

Decision No. C24-0369

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.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: May 31, 2024

Adopted Date: May 29, 2024

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking to amend the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings contained in 4 Code of Colorado Regulations 723-7-7343 and new rule 723-7-7351 regarding the State Safety Oversight (SSO) Program Standard for Rail Fixed Guideway Systems (Program Standard).¹ The proposed rules 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 Code of Federal Regulations (CFR) Part 670.

2. We do not propose amendments to Rules 7000 through 7099 (General Provisions), 7100 through 7199 (Operating Authority), 7200 through 7299 (Crossings and Warning Devices),

¹ The Commission proposes to re-number existing Rules 7351 through 7356 to accommodate the introduction of new Rule 7351.

7300 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.

3. We welcome comments from interested participants. To the extent a participant disagrees with the proposed rules, comments should include suggested rule revisions, in legislative format.

B. Proposed Rule Changes

4. We request that interested parties, including rail fixed guideways, rail fixed guideway systems, and transit agencies regulated by these rules, comment on the following rules and propose any alternative rules, in legislative format, which are consistent with the federal statutory and regulatory changes.

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

5. Proposed Rule 7343 is revised 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. Risk Based Inspection Program

6. Proposed Rule 7351 is entirely new and provides information required by the RBI Special Directive.

7. Proposed 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.

8. Proposed 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.

9. Proposed 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.

10. Proposed Rule 7351(d) lists the specific maintenance data that the Commission will collect.

11. Proposed Rule 7351(e) lists the specific inspection data that the Commission will collect.

12. Proposed 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.

13. Proposed 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.

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

15. Proposed 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.

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

17. Proposed 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.

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

19. Proposed 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.

C. Conclusion

20. The statutory authority for the rules proposed here is found at §§ 24-4-101 et seq., 40-18-101, -102, -103, and -104, C.R.S.

21. The proposed rules in legislative (i.e., ~~strikeout~~/underline) format (Attachment A) and final format (Attachment B) are available through the Commission's Electronic Filings (E-Filings) system at:

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

22. The Commission encourages and invites public comment on all proposed rules. We request that commenters propose any changes in legislative redline format.

23. This matter is referred to an Administrative Law Judge (ALJ) for the issuance of a recommended decision.

24. The ALJ will conduct a hearing on the proposed rules and related issues on July 8, 2024.

25. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that comments be filed no later than June 20, 2024, and that any pre-filed comments responsive to the initial comments be submitted no later than July 1, 2024. The Commission prefers that comments in this proceeding be filed using its E-Filing System at:

<https://www.dora.state.co.us/pls/efi/EFI.homepage>

The Commission will consider all submissions, whether oral or written.

26. Interested persons may provide oral comments at the public hearing unless the ALJ deems oral presentations unnecessary.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachment A and Attachment B attached hereto), shall be filed with the Colorado Secretary of State for publication in the June 10, 2024, edition of The Colorado Register.

2. This matter is referred to an Administrative Law Judge (ALJ) for the issuance of a recommended decision.

3. A hearing on the proposed rules and related matters shall be held as follows:

DATE: July 8, 2024

TIME: 11:30 a.m. until not later than 5:00 p.m.

PLACE: By video conference: using Zoom at a link the calendar of events on the Commission's website, available at:
<https://puc.colorado.gov/pucalendar>

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the ALJ deems oral presentation unnecessary. The Commission prefers and encourages interested persons to pre-file comments through its E-Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this proceeding 24R-0245R.

5. Interested persons may file written comments in this matter at any time. The Commission requests that initial pre-filed comments be submitted no later than June 20, 2024, and that any pre-filed comments responsive to the initial comments be submitted no later than July 1, 2024, so that the comments can be considered at the rulemaking hearing. The Commission will consider all submissions, whether oral or written.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 29, 2024.**

(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

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MEGAN M. GILMAN

TOM PLANT

Commissioners