

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25R-0083R

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.

**COMMISSION DECISION DENYING EXCEPTIONS TO
RECOMMENDED DECISION NO. R25-0392, DENYING
REQUEST FOR ORAL ARGUMENT, AND ADOPTING
RULE AMENDMENTS**

Issued Date: August 21, 2025

Adopted Date: August 13, 2025

TABLE OF CONTENTS

I.	BY THE COMMISSION	2
A.	Statement	2
B.	Background.....	2
C.	Rule Amendments	4
D.	Request for Oral Argument	6
E.	Exceptions	6
1.	BNSF and Union Pacific Exceptions	6
2.	Findings and Conclusions	8
II.	ORDER.....	9
A.	The Commission Orders That:	9
B.	ADOPTED IN COMMISSIONERS' WEEKLY MEETING August 13, 2025.....	11

I. BY THE COMMISSION**A. Statement**

1. This matter comes before the Commission for consideration of the exceptions filed by rulemaking participants to Recommended Decision No. R25-0392, issued May 29, 2025, by Administrative Law Judge (“ALJ”) Kelly A. Rosenberg (“Recommended Decision”). The Recommended Decision recommends adoption of certain targeted amendments to the Commission’s existing railroad civil penalty rules comprising Rules 7009 through 7011 of the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* 723-7 (“Rail Rules”). Specifically, the recommended rule amendments implement the provisions of House Bill (“HB”) 24-1030, codified at § 40-20-308, C.R.S., and effective July 1, 2024, that authorize the Commission to impose a civil penalty on a railroad “[i]f a railroad or any officer, agent, or employee of the railroad violates section 40-20-303[.]” As discussed below, this § 40-20-303, C.R.S., also enacted in HB 24-1030, outlines certain requirements for railroads to report to the Commission on their deployment and utilization of wayside detector systems and also sets forth certain expectations and procedures for obstructions at public crossings located in Colorado.

2. By this Decision, the Commission denies the exceptions filed to the Recommended Decision, denies the associated request for oral argument, and adopts the Recommended Decision and the recommended rule amendments in their entirety.

B. Background

3. The Commission initiated this matter on February 27, 2025, by issuing a Notice of Proposed Rulemaking (“NOPR”) and referred the matter to an ALJ for disposition. The

NOPR was published in the March 10, 2025 edition of *The Colorado Register* and on the Commission's website.

4. The following entities provided written comments in response to the NOPR: BNSF Railway Company ("BNSF") and Union Pacific Railroad ("Union Pacific").

5. The assigned ALJ conducted a public comment hearing on the proposed rules, as set forth in the NOPR, on April 15, 2025. No entity or individual provided any oral comment regarding the proposed rules.

6. On May 29, 2025, the ALJ issued the Recommended Decision.

7. On June 18, 2025, BNSF and Union Pacific each filed exceptions to the Recommended Decision, pursuant to § 40-6-109(2), C.R.S. No rulemaking participant filed a response to the exceptions.

8. The Commission deliberated at its August 13, 2025 Commissioners' Weekly Meeting. The Commission denied the exceptions, denied the associated request for oral argument, and adopted the Recommended Decision and the recommended rules in their entirety, resulting in this Decision.

9. The Commission's statutory authority to adopt the rules is found generally at § 40-2-108, C.R.S. (authorizing the Commission to promulgate rules necessary to administer and enforce title 40 of the Colorado Revised Statutes) as well as § 40-7-105, C.R.S. (authorizing the Commission to impose penalties for violation of articles 1 to 7 of title 40 or of any Commission rule or order) and § 40-29-110, C.R.S. (requiring the Commission to prescribe standards of safety to protect the health and safety of railroad employees). In addition, the Commission has statutory authority to promulgate these rules as set forth specifically in HB 24-1030, as codified in § 40-20-303, C.R.S. (regarding use of wayside detector systems and obstruction at public

crossings) and § 40-20-308, C.R.S. (authorizing the Commission to impose a fine on a railroad for violation of § 40-20-303, C.R.S., and requiring the Commission to promulgate rules for the determination, imposition, and appeal of such fines).

10. The adopted rule amendments are set forth in legislative (*i.e.*, ~~strikeout~~/underline) format in Attachment A to this Decision, and in final format in Attachment B to this Decision, and are available for public access 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-0083R

C. Rule Amendments

11. The legislature enacted HB 24-1030 to promote railroad safety in Colorado. In its legislative declaration, the legislature detailed its concerns including, as relevant here, that train accidents involving hazardous materials have increased in the last 20 years while regulations have decreased and that safe railroad operation requires measures such as maintaining tracks, using available technology to detect and address issues, employing experienced workers, and limiting the number of cars to ensure trains have reasonable lengths. § 40-20-301(1), C.R.S.

12. To the end of promoting railroad safety in Colorado, the legislature enacted provisions in § 40-20-303, C.R.S., that address, separately, railroads' use of wayside detector systems and obstructions at public crossings in Colorado. First, in § 40-20-303(1), C.R.S., the legislature outlines certain information that railroads must report annually to the Commission regarding deployment and utilization of wayside detector systems on mainlines¹ in Colorado to detect and prevent equipment failure. Second, in § 40-20-303(2), C.R.S., the legislature articulates that the State of Colorado expects that trains or equipment operating on a main line or

¹ Pursuant to § 40-20-302(14), C.R.S., "mainline" 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 but excludes tourist, scenic, historic, or excursion operations.

siding should be operated as to minimize obstruction of emergency vehicles. The legislature further provides that emergency vehicles may give warning to allow the crew to clear the crossing with all possible dispatch, and, if not cleared, then a request shall be made to the railroad to immediately take action, consistent with safe operating procedures, to clear the crossing.

13. Through § 40-20-308, C.R.S., the legislature authorized the Commission to impose a fine on a railroad for violation of § 40-20-303, C.R.S., by the railroad or any officer, agent, or employee of the railroad. Section 40-20-308(1), C.R.S., authorizes a fine of not less than ten thousand dollars but not more than twenty-five thousand dollars. Section 40-20-308(2), C.R.S., authorizes a fine of up to \$100,000 if the Commission finds the railroad intentionally or knowingly violated § 40-20-303, C.R.S., or the railroad's violation was part of a pattern and practice of repeated violations of § 40-20-303, C.R.S. Section 40-20-308(3), C.R.S., directs the Commission transfer any collected fines to the state treasurer. Section 40-20-308(4), C.R.S., directs the Commission to promulgate implementing rules for the determination, imposition, and appeal of fines.

14. The purpose of this rulemaking is to comply with the statutory directive to promulgate implementing rules for the determination, imposition, and appeal of fines levied by the Commission pursuant to the authority conferred in this § 40-20-308, C.R.S. Accordingly, through the rules adopted here, the Commission makes necessary amendments to its existing Rail Rules in order to incorporate this new type of fining authority into the established procedures for assessing civil penalties. The recommended rule amendments add specific language to refer to violation of § 40-20-303, C.R.S., and the civil penalty amounts set forth in § 40-20-308(1) and (2), C.R.S.

15. The Commission will, by separate rulemaking, adopt amendments to the Rail Rules that implement the provisions of § 40-20-303, C.R.S., concerning reporting on wayside detector systems and obstructions at public crossings.

D. Request for Oral Argument

16. With their exceptions, both BNSF and Union Pacific request oral argument to address the requested exceptions. We deny this request. We find the Commission has sufficient information to render its decision on the exceptions without additional argument.

E. Exceptions

1. BNSF and Union Pacific Exceptions

17. In their exceptions, BNSF and Union Pacific assert that the recommended amendments to the Commission's civil penalty rules in its Rail Rules are preempted by the Interstate Commerce Commission Termination Act of 1995 ("ICCTA") because the rules have the effect of managing or governing rail transportation.

18. Specific to obstructions at public crossings, the exceptions assert that the recommended rules dictate the imposition of civil penalties related to blocked crossings by requiring train crew to separate a train or equipment and clear a crossing. The exceptions assert that nearly all federal and state case law has reached the conclusion that the ICCTA preempts state law regulating how long a train can block a crossing because such laws specifically target railroad operations. The exceptions contend the same is true for civil penalties associated with an alleged failure to clear a blocked crossing and point specifically to the imposition of fines in recommended Rules 7010 and 7211. The exceptions further contend that this imposition of fines amounts to management or government of railroad transportation.

19. The exceptions concede that states may exercise traditional police powers to protect public health and safety but argue that rule language referring to a penalty for “violation of § 40-20-303, C.R.S.,” without more, is too vague. The exceptions challenge that it is unclear when a violation of § 40-20-303, C.R.S., could result in a penalty, noting that: (a) the statute is silent as to when separation or movement of a train or equipment would be deemed not possible, (b) the statutory language is structured so as to refer to the *state’s expectation* of how trains and equipment should be operated, and (c) the statutory definition of emergency vehicle is general. The exceptions raise concern that the statutory language of §§ 40-20-303 and -308, C.R.S., when read together, invites question whether the Commission may choose to impose upon a railroad a fine for violation of § 40-20-303(2), C.R.S. The exceptions also raise concern that the statutory language authorizing a higher fine for a pattern or practice of repeated violations, implemented in recommended Rule 7011(b) is lacking in specificity.

20. The exceptions further assert that the recommended rule amendments are likely preempted by the Federal Railroad Safety Act of 1970 (“FRSA”). The exceptions contend that a requirement for train crews to separate a train or equipment would likely overstep other federal regulations, and further, that state action is likely preempted even where the Federal Railroad Administration has not enacted requirements. They argue the FRSA already regulates the Federal Railroad Administration’s right to assess monetary penalties for noncompliance with federal safety regulations. The exceptions further contend the rules would not fall within the FRSA allowance for state regulations necessary to eliminate or reduce a local safety hazard, reasoning that the rules apply throughout the state, and further, that the fine would only attach after an alleged violation. Finally, the exceptions argue that the rules have the potential to unreasonably

burden interstate commerce by subjecting railroads to a patchwork of requirements and obligations.

2. Findings and Conclusions

21. The Commission denies the exceptions of BNSF and Union Pacific and will adopt the Recommended Decision and the recommended rule amendments in their entirety.

22. Through this rulemaking, the Commission adopts targeted amendments to its existing railroad civil penalty rules to provide for the determination, imposition, and appeal of fines levied by the Commission pursuant to the new authority conferred in § 40-20-308, C.R.S. This is intended as a straightforward exercise to incorporate into the civil penalty rules new specific language that refers to violation of § 40-20-303, C.R.S., and contemplates the civil penalty amounts set forth in § 40-20-308(1) and (2), C.R.S.

23. We acknowledge the concern raised in exceptions that the language in § 40-20-308, C.R.S., and our implementing Rule 7010(a) refers broadly to a violation of § 40-20-303, C.R.S., instead of to individual provisions therein. However, this reference to § 40-20-303 cannot be read in isolation. By its plain language, § 40-20-303 contains certain provisions that clearly require the railroad to act in a certain manner, *e.g.*, reporting on wayside detector systems, that could lead to a fine for noncompliance, and other provisions that do not. Regarding wayside detector systems, § 40-20-303(1), C.R.S., plainly imposes the obligation to report certain information annually to the Commission, which is something, if not done, could be subject to a fine for noncompliance. Conversely, regarding obstructions at public crossings, § 40-20-303(2), C.R.S., is structured, as the exceptions point out, to express the State of Colorado's expectation that trains and equipment should be operated to minimize the obstruction of emergency vehicles, and to express that emergency vehicles may give warning to allow a train

crew to clear the crossing with all possible dispatch and shall request the railroad to clear the crossing. As the exceptions raise, recent case law tends to indicate that to the extent state laws or regulations prohibiting blocked crossings have the effect of regulating railroad operations, such state action is likely preempted. It is readily apparent to this Commission that the language used by the legislature in § 40-20-303(2), C.R.S., was carefully selected and structured with these legal limits in mind, so as to strike a balance that seeks cooperation by the railroads in ensuring that emergency vehicles responding to crises in this state are not held up at blocked crossings while stopping short of enacting mandates that could be construed to manage or govern rail operations, and thus be preempted.

24. Accordingly, we find no cause in the exceptions to decline to adopt the rule amendments recommended by the ALJ. Any further concerns by BNSF and Union Pacific regarding implementation of § 40-20-303, C.R.S., and the provisions therein are better suited for consideration in the forthcoming rulemaking that we will soon open to consider adopting rules to implement of § 40-20-303 and/or in individual adjudications of any penalties sought by the Commission, where Commission Trial Staff will bear the burden of proof as to each count and any respondent railroad will have opportunity present relevant evidence and arguments including any claims of preemption. The Commission invites BNSF and Union Pacific to participate in the forthcoming rulemaking and to provide any proposed rule language or comments at that time.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R25-0392, issued May 29, 2025, filed by BNSF Railway Company on June 18, 2025, are denied.

2. The exceptions to Recommended Decision No. R25-0392, issued May 29, 2025, filed by Union Pacific Railroad on June 18, 2025, are denied.

3. The request for oral argument is denied.

4. Recommended Decision R25-0392 is adopted, consistent with the above discussion.

5. The amendments to the Commission's Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* 723-7, attached to this Decision as Attachments A and B are adopted. Attachment A is in legislative (*i.e.* strikeout/underline) format, and Attachment B is in final format.

6. The adopted rule are also available in the Commission's Efilings System at: https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=25R-0083R

7. The 20-day period provided for in § 40-6-114, C.R.S., within which to file an Application for Rehearing, Reargument, or Reconsideration, begins on the first day following the effective date of this Decision.

8. A copy of the final, adopted rules shall be filed with the Secretary of State. The rules shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

9. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 13, 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