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INDEPENDENT REGULATORY
REVIEW COMMISSION

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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

February 19, 2009

Arthur Coccodrilli
Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

re: Proposed Regulation 18-414

Dear Mr. Coccodrilli:

The Pennsylvania Department of Transportation (PennDOT) recently proposed a final form regulation, Intrastate Motor Carrier Safety Requirements (18-414), in the belief that the action is required as a result of a federal audit and necessary to retain full Federal Motor Carrier Safety Assistance Program (MCSAP) funding.

As the Majority and Minority Chairmen of the House Agriculture and Rural Affairs Committee, we request that IRRC return this regulation to PennDOT for revision for several reasons.

First, regulation proposal fails to recognize the serious impact on Pennsylvania agriculture. Section 231.2 of the current regulation explicitly exempts certain "... classes of vehicles and their drivers ...," including "[f]arm trucks not required to be registered" and "[i]mplements of husbandry." The proposed regulation would eliminate these exemptions, which would result in an increased financial burden on an already struggling industry.

Second, PennDOT has not met its burden in presenting information required by IRRC regarding adverse impacts. In its submission to the Independent Regulatory Review Commission (IRRC), PennDOT states in item 15 of the Regulatory Analysis Form that, "There should be no adverse impact to any person or entities through the enactment of these regulations." This is inaccurate. Adoption of the proposed regulations would have a significant adverse impact on Pennsylvania agricultural individuals and entities. Without an accurate assessment of the impact on Pennsylvania agriculture, IRRC cannot acquit its regulatory review responsibilities. We recommend that IRRC return the proposed regulation to PennDOT without approval and request that the regulations not be resubmitted until an appropriate assessment of the adverse impacts from the proposed changes are presented.

Third, PennDOT has not met its burden in presenting information required by IRRC regarding costs to the regulated community. In its submission to the Independent Regulatory Review Commission (IRRC), PennDOT states in item 17 of the Regulatory Analysis Form that, "The costs and/or savings to the regulated community resulting from the amendments are minimal..." This is inaccurate. Adoption of the proposed regulations will create a new regulated community – those who operate farm trucks and implements of husbandry. The costs to this newly-regulated community are expected to be considerable and are estimable. Without an accurate assessment of the costs to the regulated community associated with compliance of the new regulation, IRRC cannot acquit its regulatory review responsibilities. We recommend that IRRC return the proposed regulation to PennDOT without approval and request that the regulations not be resubmitted until an appropriate assessment of the costs of compliance on the community that would be newly-regulated by the proposed changes.

Fourth, PennDOT similarly did not meet its burden in presenting information required by IRRC with concomitant responses to items 16, 20 and 21 of the Regulatory Analysis Form. We recommend that IRRC return the proposed regulation to PennDOT without approval and request that the regulations not be resubmitted until these items have appropriate responses for the consideration of both IRRC and the public.

Fifth, PennDOT has not met its burden in presenting information required by IRRC regarding whether any provisions in the proposed regulations are more stringent than federal standards. In its submission to the Independent Regulatory Review Commission (IRRC), PennDOT response to item 24 of the Regulatory Analysis Form is altogether silent in response with respect to the elements of the proposed regulations that will create a new regulated community – those who operate farm trucks and implements of husbandry. We believe the proposed regulations exceed federal standards as generally applied elsewhere in the United States. Without a response from PennDOT to the question of whether the proposed regulations are more stringent than federal standards, IRRC cannot acquit its regulatory review responsibilities. We recommend that IRRC return the proposed regulation to PennDOT without approval and request that the regulations not be resubmitted until the required information is presented by PennDOT.

Sixth, and perhaps most importantly, PennDOT reports in item 23 of the Regulatory Analysis Form, "**There are alternative regulatory provisions that would satisfy the requirements of the FMCSA mandate.**" (Emphasis added.) We believe that PennDOT is correct that alternative approaches to satisfying applicable federal mandates do, in fact, exist. We also believe that such alternative approaches can reduce the adverse impact and cost to the agricultural community that would be newly regulated.

Seventh, PennDOT has not met its burden in presenting information required by IRRC regarding comparability to regulations in other states and how the proposed regulation would

affect Pennsylvania's ability to compete with other states. In its submission to the Independent Regulatory Review Commission (IRRC), PennDOT's response to item 25 of the Regulatory Analysis Form is, "These regulations are identical or substantially similar to those enacted by all other states, as mandated by the FMSCA." PennDOT has not identified an analysis supporting this claim. We believe that the claim that the proposed regulations comport with other states is mistaken. To the contrary, analysis of standards in place in other states indicates that the proposed regulations would place a burden on the agricultural community in Pennsylvania different than other states. As a result, the adoption of the proposed regulations (after considering the costs of compliance) would place Pennsylvania at a competitive disadvantage to other states in the extremely competitive agricultural industry. Without an accurate assessment of the comparability to regulations in other states and how the proposed regulation would affect Pennsylvania's ability to compete with other states, IRRC cannot acquit its regulatory review responsibilities. We recommend that IRRC return the proposed regulation to PennDOT without approval and request that the regulations not be resubmitted until it presents both a documented assessment of the comparability to regulations in other states and a reasonable assessment of how the proposed regulation would affect Pennsylvania's ability to compete with other states

Eighth, PennDOT has not met its burden in presenting information required by IRRC regarding farmers. Item 28 of the Regulatory Analysis Form specifically requires that the specialized needs of farmers be addressed. Incredibly, while addressing one aspect of the proposal related to farmers, PennDOT is silent about the proposed provision that would do so much damage to agriculture. Without an accurate assessment of the comparability to regulations in other states and how the proposed regulation would affect Pennsylvania's ability to compete with other states, IRRC cannot acquit its regulatory review responsibilities. We recommend that IRRC return the proposed regulation to PennDOT without approval and request that the regulations not be resubmitted until this item addresses the impact on farmers.

Ninth, PennDOT asserts in the preamble that the entire reason for the proposed changes that would adversely affect agriculture is that, "A MSCAP compliance audit was performed on the Departments [sic] intrastate motor carrier regulations. One of the compliance issues raised by the audit was the Department's blanket exemptions for farmers exceeded the permissible limits under the MCSAP program."

This may be true but has not been evidenced by presenting any such audit finding. The evaluation of whether the proposed change is a necessary or appropriate response to a federal audit finding can only be accomplished by reference to that audit finding. By not presenting that audit finding, PennDOT has disabled IRRC, the General Assembly and the public from properly evaluating whether the proposed changes coincide with the expressed impetus for the proposed change. This contextual information is especially important in light of

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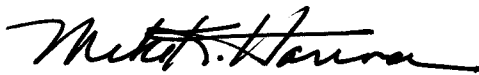
PennDOT's assertion in item 23, "**There are alternative regulatory provisions that would satisfy the requirements of the FMCSA mandate.**" (Emphasis added.) Generally, audit reports can be made public in accordance with Pennsylvania's open records law. We recommend that IRRC return the proposed regulation to PennDOT without approval and request that the regulations not be resubmitted until related audit is revealed.

Tenth, the Regulatory Review Act requires that a proposed regulation include specific information (71 P.S. 745.5) so that the public and IRRC can properly consider the proposal. The Regulatory Analysis Form is designed to track these statutory requirements. As explained in the first through the eight items above, the proposed regulation does not conform with the statutory requirements. We strongly urge IRRC to not approve this proposal without first requiring PennDOT to meet its statutory burden.

As a point of information, PennDOT's legislative briefing on the agricultural aspects of the proposed regulations is scheduled for this afternoon – less than a week prior to the IRRC meeting. While the winter weather delayed this briefing by a week, the timing serves to effectively disable legislative intervention prior to IRRC's consideration of the regulations next Thursday.

Thank you for your service to our Commonwealth.

Very truly yours,



Mike Hanna
Democratic Chairman
Agriculture and Rural Affairs Committee



John Maher
Republican Chairman
Agriculture and Rural Affairs Committee

JAM:mg

cc: James Smith, IRRC