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INDEPENDENT REGULATORY REVIEW COMMISSION

August 27, 2008

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

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

Re: Regulation #18-411 (IRRC #2704)
Department of Transportation
School Bus Drivers

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

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Enclosure

cc: Honorable Roger A. Madigan, Chairman, Senate Transportation Committee
Honorable J. Barry Stout, Minority Chairman, Senate Transportation Committee
Honorable Joseph F. Markosek, Majority Chairman, House Transportation Committee
Honorable Richard A. Geist, Minority Chairman, House Transportation Committee

Comments of the Independent Regulatory Review Commission



Department of Transportation #18-411 (IRRC #2704)

School Bus Drivers

August 27, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the June 28, 2008 *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.

1. General - Fiscal impact.

The Preamble states that the proposed regulation will not impose any additional costs on school bus drivers or others in the regulated community. However, a commentator indicated that there will be additional costs which may not be covered by health insurance. There also will be direct costs for those without health insurance. Examples include the cost of an appointment with a physician to review the results of the tests and the cost of the HbA1C test itself. The Department should provide examples of the costs associated with the administration of the HbA1C test and the other new requirements when it submits the final-form version of this regulation.

2. Section 71.3. Physical examinations. – Protection of public health, safety and welfare; Reasonableness; Implementation procedures; Clarity.

Subsection (b) Requirements of physical examination.

In Subsection (b)(4)(i), what are “diabetic medications”? The final-form regulation should include a listing of specific types or examples of diabetic medications.

Must drivers meet the requirements of Subsections (b)(4)(i)(A), (B), (C) and (D) before being granted a waiver? If so, then the final-form regulation should include the following language: “a waiver may be granted to an individual

requiring the use of diabetic medications, **provided an individual meets all of the following:**” (Emphasis added.)

Subsection (b)(4)(i)(A) requires that “the individual’s physician verifies in writing that there has been no incident of severe hypoglycemic reaction...and the individual has been free from insulin reaction resulting in loss of consciousness, attention or awareness...for the preceding 12 months....” Why did the Department reduce this period from two years to 12 months? The final-form regulation should clarify how application of this timeframe protects the health, safety and welfare of students and other passengers in school buses driven by individuals with these health concerns.

Subsection (b)(4)(i)(C) Forms

Subsection (b)(4)(i)(C) refers to a “form provided by the Department.” The final-form regulation should provide more detail on this form, including its contents and whether it will be available on the Department’s website. This same concern applies to the forms mentioned in the existing language in Subsections (b)(4)(i)(B) and (b)(4)(v).

Subsection (b)(4)(i)(D) Self-monitoring

This subsection lists various requirements for how bus drivers must demonstrate their ability to manage their diabetes. However, the proposed regulation does not explain what happens if a driver determines her or his levels are too high or too low while the driver is on duty. Hence, it is unclear how this provision will protect the driver and passengers. The final-form regulation should clarify how these requirements will be used to protect the students and other passengers who are in the driver’s immediate care.

3. Miscellaneous clarity.

In the existing Subsection 71.3(b)(4)(v), what professions are included under the term “other health care providers”? The final-form regulation should include a definition for this term.

The final-form regulation should explain the difference between the following terms: “treating physician,” “school transportation physician,” and “physician conducting the 6-month diabetic examination.” What is the difference between the “school transportation physician” and the “school transportation medical practitioner”? The latter term is defined in Section 71.2 of the existing regulation.

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To: Stephen Martin
Agency: Department of Transportation
Phone: 7-5079
Fax: 2-2741
Date: August 27, 2008
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Transportation's regulation #18-411 (IRRC #2704). 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.

Accepted by  Date: August 27, 2008