

## DECISION MEMORANDUM

**TO:** COMMISSIONER KJELLANDER  
COMMISSIONER REDFORD  
COMMISSIONER SMITH  
COMMISSION SECRETARY  
COMMISSION STAFF

**FROM:** DON HOWELL  
DEPUTY ATTORNEY GENERAL

**DATE:** OCTOBER 28, 2011

**SUBJECT:** UPDATING THE COMMISSION'S RAILROAD SAFETY AND ACCIDENT  
REPORTING RULES, IDAPA DOCKET NO. 31-7103-1101

On October 5, 2011, the Commission caused to be published in the Idaho Administrative Bulletin a Notice of Proposed Rulemaking to update its Railroad Safety and Accident Reporting Rules (IDAPA 31.73.01). The Commission's Railroad Safety Rules adopt by reference the federal safety regulations pertaining to the transportation of hazardous materials by rail. Currently, Rule 103 adopts various parts of the 2010 edition of Title 49, Code of Federal Regulations (CFR). The Notice proposes to adopt the 2011 edition of the CFRs. The Notice of Proposed Rulemaking is attached for your review.

The Notice required that written comments be submitted to the Commission no later than October 26, 2011. No person filed comments regarding the Commission's proposed changes to the Railroad Safety Rules. The Commission did receive a letter from the Legislative Services Office indicating that the Senate and House Subcommittees for review of administrative rules have reviewed the proposed changes and these subcommittees have no objections to the proposed rule. Consequently, Staff recommends that the Commission adopt its proposed rule as a pending rule and submit the rule for legislative review in 2012.

### COMMISSION DECISION

Does the Commission wish to adopt the proposed rule as its pending rule? Does the Commission desire to publish its Notice of Pending Rule in the December 7, 2011 edition of the Administrative Bulletin and submit the pending rule for legislative review in 2012?



---

Don Howell  
Deputy Attorney General

bls/N:31-7103-1101\_Decision Memo\_dh2

**IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION**  
**31.71.03 - RAILROAD SAFETY AND ACCIDENT REPORTING RULES**  
**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  
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

---

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-7103-1101**

**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, 2010). 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)