

DEPARTMENT OF TRANSPORTATION,
RAIL DIVISION

Administrative Rule Modification: Draft 1.13.15

DIVISION 510

OREGON RAILROAD HAZARDOUS MATERIALS TRANSPORTATION RULES

741-510-0010

General Provisions and Definitions

(1) OAR 741-510-0010 through 741-510-~~0040~~0050 and OAR 741-520-0010 through 741-520-0020, which shall be known as the Oregon Railroad Hazardous Materials Transportation Rules, are adopted under authority of ORS 824.080 through 824.092, and ORS 469.605(6).

~~(2) "Director" means the Director of Oregon Emergency Management of the Department of State Police.~~

(2) "Emergency Response Agency" means county or local jurisdictions and organizations, tribal, state and federal agencies, with a responsibility to conduct first response or support emergency operations and clean-up.

Change Explanation. Changes suggested by DEQ, OSFM and Rail Division. Definition in 2 was modified to better include organizations that support incident response, in addition to first responders. Rather than list what may have been a partial listing, the language description provides a description of organizations needing notification.

~~(33) "Hazard Class" means the category of hazard assigned to a hazardous material under the definitional criteria in 49 CFR Part 173 and as listed in the hazardous material table in 49 CFR 172.101.~~

~~(4) Pursuant to .086(1), the term "hazardous Hazardous Mmaterials" means any hazardous material or hazardous substance defined in Title 49, CFR, Part 171.8, as adopted in OAR 741-520-~~0010~~0015 pursuant to ORS 424.086(1).~~

~~(45)~~

~~(5) "Incident" means any situation where a release or threatened release of hazardous materials occurs, involving fire, breakage, spillage, or derailment, suspected radioactive contamination, or any other situation which in the judgment of the railroad should be reported to any emergency response agency.~~
~~(5) "Emergency Response Agency" means a fire department or district and a police or law enforcement agency.~~

(6) “Line Segment” means a length of rail line over which hazardous materials are transported between two or more stations within the state that are identified on a current railroad timetable. A line segment will terminate at the nearest station where an alternate route exists.

(667) “STCC number” means the first four digits of the Standard Transportation Commodity Code as contained in the Standard Transportation Commodity Code Tariff effective July 14, 1997. “Rail Division” means the Rail and Public Transit Division of the Oregon Department of Transportation.

(8) “Railroad Emergency Response Telephone Number” means a telephone number that is answered at all times by a person who is able to provide detailed information regarding specific incidents involving hazardous materials on the railroad, or has immediate access to a person who possesses such knowledge and information. A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of this definition.

-(9) “Threatened release” means hazardous material is likely to escape or be carried into the air, or into or on any land or waters of the state.

(710) “Timetable” means a publication containing instructions relating to the movement of trains or equipment and other essential information for purposes of railroad operations.

(811) “UN or NA Identification Number” means the 4-digit number assigned to the proper shipping name of a hazardous material as referenced in 49 CFR 172.101. “UN” numbers are assigned by the United Nations and are preceded by “UN”. “NA” (North American) numbers are identical to UN numbers, except that some substances without a UN number may have an NA number. These identification numbers provide a common reference for hazard information and general emergency response procedures for hazardous materials in transportation.

Change Explanation. Changes made by Rail Division. The changes to OAR 741-510-0010 were primarily of a housekeeping nature. For example, the definitions were reordered to put them in alphabetical order and the name of the Rail Division was updated. There were only two substantive changes. First, the definition of “incident” was modified to remove the reference to the “judgment of the railroad” in order to make identification of an “incident” less subjective. Second, the reference to the Standard Transportation Commodity Code number (“STCC number”) for hazardous materials was replaced with the United Nations identification number (“UN or NA Identification Number”). The primary reason for the change is that emergency responders use the UN or NA identification numbers and not the STCC number to identify a commodity.

Clarification. There are three types of “notification”.

- 1. 9-1-1 is used by the railroads for assistance or by general public to report an observed incident.*

2. Notice to OERS to report an Incident for assessment, possible state agency response and administrative purposes.
3. Notice sent to ODOT for quarterly and annual reporting.

OAR 741-510-0015

Adoption of Federal Regulations

The Department of Transportation adopts the rules of the United States Department of Transportation as set forth in Title 49, Code of Federal Regulations, Parts 171 through 180, Hazardous Materials Regulations, insofar as those rules apply to railroads and railroad shippers.

Change Explanation. Changes made by Rail Division. This is a new section to OAR 741-510. The current version of OAR 741-510 does not incorporate by reference the federal Hazardous Materials Regulations (“HMR”). Instead, the federal rules are incorporated by reference into OAR 741-520-0010, a division of the rules concerning “hazardous waste.” As a result, it is unclear if the HMR were intended to apply to the transportation of hazardous materials by rail or just to the transport of hazardous wastes. In addition, OAR 741-520-0010 appears to have codified a specific version of the federal rules - those “in effect on July 14, 1997” – without any mention of subsequent amendments. The federal regulations have been significantly amended since 1997. As a result, it is unclear if OAR 741-520-0010 will be construed to incorporate by reference the current version of the federal rules. This new rule explicitly incorporates the HMR and any amendments thereto into OAR 741-510.

These federal regulations are currently enforced by ODOT Rail Division through the FRA Partnership Program.

741-510-0020

Advance Notification of Transportation Railroad Reporting Information

~~(1) Pursuant to .082, each Each railroad intending to transport hazardous materials, if any part of such transportation is to take place within before transporting hazardous materials in this state, shall provide by electronic mail, to the Director, the Department of Transportation Rail Division, and each of its dispatchers, a milepost oriented inventory of the following information ally for each rail line which it owns, leases or operates, which inventory shall include operates in the state:~~

~~(a) The name and long-distance 24-hour telephone number of each emergency response agency empowered to respond to any incident involving hazardous materials along the aforesaid rail lines;~~

~~(b) The territorial limits, as defined by railroad mileposts, for each emergency response agency.~~

~~(2) Pursuant to .082, each railroad intending to transport hazardous materials, if any part of such transportation is to take place within this state, on an annual basis shall provide to each of the emergency response agencies listed in the milepost oriented inventory required by section (1) of this rule the following information:~~

~~(a) A list of each type of hazardous material (including STCC number) and quantity (carloads, trailer/container loads), transported through or within the territory of the emergency response agency, including (but not segregating) movements originated and terminated within the territory, during the preceding calendar year;~~

~~(b) Changes in publications issued by the U.S. Department of Transportation, Materials Transportation Bureau and by the Association of American Railroads, Bureau of Explosives, which contain a description of the method of properly handling each type of hazardous material transported in case of incident (ea) Current railroad Timetable???~~

~~(b) The name, address, and telephone number of its-the railroad's person in charge of education and training related to such handling hazardous material transportation;~~

~~(d) Approximate normal operating schedules for trains carrying hazardous materials;~~

~~(e) Normal procedures for placement in trains of cars carrying each type of hazardous materials;~~

~~(fc) Method of obtaining information from the railroad, including the The Railroad Emergency Response Telephone Number railroad's 24-hour emergency telephone number, in case of incident (including car identification system and method of or obtaining information regarding lading in cars where the car numbers are not visible) about train contents, including the type, quantity and placement of hazardous material cars within train.~~

~~(3) The deadline for filing the annual written information required by section (2) of this rule shall be March 1 of each year. Effective with the filing date due on March 1, 1984, the information provided pursuant to subsection (2)(a) of this rule shall be furnished in the format depicted in **Figure 1**. Estimates of the quantities of hazardous materials transported during the preceding year shall be deemed sufficient to comply with the provisions of subsection (2)(a) of this rule, except that the filing due on March 1, 1985, and in each fifth year thereafter, shall contain actual and complete tabulations of the information required by subsection (2)(a) of this rule.~~

~~(4) On an annual basis, each railroad shall make a written request to each emergency response agency listed in the milepost oriented inventory required by section (1) of this rule for verification of the information listed therein regarding the 24-hour long distance emergency telephone number and the geographical limits of said agency as described by railroad milepost numbers.~~

Change Explanation. There has been much discussion about points 1. (a) (b) and 2. PSAPs receive calls both from the railroads and from general public. The Public Safety Answering Point (PSAP) call centers, who completely cover the state, have the

information they need to receive railroad 9-1-1 calls and transfer to the appropriate police, fire and medical emergency responder. However, PSAPs don't all currently have adequate information about the railroads in their area, where the reference mile posts are geographically, and 24/7 contact information within the railroad to communicate regarding incidents along the lines. Rail Division is working with ODOT's TransGIS mapping to make this information available to the PSAPs. PSAPs have the capability to translate latitude/longitude data into a geographic location.

~~(2) Each railroad shall provide updated information required in 741-510-0020(a) through (c) to Rail Division no later than the last day of the month following the month the change was made.~~

~~(5) Pursuant to .082, each railroad intending to transport hazardous materials for which an "Explosives A/Explosive 1.1, 1.2" or a "Poison Gas/2.3, 6.1 PG-I, Hazard Zone A" placard is required, if any part of such transportation is to take place within this state, shall provide advance telephonic notification to the Director. The notification shall include, at a minimum, the following information as applicable:~~

~~(a) Name of hazardous material(s) to be transported;~~

~~(b) Quantity thereof;~~

~~(c) Complete identification of the railroad equipment in or on which the material is being shipped, including car identification numbers, car types and identification of any trailer or container equipment involved;~~

~~(d) Name or identification number of each train handling hazardous materials;~~

~~(e) The point within the state at which transportation by the reporting railroad will begin;~~

~~(f) The point within the state at which transportation by the reporting railroad will end or where the materials will leave the state;~~

~~(g) Estimated time of the beginning of such movement; and~~

~~(h) Estimated time for completion of the movement within the state by the reporting railroad.~~

~~[ED. NOTE: The Figure referenced in this rule is not printed in the OAR Compilation. Copies are available from agency.]~~

~~Stat. Auth.: ORS 469.605, .011 & .061~~

~~Stats. Implemented: .082 & .086~~

~~Hist.: PUC 1-1979, f. & ef. 3-5-79 (Order No. 79-145); PUC 5-1984, f. & ef. 3-6-84 (Order No. 84-164); PUC 6-1985, f. & ef. 6-5-85 (Order No. 85-496); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); RS 2-1996, f. & cert. ef. 3-14-96; Renumbered from 860-046-0510; RS 1-1997, f. & cert. ef. 6-27-97~~

Change Explanation. Changes made by Rail Division. Currently, OAR 741-510-0020 requires railroad to provide three types of notice relative to the transport of hazardous materials by rail.

The proposed rules address the notification requirements in three separate sections. The proposed OAR 741-510-0020(1) (a)-(c) combines what is OAR 741-510-0020(1) and parts of OAR 741-510-0020(2) into one section. The new section requires a railroad to file a report in advance of the transport of hazardous materials. Under proposed OAR 741-510-0020(2) the report must be re-filed when a change is made. As in the past, the report under proposed OAR 741-510-0020(1) requires detailed information about railroad operations, lines, and contacts. Unlike current OAR 741-510-0020(2), the proposed version of this section does not require commodity information as part of the report as information about the hazardous materials transported by rail is now addressed in proposed rules OAR 741-510-0025.

It should be noted that the proposed rules do not contain a requirement for railroads to provide any notification in advance of the departure of a train carrying hazardous materials. There are a couple of reasons for this. First, advance notification requirements are likely inconsistent with federal law. Second, ODOT outreach suggests that advance notification of the movement of hazardous materials is not information that is useful to, or required by, first responders. Emergency response is not benefitted by inundating first responders on a daily basis with a high volume of notifications relative to the movement of hazardous materials. What is most important to first responders is access to commodity information and communication with the railroad as soon as possible after an incident. These concepts are addressed elsewhere in the proposed rules.

OAR 741-510-0025

Quarterly Reporting of Hazardous Material Transportation

(1) Each railroad transporting hazardous materials, if any part of such transportation takes place within this state, shall provide a report via electronic mail to the Rail Division, for each quarter in which hazardous materials are transported.

(a) The quarterly report shall be made by the reporting railroad no later than the last day of the month following the quarter in which transportation of the hazardous material(s) shipment ends, or the hazardous material(s) shipment leaves the state.

(2) The quarterly report shall segregate the reportable data by month. The quarterly report shall include:

(a) The name, UN or NA identification number and hazard class of the hazardous material(s) transported;

(b) The quantity of rail car(s) involved in the transportation of the hazardous materials;

(c) The railroad Line Segments in the state over which the hazardous material were transported.

(3) The Rail Division shall prepare an annual report based on the quarterly reports submitted by each railroad.

(4) The Rail Division shall make the information provided in the quarterly and annual reports available to Emergency Response Agencies.

***Change Explanation.** Changes made by Rail Division. This proposed rule is new to OAR 741-510. The rule requires railroads to provide quarterly reports to the state concerning the transportation of hazardous materials that occurred the prior quarter. Under current rule, OAR 741-510-0020(2), such reports were only required to be submitted on an annual basis. Requiring commodity reports on a more frequent basis allows state and local first responders to continually assure that sufficient resources are in place and personnel are trained in the event of changes to the volume of transport of a particular hazardous material or the transport of a new hazardous material.*

741-510-0027

Public Disclosure of Reporting Hazardous Material Transportation

(1) Pursuant to 824.082 and 824.086, Rail Division shall make accessible to the general public, information reported quarterly, required by section (1) through (4) of OAR 741-510-0025. Disclosure of the reports will be subject to public records disclosure laws and will require a public records request.

(2) ORS 192.501 provides that certain records (i.e., trade secrets) are exempt from disclosure under 192.410 to 192.050 unless the public interest requires disclosure in a particular instance. Persons required to provide information under OAR 741-510-0027 of this rule may request that the Rail Division treat some or all of their information as exempt from public disclosure by:

(a) Making the claim in writing at the time the requested information is provided to the Rail Division, and;

(b) Providing any written documentation or analysis that supports the claim of exemption from public disclosure at the time the requested information is provided to the Rail Division.

***Change Explanation.** Changes made by Rail Division. This proposed rule section is new. The original rule did not address public disclosure of the information provided under the rule.*

741-510-0030

Radio Requirements

~~(1) To insure that train crew members have the ability to communicate with each other and with the train dispatcher while transporting hazardous materials within this state, the radio transmitter receivers with which the train is equipped pursuant to .088 shall each be capable of transmitting and receiving voice messages on the same wave lengths as the transmitter receivers at the office of the dispatcher in charge of the train involved.~~

~~(2) At least one radio transmitter receiver in good working order shall be located in the leading locomotive and one in the occupied caboose, if any.~~

~~(3) Trains which are operated without an occupied caboose shall be equipped with one radio transmitter receiver in the lead locomotive and at least one radio handset, both in good working order.~~

~~Stat. Auth.: ORS 183.335, .090, .210, .252, .258 & ORS 825.260~~

~~Stats. Implemented: .088~~

~~Hist.: PUC 1-1979, f. & ef. 3-5-79 (Order No. 79-145); PUC 5-1984, f. & ef. 3-6-84 (Order No. 84-164); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); RS 2-1996, f. & cert. ef. 3-14-96; Renumbered from 860-046-0520~~

Section 0030 Change Explanation. Changes made by Rail Division. Current OAR 741-510-0030 imposing certain requirements for radios on trains is proposed for deletion. There are several reasons for this. First, the requirements are substantially the same as those required by ORS 824.088(3). Second, the requirements in the rule are inconsistent with federal law. Third, as required ODOT has been following federal law with respect to radio requirements on trains, which differs from this rule.

OAR 741-510-0035

Immediate Access to Train Information for Emergency Response Agencies

Each railroad transporting hazardous materials, if any part of such transportation takes place within this state, shall ensure that Emergency Response Agencies responding to an Incident on the transporting railroad's lines have immediate telephonic or electronic access to information about train contents, including the type, quantity and placement of hazardous material cars within train.

Change Explanation. Changes made by Rail Division. This rule is new to OAR 741-510. It requires railroads to ensure that emergency response agencies have immediate access to train content and placement information. It is intended to maximize the ability of first responders to respond quickly and efficiently to an incident involving hazardous materials. As explained above, immediate access to such information was the primary need identified by first responders in prior outreach by ODOT.

741-510-0040

Inspection of Rail Cars

~~(1) As part of its implementation of the visual inspection requirement of ORS 824.084, each railroad shall issue specific written instructions to its operating employees, directing that the required inspections, if no car man is on duty, shall be made by a member of the train or switch crew at each yard or station where the affected rail cars are to be picked up, set out, or where a movement of a train containing affected rail cars terminates or originates. Said instructions shall further specify that the person making the inspection shall ascertain whether there is any evidence or signs of leakage or other loss or change of contents from any affected rail cars and whether there are any obvious defects in the running gear of any affected rail cars. Said instructions shall further specify that the dispatcher shall be immediately notified of all problems observed which are not promptly corrected.~~

~~(2) Each railroad shall provide the written instructions required by section (1) of this rule within 30 days from the effective date of this rule. Said instructions shall be reissued by general distribution to operating employees at least once annually.~~

~~Stat. Auth.: ORS 183, , , &~~

~~Stats. Implemented: .084~~

~~Hist.: PUC 1-1979, f. & ef. 3-5-79 (Order No. 79-145); PUC 5-1984, f. & ef. 3-6-84 (Order No. 84-164); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); RS 2-1996, f. & cert. ef. 3-14-96; Re numbered from 860-046-0530~~

Change Explanation. Changes made by Rail Division. Current OAR 741-510-0040 imposing certain inspection requirements for trains while stationary is proposed for deletion. There are several reasons for this. First, the requirements are substantially the same as those required by ORS 824.084. Second, the requirements in the rule are inconsistent with federal law. Third, as required ODOT has been following federal law with respect to the inspections of trains, which differs from this rule.

OAR 741-510-0045

Notice of Incidents

(1) In the event of an Incident requiring emergency response, the railroad shall immediately notify 9-1-1.

(2) Each railroad shall notify the Oregon Emergency Response System (OERS) immediately by telephone or similar means of communication of any Incident. Notification to OERS is not a substitute to calling 9-1-1 for an Incident that requires emergency response.

-(3) Notifications required in (1) and (2) of this section shall be considered immediate if made as soon as possible following the Incident.

(4) The notifications required of an Incident to OERS will at a minimum, include:

- a) Name and phone number of the person making the notification;
- b) Name of the operating railroad reporting the incident;
- c) Name and phone number of the railroad contact person who is able to provide updated incident information;
- d) Date and time of the incident;
- e) Location of the Incident by railroad milepost and nearest city or town;
- f) Type of Incident and nature of hazardous material involvement;
- g) Estimated number of hazardous material rail cars involved.

(5) Upon request, railroads shall provide the following information to Emergency Response Agencies through the Railroad Emergency Response Telephone Number:

- a) Location of the Incident by latitude/longitude;
- b) Whether a continuing danger to life exists at the scene;
- c) Actions taken, such as containment, shelter-in-place, or evacuation;
- d) The extent of any injuries;
- e) Class or division, proper shipping name, and the quantity of hazardous materials involved and released;
- f) The car reporting marks for any rail car involved in the release or suspected release of a hazardous material;

(6) OERS will notify ~~all~~ appropriate state agencies ~~and local emergency responders~~ following their adopted protocols.

Change Explanation. Changes made by Rail Division. The original rule state incidents are reported to Director of OEM. The new proposed rule specifically identifies OERS as point of notification.

OAR 741-510-0050

Civil Penalties

(1) Pursuant to ORS 824.990(1) and (2),

(a) Any railroad that fails to submit the emergency preparedness coordination information required by OAR 741-510-0020 shall incur a civil penalty of \$1000 for each day of non-compliance.

(b) Any railroad that fails to make the quarterly notification required by OAR 741-510-0025 shall incur a civil penalty of \$1000 for each day of non-compliance.

(c) Any railroad that fails to provide emergency response agencies with immediate access to hazardous material information as required by OAR 741-510-0035 shall incur a civil penalty of \$1000 for each incident.

(d) Any railroad that fails to provide the notice of a reportable incident required in OAR 741-510-0045 shall incur a civil penalty of \$1000 for each unreported incident.

(2) The Oregon Department of Transportation may reduce any penalty provided for in this section on such terms as the department considers proper if:

(a) The defendant admits the violations alleged in the notice and makes timely request to the department for reduction of the penalty.

(3) Civil penalties imposed under this section shall be imposed in the manner provided in ORS 183.745.

***Change Explanation.** Changes made by Rail Division. This section is new to OAR 741-510. It authorizes the imposition of civil penalties against a railroad for violations of various sections of the proposed rules. ODOT believes that it is necessary for the state to have a tool to enforce the obligations set forth in rule.*