

IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION

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

DOCKET NO. 31-7103-1301

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 Section 61-515, 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 16, 2013.

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 Rules 103 and 104 adopt 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 Rule 103 adopts the 2011 edition of the Code of Federal Regulations (CFR) and Rule 104 adopts the 2010 edition of the CFR. Since these two rules were last updated, PHMSA amended 49 C.F.R. Parts 171 and 172 revising procedures to allow electronic shipping papers and adding emergency contact phone numbers to the shipping papers. It also amended Parts 173, 174, 179, and 180 regarding the loading and marking of railroad tank cars carrying hazardous materials. 77 Fed.Reg. 37962-01 (June 25, 2012). The Commission proposes to adopt the 2013 edition of the CFR for both Rules 103 and 104.

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 these proposed rules adopt mandatory federal safety regulations for the safe transportation of hazardous materials by rail. The federal safety regulations are already applicable to railroads and rail shippers.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The revisions to be adopted in the 2013 edition of the federal hazardous material safety regulations are explained in detail in the descriptive summary above. Adoption of the 2013 federal safety regulations will provide uniformity between state and federal rail safety provisions. An electronic link to the incorporated material is contained in the Commission's railroad safety rule 31.71.03.008 and at www.gpoaccess.gov/cfr.

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 23, 2013. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 19th day of August 2013.



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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**

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, 2014³). 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. (3-29-12)()

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, 2010³). 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, secretary@puc.idaho.gov. (4-7-11)()



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: June 10, 2013
Contact Person: Joe Leckie	Title: Executive Administrator	Phone: 334-0330	Email: Joe.leckie@puc.idaho.gov	
Person Authorizing Rule: Paul Kjellander	Title: President, PUC	Phone: 334-2898	Email: Paul.kjellander@puc.idaho.gov	
Statutory Authority for the rule making (Idaho Code, Federal Statute or Regulation): I.C. §61-515, 49 CFR Parts 107, 171-174, 178, 180				
Title, Chapter, and Possible Docket (IDAPA) Number: 31.71.03 Railroad Safety and Accident Reporting Rules 31-7103-1301				
This rule is: <input checked="" type="checkbox"/> Proposed <input type="checkbox"/> Temporary		Effective Date: After 2014 session		
If this is a 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. Please explain:				
If this is a temporary rule which imposes a fee or charge, provide justification as described in Idaho Code 67-5226(2):				
Agency has determined according to Idaho Code 67-5220(1): <input type="checkbox"/> This rule is to be negotiated <input checked="" type="checkbox"/> Negotiation of this rule is not feasible				
If rule is negotiated: Agency certifies that the rule <input type="checkbox"/> has been or <input type="checkbox"/> will be negotiated with interested persons as outlined in Idaho Code 67-5220(3). <i>(indicate which)</i>				
If rule negotiation is not feasible, the agency has determined: <input type="checkbox"/> Rule is temporary; or <input type="checkbox"/> Lack of identifiable representatives of affected interests; or <input type="checkbox"/> Rule is simple in nature; or <input type="checkbox"/> Affected interests are not likely to reach consensus; or <input checked="" type="checkbox"/> Other. Please explain: Negotiated rulemaking under I.C. section 67-5220 (2) is not feasible because the proposed rule adopts updated federal hazardous material safety regulations that are already mandatory for rail shippers in Idaho.				
Provide a fiscal impact statement for all programs affected. Be sure to reflect both positive and negative impacts and to include all fund sources including both the General Fund and dedicated funds: No fiscal impact. The cost of publication is estimated to be \$300 from the PUC's dedicated fund.				
Provide a short explanation of the need for this rule: This rule adopts the current federal safety regulations applicable to the transportation of hazardous materials by rail in Idaho and is already mandatory under the CFR's for railroads operating in Idaho.				

Provide a short summary of the changes this rule makes:
Update Idaho safety rules to reflect recent changes in the federal railroad safety regulations found in 49 CFR Parts 107 and 172

Provide a list of those persons or interest group(s) affected by this rule:
Railroads, rail shippers, the public.

Section 2 (To be Completed by DFM)

DFM Analyst Comments:
Propose to reflect revised federal railroad safety regulations.

DFM Analyst Fiscal Impact Review:
No significant impact.

DFM Analyst Signature & Date: Richard C. Budzich 06/20/13	Recommend: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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Gov Special Assistant Signature & Date: Stephen R. Goodson 06/20/2013	Recommend: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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DFM Administrator Action:
 Approved
 Authorized to Advance Rulemaking Process, DFM to review draft rule prior to publication (See Section 3)
 Not Approved

DFM Administrator Signature & Date:
 6/20/13

Section 3 (To Be Completed By DFM if Required)

DFM Analyst Signature & Date:	Recommend: <input type="checkbox"/> Yes <input type="checkbox"/> No
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DFM Administrator Signature & Date:	Approved: <input type="checkbox"/> Yes <input type="checkbox"/> No
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Return via email to: info@dfm.idaho.gov

RULEMAKING CHECKLIST FORM

Docket Number (Assigned by the Office of Administrative Rules): 31-7103-1301
(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 171, 172, 173, 174, 179 and 180

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?