

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF

RUL-R-0701

FROM: DON HOWELL

DATE: AUGUST 6, 2007

SUBJECT: UPDATING THE COMMISSION'S RAILROAD SAFETY-SANITATION RULES AND RESCINDING THE COMMISSION'S RAILROAD ACCIDENT REPORTING RULES, DOCKET NOS. 31-7103-0701 AND 31-7102-0701

The Commission's Railroad Safety and Sanitation Rules adopt by reference several parts of the federal Hazardous Material Safety Regulations. In particular, Rule 103.02 adopts by incorporation the federal hazardous material regulation for shipments by rail. IDAPA 31.71.03.103.02. Rule 103 adopts the 2005 Code of Federal Regulation. Staff is recommending that the Commission update its adoption of the various CFR parts to the October 1, 2007 edition. The changes to the 2007 CFRs include: requiring "NON-ODORIZED" marking on certain packages including tank cars containing un-odorized liquid petroleum gas (Part 172); revising the transport requirements for infectious substances and regulated medical waste consistent with international standards (Parts 172, 173); and adopting new Internet options for registration and assessment of hazardous materials (Part 107).

The Commission Staff is also recommending that the Commission add one rule to its Railroad Safety Rules. This rule would be the one substantive rule (Rule 101) regarding railroad accident reporting found in the Commission's Railroad Accident Reporting Rules, IDAPA 31.71.02. With the transfer of this one reporting rule, the Commission may then repeal the Railroad Reporting Rules. This will streamline the Commission's Railroad Rules into two rule sets instead of three sets. The proposed rules are attached for your consideration and approval.

COMMISSION DECISION

Should the Commission's Railroad Safety-Sanitation Rules be updated by adoption of the October 1, 2007 Edition of the CFRs? Does the Commission wish to move its Railroad Accident Reporting Rule 101 to the Railroad Safety Rules and repeal IDAPA 31.71.02?



Don Howell

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**IDAPA 31
TITLE 71
CHAPTER 03**

**31.71.03 - RAILROAD SAFETY/SANITATION, AND
ACCIDENT REPORTING RULES**

000. LEGAL AUTHORITY (RULE 0).

These rules are adopted under the general authority of the Idaho Public Utilities Law, Chapters 1-7, Title 61, Idaho Code, and the specific authority of Sections 61-515 and 61-515A, Idaho Code. (3-30-01)

001. TITLE AND SCOPE (RULE 1).

The title of these rules is "Railroad Safety/Sanitation and Accident Reporting Rules." The scope of these rules ~~is that they~~ set safety, and sanitation and accident reporting standards that railroads must meet while operating in Idaho. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

~~All correspondence with~~ Most documents regarding ~~to~~ these rules ~~is a~~ are public records. Accident investigative reports by the Commission or the Commission Staff may be investigatory records exempt from disclosure under Section 9-340B(1), Idaho Code. Accident reports required by these rules and the results of further investigations by the Commission are prohibited from admission into evidence in any action for damages based on or arising out of the loss of life or injury to the person or property pursuant to Section 61-517, Idaho Code. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

006. CITATION (RULE 6).

The official citation of these rules is IDAPA 31.71.03.000 et seq. For example, this rule is cited as IDAPA 31.71.03.006. In documents submitted to the Commission or issued by the

Commission, these rules may be cited by their short title of Railroad Safety/~~Sanitation~~ and Accident Reporting Rules (RRSSR) and the parenthetical rule number. For example, this rule may be cited as RRSSR 6. (7-1-93)()

007. EFFECTIVE DATE – HISTORY OF RULES (RULE 7).

The Commission adopted predecessors to these rules dating back at least to 1977. Prior to 1993, ~~They were most-recently~~ codified at IDAPA 31.H and IDAPA 31.L. They were readopted and reformatted by rulemaking decision in Docket Number 31-7103-9301, effective July 1, 1993. The history of rulemaking proceedings preceding the initiation of the publishing of the Idaho Administrative Bulletin and the Idaho Administrative Code is available from the Commission Secretary. (7-1-93)()

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 from the Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954. The full text of the CFR is also available in electronic format at ~~www.aaccess.gpo.gov/nara~~ www.gpoaccess.gov.nara. 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. (3-30-01)()

(BREAK IN CONTINUITY OF SECTIONS)

RULES 101 THROUGH 200 – SAFETY, AND SANITATION CONDITIONS, AND ACCIDENT REPORTING FOR RAILROADS

(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, 2005). 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.

(4-11-06)()

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). 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. ()

105. -- 999. (RESERVED).