

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.

**RECOMMENDED DECISION ADOPTING RULES AND
CLOSING PROCEEDING**

Issued Date: May 29, 2025

TABLE OF CONTENTS

I. STATEMENT.....	2
A. Background.....	2
B. Procedural History.....	3
II. DISCUSSION, FINDINGS, AND CONCLUSIONS	4
A. Applicability	5
1. Proposed Rules.....	5
2. Public Comments	6
3. Analysis.....	6
III. CONCLUSION.....	9
IV. ORDER.....	9
A. The Commission Orders That:	9

I. STATEMENT

A. Background

1. On February 27, 2025, the Colorado Public Utilities Commission (“Commission”) issued a Notice of Public Rulemaking (“NOPR”), commencing this proceeding to amend the Commission’s Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (“CCR”) 723-7 (“Railroad Rules”). The Commission initiated this rulemaking to implement certain statutory provisions of House Bill (“HB”) 24-1030. The Commission also referred this matter to an Administrative Law Judge (“ALJ”) for a Recommended Decision.

2. HB 24-1030 concerned railroad safety. Relevant to this proceeding, HB 24-1030 placed wayside detector requirements on railroads. This technology works to detect and prevent various equipment failures.¹ Two common types of wayside detector technologies are: (1) hot bearing detectors that use infrared sensors to measure the temperatures of bearings on passing trains; and (2) dragging equipment detectors that detect objects dragging along a track.² HB 24-1030 enacted new § 40-20-303, C.R.S., which requires railroads that operate any main line³ in the state to report certain information to the Commission related to their wayside detectors.⁴

¹ See § 40-20-301(2)(a), C.R.S.

² See § 40-20-301(2)(b), C.R.S.

³ Per § 40-20-302(14), C.R.S., “Main line” is a segment or a route of railroad tracks of any railroad over which five million or more gross tons of railroad traffic is transported annually as documented in timetables filed with the Federal Railroad Administration pursuant to 49 CFT 217.7. It does not include tourist, scenic, historic, or excursion operations as defined in 49 CFR 238.5.

⁴ § 40-20-303(1), C.R.S.

3. Through HB 24-1030, the general assembly also enacted § 40-20-308(1) and (2), C.R.S., which authorized the Commission to impose a civil penalty on a railroad for violation of § 40-20-303, C.R.S. These provisions provide that:

- (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.

4. Being fully advised in this matter, and consistent with the discussion below, in accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding, along with a written recommended decision.

5. The recommended amendments to the Railroad Rules 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. Procedural History

6. HB 24-1030 became effective July 1, 2024.

7. On February 27, 2025, the Commission issued the NOPR and Decision No. C25-0137. The Commission provided substantive descriptions of the proposed amendments in the NOPR.

8. The following entities provided written comments in this proceeding: Union Pacific Railroad (“Union Pacific”) and BNSF Railway Company (“BNSF”).

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

II. DISCUSSION, FINDINGS, AND CONCLUSIONS

10. In rendering this Decision, the ALJ has reviewed the record in this proceeding and has evaluated all comments submitted by the participants, even if the ALJ does not specifically address such comments.

11. The Commission's statutory authority to adopt the proposed rules is found generally at § 40-2-108, C.R.S. (authorizing the Commission to promulgate rules necessary to administer and enforce Title 40), as well as §§ 40-7-105, C.R.S. (authorizes Commission to impose penalties) and 40-29-110, C.R.S. (requires Commission to prescribe standards of safety for 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 and 40-20-308, C.R.S.

12. Based on the above-described authorities, and based on the requirements of HB 24-1030, the undersigned concludes that the Commission has authority to promulgate the rules that this Decision adopts.

13. When the Commission exercises any authority the General Assembly grants it, it must give the public interest "first and paramount consideration."⁵ In assessing the proposed rules, the undersigned is mindful of the impact of the modifications of the rules on the public interest.

⁵ *Pub. Serv. Co. of Colo. V. Pub. Utilis. Comm'n*, 350 P.3d 543, 549 (Colo. 1960), *cert. denied*, 364 U.S. 820 (1960).

A. Applicability

14. Section 40-20-302(20), C.R.S., defines “railroad” to mean “a person providing railroad transportation.” Section 40-20-302(21), C.R.S., defines “railroad transportation” as “any form of nonhighway ground transportation that runs on rails or electromagnetic pathways.”⁶ In accordance with HB 24-1030, these rules apply to all railroads in Colorado.

1. Proposed Rules

15. Proposed Rule 7010 adds the following language: “The Commission may impose a civil penalty against a railroad as defined in §40-20-302(20), C.R.S., if the railroad or any officer, agent, or employee of the railroad violates § 40-20-303, C.R.S.” Proposed Rule 7010 also includes § 40-20-303, C.R.S., as a basis for the Commission to impose a civil penalty against a railroad, sets forth the statutory penalty amount, and explains the process for initiating a civil penalty against a railroad.⁷

16. Proposed Rule 7011 adds the following language in subpart (b):

A violation of § 40-20-303, C.R.S., may result in the assessment of a civil penalty of not less than \$10,000.00 but not more than \$25,000.00 per offense, unless the Commission determines that either: (1) the railroad intentionally or knowingly violated § 40-20-303, C.R.S.; or (2) 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 \$100,000.00 per violation. Each day of a continuing violation of § 40-20-303, C.R.S., constitutes a separate violation.

⁶ The definition excludes rapid transit operations, public transportation, rail fixed guideway operations, or commuter passenger rail that is in an urban or a suburban area and is not connected to a general or an interstate railroad system.

⁷ Decision No. C25-0137, Attachment A at pp. 2-5.

2. Public Comments

17. Union Pacific, through its counsel, submitted written comments. In those comments, Union Pacific cited the Interstate Commerce Commission Termination Act (49 § USC 10501(b)) (“ICCTA”), a federal law that preempts state laws that affect railroads in two ways.⁸ First, the ICCTA categorically preempts state or local regulation of matters directly regulated by the Surface Transportation Board. Second, the ICCTA preempts, as applied, any state law that “would have the effect of preventing or unreasonably interfering with railroad transportation.”⁹

18. Union Pacific stated in its written comments that the Commission’s proposed rules “may go beyond the scope of the PUC’s authority” because the proposed amendments “could interfere” with railroad operations.¹⁰

19. BNSF, through counsel, submitted written comments that were similar in substance to Union Pacific.¹¹ BNSF also joined and concurred with Union Pacific’s written comments.¹²

3. Analysis

20. Under the Supremacy Clause in Article VI of the United States Constitution, federal law may preempt state law where a federal statute has an express preemption provision (express preemption), and where federal law impliedly preempts state law.¹³ Implied preemption includes circumstances where federal law so thoroughly occupies the field as to make a reasonable inference that Congress left no room for states to supplement it (field preemption);¹⁴ and where state law directly conflicts with federal law such that it is impossible to comply with both federal and state

⁸ Union Pacific written comments at p. 2.

⁹ *Emerson v. Kansas City*, 503 F.3d 1126, 1130, 1133 (10th Cir. 2007).

¹⁰ Union Pacific’s written comments at p. 1.

¹¹ See BNSF’s written comment.

¹² *Id.* at p. 3.

¹³ See *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 368-69 (1986).

¹⁴ *Fidelity Fed. Sav. & Loan Assn. v. De la Cuesta*, 458 U.S. 141, 153 (1982).

requirements or where the state law stands as an obstacle to executing and accomplishing Congress's full objectives (conflict preemption).¹⁵ What is a sufficient obstacle is a matter of judgment that should be informed by examining the relevant federal statute as a whole and identifying its purpose and intended effect.¹⁶ As to conflict preemption, where state law furthers the goal of federal law, the analysis turns on whether the state law's method to effectuate the common goal conflicts with federal law.¹⁷ Whether express or implied, the preemption analysis starts with the assumption that states' historic police powers are not to be superseded by federal law unless that is Congress' clear and manifest intent.¹⁸

21. The ALJ understands and appreciates the concerns expressed by Union Pacific and BNSF. However, neither entity provided any support that the proposed rules in question are preempted or will have the effect of preventing or unreasonably interfering with railroad transportation. Union Pacific and BNSF's comments are unpersuasive because they do not apply any legal analysis used to determine whether the proposed rules are preempted by the ICCTA.¹⁹ In addition, the ICCTA does not regulate wayside detectors.²⁰ Moreover, while the Surface Transportation Board regulates rail transportation, it similarly does not directly regulate wayside detectors.²¹

¹⁵ *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 fn. 6 (2000) (The categories for preemption are not rigidly distinct; field preemption and conflict preemption may also fall into the express preemption category.)

¹⁶ *Crosby*, 530 U.S. at 374.

¹⁷ *Crosby*, 530 U.S. at 380, fn.14, citing *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69, 82-83 (1987).

¹⁸ *Cipollone v. Liggett Group.*, 505 U.S. 504, 516 (1992).

¹⁹ Because it governs interstate rail transportation issues, the ICCTA has a broader preemptive scope than the Federal Railroad Safety Act ("FRSA"), 49 U.S.C. § 20106, and so this analysis focuses on the ICCTA. The FRSA primarily focuses on railroad safety matters. Relevant here, the FRSA only preempts a state rule when the Secretary of Transportation prescribes a regulation or issues an order covering the subject matter of the state requirement. No such regulation or order is at issue here.

²⁰ See 49 § U.S.C. 10501(b).

²¹ See 49 U.S.C. 1301 – 1326; see also 49 U.S.C. 10101 – 11908.

22. Further, the Federal Railroad Administration (“FRA”) does not regulate the same requirements as outlined in § 40-20-303, C.R.S.²² As the general assembly noted in HB 24-1030, the FRA recommends but does not require the placement of hot bearing detectors at intervals of 40 miles despite railroad experts calling for a significantly greater quantity and density of such detectors.²³ Similarly, the general assembly noted that the FRA also recommends but does not require the installation of dragging equipment detectors at intervals of no more than 25 miles on railroad tracks where trains operate at speeds of at least 60 miles per hour despite railroad experts calling for a significantly greater quantity and density of such equipment.²⁴

23. The FRA’s recommended spacing distances: (a) do not consider the unique and challenging dynamics of operating railroads safely in Colorado; (b) do not adequately prevent accidents and derailments; and (c) do not proactively protect Colorado’s residents, communities, and environment from harm.²⁵

24. One of Colorado’s top priorities is “protecting Colorado’s residents, ecosystems, and infrastructure from exposure to hazardous materials carried by trains.”²⁶ To effectively protect Colorado’s residents, ecosystems, and infrastructure, several factors are necessary, including the appropriate use of technology to detect and address mechanical and other issues.²⁷

25. Accordingly, the ALJ concludes that the proposed rules are necessary to protect Colorado’s public health, safety, and welfare. In addition, the ALJ concludes that the proposed rules are not preempted by federal law and will not make any changes to the proposed rules.

²² See, e.g., 49 C.F.R. § 236.601.

²³ § 40-20-301(e), C.R.S.

²⁴ § 40-20-301(f), C.R.S.

²⁵ See § 40-20-301(g), C.R.S.

²⁶ See § 40-20-301(1)(b), C.R.S.

²⁷ See § 40-20-301(1)(g), C.R.S.

III. CONCLUSION

26. Attachment A to this Decision represents the rule amendments adopted by this Recommended Decision with modifications to the prior Railroad Rules being indicated in redline and strikeout format.

27. Attachment B to this Decision represents the rule amendments adopted by this Decision to the prior Railroad Rules in final form.

28. The adopted rules in legislative format (*i.e.*, strikeout/underline Attachment A) and final format (Attachment B) are available through the Commission's E-Filings in this proceeding (25R-0083R) at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=25R-0083R

29. It is found and concluded that the proposed rules as modified by this Recommended Decision are reasonable and should be adopted.

30. Pursuant to the provisions of § 40-6-109, C.R.S., the ALJ recommends that the Commission adopt the attached rules.

IV. ORDER

A. The Commission Orders That:

1. The Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* 723-7, contained in red-lined and strikeout format, attached to this Recommended Decision as Attachment A, and in final format, attached as Attachment B, are adopted.

2. Through this decision, Proceeding No. 25R-0083R is closed.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who, who may file exceptions to it.

- a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

KELLY A. ROSENBERG

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director