

IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION

31.71.03 – RAILROAD SAFETY/SANITATION RULES

DOCKET NO. 31-7103-0701

RUL-R-07-01

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 61-515A, 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 18, 2007. 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/Sanitation Rules currently adopt by reference federal hazardous material safety regulations. In particular, Rule 103.02 adopts the federal hazardous material regulations found in the Code of Federal Regulations (CFR) dated October 1, 2005. The Commission is proposing to update Rule 103.02 by adoption of the October 1, 2007 edition of the CFR. Major revisions included in the 2007 edition of the CFR 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 is also proposing to add Rule 104 which was previously promulgated at IDAPA 31.71.02.101. Moving the accident reporting rule to this Chapter will allow the Commission to consolidate and streamline its railroad rules. By adding Rule 104, the Commission is also proposing to amend the title and scope of these rules and make other housekeeping changes (references to citations, websites, and public records compliance).

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.

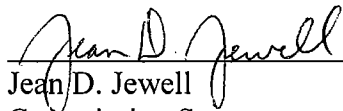
NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this proposed rule adopts updated CFR parts necessary for the safe

transportation of hazardous materials by rail and accident reporting required by federal regulations.

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 25, 2007. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 13th day of August 2007.



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~~ 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.access.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~~7~~). 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).