

**IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION**

**31.71.03 – RAILROAD SAFETY/SANITATION RULES**

**DOCKET NO. 31-7103-0501**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Public Utilities Commission has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 61-515 and 61-113, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005. The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

The federal Pipeline and Hazardous Materials Safety Administration (PHMSA) has issued several changes to the federal regulations concerning the transportation of hazardous materials by rail. PHMSA has clarified which functions in the rail transportation chain are subject to the federal hazardous materials regulations (HMRs) and which are not subject to HMRs. More specifically, the “pre-transportation function” (the loading of packaged hazardous material on a rail car), the transportation of the car by a railroad, and “storage incidental” to the transportation (storage between the time the railroad takes physical possession of the car containing hazardous materials and when the car is delivered to its destination), are all subject to the federal HMRs. Delivery of a rail car carrying hazardous material to tracks that are used solely by the receiving customer (e.g., private track or private siding) is not subject to the HMRs. The HMRs do not apply to rail movements solely within a contiguous facility where public access is restricted, or to the unloading of a hazardous material car after the railroad has delivered the car to the customer.

PHMSA also adopted changes that align the HMRs with the International Atomic Energy Agency requirements regarding the rail transportation of Low Specific Activity (LSA) materials. Finally, PHMSA added a definition of “person who offers or [the] offeror” to the HMRs. The Commission proposes to adopt these new amendments to the federal HMRs by incorporation.

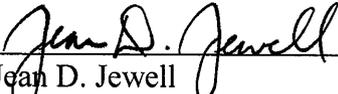
**FEE SUMMARY:** There are no fees associated with this proposed rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed rule merely adopts existing federal safety regulations applicable to shippers and transporters of hazardous materials by rail.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

Anyone may submit written comments regarding these proposed rules. All written comments concerning the proposed rules must be delivered to the Commission Secretary at the address identified below or must be postmarked on or before October 26, 2005.

DATED at Boise, Idaho this 19<sup>th</sup> day of August 2005.

  
\_\_\_\_\_  
Jean D. Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074  
Telephone: (208) 334-0338  
Facsimile: (208) 334-3762

Street address for express delivery:

472 W Washington  
Boise, Idaho 83702-5983

**IDAPA 31  
TITLE 71  
CHAPTER 03**

**31.71.03 - RAILROAD SAFETY/SANITATION RULES**

**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, 2003~~5~~). 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. (~~3-20-04~~)( )

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)

## Proposed/Temporary Administrative Rules Form

<b>Agency Name:</b> Idaho Public Utilities Commission	<b>STARS Agency Code:</b> 31	<b>Phone Number:</b> 334-0330
<b>Contact Person:</b> Ron Law		<b>FAX Number:</b> 334-3762
<b>Statutory Authority for the rule making (Idaho Code, Federal Statute or Regulation):</b> Idaho Code §61-515 and 61-515A		
<b>Title, Chapter, and Possible Docket (IDAPA) Number:</b> Railroad Safety/Sanitation Rules 31-7103-0501		
<b>This Rule Is:</b> <input checked="" type="checkbox"/> Proposed <input type="checkbox"/> Temporary <b>Effective Date:</b>		
<b>If Temporary Rule:</b> <input type="checkbox"/> Necessary to protect the public health, safety, or welfare; or <input type="checkbox"/> Compliance with deadlines in amendments to governing law or federal programs; or <input type="checkbox"/> Conferring a benefit.		
<b>If this is a temporary rule which imposes a fee or charge, provide justification as described in Idaho Code 67-5226(2):</b> N/A		
<b>Provide a fiscal impact statement, both positive and negative, by fund source for all programs affected:</b> Publication costs about \$210 from PUC's dedicated fund.		
<b>Need for Proposed Rule Change:</b> The commission's railroad safety/sanitation rules currently adopt by reference several federal hazardous materials regulations applicable to railroads. These proposed rule changes reflect the recent changes to those federal rules and would keep the commission's rules concurrent with the federal rules regarding the transportation of hazardous materials by rail.		
<b>Proposed Rule Changes (Summary Only):</b> Redefines functions of pre-transportation and transportation. Clarifies unloading and storage of hazardous material on shippers' property as non-regulated functions. Defines terms for person who offer hazardous material and provides packaging requirements for very low-grade radioactive material.		
<b>Interest Group(s) or Citizens Affected:</b> Railroads, rail shippers and the general public.		
<i>(DFM's Use Only)</i>		
<b>DFM Analyst Comments:</b>		
<b>Received Date:</b> 8-3-05	<b>Internal Admin. Rule No.</b> 143	
<b>DFM Analyst Signature:</b> 	<b>Approved:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Reviewed Date:</b> 8/14/05
<b>Policy Advisor Signature:</b> 	<b>Approved:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Reviewed Date:</b> 7/19/05

Please return to: Division of Financial Management, Statehouse Room 122  
 PO Box 83720 Boise, Idaho 83720-0032  
 E-Mail: [info@dfm.state.id.us](mailto:info@dfm.state.id.us)

# RULEMAKING CHECKLIST FORM

**Docket Number (Assigned by the Office of Administrative Rules):** 31-7103-0501  
(OAR will assign docket number to Negotiated, Proposed and Temporary rulemakings.)

**IDAPA, Title, and Chapter Number and Chapter Name :**

31.71.03 – Railroad Safety/Sanitation Rules

**Agency:** Idaho Public Utilities Commission

**Agency Contact and Phone Number:** Don Howell – 334-0312

**Legal Authority for rulemaking - Idaho Code Section(s):** 61-515 and 61-113

**This rulemaking is a: (Check at least one; it may be necessary to check more than one.)**

Negotiated Rulemaking  Proposed Rulemaking  Temporary/Proposed Rulemaking

Temporary Rulemaking  Effective Date of Temporary Rule: \_\_\_\_\_

**Temporary Rule Justification (See Idaho Code Section 67-5226):**

- Protection of the public health, safety, or welfare; or  
 Compliance with deadlines in amendments to governing law or federal programs; or  
 Conferring a benefit.

Pending Rule  Date Pending Rule Will Become Effective: \_\_\_\_\_

Amendment to Temporary Rule  Rescission of Temporary Rule

Correction to Pending Rule  Vacation of Rulemaking

**Does any portion of this rulemaking impose or increase a fee or charge?**

If yes, provide a specific description along with the citation of the statute authorizing the imposition or increase.  
No.

**Does this rulemaking necessitate changes in other rules?**

If yes, please specify.  
No.

**Does this rulemaking incorporate by reference other documents?**

Specify an exact description of document(s) incorporated by reference.

Yes. Code of Federal Regulations, Title 49, Parts 107, 171, 172, 173, 174, 178, 179, 180

HAVE YOU . . .

1. Had your legal counsel review your rulemaking?  
 2. Received Director, Board or Commission approval for the rulemaking?  
 3. Provided nine hard copies of the Notice of Rulemaking and the text of the rule changes to the Legislative Services Office? Provided one hard copy if Temporary only?

HAVE YOU INCLUDED . . .

1. An approved Proposed/Temporary Administrative Rules Form (PARF)?  
 2. An electronic version of the Notice and complete text of the rule changes in Microsoft Word?  
 3. An 8 1/2 by 11 hard copy of the Notice and the complete text of the rule changes?