

Dear Senators McKENZIE, Pearce & 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 31.11.01 - Safety & Accident Reporting Rules for Utilities Regulated

by the Idaho Public Utilities Commission (Docket #31-1101-1001);

31.71.03 - Railroad Safety & Accident Reporting Rules

(Docket #31-7103-1001).

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 10-21-10. 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 11-19-10.

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 334-4845, or send a written request to the address or FAX number indicated on the memorandum attached.



# Legislative Services Office Idaho State Legislature

*Serving Idaho's Citizen Legislature*

**Jeff Youtz**  
Director

## MEMORANDUM

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

**FROM:** Research and Legislation Staff, Nugent **MPN**

**DATE:** October 1, 2010

**SUBJECT:** Rules of the Idaho Public Utilities Commission:  
31.11.01 - Safety & Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission (Docket #31-1101-1001);  
31.71.03 - Railroad Safety & Accident Reporting Rules (Docket #31-7103-1001).

The Public Utilities Commission is proposing to amend its rules regarding safety and accident report for utilities regulated by the Public Utilities Commission and its rules regarding railroad safety and accident reporting. The two sets of proposed rules adopt the 2010 codes for the respective safety standards by incorporating them by reference. The Commission in its notice of rulemaking for the proposed rules articulates the difference between the newest versions of the codes and the older version that was in effect.

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

cc: Public Utilities Commission  
Barbara Barrows & Donald L. Howell II, Deputy Attorney General

**Mike Nugent, Manager**  
Research & Legislation

**Cathy Holland-Smith, Manager**  
Budget & Policy Analysis

**Don H. Berg, Manager**  
Legislative Audits

**Glenn Harris, Manager**  
Information Technology

## IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

### 31.11.01 - SAFETY AND ACCIDENT REPORTING RULES FOR UTILITIES REGULATED BY THE IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-1101-1001

#### 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 61-517, 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 20, 2010.

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 Safety and Accident Reporting Rule 201 currently adopts by incorporation the federal pipeline safety regulations issued by the Pipeline and Hazardous Material Safety Administration (PHMSA) in the 2009 edition of the Code of Federal Regulations (CFRs). Rule 201 applies to natural gas and pipeline utilities in Idaho. The Commission proposes to adopt the 2010 edition of the CFRs.

There are two major revisions included in the 2010 edition to the federal pipeline safety regulations. First, in December 2009, PHMSA amended 49 C.F.R. Parts 192 and 195 to address human factors and other aspects of control room management for pipelines where controllers use "supervisory control and data acquisition" (SCADA) systems. Among other things, pipeline operators were required to implement methods to prevent controller fatigue and procedures to manage SCADA alarms. These changes to the CFRs required pipeline operators to develop control room management procedures by August 1, 2011, and to implement the procedures by February 1, 2013. In February 2010, PHMSA corrected errors contained in the December 2009 changes.

Second, in December 2009, PHMSA amended its pipeline safety regulations in 49 C.F.R. Part 192 to require operators of gas distribution pipelines to develop and implement integrity management (IM) programs similar to those required for gas transmission pipelines but tailored to reflect the differences in and among distribution pipelines. The federal regulations allow for risk-based adjustments of prescribed intervals for leak detection surveys and other fixed-interval requirements for gas distribution pipelines. To minimize regulatory burdens, the federal rules established simpler requirements for master meter and small liquefied petroleum gas (LPG) operators. The changes also requires pipeline operators to install excess flow valves on new and replaced residential service lines, subject to feasibility criteria outlined in the rule. These changes became effective February 12, 2010. In February 2010, PHMSA made minor corrections to terminology.

**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 federal safety regulations necessary for the safety of utility employees and the public during the installation, operation, or maintenance of natural gas pipelines.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Adoption of the 2010 edition of 49 C.F.R. Parts 192 and 195 will make Rule 201 consistent with the federal safety regulations concerning gas and pipeline utilities and avoid confusion. Updating Rule 201 is also necessary to maintain full funding of the Commission's safety inspection program funded by PHMSA.

**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 27, 2010. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 26th day of August, 2010.

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 31-1101-1001**

**201. FEDERAL NATURAL GAS SAFETY REGULATIONS (RULE 201).**

The Commission incorporates by reference Part 260.9, Title 18 (April 1, 2009~~10~~) and Parts 191, 192, 193, 195, and 199, Title 49, the Code of Federal Regulations (October 1, 2009~~10~~), except that federal accident reporting requirements contained in the rules adopted by reference in Rule 201 are replaced for state reporting purposes by orders of the Commission or rules of the Commission. These regulations are found in the Code of Federal Regulations, available on the web from the U.S. Government ~~Printing Office, Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954~~ Bookstore at <http://bookstore.gpo.gov> and click on "Code of Federal Regulations." or by calling toll-free 866-512-1800. The incorporated CFR Parts are also available in electronic format at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html). All gas and pipeline corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of these federal regulations adopted by reference. (3-29-10)(\_\_\_\_)

## IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

### 31.71.03 - RAILROAD SAFETY AND ACCIDENT REPORTING RULES

DOCKET NO. 31-7103-1001

#### 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 61-517, 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 20, 2010.

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 Rules 103 and 104 (Reporting Rail Accidents) adopt the 2008 and 2007 editions of the Code of Federal Regulations (CFRs), respectively. The Commission proposes to adopt the 2010 edition of the CFRs.

There are four major revisions included in the 2010 edition of the federal hazardous material safety regulations. First, in October 2009, PHMSA amended 49 C.F.R. Parts 172 and 174 to clarify requirements governing emergency response information provided by shippers of hazardous materials. In particular, PHMSA requires that shippers' names and contact numbers be included on shipping papers so that emergency responders are able to obtain additional information about the hazardous materials being shipped by rail. Second, in March 2010, PHMSA modified the current security plan requirements applicable to the commercial transportation of hazardous materials by rail. The agency amended 49 C.F.R. Part 172 to decrease the number of hazardous materials subject to security plan requirements. This reduces regulatory costs and paperwork burden. Third, PHMSA amended 49 C.F.R. Section 107.62 to adjust the annual federal fee for entities shipping hazardous materials by rail. This change became effective on April 29, 2010. Finally, PHMSA amended 49 C.F.R. Parts 107, 171, 173, 174, and 179 concerning the procedures for issuing special permits for hazardous material shipments that have established safety records. These revisions were intended to provide wider access to the regulatory flexibility offered in special permits and eliminate the need for numerous requests. This change is effective October 1, 2010.

The Commission is also proposing that Rule 8 be modified to conform to changes that the Legislature enacted requiring agencies to disclose where electronic copies of incorporated materials can be obtained. Adoption of the 2010 edition of 49 C.F.R. Parts 107, 171-174, 178, 179, 180 and 225 will make Rules 103 and 104 consistent with the federal safety regulations concerning the transportation of hazardous materials by rail.

**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)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

There are four major revisions included in the 2010 edition of the federal hazardous material safety regulations. These revisions are listed in detail in the descriptive summary of this rulemaking.

**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 27, 2010. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 26th day of August 2010.

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 31-7301-1001**

**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 on the web from the *Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954* U.S. Government Bookstore at <http://bookstore.gpo.gov/> and click on "Code of Federal Regulations," or by calling toll-free 866-512-1800. The full text of the CFR is also available in electronic format at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html). 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 compilations are also adopted by reference, but subsequent amendments to the CFR are not adopted by reference. (4-2-08)(\_\_\_\_\_)

**(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, 2008~~10~~). 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. (5-8-09)(\_\_\_\_)

**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~~10~~). 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](mailto:secretary@puc.idaho.gov). (4-2-08)(\_\_\_\_)