

IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION

**31.71.03 – RAILROAD SAFETY AND
ACCIDENT REPORTING RULES**

DOCKET NO. 31-7103-1001

RUL-R-10-01

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. This action is authorized pursuant to Sections 61-515 and 61-517, 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 20, 2010. 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 Commission's address below.

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

The Commission's Railroad Safety and Accident Reporting Rule 103 adopts by reference the federal safety regulations pertaining to the transportation of hazardous materials by railroads issued by the federal Pipeline and Hazardous Material Safety Administration (PHMSA). Railroad Safety Rules 103 and 104 (Reporting Rail Accidents) adopt the 2008 and 2007 editions of the Code of Federal Regulations (CFRs), respectively. The Commission proposes to adopt the 2010 edition of the CFRs.

There are four major revisions included in the 2010 edition of the federal hazardous material safety regulations. First, in October 2009, PHMSA amended 49 C.F.R. Parts 172 and 174 to clarify requirements governing emergency response information provided by shippers of hazardous materials. In particular, PHMSA requires that shippers' names and contact numbers be included on shipping papers so that emergency responders are able to obtain additional information about the hazardous materials being shipped by rail. Second, in March 2010, PHMSA modified the current security plan requirements applicable to the commercial transportation of hazardous materials by rail. The agency amended 49 C.F.R. Part 172 to decrease the number of hazardous materials subject to security plan requirements. This reduces regulatory costs and paperwork burden. Third, PHMSA amended 49 C.F.R. Section 107.62 to adjust the annual federal fee for entities shipping hazardous materials by rail. This change became effective on April 29, 2010. Finally, PHMSA amended 49 C.F.R. Parts 107, 171, 173, 174, and 179 concerning the procedures for issuing special permits for hazardous material shipments that have established safety records. These revisions were intended to provide wider access to the regulatory flexibility offered in special permits and eliminate the need for numerous requests. This change is effective October 1, 2010.

The Commission is also proposing that Rule 8 be modified to conform to changes that the Legislature enacted requiring agencies to disclose where electronic copies of incorporated materials can be obtained. Adoption of the 2010 edition of 49 C.F.R. Parts 107, 171-174, 178, 179, 180 and 225 will make Rules 103 and 104 consistent with the federal safety regulations concerning the transportation of hazardous materials by rail.

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

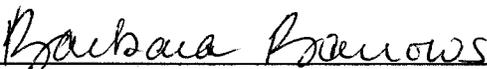
FISCAL IMPACT: There is no fiscal impact on the state general fund resulting from this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this proposed rule adopts updated CFR Parts necessary for the safe transportation 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 this proposed rulemaking. All written comments must be directed to the Commission Secretary and must be delivered on or before October 27, 2010. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 26th day of August 2010.



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Idaho Public Utilities Commission
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**IDAPA 31
TITLE 71
CHAPTER 03**

**31.71.03 - RAILROAD SAFETY AND
ACCIDENT REPORTING RULES**

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 on the web from the Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954 U.S. Government Bookstore at <http://bookstore.gpo.gov/> and click on "Code of Federal Regulations," or by calling toll-free 866-512-1800. The full text of the CFR is also available in electronic format at <http://origin.www.gpoaccess.gov/nara/> www.gpoaccess.gov/cfr/index.html. 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 recompilations are also adopted by reference, but subsequent amendments to the CFR are not adopted by reference. (4-2-08)()

(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, 2008~~10~~). 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. (5-8-09)()

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~~10~~). 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. (~~4-2-08~~)()

RULEMAKING CHECKLIST FORM

Docket Number (Assigned by the Office of Administrative Rules): 31-7103-1001
(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 61-517

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 have a negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year?

If yes, include a descriptive summary of the fiscal impact involved.
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, Parts 107, 171, 172, 173, 174, and 179

HAVE YOU...

1. Had your legal counsel review your rulemaking?
 2. Received Director, Board or Commission approval for the rulemaking?

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?



State of Idaho

DIVISION OF FINANCIAL MANAGEMENT

Executive Office of the Governor

Proposed/Temporary Administrative Rules Form

Section 1 (To be completed by Agency)			
Agency Name: Idaho Public Utilities Commission		STARS Agency Code: 900	Fax Number: 334-3762
		Date: 8/3/2010	
Contact Person: Don Howell/Ron Law	Title: Dep. Atty. General Exec. Administrator	Phone: 334-0312	Email: don.howell@puc.idaho.gov ron.law@puc.idaho.gov
Person Authorizing Rule: Jim Kempton	Title: President	Phone: 334-2898	Email: Jim.kempton@puc.idaho.gov
Section 2 (To be completed by Agency)			
Statutory Authority for the rule making (Idaho Code, Federal Statute or Regulation): Idaho Code 61-515			
Title, Chapter, and Possible Docket (IDAPA) Number: Railroad Safety/Sanitation Rules, 31.71.03 (31-7103-1001)			
This Rule is: <input checked="" type="checkbox"/> Proposed <input type="checkbox"/> Temporary		Effective Date: End of 2011 Legislative Session	
If Temporary Rule: N/A <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.			
If this is a temporary rule which imposes a fee or charge, provide justification as described in Idaho Code 67-5226(2): N/A			
Provide a fiscal impact statement, both positive and negative, by fund source for all programs affected: The only fiscal impact is approximately \$300 for rulemaking. There is no affect on the general fund because the PUC is a non-general fund agency.			
Need for Proposed Rule Change: The proposed amendments to the Railroad Safety/Sanitation Rules are necessary to keep current and consistent with changes made to the federal safety regulations for railroads, their employees, and rail shippers.			
Proposed Rule Changes (Summary Only): The Commission has adopted certain safety regulations for railroads, their employees, and rail shippers as part of its rail safety program. The proposed amendments to the Railroad Safety/Sanitation Rules adopt updated changes to federal railroad safety regulations from 2007 to the present.			
Interest Group(s) or Citizens Affected: Railroads, Rail Shippers and the public.			
Section 3 (DFM Use Only)			
DFM Analyst Comments: Proposed rule making to match federal regulation. No fiscal impact.			
DFM Analyst Fiscal Impact Review:			

DFM Analyst Signature & Date: D. Keith Reynolds 08/09/10		Recommend: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Gov Special Assistant Signature & Date: Mark Warbis 8-13-10		Recommend: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
DFM Administrator Signature & Date: <i>[Signature]</i> 8/16/10		Approval: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Section 4 (To Be Completed By DFM PARF Coordinator)		
	Date	Days
Received by DFM from Agency	8/9/2010	0
Received by DFM Analyst from Coordinator	8/9/2010	0
Received by Coordinator from Analyst	8/9/2010	0
Received by Governor's Special Assistant from Coordinator	8/9/2010	0
Received by Coordinator from Governor's Special Assistant	8/13/2010	4
Received by DFM Administrator		

Return via email to: info@dfm.idaho.gov