion to amend the same filed with the Commission prior to a hearing on the merits. No such amendment may be permitted if the substantial rights of the cited entity are prejudiced.
- (c) Adjudication.
- (I) The railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track cited with alleged violation(s) or the railroad, as defined in § 40-20-302(20), C.R.S., cited with alleged violation(s) of § 40-20-303, C.R.S. may either admit liability for the violation(s) by executing the acknowledgement of liability and paying the penalty prescribed in the civil penalty assessment notice or contest the alleged violation(s) as set forth below. When the cited entity admits liability, it must pay the civil penalty specified for the violation(s) in person at the Commission's office or by depositing payment postage prepaid in the United States mail within ten days after the citation is issued.
  - (II) The railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track cited with alleged violation(s), or the railroad, as defined in § 40-20-302(20), C.R.S., cited with alleged violations of § 40-20-303, C.R.S. may contest the violation(s) identified in the civil penalty assessment notice and request a hearing before the Commission. If the cited entity does not pay the prescribed penalty within ten calendar days after the civil penalty assessment notice is issued, the notice constitutes a complaint to appear before the Commission. The cited entity must contact the Commission on or before the time and date specified in the civil penalty assessment notice to set the complaint for a hearing on the merits. If the cited entity fails to contact the Commission as required, the Commission will set the complaint for a hearing. At the hearing, Commission trial staff shall have the burden of demonstrating the violation(s) by a preponderance of the evidence.

## (d) Civil penalty assessment.

- (I) The Commission shall assess a civil penalty only after a railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track, or the railroad, as defined in § 40-20-302(20), C.R.S., either admits liability or is adjudicated to have committed the violation.
- (II) In any written decision entered by the Commission assessing a final civil penalty, the Commission may impose a civil penalty of not more than \$2,000.00 for each offense, pursuant to § 40-7-105(1), C.R.S., unless the civil penalty is assessed for a violation of § 40-20-303, C.R.S., in which case the Commission may impose a civil penalty of not less than \$10,000.00 but not more than \$25,000.00 on the railroad for each offense, pursuant to § 40-20-308(1), C.R.S., or not more than \$100,000.00 for each offense where authorized by § 40-20-308(2)(a) or (b), C.R.S. In determining the civil penalty amount, the Commission shall consider the factors set forth in paragraph 1302(b) of the Commission's Rules of Practice and Procedure, 4 Code of Colorado Regulations 723-1.
- (III) In accordance with § 40-7-105(2), C.R.S. and § 40-20-308(1), C.R.S., every violation is considered a separate and distinct offense, and, in the case of a continuing violation, each day's continuance thereof shall be deemed a separate and distinct offense.

- (e) Nothing in these rules shall affect the Commission's ability to pursue other remedies in lieu of imposing a civil penalty.

**7011. Regulated Railroad, Railroad Corporation, Rail Fixed Guideway, or Transit Agency Rule Violations, Civil Enforcement, and Civil Penalties.**

- (a) Violation of the Colorado Constitution, a provision of articles 1 to 7 of title 40, C.R.S., a Commission order, and the following rules may result in the assessment of a civil penalty of up to \$2,000.00 per offense. The total amount of civil penalties assessed against any one railroad, railroad corporation, rail fixed guideway, transit agency, and owner of track may not exceed \$150,000.00 in any consecutive 12-month period.

Citation	Description
Rule 7204(a)(X)(D)	Schematic Diagram
Rule 7211(b)	Track Construction or Removal
Rule 7211(c)	Railroad Projects Involving Crossings
Rule 7211(h)	Crossing Surface Maintenance
Rule 7211(k)	Crossing Obstructions
Rule 7211(l)	Project Coordination, Public Notice and Detours
Rule 7211(m)	Project Management and Support

Rule 7211(n)	Crossing Surface Replacement
Rule 7212(c)	Warning Device Selection, Preemption Timing Selection, and Exit Gate Operation Selection
Rule 7212(d)	Report Preparation and Payment Prohibition
Rule 7212(e)	Schematic Diagram Provision Requirements and Cost Estimate Provision Timeline
Rule 7212(f)	Construction and Maintenance Agreement Timeline
Rule 7212(g)	Railroad Consultant Review Time Limitation
Rule 7212(h)	Existing Crossing Easement Payment Prohibition
Rule 7212(i)	Formal Complaint for Delay and/or Untimeliness
Rule 7213(a)	Minimum Crossing Safety Requirements
Rule 7301(a)	Crossing Warning Device Installation and Maintenance
Rule 7301(d)	Crossing Obstructions
Rule 7302	Accident Notification
Rule 7324(a-f)	Overhead Clearances
Rule 7325(a-j)	Side Clearances
Rule 7326(a-d)	Track Clearances
Rule 7402(a-c)	Class I Railroad Peace Officers Minimum Requirements

- (b) A violation of § 40-20-303, C.R.S. may result in the assessment of a civil penalty of not less than \$10,000.00 but not more than \$25,000.00 per offense, unless the Commission determines that either: (1) the railroad intentionally or knowingly violated § 40-20-303, C.R.S., or (2) the violation was part of a pattern and practice of repeated violations of § 40-20-303, C.R.S., in which case the Commission may impose a fine of up to \$100,000.00 per violation. Each day of a continuing violation of § 40-20-303, C.R.S., constitutes a separate violation.