

IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION

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

RUL-R-11-01

DOCKET NO. 31-7103-1101

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 19, 2011.

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 Rule 103 adopts the 2010 edition of the Code of Federal Regulations (CFR). The Commission proposes to adopt the 2011 edition of the CFR.

There are two major revisions included in the 2011 edition of the federal hazardous material safety regulations. First, in January 2011, PHMSA amended 49 C.F.R. Parts 107 and 171 revising procedures regarding the issuance of special permits when a hazardous material rail car has a defect. The special permit issued by PHMSA would allow a shipper to move the hazardous car to a repair facility. This change became effective on March 7, 2011. Second, PHMSA amended 49 C.F.R. Part 172 to remove saccharin and its salts from the list of hazardous substances and reportable quantities. This change was effective June 27, 2011.

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.

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 two revisions to be adopted in the 2011 edition of the federal hazardous material safety regulations are explained in detail in the descriptive summary above. Adoption of the 2011 federal safety regulations will provide uniformity between state and federal rail safety provisions.

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 26, 2011. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 4th day of August 2011.



Jean D. Jewell

Commission Secretary
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, 2010¹). 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. (4-7-11)()

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)



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: 7-13-2011
Contact Person: Joe Leckie/Don Howell	Title: Executive Administrator Deputy Attorney Gen.	Phone: 334-0330	Email: Joe.leckie@puc.idaho.gov Don.howell@puc.idaho.gov	
Person Authorizing Rule: Paul Kjellander	Title: President, PUC	Phone: 334-2898	Email: Paul.kjellander@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:
Safety & Accident Reporting Rules for Public Utilities, 31-11-01 Docket No. 31-1101-1101

This Rule is: Proposed Temporary **Effective Date:**
End of 2012 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 changes from previous editions of safety codes and federal regulations are minor so the fiscal impact on utilities, if any, will be minimal. The General Fund will not be impacted. The impact on the PUC's funds will be the costs of purchasing the new safety codes and the rulemaking costs, estimated to be approx. \$800.

Need for Proposed Rule Change: The PUC's Safety & Accident Reporting Rules adopt by incorporation several national safety codes including the National Electric Safety Code (NESC) in Rule 101, the federal pipeline safety regulations in Rule 201, the International Fuel Gas Code in Rule 202, and the International Mechanical Code in Rule 203. These public safety codes and regulations have recently been updated in 2011 editions and the PUC desires to update its safety rules to protect the public. This will insure compatibility with the most recent 2011 safety provisions.

Proposed Rule Changes (Summary Only):
Update four safety rules to reflect changes in the 2011 editions of the national/international safety codes and regulations.

Interest Group(s) or Citizens Affected:
Utilities and members of the public.

Section 3 (DFM Use Only)

DFM Analyst Comments:
Proposed rules to update safety rules adopted by incorporation.

DFM Analyst Fiscal Impact Review:
No General fund impact. Minimal impact to dedicated funds.

DFM Analyst Signature & Date:
D. Keith Reynolds 07/14/11

Recommend:
 Yes No

Gov Special Assistant Signature & Date:
Stephen Goodson 7/22/11

Recommend:
 Yes No

DFM Administrator Signature & Date:

Wayne H. [Signature] 7/22/11

Approval:
 Yes No

Section 4 (To Be Completed By DFM PARF Coordinator)

	Date	Days
Received by DFM from Agency	7/14/2011	0
Received by DFM Analyst from Coordinator	7/14/2011	0
Received by Coordinator from Analyst	7/14/2011	0
Received by Governor's Special Assistant from Coordinator	7/15/2011	1
Received by Coordinator from Governor's Special Assistant	7/22/2011	7
Received by DFM Administrator		

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