

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF**

FROM: DON HOWELL

DATE: SEPTEMBER 26, 2003

**RE: UPDATING THE COMMISSION'S RAILROAD SAFETY RULES,
DOCKET NO. 31-7103-0301**

On September 3, 2003, the Commission caused to be published in the Administrative Bulletin a notice that it intended to amend its Railroad Safety Rule 103, IDAPA 31.71.03.103. In its Notice of Rulemaking, the Commission explained that the U.S. Department of Transportation in conjunction with the Department of Homeland Security had issued new rules to enhance the security of hazardous materials transported by railroads. The amended Safety Rules (to be codified in scattered sections in 49 C.F.R. Part 172) requires shippers of hazardous materials and railroads to develop and implement security plans. These federal safety rules were published in the Federal Register in March 2003. 68 Fed. Reg. 14510 (March 25, 2003). The Commission proposed to incorporate these new safety rules by adopting the October 1, 2003, edition of the Code of Federal Regulations and specifically the security amendments contained in 49 C.F.R. Part 172.

The Commission's Notice invited interested persons to submit written comments no later than September 24, 2003. No public comments were received. The Legislative Services office did indicate that the Senate and House Subcommittees for review of Administrative Rule did examine the proposed change. Legislative Services' letter stated that no "meeting will be held, and we are pleased to report that no objections will be filed [to the proposed rulemaking]." The proposed amendment to Railroad Safety Rule 103 is attached for your consideration.

COMMISSION DECISION

Does the Commission wish to adopt the proposed rule as a pending rule? Does the Commission wish to issue a Notice of Pending Rule to be published in the Administrative Bulletin on November 5, 2003?



Don Howell

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IDAPA 31
TITLE 71
CHAPTER 03
31.71.03—RAILROAD SAFETY/SANITATION RULE

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, 2009). 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.

~~(3-30-01)~~(_____)

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)