

DECISION MEMORANDUM

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

RUL-R-10-01

**FROM: DON HOWELL
DEPUTY ATTORNEY GENERAL**

DATE: AUGUST 4, 2010

**SUBJECT: UPDATING THE COMMISSION'S RAILROAD SAFETY AND
ACCIDENT REPORTING RULES, IDAPA DOCKET NO. 31-7103-1001**

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, Rules 103 and 104 adopt various parts of Title 49, Code of Federal Regulation (CFR). More specifically, Rule 103 adopts the federal safety rules pertaining to the transportation of hazardous material by rail. The current rule adopted the October 1, 2008 edition of the CFRs. Rule 104 pertains to the reporting of railroad accidents. This rule incorporates by reference 49 C.F.R. Part 225 from the October 1, 2007 edition of the CFRs.

The Staff proposes that the Commission adopt the current version of the CFRs to be published on October 1, 2010. This would include 49 C.F.R. Parts 107, 171, 172-174, 178-180, and 225.

CFR CHANGES SINCE 2007

Since Rule 103 was last updated, the Pipeline and Hazardous Material Safety Administration (PHMSA) has made four changes to the railroad hazardous material rules. First, in October 2009, PHMSA amended 49 C.F.R. Parts 172 and 174 to clarify requirements governing emergency response information provided by shippers of hazardous materials. In particular, PHMSA required that the shippers' name and contact number be included on shipping papers so that emergency responders would be able to obtain additional information about the hazardous material being shipped by rail. Second, in March 2010, PHMSA modified the current security plan requirements applicable to the commercial transportation of hazardous materials by

rail. The agency amended 49 C.F.R. Part 172 to decrease the number of hazardous materials subject to security plan requirement. This reduced regulatory cost and paperwork burden.

Third, PHMSA amended 49 C.F.R. Part 107.62 to adjust the annual federal fee for entities shipping hazardous material by rail. This change became effective on April 29, 2010. Finally, PHMSA amended 49 C.F.R. Parts 105, 107, 171, 173, 174, 176, 177, and 179 concerning the procedures for issuing special permits for hazardous shipments that have an established safety record. The revisions were intended to provide wider access to the regulatory flexibility offered in special permits and eliminate the need for numerous requests. This change is effective October 1, 2010.

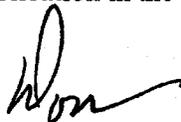
HOUSEKEEPING

The Staff is also proposing that Rule 8 be modified to conform to changes that the Legislature made to *Idaho Code* § 67-5229. In House Bill 614 enacted this year, the Legislature required that agency rules indicate where electronic copies of incorporated material can be obtained "or provide an electronic link to the incorporated materials." *Idaho Code* § 67-5229(2); HB No. 614, 2010 Sess. Law, ch. 280. The Commission's Notice of Rulemaking must also include an explanation "of why the incorporation is needed." *Id.*

The Staff recommends the Commission update its Railroad Safety Rules as described above and set out in the attached proposed changes. Adoption of the current CFRs would make the rules consistent with the federal regulations and avoid confusion.

COMMISSION DECISION

Should Rule 103 of the Commission's Railroad Safety and Accident Reporting Rules be updated by the adoption of the current CFR provisions concerning the transportation of hazardous materials by rail? Should Rule 104 be updated to conform to the current federal reporting rules for railroad accident reporting? Does the Commission also wish to make the housekeeping changes to Rule 8? Does the Commission wish to forward these proposed changes to the Administrative Rules Coordinator for publication in the next Administrative Bulletin?



Don Howell
Deputy Attorney General

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**IDAPA 31
TITLE 71
CHAPTER 03**

**31.71.03 - RAILROAD SAFETY AND
ACCIDENT REPORTING RULES**

**008. INCORPORATION BY REFERENCE - CODE OF FEDERAL REGULATIONS
(RULE 008).**

The Code of Federal Regulations (CFR) is referred to in Rules 103 and 104. The annual volumes of the CFR may be obtained on the web from the Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954 U.S. Government Bookstore at <http://bookstore.gpo.gov/> and click on "Code of Federal Regulations," or by calling toll-free 866-512-1800. The full text of the CFR is also available in electronic format at <http://origin-www.gpoaccess.gov/nara/> www.gpoaccess.gov/cfr/index.html. The incorporated CFR Parts are also available for inspection and copying at the office of the Idaho Public Utilities Commission and the Idaho State Law Library. Whenever a federal regulation is adopted by reference in these rules, subsequent annual recom compilations are also adopted by reference, but subsequent amendments to the CFR are not adopted by reference. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

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, 2008~~10~~). 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.

(~~5-8-09~~)()

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, 2007~~10~~). 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 to secretary@puc.idaho.gov. (~~4-2-08~~)()