

DECISION MEMORANDUM

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

FROM: DON HOWELL

DATE: OCTOBER 28, 2005

**SUBJECT: UPDATING THE COMMISSION'S RAILROAD SAFETY RULE 103
REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIAL,
DOCKET NO. 31-7103-0501**

In August 2005, the Commission issued a Notice of Proposed Rulemaking to incorporate several recent changes to the federal regulations concerning the transportation of hazardous material by rail addressed in Railroad Safety Rule 103. During the past 12 months, the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) made several changes to its federal HAZMAT regulations. The Commission proposed to adopt these changes by adopting the updated Code of Federal Regulations dated October 1, 2005.

The Commission's Notice of Proposed Rulemaking was published on October 5, 2005. Comments were to be submitted to the Commission no later than October 26, 2005. Only one comment was received. In a letter dated September 16, 2005, the Legislative Services Office indicated that the Senate and House Subcommittees for Review of Administrative Rules had examined the proposed rule change. The letter stated that no "meeting will be held, and we are pleased to report that no objections will be filed [to the proposed rule]."

COMMISSION DECISION

Does the Commission wish to update its rail safety Rule 103 by incorporating the 2005 edition of the Code of Federal Regulations? Does the Commission wish to adopt its proposed rule as the pending rule? Does the Commission wish to issue a Notice of Pending Rule to be published in the Administrative Bulletin on January 4, 2006?

Don Howell

**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)