

## DECISION MEMORANDUM

**TO:** COMMISSIONER KJELLANDER  
COMMISSIONER SMITH  
COMMISSIONER HANSEN  
COMMISSION SECRETARY  
COMMISSION STAFF

**FROM:** DON HOWELL

**DATE:** JULY 16, 2003

**RE:** ADOPTING THE NEW FEDERAL SECURITY RULES REGARDING THE  
TRANSPORTATION OF HAZARDOUS MATERIALS BY RAIL, PUC CASE  
NO. RUL-R-03-1 (IDAPA DOCKET NO. 31-7103-0301)

In March 2003, the U.S. Department of Transportation in conjunction with the Department of Homeland Security issued new safety rules to enhance the security of hazardous materials transported by rail. The new safety rules require shippers of hazardous materials and railroads to develop and implement security plans. 68 Fed. Reg. 14510 (March 25, 2003). These amended safety rules are to be codified in scattered sections of 49 C.F.R. Part 172.

The security plans are to address risk assessment, personnel safety, unauthorized access to materials, and in-route transportation safety. In addition, the new federal safety rules require shippers and transporters of hazardous materials to provide security awareness training to their employees. The new C.F.R. sections are attached for your review in Attachment 1.

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, 2003 Edition of the Code of Federal Regulations. More specifically, Staff proposes that the Commission's Railroad Safety Rule 103 be amended as shown in Attachment 2.

### COMMISSION DECISION

Does the Commission wish to adopt the new federal Safety Rule? Does the Commission wish to issue a Notice of Proposed Rule to be published in the Administrative Bulletin on September 3, 2003?



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Don Howell

**IDAPA 31**  
**TITLE 71**  
**CHAPTER 03**  
**31.71.03—RAILROAD SAFETY/SANITATION RULE**

**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, 2000~~3~~). 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.

(3-30-01)(\_\_\_\_\_)

**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)

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## 49 CFR § 172.704

2. In § 172.704, paragraph (a) introductory text is revised, paragraphs (a)(4) and (a)(5) are added, and paragraph (b) is revised to read as follows:

## 49 CFR § 172.704

## § 172.704 Training requirements.

(a) Hazmat employee training must include the following:

\* \* \* \* \*

(4) Security awareness training. No later than the date of the first scheduled recurrent training after March 25, 2003, and in no case later than March 24, 2006, each hazmat employee must receive training that provides an awareness of security risks associated with hazardous materials transportation and methods designed to enhance transportation security. This training must also include a component covering how to recognize and respond to possible security threats. After March 25, 2003, new hazmat employees must receive the security awareness training required by this paragraph within 90 days after employment.

(5) In-depth security training. By December 22, 2003, each hazmat employee of a person required to have a security plan in accordance with subpart I of this part must be trained concerning the security plan and its implementation. Security training must include company security objectives, specific security procedures, employee responsibilities, actions to take in the event of a security breach, and the organizational security structure.

(b) OSHA, EPA, and other training. Training conducted by employers to comply with the hazard communication programs required by the Occupational Safety and Health Administration of the Department of Labor (29 CFR 1910.120 or 1910.1200) or the Environmental Protection Agency (40 CFR 311.1), or training conducted by employers to comply with security training programs required by other Federal or international agencies, may be used to satisfy the training requirements in paragraph (a) of this section to the extent that such training addresses the training components specified in paragraph (a) of this section.

\* \* \* \* \*

3. Subpart I is added to read as follows:

## Subpart I--Security Plans

Sec.

172.800 Purpose and applicability.

172.802 Components of a security plan.

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ATTACHMENT 1

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172.804 Relationship to other Federal requirements.

49 CFR § 172.800

§ 172.800 Purpose and applicability.

(a) Purpose. This subpart prescribes requirements for development and implementation of plans to address security risks related to the transportation of hazardous materials in commerce.

(b) Applicability. By September 25, 2003, each person who offers for transportation in commerce or transports in commerce one or more of the following hazardous materials must develop and adhere to a security plan for hazardous materials that conforms to the requirements of this subpart:

(1) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this subchapter, in a motor vehicle, rail car, or freight container;

(2) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

(3) More than one L (1.06 qt) per package of a material poisonous by inhalation, as defined in § 171.8 of this subchapter, that meets the criteria for Hazard Zone A, as specified in §§ 173.116(a) or 173.133(a) of this subchapter;

(4) A shipment of a quantity of hazardous materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;

(5) A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class under the provisions of subpart F of this part;

(6) A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR part 73; or

(7) A quantity of hazardous material that requires placarding under the provisions of subpart F of this part.

49 CFR § 172.802

§ 172.802 Components of a security plan.

(a) The security plan must include an assessment of possible transportation security risks for shipments of the hazardous materials listed in § 172.800 and appropriate measures to address the assessed risks. Specific measures put into

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place by the plan may vary commensurate with the level of threat at a particular time. At a minimum, a security plan must include the following elements:

(1) Personnel security. Measures to confirm information provided by job applicants hired for positions that involve access to and handling of the hazardous materials covered by the security plan. Such confirmation system must be consistent with applicable Federal and State laws and requirements concerning employment practices and individual privacy.

(2) Unauthorized access. Measures to address the assessed risk that unauthorized persons may gain access to the hazardous materials covered by the security plan or transport conveyances being prepared for transportation of the hazardous materials covered by the security plan.

(3) En route security. Measures to address the assessed security risks of shipments of hazardous materials covered by the security plan en route from origin to destination, including shipments stored incidental to movement.

(b) The security plan must be in writing and must be retained for as long as it remains in effect. Copies of the security plan, or portions thereof, must be available to the employees who are responsible for implementing it, consistent with personnel security clearance or background investigation restrictions and a demonstrated need to know. The security plan must be revised and updated as necessary to reflect changing circumstances. When the security plan is updated or revised, all copies of the plan must be maintained as of the date of the most recent revision.

49 CFR § 172.804

§ 172.804 Relationship to other Federal requirements.

To avoid unnecessary duplication of security requirements, security plans that conform to regulations, standards, protocols, or guidelines issued by other Federal agencies, international organizations, or industry organizations may be used to satisfy the requirements in this subpart, provided such security plans address the requirements specified in this subpart.

Issued in Washington DC on March 19, 2003, under authority delegated in 49 CFR part 1.

Ellen G. Engleman,

Administrator, Research and Special Programs Administration.

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