

Attachment 2: Responses to Comments and RAC comment letters

REVIEW COMMENT RECORD (RCR)	Document(s) Reviewed: OR Radioactive Transportation Rulemaking	Page 2 of 6
		Date (Response Due) 4/30/2026

Document(s) Reviewer (Name) Tom Sicilia, Matt Hendrickson, Max Woods, Mark Reese	Date (Reviewed) 4/30/2026
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Item	Commenter	Section	Comments	Comment Resolution
1.	CRK	0001(2)	Comment: The OAR definitions should include the language above and the specific values and instructions that the state supports and are in effect now, not just a reference to the law coupled with broad in effect language. Recent federal executive orders have sought to decimate radiation exposure standards, could this impact federal definitions of radioactivity standards and values? Recent federal upheaval supports making the OAR definitions as clear as possible to maintain the health and safety standards supported by Oregon.	Response: Rejected outside of scope.
2.	CRK	0001(2)	Comment: Additionally, the definitions section should include a definition of solid and liquid radioactive waste. The definitions under Class 7 (radioactive material), make it really challenging to differentiate between solid and liquid radioactive waste. However, transportation of the two different physical forms, has tangible differences in risks to people and the environment and requires different emergency responses, which in turn cost more. The definitions section should define what Oregon would classify as liquid versus solid radioactive waste.	The comment is correct in that it is difficult to differentiate between solid and liquid in Class 7 and that liquid response is more costly. However, adding new definitions not supported by existing rules at Federal and State level may face challenges not only in implementation, but may be challenged as not alignment with interstate Commerce. ODOE supports a standard fee for radioactive material, regardless of liquid or solid.
3.	CRK	0003(1)	Comment: Columbia Riverkeeper strongly supports the inclusion of rail shippers; they should not be exempted from this rule. In other instances, ODOE has charged a fee on rail carriers for oil transportation and the case law makes a strong case for why this type of fee is not preempted by federal law.	Accepted, though please note that it is DEQ, not ODOE, that administers the oil transportation fee and safety program.
4.	OTA	0003(1)	Comment: I think this is an interesting point. I am in support of trains paying the fee, however, didn't even think about transport by water. I think this should be explored as well.	Rejected: While the Federal Government and Oregon have agencies that regulate transport by water at this time ODOE is unaware of any applicable shipments of radioactive material via water, aside from certain federal shipments of security-controlled material. Those shipments - while they do travel on the Oregon side of the Columbia River- never stop at an Oregon port. Administration of this concept seems challenging.
5.	AAR	0003(1)	Comment: These changes include the addition of railroads to the regulated transporters of radioactive materials. For the reasons explained below, to the extent the proposed regulation and permitting/fee requirements apply to railroad shipments, they are preempted by federal law [...] For the reasons courts have repeatedly explained, a regulation seeking to require the permitting and associated fees associated with the transport of radioactive materials directly relates to both railroad operations and rail property and is preempted under ICCTA.	Partially accepted. ODOE agrees that railroads are not subject to permitting requirements; however, we believe railroads can be subject to the fees. There are examples from other states where this is the case.

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6.	AAR	0003(1)	Comment: A state permitting requirement for specific commodities interferes with and frustrates a railroad's ability to comply with its common carrier obligation. In addition, the regulation ability of the ODOE to deny or suspend a permit can result in a shipment being delayed in transportation if tendered to the railroad while a permit request is pending. The discretion of the ODOE to deny a permit is a direct regulation of rail transportation and conflicts with both the common carrier obligation and federal law.	Accepted: The Railroads are subject to reasonable fees, but not the permitting conditions within the ruleset. Change made to rules moving railroads out of the permit section and solely subject to the fee section.
7.	AAR	0003(1)	Comment: AAR has endeavored to provide a useful overview of federal preemption law for consideration as Oregon considers the finalization of its changes to Division 60. We respectfully request that railroads be removed from the category of regulated transporters. The federal government is the sole regulator of the rail industry and state regulation of railroads of this nature is preempted by federal law. I invite you to reach out with any questions or if you would like to further discuss this issue.	Partially accepted. ODOE agrees that railroads are not subject to permitting requirements; however, we believe railroads can be subject to reasonable fees. There are examples from other states where this is the case.
8.	CRK	0003(2)	Comment: shouldn't this also include Tribal Nation carriers and vehicles?	Accepted: This exemption is a mirror of US DOT 49 CFR 171.1(d)(5). Tribal vehicles operated by the tribe carrying tribal materials within tribal lands would be similarly exempt.
9.	CRK	0003(2)	Comment: Could an example be provided that would fit the exemption outlined in section (2)?	Generally covered by Office of Secure Transportation (National Nuclear Security Administration or Department of Defense)
10.	CRK	0003(3)	Comment: Section (3) includes the statement, " In accordance with ORS 469.603 and 469.607, it is the intent of these rules to be consistent with the United States Department of Transportation and Nuclear Regulatory Commission rules." Legally, the state is allowed to promulgate laws that are more protective than federal laws, does Oregon want to be consistent with the federal government or more protective? Again, it seems like recent federal upheaval, which has included strong deregulation, would incentivize Oregon to ensure that its laws remain as protective as intended.	Rejected: Out of Scope. ODOE believes our program creates safe shipping conditions by using fee money to support first responder safety training. Packaging requirements for radioactive materials are set by federal standards.
11.	CRK	0003(3)	Comment: In regards to section (3), has ODOE issued an emergency permit in the past and under what circumstances?	We are not aware of any emergency permits issued by ODOE or ODOT to date.
12.	CRK	0003(4)(c)	Comment: Columbia Riverkeeper recommends that carriers should be required to provide precise information, why does the current rule state that this is not required? Could ODOE provide an example of when precise information was not available? As written, this rule requires self reporting, as opposed to carriers needing to show that precise information is not available. Knowing this information seems vital to emergency services responses if there were to be an accident.	Rejected: The response information included with shipping documents is currently sufficient for immediate response actions. This includes Bills of Lading, Dangerous Goods Declarations, and Train Consists.

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13.	CRK	0003(4)(e)	Comment: the rule should require any violations of law related to radioactive transport, not just those within the last two years. It should also cover radioactive and hazardous waste transport. This would allow for more informed risk assessments when issuing permits and provide more information for emergency preparedness. How many carriers in the past two years had violations related to radioactive transport?	Rejected: Out of Scope – These decisions would be ODOT’s discretion/authority. We are not aware of any violations related to radioactive transport in the past two years.
14.	CRK	0003(15)	Comment: self reporting seems to defeat the purpose of this section. Carriers, including rail, should be required to report prior to transporting radioactive materials through Oregon. Reporting after the fact does not allow for proper identification of radioactive materials moving through the state, the rail and roads they will travel on, and the communities they will travel through. Having this information ahead of time would better prepare emergency responders and allow for better response time. With an online option, it doesn’t seem too challenging to report ahead of time if not traveling through an Oregon port of entry. Since rail carriers do not enter through an Oregon port of entry it seems like the state could work with these carriers ahead of time instead of relying on self-reporting that may occur after transport has taken place	Rejected: Due to the nature of rail, they do stop when entering a State, may not require a permit, and may not be able to forecast the day of entry or exit of the State. ODOE agrees that shipment information is available before any transportation occurs. This portion is designed to mirror existing reporting to the Oregon Department of Transportation to ease reporting burden.
15.	AAR	0004?	Comment: The federal regulations that govern the transportation of hazardous materials, including radioactive materials, do not allow for the holding of a shipment pending a state inspection or permit. The federal Hazardous Materials Regulation requires rail carriers to forward shipments promptly and within 48-hours after acceptance at the origination or receipt at any yard. 49 C.F.R. § 174.14. A state law that conflicts with federal requirements is preempted and unenforceable. ¹ Moreover, the requirement for a copy of the permit to be with train crews is inconsistent with how shipping papers are maintained in the rail industry and the potential that a radioactive materials shipment would have to be held at an intermediate station unless and until the permit is transferred to a new train crew is both a direct regulation of rail transportation, which is preempted by ICCTA, and inconsistent with the Hazardous Materials Regulations.	Accepted: See 6.
16.	CRK	0005	Comment: Does the term “spent nuclear reactor fuel” need to be defined in the definitions? Would this term include tank waste, high level waste?	Rejected: ODOE expects that the following is sufficient: 345-060-0001 Definitions (1) The definitions set out in ORS 469.300 are the definitions to be used in interpreting the rules in this division, unless the context requires otherwise or unless a term is specifically defined in this rule. Terms not otherwise defined are defined as found in 10 CFR 71 and 49 CFR 171 through 178 in effect as of the date of this rule.

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17.	CRK	0005(2)(b)	Comment: should also require that carriers submit a written explanation of why they could not comply with the 48 hours notice, this would allow for more public transparency and a written record to determine if certain carriers have a pattern of noncompliance. tank waste, high level waste?	Rejected: Out of Scope.
18.	OTA	0006	Comment: If railroads were notified that they were going to be charged for the transport, it seems to me they could they plan for the charges at the time the shipment was manifested, or whatever method the railroad uses when they charge their customers.	Accepted: ODOE will continue to work with Railroads on implementation.
19.	CRK	0006(1)	Comment: should use a risk based model for addressing fees. Columbia Riverkeeper suggests requiring a \$125 fee for solid waste and \$175 for liquid waste shipments (however see comments below about the fee increase). The purpose of increasing fees on carriers of radioactive materials is to provide more funds for emergency responders and prepare for increased shipments coming out of the Hanford Nuclear Site, as well as other sources in the region, such as radioactive fracking waste.	Partially Rejected: Accepted in relation to Highway Route Controlled Quantities, Spent or Used Nuclear Fuel. ODOE has calculated to estimated fee to cover expected training needs.
20.	CRK	0006(1)	Comment: The fee increase proposed in Section (1) should be adjusted higher. It's Columbia Riverkeeper's understanding that the proposed fee is the minimum amount to keep things where they are at. However, ODOE stated to the RAC that currently ODOE does not have enough funds to provide service and training to emergency responders when it comes to radioactive transport issues. Therefore, with the 10x increase in shipments expected from one Hanford project alone, and the increase in TRU waste shipments to the Waste Isolation Pilot Plant from the site, it seems like the fee increase is already insufficient and therefore should be higher.	Partially Accepted: ODOE does expect greater transportation through the State, but we have estimated the fee increase to cover expected training needs in the future. ODOE supplements the fees with funding from other sources to complete training needs.
21.	OTA	0006(6)	Comment: If it is indexed for inflation at lease there is something tangible to tie the fee change to.	Accepted: the proposed mechanism would allow flexibility to forego increases if not warranted. Decision on fee increases would be made by EFSC on a regular review cycle.
22.	CRK	0006(6)(a)	Comment: should require more frequent cost adjustment to ensure that fees collected are reflecting increased costs in emergency responses. Generally, this section should include a fee increase for carriers who have caused an emergency response.	Rejected – ODOE is confident that the increase structure will allow the program to remain funded at appropriate levels. If there is a violation of rules, ODOE has the ability to enforce penalties, as warranted.
23.	CRK	0007	Comment: This section uses the term ""irradiated reactor fuel" (defined in 10 CFR 73.37 in effect as of the date of this rule,"" which is different than the term used in OAR 345-060-0005 , "spent nuclear fuel." Columbia Riverkeeper suggests using the same term in both sections and defining the consistent term in the definitions.	Rejected: 0005 is the inspection portion and mirrors NRC packaging requirements under 10 CFR 73.37. Irradiated reactor fuel is a broader definition than "spent nuclear fuel" ODOE is still evaluating how the definitions will be impacted by US DOE and NRC regulatory changes.

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24.	CRK	0030	Comment: This section should include a requirement that carriers must contact local Tribal emergency response authorities if they are on or within 20 miles of reservation land.	The OERS notification system (OEC3 after July 1, 2026) for emergencies would reach Tribal first responders if an accident was on or near reservation land. ODOE is confident of the efficacy of the OERS/OEC3 communication system and practices communications weekly.
25.	CRK	0045(4)	Comment: should include indemnification language for any Tribe on whose reservation an accident occurs on. It should also cover off-reservation accidents that result in damage or destruction of cultural resources covered under treaty-reserved rights.	Rejected: Out of Scope. Such damages would be more appropriately addressed through other avenues. ODOE does have the ability to levy violations, which could include fines.
26.	CRK	0050	Comment: Are there any related provisions to include for rail carriers?	Generally not. As owner and operator of the lines, the railroads have exact control on when/if the rail line is used.
27.	CRK	general	Comment: Columbia Riverkeeper is appreciative of the state of Oregon providing services and training to emergency responders in the case of an accident involving radioactive materials. We also support increases to this fee to ensure that services and training may continue and increase as necessary to meet the demands of increased shipments of radioactive material through the state. As a general comment, we also support a portion of these funds and/or services and training be provided to Tribal emergency responders as well.	Training is currently available to any government or response unit which could be called to respond to a transportation event. ODOE regularly works with CTUIR first responders and will increase training awareness and coordination with Tribal nations in the future.
28.	CRK	general	Comment: While generally supportive of this rule, Columbia Riverkeeper would like to mention recent studies which point to the disparate harm from ionizing radiation released into the environment to underscore that rules must ensure a higher level of protection. We encourage Oregon to consider this harm and urge the state to not exclude wealthy railroad companies from the rules when they are potentially moving material through communities that could cause great harm.	Comment noted.
29.	CRK	general	Comment: It's essential that the funds gathered through this current rule update provide for accurate services and training to address radioactive transport emergencies and keep people and the environment as safe as possible. (studies provided).	Thank you for the comment. We intend to continue using the collected fees for safety training for first responders.