

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
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COMMISSION STAFF

FROM: DON HOWELL
DEPUTY ATTORNEY GENERAL

RUL-R-13-01

DATE: JUNE 20, 2013

SUBJECT: UPDATING THE COMMISSION'S RAILROAD SAFETY AND
ACCIDENT REPORTING RULES, IDAPA DOCKET NO. 31-7103-1301

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, Rule 103 adopts various parts of Title 49, Code of Federal Regulation (CFR). Currently Rule 103 adopts the October 1, 2011 edition of the CFRs and Rule 104 adopts the 2010 edition.

The Staff proposes that the Commission adopt the current version of the CFRs to be published on October 1, 2013. This would include recent changes to 49 C.F.R. Parts 171-174, 179 and 180. The proposed changes are attached for your review.

CFR CHANGES SINCE 2011

Since Rule 103 was last updated in 2011, the Pipeline and Hazardous Material Safety Administration (PHMSA) has made several changes to the railroad hazardous material rules. In particular, Staff recommends that the Commission adopt the recent CFR changes. In June 2012, PHMSA amended 49 C.F.R. Parts 171 and 172 revising procedures allowing electronic shipping papers and adding emergency contact phone numbers to the papers. It also amended Parts 173, 174, 179 and 180 regarding the loading and marking of tank cars carrying hazardous materials. These changes became effective on July 25, 2012. 77 Fed.Reg. 37962-01 (June 25, 2012). The new edition of Title 49 of the CFRs will be published on October 1, 2013.

Second, because Staff is recommending that Rule 103 be updated by adoption of the 2013 CFRs, Staff also recommends that Rule 104 (Reporting of Railroad Accidents) be updated to reflect adoption of the October 1, 2013 CFRs.

STAFF RECOMMENDATION

Because these federal safety regulations are mandatory for rail carriers and shippers, Staff recommends that there is no need or requirement for a negotiated rulemaking.

COMMISSION DECISION

Should Rules 103 and 104 of the Commission's Railroad Safety and Accident Reporting Rules be updated by the adoption of the 2013 CFR provisions concerning the transportation of hazardous materials by rail? Does the Commission wish to forward these proposed changes to the Administrative Rules Coordinator for publication in the next Administrative Bulletin to be issued on August 7, 2013?



Don Howell
Deputy Attorney General

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