

DECISION MEMORANDUM

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

**FROM: DON HOWELL
DEPUTY ATTORNEY GENERAL**

RUL-R-10-01

DATE: NOVEMBER 5, 2010

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

On October 6, 2010, the Commission caused to be published in the Idaho Administrative Bulletin a proposed rulemaking regarding changes to the Commission's Railroad Safety and Accident Reporting Rules, IDAPA 31.71.03. The Commission's Rule 103 adopts by reference the federal safety regulations pertaining to the transportation of hazardous materials by railroads issued by the federal Pipeline and Hazardous Material Safety Administration (PHMSA). Rule 104 addresses Code of Federal Regulations (CFRs), respectively. In its rulemaking the Commission proposed to adopt the 2010 edition of the CFRs.

The Commission also proposed to amend its Rule 8 (Incorporated by Reference – Code of Federal Regulations) to conform to changes the Legislature made in the Administrative Procedures Act, *Idaho Code* § 67-5229. In House Bill 614 enacted this year, the Legislature required that agency rules indicate where electronic copies of incorporated materials can be obtained “or provide an electronic link to the incorporated materials.” *Idaho Code* § 67-5229(2). Consequently, the Commission's rulemaking made proposed changes to Rules 8, 103, and 104. These rules are attached for your review.

As mentioned above, the Commission's proposed changes to these three rules were published in the Administrative Bulletin on October 6, 2010. Written comments regarding the proposed changes were due not later than October 27, 2010. The Commission received no comments in response to the APA notice.

The Commission did receive two letters from the Legislative Services Office. In its first letter dated October 1, 2010, Legislative Services determined that it appears that the proposed rules “have been promulgated within the scope of statutory authority granted to the Public Utilities Commission.” In a subsequent letter dated October 21, 2010, Legislative Services reported no objections to the proposed rule changes will be filed.

COMMISSION DECISION

Does the Commission wish to make any changes to its proposed rules published in the Administrative Bulletin on October 6, 2010?

Does the Commission wish to adopt its proposed rules as its pending rules? If yes, does the Commission wish to have its notice of adoption of pending rules published in the next Administrative Bulletin on December 1, 2010?



Don Howell
Deputy Attorney General

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