DECISION MEMORANDUM

TO: **COMMISSIONER KJELLANDER**
COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSION SECRETARY
JOE LECKIE
ELLIS HIRE
COMMISSION STAFF

FROM: **DON HOWELL**
DEPUTY ATTORNEY GENERAL

DATE: **JUNE 20, 2013**

SUBJECT: **UPDATING THE COMMISSION'S RAILROAD SAFETY AND ACCIDENT REPORTING RULES, IDAPA DOCKET NO. 31-7103-1301**

The Commission's Railroad Safety and Accident Reporting Rules (IDAPA 31.71.03) adopt by reference the federal safety regulations pertaining to the transportation of hazardous material by rail. In particular, Rule 103 adopts various parts of Title 49, Code of Federal Regulation (CFR). Currently Rule 103 adopts the October 1, 2011 edition of the CFRs and Rule 104 adopts the 2010 edition.

The Staff proposes that the Commission adopt the current version of the CFRs to be published on October 1, 2013. This would include recent changes to 49 C.F.R. Parts 171-174, 179 and 180. The proposed changes are attached for your review.

CFR CHANGES SINCE 2011

Since Rule 103 was last updated in 2011, the Pipeline and Hazardous Material Safety Administration (PHMSA) has made several changes to the railroad hazardous material rules. In particular, Staff recommends that the Commission adopt the recent CFR changes. In June 2012, PHMSA amended 49 C.F.R. Parts 171 and 172 revising procedures allowing electronic shipping papers and adding emergency contact phone numbers to the papers. It also amended Parts 173, 174, 179 and 180 regarding the loading and marking of tank cars carrying hazardous materials. These changes became effective on July 25, 2012. 77 Fed.Reg. 37962-01 (June 25, 2012). The new edition of Title 49 of the CFRs will be published on October 1, 2013.

Second, because Staff is recommending that Rule 103 be updated by adoption of the 2013 CFRs, Staff also recommends that Rule 104 (Reporting of Railroad Accidents) be updated to reflect adoption of the October 1, 2013 CFRs.

STAFF RECOMMENDATION

Because these federal safety regulations are mandatory for rail carriers and shippers, Staff recommends that there is no need or requirement for a negotiated rulemaking.

COMMISSION DECISION

Should Rules 103 and 104 of the Commission's Railroad Safety and Accident Reporting Rules be updated by the adoption of the 2013 CFR provisions concerning the transportation of hazardous materials by rail? Does the Commission wish to forward these proposed changes to the Administrative Rules Coordinator for publication in the next Administrative Bulletin to be issued on August 7, 2013?

Don Howell
Deputy Attorney General

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IDAPA 31
TITLE 71
CHAPTER 03

31.71.03 - RAILROAD SAFETY AND ACCIDENT REPORTING RULES

103. TRANSPORTATION OF HAZARDOUS MATERIAL BY RAIL (RULE 103).

01. Hazardous Material Defined. "Hazardous material" means a substance or material which has been determined by the United States Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated by the Secretary of Transportation. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials as defined in 49 C.F.R. Section 171.8, materials designated as hazardous under the provisions of 49 C.F.R. Section 172.101, and materials that meet the defining criteria for hazardous classes and divisions in 49 C.F.R. Part 173. (3-30-01)

02. Adoption of Federal Safety Regulations. The Commission hereby adopts by reference 49 C.F.R. Parts 107, 171, 172, 173, 174, 178, 179, and 180 (October 1, 201~~1~~3). All customers offering hazardous materials for shipment by rail and all railroads operating in Idaho that transport hazardous materials listed in, defined by, or regulated by the adopted federal safety regulations must comply with 49 C.F.R. Parts 107, 171, 172, 173, 174, 178, 179 and 180. ~~(3-29-12)~~(____)

03. Recognition of Federal Exemptions. Whenever a railroad or shipper has applied to a federal agency and has been granted an exemption from the transportation or packaging requirements of the federal safety regulations adopted in Subsection 103.02, the federal exemption will also be recognized under these rules. The Commission shall not administer a program to duplicate consideration or approval of federal exemptions on a state level. (3-30-01)

104. REPORTING OF RAILROAD ACCIDENTS (RULE 104).

The Commission incorporates by reference 49 C.F.R. Part 225 (October 1, 201~~0~~3). Pursuant to 49 C.F.R. 225.1, all railroads that are required to file a copy of any accident/incident report with the Federal Railroad Administration shall also file a copy of such report with the Commission Secretary for accidents or incidents occurring in Idaho. Copies of accident or incident reports shall be mailed to: Commission Secretary, Idaho Public Utilities Commission, PO Box 83720, Boise, Idaho 83720-0074 ((208) 334-0338). Copies of such reports may also be provided by facsimile at (208) 334-3762 or by electronic mail, secretary@puc.idaho.gov. ~~(4-7-11)~~(____)