

## Oregon Administrative Rules Committee Minutes

Date: Wednesday, November 8, 2023

Time: 3pm

**Members:** Jessica Epley, Melanie Lewis, Alba Vogland, Jaimie Lemke, and Kevin Hennessy.

**Non-Voting Members:** KC Chumachenko, Lucas Schaffler, Josh Thomas, Kitty O'Keefe, Micah Brown, and Scott Gallegos

**Guests:** Garth McSone who dropped off after introductions

### 1. Announcements and Introductions

- a. Announcements and Guest sign-in
- b. Jessica asked to move the meeting minutes from 05.01.2023 to the next scheduled OAR meeting. No minutes were reviewed.
- c. Comments from the Chair: Jessica welcomed members and guests.

### 2. OAR Committee Updates on Rulemaking Process

- Jessica asked Josh to provide members the rulemaking process.
- Josh shared Issue Summary 23-11-0037 get from Josh (See attachment 1)
  - Process is also in the Standards Manual under OAR 952-001-003 (pg.17)
  - January 18 board meeting is our target. Gives time for outreach and communication.
  - Approved changes to OARs: we have 7 rule changes, and you can review in the OAR worklog.
  - Josh is most concerned with #5: Amend OAR 952-001-0010(23) – reducing the ticket length from 45 days to 30 days.
  - Many changes will need to be made to collateral material, online class, Josh's training, etc.
  - Josh will reach out to Diane Davis to assist with the rulemaking process

### 3. Old Business

- a. OAR Committee review of approved rule changes in log:
  - Discussion of proactive communications with stakeholders before implementation
    - This was covered under rulemaking process discussion.
  - New quarterly newsletter to help spread the word before and after the changes.
  - Schedule of mileposts on the road to finalizing changes in January.
    - Board members requested this to share with their stakeholders/members. First issue would focus on rule changes.
    - Jessica asked how this would be distributed? Board members? Partner recruitment organizations? Josh replied, both. Jessica suggested to post on OUNC website.
- b. Examine other items on OAR log for possible action/removal.
  - Jessica pulled up Open Issues tab from OAR work log and discussion followed:
    - She asked Melanie if this language we are reviewing is correct? Yes.
    - Adding existing language to OAR 952-001-0090. Jaimie reminded members this was a recommendation that came from the white paper from American Gas Association. Jessica is asking for direction. She feels there is not enough data currently to act. Jaimie was fine tabling from work log. Jessica updated the work log
    - OAR 952-001-0010 (22) Definitions: this came from white paper via Jaimie. Is this still a relevant topic? Jaimie says, yes. NWN data shows this is a continued issue. Let's look at reasons behind this exemption. Jessica asked what additional data to we need? Jaimie will reach out to other gas utilities. Jessica reminded members; we do have a data committee. Micah feels the DIRT report is a useful tool. Jessica will reach out to Lee to give her insight as to what we are looking for.
    - OAR 952-001-0070 (10): Addressed in existing administrative rules – tabled.
    - Complaint process pg. 39 of Standards Manual: Jessica shared this referred to staff to for updating the manual.

- Positive Response: this is OCC systems change, not a rule/statute change. Staff to refer this to Board consideration as an operational change.

#### 4. New Business

- a. Review mandatory damage reporting concept from Melanie (*approved by board June 14*)
  - Proposed addition to OAR 952-001-0090 (6) (See attachment 2) Jessica read out loud current language.
    - Proposed language: add to first sentence after facilities, 'and notify the Oregon Utility Notification Center immediately'.
    - Members shared comments/feedback of what we are trying to accomplish here: utilizing the call center to collect this information, in addition to notifying the operator.
    - Jessica asked Scott what other states do this type of reporting? Scott shared 9 of their 17 states do offer different damage type tickets. None of those states submit to DIRT.
    - Jessica asked members 'what is the benefit of tracking damages in the field?'
      - Accurate data: find root causes of damages which would lead to target awareness and training. DIRT is not up to date. This could be readily available to us.
      - Is there a cost from OCC to add this? Scott will have to report back on this question.
      - This might not be a rule change. Expand the use of our headers on our tickets. We currently have 5 headers.
      - Damage header ticket discussion followed. Would this put too much responsibility on the operator or call center?

**Committee Action:** Get the information that Scott had created per Melanie's request and post that in the OAR committee folder. Keep this discussion open for next meeting after the first of the year.

- b. Looking ahead to the 2025 legislative session
  - Possible ORS amendments, additions – exemptions/subsidies, manual reference, other.
    - Tabled – keep on agenda for next meeting.

5. For the Good of the Order

6. Next Meeting: tbd

Meeting adjourned at 4:02pm

Kitty submitted minutes on November 16, 2023



## ISSUE SUMMARY

#23-11-0037

**SUBJECT:** Oregon Administrative Rulemaking Roadmap

**DATE:** November 8, 2023

**PREPARED BY:** Josh Thomas, Executive Director

As specified in ORS 757.552(2), a core function of the Oregon Utility Notification Center (OUNC) is to adopt rules that regulate the notification and marking of underground facilities to prevent damage to underground facilities. The OUNC Board of Directors is currently proceeding with seven pending changes to its Oregon Administrative Rules in Chapter 952 (listed on page two).

The rulemaking process is prescriptive, including mandatory public notification and involvement. The purpose of this issues summary is to provide board members with our roadmap for this process as we proceed with the first changes to our rules since January 2019.

### Statutes vs Rules

Oregon's dig laws and rules are guided by Oregon Revised Statutes, which is the compilation of state laws. Oregon Administrative Rules put more form and function to the laws – they are like the strategies that agencies use to carry out the goals established by the Oregon Revised Statutes. Our rules do carry the force of law.

**Oregon Revised Statutes (ORS)** changes require legislative involvement, and the Oregon Legislative Assembly meets annually with long sessions in odd numbered years and short sessions in even numbered years. It is an involved process.

**Oregon Administrative Rules (OAR)** changes can be made through registered Rules Coordinators. Josh Thomas, Executive Director for OUNC, and Diane Davis, Operations and Policy Analyst with the Oregon Public Utility Commission are Rules Coordinators for OUNC.

### Rulemaking Process

In the Standards Manual under Oregon Administrative Rules 952-001-0003, there is a Permanent Rulemaking Notice that spells out the general process for rule changes. Oregon State Archives and Oregon Secretary of State also provide a useful, more detailed checklist to use for permanent rulemaking, which includes:

1. Prepare Notice of Proposed Rulemaking Including Statement of Need and Fiscal Impact, using Oregon Administrative Rules Database (OARD).
2. Monitor OARD dashboard and make any necessary corrections on returned filings.
3. Give notice:
  - To specified legislators (**49 days** before rule is effective);
  - To agency mailing list (**28 days** before rule is effective);
  - In Secretary of State's Bulletin (**21 days** before rule is effective); and
  - In accordance with the agency's notice rule (Associated Press/Capitol Press Room).

4. Hold rulemaking hearing, complying with OAR 137-001-0030 and the "Attorney General's Public Records and Meetings Manual."
5. Maintain the rulemaking record, including agency response to any comments on achieving rule's substantive goals while reducing the negative economic impact on small business.
6. Fully consider all written and oral comments, revising as needed.
7. Adopt, amend, or repeal rules.
8. Submit permanent rule filing to Archives Division using OARD.
9. Monitor OARD dashboard and make any corrections needed on returned filings.
10. Provide Rule Report to Legislature no later than February 1 each year including number of rules adopted, amended, or repealed during previous 12-month period.
11. Review newly adopted rules no later than five years after adoption to determine whether: (1) rule should be repealed or amended; (2) fiscal impact statement was accurate; (3) rule had intended effect; and (4) rule impacted small business. Submit report to advisory committee (if any), Secretary of State, and Small Business Rules Advisory Committee (if Committee did not complete the review).

The Publications Unit of the Secretary of State Archives Division accepts Administrative Rule filings and publishes Administrative Rules. The Attorney General's office has the authority to interpret Administrative Rules and give legal advice concerning Administrative Rules. Legislative Counsel reviews Administrative Rules for constitutionality and scope and intent of enabling legislation.

According to ORS 183.330(2), the rules coordinator is responsible for maintaining copies of all rules adopted by the agency and provides information to the public about the status of those rules and rulemaking proceedings. The coordinator also maintains a mailing list required by ORS 183.335(8).

In addition to the mandated requirements for notification, it is also important for OUNC to consider industry relations and impacts on partnerships when making changes to rules. A longer horizon and more involved, proactive communications effort should be pursued before implementing changes that could come as a surprise and/or bring adverse operational impacts.

### **Approved Changes to Oregon Administrative Rules**

The following changes have been approved by the board in 2023, and they have been consolidated for the rulemaking process to avoid making piecemeal changes throughout the year.

1. Amend OAR 952-001-0050 (2) – providing an exception to the requirement for notification when work is to take place within an established or pre-existing facility enclosure.
2. Amend OAR 952-001-0010 (10) – defining a “large area” as a project that exceeds seven hundred fifty linear feet.
3. Amend OAR 952-001-0040 – clarifying requirements for pre-marking areas of proposed excavation with white paint, and allowing for the use of electronic white lining.
4. Amend OAR 952-001-0080 – clarifying requirements for design locate requests, specifying delivery of drawings and maps owned by facility operators during planning phases.
5. Amend OAR 952-001-0010 (23) – reducing the ticket lift from 45 days to 30 days.
6. Amend OAR 952-001-0010 – adding hand digging, air cutting, vacuum excavation or hydro vacuum excavation to the definition of “non-invasive methods.”
7. Amend OAR 952-001-0002 – specifying recruitment partner organizations for OUNC board.

For more detailed information on these proposed changes, please request a copy of the OAR Committee Worklog.

### **Proposed Timeline**

We are targeting the Thursday, January 18 OUNC Board Meeting for the rulemaking hearing to adopt these changes. This allows us time for outreach and communications about the package of pending changes that the board has passed. We will continue these efforts after the rule changes are adopted as well.

These changes will also prompt necessary changes to our training programs (in person and online), our website, Standards Manual, brochures and various other collateral materials and informational resources. Staff will review and make the necessary changes to ensure accuracy and consistency.

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### **References:**

- [Oregon Administrative Rules Database \(OARD\) Overviews and Checklists](#)
- [Standards Manual](#)
- OAR Committee Worklog



# CONCEPT SUBMISSION FORM

The Oregon Utility Notification Center (OUNC) Board of Directors welcomes ideas and suggestions that prevent damage, ensure safety and improve OUNC's contact center and programs. To submit a concept for consideration by the OUNC Board or its committees, fill out this form using whatever space you need, include relevant attachments, and submit it to [info@digsafelyoregon.com](mailto:info@digsafelyoregon.com).

## PROBLEM STATEMENT

*At this time the OUNC does not have accurate way to track damages in the field.*

## RULE/LAW/POLICY REFERENCE

Proposed Addition to OAR 952-001-0090 (6)

## PROPOSED CHANGE(S)

*Proposed Addition to OAR 952-001-0090 (6)*

### **Consideration:**

I am proposing to the OAR committee, the adoption of required damage ticket/reporting. Adopting this process would:

- Prevent damages
- Prevent serious incidents/accidents
- Improve workplace safety
- Save time and resources
- Protect companies – recorded damage ticket
- Improve damage investigations - claims

To take it a step further, the data collected would:

- Assist in targeting and increasing awareness in problematic:
  - Geographical areas
  - Contractors
  - Utility companies
  - Locating Companies
- Which can lead to additional:
  - Training
  - Public awareness

Near misses and incidents lead to major injuries, it's just matter of time. If we are more informed of the happenings in the field, we can better inform excavators, utility companies, homeowners and locate contractors to prevent damages. Also an added benefit, we will be able to monitor bad actors.

**Possible Processes:**

- A damage ticket would be created when a damage or near miss occurs in the field. The ticket would notify the utility/contractor locator of the damage. This would establish a recorded record of the damage which would be for public use. The ticket would be treated as an emergency ticket.
- Another option is to not create a ticket but logging the damage data as Washington, Colorado and California does which would lead to mandatory damage reporting.
- Or both

**Enforcement:**

- Processes and mandatory requirements can be approved but the driver to making change will be enforcement of the rule.
  - Consideration –
    - Statute change regarding enforcement ORS
    - OAR 757.993

**Language change - OAR 952-001-0090 (6):**

• **Current Language**

If the excavator causes or observes damage to underground facilities, the excavator must notify the operator of the underground facilities immediately. If the damage causes an emergency or if the damage from excavation activity is to a pipeline and causes release of any natural gas, other gas or hazardous liquid from the pipeline, the excavator must promptly report the released to appropriate emergency response authorities by calling the 911 emergency telephone number and must take reasonable steps to ensure the public safety. The excavator must not bury damaged underground facilities without the consent of the operator of the damage underground facilities.

• **Proposed Language**

If the excavator causes or observes damage to underground facilities, the excavator must notify the operator of the underground facilities **and notify the Oregon Utility Notification Center** immediately. If the damage causes an emergency or if the damage from excavation activity is to a pipeline and causes release of any natural gas, other gas or hazardous liquid from the pipeline, the excavator must promptly report the released to appropriate emergency response authorities by calling the 911 emergency telephone number and must take reasonable steps to ensure the public safety. The excavator must not bury damaged underground facilities without the consent of the operator of the damage underground facilities.

Damage reporting submittal is required within 60 days of damage date. Submittal shall be completed at >>>>>>>>>>

**Reference:**

- Existing state laws, including Wyoming (ticket), California (report), Colorado (report), Nebraska (ticket), Texas (ticket)

**COMMITTEE REFERRAL**

OARs

**ADDITIONAL INFORMATION**

*Is there anything else we should know about this issue or your proposed concept?*

**NAME:**

Melanie Lewis

**COMPANY/ORGANIZATIONAL AFFILIATION AND TITLE:**

Employed @ PacifiCorp - OUNC Board Member representing the Regulated Electric

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