

Decision No. C25-0251

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25R-0156R

IN THE MATTER OF THE TEMPORARY RULES IMPLEMENTING THE RAILROAD SAFETY TRAINING REQUIREMENTS AND INCIDENT RESPONSE REQUIREMENTS, 4 CODE OF COLORADO REGULATIONS 723-7-7331, AND 7334 THROUGH 7335.

**COMMISSION DECISION
ADOPTING TEMPORARY RULES**

Issued Date: April 4, 2025

Adopted Date: April 2, 2025

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for immediate adoption of temporary rules 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* (“CCR”) 723-7 (“Rail Rules”). The statutory provisions necessitating immediate issuance of these temporary rules, §§ 40-20-302, 40-20-305, and 40-20-310, C.R.S., were enacted in House Bill (“HB”) 24-1030, which became effective on July 1, 2024. These temporary rules are necessary to implement the new statutory safety training and incident response requirements for railroads, starting July 1, 2025. Accordingly, and as discussed below, the temporary rules are adopted without compliance with the rulemaking procedures prescribed in § 24-4-103, C.R.S., so that railroads can fulfill the safety training and incident response requirements now required in state law, and to thereby provide for the health, safety, and welfare of the public.

2. 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.

3. Attachments A and B to this Decision are the temporary rules in legislative (“strikeout and redline”) format and final 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=25R-0156R

B. Discussion, Findings, and Conclusions

4. On May 10, 2024, Governor Jared Polis signed into law HB 24-1030 enacting new railroad safety requirements in the State of Colorado. As relevant to this rulemaking, new § 40-20-310(1), C.R.S., requires that “on or before July 1, 2025, and at least once every three years thereafter, each railroad shall offer training to each fire department and other first responder organization having jurisdiction along tracks upon which the railroad operates in the state.” This training is required of “each railroad,” which new §§ 40-20-302(20) and (21) define as a person providing “railroad transportation,” which excludes rapid transit operations, public transportation, rail fixed guideway operations, or commuter passenger rail that is in an urban or suburban area and is not connected to a general or an interstate railroad system. The legislation requires training on incident response requirements outlined in § 40-20-305, C.R.S., so the information on incident response requirements needs to be included in these temporary rules.

5. Given the imminent statutory deadline of July 1, 2025, for railroads to offer their first training, and as authorized by § 24-4-103(6)(a), C.R.S., the Commission finds that immediate

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 (25R-0156R) in the “Proceeding Number” field and then selecting “Search”.

adoption of temporary rules implementing these new statutory requirements is imperatively necessary to comply with state law and to provide for the health, safety, and welfare of the public. The temporary rules outline the safety training content, required safety drills, communications requirements, and incident response requirements. Concurrent with this Decision we are opening a rulemaking to consider adoption of these rule changes with opportunity for public participation. In the interim, these temporary rules are necessary so that railroads subject to these training and incident response requirements can fully comply with the new law. Accordingly, by this Decision, we adopt for immediate effect temporary rules that implement the safety training and incident response requirements enacted in §§ 40-20-310, and 40-20-305, C.R.S., respectively, to allow Colorado railroads to timely offer the required training by July 1, 2025.

6. The adopted temporary rules are contained in the existing section of the Rail Rules titled “Railroad and Hazardous Materials Safety.” New Rule 7334 contains the rule provisions implementing the minimum railroad safety training requirements enacted in HB 24-1030. New Rule 7335 specifies the minimum incident response requirements for which training will be required under Rule 7334. Further, we have added corresponding definitions to existing Rule 7331 that are relevant to the railroad safety training and incident response requirements including definitions for the terms “Class I,” “Class II,” and “Class III” railroad, “hazardous material,” “incident,” and “railroad transportation.”

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 provide railroad safety

training on elements included in incident response requirements on or before July 1, 2025. Thus, immediate adoption of these temporary rules implementing the statutory safety training and incident response requirements 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.

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 §§ 40-20-305 and 40-20-310, C.R.S.

II. ORDER

A. The Commission Orders That:

1. The rules in final 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 upon 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
April 2, 2025.**

(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, 40-20-305, 40-20-310, 40-29-110, and 40-32-108, C.R.S.

* * * *

[indicates omission of unaffected rules]

Railroad and Hazardous Materials Safety

7330. Applicability.

Rules 7330 through 733~~52~~ apply to all railroads, ~~and passenger railroads~~ defined in paragraph 7331(k) and passenger rail systems, defined in paragraph 7331(j).

7331. Definitions.

The following definitions apply only in the context of rules 7330 through 733~~52~~.

(a) "Class I railroad" has the meaning set forth in 49 U.S.C. Sec. 20102(1).

- (b) “Class II railroad” has the meaning set forth in 49 U.S.C. Sec. 20102(1).
- (c) “Class III railroad” has the meaning set forth in 49 U.S.C. Sec. 20102(1).
- (da) “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.
- (eb) “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.
- (f) “Hazardous material” has the meaning set forth in 49 CFR 171.8.
- (ge) “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.
- (h) “Incident” has the meaning set forth in 49 CFR 225.5.
- (id) “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.
- (j) “Passenger rail system” means a rail system, including related or connected infrastructure and facilities, that is used for passenger service and is competitive in terms of travel time with other modes of surface transportation within the district. A passenger rail system shall not be used to transport freight.
- (ke) “Railroad” means a person providing railroad transportation.
- (l) “Railroad transportation” means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways. “Railroad transportation” does not include rapid transit operations, public transportation, rail fixed guideway operations, or commuter passenger rail that:
- (I) is in an urban or suburban area; and
- (II) is not connected to a general or an interstate railroad system.
- (mf) “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.
- (ng) “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.

[indicates omission of unaffected rules]

7333. ~~7339.~~ [Reserved].

7334. Railroad Safety Training Requirements.

- (a) On or before July 1, 2025, and at least once every three years thereafter, each railroad shall offer safety training to each fire department and other first responder organization having jurisdiction along track upon which the railroad operates in the state. A railroad may offer such safety training simultaneously to more than one fire department and other first responder organization.
- (b) Railroad safety training content.
 - (I) Railroad safety training is required to address the following subject matters:
 - (A) general hazards of hazardous materials;
 - (B) techniques to assess risks posed to the environment and to the safety of emergency responders and the public;
 - (C) factors an incident commander must consider in determining whether to attempt to suppress a fire or to evacuate the public and emergency responders from an area;
 - (D) method and timing of communications between railroads and fire departments, emergency managers, and first responders, including emergency notification procedures during an incident;
 - (E) how the railroad will meet the notice and electronic train consist information requirements of the Pipeline and Hazardous Materials Safety Administration rules at 49 C.F.R. Part 174 sections 174.26 and 174.28, beginning July 24, 2025;
 - (F) public notification processes;
 - (G) environmental contamination response;
 - (H) resource coordination;
 - (I) other strategies for initial response by emergency responders; and
 - (J) include safety drills that implement suggested protocols or practices for emergency responders to use to safely accomplish the tasks outlined in subparagraphs 7334(b)(I)(A-J) above.
 - (II) Railroad safety training may be offered through virtual based training, in-person/on-site training, or a combination of both. Training for the topics identified in subparagraphs 7334(b)(I)(A-J) above may be offered through a single course or may be addressed over a series of courses.

(III) The railroads are required to keep records for each person receiving railroad safety training including date, time, location, and scope of training and should be available to the Commission upon request.

(c) Safety drills.

(I) Each railroad operating trains in Colorado shall coordinate with the Department of Public Safety to conduct the following annual safety drills with other federal, regional, state, and local agencies:

(A) at least one hazardous materials response tabletop scenario involving a derailment and release of crude oil or other flammable materials;

(B) at least one hazardous materials response tabletop scenario involving a derailment involving inhalation hazards; and

(C) at least one oil containment, recovery, and sensitive area protection walkthrough; tabletop exercise; or functional exercise involving oil or hazardous substances.

(II) Every five years, each railroad operating trains in Colorado shall conduct at least one full-scale exercise in coordination with local emergency management organizations and local fire chiefs.

(III) A Class II or Class III railroad may satisfy the training requirements of this rule 7334 by either:

(A) entering into an agreement with a Class I railroad to be a partner with the Class I railroad in its training program; or

(B) adopting the training programs provided by the Short Line Safety Institute.

(d) Communications.

(I) Railroads shall perform quarterly testing of communication devices including radios and backup wireless systems to ensure that communications among the following persons are operating properly throughout Colorado including mountain and canyon areas:

(A) crew members, and

(B) crew members, railroad dispatch centers and the Department of Public Safety.

(II) Railroads shall perform quarterly testing of communication between wayside detectors with trains and train crews, and railroad dispatch centers.

(III) Railroads shall update contact information for their dispatch center with the Department of Public Safety and the Public Safety Answering Point centers responsible for the area where the accident or incident occurred on an annual basis.

7335. Incident Response Requirements.

- (a) A railroad operating in Colorado that accommodates high-hazard flammable trains or high-hazard high-consequence hazardous material shall coordinate with the Department of Public Safety regarding emergency response and spill response capacity and planning.
- (b) Railroads shall coordinate incident and response efforts with local law enforcement agencies and the hazardous materials section of the Colorado State Patrol.
- (c) A railroad and the Department of Public Safety shall coordinate regarding the adequacy of caches of equipment, supplies, and available staff to mitigate all hazards likely within the area covered by each cache, including, but not limited to, consideration of:
 - (I) fire suppression foam and foam systems;
 - (II) absorbent materials and containment booms;
 - (III) specialized leak mitigation and repair kits;
 - (IV) chemical protective clothing;
 - (V) personnel decontamination supplies;
 - (VI) interoperable communication equipment; and
 - (VII) response times.
- (d) A railroad shall ensure that local and state first responders have access to the railroad owned or contractors cached equipment necessary to respond to rail incidents.
- (e) The resources described in subparagraphs 7335(b)(I-VII) may be maintained:
 - (I) as partnerships with federal, state, county, or local agencies including local fire departments and police departments; or
 - (II) pursuant to contracts with other railroads or emergency response entities.
- (f) Nothing in this rule 7335 creates any duty for a local government, except that a local government may agree to assume duties delegated to the local government by a railroad.
- (g) A railroad may partner with one or more counties or other regional entities to support regional hazardous materials teams and capabilities.

7336. – 7339. [Reserved].

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7336. – 7339. [Reserved].