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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

January 25, 2007

Honorable Allen D. Biehler, P.E., Secretary
Department of Transportation
Keystone Building, 8th Floor
400 North Street
Harrisburg, PA 17120-0041

Re: Regulation #18-408 (IRRC #2584)
Department of Transportation
Roadside Rest Areas

Dear Secretary Biehler:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

Comments of the Independent Regulatory Review Commission

on

Department of Transportation Regulation #18-408 (IRRC #2584)

Roadside Rest Areas

January 25, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the November 25, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Transportation (Department) to respond to all comments received from us or any other source.

Section 443.2. Prohibited activities or actions. - Fiscal impact; Protection of public safety; Reasonableness; Implementation procedures; Clarity.

In the existing Chapter 443, this section consists of a list of prohibited activities. The proposed regulation adds new language to the list. In the proposed regulation, the opening paragraph of this section reads: "The following specified activities or actions [**shall be**] are prohibited in roadside rest areas." Subsections (1)-(17) comprise the list of prohibited activities. We have identified the following areas for comment.

Obeying all signs and areas where driving or parking is not permitted

In the proposed regulation, the following statement has been added to Subsection (1): "Drivers shall obey all posted traffic signs and markings." This statement does not describe prohibited activities, and is broader than the existing language in this subsection which reads: "Driving or parking of a vehicle in areas other than those provided." Traffic signs and markings do more than inform drivers about the areas where parking or driving is prohibited. The new language should either be moved to a different section or re-written to match the style of the list. One possible re-write is: "Failure to comply with all posted traffic signs and markings." The new statement should also be the only statement in Subsection (1) and the existing language, which is limited to preserving "no parking" and "no driving" areas, should be written as the new Subsection (2).

Time limits on parking

The existing language in Subsection (2) reads: "Parking or standing of a vehicle for more than 2 hours in a single 24-hour period or in excess of the posted time limit." The new language added by the proposed regulation states that vehicles left for longer than 24 hours are "subject to removal and storage at the sole cost and expense of the owner." There are two concerns.

First, as noted above on Subsection (1), this new language is not describing a prohibited activity. It describes a penalty. This new language should be moved to a new section added to the final-

form regulation that describes the fines and penalties for violations of the provisions of Chapter 443. For example, people, who park their vehicles for more than two hours at rest areas would be subject to fines pursuant to Section 8 of the act of June 7, 1961 (P.L. 257, No. 151) (36 P.S. § 478.18), and “vehicles unattended for more than 24 hours will be considered abandoned and subject to removal and storage at the sole cost and expense of the owner.” The regulation should also state that public notices listing the fines for violations of the parking and other rules, including a warning that a vehicle is subject to towing after 24 hours, will be conspicuously posted at rest areas.

Second, it is unclear what a driver should do in an emergency situation when the vehicle won't run or it is unsafe to operate, and the driver may not be able to resolve the situation in less than two hours. The Department should consider providing an exception for emergencies when operators or owners alert the Department that they intend to move the vehicle as soon as possible but they may need more than two hours to get help with towing or emergency repairs. This would prevent dangerous or costly situations when people try to get vehicles out of rest areas before the vehicles are ready and safe for the open road.

Defacing facilities, skateboarding, smoking or not smoking, igniting fires and sleeping

The proposed regulation adds numerous new prohibited activities to Subsections (3) and (4). They read:

(3) Defacing or damaging buildings or other facilities[.], **skateboarding, rollerblading, skating, biking or sledding, riding of all-terrain vehicles or smoking in areas designated as "No Smoking."**

(4) Igniting or maintaining fires for heating or cooking equipment, except in areas or facilities designed for the purpose, **camping overnight or setting up a tent, sleeping anywhere but in a legally parked vehicle, or remaining anywhere but in a legally parked vehicle for more than 2 hours.**

Subsections (3) and (4) are too long and contain unrelated subjects. The purpose of a list is to delineate items, conditions or terms, and to avoid long statements or sentences. The existing language in the two subsections should continue to stand alone as parts of the list, and the new language should be set forth as at least three new subsections.

Emergencies and minor repairs

Subsection 443.2(8) of the proposed regulation expressly prohibits the “maintenance or repairing of vehicles or attachments to vehicles” at rest areas “except in emergencies.” The Pennsylvania Motor Truck Association (PMTA) suggests the addition of specific language to allow for minor repairs to commercial vehicles placed out of service by law enforcement after roadside inspections. PMTA claims that the exception for emergencies may not be interpreted by law enforcement officers to include minor repairs. In these cases even though the required repairs are minor, commercial vehicles would need to be towed at considerable expense to owners or operators. It is our understanding that the intent of the Department for this regulation is that a rest area should provide temporary parking for the broadest number of travelers and their vehicles. To this end, other provisions in this regulation limit parking to two hours. If a minor repair or adjustment can be completed during this two-hour period at a rest area, we do not see

why this activity should be prohibited. We recommend that that the exception in this subsection be extended to include minor repairs or adjustments that can be performed in two hours or less.

Expressive activities and distributing written materials

New language in Subsections 443.2(17)(iii) and (iv) prohibits picketing, similar expressive activities, and distributing written materials. There are two issues.

First, Subsection 443.2(17)(iii) sets forth a complete prohibition on picketing and other types of expressive activity and, unlike Subsection 443(17)(iv), it does not allow for this type of activity with “the written agreement of the Department.” Subsection 443.2(17)(iii) needs to be amended in the final-form regulation to allow for such activity with a written agreement from the Department.

Second, there is no indication of how a person would apply for a “written agreement” with the Department or what criteria would be used by the Department in determining what activities would be allowed. These subsections should include a reference to a regulation that outlines the process whereby the public could file a request for a “written agreement.”

Facsimile Cover Sheet



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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Stephen Martin
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Phone: 7-5079
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Date: January 25, 2007
Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Transportation's regulation #18-408 (IRRC #2584). Upon receipt, please sign below and return to me immediately at our fax number, 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

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Accepted by *Stephen F. J. [Signature]* Date: 1-25-07