

Decision No. C25-0617

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25R-0352R

IN THE MATTER OF THE TEMPORARY RULES IMPLEMENTING THE RULES REGULATING RAILROADS, RAIL FIXED GUIDEWAYS, TRANSPORTATION BY RAIL, AND RAIL CROSSINGS, 4 CODE OF COLORADO REGULATIONS 723-7, TO IMPLEMENT HOUSE BILL 25-1110.

**COMMISSION DECISION
ADOPTING TEMPORARY RULES**

Issued Date: August 27, 2025

Adopted Date: August 27, 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. The statutory provisions necessitating immediate issuance of these temporary rules, § 40-4-106(5) and (6), C.R.S., were enacted in House Bill (“HB”) 25-1110, which became effective on August 6, 2025. These temporary rules are necessary to implement the new crossing surface maintenance cost allocations provided in statute and to supersede the initial temporary cost allocation rules. Accordingly, and as discussed below, the temporary rules are adopted without compliance with the rulemaking procedures prescribed in § 24-4-103, C.R.S., in order to provide necessary process to ensure that railroads and road authorities can immediately comply with the new state law and 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. Attachment A to this Decision are the temporary rules in legislative (strikeout/underline) format and Attachment B to this Decision in 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-0352R

B. Discussion, Findings, and Conclusions

4. On April 10, 2025, Governor Jared Polis signed into law HB 25-1110 enacting new crossing surface maintenance cost allocation requirements in the State of Colorado. Section 40-4-106(5) and (6), C.R.S., requires that the Commission's cost allocation rule be changed for all local government road authorities to require that all costs for crossing surface maintenance to maintain the portion of the existing crossing between the ends of the railroad ties be paid by the railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track, and the portion of the existing crossing that is outside of the ends of the railroad ties are to be paid by the local government road authority. In the interim, these temporary rules are necessary so that the railroads and local government road authorities that have railroad crossings know how costs for the maintenance of crossing surfaces are to be paid as of August 6, 2025. As a result, by this Decision, we adopt temporary rules that implement the crossing maintenance cost maintenance requirements as required by § 40-4-106(5) and (6), C.R.S., in order to allow the new cost allocation requirements to be in effect.

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-0352R) in the "Proceeding Number" box and then selecting "Search".

5. The adopted temporary rules add a new definition for “maintain” to Rule 7201 in the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings contained in 4 CCR 723-7. Rule 7211(j) is altered to make the rule applicable to all road authorities that are not local governments. New Rule 7211(k) enacts the new rule for cost allocation of crossing maintenance costs for all local government road authorities.

6. 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*. In the meantime, if the Commission does not issue temporary rules, the legislature’s prescribed maintenance cost allocations may not be enforceable for many months. Given that the legislature prescribed these cost allocations and mandated that they be implemented through Public Utilities Commission (PUC) regulation, without a corresponding Commission rule, the legislature’s chosen cost allocations would be delayed. Thus, immediate adoption of these temporary rules implementing the new statutory crossing maintenance cost allocation is necessary (1) to comply with state law and (2) to provide for the health, safety, and welfare of the public by ensuring that changes to rail crossings are not delayed by disputes over ongoing maintenance allocations.

7. 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.

8. The statutory authority for the temporary rules is found, generally, at §§ 40-1-103.5 and 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 25-1110, as codified at § 40-4-106(5) and (6), C.R.S.

II. ORDER

A. The Commission Orders That:

1. The rules in final format are available in this Proceeding through the Commission's E-Filings system and 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 an Application 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
August 27, 2025.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners