

State of California Public Utilities Commission

MEMORANDUM



Date: August 10, 2023

From: Rail Crossings and Engineering Branch

Subject: PRIVATE RAIL CROSSINGS GUIDELINES

Introduction

Private rail grade crossings are level intersections of railroads, including light rail transit, and roadways/pathways that are either not open to public travel or not maintained by public authorities. Private crossings are intended for use only by the property owner, owner's licensees, and invitees.

This memorandum is provided to the public for guidance and as a reference to relevant regulatory provisions. However, the public, including roadway agencies, railroads, and transit agencies should not rely on the memorandum to demonstrate compliance and must seek their own legal counsel.

How is a private crossing established?

In California, private crossings require an agreement with the railroad or rail transit agency to construct, install, and maintain the rail crossing.¹ The private crossing agreement identifies the appropriate warning devices and the parties responsible for the construction, maintenance, and costs of the private rail crossing.

To establish a new private rail crossing, the property owner shall contact the railroad or rail transit agency that owns and maintains the tracks and engage in a private rail crossing agreement. Information on the application process and examples of private rail crossing agreements are available on the [UPRR website](#) and [BNSF website](#).

Can a private rail crossing be established at any desired location?

No. The railroad and the property owner determine the location of the private crossing. Railroads and rail transit agencies may not agree to the installation of a private crossing:

¹ California Public Utilities Commission General Order 75-D Section 7.2 The establishment of a private at-grade crossing, other than a private at-grade crossing of the railroad tracks by the owning railroad, must be authorized through a written agreement between the railroad and the party requiring the crossing.

- When the property has alternative reasonable access.
- When a landlocked property owner who has an agreement for one private crossing subdivides their property to create two landlocked parcels and needs an additional crossing(s) for the new parcel(s).

What if the parties cannot reach an agreement?

California Public Utilities Code Section 7537 provides the California Public Utilities Commission (CPUC) with the authority to determine the necessity for any private at-grade rail crossing and the place, manner, and conditions under which the at-grade rail crossing shall be constructed and maintained, and to apportion the costs.

What is the CPUC's process?

Once a request for a private rail crossing is received by the CPUC Rail Crossings and Engineering Branch staff, the CPUC will assign a Utilities Engineer to review the request and conduct a meeting between the railroad, property owner, CPUC staff, and other interested parties. The meeting, also called a diagnostic review, is usually held onsite at the proposed new private crossing or at the existing private crossing. The participants try to reach an agreement on the placement and safety considerations for the crossing. The participants evaluate the site-specific characteristics and determine the appropriate warning devices and traffic-control devices necessary for the safety of the crossing.² If the participants are unable to reach an agreement, the party(ies) desiring to create the private rail crossing have the option to proceed before a Commission assigned Administrative Law Judge in a formal application or in a formal complaint proceeding.

Can an existing private crossing be relocated or transferred to a new owner?

The prospective new property owner should check with an attorney and the railroad to determine transferability and negotiate a new agreement if required by the railroad.

Where can I get a copy of a specific private crossing agreement?

The railroads may have copies of the private crossing agreements, depending on when the private crossing agreement was finalized.

The CPUC does not require the railroad or property owner to file a copy of the private crossing agreement with the CPUC.

² Public Utilities Code Section 7538 permits the CPUC to prescribe alternative warning devices other than the mandatory stop signs.

Does the Federal Railroad Administration regulate private crossings?

If active warning devices have been installed, the Federal Railroad Administration requires the inspections, tests, and maintenance of active warning devices.³

What are appropriate warning devices?

Public Utilities Code Section 7538 requires one or more stop signs, as described in California Vehicle Code Section 21400, at every farm or private grade crossing where no automatic rail grade crossing protective devices (flashing light signals with or without automatic gates) are installed.

CPUC General Order 75-D includes regulations on passive (stop or yield signs) and active warning devices in conformance with the California Manual on Uniform Traffic Control Devices, including the “Private Crossing” sign under Section 7.3.

Can a private crossing be requested with rail transit systems?

Private crossings that are for the use by the property owner, owner’s licensees, and invitees, may require an agreement between the private property owner and the rail transit system. The private property owner should contact the rail transit system for more information.

Can a private crossing be included in a Quiet Zone?⁴

Private crossings can be included in a Quiet Zone, where locomotive engineers cease the routine sounding of the train horns when approaching highway-rail grade crossings. Quiet Zones include one or more public crossings. Any private crossing within the boundaries of the public crossings must be included in the Quiet Zone if the crossing provides access to the public or provides access to active industrial or commercial sites.⁵ The inclusion of a private crossing in a Quiet Zone must be evaluated by the diagnostic review team and equipped or treated in accordance with the recommendations of the diagnostic team.⁶

Does a private crossing require posting of a DOT Crossing Identification Number?⁷

No, the Federal Railroad Administration does not require the posting of the DOT Identification

³ 49 Code of Federal Regulations, Part 234. Other Federal Railroad Administration regulations applicable to the railroad are intended to address safety at private crossings, as well as public crossings, particularly requirements for alerting lights (Part 219.125) and for reflectors on rail rolling stock (Part 224) to make trains more conspicuous.

⁴ 49 Code of Federal Regulations Part 222 describes the Federal Train Horn Rule and Quiet Zones.

⁵ 49 Code of Federal Regulations Part 222.35(e).

⁶ 49 Code of Federal Regulations Part 222.25.

⁷ Rail Safety Improvement Act 2008.

Number at private crossings. However, in General Order 75-D, Section 5, Identification of Public At-grade crossings, does include publicly used private at-grade crossings as needing posting of the Commission and/or U.S. Department of Transportation assigned DOT number.

The Rail Safety Improvement Act of 2008 requires that all crossings, Public, Private, Pedestrian and Pathway, both at-grade and grade-separated, be assigned a crossing inventory number. The Federal Railroad Administration does require the primary operating railroad at each crossing, including private crossings, to maintain a DOT crossing inventory record. Guidance regarding how to fill out the inventory form is provided in the Federal Railroad Administration's "Guide for Preparing U.S. DOT Crossing Inventory Forms". Changes or corrections to DOT numbers should also be communicated with CPUC staff using the email rceb@cpuc.ca.gov.