

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 21R-0538R

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

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**NOTICE OF PROPOSED RULEMAKING**

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Mailed Date: November 22, 2021  
Adopted Date: November 10, 2021

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**I. BY THE COMMISSION**

**A. Statement**

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NOPR) to amend the rules governing rail crossings comprising Rules 7001 through 7301 of the Commission’s Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (CCR) 723-7. The Commission has statutory authority to adopt these rules under §§ 40-2-108, 40-4-106, 40-7-105, 40-9-108(2), 40-18-102, 40-18-103, 40-29-110, and 40-32-108, C.R.S. Among other updates and revisions, the Commission amends its rules to implement fining authority for noncompliance with rail crossing safety regulations as authorized in Senate Bill (SB) 19-236, effective May 30, 2019, and codified as §§ 40-4-106 and 40-7-105, C.R.S.

2. As discussed below, this is the Commission’s second NOPR notice proposing these rule revisions. In March 2021, the Commission issued a NOPR in Proceeding No. 21R-0100R commencing a rulemaking to consider these same proposed revisions. Due to procedural concerns, the rulemaking was closed before reaching a determination on whether to

adopt the rules. The proposed amendments in this NOPR are identical to those proposed in prior Proceeding No. 21R-0100R.

3. The Commission refers this matter to an Administrative Law Judge (ALJ) for a recommended decision. The ALJ will hold a remote public hearing on the proposed rules at **1:00 p.m. on January 11, 2022.**

4. The proposed rule changes are set forth in legislative (*i.e.*, *strikeout and underline*) format in Attachment A to this Decision, and in final format in Attachment B to this Decision.

## **B. Background**

### **1. Fining Authority Granted to Commission in SB 19-236**

5. SB 19-236 adds new subsection § 40-4-106(1)(b), C.R.S., which provides:

If, pursuant to this subsection (1), the commission issues an order or promulgates a rule requiring a railroad company to comply with railroad crossing safety regulations, the commission may impose a civil penalty pursuant to article 7 of this title 40, in an amount not to exceed the maximum amount set forth in section 40-7-105 (1), against a railroad company that fails to comply with the order or rule.

6. As relevant here, § 40-7-105(1), C.R.S., provides:

Any public utility which violates or fails to comply with any provision of the state constitution or of articles 1 to 7 of this title or which fails, omits, or neglects to obey, observe, or comply with any order, decision, decree, rule, direction, demand, or requirement of the commission or any part or provision thereof, except an order for the payment of money, in a case in which a penalty has not been provided for such public utility, is subject to a penalty of not more than two thousand dollars for each offense.

### **2. Relevant Prior Commission Proceedings**

#### **a. Pre-Rulemaking Engagement**

7. Following the passage of SB 19-236, the Commission opened repository Proceeding No. 19M-0379R on July 16, 2019 by Decision No. C19-0586, to solicit input from

stakeholders and other interested participants on what the Commission should include when it initiates a rulemaking to implement fining authority in its railroad rules. The Commission hosted pre-rulemaking half-day workshops on September 16 and 17, 2019, to engage with stakeholders and other interested participants on the proposed rulemaking. The Commission also received numerous comments from both railroads and municipal entities pertaining to the proposed rulemaking. The Commission has reviewed the numerous comments filed in its pre-rulemaking repository proceeding, Proceeding No. 19M-0379R.

### **b. Prior Adjudications**

8. Subsequent to commencing a formal rulemaking to adopt rules implementing the fining authority provisions enacted through SB 19-236, several proceedings before the Commission presented cases in which certain railroad companies significantly delayed or failed to comply with Commission orders.<sup>1</sup>

9. In those proceedings, the Commission determined that significant delay in complying with Commission decisions, including instances involving delay in filing a signed construction and maintenance agreement as required by a Commission decision, would postpone upgrades and installations that were already approved and ordered to proceed by the Commission. The Commission concluded that failure to comply with these Commission orders constituted violations within the scope of § 40-4-106(1)(b), C.R.S. Citing its broad authority under § 40-4-106(2)(a), C.R.S., to prescribe terms and conditions of installation, operation, maintenance, and warning at public crossings to prevent accidents and promote public safety, the Commission concluded that its jurisdiction is squarely grounded in safety.

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<sup>1</sup> See, e.g., Proceeding Nos. 18A-0332R; 18A-0339R; 18A-0629R; 18A-0631R; 18A-0636R; 18A-0809R; 19A-0201R; 19A-0231R; 19A-0413R; 19A-0475R; and 19A-0542R.

10. The Commission noted that § 40-4-106(1)(b), C.R.S., as amended by SB 19-236, provides, if the Commission issues an order or promulgates a rule requiring a railroad company to comply with railroad crossing safety regulations, that the Commission may impose a civil penalty against a railroad company that fails to comply with the order or rule. Pursuant to Rule 4 CCR 723-1-1302(b) of the Commission's Rules of Practice and Procedure, the Commission may impose a civil penalty, when provided by law. The Commission recognized that it had initiated a pre-rulemaking stakeholder engagement in Proceeding No. 19M-0379R to consider adopting rules specific to this new statutory authority. However, the Commission found it necessary to act in individual adjudications before rules could be adopted, and that § 40-4-106(1)(b), C.R.S., does not require that the Commission adopt rules in order to use the fining authority conferred in this statute. These proceedings were ultimately resolved without the Commission assessing a civil penalty.

**c. Previous Rulemaking Proceeding**

11. On March 15, 2021, the Commission issued a NOPR<sup>2</sup> proposing amendments to the rules governing rail crossing comprising Rules 7001 through 7354 of the Commission's Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 CCR 723-7. The proposed amendments are identical to those proposed in this NOPR.

12. After the Commission issued the original NOPR, several parties raised concerns regarding whether the Commission should have notified the Colorado Legislature (Legislature) of proposed rules prior to issuing the NOPR pursuant to § 24-4-101 *et seq.*, C.R.S. The ALJ noted ambiguity in the applicability of § 24-4-101 *et seq.*, C.R.S., to the Commission's adoption of proposed rules intending to impose civil penalties on railroad companies in Decision

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<sup>2</sup> See Decision No. C21-0129 in Proceeding No. 21R-100R.

No. R21-0308 issued in Proceeding No. 21R-100R on May 24, 2021. As such, the ALJ suggested closing the original proceeding and reissuing the NOPR to promote open communication with the Legislature. The Commission has closed the original proceeding.<sup>3</sup>

### **C. Discussion of Proposed Amendments**

13. To best implement SB 19-236, we find it appropriate to open this rulemaking to consider rule changes that implement the General Assembly's directive that the Commission implement fining authority over railroad companies that fail to comply with Commission safety regulations. The Commission has authority to impose civil penalties under the authority vested by § 40-4-106(1)(b), C.R.S., without implementing corresponding rules; however, we anticipate a uniform process through rule considerations will best assist stakeholders in understanding Commission processes and ensure continued compliance with Commission orders with the intent and purpose that accidents may be prevented, and the safety of the public promoted, at crossings throughout the state.

14. While we are encouraged that the railroad companies ultimately complied with Commission orders in recent proceedings, we continue to be dismayed at the pattern of delay. The rule proposals in this NOPR aim to encourage ongoing compliance and avoid delay and unnecessary cost with the singular intent that railroad crossing safety is paramount in all Commission determinations under its jurisdiction.

15. In the discussion below, we identify and explain the proposed rule change, provide analysis of the change, and, as applicable, pose questions for comment by rulemaking participants. Where rules are described as "current," they refer to the currently effective

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<sup>3</sup> The Commission will provide notice to the Legislature of the proposed rules on the date of issuance of this NOPR.

rules prior to proposed amendments. “Proposed” rules refer to proposed changes, including new or reordered paragraphs, or revisions to language. The proposed changes are shown in Attachment A (redline) and Attachment B (clean) to this Decision. The Commission welcomes comments on the proposed rules as presented in this Section C and Attachments A and B.

### **1. Basis, Purpose, and Statutory Authority**

16. The proposed revisions to the Basis, Purpose, and Statutory Authority section add that these rules address civil penalties.

### **2. Civil Penalties**

17. We propose to add a new section to the rules titled “Civil Penalties.” This new section, comprising new Rules 7009 through 7011 contain the substantive provisions implementing the new statute.

#### **a. Rule 7009. Definitions**

18. Proposed new Rule 7009 provides definitions for terms used in this Civil Penalties section that arise from the new statutory requirements.

19. **Rule 7009(a)** – We propose adding a defined term for “civil penalty” to clarify that a “civil penalty” is a monetary penalty imposed by the Commission for failures to comply with a Commission order or rule, as authorized by § 40-4-106(1)(b), C.R.S.

20. **Rule 7009(b)** – We propose adding a defined term for “civil penalty assessment” to clarify that a “civil penalty assessment” is an act by the Commission that imposes a civil penalty.

21. **Rule 7009(c)** – We propose adding a defined term for “civil penalty assessment notice” to clarify that a “civil penalty assessment notice” is a written document whereby the

Commission gives initial notice of an alleged failure to comply with a Commission order or rule and sets forth the proposed civil penalty amount.

**b. Rule 7010. Civil Penalties**

22. This proposed new rule establishes how the Commission will handle alleged violations of a Commission order or rule.

23. **Rule 7010(a)** – This rule provides that the Commission has authority to impose a civil penalty against a railroad, railroad corporation, rail fixed guideway, or transit agency for failure to comply with a Commission order or rule, as authorized in § 40-4-106(1)(b), C.R.S. We propose this rule after receiving stakeholder feedback that violations of Commission orders and rules by these entities are widespread. We are concerned that these violations can lead to delays that impair local and municipal governing authorities from maintaining safe rail crossings. To promote safety for the traveling public, we propose this rule to encourage these entities engage in a constructive partnership with local and municipal governing authorities to timely build and maintain safe rail crossings.

24. **Rule 7010(b)** – This rule proposes a framework for how the Commission will issue a civil penalty assessment notice for an alleged failure to comply with a Commission order or rule. We propose the civil penalty assessment notice shall identify the alleged individual violation of a Commission order or rule, propose a penalty amount for each alleged violation, propose a percentage-based reduction of the penalty amount, and, where applicable, state the maximum amount of imposable penalty pursuant to § 24-34-108(2), C.R.S.

25. **Rule 7010(c)** – This rule proposes procedures for adjudicating alleged individual violations leading to a civil penalty assessment notice. An entity may admit liability or contest the alleged violations identified in the civil penalty assessment notice. Alternatively, an entity



may request a hearing before the Commission to contest alleged violations in the civil penalty assessment notice. We propose the evidentiary standard of a preponderance of the evidence demonstrating a violation and that the burden rests with Commission Trial Staff at the hearing. Consistent with processes in other Commission agency rules,<sup>4</sup> we propose this adjudicatory process will protect the due process rights of alleged violators of Commission rules or orders.

26. **Rule 7010(d)** – This rule proposes procedures for assessing civil penalties after an admission or adjudicative finding of liability. Pursuant to § 40-7-105(1), C.R.S., the maximum civil penalty assessment is two thousand dollars. In accordance with § 40-7-105(2), C.R.S., every violation is considered a separate and distinct offense, and each day is deemed a separate and distinct offense. We propose these civil penalty rules to closely match the civil penalty rules for fixed utilities.

**c. Rule 7011. Rule Violations, Civil Enforcement, and Civil Penalties**

27. We propose that violations of Rules 7204, 7211, 7212, 7213, 7301, 7302, 7324, 7325, 7326, and 7402 may form the basis for a civil penalty assessment notice.

**d. Rule 7201. Definitions**

28. We propose removing the definition of “owner of the track” in Rule 7201 universally because owner(s) of the track fall under the definition of “Railroad” so use of this term is unnecessary.

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<sup>4</sup> See, e.g., §§ 40-7-116 and 40-7-116.5, C.R.S. (detailing Commission standards for enforcement proceedings against public utilities and carriers); Rules 6017 and 6018 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6 (stating civil penalty rules related to transportation by motor vehicle).

**e. Rule 7202. Necessary Parties to Application Proceeding**

29. This rule clarifies that any owner of a track at a railroad crossing be joined as a necessary party in an application proceeding before the Commission. We propose this joinder requirement for the sake of efficiency in the application process.

**f. Rule 7204. Application Contents**

30. **Rule 7204(a)(X)(C) and (D)** – This rule adds new language that requires an entity to provide the road authority the detailed railroad cost estimate of the crossing warning device within the 90-day timeframe outlined in proposed Rule 7212(e). The rule also clarifies that the schematic diagram of the crossing warning devices (commonly referred to as the “front sheet” or “state sketch”) shall also be provided within the timeframe outlined in proposed Rule 7212(e).

**g. Rule 7211. Crossing Construction and Maintenance**

31. We propose amendments to this rule to ensure that delays pertaining to crossing construction and maintenance projects are limited. We propose these amendments to ensure that road authorities can best provide for the safety of the traveling public.

32. **Rule 7211(k)** – This rule clarifies that the Commission may determine what obstructions are to be removed from rail crossings. We propose this clarification to ensure reasonable safety measures are in place for rail crossings and that objects obstructing the view of the rail crossing are removed.

33. **Rule 7211(l)** – This rule establishes that a railroad, railroad corporation, rail fixed guideway, or transit agency shall be required to coordinate with the road authority when a maintenance or crossing construction project leads to the temporary closure of a highway-rail crossing or public pathway crossing. This rule responds to the concern raised by road authorities that local roadways can become closed without notice or coordination with the road authority.

We propose this rule to ensure road authorities are informed and can provide adequate notice to the general public to ensure the safety of the affected crossing.

34. **Rule 7211(m)** – This rule requires that a railroad, railroad corporation, rail fixed guideway, or *transit* agency cannot not perform construction work at a highway-rail crossing or public pathway crossing prior to obtaining all required road authority permits and coordinating with the road authority to provide public notice of detours. We propose this rule to ensure that railroads obtain the necessary road authority permits and work with road authorities to provide public notice of detours for the period of time when the crossing is temporarily closed.

35. We propose this rule to ensure compliance with local and municipal permitting requirements and to ensure the safety of the traveling public. Road authorities raised the issue in the stakeholder process that, by closing roadways without any notice or permits, drivers have to turn *around* and find other ways to travel to their destination. We agree that this can create a safety issue where drivers are making maneuvers that are not normal and where other drivers may be unaware of the intent of the driver making an irregular traffic maneuver. We expect, if road authorities are informed ahead of a proposed closure, they can work with railroads to ensure appropriate permitting, public notice, and signage to avoid these public safety threats. We solicit feedback from rulemaking participants on these concerns and whether this proposed rule adequately addresses those concerns.

36. **Rule 7211(n)** – This rule establishes that a railroad, railroad corporation, rail fixed guideway, or transit agency shall provide road authorities with the project construction support needed to timely construct and complete any highway-rail or public pathway crossing project. We propose this rule to respond to stakeholder concerns related to the construction of railroad projects, where road authorities stated that they cannot perform portions of construction projects

because the appropriate railroad management and support is not provided when needed. The proposed rule addresses this issue by requiring railroad management and support to be provided to road authorities when needed.

37. **Rule 7211(o)** – This rule establishes that a railroad, railroad corporation, rail fixed guideway, or transit agency shall replace crossing surfaces within 90 days, starting from the date when a road authority informs the railroad, railroad corporation, rail fixed guideway, or transit agency that the crossing surface is in disrepair. We propose this rule to ensure that crossing surfaces remain in a condition that provides the public a safe crossing.

38. We propose this rule to address stakeholder concerns pertaining to the duration of time it currently takes to repair crossings. For example, on one crossing surface that was in disrepair on South Santa Fe Drive in Denver, vehicles routinely traveled over the crossing at 55 miles per hour for two years. This required the Colorado Department of Transportation to initiate temporary mitigation measures and post signage warning drivers of the unsafe crossing.

39. We propose this rule to address the general untimeliness of repairing or replacing crossing surfaces. We propose that 90 days is a sufficient time to replace the surfaces and allows time for ordering crossing surface planks and allowing the railroad to install the new panels or repair existing ones where possible. This rule also requires that railroads coordinate with road authorities to coordinate required closures, per Rule 7211(l).

40. **Rule 7211(p)** – This rule requires a railroad, railroad corporation, rail fixed guideway, or transit agency to obtain the Commission’s authority prior to commencing construction of a new crossing or making any changes at a public crossing. We propose this rule after discovering that several public crossings have been opened, closed, or changed without Commission authority. This rule allows for the Commission to grant authority for construction

projects while allowing the Commission to ensure that projects are completed in accordance with public safety measures.

41. We propose that relevant changes to a rail crossing include installing sidewalk panels; installing passive warning devices other than crossbucks, yield signs, and emergency notification signs; installing active warning devices; changing crossing detection circuitry; interconnecting a crossing with a traffic signal or queue cutter signal; and adding or removing additional tracks.

42. We propose this rule to clarify the Commission's authority is needed before any new public crossing changes are made outside maintenance done in the ordinary course of business. We find this rule is necessary to avoid changes being made to rail crossings without the Commission reviewing the changes for safety concerns. Changes made outside of the ordinary course of business and without Commission authorization would subject the railroad, railroad corporation, rail fixed guideway, or transit agency to civil penalties under the updated rules. We propose this rule and potential for civil penalty to better ensure safety is reviewed and paramount to any changes made.

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

43. We propose these amendments to ensure that delays pertaining to construction projects of rail crossings are minimized. These rules are intended to provide road authorities with the ability to manage the impact of crossing safety projects and to promote safety for the traveling public.

44. **Rule 7212(a)** – We propose minor wording changes to ensure all parties agree for a need to request a crossing safety diagnostic.

45. **Rule 7212(c)** – This rule requires a road authority and Commission Staff confer on the need for, and selection of, appropriate safety devices, the appropriate preemption operation and the timing of traffic control signals interconnected with highway-rail grade crossings adjoined to signalized highway intersections, and the appropriate exit gate operating mode and clearance times for rail crossings. We propose this rule to assist road authorities in making these decisions with the interest of public safety in mind.

46. **Rule 7212(d)** – This rule establishes that a railroad, railroad corporation, rail fixed guideway, or transit agency cannot require a road authority to accept the results of or pay for the preparation of any study or report not expressly requested by the road authority. We propose this rule to ensure that road authorities are not bound by railroad consultants who prepare traffic studies and then require the road authority to pay for such a study.

47. During the stakeholder process, Douglas County described how a railroad company hired a third-party traffic engineering consultant to provide review and comment on crossing improvement plans. We are concerned that road authorities can be forced to assume the cost of these third-party consultants as an unnecessary expense where they already employ qualified traffic engineering staff to perform the same assessments. We note that pre-rulemaking workshop participants expressed concern that third-party consultants may delay the commencement of safety improvement projects of rail crossings.

48. We propose this rule to clarify that railroads are not to perform any traffic studies or prepare these types of reports for road authorities unless expressly requested by the road authority, and road authorities are not required to pay for such studies unless expressly requested. We seek participant comment on further concerns and clarity in further updating this rule.

49. **Rule 7212(e)** – This rule establishes that a railroad, railroad corporation, rail fixed guideway, or transit agency shall provide a road authority with a cost estimate and schematic diagram no more than 90 days after a request by the road authority. The information included in the schematic diagram must include all information as set forth in Rule 7204(X)(D) and adhere to the specific configuration requested by the road authority.

50. During the stakeholder process, railroads proposed a generic schematic and estimate that is modified after Commission approval and after the railroad conducts the field survey for the project. We are concerned this may cause problems for road authorities when construction of a project commences and could lead to delays. Additionally, we are concerned, when railroads design something different from what is applied for by the road authorities as this could create safety issues that railroads then expect road authorities to resolve.

51. We propose this rule to resolve delays in rail crossing and crossing related projects moving forward. We find timely provision of accurate cost estimates based on an actual design of the crossing will help move projects toward timely completion.

52. **Rule 7212(f)** – This rule requires that a signed construction and maintenance agreement, or evidence of a signed intergovernmental agreement, shall be filed with the Commission within 90 days of the Commission’s order authorizing the highway-rail crossing project, or within 30 days before the proposed start date for construction, whichever comes later.

53. We propose this rule to implement a timeline to ensure the timely commencement of a crossing project. The construction and maintenance agreement must be executed before the construction of a project begins. We find that delays in filing the construction and maintenance agreement may lead to delays in the commencement of projects that improve the safety of rail

crossings. Under the proposed rule, waiver of the timelines is permissible for good cause, where the burden of persuasion rests with the movant.

54. **Rule 7212(g)** – This rule proposes that a railroad, railroad corporation, rail fixed guideway, or transit agency shall be afforded up to eight billable hours in scope for preemption calculation verification based on road authority-provided traffic signal timings, and to complete any necessary project review and railroad client report for at-grade highway-rail or pathway-rail grade crossing projects. A railroad, railroad corporation, rail fixed guideway, or transit agency may request an extension of the permitted time, with good cause shown. We anticipate that railroads setting reasonable limitations on the scope of work, subject to expansion for good cause, will assist in avoiding unnecessary cost and delay. Participants are encouraged to comment on whether these limitations are sufficient.

55. We propose this rule to limit the time and scope of the work that railroad consultants provide so as not to delay road authority projects, whereby such a delay can lead to public safety concerns. This rule also clarifies that road authorities need not redesign their projects to conform with railroad specifications when they conflict with what the road authority determines is needed for the safety of the traveling public.

56. **Rule 7212(h)** – This rule clarifies that a railroad, railroad corporation, rail fixed guideway, or transit agency may assess costs for new or revised easements but may not assess costs for existing easements at existing public highway or public pathway crossings. An easement fee may be an unnecessary expense on the part of road authorities because these fees have already been paid for in existing easements. When an additional area is needed for an existing easement, this area is fair for a revised assessment.



57. We propose this rule to clarify that payments for easements at existing crossings are prohibited and to ensure minimal delay in projects and construction and maintenance agreements from moving forward. A delay in moving forward with crossing projects and the execution of construction and maintenance agreements can lead to public safety issues.

58. **Rule 7212(i)** – This rule allows road authorities to file formal complaints with the Commission against railroads where the railroad delays have caused a loss of third-party funding for the completion of a highway-rail or pathway crossing project. These complaints must contain factual allegations of the cause of delay, state the amount of lost funding, and request that the Commission allocate the lost funding to the railroad, railroad corporation, rail fixed guideway, or transit agency, or otherwise institute appropriate relief, including but not limited to the imposition of a civil penalty assessment.

59. We propose this rule to prevent delays that cause the loss of funding and in turn delay projects from moving toward their completion. Such delays can constitute public safety threats. The loss of funding incurred by road authorities may then be assigned to the railroads.

**i. Rule 7213. Minimum Crossing Safety Requirements**

60. **Rule 7213(a)** – We propose an amendment that adds the requirement of posting an emergency notification sign on each side of the tracks with the crossbucks, yield sign, and number of tracks sign, if necessary. We propose this amendment to ensure conformity with the Federal Railroad Administration’s requirements, under the Rail Safety Improvement Act of 2008, that requires all crossings to have posted emergency notification signs on both sides of the crossing. This provides the traveling public information about who to call in case of emergencies and how to identify in these calls where the emergency is occurring. This also

ensures that specific crossing numbers are available to emergency responders, notifying them of the location where an emergency is occurring.

### **3. Safety**

#### **a. Rule 7301. Installation and Maintenance of Crossing Warning Devices**

61. **Rule 7301(a)** – We propose a clarification that a railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, or transit agency incurs the expense of installing and maintaining the good operating condition or good condition of passive and active crossing warning devices for the life of the crossing.

### **D. Conclusion**

62. Through this NOPR, the Commission solicits comments from interested persons on the amendments proposed in this Decision and its attachments. Interested persons may file written comments including data, views, and arguments into this Proceeding for consideration. The Commission also welcomes submission of alternative proposed rules, including both consensus proposals joined by multiple rulemaking participants and individual proposals.

63. Participants are encouraged to provide redlines of any specific proposed rule changes. Participants are invited to re-file in this Proceeding any comments that they filed in prior Proceeding No. 21R-0100R.

64. The proposed rules in legislative (*i.e.*, strikeout/underline) format (Attachment A) and final format (Attachment B) are available through the Commission's E-Filings System at: [https://www.dora.state.co.us/pls/efi/EFI.Show\\_Docket?p\\_session\\_id=&p\\_docket\\_id=21R-0538R](https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0538R)

65. The Commission refers this matter to an ALJ for a recommended decision. The ALJ will hold a hearing on the proposed rules at the below-stated time and place. In addition to

submitting written comments, participants will have an opportunity to present comments orally at the hearing, unless the ALJ deems oral presentations unnecessary. The Commission will consider all comments submitted in this Proceeding, whether oral or written.

66. Initial written comments on the proposed rule changes are requested by **December 22, 2021**. Any person wishing to file comments responding to the initial comments is requested to file such comments by **January 5, 2022**. These deadlines are set so that the comments and responses may be considered at the public hearing conducted by the ALJ, nonetheless, persons may file written comments into this Proceeding at any time.

67. Throughout this Decision, we have endeavored to explain our proposed rule change in this NOPR, and to provide our reasoning for accepting or not accepting other suggestions at this time. The Commission's intent in these rules is to best ensure public safety through the Commission's rules, consistent with the inclusions of rail fining authority set forth in SB 19-236, and impose fines as necessary to further that cause. This rulemaking is intended to lead to further engagement with stakeholders on proposed rule changes with the ALJ and, if warranted, with the Commission following the ALJ's recommended decision. The Commission therefore encourages continued robust participation from stakeholders including providing written and oral comments and with redlines of specific proposed rule changes.

## **II. ORDER**

### **A. The Commission Orders That:**

1. This Notice of Proposed Rulemaking (including Attachment A and Attachment B) shall be filed with the Colorado Secretary of State for publication in the December 10, 2021, edition of *The Colorado Register*.

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

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

DATE: January 11, 2022

TIME: 1:00 p.m.

PLACE: By video conference using Zoom at a link provided in the calendar of events posted on the Commission's website: <https://puc.colorado.gov/>

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Administrative Law Judge deems oral comments unnecessary.

5. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than December 22, 2021, and any pre-filed comments responsive to the initial comments be submitted no later than January 5, 2022. The Commission will consider all submissions, whether oral or written. The Commission prefers that comments be filed into this Proceeding using the Commission's E-Filings System at:

<https://www.dora.state.co.us/pls/efi/EFI.homepage>

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
November 10, 2021.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ERIC BLANK

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JOHN GAVAN

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MEGAN M. GILMAN

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Commissioners