



Oregon

John A. Kitzhaber, M.D., Governor

Oregon Transportation Commission

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DATE: February 5, 2105

TO: Oregon Transportation Commission

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FROM: Matthew L. Garrett
Director

SUBJECT: **Agenda E** – Administrative Rule Update Hazardous Materials Transport by Rail

Requested Action:

Receive an update from the Oregon Department of Transportation's (ODOT) Rail and Public Transit Division on progress made in the Hazardous Materials Transport by Rail Oregon Administrative Rule revision and to direct commencement of the formal rule-making process.

Background:

Movement of Bakken crude oil increased dramatically from 2006 to 2013 and a number of incidents, including Lac Megantic in Canada, raised public awareness and concerns about the safety of crude oil transport by rail. A federal emergency order was released in May 2014 requiring railroads to report movement of Bakken crude oil shipments exceeding one-million gallons and when quantities change by 25 percent.

In Oregon, the governor ordered a rail safety study to review the state's preparedness for oil trains. The action items recommended include updating statutes, administrative rules and procedures.

In August 2014, ODOT's Rail and Public Transit Division established a Hazardous Materials Rule Advisory Committee to begin collaboration with tribal, federal, and state agencies, local elected officials, first responders, rail shipping customers, and environmental stakeholder groups to modernize administrative rules to address communications and notifications of hazardous materials transported by rail. The goals of the rule modernization include:

1. To provide information to first responders when they need it to address emergencies,
2. To address the mechanism through which the public may seek to obtain commodity flow information submitted by the railroads,
3. To provide information to emergency response planning agencies, and
4. To gain consistency with federal regulations.

The Hazardous Materials Rule Advisory Committee met on three occasions in August and November 2014 and January 2015. ODOT Rail convened separate meetings with state agencies, railroads, and 9-1-1 dispatch centers to explore specific areas of discussion.

Subjects of intense discussion included the level of detail reported by the railroads and the degree of disclosure of information to the general public. The rule under consideration:

1. Will address all hazardous materials, unlike the federal emergency order which only addressed Bakken crude oil.
2. Will comply with federal law, including areas where federal law preempts states. For example: the *existing* Oregon Administrative Rule (OAR) requires advance notification of Toxic/Poisonous Inhalation Hazards and Explosive shipments. Advance notice requirements are pre-empted by federal rule. Instead, the proposed rules will require the railroads to submit historic commodity flow information on a quarterly basis for emergency planning and require railroads to make current commodity movement information available to first responders in the event of an emergency.

This commodity information is currently available to first responders via a phone request to the railroad, a request to the train crew, or by accessing a new railroad-provided online application—AskRail.

3. Will include two types of information and two sets of communication/notification requirements.
 - a. Commodity Flow Information for Planning
 - i. Historic, not advance as currently required, information of hazardous materials shipped, will be reported to ODOT by the railroads quarterly, compared to annually as currently required.
 - ii. ODOT will post this information on a secure website for emergency response agencies to plan emergency response.
 - b. Incident Response
 - i. The railroads currently do and will continue to contact 9-1-1 when an incident occurs needing fire, police or medical response. Clarification was made with—Public Safety Answering Point (PSAP) /9-1-1 dispatch centers regarding its communication needs with railroads during emergencies.
 - ii. Immediate notification of incidents will be made available to the Oregon Emergency Response System (OERS), and distributed to state agencies.
 - iii. The rule specifies a list of items to disclose when reporting an incident to OERS and to emergency responders placing follow-up requests.
4. Will disclose information to the general public through the public records request process to balance the need to protect information that is federally exempt and the desire for rail commodity flow transparency.

Note: At the date this memo was submitted, the Rail Division was still collecting final comments from the Hazardous Material Rule Advisory Committee members. A final draft of the rule language will be submitted to the Commission prior to its February 19 meeting.

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Attachment:

Attachment A – Draft HazMat Rule

Copies(w/attachment) to:

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