

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF

FROM: STEPHEN GOODSON, POLICY ADVISOR

DATE: MAY 28, 2021 GWR-U-21-01

SUBJECT: ADOPTING THE COMMISSION'S SAFETY REGULATION CHAPTERS
BY ORDER

BACKGROUND

The Legislature adjourned/recessed its 2021 Legislative Session without extending agency rules by statute. *See* I.C. § 67-5292. Unless agency rule chapters promulgated under the Idaho Administrative Procedure Act are adopted as temporary rules, the agency rule chapters will expire on July 1, 2021. *See* I.C. § 67-5226. The Division of Financial Management has directed state agencies to adopt as temporary rules those existing rule chapters each agency wishes to keep in effect.

The Commission has statutory authority to adopt safety regulations by order, rather than promulgating the rules under the Idaho Administrative Procedure Act. The authority is in *Idaho Code* § 61-515:

The commission shall have the power, after a hearing had upon its own motion or upon complaint, ***by general or special orders***, or regulations, or otherwise, to require every public utility to maintain and operate its line, plant, system, equipment, apparatus and premises in such manner as to promote and safeguard the health and safety of its employees, customers and the public, and to this end to prescribe the installation, use, maintenance and operation of appropriate safety or other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the public may demand.

(Emphasis added). The Commission has two rule chapters that can reasonably be described as safety regulations: IDAPA 31.11.01 (Safety and Accident Reporting Rules for Utilities

Regulated by the Idaho Public Utilities Commission) and IDAPA 31.71.01 (Railroad Safety Rules).

STAFF RECOMMENDATION

Staff recommends the Commission not adopt IDAPA 31.11.01 and IDAPA 31.71.01 as temporary rules. Instead, Staff recommends the Commission adopt these two rule chapters by order under *Idaho Code* § 61-515, allowing them to expire from the State's administrative rules. The rule chapters would remain in effect but would no longer be promulgated under the Idaho Administrative Procedure Act.

Staff sees several advantages to removing IDAPA 31.11.01 and IDAPA 31.71.01 from the IDAPA rules and instead adopting them by Commission order. First, the rules can be more easily updated than under the Idaho Administrative Procedure Act. Second, State funds will be saved by not having to publish these rule chapters in the Idaho Administrative Bulletin this year and any subsequent year in which the Legislature fails to extend the State's administrative rules by statute.

To provide stakeholders and the public notice of this change, Staff recommends the Commission issue notice of the proposed regulatory change, setting a June 18, 2021 deadline for stakeholders and the public to comment and a June 24, 2021 reply comment deadline for Staff to reply. The short comment window is necessary because removing IDAPA 31.11.01 and IDAPA 31.71.01 will expire on July 1, 2021 if not adopted by order under *Idaho Code* § 61-515 or adopted as temporary rules under *Idaho Code* § 67-5226.

COMMISSION DECISION

Does the Commission wish to issue notice of the proposed regulatory change described above, setting a June 18, 2021 deadline for stakeholders and the public to comment and a June 24, 2021 reply comment deadline for Staff to reply?


Stephen Goodson, Policy Advisor