

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0245R

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE STATE SAFETY OVERSIGHT PROGRAM STANDARD FOR RAIL FIXED GUIDEWAY PUBLIC TRANSPORTATION SYSTEMS RULES, 4 CODE OF COLORADO REGULATIONS 723-7-7340 THROUGH 7356.

**RECOMMENDED DECISION
AMENDING RULES**

Issued Date: July 23, 2024

I. STATEMENT

1. On May 31, 2024, the Colorado Public Utilities Commission (“Commission”) issued the Notice of Proposed Rulemaking (“NOPR”) that commenced this proceeding to amend the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings contained in 4 *Code of Colorado Regulations* (“CCR”) 723-7 regarding the State Safety Oversight (“SSO”) Program Standard for Rail Fixed Guideway Systems (“Program Standard”). Decision No. C24-0369. The Commission also referred this matter to an Administrative Law Judge (“ALJ”) and scheduled a hearing for July 8, 2024.

2. The Staff of the Commission previously proposed, and the Commission previously approved, adopting the SSO Program Standard required by the SSO regulations at 49 *Code of Federal Regulations* (“CFR”) Part 674, and the rail transit agency’s Agency Safety Plan required by the Public Transportation Agency Safety Plan regulation at 49 CFR Part 673 in the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 CCR 723-7.

3. The purpose of this rulemaking is to implement the requirements of the Federal Transit Administration (“FTA”) issued risk-based inspection (“RBI”) program special directive (“RBI Special Directive”) issued to the Commission on October 21, 2022 as required by 49 U.S.C. § 5329(k)(5) and 49 CFR Part 670, and as part of the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law signed into law by President Biden on November 15, 2021.

4. The proposed rules in this NOPR are identical to the temporary Risk Based Inspection rules previously adopted by the Commission. Decision No. C24-0372, issued in Proceeding No. 24R-0253R (May 31, 2024).

5. Amendments are proposed to Rule 7343 State Safety Oversight Program Management, Policies, and Objectives and existing Rules 7351 through 7356 are re-numbered to accommodate the introduction of the new Rule 7351 Risk Based Inspection Program.

6. No amendments are proposed to Rules 7000 through 7099 (“General Provisions”), 7100 through 7199 (“Operating Authority”), 7200 through 7299 (“Crossings and Warning Devices”), 7033 through 7339 (“General Safety”), and 7400 through 7404 (“Employment of Class I Railroad Peace Officers”) because there are no changes required through the above-mentioned authorities.

7. On May 31, 2024, the Commission filed the Confirmation of the E-filing of the NOPR with the Office of Regulatory Reform for review and notice.

8. Also on May 31, 2024, the Commission filed the Confirmation of the E-filing of the NOPR with the Secretary of State for publication of hearing.

9. Being fully advised in this matter and consistent with the discussion below, in accordance with § 40-6-109, C.R.S., the undersigned ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision.

II. DISCUSSION

10. The proposed rules, provided with Decision No. C24-0369 in legislative (*i.e.*, strikeout/underline) format and in final format, were made available to the public through the Commission's Electronic Filings ("E-Filings") system.

11. No written comments have been filed in this Proceeding.

12. At the noticed time and place, a public comment hearing was convened. No member of the public provided any oral comment. During the hearing, Dr. Pamela Fischhaber, Deputy Director–Public Safety, briefly summarized the proposed amendments and explained that Commission counsel previously reviewed all the Commission's authority in preparing the risk-based inspection submission to the FTA. A memo from counsel confirming the Commission's authority to adopt the proposed rules was included in the that FTA submission.

1. Rule 7343. State Safety Oversight Program Management, Policies, and Objectives.

13. Rule 7343 is amended and puts in place the authorities, capabilities and access requirements required by the RBI Special Directive. This section outlines the Commission's authorities to access each rail transit agency ("RTA") overseen by the Commission both with advanced notice and without advance notice. This section outlines required physical access, and the necessary safety training and requirements required to safely access facilities. This section outlines that the Commission has the authority and capability to audit, inspect, investigate and enforce the Program Standard including inspection of activities, infrastructure, equipment, records,

personnel, and data of the RTA. Finally, this section requires that any policies and procedures developed by the State Safety Oversight Agency Staff (“SSOA Staff”) must be developed in consultation with each RTA overseen by the Commission.

2. Rule 7351. Risk Based Inspection Program.

14. Rule 7351 is added to include information required by the RBI Special Directive.
15. Rule 7351(a) outlines the requirements for the development of a RBI program and requires eight requirements that the SSOA Staff process and procedures manual must address.
16. Rule 7351(b) requires each RTA to provide the Commission with data collected by the RTA that is used when identifying hazards and assessing and mitigating safety risk and requires the SSOA Staff process and procedures manual to address the safety data to share the processes and procedures for sharing data with the Commission, and the frequency that the data will be shared with the Commission.
17. Rule 7351(c) provides the required safety program data that the Commission will collect including records of events, hazard records, and safety risk mitigation records.
18. Rule 7351(d) lists the specific maintenance data that the Commission will collect.
19. Rule 7351(e) lists the specific inspection data that the Commission will collect.
20. Rule 7351(f) requires SSOA Staff to develop policies and procedures regarding the requirements of the data management system required to store, organize, maintain data collected as part of the RBI program.
21. Rule 7351(g) requires the Commission’s data management system to have the capacity to store all data and records collected by the Commission and to accurately store that data.

22. Rule 7351(h) requires SSOA Staff to develop processes and procedures or a prioritization for the RBI program.

23. Rule 7351(i) requires SSOA Staff to develop processes and procedures to outline the data analysis procedures to specify safety metrics and include comprehensive data analysis.

24. Rule 7351(j) requires the SSOA Staff process and procedures manual to outline safety concern prioritization ratings.

25. Rule 7351(k) requires the SSOA Staff process and procedures manual to identify and prioritize safety concerns and to describe how to prioritize inspections for each RTA.

26. Rule 7351(l) requires the RBI and prioritization process to be continuous and prescribes minimum frequencies for analysis and RBI to be performed.

27. Rule 7351(m) requires the SSOA Staff process and procedures manual to be written such that RBI can be performed commensurate with the complexity of each RTA the Commission oversees.

III. CONCLUSION

28. Attachment A to this Decision represents the rule amendments adopted by this Recommended Decision with modifications to the prior Rule 7343, the renumbering of the existing Rules 7351 through 7356, and the addition of the new Rule 7351 being indicated in redline and strikeout format.

29. Attachment B to this Decision represents the rule amendments adopted by this Recommended Decision with modifications to the prior Rule 7343, the renumbering of the existing Rules 7351 through 7356, and the addition of the new Rule 7351 in final form.

30. The adopted rules in legislative format (*i.e.*, strikeout/underline Attachment A) and final format (Attachment B) are available through the Commission's E-Filings system in this Proceeding (24R-0245R) at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0245R

31. It is found and concluded that the proposed rules as modified by this Recommended Decision are reasonable and should be adopted.

32. Pursuant to the provisions of § 40-6-109, C.R.S., it is recommended that the Commission adopt the attached rules.

IV. ORDER

A. The Commission Orders That:

1. Rule 7343 of the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* 723-7-7343, renumbering of existing Rules 7351 through 7356, and new Rule 723-7-7351 Risk Based Inspection Program, contained in redline and strikeout format attached to this Recommended Decision as Attachment A, and in final form as Attachment B, are adopted.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

- b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.
4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director