

IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION

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

DOCKET NO. 31-7103-0801

RUL R-08-01

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 September 17, 2008. 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 currently adopt by reference federal hazardous material safety regulations. In particular, Rule 103.02 adopts the federal hazardous material regulations found in Title 49, Code of Federal Regulations (CFR) dated October 1, 2007. The Commission is proposing to update Rule 103.02 by adoption of the October 1, 2008 edition of the CFR. Major revisions to be included in the 2008 edition of the CFR include: Adding 30 new substances to the list of hazardous substances contained in 49 C.F.R. Part 172 (73 Fed.Reg. 1089 (Jan. 7, 2008)); requiring hazardous material shippers to provide emergency response telephone numbers on the material shipping documents (Part 172); adding new entries to the hazardous material listing and new rail car placarding requirements; and developing alternative emergency response actions for various concentrations of ethanol and alcohol in gasoline mixtures (49 C.F.R. Parts 171, 172, 173, 178, and 180). 73 Fed.Reg. 4699 (Jan. 28, 2008).

Finally, the Commission proposes to adopt changes to 49 C.F.R. Parts 172 and 174 that require railroads to compile annual data on certain shipments of explosives, "toxic by inhalation," and radioactive materials. Rail carriers are to use the data to analyze safety and security risks along rail routes and assess alternative routing options. Railroads must also inspect placarded hazardous material rail cars for signs of tampering or suspicious activities. These new safety rules implement recommendations of the 9/11 Commission Act of 2007. 73 Fed.Reg. 20751 (April 16, 2008).

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

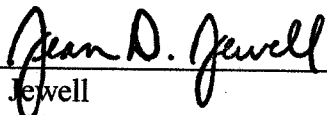
FISCAL IMPACT: There is no fiscal impact on the state general fund resulting from this rulemaking.

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.

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 September 24, 2008. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 30th day of July 2008.



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 83702-5918

**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, ~~2007~~2008). 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.

~~(4-2-08)~~(____)

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)

RULEMAKING CHECKLIST FORM

Docket Number (Assigned by the Office of Administrative Rules): 31-7103-0801

(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 61-515A

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, 178, 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?



State of Idaho

DIVISION OF FINANCIAL MANAGEMENT

Executive Office of the Governor

DFM Tracking No.
900-3

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: 6/30/2008
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: Mack Redford	Title: President	Phone: 334-3427	Email: mack.redford@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 (31-7103-0801)

This Rule is: Proposed Temporary Effective Date:
End of 2009 Legislative Session

If Temporary Rule: N/A
 Necessary to protect the public health, safety, or welfare; or
 Compliance with deadlines in amendments to governing law or federal programs; or
 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 with changes made to the federal safety regulations for railroads, their employees, and rail shippers.

Proposed Rule Changes (Summary Only):
The Commission has adopted the 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.

Interest Group(s) or Citizens Affected:
Railroads, Rail Shippers and the public.

Section 3 (DFM Use Only)

DFM Analyst Comments:
Currently, federal monies provide for 40%-50% of total agency program costs. As part of the funding agreement, states must adopt all federal regulations within two years of federal adoption, or funding will be cut. In addition, rail operators must comply with the federal safety regulations, regardless of state compliance. The proposed

changes include Part 172, HM-145N, Effective March 31, 2008. Adds 30 new hazardous substances to the current list of hazardous substances regulated by 49 Code of Federal Regulations. Aligns Environmental Protection Agencies regulations with Department Of Transportation regulations.

- Parts 172 and 174, HM-232F, Effective June 1, 2008. Requires rail carriers to compile and analyze certain shipments of Explosives, Radioactive, and Toxic by Inhalation materials for transportation routing away from large population centers. Requires carrier inspection of placarded rail cars for evidence of tampering, suspicious activity and addresses en route storage and delays in security plans. These updates implement recommendations of the 9/11 Commission Act of 2007

- Parts 171,172,173,178 and 180, HM-218D, Effective October 1, 2008. Adds new entries to the hazardous material listing and additional rail car placarding requirements to the 49 Code of Federal Regulations for various ethanol, alcohol and gasoline blends. Alternate emergency response actions are required for various concentrations of ethanol and alcohol in gasoline mixtures.

- Part 172, HM-206F, Effective July 1, 2008. Requires hazardous material shippers to provide emergency response telephone numbers on the material shipping documents.

DFM Analyst Fiscal Impact Review:

Not adopting federal changes will cut state funding, and operators would still have to follow the federal guidelines.

DFM Analyst Signature & Date:

Maria Barratt 7/9/08

Recommend:

Yes No

Gov Special Assistant Signature & Date:

John Chatburn 7/10/08

Recommend:

Yes No

DFM Administrator Signature & Date:

[Handwritten Signature] 7/10/08

Approval:

Yes No

Section 4 (To Be Completed By DFM PARF Coordinator)

Date

Days

	Date	Days
Received by DFM from Agency	7/2/08	1
Received by DFM Analyst from Coordinator	7/3/08	6
Received by Coordinator from Analyst	7/9/08	1
Received by Governor's Special Assistant from Coordinator	7/10/08	0
Received by Coordinator from Governor's Special Assistant	7/10/08	0
Received by DFM Administrator	7/10/08	

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