

DECISION MEMORANDUM

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

FROM: DON HOWELL

DATE: AUGUST 4, 2005

SUBJECT: ADOPTING RECENT AMENDMENTS TO THE FEDERAL HAZARDOUS MATERIALS (HazMat) REGULATIONS REGARDING THE TRANSPORTATION OF HAZMAT BY RAIL, DOCKET NO. 31-7103-0501

The federal Pipeline and Hazardous Materials Safety Administration (PHMSA) has issued several changes to the federal regulations concerning the transportation of hazardous materials by rail. PHMSA has clarified which functions in the rail transportation chain are subject to the federal hazardous materials regulations (HMRs) and which are not subject to HMRs. More specifically, the “pre-transportation function” (the loading of packaged hazardous material on a rail car), the transportation of the car by a railroad, and “storage incidental” to the transportation (storage between the time the railroad takes physical possession of the car containing hazardous materials and when the car is delivered to its destination), are all subject to the federal HMRs. Delivery of a rail car carrying hazardous material to tracks that are used solely by the receiving customer (e.g., private track or private siding) is not subject to the HMRs. The HMRs do not apply to rail movements solely within a contiguous facility where public access is restricted, or to the unloading of a hazardous material car after the railroad has delivered the car to the customer.

PHMSA also adopted changes that align the HMRs with the International Atomic Energy Agency requirements regarding the rail transportation of Low Specific Activity (LSA) materials. Finally, PHMSA added a definition of “person who offers or [the] offeror” to the HMRs.

The Staff recommends that the Commission adopt these changes to the HMRs by incorporation. The new changes are to be incorporated in the October 1, 2005 Edition of the Code of Federal Regulations. More specifically, Staff proposes that the Commission's Railroad Safety Rule 103 be amended as shown in the attachment.

COMMISSION DECISION

Does the Commission wish to adopt the new federal safety rules? Does the Commission wish to issue a Notice of Proposed Rule to be published in the Administrative Bulletin on October 5, 2005.



Don Howell

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**IDAPA 31
TITLE 71
CHAPTER 03**

31.71.03 - RAILROAD SAFETY/SANITATION 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, 2003~~5~~). 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. (3-20-04)()

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)