

Decision No. C24-0372

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0253R

IN THE MATTER OF THE TEMPORARY RULES IMPLEMENTING THE STATE SAFETY OVERSIGHT PROGRAM STANDARD FOR RAIL FIXED GUIDEWAY PUBLIC TRANSPORTATION SYSTEMS, 4 CODE OF COLORADO REGULATIONS 723-7-7340 THROUGH 7355.

COMMISSION DECISION ADOPTING TEMPORARY RULES

Mailed Date: May 31, 2024

Adopted Date: May 29, 2024

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission adopts temporary rules to implement the new risk-based inspection program by updating the State Safety Oversight Program Standard for Rail Fixed Guideway Systems (Program Standard) pursuant to the procedures prescribed in § 24-4-103(6)(a), C.R.S. The temporary rules 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 723-7-7351. These temporary rules implement the new Program Standard requirements to 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. 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 ensure the Commission can timely comply with federal law and regulation, and preserve public health, safety, and welfare for Colorado's traveling public. 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.

B. Discussion, Findings, and Conclusions

3. On October 21, 2022, the FTA issued the RBI Special Directive to the Commission as required by 49 U.S.C. § 5329(k)(5) and 49 CFR Part 670. The RBI Special Directive requires the Commission to submit documentation that demonstrates that the State Safety Oversight Agency (SSOA), the Commission, has developed a risk-based inspection program in accordance with the RBI Special Directive and the criteria set forth in 49 U.S.C. § 5329(k)(5) within two years of the issuance of the RBI Special Directive, and requires that within one year of the FTA's approval of the SSOA's RBI program, submit documentation that demonstrates the SSOA has implemented that approved program for at least six months. If the Commission does not comply with the RBI Special Directive, it could lead to the withholding of FTA SSOA grant funds.

4. By this Decision, we adopt temporary rules that implement the RBI Special Directive compliant Program Standard to allow Colorado to timely submit its application for RBI program review and approval.

5. 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. If the Commission waits until permanent rules are in place to file its application with the FTA for certification of compliance with the RBI Special Directive, this would likely leave the FTA only a few months before the October 22, 2024 compliance date to review the application and approve Colorado's RBI program. Further, should any issues arise during the rulemaking process that would require additional hearings and delay the Commission's adoption of the permanent rules, the Commission may not be able to file its application by the FTA's submission deadline. Submitting a late application risks not achieving certification of the RBI program by October 22, 2024 compliance deadline and jeopardizes the Commission's critical FTA SSOA transit funding.

6. We find that this matter requires our immediate and continuing attention to comply with federal law and regulation, and to protect public safety in Colorado. We also find that the time that will transpire before completing a permanent rulemaking for the Program Standard risks timely compliance with federal law and regulation, and the safety of the traveling public in Colorado. Thus, immediate adoption of temporary rules implementing the Program Standard is imperatively necessary to timely comply with federal law and regulation, and preserve public health, safety, and welfare for Colorado's traveling public.

7. The temporary rules shall be effective on the mailed date of this Decision and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less. In the permanent rulemaking that will be opened concurrently with these temporary rules, we will put forth the Program Standard for permanent rules.

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

9. Attachments A and B to this Decision are the temporary rules in legislative (strikeout and underline) format and final version 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=24R-0253R.

II. ORDER

A. The Commission Orders That:

1. The rules in final version format available in this Proceeding through the Commission's E-Filings system 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 mailed 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 applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

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 (24R-0245R) in the "Proceeding Number" box and then selecting "Search".

4. 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