

## **DECISION MEMORANDUM**

**TO:           COMMISSIONER REDFORD  
              COMMISSIONER SMITH  
              COMMISSIONER KEMPTON  
              COMMISSION SECRETARY  
              COMMISSION STAFF**

**FROM:       DON HOWELL  
              DEPUTY ATTORNEY GENERAL**

**DATE:       JULY 24, 2008**

**SUBJECT:   ADOPTING THE NEW FEDERAL SAFETY RULES REGARDING THE  
              TRANSPORTATION OF HAZARDOUS MATERIALS BY RAIL, IDAPA  
              DOCKET NO. 31-7103-0801**

This year the U.S. Department of Transportation (DOT), the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the FRA have issued new safety rules to enhance the safe transportation of hazardous materials transported by rail. The Staff recommends that the Commission update its rail safety rules and incorporate the new federal changes. The federal changes are discussed in greater detail below.

First, DOT and PHMSA have added 30 new substances to the list of hazardous substances contained in 49 C.F.R. Part 172. The list of hazardous materials was also edited to align the list with hazardous substances designated by the U.S. Environmental Protection Agency (EPA). 73 Fed.Reg. 1089 (Jan. 7, 2008). Second, DOT and PHMSA amended the hazardous material regulations in scattered sections of 49 C.F.R. Parts 171, 172, 173, 178 and 180. In particular, the agencies added new entries to the hazardous material listing and set out additional rail car placarding requirements. These changes also address the transportation of various ethanol, alcohol, and gasoline blends. Railroads are required to develop alternative emergency response actions for various concentrations of ethanol and alcohol in gasoline mixtures. Part 172 was also amended to require hazardous material shippers to provide emergency response telephone numbers on the material shipping documents.

Third, the three agencies promulgated new rail safety rules in 49 C.F.R. Parts 172 and 174 that require railroads to compile annual data on certain shipments of explosives, "toxic

by inhalation,” and radioactive materials. Rail carriers are to use the data to analyze safety and security risks along rail routes and assess alternative routing options. The agencies also adopted a new requirement that railroads inspect placarded hazardous material rail cars for signs of tampering or suspicious activities. These new safety rules implement recommendations of the 9/11 Commission Act of 2007. 73 Fed.Reg. 20751 (April 16, 2008).

**STAFF RECOMMENDATION**

The Staff recommends that the Commission adopt these new safety rules by incorporation. The new safety rules are to be incorporated in the October 1, 2008 Edition of Title 49, 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 Rulemaking to be published in the Administrative Bulletin on October 1, 2008?



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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, ~~2007~~2008). 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.

~~(4-2-08)~~(    )

**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)