

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25R-0152R

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: November 10, 2025

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I. PROCEDURAL BACKGROUND

1. On April 4, 2025, the Colorado Public Utilities Commission (“Commission”) issued Decision No. C25-0250, a Notice of Proposed Rulemaking (“NOPR”) primarily to implement House Bill (“HB”) 24-1030. The NOPR proposed new railroad safety training and incident response requirements as part of the Commission’s Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (“CCR”) 723-7. The NOPR also referred this matter to an Administrative Law Judge (“ALJ”), scheduled a public comment hearing for May 19, 2025, and set deadlines for the submission of initial written public comments and responsive written public comments. A draft of the proposed rules, in legislative and strikethrough formats, was filed with Decision No. C25-0250.

2. By Decision No. R25-0394-I, issued May 29, 2025, the undersigned ALJ continued the public comment hearing in this matter to June 30, 2025, at 11:00 a.m., and announced new

deadlines for the submission of initial and responsive written comments. A modified version of the draft proposed rules attached to Decision No. C25-0250 (the “Draft Rules,” or singularly a “Draft Rule”), in legislative and strikethrough formats, was filed with Decision No. R25-0394-I.

3. Between April 24, 2025, and August 8, 2025, written comments were submitted by Union Pacific Railroad Company (“Union Pacific”), BNSF Railway Company (“BNSF”), and the American Short Line & Regional Railroad Association (“ASLRRA”).

4. On June 30, 2025, a public comment hearing in this matter was held as scheduled by Decision No. R25-0394-I. At the hearing, Mr. Robert Bavier, Senior Director, Hazardous Materials, Union Pacific Railroad Company (“Union Pacific”) submitted a public comment on behalf of Union Pacific.

5. By Decision No. R25-0536-I, issued July 24, 2025, the undersigned ALJ, among other things, denied the Motion for Additional Time for Filing, filed by BNSF on July 18, 2025, and acknowledged the anticipated filing of written public comments by BNSF and/or Union Pacific.¹

II. THE DRAFT RULES²

6. The following provides a summary of the Draft Rules, which were attached as Attachments A and B to Decision No. R25-0394-I and served as the basis for public comment in this Proceeding.

A. Rule 7330 – Applicability

7. Draft Rule 7330 establishes that the railroad safety training and incident response requirements in Rules 7330 through 7335 apply to all railroads operating in Colorado. This rule

¹ Decision No. R25-0536-I at p. 2.

² See Attachments A and B to Decision No. R25-0394-I.

introduces the structural division for the new subpart on “Railroad and Hazardous Materials Safety.” It does not alter existing jurisdictional boundaries but delineates the scope of the new requirements authorized by HB 24-1030.

B. Rule 7331 – Definitions

8. Draft Rule 7331 adds statutory and technical definitions to implement HB 24-1030. The Draft Rules adopt federal definitions for Class I, Class II, and Class III railroads by reference to 49 U.S.C. § 20102(1) and incorporate state-law definitions for hazardous material and incident as set forth in §§ 40-20-302(10) and § 40-20-302(13), C.R.S. respectively. Draft Rule 7331 also defines railroad transportation, train, main line, and wayside detector system for purposes of Rules 7330 through 7335. This framework aligns state implementation with both HB 24-1030 and established federal railroad-safety terminology while grounding required coordination responsibilities in Colorado statute.

C. Rule 7334 – Railroad Safety Training Requirements

9. Draft Rule 7334 implements § 40-20-310(2), C.R.S., by requiring every railroad operating in Colorado to offer safety training to each fire department and other first responder organization having jurisdiction along the track upon which the railroad operates in the state. A railroad may provide this training to multiple departments or organizations simultaneously.

10. Subsection (a) establishes the initial compliance deadline of on or before July 1, 2025, and a recurring requirement at least once every three years thereafter.

11. Subsection (b) prescribes the minimum content of the required training, including: (1) general hazards of hazardous materials; (2) techniques to assess risks posed to the environment and to responder and public safety; (3) factors that an incident commander must consider in fire suppression or evacuation decisions; (4) methods and timing of communications between railroads

and emergency responders, including emergency notification procedures; (5) how the railroad will meet notice and electronic train consist information requirements under 49 C.F.R. §§ 174.26 and 174.28; (6) public notification processes; (7) environmental contamination response and resource coordination; and (8) other strategies for initial response.

12. Subsection (c) requires annual safety drills, including: at least one hazardous materials response tabletop scenario involving a derailment and release of crude oil or other flammable materials; at least one hazardous materials response tabletop scenario involving a derailment involving inhalation hazards; and at least one oil containment, recovery, or sensitive-area protection walkthrough, tabletop exercise, or functional exercise. Every five years, each railroad operating trains in Colorado must conduct at least one full-scale exercise in coordination with local emergency management organizations and local fire chiefs.

13. Subsection (c)(III) provides compliance flexibility for Class II and Class III railroads, allowing them to satisfy the training requirements by partnering with a Class I railroad or by adopting Short Line Safety Institute training programs.

14. Finally, Subsection (d) requires quarterly testing of communication devices, including radios and backup wireless systems, and quarterly testing of communication between wayside detectors, train crews, and railroad dispatch centers, as well as annual updates to dispatch center contact information provided to the Department of Public Safety and to the Public Safety Answering Points.

D. Rule 7335 – Incident Response Requirements

15. Draft Rule 7335 implements § 40-20-305, C.R.S., governing coordination with the Colorado Department of Public Safety (“CDPS”) and other agencies concerning emergency response and spill response capacity. Subsection (a) requires railroads that accommodate high-

hazard flammable trains or high-consequence hazardous materials to coordinate with CDPS regarding emergency response and spill response planning. Subsection (b) requires coordination of incident and response efforts with local law enforcement agencies and the hazardous materials section of the Colorado State Patrol. Subsection (c) directs the railroad and CDPS to evaluate the adequacy of caches of equipment, supplies, and personnel, identifying seven considerations: (I) fire suppression foam and foam systems; (II) absorbent materials and containment booms; (III) specialized leak mitigation and repair kits; (IV) chemical protective clothing; (V) personnel decontamination supplies; (VI) interoperable communication equipment; and (VII) response times. Subsection (d) ensures that local and state first responders have access to railroad-owned or contractor-maintained cached equipment necessary to respond to rail incidents. Subsection (e) allows these resources to be maintained through partnerships with governmental agencies or contracts with other railroads or emergency response entities, and Subsection (f) clarifies that no duty is created for local governments unless voluntarily assumed. Subsection (g) permits railroads to support regional hazardous materials teams and capabilities. Collectively, these provisions emphasize coordination, resource readiness, and interoperability, rather than operational control over railroad transportation.

E. Rules 7333 and 7336-7339 – Reservation

16. Rules 7333, 7336, 7337, 7338, and 7339 are reserved and contain no substantive text in the Draft Rules.

III. PUBLIC COMMENTS

A. Definitions

17. Union Pacific initially observed that several terms, including “walkthrough tabletop exercise,” lack definitions in the proposed rules. Union Pacific requested that the Commission

clarify such terminology to ensure consistent interpretation and application.³ In its amended public comments,⁴ Union Pacific proposed to add to the definition of “dragging equipment detector.”⁵

Union Pacific further proposed to add the following definition subsections to Rule 7331.

(f) “Emergency Management Agency” means local emergency planning committees, emergency management agencies, and the Environmental Protection Agency.

(g) “Emergency Manager” means an Emergency Management Agency employee who is authorized to make decisions on behalf of that agency.

(h) “First Responder Organization” means fire and police departments. For purposes of Railroad and Hazardous Materials Safety training in the context of Rules 7330 through 7335, first responder training is provided only to fire departments.

(i) “Functional Exercise” means an operations-based exercise designed to test capabilities and functions in a realistic, real-time environment. Movement of resources is typically simulated.

(r) “Tabletop Exercise” means a discussion-based exercise in response to a scenario, intended to generate a dialogue of various topics to facilitate a conceptual understanding, identify strengths and areas for improvement, and/or achieve changes in perceptions about plans, policies, or procedures.⁶

B. Railroad Safety Training Requirements and Drills

18. Union Pacific noted that the requirements for safety training in Rule 7334(a) and the requirements for safety drills in Rule 7334(c) appear substantially similar. It proposed that the Commission consider consolidating these provisions for efficiency and clarity.⁷ At the June 30, 2025, public comment hearing, Union Pacific further urged alignment of required drills and exercises with the federal National Preparedness for Response Exercise Program (“NPREP”)

³ See Union Pacific Railroad Company’s Comments, filed April 24, 2025 at p. 2.

⁴ See Union Pacific Railroad Company’s Amended Comments, filed August 8, 2025.

⁵ *Id.* at p. 2.

⁶ *Id.* at pp. 2, 3.

⁷ Union Pacific Railroad Company’s Comments, filed April 24, 2025 at p. 1.

to avoid creating Colorado-specific exercise types, and requested that Rule 7335 define the terms “coordinate,” “High-consequence,” and “adequacy.” In contrast, in its amended written comments,⁸ Union Pacific proposed prescriptive substitute language for Rule 7334(c), stating:

(I) Exercises will be designed using scenarios and scopes aimed at thoroughly testing and applying the safety training concepts specified in Rule 7334(b).

(II) Every three years, railroads are required to organize a functional exercise in collaboration with local Emergency Management Organizations and fire chiefs.

(III) Throughout the remaining years of a triennial cycle, different exercise methods shall include:

(A) a spill containment and recovery equipment deployment exercise; and

(B) a spill or release response tabletop exercise.⁹

Union Pacific proposed revisions to Rule 7334 that would combine or align the safety training and safety drill requirements in order to reduce overlap between the two provisions.¹⁰

19. ASLRRA, representing 11 Class III freight railroads in Colorado, expressly adopted Union Pacific’s April 24, 2025, comments and further proposed a targeted amendment to Rule 7334. ASLRRA’s amendment would incorporate language from § 40-20-310(5)(a)–(b), C.R.S., allowing Class II and III railroads to meet the training requirements either by partnering with a Class I railroad or by adopting the Short Line Safety Institute’s training programs.¹¹ ASLRRA argues that without this amendment, the rules would be incomplete and fail to reflect

⁸ See Union Pacific Railroad Company’s Amended Comments, filed August 8, 2025.

⁹ *Id.* at p. 4.

¹⁰ See Union Pacific Railroad Company’s Amended Comments, filed April 24, 2025 at p. 2.

¹¹ American Short Line & Regional Railroad Association Comments and Proposed Rule Change, filed June 4, 2025 at p.1.

the General Assembly's intent in HB 24-1030.¹² ASLRRA seeks to accomplish this by adding the following subsection¹³ under Rule 7334:

A Class II or Class III railroad may satisfy the requirements of this rule by either:

(i) entering into an agreement with a Class I railroad to be a partner with the Class I railroad in its program; or

(ii) adopting the training programs provided by the Short Line Safety Institute¹⁴

C. Incident Response Requirements

20. The initial public comments from Union Pacific¹⁵ expressed broad support for collaboration with first responders but cautioned against adopting state-level mandates that, in its view, could “have the effect of preventing or unreasonably interfering with railroad transportation” under the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10501(b) (“ICCTA”).¹⁶ On the topic of incident response, Union Pacific stressed that public notification and incident command functions should remain with the appropriate local agencies after the railroad has made its required notifications.¹⁷

21. Union Pacific's amended comments,¹⁸ as they relate to incident response requirements, were designed to narrow the scope of railroad obligations and align them with federal emergency management frameworks. Union Pacific proposes to delete certain wording from, add, certain language to, and replace certain language in, subsection (a) of Proposed

¹² *Id.* at pp. 1-2.

¹³ ASLRRA does not denote the numeric subsection under which ASLRRA's proposed addition should appear.

¹⁴ American Short Line & Regional Railroad Association Comments and Proposed Rule Change, filed June 4, 2025 at p.3.

¹⁵ *See, supra*, footnote no. 2.

¹⁶ Union Pacific Railroad Company's Comments, filed April 24, 2025, at p. 2.

¹⁷ *Id.*

¹⁸ *See, supra*, footnote no. 3.

Rule 7335, so that it would read: “A railroad operating in Colorado that transports hazardous materials shall communicate with the Colorado Department of Public Safety regarding emergency response and spill response capacity and planning.”¹⁹ Regarding subsection (b) of Rule 7335, Union Pacific recommends that the requirement to work with local law enforcement and the State Patrol’s Hazardous Materials Section be explicitly “pursuant to the National Incident Management System (NIMS) framework utilizing the Incident Command System (ICS).”²⁰ In subsection (c) of Rule 7335, Union Pacific recommends deleting the prescriptive cache and equipment list and replace it with a requirement to hold coordination meetings, if requested, covering:

- (I) technical advice and recommendations;
- (II) trained response personnel;
- (III) specialized equipment;
- (IV) any other available resources to support an incident commander who conducts a public safety emergency response under the National Incident Management System; and
- (V) inventory information on emergency responses involving oil or other hazardous-substances, consisting of:
 - (A) equipment owned by the railroad, including equipment type and location;
 - (B) the railroad's response personnel, including contact information and location; and
 - (C) other resources reasonably available to the railroad.²¹

In subsection (d) of Rule 7335, the obligation was qualified to apply only “if necessary,” so that the text would read: “...cached equipment is available... if necessary.” The legal position

¹⁹ Union Pacific Railroad Company’s Amended Comments, filed August 8, 2025 at p. 5.

²⁰ *Id.*

²¹ *Id.* at pp. 5-6.

accompanying these edits reiterated that the proposed rule manages or governs rail transportation and that daily penalties “indirectly regulate... through economic leverage.”²²

22. BNSF’s public comments focus on narrowing the scope of railroad obligations and ensuring flexibility in how compliance may be achieved.²³ BNSF objects to Proposed Rule 7335, which sets incident response requirements for High-hazard High-consequence hazardous materials, hazardous materials, caches of equipment and supplies, and available staff for all hazards likely within the area covered by each cache.²⁴ BNSF emphasizes that these requirements apply directly to railroads engaged in rail transportation and impose significant fines for violations, \$10,000 to \$25,000 per day, and in some cases up to \$100,000 per day.²⁵ BNSF argues that these provisions have the effect of managing or governing rail transportation and are therefore likely preempted by the ICCTA. BNSF further contends that the Federal Railroad Safety Act (“FRSA”) already regulates incident response requirements and that Proposed Rule 7335 is likely preempted for that reason as well, citing Federal Railroad Administration’s (“FRA”) inspection authority, accident/incident reporting requirements, and National Transportation Safety Board investigative authority.²⁶ BNSF also notes that the term “high-hazard high-consequence hazardous material” does not appear in the Federal Hazardous Materials Regulations (HMR)²⁷ and represents a new classification inconsistent with the existing federal framework.²⁸

²² *Id.* at p. 7.

²³ *See, generally*, BNSF Railway Company’s Initial Written Comments, filed June 6, 2025.

²⁴ *Id.*

²⁵ *Id.* at p. 8.

²⁶ *Id.* at pp. 8-9.

²⁷ *See* 49 C.F.R. § 174.26 (notice to train crews) and 49 C.F.R. § 174.28 (electronic train consist information).

²⁸ BNSF Railway Company’s Initial Written Comments, filed June 6, 2025. at p. 8.

23. ASLRRA does not present an independent analysis regarding the issue of incident response. Instead, ASLRRA states that it “concurs with the Comments submitted by the Union Pacific Railroad... on April 24, 2025, and adopts them.”²⁹

D. Coordination with Emergency Responders

24. Union Pacific emphasized its longstanding commitment to partnering with first responders, including fire departments and other agencies with jurisdiction along its tracks.³⁰ Union Pacific further expresses willingness to invite emergency management organizations to such training if the Commission supplies relevant contact lists, and proposes to offer first responder training every three years using those lists.³¹ Union Pacific clarifies that public notifications in emergency situations should be the responsibility of local agencies, while railroads notify local agencies through 911 and the State.³² It proposes consolidating similar safety training and drill requirements, and specifies that incident response should occur in coordination with the CDPS, local law enforcement, and the Colorado State Patrol under NIMS and ICS protocols.³³ It supports shared access to caches of response equipment and allows partnerships or contracts to meet resource requirements.³⁴

25. ASLRRA states that training obligations of Class II and III railroads may be fulfilled either by partnering with a Class I railroad’s program or by adopting training from the Short Line Safety Institute.³⁵

²⁹ American Short Line & Regional Railroad Association Comments and Proposed Rule Change, filed June 4, 2025 at p.1.

³⁰ Union Pacific Railroad Company’s Comments, filed April 24, 2025, at p. 1.

³¹ Union Pacific Railroad Company’s Amended Comments, filed August 8, 2025 at p. 1.

³² *Id.*

³³ *Id.* at p. 3.

³⁴ *Id.* at p. 6.

³⁵ American Short Line & Regional Railroad Association Comments and Proposed Rule Change, filed June 4, 2025 at p.1.

26. BNSF underscores its focus on safety and compliance with applicable regulations, but contends that many of the proposed emergency coordination and incident response requirements, particularly those in Proposed Rules 7334 and 7335, are preempted by federal law, including the ICCTA, the FRSA, and the Hazardous Materials Transportation Act, 49 U.S.C. § 5125 (“HMTA”).³⁶

E. Federal Preemption Considerations

27. Union Pacific contends that portions of the proposed rules are likely preempted by Federal law.³⁷ It cites the ICCTA, under which, Union Pacific maintains, the Surface Transportation Board (“STB”) has exclusive jurisdiction over rail transportation.³⁸ Union Pacific asserts that state regulation is preempted both when it directly regulates matters within the STB’s jurisdiction and when, as applied, it prevents or unreasonably interferes with railroad operations.³⁹ It warns that the Proposed Rules, by prescribing the content and frequency of safety training and drills, and by imposing substantial fines for violations, would have the effect of managing or governing railroad transportation through economic leverage.⁴⁰

28. ASLRRRA does not present an independent analysis of federal preemption. Instead, on behalf of Colorado’s Class III railroads, it adopts Union Pacific’s April 24, 2025 comments in full, thereby incorporating Union Pacific’s preemption arguments as its own.

29. BNSF advances a detailed preemption argument grounded in three federal statutes: the ICCTA, FRSA, and HMTA.⁴¹ It asserts that the Proposed Rules would regulate railroad

³⁶ BNSF Railway Company’s Initial Written Comments, filed June 6, 2025 at pp. 2-11.

³⁷ Union Pacific Railroad Company’s Amended Comments, filed August 8, 2025 at p. 7 and Union Pacific Railroad Company’s Comments, filed April 24, 2025, at pp. 2-3.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Union Pacific Railroad Company’s Amended Comments, filed August 8, 2025 at p. 7.

⁴¹ See BNSF Railway Company’s Initial Written Comments, filed June 6, 2025 at pp. 2-11.

operations in areas subject to exclusive Federal jurisdiction, such as incident response, communication requirements, and hazardous materials handling.⁴² BNSF maintains that the rules are neither “remote nor incidental” to rail transportation, but instead directly manage it, triggering ICCTA preemption.⁴³ It further argues that the FRSA occupies the field of railroad safety, preempting state rules unless they address a truly local hazard without conflicting with federal law or unduly burdening interstate commerce.⁴⁴ It also contends that the HMTA preempts any non-uniform state hazardous materials regulation.⁴⁵ In summary, BNSF argues that the Proposed Rules, in particular Proposed Rule 7334(d) and 7335, are vulnerable to a preemption challenge under the ICCTA, FRSA, and HMTA.

F. Administrative Coordination

30. Union Pacific suggested that the Commission itself should maintain and publish a list of emergency management contacts to assist railroads in complying with the triennial training mandate. According to Union Pacific, such centralized coordination would ensure consistency statewide and reduce the burden on individual railroads to identify appropriate agencies.⁴⁶

IV. COMMISSION JURISDICTION AND APPLICABLE FEDERAL LAW

31. As an initial matter, the Commission’s jurisdiction does not extend to the regulation of railroad rates, routes, or services within the meaning of the ICCTA. Likewise, the Commission does not impose requirements in areas expressly governed by the HMR, including the classification, packaging, marking, labeling, placarding, documentation (shipping papers), or

⁴² *Id.* at pp. 6-7, 8-11.

⁴³ *Id.* at p. 8.

⁴⁴ *Id.* at pp. 8-11.

⁴⁵ *Id.* at pp. 6-7.

⁴⁶ Union Pacific Railroad Company’s Amended Comments, filed August 8, 2025 at p. 1.

incident reporting requirements for hazardous materials transportation. These subjects are preempted under the HMTA.⁴⁷

A. U.S. Constitution

32. Federal law preempts and limits the scope of state regulation of railroads. The Supremacy Clause of the United States Constitution provides that federal law “shall be the supreme Law of the Land.”⁴⁸ Congress has exercised this authority in multiple statutes affecting railroad operations.

B. ICCTA

33. The ICCTA, codified in 49 U.S.C. §§ 10101 et seq., grants the STB exclusive jurisdiction over “transportation by rail carriers” and related facilities.⁴⁹ The statute expressly provides that “the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.”⁵⁰ Courts have described ICCTA preemption as among the broadest in federal law, intended to prevent the development of a patchwork of state and local regulation.⁵¹

C. FRSA

34. In addition to the ICCTA, FRSA, codified in 49 U.S.C. §§ 20101 et seq., provides for nationally uniform railroad safety standards. FRSA includes limited exceptions allowing states

⁴⁷ See 49 U.S.C. § 5101 et seq., and 49 C.F.R. Part 171 et seq.

⁴⁸ U.S. Const. art. VI, cl. 2.

⁴⁹ 49 U.S.C. § 10501(b).

⁵⁰ *Id.*

⁵¹ See, e.g., *City of Auburn v. United States*, 154 F.3d 1025, 1030–31 (9th Cir. 1998) (quoting *CSX Transp., Inc. v. Ga. Pub. Serv. Comm’n*, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996)) (“It is difficult to imagine a broader statement of Congress’s intent to preempt state regulatory authority over railroad operations.”); *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638, 643 (2d Cir. 2005) (quoting *Green Mountain R.R. Corp. v. Vermont*, No. 01-CV-181, 2003 U.S. Dist. LEXIS 23774, at *2 (D. Vt. Dec. 15, 2003)) (“[N]ot all state and local regulations are preempted by the [ICCTA]; local bodies retain certain police powers which protect public health and safety.” (brackets in original omitted)); *Union Pac. R.R. v. Chicago Transit Auth.*, 647 F.3d 675, 678 (7th Cir. 2011) (citing cases from multiple federal circuits recognizing Congress’s intent that ICCTA preemption be interpreted broadly).

to adopt or enforce regulations necessary to address local safety hazards, provided those regulations are not incompatible with federal law.⁵²

35. These principles are codified in 49 U.S.C. § 20106, which provides:

(a) National uniformity of regulation.--(1) Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.

(2) A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order--

(A) is necessary to eliminate or reduce an essentially local safety or security hazard;

(B) is not incompatible with a law, regulation, or order of the United States Government; and

(C) does not unreasonably burden interstate commerce.

(b) Clarification regarding State law causes of action.--(1) Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party--

(A) has failed to comply with the Federal standard of care established by a regulation or order issued by the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), covering the subject matter as provided in subsection (a) of this section;

(B) has failed to comply with its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the Secretaries; or

(C) has failed to comply with a State law, regulation, or order that is not incompatible with subsection (a)(2).

⁵² See 49 U.S.C. § 20106.

(2) This subsection shall apply to all pending State law causes of action arising from events or activities occurring on or after January 18, 2002.

(c) Jurisdiction.--Nothing in this section creates a Federal cause of action on behalf of an injured party or confers Federal question jurisdiction for such State law causes of action.

This framework provides for national uniformity in railroad safety regulation while preserving limited state authority to address essentially local safety or security hazards that are not incompatible with federal law and do not impose an undue burden on interstate commerce.

D. HMTA

36. In addition, the HMTA, codified in 49 U.S.C. §§ 5101 et seq., provides the U.S. Department of Transportation with authority to regulate the safe transport of hazardous materials in commerce.⁵³ The HMTA and its implementing regulations establish uniform national standards governing classification, packaging, handling, and routing of hazardous materials by rail and other modes.⁵⁴ The statute includes an express preemption clause, 49 U.S.C. § 5125, which bars state or local governments from imposing requirements that differ from or conflict with the federal scheme.

37. The HMTA, like the ICCTA, reflects Congress's intent to establish uniform national standards and avoid a patchwork of state and local regulation that could disrupt interstate commerce. Accordingly, to the extent the proposed rules or comments implicate the transportation of hazardous materials by rail, the HMTA reinforces the principle that safety standards and operational requirements in this field are reserved to federal authorities.

E. Federal Oversight of Railroad Agreements under 49 U.S.C. § 10706

38. 49 U.S.C. § 10706(a)(2)(A) states:

⁵³ See, generally, 49 U.S.C. §§ 5101 et seq.

⁵⁴ *Id.*; see also, 49 C.F.R. Parts 171 – 180.

A rail carrier providing transportation subject to the jurisdiction of the Board under this part that is a party to an agreement of at least 2 rail carriers that relates to rates (including charges between rail carriers and compensation paid or received for the use of facilities and equipment), classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, publication, or establishment of them, shall apply to the Board for approval of that agreement under this subsection. The Board shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy of section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of its approval. If the Board approves the agreement, it may be made and carried out under its terms and under the conditions required by the Board, and the Sherman Act (15 U.S.C. 1, et seq.), the Clayton Act (15 U.S.C. 12, et seq.), the Federal Trade Commission Act (15 U.S.C. 41, et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a) do not apply to parties and other persons with respect to making or carrying out the agreement. However, the Board may not approve or continue approval of an agreement when the conditions required by it are not met or if it does not receive a verified statement under subparagraph (B) of this paragraph.

39. 49 U.S.C. § 10706(a)(4) states:

Notwithstanding any other provision of this subsection, one or more rail carriers may enter into an agreement, without obtaining prior Board approval, that provides solely for compilation, publication, and other distribution of rates in effect or to become effective. The Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a) shall not apply to parties and other persons with respect to making or carrying out such agreement. However, the Board may, upon application or on its own initiative, investigate whether the parties to such an agreement have exceeded its scope, and upon a finding that they have, the Board may issue such orders as are necessary, including an order dissolving the agreement, to ensure that actions taken pursuant to the agreement are limited as provided in this paragraph.

V. FINDINGS, ANALYSIS AND CONCLUSIONS

A. Findings

40. HB 24-1030 directs the Commission to promulgate rules addressing railroad safety training for first responders and incident response for High-hazard materials.

41. Union Pacific, BNSF, and ASLRRA submitted public comments in this Proceeding and raised concerns regarding clarity, operational feasibility, and potential federal preemption.

42. ASLRRA, representing 11 Class III railroads, specifically requested amendments to ensure that Class II and III railroads may comply with Rule 7334 by partnering with Class I railroads or by adopting Short Line Safety Institute programs, as expressly authorized by § 40-20-310(5)(a)–(b), C.R.S.

43. The comments further reflect the railroads’ acknowledgement that first responders require consistent, practical training on hazardous materials response.

44. This rulemaking proceeding concerns the amendment of Rule 7330 and 7331 and the adoption of new Rules 7334 and 7335 of the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 CCR 723-7, to implement HB 24-1030.

45. Union Pacific Railroad Company, through Mr. Robert Bavier, Senior Director of Hazardous Materials, identified several terms in proposed Rule 7334, including ‘first responder organizations having jurisdiction’ and ‘sensitive area protection walkthroughs,’ that appear in the Draft Rules but lack definition. Union Pacific recommended that the Commission define these terms and align the rule’s drill and exercise requirements with the federally recognized NPREP standards.

46. Union Pacific further proposed that the State develop and maintain an official list of responder organizations to facilitate comprehensive outreach and coordination.

47. With respect to proposed Rule 7335, Union Pacific identified ambiguity in the terms ‘High-consequence,’ ‘coordinate,’ and ‘adequacy,’ noting that the absence of measurable parameters could impede consistent implementation of emergency response planning and evaluation.

48. BNSF Railway Company did not present additional oral comments on the substance of Rules 7334 or 7335 during the June 30, 2025 hearing, but its counsel indicated that BNSF intends to coordinate with Union Pacific in developing proposed definitions for certain key terms.⁵⁵

49. Both Union Pacific and BNSF raised in their written public comments concerns regarding potential federal preemption of portions of the Draft Rules. At the hearing, counsel for Union Pacific stated that Union Pacific concurred with BNSF's preemption analysis.

50. The record supports the conclusion that additional definitional clarity in proposed Rules 7334 and 7335 will improve the rules' enforceability, facilitate compliance, and reduce the risk of conflicting interpretations.

51. As an initial matter, the Commission recognizes the limits of its jurisdiction in promulgating rules governing railroads operating in Colorado. Federal law occupies the field of railroad transportation safety and operations to a significant degree through the ICCTA FRSA, and HMTA. These statutes vest exclusive federal jurisdiction over the regulation of rail transportation, rail operations, and hazardous materials routing and response in the STB, the FRA, and the Pipeline and Hazardous Materials Safety Administration, respectively. However, federal law preserves limited state authority to adopt safety and emergency response requirements of general applicability that are (1) not incompatible with federal law, (2) do not unreasonably burden interstate commerce, and (3) address genuinely local safety concerns. This Recommended Decision interprets the statutory directives in HB 24-1030 as authorizing the Commission to

⁵⁵ The undersigned ALJ appreciates the carriers' stated intention to collaborate on definitional proposals that may assist the Commission in adopting rules that are operationally practical, consistent with established federal frameworks, and legally sound.

promulgate rules of coordination, communication, and training, rather than to regulate the physical operation of trains or impose operational restrictions preempted by federal law.⁵⁶

52. Aligning Colorado’s exercise and drill requirements with the NPREP standards will promote consistency with existing federal obligations and established responder practices, thereby enhancing the effectiveness of coordinated emergency response. In most circumstances, the planning, notification, and execution elements required by these rules will substantially mirror, and, where implemented jointly, may satisfy the exercise objectives established under NPREP. However, the Commission does not construe compliance with NPREP as automatically fulfilling the requirements of these rules, or vice versa; rather, the Commission intends for the two frameworks to operate in a complementary and mutually reinforcing manner.

53. In drafting this Decision and the accompanying rules,⁵⁷ the undersigned ALJ considered the preemption concerns raised by BNSF and Union Pacific to ensure that the final rules fall within the scope of the Commission’s authority and do not conflict with federal law, including the ICCTA, FRSA, and HMTA.

B. Analysis and Conclusions - the Proposed Rules⁵⁸

54. The undersigned ALJ has reviewed the Draft Rules attached to Decision No. R25-0394-I, the public comments summarized above, and the revisions reflected in Attachments A and B to this Recommended Decision (collectively, the “Proposed Rules,” or singularly a “Proposed Rule”). The following analysis and conclusions address each principal area of revision,

⁵⁶ See *Emerson v. Kansas City S. Ry. Co.*, 503 F.3d 1126, 1130–33 (10th Cir. 2007) (holding that the ICCTA does not categorically preempt generally applicable state tort or safety measures that do not regulate rail operations); cf. *City of Tulsa v. S. Kan. & Okla. R.R., L.L.C.*, No. 24-CV-225-JFJ, 2024 WL 4656216, at *3–4 (N.D. Okla. November 1, 2024) (distinguishing *Emerson* where the local action directly affected railroad construction and operations).

⁵⁷ See Attachments A and B to this Recommended Decision.

⁵⁸ See *id.*

including definitional clarifications in Rule 7331, structural and procedural refinements in Rules 7334 and 7335, and related modifications designed to ensure legal consistency, operational feasibility, and alignment with HB 24-1030 and federal law.

1. Rule 7330 – Applicability

55. The undersigned ALJ finds and concludes that the modifications to Proposed Rule 7330 are appropriate and consistent with HB 24-1030. The revised rule more precisely defines the scope of its applicability by clarifying that the training and safety requirements apply only to railroads and passenger rail systems operating within Colorado.

2. Rule 7331 – Definitions

56. The Proposed Rules include expanded and new definitions in Rule 7331 that were not contained in the Draft Rules. These additions implement HB 24-1030 and respond to public comments seeking greater clarity and alignment with federal terminology. New definitions for Adequacy, Coordinate, Emergency Management Organization, First Responder Organization, Functional Exercise, and Tabletop Exercise clarify the scope of planning and preparedness obligations under Rules 7330 through 7335. Other definitions, including Sensitive Area Protection Walkthrough and High-consequence Hazardous Material, are added to modernize terminology and integrate concepts consistent with FRA and HMR standards. Collectively, these revisions improve the Proposed Rules' specificity, promote a uniform understanding among regulated railroads and emergency responders, and ensure continued consistency with statutory language and federal practice.

3. Railroad Safety Training Requirements – Rule 7334

57. The record demonstrates general agreement that training for first responders is necessary and mandated by statute. However, Union Pacific identified several terms in Proposed

Rule 7334, such as “first responder organizations having jurisdiction” and “sensitive area protection walkthroughs,” that lack definition and could lead to inconsistent or impractical implementation. ASLRRA, further emphasized the need for the rule to expressly permit compliance through partnerships with Class I railroads or adoption of Short Line Safety Institute training, as authorized by § 40-20-310(5)(a)–(b), C.R.S. The undersigned ALJ finds these requested clarifications reasonable and concludes that incorporating precise definitions and recognizing statutory compliance pathways will enhance enforceability and prevent infeasible obligations for smaller railroads. Alignment of the exercise and drill requirements with federally recognized NPREP standards will likewise promote consistency with existing federal frameworks and responder practices. Accordingly, Proposed Rule 7334 includes language expressly acknowledging the compliance options for Class II and Class III railroads set forth in § 40-20-310(5)(a)–(b), C.R.S., thereby ensuring consistency with HB 24-1030 and avoiding unintended burdens on smaller operators.

58. The undersigned ALJ further recommends adding new subsection (IV) to Rule 7334(c) to clarify that federally- or state-mandated oil-spill or hazardous-materials exercises may be conducted in conjunction with the drills required by this rule. This addition reflects stakeholder comments urging coordination rather than duplication and ensures consistency with federal and state emergency response frameworks. The undersigned ALJ finds that this clarification promotes efficiency and avoids conflicting obligations while preserving the cooperative-training objectives of HB 24-1030.

59. The undersigned ALJ finds that the proposed Rules 7334 and 7335, as modified herein, fall within the State’s preserved police powers under federal law. The adopted rules govern coordination, notification, and training relationships between railroads and Colorado emergency

response entities rather than prescribing railroad operations or equipment standards. Rule 7334 concerns the provision of safety training, planning, and drills for local and state first responders, while Rule 7335 addresses coordination with the Department of Public Safety and the availability of response resources. These are cooperative measures intended to enhance statewide emergency preparedness consistent with the requirements of §§ 40-20-305 and 40-20-310, C.R.S. The undersigned ALJ concludes that these topics are not categorically preempted by the ICCTA because they do not manage or govern rail transportation, and they are not preempted by the FRSA or HMTA because they concern inter-agency coordination and communication rather than the transport, packaging, or handling of hazardous materials. Nevertheless, the Proposed Rules have been modified to clarify that a railroad's obligations relate to coordination and joint exercises, and that nothing in the rules requires duplicative or conflicting drills already mandated by federal or other state authorities.⁵⁹

4. Incident Response Requirements – Rule 7335

60. Union Pacific and ASLRRA, by incorporating Union Pacific's earlier filing, raised concerns that the proposed incident response provisions in Rule 7335 are overbroad, potentially preempted by federal law, and in need of narrowing or modification to avoid imposing state-level mandates on federally regulated railroad operations. The undersigned ALJ finds that definitional clarity regarding the terms "High-consequence," "coordinate," and "adequacy" is necessary to ensure that Rule 7335 can be implemented without creating conflicting or indeterminate obligations.

⁵⁹ See 49 U.S.C. § 20106(a)(2) (authorizing state regulation addressing essentially local safety hazards consistent with federal law).

61. The Proposed Rules modify Rule 7335 to clarify coordination duties and eliminate ambiguities that may have appeared in the Draft Rules. In particular, the revisions limit required coordination to the CDPS and expressly reference Emergency Management Organizations and First Responder Organizations as defined in Rule 7331. The rule consolidates prior provisions on caches, equipment, and staffing, replacing prescriptive inventories with functional adequacy criteria tied to § 40-20-305(1)(a), C.R.S. These changes focus the rule on planning and information-sharing rather than operational command. The addition of subsections (f) and (g) confirms that local governments assume no new duty absent agreement and authorizes voluntary regional partnerships consistent with the definitions of “Coordinate” and “Adequacy.” Collectively, these revisions make the rule more consistent with HB 24-1030 while remaining within the bounds of state authority.

5. Preemption Concerns

62. Both Union Pacific and BNSF raised concerns that portions of Proposed Rules 7334 and 7335, if left unmodified, could be preempted under the ICCTA, FRSA, or HMTA. The undersigned ALJ concludes that some of these concerns are generally well founded and that the final rules should be crafted to complement, not conflict with, federal law. Ensuring consistency with federal standards will reduce the risk of preemption, promote effective emergency preparedness, and preserve the Commission’s rules within the scope of its statutory authority under HB 24-1030.

63. The undersigned ALJ has considered the comments of BNSF and Union Pacific asserting that portions of the Draft Rules are preempted under the ICCTA and FRSA. While federal law broadly governs railroad operations, the FRSA contains a savings clause that permits states to adopt or enforce laws related to railroad safety when those laws (1) address an essentially local

safety hazard, (2) are not incompatible with federal law, and (3) do not impose an undue burden on interstate commerce. The Commission's rules implement HB 24-1030, enacted to strengthen hazardous materials transportation safety and emergency preparedness specific to Colorado's geography, population centers, and local response capabilities. These provisions do not regulate railroad rates, routes, or services, matters reserved to STB under the ICCTA. Rather, these provisions complement federal safety requirements by tailoring preparedness obligations to local hazards within the FRSA's preserved area of concurrent state authority.

64. Lastly, to be clear, and as reflected in Proposed Rule 7335, any inter-railroad "partnerships" or "contracts" contemplated under that rule are limited to emergency-preparedness and response coordination and do not authorize agreements concerning rates, divisions, market allocation, or capacity sharing within the scope of 49 U.S.C. § 10706.

6. Conclusion

65. The undersigned ALJ reviewed and considered the comments of BNSF and Union Pacific asserting broad federal preemption. The undersigned ALJ acknowledges that both carriers have expressed legitimate concerns regarding the potential overlap between the Commission's proposed requirements and existing federal mandates under the FRSA and HMTA. To address these concerns, the undersigned ALJ clarifies that the Proposed Rules, which are reflected in Attachment A (the rules in legislative/strikethrough format, showing changes as compared with the Draft Rules⁶⁰) and Attachment B (the rules in final format), and attached to and incorporated into this Recommended Decision, apply to interagency coordination and joint emergency preparedness, not operational control of rail transportation. Accordingly, Rule 7334(c) has been modified to emphasize that its required safety drills and exercises may occur "in conjunction with

⁶⁰ See Attachments A and B to Decision No. R25-0394-I, issued May 29, 2025.

or as part of federally mandated or other governmental oil-spill or hazardous materials exercises,” and that railroads may satisfy the Commission’s requirements through participation in equivalent federally required exercises when those exercises meet or exceed the scope of this rule. This clarification aligns with HB 24-1030’s intent that the Commission ensure cooperation among railroads, emergency managers, and first responders without creating a duplicative regulatory framework. The undersigned ALJ therefore concludes that the revised Rule 7334(c), as supplemented by proposed paragraph (IV), is not preempted and serves a valid public-safety coordination purpose.

VI. TRANSMITTAL OF THE RECORD

66. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this proceeding along with this written Recommended Decision and recommends that the Commission enter the following order.

VII. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, Rules 7330, 7331, 7333, 7334 and 7335 of the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* 723-7, attached to this Recommended Decision as Attachment B, are adopted.

2. The rules in legislative/strikethrough format (showing changes to the proposed rules attached to Decision No. R25-0394-I)⁶¹ and in final format are attached to this Recommended Decision as Attachments A and B, respectively. They are also available in the Commission’s E-Filings system at:

⁶¹ See Attachments A and B to Decision No. R25-0394-I, issued May 29, 2025.

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=25R-0152R

3. Proceeding No. 25R-0152R is closed.
4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, 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.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director