



HAZARDOUS MATERIALS RULES ADVISORY COMMITTEE

August 26, 2014, 9:00- Noon

ODOT Technical Leadership Center
Diamond Lake Conference Room
4040 Fairview Industrial Drive SE
Salem, Oregon

MEETING #1 SUMMARY

Committee Members Attending:	See Attachment
Facilitator:	Doug Zenn
Guests:	See Attachment

MEETING OPENING

Hal Gard opened the meeting and thanked the group for participating. He explained that this group will help staff in crafting a recommendation for rule revisions for transporting hazardous materials by rail through Oregon. He stressed that the group would not be determining policy about whether hazardous material should be shipped on rail.

Facilitator Doug Zenn introduced himself and discussed the objectives and roles of this advisory group in more detail. He said this would not be a decision-making body, but help staff with making recommendations based on the best information available to the Oregon Transportation Commission (OTC). The meetings offer a chance for stakeholders to get together and share perspectives. As such, he encouraged the group to provide information that might help in this endeavor both during and between meetings.

Zenn said one of the meeting objectives is develop among this committee a common understanding of the issues before us. Another objective is to assess the group's thoughts on the latest drafts of rules that were emailed to the group.

Zenn said the first half of the meeting would be a quick assessment; the second half would provide an opportunity to start working through the rules in more depth.

INTRODUCTIONS

Zenn opened the discussion to the table for introductions, including those in the audience. Attendees are listed in Appendix A. Zenn made a note of sources of information for this group and others including:

- Meeting notes and materials -- www.oregon.gov/odot/rail
- Comments and suggestions -- hazmatbyrail@odot.state.or.us
- Updates -- www.oregon.gov/odot

OBJECTIVES/GROUND RULES

Zenn reviewed general basic rules for the group. There was no disagreement about these approaches. These general meeting ground rules are attached at the end of this document.

RULES DRAFT OVERVIEW

Hal Gard provided a general overview of the process in developing potential revisions for existing rules that are applicable. He said this is staff's first attempt to find a balance point between protecting sensitive info while providing transparency needed for safety. He said this could be considered a starting point for the discussions among this group. He said the draft has been reviewed by ODOT staff as well as legal counsel from the state Department of Justice. Staff will be looking at related statutes, some of which have not been updated since 1976, but ODOT needs to do this process before it can identify potential statute changes.

The committee asked several clarifying questions about timelines and scope. Gard said he hopes to complete this process in about three meetings, but that will be dependent on this committee's needs. He said ODOT is aiming for a November date to introduce statute changes to the legislature as identified through this process with this committee and in consultation with the Governor's Office, but again, this is dependent on this group's work. He said ODOT will not hurry the process to detriment of the quality effort. He affirmed that the focus of most of the rules is on response times and reporting.

DRAFT RULES ASSESSMENTS

For each of the eight suggested rule changes (and two rule deletions), Zenn polled the group to get a very general indication of levels of agreement on the suggested changes. He asked the group members to indicate whether they thought the rule language 1) is good as is, 2) needs minor refinements, or 3) needs major revisions. He also gave the option of indicating whether they were unsure. Polling results are included below the rule in italics.

The group received a brief summary of each rule, asked clarifying questions and provided a few comments, which are included below the polling results. Zenn said the group would discuss rules in greater depth after the break.

OAR 741-510-0010. General Provisions and Definitions

(Good as is - 0; Needs minor refinement - 11; Needs major revisions - 4; Unsure - 3)

- The group discussed whether the definitions for emergency response agency should include other public agencies that may need to be involved, such as DEQ.

OAR 741-510-0015. Adoption of Federal Regulations

(Good as is - 8; Needs minor refinement - 2; Needs major revisions -2; Unsure - 5)

OAR 0020 Advanced Notification of Hazardous Materials

(Good as is - 0; Needs minor refinement - 1; Needs major revisions - 16; Unsure - 1)

- The group briefly discussed the merits of milepost inventories
- Several group members said they would need more internal review before identifying needed revisions.
- Several noted the links between this rule and the next few. It was noted that there’s internal coordination within the state agencies that needs to take place.

OAR 741-510-0025. Monthly Notification of Hazardous Material Transportation

(Good as is - 0; Needs minor refinement - 2; Needs major revisions - 2; Unsure - 5)

- The group discussed the frequency of reporting and how reports could or would be used and who could best use the information. It also covered possibilities for secure repositories of information and coordinating distribution.
- The specificity of reporting information was also discussed. Rail carriers indicated they could not provide specific locations about where materials are dropped and still protect data from competitors. They suggested less specificity: perhaps county or city, but not by milepost.

OAR 741-510-0026. Annual Notification of Hazardous Material Transportation

(Good as is - 0; Needs minor refinement - 1; Needs major revisions - 12; Unsure - 7)

- The group discussed a need for projections and the need to have information for the general public that still protects sensitive information.

OAR 741-510-0030 Radio Requirements– PROPOSED TO BE DELETED

- The group discussed that this rule is out of date, redundant and inconsistent with federal law.

OAR 741-510-0035. Immediate Access to Train Information for Emergency Response Agencies

(Good as is - 1; Needs minor refinement - 13; Needs major revisions - 0; Unsure - 6)

- Some in the group indicated this is already provided, but how and when it is provided or available may need better definition.

OAR 741-5100040. Inspection of Rail Cars – PROPOSED TO BE DELETED

- The group discussed that this rule is redundant with federal law and not needed.

OAR 741-510-0045. Notice to office of Emergency Management of Reportable Incidents.

(Good as is - 0; Needs minor refinement - 1; Needs major revisions - 18; Unsure - 1)

- The group discussed the need to explore the statute and the most up-to-date notification of incidents (Director of Emergency Management versus Oregon Emergency Response)
- The group also discussed the potential overlap with hazardous waste reporting and the definition what would be considered an “incident.”

OAR 741-510-0050. Civil Penalties

(Good as is - 0; Needs minor refinement - 4; Needs major revisions - 3; Unsure - 12)

- The group discussed possible parallels with federal rules and suggestions for possible progressive penalties as incidents are repeated.

DISCUSSIONS

Following a meeting break, the group returned for more in-depth discussions of rules. Zenn suggested to the group that it consider ranges about what is reasonable and provide rationale behind specific suggestions, when possible. The group provided general comments and suggestions then

Group members asked for a better understanding of confidentiality since it is the issue within most rules, and to possibly receive a briefing on this issue. Staff said it would attempt to provide some additional guidance, but it depends on the type of information and how the rules are structured as to whether it will be subject to public records in Oregon or non-disclose-able pursuant to federal law.

Group members suggested looking into the definitions for Rail Secure Sensitive Material (RSSM). If it's specifically crude oil being discussed, the definition might include that it's not RSSM.

OAR 741-510-0010. General Provisions and Definitions

Group suggestions and comments included:

- Add DOT Hazard Class to definition and define volume.
- Use the same definition as federal: "empty or loaded."
- Better define "Emergency Response Agency."
- Ensure "police" is considered an agency.
- Make the distinction, where necessary, between first responders and emergency response
- Make sure Forest Service and BLM are included since fire departments may not initially respond to incidents on these lands.
- Make sure the term "incident" is consistent through the rules.

OAR 741-510-0015. Adoption of Federal Regulations

It was noted that some federal level regulations have preemption. Pat Brady volunteered to provide this for staff as needed.

OAR 741-510-0020. Advance Notification of Hazardous Material Transportation

The group discussed several topics including:

- the responsibilities with regard to informing the state of changes in transportation law and whether it should be a state or railroad responsibility;
- the value of milepost reporting and whether alternatives would be preferable;
- the best methods of getting information to the right agencies at the right time (State agency representatives agreed to look at this between meetings and come back to the group with suggestions.);

- frequency of reporting (advanced/monthly/quarterly) and the needs for this information, some of which is already required by federal law.

OAR 741-510-0025. Monthly Notification of Hazardous Material Transportation

- The group noted that the same issues of frequency (from the previous rule) are applicable to this rule as well.
- State agencies agreed to get together to better define needs (training, equipment purchases, staffing, etc.) from reporting including awareness and preparedness.
- The group discussed reporting (current) for rerouted trains
- It was noted to be aware of potential volume discrepancies when adding quarterly reports into an annual reporting.

CLOSING

The group agreed to look at the other rules and get back to staff with comments, questions and suggestions. Staff said it is looking at dates for the next meeting including September 24, October 14, and November 4. Staff will send poll for these dates.

ODOT staff indicated that it is available for other meetings with group members and their staffs as necessary, to help facilitate an understanding of this process. Zenn thanked the group for its participation.

Committee Members or Representatives

Brock Nelson, Union Pacific
Robert McGuire, Homeland Security
Lisa Ganuelos, Confederated Tribes of the Umatilla Indian Reservation
Kim Lippert, Office of Oregon Emergency Management
Dave Stuckey, Office of Emergency Management
Mariana Ruiz-Temple, Office of the State Fire Marshal,
Les Hall, Newberg Fire Chief
Nathan Garibay, Deschutes Sheriff Office
Dave Howell, Bend Fire Dept.
Pat Brady, Burlington Northern Santa Fe Railroad (BNSF)
Ken Yohe, Multnomah County Sheriff's Office
Jack Svadlenak, Senior Transportation Economist, ODOT
Steven Massey, City Counselor, City of Rainier
Joel Haka, Senior VP, Genesee & Wyoming Railroad
Patrick Trapp, Port of St Helens
Darrell Brock, Arc Logistics Partners - Portland Terminal
Rick Till, Friends of Columbia Gorge
Marveita Redding, City of Portland, Bureau of Environmental Services
Don Pettit, Manager, Department of Environmental Quality
Richard Franklin, United States Environmental Protection Agency
Henry Heimuller: Commissioner, Columbia County.

ODOT Staff

Chris Kuenzi, Hazmat Compliance Specialist, ODOT
John Johnson, Rail Safety Section Manager, ODOT
Rhonda Urben – ODOT, Contact for this committee
Howard "Hal" Gard, Administrator, Public Transit & Rail Division, ODOT

Facilitator

Doug Zenn, Zenn Associates, facilitation
Laurie Carroll , Zenn Associates, notes

Guests

1. Dana Pompetti, Union Pacific
2. Tom Fuller, Communications Manager, ODOT
3. Travis Brouwer, Federal Affairs Advisor, ODOT
4. Dave Thompson, Public Affairs, ODOT
5. Marissa Johnson, Representing Oregon Legislature Representative Barbara Smith
6. Chris West, Pac West Communications
7. Erik Havig, Planning Section Manager, ODOT
8. Bonnie Heitsch, General Counsel, DOJ
9. Steve Law, Portland Tribune
10. Rob Davis, The Oregonian
11. Victor Dodier, State and Local Program Coordinator, ODOT