

Decision No. C25-0250

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25R-0152R

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 TO IMPLEMENT HOUSE BILL 24-1030.

NOTICE OF PROPOSED RULEMAKING

Issued Date: April 4, 2025

Adopted Date: April 2, 2025

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (“Commission”) issues this Notice of Proposed Rulemaking (“NOPR”) to add rules governing railroad safety training requirements and incident response requirements comprising Rules 7334 and 7335 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, 40-20-302, 40-20-305, 40-20-310, and 40-29-110, C.R.S. Among other updates and revisions, the Commission amends its rules to implement railroad safety training requirements and incident response requirements as authorized in House Bill (“HB”) 24-1030, effective July 1, 2024, and codified as §§ 40-20-305 and 40-20-310, C.R.S.

2. 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 **on May 19, 2025, at 11:00 a.m.**

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

B. Background

4. HB 24-1030 adds new subsection § 40-20-305(1)(a), C.R.S., which provides:

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. The railroad and the Department of Public Safety shall coordinate regarding the adequacy of caches or equipment, supplies, and available staff to mitigate all hazards likely within the area covered by each cache, including consideration of: ...

5. HB 24-1030 adds new subsection § 40-20-305(1)(b), C.R.S., which provides:

A railroad shall ensure that local and state first responders have access to the cached equipment necessary to respond to rail incidents.

6. HB 24-1030 adds new subsection § 40-20-305(1)(c)(4), C.R.S., which provides:

Each railroad shall coordinate with the Department of Public Safety to conduct at least two hazardous materials response tabletop exercises each year with other federal, regional, state, and local agencies, including at least one scenario involving derailment and release of crude oil, or other flammable materials and at least one incident with derailment involving inhalation hazards.

7. Additionally, new § 40-20-310(1), C.R.S., provides:

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. In satisfying this requirement, a railroad may offer such training simultaneously to more than one fire department and other first responder organization.

C. Discussion of Proposed Amendments

8. To best implement HB 24-1030, we find it appropriate to open this rulemaking to consider rule changes that implement the General Assembly’s directive that the Commission implement railroad training requirements and incident response requirements. The Commission has authority to develop these rules under the authority vested by §§ 40-20-305, and 40-20-310, C.R.S.

9. In the discussion below, we identify and explain the proposed rule changes. 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 to this Decision.

1. Basis, Purpose, and Statutory Authority

10. The proposed revisions to the Basis, Purpose, and Statutory Authority section add the updated reference to new §§ 40-20-305, and 40-20-310, C.R.S., enacted in HB 24-1030, which authorizes the Commission to promulgate these rules.

2. Railroad and Hazardous Materials Safety

11. We propose to add new language in the existing rule section titled “Railroad and Hazardous Materials Safety,” comprising Rules 7330 through 7335, to include reference to the

new railroad safety training requirements and incident response requirements conferred in §§ 40-20-310 and 40-20-305, C.R.S.

a. Rule 7331 - Definitions

12. A number of definitions have been added to Rule 7331 to incorporate statutory definitions from HB 24-1030.

13. First, the statutory definitions for Class I, Class II, and Class III railroads have been added with the meaning of these terms set forth in 49 U.S.C. Sec. 20102(1).

14. Second, the statutory definition for “hazardous material” is added with the meaning set forth in 49 C.F.R. 272.8.

15. Third, the statutory definition for “incident” is added with the meaning set forth in 49 C.F.R. 225.5.

16. Finally, the statutory definition for “railroad transportation” is added to define what it includes and what is not included in the definition.

b. Rule 7334 – Railroad Safety Training Requirements

17. **Rule 7334(a)** This rule defines that railroad safety training is required by July 1, 2025, to be offered to each fire department and other first responder organizations having jurisdiction along track upon which the railroad operates in the state.

18. **Rule 7334(b)** This rule outlines what railroad safety training content is required, how training may be accomplished, requires a minimum of eight hours of safety training, and requires the railroads to keep records for each person receiving railroad safety training.

19. **Rule 7334(c)** This rule outlines safety drills that must occur annually including hazardous materials response tabletop scenarios, requires at least one oil containment recovery and sensitive area protection walkthrough, tabletop, or functional exercise, requires at least one

full-scale exercise in coordination with local emergency management organizations and fire chiefs, who railroads need to coordinate incident and response efforts with, and how Class II and Class III railroads may satisfy these training requirements.

20. **Rule 7334(d)** – This rule outlines required testing of communication and requires railroads to update contact information on a quarterly basis.

21. **Rule 7335** – Incident Response Requirements

22. **Rule 7335(a)** This rule requires railroads in Colorado that accommodate high-hazard flammable trains or high-hazard high-consequence hazardous materials shall coordinate with the Department of Public Safety regarding emergency response and spill response capacity and planning.

23. **Rule 7335(b)** – This rule requires a railroad and the Department of Public Safety to coordinate regarding the adequacy of caches of equipment, supplies, and available staff to mitigate all hazards likely within the area covered by each cache and includes a non-exhaustive list of equipment to be considered.

24. **Rule 7335(c)** – This rule requires a railroad ensure that local and state first responders have access to cached equipment necessary to respond to rail incidents.

25. **Rule 7335(d)** – This rule discusses how the resources described in Rule 7335(b)(I-VII) are to be maintained.

26. **Rule 7335(e)** – This rule explains that the 7335 rules do not create any duty for a local government, but that a local government may agree to assume duties delegated by a railroad.

27. **Rule 7335(f)** – This rule allows a railroad to partner with one or more counties or other regional entities to support regional hazardous materials teams and capabilities.

D. Conclusion

28. Through this NOPR, the Commission solicits comments from interested persons on the new rules 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.

29. Participants are encouraged to provide redlines of any specific proposed rule changes.

30. The proposed rules in legislative (*i.e.*, strikeout/redline) 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=25R-0152R

31. 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.

32. Initial written comments on the proposed rule changes are requested by **April 24, 2025**. Any person wishing to file comments responding to the initial comments is requested to file such comments by **May 9, 2025**. These deadlines are set so that the comments and responses may be considered at the public hearing to be conducted by the ALJ on May 19, 2025, nonetheless, persons may file written comments into this Proceeding at any time.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (“NOPR”), including Attachment A in legislative (*i.e.*, strikeout/redline) format, and Attachment B in final format to this Decision, shall be filed with the Colorado Secretary of State for publication in the April 25, 2025, 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: May 19, 2025

TIME: 11:00 a.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 April 24, 2025, and any pre-filed comments responsive to the initial comments be submitted no later than May 9, 2025. The Commission will consider all submissions, whether oral or written. The Commission prefers 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 Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 2, 2025.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners