

RULES AND REGULATIONS

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 161]

Requirements for Qualified and Certified Reinsurers

The Insurance Department (Department) amends Chapter 161 (relating to requirements for qualified and certified reinsurers) under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412), regarding the general rulemaking authority of the Department, and section 319.1 of The Insurance Company Law of 1921 (act) (40 P. S. § 442.1), regarding credits for reinsurance.

Purpose

The purpose of this final-form rulemaking is to update Chapter 161 in accordance with amendments to section 319.1 of the act by the act of July 5, 2012 (P. L. 1111, No. 136) (Act 136), which grants the Insurance Commissioner (Commissioner) the authority to “certify” reinsurers so that ceding insurers may receive credit for reinsurance ceded to duly certified reinsurers. Chapter 161 sets forth requirements for a licensed ceding insurer to receive credit for reinsurance in its financial statements. These amendments were proposed in conjunction with amendments to Chapter 163 (relating to requirements for funds held as security for the payment of obligations of unlicensed, unqualified reinsurers).

The amendments to Chapter 161 are based upon recent amendments to model law and regulation developed by the National Association of Insurance Commissioners (NAIC) entitled “Credit for Reinsurance Model Law” (No. 785) and “Credit for Reinsurance Model Regulation” (No. 786). This final-form rulemaking is part of the financial regulation standards the Department must meet to maintain its accreditation by the NAIC. Thus, if a jurisdiction opts to certify reinsurers, as the Commonwealth has done with the enactment of Act 136, the standards by which it does so must be substantially similar to NAIC requirements for the jurisdiction to maintain NAIC accreditation.

Comments and Response

Notice of proposed rulemaking was published at 42 Pa.B. 5629 (September 1, 2012) with a 30-day comment period. Comments were received from the Insurance Federation of Pennsylvania, Ace Group and Lloyds, London expressing support for the proposed rulemaking. The Ace Group and Lloyds, London emphasized the necessity that the Department’s regulation be substantially similar to the NAIC model law and regulation.

A comment from American International Group (AIG) raised three concerns. AIG noted that the amendments to section 319.1 of the act by Act 136 did not address the frequency by which a Commissioner would certify a reinsurer and requested that the Commissioner implement a uniform annual date for certifications to be effective to minimize administrative burden for calculating collateral requirements for the year. The Department declined to make this change. The variance of effective

dates of contracts is a contractual issue between a ceding insurer and reinsurer and is not related to the timing of the Commissioner’s certification of a reinsurer. Further, taking a credit for reinsurance is entirely voluntary; if a ceding insurer would find that the benefit of a credit is outweighed by the administrative burden of calculating the credit, it may decline to do so until the reinsurers with whom it contracts are certified.

AIG suggested that “catastrophic event” be defined as an event determined by an organization such as the Property Claims Service or equivalent organization recognized by the Commissioner. The Department amended § 161.3b(b)(4) (relating to calculation of credit for reinsurance regarding obligations secured with certified reinsurers) as explained as follows.

AIG expressed its belief that the 1-year deferral in posting security should not apply to certified reinsurers that have been assigned a “Secure 4,” “Secure 5” or “Vulnerable 6” rating. The Department declined to make this change because it would be a significant deviation from the NAIC model. Additionally, the Department believes that policyholders are better protected if the solvency of reinsurers is not jeopardized by treating them disparately. It should be noted that it is the ceding insurer’s prerogative to contract with a particular reinsurer and a ceding insurer is under no obligation to contract with an insurer who has been assigned a rating.

On October 31, 2012, the Independent Regulatory Review Commission (IRRC) submitted a comment with regard to the rulemaking that: (1) requested that the Department either define “catastrophic occurrence” or provide an explanation as to its rationale for not doing so; and (2) noted several cross referencing errors.

In response to IRRC’s comment and the comment from AIG, the Department added clarifying language to § 161.3b(b)(4) to note that when deciding whether to recognize an event as a catastrophic occurrence, the Commissioner would do so in consultation with the NAIC and would consider both natural and human events as possible catastrophes.

However, the Department declined to provide a specific definition of “catastrophic occurrence” to maintain consistency with the NAIC model, which intentionally leaves the term undefined so that the Commissioner can make a case-by-case determination. “Catastrophe” and “catastrophic occurrence” are not capable of objective definition. Specifically, it is not possible to prospectively create a definition that would encompass all cases and would appropriately consider the totality of the circumstances.

With regard to the cross referencing errors referenced by IRRC, the Department corrected the cross referencing error in § 161.3b(e).

IRRC also noted that the references in § 161.3a(c)(3) and (4) (relating to requirements for certified reinsurers) do not match the corresponding provisions of the NAIC model regulation. Although the Department does acknowledge that the references do not match the corresponding NAIC model provisions, the Department determined that the NAIC model references are in error and that the references are correct.

Specifically, the Department determined that § 161.3a(c)(3) properly cross references subsection (a)(3)(ii), regarding the assigning of a new rating to a reinsurer that is certified in another jurisdiction. Con-

versely, section B(7)(a) of the NAIC model and § 161.3a(a)(5)(i) relate to notification requirements for regulatory actions. The NAIC model regulation should have cross referenced section 8B(8)(a). The equivalent of section 8B(8)(a) is § 161.3a(a)(3)(iii)(A). Because this subsection refers back to subsection (a)(3)(ii), the Department believes the direct reference to subsection (a)(3)(ii) is more clear.

Likewise, the Department determined that § 161.3a(c)(4) properly cross references § 161.6 (relating to revocation of reinsurer qualification or certification), which deals with revocation of reinsurer qualification or certification. Again, the NAIC model should have cross referenced section 8B(8)(a) instead of section 8B(7)(a). The equivalent of section 8B(8)(a) is § 161.3a(a)(3)(iii)(B). Because this subsection refers back to § 161.6, the Department believes the direct reference to § 161.6 is more clear.

Affected Parties

This final-form rulemaking applies to insurance companies domesticated in this Commonwealth and the reinsurers with whom they do business.

Fiscal Impact

State government

The final-form rulemaking will strengthen and clarify existing regulatory requirements. There will not be material increase in cost to the Department as a result of this final-form rulemaking.

General public

While Chapter 161 does not have immediate fiscal impact on the general public, the general public will benefit to the extent that allowing reduced collateral for reinsurers that are financially solvent and licensed in well-regulated jurisdictions will reduce the cost of reinsurance to ceding insurers in this Commonwealth and reduce trade barriers allowing for more competition in the reinsurance marketplace.

Political subdivisions

This final-form rulemaking will not impose additional costs on political subdivisions.

Private sector

This final-form rulemaking will not impose significant costs on the transaction of business in this Commonwealth.

Effectiveness/Sunset Date

This final-form rulemaking will become effective on June 24, 2013. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, a sunset date has not been assigned.

Contact Person

Questions regarding this final-form rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, fax (717) 705-3873, psalvatore@state.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 22, 2012, the Department submitted a copy of the notice of proposed rulemaking,

published at 42 Pa.B. 5629, to IRRC and the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 17, 2013, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 18, 2013, and approved the final-form rulemaking.

Findings

The Commissioner finds that:

(1) Public notice of intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Commissioner, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapter 161, are amended by adding §§ 161.3a, 161.3c and 161.8a, deleting § 161.8 and amending §§ 161.1—161.3, 161.6, 161.7 and 161.9 to read as set forth at 42 Pa.B. 5629 and by adding § 161.3b to read as set forth in Annex A.

(b) The Department shall submit this order, 42 Pa.B. 5629 and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Department shall certify this order, 42 Pa.B. 5629 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form regulations adopted by this order shall take effect on June 24, 2013.

MICHAEL F. CONSEDINE,
Insurance Commissioner

(Editor's Note: See 43 Pa.B. 2819 (May 25, 2013) for a final-form rulemaking by the Department relating to this final-form rulemaking.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 2530 (May 4, 2013).)

Fiscal Note: Fiscal Note 11-249 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 31. INSURANCE

PART VIII. MISCELLANEOUS PROVISIONS

CHAPTER 161. REQUIREMENTS FOR QUALIFIED AND CERTIFIED REINSURERS

§ 161.3b. Calculation of credit for reinsurance regarding obligations secured with certified reinsurers.

(a) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the Commissioner and consistent with section 319.1(b) of the act (40 P.S. § 442.1(b)) or in a multibeneficiary trust in accordance with § 161.3(3)(vii)(B) (relating to credit for reinsurance) except that:

(1) If a certified reinsurer maintains a trust to fully secure its obligations subject to § 161.3(3)(vii) and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this paragraph or comparable laws of other United States jurisdictions and for its obligations subject to § 161.3(3)(vii)(B). It shall be a condition to the grant of certification under this subsection that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the chief regulatory official with principal regulatory oversight of each trust account, to fund, upon termination of a trust account, out of the remaining surplus of the trust any deficiency of another trust account.

(2) The minimum trustee surplus requirements provided in § 161.3(3)(vii) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this paragraph, except that the trust must maintain a minimum trustee surplus of \$10 million.

(b) The allowable credit allowed a ceding insurer must be based upon the security held by or on behalf of the ceding insurer and shall be calculated in accordance with the following requirements:

(1) For full credit to be allowed, the amount of security must correspond with the rating assigned by the Commissioner to the certified reinsurer under § 161.3a(a)(3) (relating to requirements for certified reinsurers) as follows:

<i>Rating</i>	<i>Security required</i>
Secure—1	0%
Secure—2	10%
Secure—3	20%
Secure—4	50%
Secure—5	75%
Vulnerable—6	100%

(2) Affiliated reinsurance transactions will receive the same opportunity for reduced security requirements as other reinsurance transactions.

(3) The Commissioner will require the certified reinsurer to post 100% for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(4) To facilitate the prompt payment of claims, a certified reinsurer will not be required to post security for catastrophe recoverables for 1 year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the Commissioner. When determining what constitutes a catastrophic occurrence, the Commissioner will consult with the NAIC and consider both natural and human events. The 1-year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner in compliance with its contractual obligations in the reinsurance agreement under which the claims are ceded. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- Line 1:* Fire
- Line 2:* Allied Lines
- Line 3:* Farmowners multiple peril
- Line 4:* Homeowners multiple peril
- Line 5:* Commercial multiple peril
- Line 9:* Inland Marine
- Line 12:* Earthquake
- Line 21:* Auto physical damage

(c) With respect to obligations incurred by a certified reinsurer, if the security is insufficient, the Commissioner will reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(d) For purposes of calculating the allowable credit under this section, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100% of its obligations.

(1) As used in this subsection, "terminated" refers to revocation, suspension, voluntary surrender and inactive status.

(2) If the Commissioner continues to assign a higher rating as permitted by this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(e) Based on the analysis conducted under § 161.3a(a)(3)(ii)(B)(V) of a certified reinsurer's reputation for prompt payment of claims, the Commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the Commissioner will, at a minimum, increase the security the certified reinsurer is required to post by one rating level under § 161.3a(a)(3)(ii)(B)(I) if the Commissioner finds either of the following:

(1) More than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed \$100,000 for each cedent.

(2) The aggregate amount of reinsurance recoverables on paid losses not in dispute that are overdue by 90 days or more exceeds \$50 million.

(f) This section does not prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements under this section or under § 161.8a (relating to reinsurance contracts).

[Pa.B. Doc. No. 13-950. Filed for public inspection May 24, 2013, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 163]

Requirements for Funds Held as Security for the Payment of Obligations of Unlicensed, Unqualified Reinsurers

The Insurance Department (Department) amends Chapter 163 (relating to requirements for funds held as security for the payment of obligations of unlicensed, unqualified reinsurers) under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412), regarding the general rulemaking authority of the Department, and sections 319—319.2 of The Insurance Company Law of 1921 (act) (40 P. S. §§ 442—442.2).

Purpose

The purpose of this final-form rulemaking is to update Chapter 163 in accordance with amendments made to section 319.1 of the act by the act of July 5, 2012 (P. L. 1111, No. 136) (Act 136), which grants the Insurance Commissioner (Commissioner) the authority to “certify” reinsurers so that ceding insurers may receive credit for reinsurance ceded to duly certified reinsurers. This amendment was proposed in conjunction with amendments to Chapter 161 (relating to requirements for qualified and certified reinsurers). Specifically, Chapter 163 is amended to clarify that the requirements of Chapter 163 do not apply to assuming reinsurers that have been duly certified by the Commissioner as permitted by Act 136.

Comments and Response

Notice of proposed rulemaking was published at 42 Pa.B. 5628 (September 1, 2012) with a 30-day comment period. Comments were received from the Insurance Federation of Pennsylvania and Ace Group expressing support for the amendment. On October 31, 2012, the Independent Regulatory Review Commission (IRRC) indicated that it did not have comments objections, comments or recommendations regarding the amendment.

Affected Parties

This final-form rulemaking applies to insurance companies domesticated in this Commonwealth and the reinsurers with whom they do business.

Fiscal Impact

State government

The final-form rulemaking will strengthen and clarify existing regulatory requirements. There will not be material increase in cost to the Department as a result of this final-form rulemaking.

General public

While Chapter 163 does not have immediate fiscal impact on the general public, the general public will benefit to the extent that allowing reduced collateral for

reinsurers that are financially solvent and licensed in well-regulated jurisdictions will reduce the cost of reinsurance to ceding insurers in this Commonwealth and reduce trade barriers allowing for more competition in the reinsurance marketplace.

Political subdivisions

This final-form rulemaking will not impose additional costs on political subdivisions.

Private sector

This final-form rulemaking will not impose significant costs on the transaction of business in this Commonwealth.

Effectiveness/Sunset Date

This final-form rulemaking will become effective on June 24, 2013. The Department continues to monitor the effectiveness of regulations on a triennial basis. Therefore, a sunset date has not been assigned.

Contact Person

Questions regarding this final-form rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, fax (717) 705-3873, psalvatore@pa.gov.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 22, 2012, the Department submitted a copy of the notice of proposed rulemaking, published at 42 Pa.B. 5628, to IRRC and the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 14, 2012, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective November 14, 2012.

Findings

The Commissioner finds that:

(1) Public notice of intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Commissioner, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapter 163, are amended by amending § 163.1 to read as set forth at 42 Pa.B. 5628.

(b) The Department shall submit this order and 42 Pa.B. 5628 to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Department shall certify this order and 42 Pa.B. 5628 and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form regulation adopted by this order shall take effect June 24, 2013.

MICHAEL F. CONSEDINE,
Insurance Commissioner

(Editor's Note: See 43 Pa.B. 2816 (May 25, 2013) for a final-form rulemaking by the Department relating to this final-form rulemaking.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 2530 (May 4, 2013).)

Fiscal Note: Fiscal Note 11-250 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 13-951. Filed for public inspection May 24, 2013, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 33]

[L-2011-2233841]

Railroad Transportation

The Pennsylvania Public Utility Commission (Commission), on January 24, 2013, adopted a final rulemaking order which amends the Commission's existing regulations in Chapter 33 (relating to railroad transportation) to reflect the technological and operational changes in the railroad industry and to reflect current Federal standards.

Executive Summary

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.

Public Meeting held
January 24, 2013

Commissioners Present: Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Wayne E. Gardner; James H. Cawley; Pamela A. Witmer

*Final Rulemaking Amending 52 Pa. Code Chapter 33;
Doc. 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 CFR Part 214, since the Federal regulations do not cover equipment manufactured prior to 1991. The Unions request, therefore, that we retain this provision.¹

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

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 CFR 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. *IRRC 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 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 CFR 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.A. § 20106.

The Federal Railroad Safety Act (FRSA), 49 U.S.C.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 20106, even if a federal regulation or order covers the subject matter of a state law, regulation, or order relating to railroad safety, pre-emption 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.A. § 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 CFR 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 CFR 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 CFR Part 225.

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

§ 33.21. General

The Railroads comment that § 33.21(a) of our regulations should be deleted since it is preempted by 49 CFR 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.A. § 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.A. § 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.A. § 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 FR 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 CFR 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 CFR 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 CFR 214.513 provides general requirements for retrofitting of all existing on-track roadway maintenance machines.

As noted earlier, 49 U.S.C.A. § 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 CFR 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 CFR 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.A. § 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.A. § 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 CFR 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 FR 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 CFR 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 CFR 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 CFR 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 standard 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.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 11, 2011, the Commission submitted a copy of the notice of proposed rulemaking,

published at 41 Pa.B. 5634, to IRRC and the Chairpersons of the House Consumer Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Commission has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 3, 2013, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 4, 2013, and approved the final-form rulemaking.

Conclusion

Annex A, the 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 That:

1. The regulations of the Commission, 52 Pa. Code Chapter 33, are amended by amending §§ 33.1, 33.11—33.14, 33.31, 33.41, 33.54 and 33.101—33.103 and by deleting §§ 33.61, 33.65, 33.66, 33.71—33.77, 33.81—33.84 and 33.113 to read as set forth in Annex A.

(*Editor’s Note:* Rescinded § 33.65 was not included in the proposed rulemaking published at 41 Pa.B. 5634.)

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.

ROSEMARY CHIAVETTA,
Secretary

(*Editor’s Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 2242 (April 20, 2013).)

Fiscal Note: Fiscal Note 57-286 remains valid for the final adoption of the subject regulations.

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:

Blind car—A railroad car attached behind the caboose of a freight train or at the rear end of a passenger train upon which a member of the crew cannot ride in order to properly protect the rear of the train in the event of an emergency.

Bureau—The Bureau of Technical Utility Services of the Pennsylvania Public Utility Commission.

Cabin cars—Caboose provided for the use of railroad employees, excluding protection cars.

Carrier—Any railroad, railway company or corporation subject to Commission jurisdiction, which operates in this Commonwealth.

* * * * *

Main track—A designated track upon which trains are operated by timetable, train order, or both, or the use of which is governed by block signals.

Overhead clearance—The vertical distance from the top of the highest rail to any structure or obstruction there above.

* * * * *

Street railway—Every railroad and railway, or extension, and all the facilities thereof, by whatever power operated, for public use in the conveyance of passengers or property, located mainly or in part upon, above, below, through, or along any highway in any city, borough, or town, and not constituting or used as part of a trunk line railroad system.

Wash basin or bowl—A basin or bowl used for the purpose of obtaining personal cleanliness.

* * * * *

Subchapter B. SERVICE AND FACILITIES

ACCIDENTS

§ 33.11. General.

Each carrier shall submit a report of each reportable accident or incident involving its facilities or operation in this Commonwealth. Reports shall be addressed to the Bureau of Technical Utility Services, Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265.

§ 33.12. Reportable accidents or incidents.

A reportable accident or incident is one 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 (relating to railroad accidents/incidents: reports classification, and investigations).

§ 33.13. Telephone reports.

A carrier shall immediately report by telephone to the Bureau an accident or incident which requires the carrier

to telephonically notify the Federal Railroad Administration under 49 CFR Part 225 (relating to railroad accidents/incidents: reports classification, and investigations). The proper telephone number is provided on the Commission's web site at www.puc.pa.gov.

§ 33.14. Accident or incident report forms.

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 railroad accidents/incidents: reports classification, and investigations). 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 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 tapper 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 supplement the provisions of this chapter and control when State regulations are pre-empted. However, a violation of the Federal regulations which is not otherwise a violation of this chapter 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).

§ 33.65. (Reserved).

§ 33.66. (Reserved).

§§ 33.71—33.77. (Reserved).

§§ 33.81—33.84. (Reserved).

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 Surface Transportation Board.

§ 33.102. Records.

Each carrier shall preserve its records in conformity with the effective regulations of the Surface Transportation Board.

§ 33.103. Reports.

A carrier shall file with the Commission each year an assessment report 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. (Reserved).

[Pa.B. Doc. No. 13-952. Filed for public inspection May 24, 2013, 9:00 a.m.]