

Decision No. C25-0137

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.

NOTICE OF PROPOSED RULEMAKING

Issued Date: February 27, 2025

Adopted Date: February 26, 2025

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (“Commission”) issues this Notice of Proposed Rulemaking (“NOPR”) to amend the rules governing rail civil penalties comprising Rules 7009 through 7011 of the Commission’s Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (“CCR”) 723-7 (“Rail Rules”). The Commission has statutory authority to adopt these rules under §§ 40-2-108, 40-7-105, 40-20-303, 40-20-308, and 40-29-110, C.R.S. The Commission amends its rules to implement fining authority for noncompliance with wayside detector systems and obstructions at public crossings as authorized in House Bill (“HB”) 24-1030, effective July 1, 2024, and codified as §§ 40-20-303 and 40-20-308, 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 at **11:00 a.m. on April 15, 2025.**

3. The proposed rule amendments are set forth in legislative format (strikeout and underline) 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.

B. Background

4. Through HB 24-1030, the legislature enacted new § 40-20-308(1) and (2), C.R.S., which authorize the Commission to impose a civil penalty on a railroad for violation of § 40-20-303, C.R.S. These provisions provide as follows:

- (1) If a railroad or any officer, agent, or employee of the railroad violates section 40-20-303, the public utilities commission may impose a fine of not less than ten thousand dollars but not more than twenty-five thousand dollars on the railroad. Each day of a continuing violation constitutes a separate violation.
- (2) Notwithstanding subsection (1) of this section, the public utilities commission may impose a fine of up to one hundred thousand dollars per violation if the commission finds:
 - (a) The railroad intentionally or knowingly violated section 40-20-303; or
 - (b) The railroad’s violation was part of a pattern and practice of repeated violations of section 40-20-303.

C. Discussion of Proposed Rule Amendments

5. To implement HB 24-1030, and consistent with the directive in § 40-20-308, C.R.S., to promulgate rules for the determination, imposition, and appeal of fines

under § 40-20-308, we open this rulemaking to consider corresponding amendments to our Rail Rules. In the discussion below, we identify and explain each proposed rule change.

1. Basis, Purpose, and Statutory Authority

6. We propose to add to the Basis, Purpose, and Statutory Authority section a reference to new § 40-20-308, C.R.S., which has not yet been added to our Rail Rules.

2. Civil Penalties

7. We propose to update the language throughout the existing rule section titled “Civil Penalties,” comprising Rules 7009 through 7011, to refer where necessary to the new fining authority conferred in § 40-20-308, C.R.S.

a. Rule 7010. Civil Penalties

8. **Rule 7010(a)** – This existing rule provides that the Commission has authority to impose a civil penalty against a railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track for failure to comply with the Colorado Constitution, a provision of articles 1 to 7 of title 40, C.R.S., or a Commission order or rule. We proposed to add new language that also specifies the Commission may impose a civil penalty against a railroad, as defined in § 40-20-302(20), C.R.S., if a railroad or any officer, agent, or employee of the railroad violates § 40-20-303, C.R.S.

9. **Rule 7010(b)** – This existing rule provides a framework for how the Commission will issue a civil penalty assessment notice for an alleged failure to comply with or violation(s) of the Colorado Constitution, a provision of articles 1 to 7 of title 40, C.R.S., or a Commission order or rule. We propose to add new language specifying what must be included in the Commission’s civil penalty assessment notice if such notice pertains to an alleged violation of § 40-20-303, C.R.S.

10. **Rule 7010(c)** – This existing rule provides procedures for adjudicating alleged individual violations leading to a civil penalty assessment notice. An entity may admit liability or contest the alleged violations identified in the civil penalty assessment notice. Alternatively, an entity may request a hearing before the Commission to contest alleged violations in the civil penalty assessment notice. The rule specifies that, at hearing, Commission trial staff will have the burden of demonstrating the violation(s) by a preponderance of the evidence. These procedures are consistent with the processes set forth in rule for other regulated industries¹ and are designed to adequately protect the due process rights of alleged violators. We propose to update this rule to include reference to railroads, as defined in § 40-20-302(20), C.R.S., for alleged violations of § 40-20-303, C.R.S.

11. **Rule 7010(d)** – This existing rule sets out the procedures for assessing civil penalties after an admission or adjudicative finding of liability. We propose to update this rule to include reference to railroads, as defined in § 40-20-302(20), C.R.S., for alleged violations of § 40-20-303, C.R.S. Further we propose new rule language that specifies the associated penalty amounts for violation of § 40-20-303. Pursuant to express provisions in § 40-20-308, C.R.S., the minimum civil penalty assessment is \$10,000 and the maximum civil penalty assessment is \$25,000. If the Commission finds a railroad knowingly or intentionally violates § 40-20-303, C.R.S., or that the violation is part of a pattern and practice of repeated violations of § 40-20-303, C.R.S., then the Commission may impose a fine of up to \$100,000 for each offense. These heightened penalties are expressly authorized in § 40-20-308(2)(a) and (b), C.R.S. We also add rule language in existing subparagraph (d)(III) specifying that, for purposes of

¹ See, e.g., §§ 40-7-116 and 40-7-116.5, C.R.S. (detailing Commission standards for enforcement proceedings against public utilities and carriers); Rules 6017 and 6018 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6 (stating civil penalty rules related to transportation by motor vehicle).

calculating penalties for violation of § 40-20-303, every day of a continuing violation is considered a separate and distinct offense, consistent with the directive in § 40-20-308(1), C.R.S.

b. Rule 7011. Rule Violations, Civil Enforcement, and Civil Penalties

12. We propose to add a new paragraph (b) to this rule to address violations of § 40-20-303, C.R.S., consistent with the authority in § 40-20-308, C.R.S., to issue civil penalties for violations of § 40-20-303, C.R.S. Consistent with the amounts set forth in § 40-20-308, C.R.S., new paragraph (b) specifies that a violation of § 40-20-303, C.R.S., may result in the assessment of a civil penalty of not less than \$10,000 but not more than \$25,000, per offense, unless the Commission determines that either the railroad intentionally or knowingly violated § 40-20-303, C.R.S., or the violation was part of a pattern and practice of repeated violations of § 40-20-303, C.R.S., in which case the Commission may impose a fine of up to \$100,000 per violation. Consistent with § 40-20-308, C.R.S., the rule specifies that each day of a continuing violation of § 40-20-303, C.R.S., constitutes a separate violation.

D. Conclusion

13. Through this NOPR, the Commission solicits comments from interested persons on the rule amendments proposed in this Decision and shown in Attachments A and B. 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. Participants are encouraged to provide redlines of any specific proposed rule changes.

14. 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.

15. Initial written comments on the proposed rule changes are requested by **March 25, 2025**. Any person wishing to file comments responding to the initial comments is requested to file such comments by **April 10, 2025**. These deadlines are set so that the comments and responses may be considered at the public hearing conducted by the ALJ on April 15, 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 (including Attachment A and Attachment B to this Decision) shall be filed with the Colorado Secretary of State for publication in the March 10, 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 shall be held as follows:

DATE: April 15, 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 at any time. So that they can be duly considered at the scheduled hearing, the Commission requests that initial pre-filed comments be submitted no later than **March 25, 2025**, and any pre-filed comments responsive to the initial comments be submitted no later than **April 10, 2025**. The Commission will consider all submissions, whether oral or written. The Commission prefers that any written 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
February 26, 2025.**

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners

Rebecca E. White,
Director