

Dear Senators McKENZIE, Jorgenson & Stennett, and
Representatives LOERTSCHER, Anderson & Mary Lou Shepherd:

The Legislative Services Office, Research and Legislation, has received the enclosed
rules of the Idaho Public Utilities Commission:

IDAPA 31.71.03 - Railroad Safety and Accident Reporting (Docket #31-7103-0801).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by
the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice
to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis
from Legislative Services. The final date to call a meeting on the enclosed rules is no later than
9-9-08. If a meeting is called, the subcommittee must hold the meeting within forty-two (42)
days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting
on the enclosed rules is 10-7-08.

_____The germane joint subcommittee may request a statement of economic impact with
respect to a proposed rule by notifying Research and Legislation. There is no time limit on
requesting this statement, and it may be requested whether or not a meeting on the proposed rule
is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the
address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Germane Subcommittees for Administrative Rules Review of the Senate and House of Representatives State Affairs Committees

FROM: Research and Legislation Staff, Nugent

DATE: August 21, 2008

SUBJECT: Proposed Rules of the Public Utilities Commission Relating to Railroad Safety and Accident Reporting - IDAPA 31.71.03 (Docket #31-7103-0801)

The Public Utilities Commission is proposing to update its railroad safety and accident reporting rules by adopting the 2008 version of certain federal regulations. By doing this, the Commission is proposing to :

1. Add thirty new substances to the list of hazardous substances contained in 49 CFR Part 172;
2. Require hazardous material shippers to provide emergency response telephone numbers on the new material shipping documents;
3. Add new entries to the hazardous material listing and new rail car placarding requirements;
4. Develop alternative emergency response actions for various concentrations of ethanol and alcohol in gasoline mixtures;
5. Require railroads to compile annual data on certain shipments of explosives, "toxic by inhalation," and radioactive materials. Rail carriers are to use the data and analyze safety and security risks along rail routes and assess alternative routing options. Railroads also must inspect placarded hazardous material rail cars for signs of tampering or suspicious activities.

It appears the proposed rules have been promulgated within the statutory authority granted to the Public Utilities Commission.

cc: Public Utilities Commission

Jean D. Jewell, Commission Secretary

Donald L. Howell, Deputy Attorney General

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

31.71.03 - RAILROAD SAFETY AND ACCIDENT REPORTING RULES

DOCKET NO. 31-7103-0801

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:

1. 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));
2. Requiring hazardous material shippers to provide emergency response telephone numbers on the material shipping documents (Part 172);
3. Adding new entries to the hazardous material listing and new rail car placarding requirements; and
4. 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
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 31-7103-0801

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~~8~~). 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)