

COMMUNITY RAIL SAFETY ADVISORY COMMITTEE

MEETING AGENDA

Information of Meeting

Date: Thursday, November 21, 2024

Time: 11:00 am -1:00 pm

Location: Virtual via Zoom

Note: This meeting will be recorded

Facilitator: Sheryl Trent

Join Zoom Meeting

<https://us06web.zoom.us/j/84670808123?pwd=VcTiRVJCYdbsK0F5B3e8RqVa4jPFRn.1>

Meeting ID: 846 7080 8123

Passcode: 498524

Agenda

11:00 am Welcome

11:02 am Housekeeping/Administrative Items (*Information*)

- Industry Committee Minutes from 11.12.24
- Review and Approval of Community Committee Minutes from 11.14.24
- Any Sections not listed for discussion on this agenda are final language, listed in green in the language document dated 11.14.24

11:10 am Review of Final Language

Section I: An Assessment of The Staffing Levels And Equipment Necessary To Ensure Railroads' Compliance With Federal And State Rules And Regulations And Minimize Rail Safety Risks For Railroads, Facilities, Workers, And Communities That Include Rail Lines;

(Note that the last paragraph of language was added as a copy and paste from the work done for Section IX (A) on 11/14)

The state should hire at least one inspector, with associated equipment, for each of the six disciplines. The State should use data to determine the level of staffing and ensure those resources are focused in the most efficient and effective ways, which may require staffing at higher levels than recommended by the FRA. Over time and in some cases, one inspector could have up to two (2) disciplines moving forward, with track and mechanical being of the most importance. Inspections and resources should be targeted to high population areas, vulnerable (rural, funding, historical, waterways) or geographically restricted areas, state mapped areas of vulnerability and environmental justice, areas of environmental importance, and areas that historically have had numerous incidents.

In order to operate a fully staffed Office of Rail Safety, the Office must have a minimum of 6 employees, one per discipline, with the ability to grow to 12 or more staff to support inspection and coordination of training and first response activity. The Office must be able to supply vehicles for each field staff, communication equipment for staff, phones, radios to communicate with rail and first responders, and a minimum of one high occupancy Hi-Rail Vehicle. The Office must also have adequate clean-up capacity and caches across the state, including but not limited to, personal protective equipment, fire suppression foam and foam systems, absorbent materials and containment booms, sandbags, and other equipment to divert material away from waterways, specialized leak mitigation and repair kits, personnel decontamination supplies, interoperable communication equipment, railroad standard procedures, and contact information.

Section II: An Indication that Public Data Not Subject To Exceptions Under the “Colorado Open Records Act”, Part 2 of Article 72 of Title 24, Will BE Shared with the Community Rail Safety Advisory Committee and the Rail Industry Safety Advisory Committee

(Note that the Committee agreed to add the reference agencies to this section just as they will be added to Section VII language)

Public data not subject to exceptions under the "Colorado Open Records Act", Part 2 of Article 72 of Title 24, will be shared with the Community Rail Safety Advisory Committee and the Rail Industry Safety Advisory Committee. Data that might have confidential considerations will have to be processed through the CORA process. For additional public data sharing that will be created moving forward, resources may be necessary to provide that data in the most accessible way possible, and further refinement and discussions about what data exists, what data can be shared, and how that data should be shared is needed.

The Office of Rail Safety is tasked with researching, collecting data, and providing reports on a variety of topics including but not limited to; blocked crossings, including information regarding emergency vehicles affected by blocked highway-rail crossings; investigations into incidents; identifying high-risk crossings and strategies including funding to eliminate those; annual reporting on safety, including train length for covered railroads and facilities; facilitating public input; communication issues; environmental impacts; and environmental and public health; etc. The Office shall ensure that all data is shared with the Advisory Committees as soon as possible to inform the ongoing work of the Committees. Other data collected by DPS, CDPHE, and state and federal agencies on rail in Colorado shall also be shared with the Committees.

Section III, An Assessment of Data Collection And Reporting Needs To Ensure Annual Reporting On Rail Safety, Including Train Length, For Covered Railroads And Facilities;

In order to best inform the work of the Office of Rail Safety, accurate and comprehensive data covering a range of topics must be collected and reported. In addition to data already required in existing statute, the railroad industry shall report, and the Office shall collect data on the following:

- Blocked crossing location, duration of blockage and reason
- Train length
- Train configuration
- Train wheel axle count
- Wayside detector information including
 - total number of defects identified and corrective action taken once defect was identified
 - performance standards and calibration
 - the location of newly installed wayside detectors
 - inspection, maintenance and repair of wayside detectors
 - new and emerging technology on detectors and railroad implementation plans
- Maintenance activity
 - Car and locomotive maintenance including how often a defect is identified, type of defect identified, corrective action, and when any action was taken
 - Track maintenance including how often a defect is identified, type of defect identified, corrective action, and when any action was taken
 - Signal equipment maintenance including how often an issue is identified, type of issue identified, corrective action, and when any action was taken
 - Crossing equipment maintenance including how often a defect or issue is identified, type of defect or issue identified, corrective action, and when any action was taken
- Siding locations and length
- Number of complaints filed to the railroad and to any future public hotline. Data must include type/topic of complaint and any action taken to address the complaint

Section VII: An Assessment of Best Practices For Ensuring Financial Responsibility For Response, Cleanup, And Damages From Major Rail Events, Which Assessment Reviews Best Practices From Other States;

(Note that the Committee agreed to add reference agencies to part 4 of this language, information to be presented at or before this meeting)

The goal of the Office of Rail Safety is to prevent incidents through safety and inspection. However, adequate insurance and financial responsibility of the Railroads is critical to ensure that should an incident occur, communities and the environment can undergo the correct remediation process to be made whole and mitigate further negative impacts. While there are existing statutes

in place to address the issue of ensuring financial responsibility, there are gaps in the intersections of these laws and practical on the ground implications such as ongoing cleanup and damages. There also are gaps due to the lack of DERA over railroads leading to smaller DERAs being on the hook for recouping costs, and delays which may be difficult for some DERAs around the state. Additionally, the lack of a DERA over railroads causes gaps in coverage and clear coordination should an incident occur. The committee would like to ensure that there are stop gaps available to ensure proper response, financial responsibility and cleanup of any disasters, this includes the state having the proper equipment to respond quickly to incidents, potentially lessening impacts and clean up necessary.

The committee would like to ensure:

1. The Office of Rail Safety considers a DERA-like structure for railroads, right of ways and incidents related to railroads, similar to that for trucking.
2. That financial responsibility includes funding available for worst-case scenario events, ongoing cleanup and long-term monitoring after the incident.
3. The gaps in coordination and communication before, during and after an event are addressed, in particular the coordination and command of efforts during an incident which a DERA for railroads could streamline;
4. Interagency cooperation and coordination with CDPHE, DNR, ECOM, OEDIT and others for data collection, environmental impacts, impacts to surrounding community, **environmental health** and **public health** implications, the economy, and infrastructure that is at risk are taken into consideration when ensuring financial responsibility; and
5. That concrete preparedness plans and mitigation plans are in place and shared with impacted community and organizations including organizations that represent rail workers, first responders, local governments, the Office of Rail Safety, etc.

Section IX: (A) A Legislative Proposal Concerning The Creation of A Fee Structure Or Other Revenue Source, An Assessment, And A Governance Body And An Office of Rail Safety To Address The Needs Described In Subsections (L 3)(A)(I) To (13)(A)(VIII) of This Section, Which Fee Structure, Assessment, And Governance Body Can Be Introduced As Legislation As Soon As The 2025 Regular Legislative Session And Begin Operating No Later Than January 1, 2027.

This was a critical part of the legislation that was negotiated with, passed and signed by the Governor last session. We believe that this will make Colorado similar to 30 other states in the country and will start making rail lines safer in Colorado.

Fee Structure:

We believe the proper way to structure and fund the services provided by the Office of Rail Safety is through an enterprise or standalone Office of Rail Safety financed with a fee.

An enterprise is a government-owned business that receives revenue in return for providing a good or service. Enterprises cannot levy taxes and must provide goods or services in exchange for fees. From 1994 through 2024, Colorado has created over 30 state enterprises.

The Office of Rail Safety will conduct unbiased inspections to ensure the proper functioning of rail lines, ensure the state has adequate equipment and staffing to facilitate the work of the Office. This can be done through reasonably calculated rates to the railroads based on the benefits received.

The PUC and the state legislature should review the following as possible fee structures for the enterprise or standalone Office of Rail Safety.

- Track miles
- Corporation fee
- Gross revenue percentage
 - Originated
 - Pass through
- Percentage of gross intrastate revenues
- Per gross ton-miles
- Fixed cost per route mile and per grade crossing
- Fuel tax on RR
- Percentage of total receipts reported
- Track miles + number of grade crossing + operating revenue
- Fixed cost per placard
- Railroad route miles
- Per tonnage
- Gross tonnage
- Car tonnage

This is a comprehensive list that shows a number of potential funding options, but in no way are we suggesting that these should all be utilized in creating a fee structure. The revenue raised from one or a combination of these sources would be more than adequate to cover the services of the office.

Governance Body:

Should the Office of Rail Safety be set up as an enterprise, the enterprise should be governed by a board of directors. The board should consist of various appointees with expertise in freight, rail, environmental impacts, environmental health, public health, public safety, etc. These appointments can be determined in statute and consistent with other enterprises in the state. We want everyone to have representation on this governing board, similar to the representation in these working groups. This includes but is not limited to appointees with expertise in freight, rail, environmental impacts, environmental health, public health, public safety, etc. *Note from Sheryl: this seems to be a repeat of the second sentence in this paragraph, should we combine the two?*

Transparency:

To ensure transparency and reporting, the Office of Rail Safety shall be required to report to the Industry and Community Rail Safety Advisory Committees and the Legislature on a recurring basis, at least annually. Additionally, if structured as an enterprise, all funds are subject to periodic audits, allowing for a level of supervision from the legislature.

In closing, creating a dedicated enterprise or standalone fund for rail safety in Colorado is not just a vision—it's a necessity. By establishing a data-driven, unbiased entity, we can proactively address rail safety challenges and protect our communities, workers, and environment.

Through robust collaboration with local governments, rail companies, law enforcement, and rail workers, we can build an Office of Rail Safety that prioritizes safety, fosters trust, and drives lasting change across our rail networks. Together, we can make Colorado's rail lines safer, ensuring a secure and sustainable future for all.

What We Need to be Funded:

In order to operate a fully staffed Office of Rail Safety, the Office must have a minimum of 6 employees, one per discipline, with the ability to grow to 12 or more staff to support inspection and coordination of training and first response activity. The Office must be able to supply vehicles for each field staff, communication equipment for staff, phones, radios to communicate with rail and first responders, and a minimum of one high occupancy Hi-Rail Vehicle. The Office must also have adequate clean-up capacity and caches across the state, including but not limited to, personal protective equipment, fire suppression foam and foam systems, absorbent materials and containment booms, sandbags, and other equipment to divert material away from waterways, specialized leak mitigation and repair kits, personnel decontamination supplies, interoperable communication equipment, railroad standard procedures, and contact information.

After discussions with rail workers across the state, and from information gathered from other states, we believe this is a strong initial list for a successful office of rail safety in Colorado. We also believe it is important for the enterprise to have the ability to amend and add to this list in the future. This will allow them to be nimble as safety standards change, as the economy and rail traffic levels change. This will also allow the office to address different climate, weather, and geographical challenges in the state. These are all things that are highly unique to Colorado compared to other states.

11:50 am Open Discussion