

Decision No. C24-0938

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0558R

IN THE MATTER OF THE TEMPORARY RULES IMPLEMENTING THE WAYSIDE
DETECTOR SYSTEMS AND REPORTING RULES, 4 CODE OF COLORADO
REGULATIONS 723-7-7330 THROUGH 7332.

COMMISSION DECISION ADOPTING TEMPORARY RULES

Issued Date: December 23, 2024

Adopted Date: December 18, 2024

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for immediate adoption of temporary rules in order to implement certain critical amendments to the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings contained in 4 *Code of Colorado Regulations* 723-7 (“Rail Rules”). The statutory provisions necessitating immediate issuance of these temporary rules, §§ 40-20-302 and 40-20-303, C.R.S., were enacted in House Bill (“HB”) 24-1030, which became effective on July 1, 2024. The Commission originally adopted temporary rules to implement HB 24-1030 by Decision No. C24-0868, issued November 27, 2024, in Proceeding No. 24R-0511R. The Commission has since then identified two targeted modifications to the rule language that we find will improve these rules so that they more clearly track the statutory language that the rules are intended to implement. Accordingly, we find it appropriate to re-issue, for immediate effect, replacement temporary rules that contain

more descriptive language of the reporting requirements required under statute and our implementing temporary rules.

2. As stated in our prior decisions, these temporary rules are necessary to implement the new statutory reporting requirements for railroads operating any mainline in the state of Colorado, starting January 1, 2025. As a result, the Commission adopts for immediate effect the temporary rules shown in the attachments to this Decision in accordance with the rulemaking procedures prescribed in § 24-4-103(6), C.R.S., to ensure that railroads can fulfill the wayside detector system reporting requirements in state law, and to provide for the health, safety, and welfare of the public.

3. In accordance with § 40-2-108(2), C.R.S., these temporary rules are effective for 210 days from the effective date of this Decision, or until the Commission issues permanent rules in this matter, whichever period is less. These temporary rules are intended to supersede the prior temporary rules adopted by Decision No. C24-0868, issued November 27, 2024, in Proceeding No. 24R-0511R.

4. Attachments A and B to this Decision are the temporary rules in legislative (strikeout and underline) format modifying the Rail Rules and final version format, respectively. The temporary rules are also publicly available through the Commission's E-Filings system¹ at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0558R

B. Discussion, Findings, and Conclusions

5. On May 10, 2024, Governor Jared Polis signed into law HB 24-1030 enacting new railroad safety requirements in the State of Colorado. Section 40-20-303(1), C.R.S., requires that

¹ From the *Electronic Filings* (E-Filings) system page (<https://www.dora.state.co.us/pls/efi/EFI.homepage>), the rules can also be accessed by selecting “Search” and entering this proceeding number (24R-0558R) in the “Proceeding Number” box and then selecting “Search”.

“on or before January 1, 2025 and on or before January 1 of each year thereafter, a railroad operating any main line in the state shall submit to the Public Utilities Commission a public report that discloses, at a minimum....”. The legislation lists the minimum information to be filed in this report. The Commission finds it necessary to issue temporary rules to outline what is required to be filed with the Commission by January 1, 2025, so that the railroads subject to this reporting requirement can fully comply with the new law. As a result, by this Decision, we adopt temporary rules that implement the initial reporting requirements as required by § 40-20-303, C.R.S., in order to allow Colorado railroads to timely submit this initial wayside detector system report.

6. The adopted temporary rules comprise a new standalone section in the Rail Rules. This new section is titled “Railroad and Hazardous Materials Safety.” Within this new section, Rule 7330 specifies that this subset of rules applies to all railroads and passenger railroads, Rule 7331 adds definitions relevant to the wayside detector system reporting including definitions for the terms “defect,” “dragging equipment detector,” “hot bearings detector,” “main line,” “railroad,” “train,” and “wayside detector system,” and Rule 7332 outlines the substance of the reporting requirements. We note that these modified temporary rules add the term “general” in Rule 7332(a)(II), so that the rule reads: “general location of wayside detector system,” and in Rule 7332(a)(IV), so that the rule reads: “a general description of how each wayside detector system used by the railroad promotes safety.” These changes clarify that we did not intend this temporary implementing rule to supersede the statutory language that employs the term “general.”

7. Rulemaking is a lengthy process involving a notice period, opportunity to hear the public’s views both orally and in writing, time for the Commission to analyze and adopt the final rules, and time to file the final rules with the Secretary of State for publication in *The Colorado Register*. If the Commission waits until permanent rules are in place, railroads in

Colorado would not be able to meet this new statutory requirement to file wayside detector system information with the Commission on or before January 1, 2025. Thus, immediate adoption of these temporary rules implementing the statutory wayside detector system reporting requirement is imperatively necessary to comply with state law and to provide for the health, safety, and welfare of the public.

8. The temporary rules shall be effective on the issued date of this Decision and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less. In the permanent rulemaking that will be opened after a more thorough stakeholder process, we will put forth the expanded wayside detector system reporting requirement for consideration in permanent rules.

9. The statutory authority for the temporary rules is found, generally, at § 40-2-108, C.R.S. (authorizing the Commission to promulgate rules necessary to administer and enforce Title 40) and § 24-4-103(6), C.R.S. (allowing and specifying procedures for adoption of temporary rules) and, specifically, in HB 24-1030, as codified at §§ 40-20-302 and 40-20-303, C.R.S.

II. ORDER

A. The Commission Orders That:

1. The rules in final version format available in this Proceeding through the Commission's E-Filings system are hereby adopted as temporary rules for the reasons described above and pursuant to the provisions of § 24-4-103(6)(a), C.R.S.

2. The temporary rules shall be effective on the Issued Date of this Decision. Such rules shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

3. The 20-day period provided in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

4. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 18, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners

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, 40-29-110, and 40-32-108, C.R.S.

* * * *

[indicates omission of unaffected rules]

7329.—7339. [Reserved].

Railroad and Hazardous Materials Safety

7330. Applicability.

Rules 7330 through 7332 apply to all railroads and passenger railroads.

7331. Definitions.

The following definitions apply only in the context of rules 7330 through 7332.

- (a) “Defect” means a deficiency in a part of a train or rail including, but not limited to, hot wheel bearings, hot wheels, deficient bearings detected through acoustic means, dragging of equipment, excessive height, excessive weight, a shifted load, a loose hose, improper rail temperature, or a deficient wheel condition.

- (b) “Dragging equipment detector” means an electronic device or other technology that monitors a passing train to actively detect and alert operators of the train of the existence of any objects dragging from the train.
- (c) “Hot bearings detector” means an infrared detector located along railroad tracks to detect and alert the operators of a passing train to any overheating of a train’s bearings, axles, or wheels.
- (d) “Main line” means a segment or route of railroad tracks of any railroad over which five million or more gross tons of railroad traffic is transported annually as documented in timetables filed with the Federal Railroad Administration, pursuant to 49 C.F.R. Part 217.7. Main line does not include tourist, scenic, historic, or excursion operations as defined in 49 C.F.R. Part 238.5.
- (e) “Railroad” means a person providing railroad transportation.
- (f) “Train” means a locomotive unit or locomotive units, with or without cars, that require an air brake test pursuant to 49 C.F.R. Part 232 and Part 238.
- (g) “Wayside detector system” means an electronic device or a series of connected devices that monitors a passing train to determine whether the train has a defect, including, but not limited to, a hot bearings detector and a dragging equipment detection.

7332. Wayside Detector Systems and Reports.

- (a) Starting January 1, 2025, and on or before January 1 of each year thereafter, all railroads operating any main line in the state of Colorado shall submit to the Commission a report, available for public inspection, that discloses the following information regarding wayside detector systems:
 - (I) type of wayside detector system;
 - (II) general location of wayside detector system;
 - (III) spacing of wayside detectors by each type of wayside detector system;
 - (IV) a general description of how each wayside detector system used by the railroad promotes safety;
 - (V) a general description of the process by which defects or other detections are managed in order to provide notice to train operators and others for each wayside detector system used by the railroad;
 - (VI) the percentage of time that each type of wayside detector was operational for the previous year; and
 - (VII) plans to adjust or improve the wayside detector system or review wayside detector technology.

7333. – 7339. [Reserved].

COLORADO DEPARTMENT OF REGULATORY AGENCIES

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