



# Pennsylvania Farm Bureau

510 S. 31st Street • P.O. Box 8736 • Camp Hill, PA 17001-8736 •

Phone (717) 761-2740 • FAX 731-3515 • www.pfb.com

2745

February 18, 2010

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

**Re: Final-Form Version of Pennsylvania Department of Transportation Proposed Rulemaking on Intrastate Motor Carrier Safety Requirements – IRRC No. 2745, Reg. No. 18-414**

RECEIVED  
2010 FEB 19 PM 1:  
INDEPENDENT REGULATORY REVIEW COMMISSION

Dear Chairman Coccodrilli:

Pennsylvania Farm Bureau (“Farm Bureau”) urges the members of the Independent Regulatory Review Commission to take formal action to disapprove the final-form version of the aforementioned proposed rulemaking.

***Pennsylvania Farm Bureau –Background and Interest.***

Farm Bureau is the largest statewide general farm organization, with a farm and rural membership of nearly 47,000 farm and rural families in the Commonwealth.

Farm Bureau has a major interest in the regulations to be promulgated under this proposed rulemaking. The evolving nature of today’s agricultural economy has increasingly challenged the ability of Pennsylvania’s farm families to achieve and maintain economic viability for their farms and farm business operations. Farm families will be further hindered by regulations that impose needless or unreasonable requirements on farming operations, or that fail to clearly identify to the regulated community and to those in charge of enforcement which standards apply and which do not.

The proposed rulemaking will create serious problems for Pennsylvania’s farm families in the operation of agricultural vehicles and performance of needed transportation tasks around their farms and local communities. Furthermore, the proposed rulemaking fails to provide any specific guidance to either the agricultural community or to those officers in charge of enforcement on regulatory requirements that apply or not apply with respect to the use and operation of agricultural vehicles in local transportation.

### *Summary of Changes to Be Made in the Proposed Rulemaking.*

Pennsylvania has essentially been subject to the same set of regulations applicable to the operation of “commercial motor vehicles” in local commerce and their drivers for more than 15 years.<sup>1</sup> Pennsylvania’s intrastate motor carrier safety regulations, 67 Pa. Code Ch. 231, expressly provide a codified set of standards that give reasonably clear direction on what requirements apply and do not apply to farms and other businesses that operate vehicles exclusively within Pennsylvania.

With few exceptions, the proposed rulemaking will essentially gut this codified set of regulations and replace it with a broad-brush regulatory provision that generically provides the governing rules for Pennsylvania’s intrastate transportation are whatever applies under the federal motor carrier safety regulations if the vehicle were operated outside of Pennsylvania.

Unlike the federal regulations, which use weight and weight rating as the **only** criteria to distinguish between those “commercial motor vehicles” and drivers subject to regulation and those that are not, the current provisions of Pennsylvania’s intrastate motor carrier safety regulations make reasonable distinctions among particular types of vehicles and transportation in assigning applicable regulatory standards. These distinctions were made in Chapter 231 in recognition of the absurdity in applying federal commercial trucking requirements to local transportation, and the wisdom in providing to vehicles used in local transportation and their drivers and business owners relief from needless burdens that would be imposed under full application of the federal regulations.

More specifically, Section 231.2 expressly provides a blanket exemption from Chapter 231’s requirements to implements of husbandry and to farm trucks whose use and operation are restricted under Pennsylvania’s Vehicle Code to geographic areas within a prescribed distance of the farm.<sup>2</sup> Chapter 231.2 also provides a limited exemption to drivers of registered farm trucks operated intrastate from the requirements and standards normally imposed on commercial truck drivers and a limited exemption to “employers” of exempt farm truck drivers from recordkeeping, testing and other requirements normally imposed on commercial trucking companies.

The proposed rulemaking will essentially eliminate all of the exemptions that the current regulations provide to transportation performed as part of farming operations. If a vehicle or combination is greater than 17,000 pounds,<sup>3</sup> the driver and vehicle would become subject to the standards for drivers and vehicles imposed under the federal regulations. And the farmer would become subject to recordkeeping and other requirements imposed under the federal regulations upon “motor carriers” that employ drivers of regulated vehicles.

---

<sup>1</sup> A review of the published version of Chapter 231 of Title 67 of the *Pennsylvania Code* would indicate that there have been no changes made to this chapter since January 1, 1996, and suggests that the provisions of particular importance to Farm Bureau were originally promulgated in May 10, 1989.

<sup>2</sup> See, Sections 1302(2) and (10) of the Pennsylvania Vehicle Code, 75 Pa.C.S. §§ 1302(2) and (10).

<sup>3</sup> This is the applicable weight threshold for “commercial motor vehicles” subject to regulation under Chapter 231.

### ***The Commission's Legal Considerations in Determination of the Proposed Rulemaking.***

Section 5.2(b) of the Regulatory Review Act provides the following among the criteria that the Commission should consider in determining whether a proposed rulemaking is in the public interest:

- Direct and indirect costs to the Commonwealth, political subdivisions and the private sector.
- The nature of required reports, forms or other paperwork and the estimated costs of their preparation by individuals, businesses and organizations of the public and private sectors.
- The impact on the public interest of exempting or setting lesser standards of compliance for individuals or small businesses when it is lawful, desirable and feasible to do so.
- The clarity, feasibility and reasonableness of the regulation.
- Reasonableness of requirements, implementation procedures and timetables for compliance by the public and private sectors.

We believe the Department has legally failed to give due and proper consideration of these factors in its proposed rulemaking, and as such, should give the Commission due cause to disapprove the Department's proposed rulemaking as not in the public interest.

### ***Why the Commission Should Disapprove the Proposed Rulemaking.***

While other reasons may be given for "justification" of proposed rulemaking, the predominant reason behind the proposed changes is threat of loss of federal grant monies. Pennsylvania receives an estimated 8 million in federal monies to support the state's motor carrier enforcement programs. The Federal Motor Carrier Safety Administration (FMCSA) requires that for those states who receive federal grants, the regulatory standards governing "intrastate" transportation must be at least as stringent as the standards imposed for "interstate" transportation under the federal regulation.

FMCSA and FMCSA's threat of withholding federal funds from Pennsylvania are clearly the driving forces behind the proposed regulatory changes. State officials have admitted publicly that they are not seeking these changes.<sup>4</sup>

But as mentioned above, the regulatory response made by Pennsylvania in its attempt to make intrastate transportation regulations "as stringent" as the federal regulations is essentially to gut the current codified set of regulations replace these regulations with a single broad-brush provision that Pennsylvania's intrastate regulatory standards are whatever standards that apply to interstate commercial vehicles under the federal motor

---

<sup>4</sup> See statement of Lt. Raymond Cook, Commander of the Commercial Vehicle Safety Section, Pennsylvania State Police, in the February 15, 2010 issue of the *Somerset Daily American*.

carrier regulations. Farmers and others to be affected by the proposed rulemaking will be left to work through the maze of the federal motor carrier regulations in order to figure out what the proposed rulemaking's broad-brush regulatory principle will practically mean in the transportation activities that are performed on farms.

***1. Extension of federal standards will make it extremely difficult for farm families to manage their local agricultural transportation needs.***

The prevailing purpose behind the federal motor carrier safety regulations is the regulation of trucks and truck-towed combinations that are operated between states. As such, the federal regulations have virtually no express provisions for special use vehicles, such as farm tractors, whose use on highways is predominantly local and intermittent. It is not shocking that such provisions do not exist. It makes little sense to develop and codify regulatory standards for types of interstate transportation that rarely, if ever, occur. Farmers, whose farms are essentially located wholly within one state, have virtually no need to drive farm machinery from one state to another.

But the failure of FMCSA to develop particular standards for local transportation or for special use vehicles locally on highways and the proposed rulemaking's generic cross-reference to the federal motor carrier regulations in determining the legal applicability of intrastate transportation creates a particular and serious problem for the Commonwealth's agriculture and farm families.

A literal reading of the provisions of the federal motor carrier safety regulations would reasonably lead to the conclusion that the following restrictions and requirements will apply under the proposed rulemaking with respect to the operation of agricultural vehicles whose weight or weight rating is greater than 17,000 pounds:

- Individuals under 18 years of age, including farm family members, will no longer be able to operate any farm tractor or truck that is towing another vehicle (such as a farm trailer or non-motorized farm implement) around the farm.
- No individual will be able to operate any farm tractor or truck towing another vehicle around the farm unless the individual had been periodically examined by a physician and had been issued and is carrying the same medical certification card as a commercial truck driver.
- Every driver who operates any farm tractor or truck towing another vehicle around the farm, and every farmer who allows this operation, will be required to comply with the same requirements and restrictions that apply under the federal "hours of service" regulations to commercial truck drivers. Regardless of whether the farmer and driver are subject to the general rule or any of the "special rules" provided in the federal regulations, there will be significant restrictions in the times that drivers may operate the farm tractor or truck, and extensive documentation requirements that will be imposed on either the driver or the farmer to show the "hours of service" requirements are being met.

- Drivers of farm tractors and trucks will be required to perform daily pre-trip inspections of the vehicle's "safety" equipment, and complete and file written reports of end-of-day inspections for each day the vehicle is operated on a road. And farmers will be required to immediately respond to each report and keep records of reports and responses made.<sup>5</sup>

These requirements and restrictions will apply, regardless of the legal limitations in distance from the farm that are imposed for implements and many farm trucks under the state Vehicle Code, as mentioned above.

Farming operations commonly use farm tractors and trucks around the farm in a manner and weight that would subject their operation to the proposed rulemaking, and the requirements and restrictions identified above. In the overwhelming majority of situations, the federal regulations subject "articulated" vehicles (i.e. vehicle combinations, where a motorized vehicle is towing a trailer) to the full brunt of the regulation's requirements, regardless of whether the "articulated vehicle" is operated on a portion of the road that is contiguous or near to the business (farm) premises.

The proposed rulemaking will cause the full brunt of the federal regulations standards to flow down to the farm level, and apply to every operation of an agricultural vehicle meeting the "regulated vehicle" weight threshold on any public road and every driver who operates a "regulated" agricultural vehicle on a public road. Additional recordkeeping requirements will also be imposed on farmers who allow these vehicles to be operated on any public road.

Farm tractors and many trucks used around the farm serve no meaningful purpose to the farm operation unless they are operated in combination with trailers and other non-self-propelled farm implements. Many of the towing vehicles are themselves above the 17,000 pound threshold even before they would tow another vehicle, and many more cannot be feasibly used in combination by the farm at weights at or below the 17,000 pound threshold.

The requirements to be imposed under the proposed rulemaking will create a management nightmare for farm families in their continuing challenge to viably operate their farms and satisfy the farm's local transportation needs. Farm transportation needs are often unpredictable, and vary widely from day to day and from hour to hour because of weather and other factors beyond the control of farmers.

Not only will the proposed rulemaking eliminate a vital segment of family labor that farm families need and must use to sustain their farm operations. For virtually every trip that a "regulated" vehicle makes on a local road – including crossing the road – the proposed rulemaking will impose unreasonable and needless burdens upon farmers to work through the maze of federal regulations to decipher:

- who is eligible to operate a vehicle;
- which standards the driver of a vehicle must comply with absolutely;

---

<sup>5</sup> The list above does not include all of the adverse requirements and restrictions to be imposed on farm families.

- which standards the driver may be relieved from compliance under “special provisions” of the regulations; and
- which conditions or requirements must be met by the driver or farmer under the “special provisions” in order for the driver to be “relieved” from compliance with the general driver standards.

Working through the nuances of regulatory requirements and exemptions may be feasible for businesses like commercial trucking companies, which have a more specialized management and labor force and which exclusively focus their daily commercial operations on transporting cargo from one area to another. But it is hardly feasible to farmers, whose primary business focus is other than transportation and whose transportation activities are intermittent with many other tasks that must be performed on farms.

All of these burdens will be placed on farmers and farm employees without any enhancement of public safety.

***2. The federal regulations’ maze of regulatory requirements and limited or conditional “exemptions” are unworkable for farmers using agricultural vehicles in local transportation.***

The federal motor carrier regulations are a confusing patchwork of regulatory requirements with limited and conditional “exemptions” that may apply to “regulated vehicles” and drivers. Most often, these “exemptions” are specific in nature to particular situations or types of vehicle operation, and provide relief to only one facet of the numerous regulatory requirements that are generally imposed.

There is no attempt in the federal regulations to provide consistency in scope or application to common types of transportation employed by businesses, such as the types of uses of agricultural vehicles commonly performed by farms in local transportation. The driver of a “regulated vehicle” used for farming purposes and the farmer who utilizes the driver could be subject to differing requirements and exemptions each time the same agricultural vehicle is used on the highway.

The “exemptions” themselves often place obligations and requirements that a driver or the driver’s employer must meet in order for the “exemption” to apply. The “hours of service” provisions, for example, impose a general requirement for drivers of “regulated vehicles” to complete and for employers to keep records daily driver’s logs of on-duty, off-duty and driving time that demonstrate compliance with the regulations, but provide an “exemption” for “local transportation” performed by the business within a 100-air-mile radius of the business. Upon closer review, the “exemption” itself is no exemption at all, as the “exemption” itself is conditioned upon the driver reporting to and leaving from the same employment location each day and upon the driver meeting the restrictions in hours of employment and driving time and minimum requirements for continuous off-duty time that are specially prescribed for the “exemption” to apply. And the employer is required to keep and maintain adequate employment records that demonstrate all of the “exempt” drivers

meet all of the requirements and restrictions that are imposed under the “exemption” provisions.

“Exemptions” more specific to agriculture are of no practical help and are themselves inconsistent and unworkable. Drivers of both single-unit agricultural vehicles and agricultural vehicles operated in combination are exempt from commercial driver’s licensing requirements, but only if operated within 150 miles of the farm. Drivers of agricultural vehicles operated within a 150-mile radius may also qualify for other regulatory exemptions; however, this exemption only applies if the agricultural vehicle is a single-unit vehicle. Drivers of “articulated” agricultural vehicles operated in combination – such as a farm tractor towing a trailer or non-motorized farm equipment – cannot qualify for the exemption, including drivers of implements of husbandry and farm vehicles subject to distance restrictions imposed under the state Vehicle Code. Other exemptions that could potentially apply to the agricultural sector only provide relief to one specific component of the regulations’ driver requirements, or are extremely limited to specialized tasks.

Practically speaking, application of the federal regulations to local agricultural transportation provides no meaningful or consistent relief to farm families.

Unlike the current intrastate regulations, the proposed rulemaking will give no guidance on regulatory expectations that farmers and drivers of agricultural vehicles operated locally will be required to meet. As mentioned previously, the proposed rulemaking will essentially replace a long-standing, codified set of regulations with a single broad-brush provision that states Pennsylvania’s intrastate regulatory standards are whatever the regulatory standards are for interstate vehicles under the federal motor carrier regulations.

Federal regulations’ mishmash of general rules, inconsistent exemptions to rules, and prerequisite conditions and mandates imposed under “exemption” provisions – to be extended to intrastate transportation under the proposed rulemaking – will create major legal and practical confusion among farmers and enforcement officers in accurately assessing the regulatory standards that do and do not apply in particular operations of agricultural vehicles around the farm.

***3. The proposed rulemaking does not provide a complete analysis of costs to the Commonwealth, nor provides any meaningful analysis of the financial costs and burdens to be placed upon the agricultural sector.***

The regulatory analysis that accompanied the proposed rulemaking broadly expressed:

“There should be no adverse impact to any person or entities through the enactment of these regulations. **Intrastate motor carriers and drivers are already subject to the existing regulations in this Chapter.**” (Emphasis added)

“There should be no costs . . . to state government resulting from these amendments to the regulation.”

“There should be no costs to local governments resulting from the amendments to the regulations.”<sup>6</sup>

As indicated above, we believe the proposed changes will have the legal effect of expanding significantly the scope of drivers, “motor carriers” and activities subject to regulation under Pennsylvania’s intrastate regulations to include numerous segments that the current regulations truly exempt or impose very limited regulation. More specifically, a multitude of farm businesses will legally become subject to regulation and will need to comply with the documentation and recordkeeping requirements that, to this point, have been largely reserved for commercial trucking businesses.

Despite concerns that Farm Bureau has consistently expressed to the Department of Transportation both before and during the regulatory review process for this proposed rulemaking, no analysis has been offered to quantify what the significant expansion in regulatory scope will mean for those affected by the proposed rulemaking. As mentioned above, a large segment of family labor who are relied upon regularly in meeting the farm’s transportation needs will be lost as a result of the proposed rulemaking.<sup>7</sup> And farmers will be required to manage their limited labor force and unpredictable transportation needs in ways that ensure individuals who have the credentials of commercial truck drivers are readily available to operate farm machinery. And assuming they can even do so accurately, farmers will need to spend significant time and cost in working through the confusing maze of federal regulatory provisions to determine what applies and does not apply for each type of vehicle operation among the wide variety of types that occur around the farm.

The proposed changes will add substantially to the costs that farm families incur in operating their farms. And these changes will come at a time when many farmers in the Commonwealth are already economically burdened from severe reductions in commodity prices.

Assuming active enforcement of the rulemaking’s proposed changes, the significant expansion in scope of regulated entities, individuals and activities will logically affect significantly the commitment of time and manpower of state and local law enforcement. Not only will enforcement personnel need to take additional time to ensure each driver of agricultural vehicles has the credentials and documentation that is not currently required. Enforcement personnel will need to conduct additional investigations of farm businesses that will become subject to the “employer” requirements under proposed rulemaking to ensure they are properly keeping and maintaining all of the documents and records that the proposed rulemaking will require to be kept and maintained.

---

<sup>6</sup> See, Regulatory Analysis Form, pg. 4.

<sup>7</sup> It is worth pointing out to the Commission that PennDOT’s own records of accidents involving drivers of farm implements under 18 years of age demonstrate that there is no compelling reason for the proposed rulemaking’s prohibition of these drivers. In the 10-year span from 1999 through 2008, only 81 accidents involving farm implement drivers have occurred on roads near Pennsylvania’s 60,000 farms. For more than half of these accidents (43), the cause was not the fault of the implement driver.

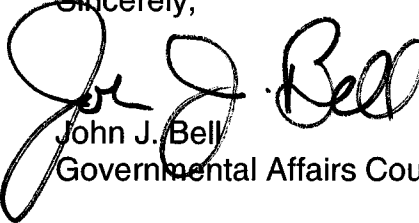


The proposed rulemaking fails to provide any meaningful analysis of persons who will be affected by the proposed rulemaking, the costs that the rulemaking will have on the individuals and businesses to be affected, or the adverse effects in costs or personnel management that the rulemaking will have upon those in charge of enforcement.

***Conclusion.***

While we are not oblivious to the potential fiscal effects to the Commonwealth in the wake of FMCSA's mandate for regulatory change, we strongly feel final promulgation of the proposed rulemaking will cause undue and unworkable hardship, cost, and confusion for Pennsylvania's farm families; will equally cause confusion in interpretation and application among enforcement officers; and will lead to erroneous, inconsistent and arbitrary enforcement of regulatory standards. Farm Bureau urges the Commission to disapprove the final-form version of the proposed rulemaking.

Sincerely,



John J. Bell  
Governmental Affairs Counsel

cc: George D. Bedwick, Vice Chairman  
Silvan B. Lutkewitte, III, Commissioner  
John Mizner, Commissioner  
S. David Fineman, Commissioner  
James M. Smith, Regulatory Analyst  
Michael Stephens, Regulatory Analyst

S:\jbj\Proposed State Regs\Amts to Intrastate MC Regs-Letter to IRRC-18 Feb 2010.doc

2745

Arthur Coccodrilli, Chairman  
Independent Regulatory Review Commission  
333 Market St, 14<sup>th</sup> Floor  
Harrisburg, PA 17101