

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

(All Comments submitted on this regulation will appear on IRRC's website)

2013 FEB 22 AM 10: 57

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IRRC

(1) Agency
Pennsylvania Public Utility Commission

(2) Agency Number:
Identification Number: Identification Number: L-2011-
2233841/57-286

IRRC Number:

2916.

(3) PA Code Cite: 52 Pa. Code Chapter 33

(4) Short Title: Final Rulemaking Amending 52 Pa. Code Chapter 33

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: John Herzog, (717)783-3714, P.O. Box 3265, Harrisburg, PA 17105-3265,
jherzog@pa.gov

Secondary Contact:

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
 Final Regulation
 Final Omitted Regulation

- Emergency Certification Regulation;
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Final Rulemaking intends to update existing Commission regulations governing the railroad industry, reflecting technological and operational changes and federal law.

(8) State the statutory authority for the regulation. Include specific statutory citation.

66 Pa.C.S. §§501, 1501, 2701-2704.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Rulemaking intends to update existing Commission regulations governing the railroad industry, reflecting technological and operational changes and federal law. The regulated community benefits from the clarity and efficiency brought about by the regulatory changes. Additionally, the unions and the Commission also benefit from clarity and the regulations reflection of the proper regulatory framework.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The regulations are consistent with various states' regulation of rail service. The regulations will not affect Pennsylvania's ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Commission solicited input from all interested parties in the form of a general notice issued to update the regulations. Input was received from various railroads, railroad associations, and unions, including the Pennsylvania State Legislative Board of the United Transportation Union, the Brotherhood of Maintenance of Way Employees Division of the Rail Conference of the International Brotherhood of Teamsters, the Brotherhood of Railroad Signalmen, Consolidated Rail Corporation, CSX Transportation, Inc., and Norfolk Southern Railway Company.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Railroads operating in Pennsylvania will be required to comply. However, the regulations do not add additional compliance requirements to existing regulations.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Railroads operating in Pennsylvania will be required to comply. However, the regulations do not add additional compliance requirements to existing regulations.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There will be no significant costs associated with the regulations. The impacts referenced above will only be positive in the sense that the regulations will be consistent with federal regulations and will reflect changes to the operational and technological characteristics of the industry.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

N/A

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There will be no significant costs associated with the regulations. Savings will be reflected in consistency with existing Federal regulatory reporting/compliance requirements.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

N/A

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

N/A

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(23a) Provide the past three year expenditure history for programs affected by the regulation. N/A

Program	FY -3	FY -2	FY -1	Current FY

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

N/A

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

N/A

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

N/A

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

N/A

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

N/A

(29) Include a schedule for review of the regulation including:

- | | |
|---|------------------|
| A. The date by which the agency must receive public comments: | N/A |
| B. The date or dates on which public meetings or hearings will be held: | N/A |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | January 24, 2013 |
| D. The expected effective date of the final-form regulation: | Upon Publication |
| E. The date by which compliance with the final-form regulation will be required: | Upon Publication |
| F. The date by which required permits, licenses or other approvals must be obtained: | N/A |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The regulations are reviewed on a daily basis as required.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

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DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General.

BY _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission
(AGENCY)

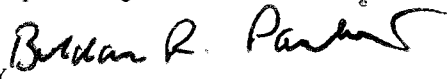
DOCUMENT/FISCAL NOTE NO. L-2011-2233841/57-286

DATE OF ADOPTION January 24, 2013

BY 
Rosemary Chiavetta

TITLE Secy
(SECRETARY)

Copy below is hereby approved as to form and legality. Executive or independent Agencies.

BY 
Bohdan R. Pankiw
Chief Counsel

1-24-2013
DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-2011-2233841/57-286
Final Rulemaking
Amending 52 Pa. Code, Chapter 33
52 Pa Code, Chapter 33

The Pennsylvania Public Utility Commission on January 24, 2013, adopted a final rulemaking order which amends the Commission's existing regulations at Chapter 33 to reflect the technological and operational changes in the railroad industry and reflect current federal standards. The contact person is John Herzog, Law Bureau, 717 783-3714.

EXECUTIVE SUMMARY

L-2011-2233841/57-286
Final Rulemaking
Amending 52 Pa. Code Chapter 33

The Pennsylvania Public Utility Commission is vested with jurisdiction over railroad common carriers operating within Pennsylvania. In furtherance of this statutory charge, the Commission has promulgated regulations governing railroad common carriers. 52 Pa. Code Chapter 33. Due to operational and technological changes in the industry and federal preemption and standards, the Commission has modified its current regulations.

Changes to regulations governing railroad transportation include updated references and terminology, deletion of outdated references and regulations, proper reflection of federal law impacting regulation, and deletion of vestigial or preempted regulations.

The contact person is John Herzog, Assistant Counsel, Law Bureau, (717) 783-3714.

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3256**

Public Meeting held January 24, 2013

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley
Pamela A. Witmer

Final Rulemaking Amending
52 Pa. Code Chapter 33

Docket No. L-2011-2233841

FINAL RULEMAKING ORDER

BY THE COMMISSION:

On November 6, 2009, we issued a Notice that the Commission sought to review the existing Railroad Transportation Regulations found at 52 Pa. Code Chapter 33, in order to seek more efficient and effective means to regulate the rail industry. *Review of Existing Railroad Transportation Regulations; 52 PA Code Chapter 33*, Docket No. M-2009-2140262. The Notice indicated that the Commission's regulations pertaining to railroads should reflect the technological and operational changes of the railroad industry that have occurred over the last 30 years and reflect current Federal standards. The Notice further indicated that the review is intended to "ensure that the regulations address a compelling public interest; ensure that the costs of regulation do not outweigh the benefits; are written in a clear and concise manner; and, where Federal regulations exist, the Commission's regulations should not exceed Federal standards unless justified by a compelling Commonwealth interest or required by State law." The Notice was published

in the *Pennsylvania Bulletin* on November 28, 2009 at 39 *Pa. B.* 6851. Comments and reply comments to the Notice were filed by various railroads, associations and unions. After reviewing the comments and replies, we initiated a Proposed Rulemaking by Order entered April 1, 2011, which proposed various changes to the Commission's regulations at 52 Pa. Code Chapter 33. *Proposed Rulemaking Amending 52 Pa. Code Chapter 33*, Docket No. L-2011-2233841. We noted that the proposal was not an exhaustive compilation of our regulations that may be in need of revision. Rather, we addressed only those provisions which clearly required revision, based on observation and comments.

The Proposed Rulemaking Order was published in the *Pennsylvania Bulletin* on October 22, 2011. 41 *Pa. B.* 5634. Joint comments to the Proposed Rulemaking were filed by the Pennsylvania State Legislative Board of the United Transportation Union, the Brotherhood of Maintenance of Way Employees Division of the Rail Conference of the International Brotherhood of Teamsters, and the Brotherhood of Railroad Signalmen. (collectively, "Unions"). Joint comments were also filed by Consolidated Rail Corporation, CSX Transportation, Inc., and Norfolk Southern Railway Company. (collectively, "Railroads"). Finally, the Independent Regulatory Review Commission ("IRRC") filed comments.

I. Summary of Comments

A. Unions' Comments

The Unions commented that they generally supported the proposed Rulemaking. However, the Unions noted that they did not believe the Proposed Rulemaking was sufficiently exhaustive, failing to supplement existing regulations with new regulations suggested by the Union in their comments to the November 6, 2009 Notice. Additionally, the Unions comment that 52 Pa. Code § 33.65, concerning camp cars and trailers, is not preempted by recently enacted Federal rules, 76 FR 67073 (October 31,

2011), and needs to be modified to address standing water, drainage hazards or tripping hazards, and the discharge of gray water.

The Unions also commented that 52 Pa. Code §33.61, concerning track cars and four-wheel self-propelled maintenance-of-way cars, is not preempted by 49 C.F.R. Part 214, since the Federal regulations do not cover equipment manufactured prior to 1991. The Unions request, therefore, that we retain this provision.¹

B. Railroads' Comments

The Railroads filed comments generally supporting the Commission's Proposed Rulemaking. The Railroads did suggest that the Commission should address additional regulations that have been allegedly preempted by Federal regulation. Of note, the Railroads suggest that the Commission's regulations concerning camp cars and trailers at 52 Pa. Code §§33.1 and 33.65, are preempted by 49 C.F.R. Part 228 as of October 31, 2011. 76 FR 67073-01. Similarly, the Railroads allege that the Commission's regulation at §33.56, concerning safe operation of trains, is preempted due to recently enacted federal regulations published on November 9, 2011. 76 FR 69802-01. Finally, the Railroads allege that various other regulations should be deleted due to preemption or obsolescence. The gist of the Railroad's comments is that the Commission's Order was not sufficiently exhaustive of all possible regulatory modifications that may be warranted.

C. IRRRC Comments

IRRC first commented that it is uncertain if the Proposed Rulemaking is in the public interest. IRRC opines that the Proposed Rulemaking does not make sufficiently specific references to federal law and, therefore, it is unable to discern whether the

¹ We had proposed deleting this provision due to Federal Railroad Administration ("FRA") regulations governing the subject matter.

proposal is in the public interest. IRRC recommends that the Final Order should be more detailed in this regard.

IRRC also comments that the statutory authority of the Commission to issue regulations should be more clearly stated. IRRC comments that the definitions of “Bureau” and “camp car or trailer” at § 33.1 should be clarified and consistent with federal law. IRRC comments that the Proposed Regulation § 33.12 is too broad in its citation to federal regulations and more specificity is required. Finally, IRRC comments that the proposed deletion of § 33.61 requires further explanation, due to confusion created by the Union’s comments.

II. Analysis

In our Proposed Rulemaking Order, we were clear that it was not our intent to conduct an exhaustive compilation of every regulation that may be in need of revision. Rather, our intent was to address only those regulations which clearly required revision to be consistent with technology and operations and with federal standards. In light of the stated limited scope of this proceeding, we decline to significantly expand the rulemaking as suggested by the Unions and the Railroads. We do advise both commentators that we will take up their suggestions at a later time. However, we want this rulemaking to proceed as originally envisioned.

To the extent any commentator believes that there is an immediate need to address any particular suggestion contained in the comments or otherwise, we remind them that they can petition the Commission for relief. In the scheme of administrative law, the petition for relief is a responsive tool to address issues that demand immediate attention. *See* 52 Pa. Code §§ 3.1 – 3.5. Regarding IRRC’s comments, we will include a detailed analysis of the specific provisions to be modified as well as ensure that the same citations are consistently used throughout the regulatory package.

We will now address the specific proposals set forth in the Proposed Rulemaking Order.

§ 33.1. Definitions.

We proposed changing three definitions, “bureau,” “camp car or trailer,” and “carrier.” We note that since we issued the Proposed Rulemaking Order, the Commission underwent a reorganization. The referenced “bureau” is now the “Bureau of Technical Utility Services.” The regulation will reflect this change. We note that this updated reference will appear throughout the Final Rulemaking, even though we will not specifically address it each time it presents.

As for “camp car or trailer,” we proposed modifying this definition consistent with 49 C.F.R. Part 228, App. C. Subsequent to issuance of our Proposed Rulemaking Order, the FRA issued a Final Rule covering a number of areas of camp car safety. 76 FR 67073-01 (October 31, 2011). The Railroads comment that this Final Rule preempts state regulation in this area, while the Unions comment that the Final Rule is not completely exhaustive and therefore does not preempt state regulation. IRRC comments that the Commission should address these comments. We note that this issue affects 52 Pa. Code § 33.65, which provides substantive rules for regulation of camp cars and trailers. While we did not include § 33.65 in our Proposed Rulemaking, we believe that it is appropriate to address this provision at this point, since all commentators as well as recently enacted federal regulations, have effectively put it in play.

The FRA Final Rule on camp cars establishes safety and health requirements related to camp cars. The federal rules address all aspects of regulation currently found in our regulation. Based on our review of the newly promulgated FRA regulations juxtaposed with our regulation, we are of the opinion that the FRA regulation preempts our regulation pursuant to 49 U.S.C § 20106.

The Federal Railroad Safety Act (FRSA), 49 U.S.C. § 20101 *et seq.*, was enacted in 1970 “to promote safety in every area of railroad operations and to reduce railroad-related accidents and incidents” 49 U.S.C. § 20101. The Secretary of Transportation is given broad powers to “prescribe regulations and issue orders for every area of railroad safety....” 49 U.S.C. § 20103(a). The FRSA and regulations promulgated thereunder are to be nationally uniform to the extent practicable, and generally preempt state laws covering the subject matter. 49 U.S.C. § 20106. The pre-emptive effect of these regulations is governed by § 20106, which contains express saving and pre-emption clauses. That provision provides:

§ 20106. Preemption

(a) National uniformity of regulation.

- (1) Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.
- (2) A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order—
 - (A) is necessary to eliminate or reduce an essentially local safety or security hazard;
 - (B) is not incompatible with a law, regulation, or order of the United States Government; and

(C) does not unreasonably burden interstate commerce.

49 U.S.C. § 20106. Thus, the States are permitted to “adopt or continue in force a law, rule, regulation, or order related to railroad safety...until the Secretary... prescribes a regulation or issues an order covering the subject matter of the State requirement.” Even after federal standards have been promulgated, a State may adopt more stringent safety requirements when “necessary to eliminate or reduce an essentially local safety...hazard,” if those standards are “not incompatible with” federal laws or regulations and not an undue burden on interstate commerce.

Pursuant to 49 U.S.C. § 20106, the initial inquiry is whether a federal regulation ‘covers’ the subject matter of the 1975 Order. To prevail on the claim that a federal regulation has pre-emptive effect, it must be established that it more than “touches upon” or “relates to” that subject matter. *CSX Transportation, Inc. v. Easterwood*, 507 U.S. 658 (1993). “Covering” indicates that pre-emption will lie only if the federal regulations substantially subsume the subject matter of the relevant state law. *Id.* Cover means to comprise, include, or embrace that concern in an effective scope of treatment or operation. The term “covering” is in turn employed within a provision that displays considerable solicitude for state law in that its express pre-emption clause is both prefaced and succeeded by express saving clauses. *Id.* What is important is that the Federal Railroad Administration (FRA) has considered the “subject matter” and has addressed it “in an effective scope of treatment or operation.” *BNSF Railway Co. v. Swanson*, 533 F.3d 618, 621 (8th Cir. 2008) (internal citations omitted).

Pursuant to 49 U.S.C. § 20106, even if a federal regulation or order covers the subject matter of a state law, regulation, or order relating to railroad safety, preemption of that state law may still be avoided if the state law, regulation, or order: (1) is necessary to eliminate an essentially local safety hazard; (2) is not incompatible with federal laws, regulations, or orders; and (3) does not unreasonably burden interstate commerce.

49 U.S.C. § 20106(a)(2)(A)-(C). This is a three part conjunctive test and all three prongs must be met for a state law, regulation or order to survive preemption. An essentially local safety hazard only applies to local situations which are not statewide in character and not capable of being encompassed in uniform national standards. *National Association of Regulatory Commissioners, et al. v. Coleman*, 542 F. 2d 11 (3d Cir. 1976).

Review of the new federal regulation reveals that it covers the subject matter of 52 Pa. Code § 33.65. Further, we do not find applicable the exceptions to the general rule of preemption established by § 20106. Our regulation at § 33.65 is not designed to eliminate an essentially local safety hazard. Finally, regarding the Unions' comments on camp cars, we note that these issues are not included in our current regulation and we decline to expand that regulation to address geologic conditions surrounding camp cars. Suffice it to say, as our regulations currently read, they are covered by the recent FRA Rule. Under these circumstances, we will delete the definition of "camp car or trailer" at 52 Pa. Code § 33.1, as well as delete 52 Pa. Code § 33.65.

In addition, we will also delete the definitions of "non-train accident," "train accident", and "train service accident." These deletions are consistent with changes to §§ 33.11-13, *infra*, which all parties support. Given the changes to the substantive regulations attached to these definitions and the reference to applicable federal regulations, state regulations prescribing definitions are not required and can lead to possible confusion.

§ 33.11. General.

The Commission proposed changing this provision to include updated references to the appropriate Commission Bureau for reporting accidents and incidents, and to delete those provisions that are inconsistent with current law. IRRC commented that it is unsure of the exact provisions that are inconsistent with Federal law. In response, 49 C.F.R.

§ 225.23 encompasses accident reporting for joint operations and we will modify this provision accordingly.

§ 33.12. Reportable accidents.

The Commission proposed modifying this provision to be consistent with FRA regulations for reportable accidents. 49 C.F.R. Part 225. The Commission proposed deleting specific definitions of reportable accidents contained in the current regulation and adopting definitions provided by Federal law at 49 C.F.R. Part 225.

IRRC comments that our citation to 49 C.F.R., as referenced in the Proposed Rulemaking, should be more specific. We agree with IRRC's concerns and will include a general reference to 49 C.F.R. Part 225.

§ 33.13. Telegraph and telephone reports.

The Commission proposed modifying this provision to provide notification consistent with FRA regulations for telephone reports. 49 C.F.R. Part 225. The Commission proposed deleting specific circumstances requiring telephonic notification of accidents contained in the current regulation and adopting Federal telephonic reporting standards. Beyond IRRC's request for a specific reference to applicable federal regulations, no comments were filed to this proposal. Therefore, we will adopt it as proposed, with the applicable citation to federal regulations. We do note that we have deleted the specific bureau phone number as suggested in our Proposed Rulemaking Order. This deletion is premised on the knowledge that phone numbers can change, creating unnecessary confusion. We have replaced the telephone number with a reference to the Commission's web site, where we will post the proper phone number.

§ 33.14. Accident report forms.

The Commission proposed modifying this provision consistent with FRA regulations for accident report forms. 49 C.F.R. § 225.21. The Commission proposed

deleting report forms delineated in the current regulation and adopting report forms required by Federal law. Beyond IRRC's request for a specific reference to applicable federal regulations, no comments were filed to this proposal. Therefore, we will adopt it as proposed, with the applicable citation to federal regulations. 49 C.F.R. Part 225.

§ 33.21. General

The Railroads comment that § 33.21(a) of our regulations should be deleted since it is preempted by 49 C.F.R. § 229.125. Further, the Railroads comment that § 33.21(b) should be modified to delete the term "watchmen" as antiquated. The Unions challenge the Railroads' position in their comments to the November 6, 2009 Notice.

The Unions and the Railroads disagree over the viability of this particular provision, which addresses significant safety issues. Given the limited scope of this proceeding, we decline to expand this rulemaking as requested by the Railroads.

§ 33.31. Regulations and procedure.

The Commission proposed modifying this provision to reflect proper statutory references. The Railroads commented that the Commission should delete the term "of service" in this regulation, since the Commission no longer has jurisdiction over the services of railroads. 49 U.S.C. § 10501(b)(1-2). At this juncture, given the limited scope of this proceeding, we decline to adopt the Railroads' comment, given the technical use of the phrase "of service" in this particular provision.

§ 33.41. Bridge or tunnel warnings.

The Commission proposed modifying this provision to reflect proper references to the American Railway Engineering and Maintenance of Way Association. No comments were filed to this proposal. Therefore, we will adopt it as proposed.

§ 33.42. Switches marked by lamps.

We did not propose any changes to this section. The Railroads commented that this Section should be deleted due to federal preemption. The Unions, in their comments to the November 6, 2009 Notice, challenged whether preemption applies. Given the limited scope of this proceeding, we decline to expand the rulemaking as requested by the Railroads.

§ 33.43. Walkways and railings.

We did not propose any changes to this section. The Railroads commented that they believe this provision has, most likely, been preempted. The Unions, in their comments to the November 6, 2009 Notice, challenged whether preemption applies. Given the limited scope of this proceeding, we decline to expand the rulemaking as requested by the Railroads.

§ 33.52. Blind cars.

We did not propose any changes to this section. The Railroads commented that this Section should be deleted since it is obsolete. The Unions did not comment. Given the limited scope of this proceeding, we decline to expand the rulemaking as requested by the Railroads.

§ 33.53. Pusher engines.

We did not propose any changes to this section. The Railroads commented that this Section should be deleted due to preemption. The Unions did not comment. Given the limited scope of this proceeding, we decline to expand the rulemaking as requested by the Railroads.

§ 33.54. Federal safety regulations

The Commission proposed amending this provision to delete outdated references to Federal law and to accurately reflect the relationship of state and federal law in the

area of safety regulation. IRRC comments that it is unclear as to the relationship between Federal and State Safety regulations. By way of further clarification, the regulation as modified is to reflect the preemption provisions of 49 U.S.C. § 20106, as discussed previously. The purpose of this regulation is to recognize that potential preemption issues may arise and may need to be addressed outside the confines of a formal rulemaking.

§ 33.55. Interchange of traffic and loading of commodities on open top cars.

We did not propose any changes to this section. The Railroads commented that this provision is preempted pursuant to 49 U.S.C. § 10501(b)(1). The Unions, in their comments to the November 6, 2009 Notice, indicated that the word “supplement” in the regulation was in need of further clarity. Given the limited scope of this proceeding, we decline to expand the rulemaking as requested by the Railroads.

§ 33.56. Safety of operation of railroad trains.

We did not propose any changes to this provision. The Railroads commented that the FRA has recently issued a regulation governing this subject matter and therefore our regulation is preempted. 76 F.R. 69802-01. The Unions, did not file comments, but in their comments to the November 6, 2009 Notice, indicated that this provision should include additional safeguards. Given the limited scope of this proceeding, we decline to expand the rulemaking as requested by the Railroads.

§ 33.61. Track, cars and four-wheel self-propelled maintenance-of-way cars.

The Commission proposed deleting this provision due to federal regulations covering this area. 49 C.F.R. Part 214. In response, the Unions commented that the federal regulations do not cover equipment manufactured prior to 1991 and therefore request that the provision be retained. IRRC comments that it wants further explanation of the proposal, citing the Unions’ comment.

It is uncontested that 49 C.F.R. Part 214 covers the subject matter of 52 Pa. Code § 33.61. The only issue is, does Part 214 cover equipment older than 1991. The Commission notes that the Railroads filed comments on this issue, alleging that the federal regulation at 49 C.F.R. § 214.513 provides general requirements for retrofitting of all existing on-track roadway maintenance machines.

As noted earlier, 49 U.S.C. § 20106 provides that state regulations related to railroad safety are preempted where the FRA has issued a regulation or order covering the subject matter. An exception to the general rule of preemption allows a state to adopt a more stringent regulation than the federal counterpart, where (1) it is necessary to eliminate an essentially local safety hazard; (2) it is not incompatible with the federal regulation; and (3) it does not unreasonably burden interstate commerce. This preemption rule is reiterated in the federal regulation. 49 C.F.R. § 214.4.

Regulations “cover” the subject matter of a safety concern where they “comprise, include, or embrace [that concern] in an effective scope of treatment or operation.” The [federal regulation] must “substantially subsume the subject matter of the relevant state law,” not merely “touch upon” or “relate to” that subject matter. What is important is that the FRA has considered the “subject matter” and has addressed it “in an effective scope of treatment or operation.” *BNSF Railway Co. v. Swanson*, 533 F.3d 618, 621 (8th Cir. 2008) (internal citations omitted).

Applying the foregoing to the regulation under consideration, the Commission’s regulation provides minimum safety requirements for track cars and four-wheel self-propelled maintenance-of-way cars. Those safety requirements include: a windshield of safety glass and adequate size; a canopy to protect the occupants from the elements; an electric headlight; an electric taillight; and a windshield wiper. 52 Pa. Code § 33.61.

The relevant federal regulations concern workplace safety generally. Those regulations require all on-track roadway maintenance machines, including those manufactured before 1991, to be equipped with: handholds or a seat or bench for each worker, protection from moving parts of the machine; a horn or warning device; an illumination device that is not hand held and capable of illuminating obstructions on the track from a distance of 300 feet; suitable overhead covers, if feasible; safe floors, decks, stairs, and ladders; and a flagging kit. 49 C.F.R. §§ 214.513, .515, .519, and .521.

Comparing the federal regulations to our regulation, it is obvious they are not identical. However, both regulations do cover the subject matter of on-track roadway maintenance machine safety. While the federal regulations do not specifically mention windshield safety glass and wiper or taillight, we do not believe this omission means the federal regulations do not cover the subject matter. Preemption under 49 U.S.C. § 20106 does not require a line-item match between the federal and state regulation.

Additionally, we do not believe that § 33.61 falls within the exception to preemption established by 49 U.S.C. § 20106. Specifically, § 33.61 is a state-wide requirement. It does not address a local safety hazard. Therefore, we believe that § 33.61 is preempted by the federal regulations previously cited. As such, we will delete this provision from our regulations.

§ 33.62. Locomotives.

We did not propose any changes to this provision. The Railroads commented that our regulation is preempted by 49 C.F.R. §§ 229.137 and 139. The Unions did not comment, but did address this provision in their comments to the November 6, 2009 Notice. Therein, the Union challenged whether this regulation was preempted. Given the limited scope of this proceeding, we decline to expand the rulemaking as requested by the Railroads.

§ 33.63. Cabin Cars.

We did not propose any changes to this section. The Railroads commented that our regulation is preempted. The Unions commented in response to our November 6, 2009 Notice, that the regulation should be retained. Given the limited scope of this proceeding, we decline to expand the rulemaking as requested by the Railroads.

§ 33.64. Protection cars.

We did not propose any changes to this provision. The Railroads commented that the regulation is obsolete and should be deleted. The Unions did not comment. Given the limited scope of this proceeding, we decline to expand the rulemaking as requested by the Railroads.

§ 33.65. Camp cars and trailers.

We did not propose any changes to this provision. As previously discussed, however, we find that recently enacted federal regulations at 76 F.R. 67073-01 preempt existing regulations and therefore we will delete this section in our final rulemaking.

§ 33.66. Safety glazing in railroad equipment.

The Commission proposed deleting this provision due to FRA regulations governing the subject matter. 49 C.F.R. Part 223. No comments were filed to this proposal. Therefore, we will adopt it as proposed.

§ 33.67. Use of back up hose in rail operations.

We did not propose any changes to this provision. The Railroads commented that this regulation is obsolete and most likely preempted and therefore should be deleted. The Unions did not comment on this provision. Given the limited scope of this proceeding, we decline to expand the rulemaking as requested by the Railroads.

§ 33.71 - § 33.77. Regulations governing passenger train service.

The Commission proposed deleting these provisions since they are obsolete and no longer applicable to passenger train service provided in Pennsylvania. No comments were filed to this proposal. Therefore, we will adopt it as proposed.

§ 33.81 - § 33.84. Regulations governing track.

The Commission proposed deleting these provisions due to FRA regulations governing the subject matter. 49 C.F. R. Part 213. No comments were filed to this proposal. Therefore, we will adopt it as proposed.

§ 33.91. General regulations (Motor Vehicles).

§ 33.92. Transportation of employees.

We did not propose any changes to these provisions. The Railroads commented that these regulations should be deleted. The Unions did not comment. Given the limited scope of this proceeding, we decline to expand the rulemaking as requested by the Railroads.

§ 33.101. Accounts.

The Commission proposed amending this provision to provide updated references to the appropriate Federal agency, the Surface Transportation Board. No comments were filed to this proposal. Therefore, we will adopt it as proposed.

§ 33.102. Records.

The Commission proposed amending this provision to provide updated references to the appropriate Federal agency, the Surface Transportation Board. No comments were filed to this proposal. Therefore, we will adopt it as proposed.

§ 33.103. Reports.

The Commission proposed amending this provision to delete the annual report requirement and to provide updated references regarding the Commission’s assessment report. No comments were filed to this proposal. Therefore, we will adopt it as proposed.

§ 33.113. Training of equipment inspectors.

The Commission proposed deleting this provision due to FRA regulations governing the subject matter. 49 C.F.R. Parts 172, 215, and 232. No comments were filed to this proposal. Therefore, we will adopt it as proposed.

§ 33.128. Application of regulations.

We did not propose any changes to this provision. The Railroad commented that this regulation be amended to include a grandfathering exemption provision for substandard clearances. The Unions commented that the regulation should be expanded. Given the limited scope of this proceeding, we decline to expand the rulemaking as requested.

§ 33.129. Enforcement.

We did not propose any changes to this provision. The Railroads commented that this regulation should be deleted and Commission enforcement efforts should be coordinated with federal regulation. Given the limited scope of this proceeding, we decline to expand the rulemaking as requested by the Railroads. We note that enforcement issues may entail uniquely state requirements.

The attached Annex A, final regulations, is permitted by sections 501, 1501 and chapter 27 of the Public Utility Code. Accordingly, under section 501 of the Public Utility Code, 66 Pa. C.S. § 501, and the Commonwealth Documents Law, 45 P.S.

§§ 1201 et seq., and regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5, we amend the regulations at Chapter 33 as set forth in Annex A; **THEREFORE,**

IT IS ORDERED:

1. The regulations of the Commission, 52 Pa. Code Chapter 33, are amended to read as set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality.

3. The Secretary shall submit a copy of this order and Annex A to the Governor's Budget Office for review of fiscal impact.

4. The Secretary shall submit this order and Annex A for review and approval by the designated standing committees of both Houses of the General Assembly, and for review and approval by IRRC.

5. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. A copy of this order shall be served on commentators to the proposed rulemaking order.

7. This final-form rulemaking shall become effective upon final publication in the *Pennsylvania Bulletin*.

8. The contact person is John Herzog, Assistant Counsel, Law Bureau,
(717) 783-3714.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 24, 2013

ORDER ENTERED: January 24, 2013

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

CHAPTER 33. RAILROAD TRANSPORTATION

Subchapter A. GENERAL PROVISIONS

§ 33.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Bureau—The Bureau of ~~Transportation and Safety~~ TECHNICAL UTILITY SERVICES of the Pennsylvania Public Utility Commission.

* * * * *

~~*Camp car or trailer*~~—[A movable car used for housing railroad employees, including portable housing. The term, if used collectively, means a group of sleeping, dining, kitchen or recreation cars furnished for the use of any one gang or group of employees. Camp cars or trailers shall be of safe construction and suitable for the purposes for which used.]

~~—(i) An on-track vehicle mounted on flat cars used to house rail employees including the following:~~

~~—(A) Outfit cars.~~

~~—(B) Camp cars.~~

~~—(C) Bunk cars.~~

~~—(D) Modular homes.~~

~~—(ii) The term does not include wreck trains.~~

Carrier—Any railroad, railway company or corporation subject to Commission jurisdiction, which operates [a steam or electric railroad] in this Commonwealth.

* * * * *

~~*Nontrain accident*—An accident involving passengers or travellers if on railway company property but not on trains.~~

* * * * *

~~*Train accident*—Any accident classified under United States Department of Transportation regulations as a train accident.~~

~~*Train service accident*—Any accident classified under United States Department of Transportation regulations as a train service accident.~~

Subchapter B. SERVICE AND FACILITIES

ACCIDENTS

§ 33.11. General.

[(a) If an accident occurs in a yard or on a road or division operated jointly or in common by two or more carriers, it shall be reported by the carrier which employs the superintendent who is in immediate charge of the yard, road, or division in question. An accident occurring on a private siding or track of like character shall be reported by the carrier having possession of the locomotive involved or responsible for the subsequent movement in commerce of the railroad equipment involved, or employing the person injured or killed.

(b)] Each carrier shall submit a report of each reportable accident or incident involving its facilities or operation in this Commonwealth. [Such reports] Reports shall be addressed to the Bureau of ~~Transportation and Safety~~ TECHNICAL UTILITY SERVICES, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, Pennsylvania [17120] 17105-3265.

§ 33.12. Reportable accidents or incidents.

[(a)] A reportable accident or incident is one [arising from the operation of a carrier which results in one or more of the following circumstances:] as defined in 49 CFR (relating to transportation) and when a carrier is required to report to the Federal Railroad Administration under 49 CFR PART 225.

[(1) The death of a person in a train or train service accident or of a passenger or traveller not on a train or on company premises in a nontrain accident, or an employe, unless the employe accident occurs in connection with new construction, in repair shops, engine houses, freight or passenger stations or accident at coal or water stations which do not occur directly as the result of the operation of a train or trains.

(2) Injury to a person other than an employe, in a train or train service accident, or to a passenger or traveller not on a train in a nontrain accident, sufficient to incapacitate the injured person from performing his or her customary vocation or mode of life, for a period of more than one day.

(3) Injury to an employe, unless the accident occurs in connection with new construction, in repair shops, engine houses, freight or passenger stations or accidents at coal or water stations which do not occur directly as the result of the operation of a train or trains, sufficient to incapacitate the injured person from performing his or her ordinary duties for more than three days in aggregate during the ten days immediately following the accident. This paragraph applies to employes on duty and to those classed as not on duty, but does not apply to employes classed as passengers or trespassers.

(4) For the year 1948, damage to railroad property amounting to more than \$250, including the expense of clearing wreck, but no damage to or loss of freight, animals, or property of noncarriers on or adjacent to right of way. For years subsequent to 1948, such minimum amount shall be that adopted by United States Department of Transportation. Casualties, as provided for in this section, shall be included in the report.

(5) All accidents occurring at highway-railroad crossings, at grade, involving contact between engines or trains and highway vehicles or pedestrians, irrespective of the amount of property damage or extent of casualties.

(6) Nontrain accidents involving highway vehicles running into and damaging crossing gates and other types of protection shall be reported on Monthly Statement Form UCTA-31, or such accidents may be reported individually on Form UCTA-7.]

§ 33.13. [Telegraph and telephone] Telephone reports.

A carrier shall immediately report by telephone [or telegram shall be made immediately in the event of the occurrence of a reportable accident resulting in fatalities, except as to trespassers, and of train collisions and passenger train derailments, as follows:] to the Bureau at (717) 787-9732-an accident or incident which requires the carrier to telephonically notify the Federal Railroad Administration under 49 CFR PART 225 (relating to transportation). THE PROPER TELEPHONE NUMBER IS PROVIDED ON THE COMMISSION'S WEB SITE, WWW.PUC.PA.GOV.

[(1) A preliminary report shall be submitted by telephone or telegram of a reportable accident resulting in the death of a person, except trespassers, in an accident defined in §

33.12 (relating to reportable accidents) or in the death of any person, trespasser or otherwise, in an accident defined in § 33.12.

(2) A preliminary report shall be submitted by telephone or telegram of a reportable accident involving the collision of an engine or train with another engine or train.

(3) A preliminary report shall be submitted by telephone or telegram of a reportable accident resulting in injury to an employe, except trespassers, in an accident as defined in § 33.12.

(4) A preliminary report shall be submitted by telephone or telegram of a reportable accident resulting from the derailment of any part of a passenger train carrying passengers.

(5) A preliminary report shall be submitted by telephone or telegram of any accident which occurs at any highway-railroad crossing at grade and involves a collision between an engine or train and a bus, taxicab, street car, or loaded gasoline or oil truck or trailer, regardless of whether the accident results in injury to a person or persons and such preliminary report shall furnish the name of the operator and of the owner of the vehicle.

(6) A preliminary report shall be submitted by telephone or telegram of any condition which will result in the obstruction of a main track for a period in excess of two hours.]

§ 33.14. Accident or incident report forms.

[Reports shall be made on prescribed accident report forms of the Commission (UCTA-1, UCTA-2, UCTA-7 and Statement Form UCTA-31), as follows:

(1) *UCTA-1*. If no reportable accident has occurred during a month the carrier shall submit a report to that effect on Form UCTA-1. Such report shall be mailed to the Commission on or before the 30th day of the month following.

(2) *UCTA-2*. Reports of accidents to employes, passengers, trespassers, and others and nontrain accidents to employes, passengers, and travellers not on trains shall be made on Form UCTA-2 and shall be filed with the Commission on or before the 30th day of the month following that in which the reportable accident occurred. Form UCTA-2 is so prepared that it corresponds to the United States Department of Transportation Form FRA F 6180-54, with respect to spacing, and it may be prepared as a carbon copy of the Form FRA F 6180-54. A carbon copy of Form LIBC-344 to the Workmen's Compensation Bureau will be accepted by the Commission in lieu of Form UCTA-2 in filing a report of reportable nontrain accidents involving employes injured and incapacitated for more than three days. Accidents to be reported on Form UCTA-2 do not include those occurring in connection with new construction in repair shops, engine houses, freight or passenger stations, or accidents at coal and water stations which do not occur directly as the result of the operation of a train or trains. Reports shall be filed of accidents resulting in injury to employes while engaged in repairing track, work on or

about bridges, telephone, telegraph and catenary wires, and the like or of any similar nontrain accident, if incapacitation is for more than three days in the aggregate during the ten days immediately following the accident. Reportable injuries to employes arising from the operation of section motor or hand cars (equipment chargeable to Account 37, Roadway Machines) shall be reported on Form UCTA-2 or by carbon copy of Form LIBC-344.

(3) *UCTA-7*. Highway-railroad crossing at grade accidents shall be reported on Form UCTA-7, and shall be filed with the Commission on or before the 30th day of the month following that in which the accident occurred. All accidents which occur at public highway crossings and involve damage to crossing gates or flashing-light signals by a highway vehicle which does not collide with an engine or train shall be listed and reported on Form UCTA-31 at the end of each month, or, in lieu of filing such statement, the carrier may file an individual report of each such accident on Form UCTA-7. If report of an accident is submitted on Form UCTA-7, a report of the accident on Form UCTA-2 is not required. Accidents involving highway collisions between section motor cars or hand cars and highway vehicles or pedestrians at public or private highway crossing shall be reported on Form UCTA-7. All accidents which occur at public or private crossings and involve collision between engines or trains and vehicles or pedestrians shall be reported on Form UCTA-7, irrespective of the extent of casualties or the amount of damages to carrier property.

(4) *UCTA-31*. Monthly reports of nontrain accidents which involve damage to crossing gates and flashing-light signals and are defined in § 33.12(a) (relating to reportable accidents) shall be reported on Form UCTA-31 and shall be filed with the Commission on or before the 30th day of the following month. In lieu of filing monthly statements on Form UCTA-31, the carrier, if it so desires, may file individual reports on Form UCTA-7 of such accidents occurring during the month.]

Carriers shall make reports to the Bureau on forms which the carrier shall file with the Federal Railroad Administration as prescribed by 49 CFR PART 225 (relating to transportation). Reports shall be submitted to the Commission within the same time period as the reports are required to be submitted to the Federal Railroad Administration under 49 CFR PART 225.

CONSTRUCTION, ALTERATION OR RELOCATION OF CROSSINGS

§ 33.31. Regulations and procedure.

Each carrier shall comply with [the provisions of section 409 of the Public Utility Law of 1937 (66 P. S. § 1178),] 66 Pa.C.S. § 2702 (relating to construction, relocation, suspension and abolition of crossings) and obtain Commission approval of the construction, alteration, or relocation of every public highway and railroad crossing at grade, above grade, or below grade, unless the Commission has given its prior unconditional consent to an abandonment of service or facilities of the line of railroad upon which such crossing or crossings are located.

SAFETY—BRIDGES, TUNNELS, TRESTLES AND SWITCHES

§ 33.41. Bridge or tunnel warnings.

(a) Common carriers shall install and maintain warnings of the telltale or taper type at a reasonable distance on each side of bridges, tunnels, or other obstructions over main tracks, main track sidings, yard and switching tracks in accordance with the specifications of the American Railway Engineering and Maintenance of Way Association or existing standard plans of individual railroads.

* * * * *

OPERATION OF TRAINS

§ 33.54. Federal safety regulations.

The safety regulations of the United States Department of Transportation[, specifically the regulations adopted by section 2 of the act of April 11, 1958, Pub. L. 85-375 (45 U.S.C.A. § 9), and by the Safety Appliance provisions of Title 45 of United States Code (45 U.S.C.A. §§ 1—16),] shall supplement the provisions of this chapter[, unless such Federal regulations are in conflict with such provisions] and control when State regulations are preempted. However, a violation of the Federal regulations which is not otherwise a violation of this chapter [shall] may not be subject to additional penalty for the same violation if penalized by a Federal tribunal.

SANITATION AND SAFETY FACILITIES AND EQUIPMENT

§ 33.61. [Track cars and four-wheel self-propelled maintenance-of-way cars]
(Reserved).

[After December 31, 1959, all track cars and four-wheel self-propelled maintenance-of-way cars used in this Commonwealth shall be equipped with all of the following safety equipment and appurtenances:

- (1) A windshield of safety glass and of adequate size to provide clear vision of the track and conditions ahead for the operator of the car.
- (2) A canopy or top of suitable material for attachment to the car and capable of protecting the occupants of the car from rain, snow, or other inclement weather.
- (3) An electric headlight, either permanently attached or a portable light in a fixed bracket, capable of illuminating the roadway ahead a distance sufficient to permit safe operation of the car.

(4) A permanently attached electrically energized red taillight to protect the track car from any following movement.

(5) A manual or automatic windshield wiper sufficient in size to provide vision of the track and conditions ahead for the operator of the car.]

§ 33.65. ~~Camp cars and trailers.~~ (RESERVED).

~~(a) All screen doors on camp cars and trailers shall be self closing and all doors shall be equipped with hardware which insures their proper manipulation, and shall be maintained in such a manner as to insure proper functioning of doors at all times. The doors shall be provided with windows having sash so constructed and maintained as to insure easy opening.~~

~~(b) All camp cars and trailers shall be properly heated and shall have adequate ventilation obtained by windows opening to the atmosphere. Such windows shall be so constructed and maintained as to insure easy opening. Both windows and doors shall be equipped with screens for use during the season when flies and insects are prevalent. The use of properly functioning air changing and air cooling equipment is permitted.~~

~~(c) All camp cars and trailers shall be lighted electrically and equipped with sufficient fixtures to insure adequate illumination.~~

~~(d) No room shall be designated for sleeping purposes, in any camp or trailer, which does not provide a minimum of 250 cubic feet of air space for each occupant.~~

~~(e) Fresh linens shall be supplied weekly or more often. In addition, each new occupant shall receive fresh linens upon arrival.~~

~~(f) All camp cars and trailers shall be provided with adequate toilet rooms, showers, wash basins, and hot and cold running water; a minimum of one facility shall be provided for each 15 persons to be accommodated.~~

~~(g) All camp cars and trailers shall contain adequate individual locker space equipped for individual locking in which employes may store clothing and personal belongings.~~

~~(h) All camp cars and trailers shall contain a space available for use as a recreation or sitting room, adequate in size for the number of employes in the work force.~~

~~(i) If employes are furnished meals in camp cars or trailers, adequate and sanitary facilities, dining space, and accommodations shall be provided.~~

~~(j) If kitchen cars are furnished, such cars shall be properly ventilated and shall be well equipped with refrigeration equipment for preserving food and adequate kitchen equipment for the preparation and serving of food. Kitchen cars shall be maintained in a clean and sanitary condition at all times.~~

~~(k) All camp cars, trailers, and kitchen cars shall be provided with an adequate supply of pure and potable water, obtained from a source approved by the Department of Health of the Commonwealth.~~

~~(l) All camp cars and trailers shall be equipped with a suitable drinking water container, a suitable container for individual paper drinking cups, and an adequate supply of paper drinking cups, toilet tissue, and paper towels. The use of a common drinking cup and a common towel is prohibited.~~

~~(m) All employers shall maintain camp cars, trailers, and kitchen cars, including the plumbing, lighting, heating and ventilating systems, and shall keep such cars in good repair, in a clean condition, and free from vermin and any accumulation of dirt, garbage, or other refuse.~~

§ 33.66. [Safety glazing in railroad equipment] (Reserved).

[(a) Every railroad over which the Commission has jurisdiction, operating within this Commonwealth, shall provide safety glazing in all windows and doors in lieu of other glazing in all cars, cabin cars and locomotives used in the transportation of passengers and employes of the company, including those engaged in the operation of the equipment.

(b) "Safety glazing material," as used in this section, shall be construed to mean any glass or transparent product manufactured or fabricated in such manner as substantially to prevent shattering and flying of the glass or transparent product when struck or broken, and which is approved by the Commission for use in appropriate locations.

(c) One third of all equipment, to which this section applies, of each railroad shall be in compliance with the provisions of this section on or before July 31, 1975; 2/3 of such equipment shall be in compliance by July 31, 1976; and the remaining equipment shall be so equipped on or before July 31, 1977; in any event equipment not in compliance shall not be operated within this Commonwealth after July 31, 1977.

(d) Glazing material used in automotive-type railroad equipment designed for use on land highways shall be in conformance with Federal Rules and Regulations—49 CFR Part 571 (relating to Federal motor vehicle safety standards).

(e) The minimum standards for glazing material used in railroad equipment, other than automotive-type equipment designed for use on land highways, shall be standards described in USAS Z26.1-1966 and in Underwriters Laboratories Standard for Safety UL 972 insofar as it has been adopted as American National Standard designated ANSI SE4.5-1972, with exceptions as noted and for use in locations as set forth in subsection (f).

(f) Reference should be made to the Table 1-Page 11-Grouping of Tests-USAS Z26.1 and numbered paragraphs on pages dated June 2, 1972 ANSI SE4.5-1972:

(1) *Safety Glazing Material for use in windshields for locomotives, railroad equipment and engineman's compartments of multiple unit cars.* Glazing material for use in windshields shall have minimum properties as determined by tests listed in Item 1, Table 1 USAS Z26.1-1966.

(2) *Safety Glazing Material for use in side windows of locomotives, railroad equipment, engineman's compartments of multiple unit cars and in cabin cars.* Glazing materials for use in side windows shall have minimum properties as determined by tests listed in Item 4, Table 1 USAS Z26.1-1966, with the following exceptions:

(i) Rigid plastic material may be coated.

(ii) In lieu of the ball impact test in Item No. 4 USAS Z26.1 the material shall be qualified under Test No. 4 Multiple Impact Test; Test No. 5 Thermal Conditioning Test for Outdoor Use; and Test No. 7 High-Energy Impact Test as described on Pages 5, 6 and 7 dated June 1972 of ANSI SE4.5-1972.

(iii) That material shall be tested for abrasion resistance by testing in the manner described in Test No. 17 USAS Z26.1 except the specimens shall be subjected to abrasion for 300 cycles and the results interpreted on the basis of the arithmetic mean of the percentages of light scattered by the three abraded specimens not exceeding 5.0%.

(3) *Safety Glazing Material for use in passenger car windows and doors except for engineman's compartments in multiple unit cars.* Glazing materials for use in windows and doors shall have the minimum properties as determined by tests listed in Items 3 or 5-Table 1 USAS Z26.1 except that rigid plastics may be coated and shall show abrasion resistance as described in paragraph (2)(iii).

(4) *Marking.* Marking of safety glazing material shall be in accordance with Paragraph 6 USAS Z26.1 and Paragraph 8 on Page 7 dated June 1972 of ANSI SE4.5-1972.]

[PASSENGER TRAIN SERVICE]

§ 33.71. [Abandonment of service] (Reserved).

[A certificate of public convenience evidencing Commission approval of the abandonment of intrastate passenger train service shall be obtained prior to the withdrawal of such service on any line of railroad.]

§ 33.72. [Changes in schedules] (Reserved).

[An application shall be filed with, and approved by, the Commission prior to the removal, elimination, or substantial change in the schedule of any passenger train, except the following:

(1) Interstate passenger trains which provide no intrastate passenger transportation for compensation between two or more cities, boroughs, or villages in this Commonwealth.

(2) Interstate trains performing intrastate service between two or more municipalities in this Commonwealth, provided the carrier elects to provide temporarily a comparable intrastate service by means of a new intrastate train.

(3) Train removals, eliminations, or schedule changes affecting intrastate passenger service on only one day a week.

(4) Suburban service exempted from this requirement by other provisions of this chapter.]

§ 33.73. [Long-distance trains] (Reserved).

[Upon application for exemption from intrastate classification, the Commission may exempt from its jurisdiction specified interstate trains making two or more stops in this Commonwealth, upon a showing that adequate intrastate service is available by trains of the same grade operated within a reasonably short time before or after the interstate train.]

§ 33.74. [Suburban trains] (Reserved).

[Section 33.73 (relating to long-distance trains) does not apply to the operation of trains on suburban runs of less than 35 miles, if the number of trains removed constitutes not more than 10% of the number of trains operated 5 or more days a week in such service on the particular run and the loss of passengers on the run, compared with a like period of the preceding year, exceeds 10%. Such section shall also not apply to the operation of trains on Saturdays, Sundays, and holidays in such service, if the average number of passengers per train on such days does not exceed 60% of the average number of passengers per train for the period Monday to Friday, inclusive, nor to the temporary curtailment of service for periods not exceeding three months to meet seasonal adjustments of traffic demands, if such practice has been effectuated in like periods of prior years to the same or greater extent.]

§ 33.75. [Posting of notice] (Reserved).

[The public and the Commission shall be given 15 days advance notice of any changes in intrastate passenger train service, except those trains subject to the filing of application. Notice to the public shall be posted at a conspicuous location at each station affected.]

§ 33.76. [Additional trains] (Reserved).

[Nothing contained in §§ 33.71—33.77 shall prevent rail carriers from operating extra passenger trains, extra sections of scheduled trains, or the scheduling of additional passenger trains. If prior notification to the Commission of temporary or trial operation of such additional schedule is given, Commission approval as set forth in §§ 33.71—33.77, will not be required for the removal or termination of such temporary or trial service, or schedule.]

§ 33.77. [Saving clause] (Reserved).

[Nothing contained in §§ 33.71—33.76 shall preclude the Commission from instituting a proceeding upon complaint or upon its own motion concerning the adequacy of passenger train service rendered by any carrier in accordance with the provisions of the Public Utility Law (66 P. S. §§ 1101 et seq.), nor shall it preclude any railroad carrier from voluntarily filing with the Commission an application for Commission approval of the removal, elimination, or substantial change in any passenger train prior to the preparation of timetables affectuating such changes.]

[TRACKS]

§ 33.81. [Track alignment] (Reserved).

(a) All track shall be constructed with curvature so limited or with tangent track so placed between reverse curvature that lateral displacement of the car couplers with the center axis of any car does not exceed 13°. Crossovers between tracks and turnouts shall be similarly constructed. Tracks designed to accommodate two coupled cars, each with trucks spaced 70 feet between truck centers and with couplers 29 inches from the center of the pivot to the pulling face of the knuckle, shall be deemed in compliance with this regulation.

(b) If, in any particular case, exemption from any of the requirements in this section is deemed necessary by the carrier concerned, the Commission may grant application of such carrier for such exemption, provided the application is accompanied by a full statement of existing conditions and the reason why such exemption is sought. Any exemption so granted shall be limited to the particular case covered by application.

(c) Subsections (a) and (b) do not apply to repairs, renewals, or maintenance of track, but nothing in this section shall be construed as restricting the rights of carriers to decrease track curvature.]

§ 33.82. [Track anchors] (Reserved).

[No track shall be released to rail service prior to the proper installation of sufficient anchors, including the reinstallation or replacement in a proper manner of all anchors removed or disturbed in the course of any track repair or maintenance.]

§ 33.83. [Tracks undergoing maintenance] (Reserved).

[Each common carrier railroad in this Commonwealth shall immediately issue instructions to all supervisory personnel engaged in the repair, renewal, or replacement of tracks, to the effect that if necessary to leave the main track in other than satisfactory condition for the passage of trains at authorized speed, the supervisor in immediate charge shall provide full protection and immediately notify the Superintendent of Transportation or other authorized official specified by the company of that fact by telephone message or by wire, and the Superintendent of Transportation or such other designated official shall forthwith issue appropriate orders restricting the use of such track to safe slow speeds until the track is restored to satisfactory condition.]

§ 33.84. [Track inspection] (Reserved).

[In the case of all tracks over which there are regularly scheduled passenger movements and all tracks currently being used for the movement of freight trains if the authorized speed is 20 miles an hour or greater, the following regulations shall apply to track inspection by all common carrier railroads operating within this Commonwealth.

(1) Each common carrier railroad having trackage subject to this section shall provide that such inspection be made by a track foreman or equally qualified employe of the railroad company involved, and that such employe shall not be required to inspect more than 100 miles of track per day.

(2) Each common carrier railroad having trackage subject to this section shall provide the track patrolman or track inspector assigned to such inspection with a standard numbered form with detachable receipt, on which such employe shall indicate the date of inspection, specific tracks inspected, and their location including the district, division or region; such forms shall require a listing of defects found and in need of correction, with respect to track stability and alignment, track surface, gauge, ties and rail fastenings, welding, insulated joints, track anchors and bolts, frogs and switches, guardrails, drainage and such other conditions as may be deemed appropriate by the carrier concerned. Such form shall be completed by the track patrolman or inspector for each trip, in multiple; the original shall be submitted to his immediate supervisor with a copy to such other personnel as the carrier may direct, and retained by both carrier and patrolman or inspector for a period of not less than 6 months and be available to the Commission or its staff for review upon request.

(3) Each common carrier railroad having trackage subject to this section shall assign a supervisory employe above the rank of foreman to be responsible for the inspection required by this section within his assigned area, which area shall be clearly designated.

(4) Tracks subject to the provisions of this section shall be inspected not less than twice each week.

(5) All switches shall be inspected on foot at least once each month.

(6) If track cars or other vehicles, including off-track vehicles, are used for such twice-weekly inspections, they shall be operated at such speed as shall insure adequate inspection, but not in excess of 5 miles per hour at all railroad crossings, highway crossings and switches, or adjacent structures where guardrails are in use.

(7) If track cars or other vehicles are used, only the track upon which such vehicles are traveling shall be considered as inspected.

(8) In all inspections of highway crossings, particular attention shall be given to the detection of unsafe conditions resulting from loose planking or obstructed flangeways, or other conditions which may endanger the safety of train movements and the traveling public.

(9) In the monthly on-foot inspection of switches, particular attention shall be given to the detection of unsafe conditions resulting from open or defective switch points, loose or missing bolts in heel filler blocking, and defective guardrails or frogs. Switches not in territories utilizing automatic signals or centralized traffic controls shall be operated at least once each month to insure that they are in proper working order.

(10) If twice-weekly inspections are required, such inspections shall not be made on consecutive days.

(11) If trains carrying passengers are to be operated over tracks not subject to this section, such tracks shall be inspected within 48 hours prior to the operation of such trains, except in case of emergency.

(12) If the track inspection reveals improper alignment, improper cross level, faulty gauge, loose ties, defective switch points, or any condition which, in the judgment of the individual inspecting the track, creates an unsafe condition, such employe shall take immediate appropriate action for the safety of operations. If the condition presents an immediate hazard, a Slow Order should be issued or, if necessary, the track taken out of service. The inspector should continue to report the condition until it is corrected.]

ACCOUNTS, RECORDS AND REPORTS

§ 33.101. Accounts.

Each carrier authorized to operate in this Commonwealth shall keep and record its accounts and records in conformity with the systems of accounts for railroad companies, with text, definitions and instructions as embodied in the currently effective

classifications prescribed for railroad companies by the [Interstate Commerce Commission] Surface Transportation Board.

§ 33.102. Records.

[(a)] Each carrier shall preserve its records in conformity with the effective [Regulations to Govern the Destruction of Records of Railroad Companies (49 CFR 1220), prescribed by the Interstate Commerce Commission] regulations of the Surface Transportation Board.

[(b) Copies of the regulations may be obtained from the Pennsylvania Public Utility Commission.]

§ 33.103. Reports.

[(a) A carrier shall file with the Pennsylvania Public Utility Commission each year an annual report showing its financial status and operating position. The annual report as prescribed and furnished by the Commission, shall be filed properly completed, signed and notarized, by March 31, covering the preceding calendar year.

(b) A railroad shall be classified for annual report filing purposes in accordance with Interstate Commerce Commission classification based on the average gross annual revenues, intrastate and interstate combined, for the 3 years preceding, as follows:

(1) Class I Railroads—revenues of \$50 million or more—after applying the prescribed railroad revenue deflator formula in 49 CFR (relating to transportation).

(2) Class II Railroads—revenues of less than \$50 million but in excess of \$10 million after applying the prescribed railroad revenue deflator formula in 49 CFR.

(3) Class III Railroads—revenues of \$10 million or less after applying the prescribed railroad revenue deflator formula in 49 CFR.

[(c)] A carrier shall file with the Commission each year an assessment report[, on Form GAO] on a form provided by the Commission showing gross Commonwealth intrastate revenues for assessment purposes. The assessment report shall be filed by March 31 covering the preceding calendar year.

MISCELLANEOUS PROVISIONS

§ 33.113. [Training of equipment inspectors] (Reserved).

[Each common carrier railroad operating within this Commonwealth shall intensify its training of equipment inspectors, particularly with respect to equipment assigned to transport material subject to regulation by the Office of Hazardous Materials, United

States Department of Transportation, and shall require, if feasible, a written record by the equipment inspector of all cars inspected.]

* * *

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February 22, 2013

ROBERT F. POWELSON
CHAIRMAN

The Honorable Silvan B. Lutkewitte, III
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown II
333 Market Street
Harrisburg, PA 17101

**Re: L-2011-2233841/57-286, Final Rulemaking Amending 52 Pa. Code Chapter 33,
52 Pa. Code, Chapter 33**

Dear Chairman Lutkewitte:

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission, on October 11, 2011, submitted a copy of the Notice of Proposed Rulemaking to the House Consumer Affairs Committee, the Senate Consumer Protection and Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC). This notice was published at 41 *Pa.B.* 5634 on October 22, 2011. The Commission also provided the Committees and IRRC with copies of all comments received in compliance with Section 745.5(b.1).

In preparing this final form rulemaking, the Commission has considered all comments received from the Committees, IRRC and the public.

Sincerely,

A handwritten signature in black ink that reads "Rob Powelson".

Robert F. Powelson
Chairman

Enclosures

pc: The Honorable Robert M. Tomlinson
The Honorable Lisa Boscola
The Honorable Robert Godshall
The Honorable Peter J. Daley, II
Legislative Affairs Director Perry
Chief Counsel Pankiw
Assistant Counsel Herzog
Regulatory Coordinator DelBiondo

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-2011-2233841/57-286

Subject: Final Rulemaking Amending 52 Pa. Code Chapter 33

Pennsylvania Public Utility Commission

2013 FEB 22 AM 10:57

RECEIVED
IRRC

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted.
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
<u>2/13/13</u>	<u>[Signature]</u>	<u>HOUSE COMMITTEE (Godshall)</u> Consumer Affairs
<u>2-22-13</u>	<u>[Signature]</u>	<u>SENATE COMMITTEE (Tomlinson)</u> Consumer Protection and Professional Licensure
<u>2/22/13</u>	<u>K Cooper</u>	Independent Regulatory Review Commission
<u> </u>	<u> </u>	Attorney General
<u> </u>	<u> </u>	Legislative Reference Bureau