

# Regulatory Analysis Form

(Completed by Promulgating Agency)



## SECTION I: PROFILE

(1) Agency:  
Pennsylvania Public Utility Commission

(2) Agency Number:

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

IRRC Number:

2916

RECEIVED  
IRRC  
OCT 11 AM 11:13

(3) Short Title: Proposed Rulemaking Amending 52 Pa. Code Chapter 33

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

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

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

Secondary Contact:

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) 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

## Regulatory Analysis Form

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

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

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

- |   |                           |
|---|---------------------------|
| A. The date by which the agency must receive public comments:                               | 30 days after publication |
| 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: | late 2012                 |
| 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                       |

(10) Provide the schedule for continual review of the regulation.

The regulations are reviewed on a daily basis as required.

**Regulatory Analysis Form**

**SECTION II: STATEMENT OF NEED**

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

66 Pa.C.S. §§501, 1102, 1103, 1501, 1502, 1504, 1506, 1508, and Chapter 27 of the Public Utility Code.

(12) 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.

(13) 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 Proposed Rulemaking intends to update existing Commission regulations governing the railroad industry, reflecting technological and operational changes and federal law.

## Regulatory Analysis Form

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source. N/A

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The Commission does not believe that there will be any entities adversely affected by the proposed regulations.

(16) List the persons, groups or entities that will be required to comply with the regulation.

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

**SECTION III: COST AND IMPACT ANALYSIS**

(17) 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 proposal.

(18) Provide a specific estimate of the costs and/or savings to **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

(19) Provide a specific estimate of the costs and/or savings to **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

## Regulatory Analysis Form

(20) 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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>						
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>						

(20a) Provide the past three year expenditure history for programs affected by the regulation. N/A

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

## Regulatory Analysis Form

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

N/A

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

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.

(23) 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

(24) 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.

## Regulatory Analysis Form

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

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

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

No.

(27) 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

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

N/A



# RAF SUPPLEMENTAL PAGE

(This page valid for use through November 1, 2011)

## Regulatory Analysis Form

(Completed by Promulgating Agency)

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

RECEIVED  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

OCT 11 A 11:13

(1) Agency:

Pennsylvania Public Utility Commission

(2) Agency Number:

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

IRRC Number:

2916

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

(4) Short Title: Proposed 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) 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.

Data is not the basis for the proposed regulation. Rather, the existing regulations are in need of updates to reflect current federal standards, law, and technology.

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED  
IRRC

OCT 11 A 11:14

DO NOT WRITE IN THIS SPACE

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

BY *Amy M. Elliott*  
(DEPUTY ATTORNEY GENERAL)

JUN 27 2011

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 March 31, 2011

BY *Rosemary Chiavetta*  
Rosemary Chiavetta

TITLE *Secy*  
(SECRETARY)

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

BY *Bohdan R. Pankiw*  
Bohdan R. Pankiw  
Chief Counsel

3-31-2011  
DATE OF APPROVAL

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

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

The Pennsylvania Public Utility Commission on March 31, 2011, adopted a proposed 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  
Proposed Rulemaking  
Amending 52 Pa. Code Chapter 33**

The Pennsylvania Public Utility Commission is vested with jurisdiction over railroad common carriers operating within Pennsylvania. 66 Pa. C.S. §§102, 501, 1101, 1102, 1103. 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 proposed modifications to its current regulations.

Proposed 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 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 March 31, 2011

Commissioners Present:

Robert F. Powelson, Chairman  
John F. Coleman, Jr., Vice Chairman  
Tyrone J. Christy  
Wayne E. Gardner  
James H. Cawley

Proposed Rulemaking Amending  
52 Pa. Code Chapter 33

Docket No. L-2011-2233841

**PROPOSED 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. Having reviewed the comments and replies, we now propose the following changes to the Commission's regulations at 52 Pa. Code Chapter 33. We note that this proposal is not an exhaustive compilation of our regulations that may be in need of revision. Rather, today we address those provisions which clearly require revision, based on observation and comments.

**§ 33.1. Definitions.**

The Commission proposes changing the definitions, as indicated, to be consistent with Federal Railroad Administration (FRA) regulations and current terminology.

**§ 33.11. General.**

The Commission proposes 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.

**§ 33.12. Reportable accidents.**

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

**§ 33.13. Telegraph and telephone reports.**

The Commission proposes modifying this provision to provide notification consistent with FRA regulations for telephone reports. 49 C.F.R. Part 225. The Commission proposes deleting specific circumstances requiring telephonic notification of

accidents contained in the current regulation and adopting Federal telephonic reporting standards.

**§ 33.14. Accident report forms.**

The Commission proposes modifying this provision consistent with FRA regulations for accident report forms. 49 C.F.R. § 225.21. The Commission proposes deleting report forms delineated in the current regulation and adopting report forms required by Federal law.

**§33.31. Regulations and procedure.**

The Commission proposes modifying this provision to reflect proper statutory references to the Public Utility Code.

**§ 33.41. Bridge or tunnel warnings.**

The Commission proposes modifying this provision to reflect proper references to the American Railway Engineering and Maintenance of Way Association.

**§ 33.54. Federal Safety Regulations**

The Commission proposes 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.

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

The Commission proposes deleting this provision due to FRA regulations governing this subject matter. 49 C.F.R. Part 214.

**§ 33.66. Safety glazing in railroad equipment.**

The Commission proposes deleting this provision due to FRA regulations governing the subject matter. 49 C.F.R. Part 223.

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

The Commission proposes deleting these provisions since they are obsolete and no longer applicable to passenger train service provided in Pennsylvania.

**§ 33.81 - § 33.84. Regulations governing track.**

The Commission proposes deleting these provisions due to FRA regulations governing the subject matter. 49 C.F. R. Part 213.

**§ 33.101. Accounts.**

The Commission proposes amending this provision to provide updated references to the appropriate Federal agency, the Surface Transportation Board.

**§ 33.102. Records.**

The Commission proposes amending this provision to provide updated references to the appropriate Federal agency, the Surface Transportation Board.

**§ 33.103. Reports.**

The Commission proposes amending this provision to delete the annual report requirement and to provide updated references regarding the Commission's assessment report.

**§ 33.113. Training of equipment inspectors.**

The Commission purposes deleting this provision due to FRA regulations governing the subject matter. 49 C.F.R. Parts 172, 215, and 232.

The attached Annex A, proposed regulations, is permitted by Sections 501, 1102, 1103, 1501, 1502, 1504, 1506, 1508, 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 propose to amend the regulations at Chapter 33 as set forth in Annex A. **THEREFORE,**

**IT IS ORDERED:**

1. That the Secretary shall submit this order and Annex A to the Office of Attorney General for preliminary review as to form and legality.
2. That the Secretary shall submit this order and Annex A, to the Governor's Budget Office for review of fiscal impact.
3. That the Secretary shall submit this order and Annex A for review and comment by the designated standing committees of both Houses of the General Assembly, and for review and comment by the Independent Regulatory Review Commission.
4. That the Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.
5. That, within thirty (30) days of this order's publication in the Pennsylvania Bulletin, an original and fifteen copies of any comments concerning this order should be submitted to the Office of the Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA, 17105-3265. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau at (717) 772-4597 or through the



AT&T Relay Center at 1-800-654-5988. The contact person is John Herzog, Assistant Counsel, Law Bureau, (717) 783-3714.

6. That a copy of this order shall be served on all commentators to the original Notice.

**BY THE COMMISSION,**

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

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: March 31, 2011

ORDER ENTERED: April 1, 2011

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 of the Pennsylvania Public Utility Commission.

\* \* \*

*Camp car or trailer*—[A movable car used for housing railroad employes, 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 employes. Camp cars or trailers shall be of safe construction and suitable for the purposes for which used.] Any on-track vehicle, including outfit, camp, or bunk cars or modular homes mounted on flat cars used to house rail employes. 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.

\* \* \*

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 shall be addressed to the Bureau of Transportation and Safety, 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 as defined in 49 C.F.R. and where a carrier is required to report to the Federal Railroad Administration pursuant to 49 C.F.R. [arising from the operation of a carrier which results in one or more of the following circumstances:

(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] to the Bureau of Transportation and Safety at (717) 787-9732, any accident or incident which requires the carrier to telephonically notify the Federal Railroad Administration pursuant to 49 C.F.R. [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:

(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 of Transportation and Safety on forms which the carrier must file with the Federal Railroad Administration as prescribed by 49 C.F.R. Reports shall be submitted to the Commission within the same time period as such reports are required to be submitted to the Federal Railroad Administration pursuant to 49 C.F.R.

\* \* \*

## 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.

(b) The provisions of subsection (a) do not apply to locations in territory where, by railroad order or rule, employees are prohibited from climbing on top of moving cars, engines, or other high equipment, or at locations over industrial tracks where points of limited vertical clearances are marked by appropriate warning signs.

(c) As used in this section, the term “points of limited vertical clearance” shall mean points less than 22 feet above the top of the rail.

\* \* \*

## 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 and will control where state regulation is preempted. [, unless such Federal regulations are in conflict with such provisions.] 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. Reserved. [Track cars and four-wheel self-propelled maintenance-of-way cars.

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.]

\* \* \*

**§ 33.66. Reserved. [Safety glazing in railroad equipment.**

(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. Reserved. [Abandonment of service.]

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. Reserved. [Changes in schedules.]

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. Reserved. [Long-distance trains.**

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. Reserved. [Suburban trains.**

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. Reserved. [Posting of notice.**

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. Reserved. [Additional trains.**

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. Reserved. [Saving clause.**

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. Reserved. [Track alignment.**

(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. Reserved. [Track anchors.**

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. Reserved. [Tracks undergoing maintenance.**

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. Reserved. [Track inspection.**

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 of the Surface Transportation Board. [Regulations to Govern the Destruction of Records of Railroad Companies (49 CFR 1220), prescribed by the Interstate Commerce Commission.

(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 a form [, on Form GAO] 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. Reserved. [Training of equipment inspectors.**

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.]

\* \* \*



COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
400 NORTH STREET  
HARRISBURG, PA 17120

ROBERT F. POWELSON  
CHAIRMAN

October 11, 2011

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, Proposed Rulemaking Amending 52 Pa. Code  
Chapter 33, 52 Pa. Code, Chapter 33

Dear Chairman Lutkewitte:

Enclosed please find 1 copy of the proposed rulemaking and the Regulatory Analysis Form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." Pursuant to Section 5(a) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15), the Commission is submitting today a copy of the proposed rulemaking and Regulatory Analysis Form to the Chairman of the House Committee on Consumer Affairs and to the Chairman of the Senate Committee on Consumer Protection and Professional Licensure.

The purpose of this proposal is to amend the Commission's existing regulations at Chapter 33 to reflect the technological and operational changes in the railroad industry and to reflect current federal standards. The contact person is John Herzog, Law Bureau, 717 783-3714.

The proposal has been deposited for publication with the Legislative Reference Bureau.

Very truly yours,

A handwritten signature in black ink that reads "Robert F. Powelson".

Robert F. Powelson  
Chairman

Enclosures

pc: The Honorable Robert M. Tomlinson  
The Honorable Lisa Boscola  
The Honorable Robert Godshall  
The Honorable Joseph Preston, Jr.  
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: Proposed Rulemaking Amending 52 Pa. Code Chapter 33


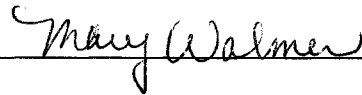
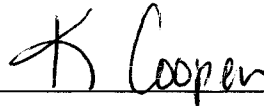
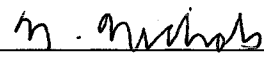
Pennsylvania Public Utility Commission

RECEIVED  
MRC  
OCT 11 AM 11:11

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>
10/11/11		HOUSE COMMITTEE (Godshall) Consumer Affairs
10/11/11		SENATE COMMITTEE (Tomlinson) Consumer Protection and Professional Licensure
10/11/11		Independent Regulatory Review Commission Attorney General
10/11/11		Legislative Reference Bureau