

Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-286 (IRRC #2916)

Railroad Transportation

December 21, 2011

We submit for your consideration the following comments on the proposed rulemaking published in the October 22, 2011 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. Determining whether the regulation is in the public interest.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs the Independent Regulatory Review Commission (IRRC) to determine whether a regulation is in the public interest. When making this determination, IRRC considers criteria such as economic or fiscal impact and reasonableness. To make that determination, IRRC must analyze the text of the Preamble and proposed regulation and the reasons for the new or amended language. *See* 71 P.S. § 745.5 (a).

The explanation of the regulation in the Preamble (Proposed Rulemaking Order) is not sufficient to allow IRRC to determine if the regulation is in the public interest. For example, according to the Proposed Rulemaking Order, the changes to Section 33.11 are intended to “delete those provisions that are inconsistent with federal law.” However, the Proposed Rulemaking Order does not specifically include which provisions are inconsistent, nor does it provide a citation to the relevant federal law. The PUC also amends Section 33.54 to “accurately reflect the relationship of state and federal law in the area of safety regulation,” but the Proposed Rulemaking Order does not explain further what that relationship is. We recommend that the Order submitted with the final-form regulation provide more detailed information required under § 745.5(a) of the RRA, including an explanation of the language proposed for each section of the regulation and cross-references to federal law when appropriate.

2. Statutory authority; Clarity.

Certain statutory references contained in this rulemaking are inconsistent. The Regulatory Analysis Form (RAF #11) and the PUC’s Proposed Rulemaking Order cite the following from the Public Utility Code as the statutory authority for this regulation: 66 Pa. C.S. §§501, 1102, 1103, 1501, 1502, 1504, 1506, 1508 and Chapter 27. However, language in the Executive Summary cites only §§102, 501, 1101, 1102, and 1103. To improve clarity, we recommend that

the same citations be consistently used throughout the regulatory package and that the final-form regulation cite to the relevant sections of Chapter 27 of the Public Utility Code.

3. Section 33.1. Definitions. – Consistency with federal law; Clarity.

Bureau

The regulation amends this definition to establish the Bureau of Transportation “and Safety” as the relevant Bureau responsible for oversight of railroad transportation safety issues. However, a commentator suggests that parts of this Bureau are now housed within the Bureau of Technical Utility Services. The PUC should review the definition to ensure that it accurately identifies the relevant bureau.

Camp car or trailer

The proposed definition defines this term as an “on-track vehicle mounted on flat cars used to house rail employees,” and lists various types of vehicles that would meet this requirement. A commentator suggests that this definition be deleted from the regulation, as it is pre-empted by recent changes to federal law. *See* 49 CFR Part 228 (changes published in the *Federal Register*, 76 FR 67073-01). The PUC should explain how the proposed definition is consistent with federal law. Should this definition remain in the final-form regulation, we also recommend that the definition include a cross-reference to 49 CFR Part 228.

4. Section 33.12. Reportable accidents or incidents. – Reasonableness; Need; Clarity.

This section requires carriers to notify the Bureau telephonically of certain accidents, as required by “the Federal Railroad Administration [FRA] under 49 CFR.” The citation to 49 CFR is overly broad. We recommend that the final-form regulation include a citation to the relevant part, chapter or section of Title 49.

The citations in Sections 33.13 and 33.14 should also be clarified.

5. Section 33.61. Track cars and four-wheel self-propelled maintenance-of-way cars. – Clarity.

The existing section of the regulation requires various safety equipment and appurtenances for track cars and four-wheel self-propelled maintenance-of-way cars “after December 31, 1959.” The PUC seeks to delete this section in its entirety, as 49 CFR Part 214 now governs this subject matter. A commentator indicates that this part of the FRA only applies to equipment manufactured after 1991, and therefore contends this language should remain for these particular vehicles. *See* 49 CFR § 214.517. We request the PUC further explain why it is deleting this section in its entirety.