

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

(All Comments submitted on this regulation will appear on IRRC's website)

3 MAY 22 AM 10:54

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IRRC

(1) Agency

Department of Transportation

(2) Agency Number:

Identification Number: 18-432

IRRC Number: 3013

(3) PA Code Cite:

67 Pa. Code, Chapter 231

(4) Short Title:

Intrastate Motor Carrier Safety Requirements

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Daryl St. Clair, 400 North Street, 6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17105, (717) 214-1883, DSTCLAIR@pa.gov

Secondary Contact: Jonathan Fleming, 400 North Street, 6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17105, (717) 772-1771, jonfleming@pa.gov

(6) Type of Rulemaking (check applicable box):

☒ Proposed Regulation

☐ Final Regulation

☐ Final Omitted Regulation

☐ Emergency Certification Regulation;

☐ Certification by the Governor

☐ Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

In April 2010, the Department amended the Intrastate Motor Carrier Safety Regulations to comply with the Federal Motor Carrier Safety Regulations. The Federal regulations provide that, in the event of an emergency, the Governor of a State may, by declaration, waive the regulations in order to deal with the emergent circumstances.

Under the current regulation, the Governor's declaration of emergency waives all of the provisions of the chapter. These amendments will permit the Governor, in issuing a declaration of emergency, to waive specified provisions of the regulation as necessary to deal with the specifics of the emergency without wholesale abandonment of other safety provisions in the regulations which do not need to be waived to address the emergency.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Sections 4704 and 6103 of the Vehicle Code, Act of June 17, 1976, P.L. 162, No. 81, *as amended* (75 Pa. C.S. §§ 4704 and 6103),

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The amendment is not mandated by any federal or state law, or court order or federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Under the current regulation, the Governor's declaration of emergency waives all of the provisions of the chapter. These amendments will permit the Governor, in issuing a declaration of emergency, to waive specified provisions of the regulation as necessary to deal with the specifics of the emergency without wholesale abandonment of other safety provisions in the regulations which do not need to be waived to address the emergency.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

The Federal regulations provide only for waiver of the entire chapter. These amendments represent a departure from the Federal provisions in allowing for a more limited response to emergent circumstances.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The regulation as it is today is the standard regulation which has been adopted by all of the other states. The amendment will provide the Governor with greater flexibility to waive only the regulations needed to provide emergency relief while continue to maintain the level of highway safety that is expected in the Commonwealth. The amendment will have no affect on Pennsylvania's ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

These amendments will not affect other Department regulations or the regulations of any other Commonwealth agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Input from the Pennsylvania State Police was solicited in the development of these amendments to the regulation.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

These regulations will affect all motor carriers and drivers who operate commercial vehicles in intrastate commerce, regardless of the type or size of the carrier operation or business serviced by the carrier(s). The department is unable to determine the number of persons or entities that will be affected. There are, however, approximately 400,000 individuals to whom the Department has issued a commercial driver's license.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

The department is unable to determine the number of persons or entities that are required to comply with the provisions of Chapter 231. This amendment of the waiver provisions in the regulation, however, imposes no additional requirements on motor carriers. As noted above, there are approximately 400,000 individuals to whom the Department has issued a commercial driver's license. There are roughly 3 million commercial drivers nationwide.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

This amendment will allow a more measured and precise response by the Commonwealth to emergent situations requiring waiver of motor carrier requirements, minimizing departure from the status quo while providing for the public safety in responding to emergency circumstances. For example, should there be a need to waive the hours of service requirements for motor carriers in order to respond to a shortage of drivers needed to deliver home heating fuel during a cold snap, those specific provisions could be waived, saving businesses the greater expense of contracting for additional drivers in the short term while not risking the public safety since other provisions of the regulation relating to equipment inspection and the like would remain in place.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The benefit of providing a limited waiver of specific provisions of the regulation in response to emergency circumstances under this amendment clearly outweighs the adverse impact that might result from wholesale waiver of the entire regulation which must be the Governor's response without this amendment.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There should be no cost to the regulated community. Waiver of portions of the Chapter should result in savings to the regulated community if the requirements of the Chapter are relaxed to deal with emergent circumstances.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There should be no change in the costs or savings to local governments from these amendments. The costs and savings to local government would be the same as to the regulated community noted above in (19).

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There should be no change in the costs or savings to state government from these amendments.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

There should be no change in legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, required from implementation of the amendment to the regulation

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

| | Current FY Year | FY +1 Year | FY +2 Year | FY +3 Year | FY +4 Year | FY +5 Year |
|-----------------------------|----------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| SAVINGS: | \$ | \$ | \$ | \$ | \$ | \$ |
| Regulated Community | N/A | | | | | |
| Local Government | N/A | | | | | |
| State Government | N/A | | | | | |
| Total Savings | N/A | | | | | |
| COSTS: | | | | | | |
| Regulated Community | N/A | | | | | |
| Local Government | N/A | | | | | |
| State Government | N/A | | | | | |
| Total Costs | N/A | | | | | |
| REVENUE LOSSES: | | | | | | |
| Regulated Community | N/A | | | | | |
| Local Government | N/A | | | | | |
| State Government | N/A | | | | | |
| Total Revenue Losses | N/A | | | | | |

(23a) Provide the past three year expenditure history for programs affected by the regulation.

| Program | FY -3 | FY -2 | FY -1 | Current FY |
|--|--------------|--------------|--------------|-------------------|
| MCSAP Program State & Federal monies | \$ 7,871,246 | \$ 7,826,380 | \$ 8,215,847 | \$ 8,017,960 |
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| <p>(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:</p> <ul style="list-style-type: none">(a) An identification and estimate of the number of small businesses subject to the regulation.(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.(c) A statement of probable effect on impacted small businesses.(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. <p>As noted in response to Item 16, this amendment of the waiver provisions in the regulation imposes no additional requirements on motor carriers. Consequently there is no adverse impact on motor carriers, on carriers who are themselves small businesses, or any small businesses which may utilize commercial drivers in their operations.</p> <ul style="list-style-type: none">(a) There are approximately 400,000 individuals to whom the Department has issued a commercial driver's license and roughly 3 million such drivers nationwide. It is not possible to further identify the number of carriers who are themselves small businesses, or by whom commercial drivers may be employed or with whom they may contract.(b) As noted in response to Item 22, there will be no additional recordkeeping or other administrative costs, nor any additional professional skills required of small businesses or any other entity as this amendment to the regulation imposes no additional requirements on the regulated community.(c) There should be no impact on small business except for benefit in the allowance of all businesses to operate more efficiently in the event of a waiver of regulatory provisions to respond to an emergent situation.(d) This amendment to the regulation, in fact, allows a less intrusive risk to public safety and allows more frequent and more efficient responses to emergent situations than can occur now under the existing regulation. | | | | |
| <p>(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.</p> <p>There are no special provisions in these amendments which address the particular needs of minorities, elderly small businesses or farmers.</p> | | | | |
| <p>(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.</p> <p>No alternative regulatory schemes were considered.</p> | | | | |

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

As noted in response to Item 16 and 24, this amendment of the waiver provisions in the regulation **imposes no additional requirements** on motor carriers. Moreover, to the extent that the amendment may facilitate more frequent waiver of some existing regulatory provisions in emergencies, the amendment will benefit carriers, especially those solo or smaller carriers for whom the federal regulations may seem more of an imposition. Compliance with the Chapter by the regulated community is neither lessened nor made more stringent by this amendment itself; compliance is not affected at all, except at such time as the Governor may ease some provisions of the regulation in response to an emergency. Consequently a flexibility analysis as contemplated by Act 76 is not possible for this amendment to the regulation.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data was not the basis for this regulation.

(29) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: 7/01/2013
- B. The date or dates on which public meetings or hearings will be held: N/A
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: 10/01/2013
- D. The expected effective date of the final-form regulation: 10/01/2013

E. The date by which compliance with the final-form regulation will be required:

10/01/2013

F. The date by which required permits, licenses or other approvals must be obtained:

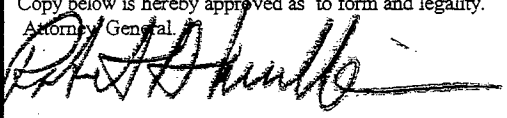

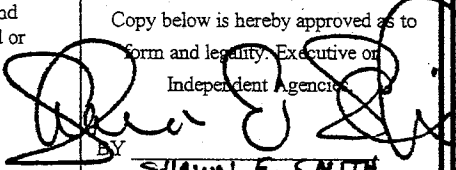
N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

These regulations will be reviewed periodically as appropriate to ensure continued effectiveness.

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| <p style="text-align: center;">FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU</p> <p style="text-align: center;">(Pursuant to Commonwealth Documents Law)</p> | | <p style="text-align: right;">2013 MAY 22 AM 10:54</p> <p style="text-align: center;">DO NOT WRITE IN THIS SPACE</p> |
| <p>Copy below is hereby approved as to form and legality. Attorney General</p> <p></p> <p>By: _____ (Deputy Attorney General)</p> <p style="text-align: center;">MAY 13 2013</p> <p>_____ Date of Approval</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p> | <p>Copy of below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:</p> <p style="text-align: center;"><u>Department</u> <u>of</u> <u>Transportation</u> (Agency)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>18-432</u></p> <p>DATE OF ADOPTION _____</p> <p>BY  Secretary of Transportation</p> | <p>Copy below is hereby approved as to form and legality. Executive or Independent Agency</p> <p></p> <p>BY SHAWN E. SMITH</p> <p style="text-align: center;">APR 18 2013</p> <p>_____ (Date of Approval)</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike Inapplicable Title)</p> <p><input type="checkbox"/> Check if applicable. No attorney General Approval or Objection within 30 days after submission.</p> |

DEPARTMENT OF TRANSPORTATION

Title 67 Transportation
Part I. Department of Transportation
Subpart A. Vehicle Code Provisions

Article II. Title

Chapter 231

Intrastate Motor Carrier Safety Requirements

PROPOSED RULEMAKING

Title 67. Transportation
Part I. Department of Transportation
Subpart A. Vehicle Code Provisions
Article VIII. Administration and Enforcement
Chapter 231. Intrastate Motor Carrier Safety Requirements

Notice of Proposed Rulemaking

Preamble

Notice is hereby given that the Department of Transportation, pursuant to the authority contained in Sections 4704 and 6103 of the Vehicle Code, Act of June 17, 1976, P.L. 162, No. 81, *as amended* (75 Pa. C.S. §§ 4704 and 6103), proposes to amend Chapter 231 of the Department of Transportation Regulations, Title 67, as set forth in Annex A to this Notice.

Purpose of Chapter

The purpose of Chapter 231 is to prescribe the minimum requirements and qualifications for drivers, vehicles, and other matters relating to the intrastate operation of commercial vehicles. In April 2010, the Department amended the Intrastate Motor Carrier Safety Regulations to comply with the Federal Motor Carrier Safety Regulations.

Purpose of the Amendments

The purpose of these amendments to Chapter 231 is to provide the Governor with greater flexibility to waive specified provisions of the regulation and retain other provisions as effective in dealing with circumstances warranting a declaration of emergency.

Summary of Significant Amendments

These amendments add language to the provisions of 49 CFR §390.23(a), heretofore adopted in this chapter, that will permit the Governor, in issuing a declaration of emergency, to waive specified provisions of the regulation as necessary to deal with the specifics of the emergency. Under the current regulation, the Governor's declaration of emergency waives all of the provisions of the chapter. The ability to issue a limited waiver of the regulation will ensure that the emergent conditions can be addressed by waiver of specified provisions without wholesale abandonment of other safety provisions in the regulations which do not need to be waived to address the emergency.

Persons and Entities Affected

These amendments will affect commercial drivers when circumstances prompt a declaration of emergency by the Governor.

Fiscal Impact

Implementation of these regulations will not require the expenditure of any additional funds by the Commonwealth or local municipalities. These regulations will not impose any additional costs on the regulated community.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act, Act of June 25, 1982 (P.L. 633, No. 181), *as amended*, 71 P.S. §745.5(a), the agency submitted a copy of this proposed

regulation on May 22, 2013 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Transportation Committees. In addition to submitting these regulations, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specified detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of comments, recommendations or objections.

Sunset Provisions

The Department of Transportation will make these regulations effective upon publication in final form following appropriate evaluation of any comments, suggestions or objections received during the period allowed for public comment. The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer provisions required pursuant to the Vehicle Code (75 Pa. C.S. §§101, et seq.). The Department, however, will continue to closely monitor these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amendments to the regulations to Daryl St. Clair, Bureau of Maintenance and Operations, 400 North Street, 6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17105 within thirty days of the publication of this notice in the *Pennsylvania Bulletin*

Contact Person

The contact person for technical questions about the proposed amendments to the regulations is Daryl St. Clair, Daryl St. Clair, 400 North Street, 6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17105, (717) 214-1883, DSTCLAIR@pa.gov.

Barry J. Schoch, P.E.
Secretary of Transportation

ANNEX A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

SUBPART A. VEHICLE CODE PROVISIONS

ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT

CHAPTER 231. INTRASTATE MOTOR CARRIER SAFETY REQUIREMENTS

Subchapter A. GENERAL

Proposed Rulemaking

§ 231.8 Additions or modifications to 49 CFR.

As stated in §231.7 (relating to adoption of portions of 49 CFR by reference), this chapter generally incorporates 49 CFR Parts 382, 385, 390, 391, 392, 393, 395 and 396. The following modification, additions and deletions to those parts apply:

(16) 49 CFR 390.23(a) (relating to relief from regulations) is modified to read as follows:

(a) Some or all of Parts 390 through 399 of this chapter shall not apply to any motor carrier or driver operating a commercial motor vehicle to provide emergency relief during an emergency, subject to the following limitations:

(1) *Regional emergencies.*

(i) The exemption provided by paragraph (a)(1) of this section is effective only when:

(A) An emergency has been declared by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; or

* * * * *

(iii) A declaration of emergency by a Governor of a State may limit the exemption provided by paragraph (a)(1) of this section to specified provisions of Parts 390 through 399 of this chapter.



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

May 22, 2013

David Sumner, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

**Re: Proposed Rulemaking
18-432 — 67 Pa. Code, Chapter 231
Intrastate Motor Carrier Safety Requirements**

Dear Mr. Sumner:

Enclosed please find a copy of the Face Sheet, Preamble, Annex A and Regulatory Analysis Form, for amendments to Chapter 231 of Department regulations which the Department of Transportation intends to adopt in accordance with the provisions of Section 5 of the Regulatory Review Act, Act of June 25, 1982, P.L. 633, *as amended* 71 P.S. § 745.5.

Copies of these materials were also delivered today to the majority and minority chairpersons of the Pennsylvania House and Senate Transportation Committees.

The Department of Transportation will provide IRRC with any assistance you require to facilitate a thorough review of this regulation. Thank you for your attention.

Very truly yours,

Stephen F. J. Martin
Regulatory Counsel



TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

I.D. NUMBER: #18-432
SUBJECT: Intrastate Motor Carrier Requirements
67 Pa. Code, Chapter 231
AGENCY: Department of Transportation



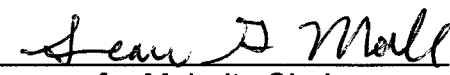
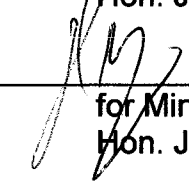

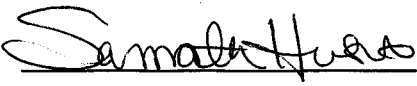
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TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor

FILING OF REGULATION

| DATE | SIGNATURE | DESIGNATION |
|---------|---|---|
| 5/22/13 |  for Majority Chair Hon. Dick L. Hess | HOUSE COMMITTEE ON TRANSPORTATION |
| 5/22/13 |  for Minority Chair Hon. Michael P. McGeehan | |
| 5/22/13 |  for Majority Chair Hon. John C. Rafferty, Jr. | SENATE COMMITTEE ON TRANSPORTATION |
| 5/22/13 |  for Minority Chair Hon. John N. Wozniak | |
| | N/A | OFFICE OF ATTORNEY GENERAL |
| 5/22/13 |  | INDEPENDENT REGULATORY REVIEW COMMISSION |
| 5/22/13 |  | LEGISLATIVE REFERENCE BUREAU |

Date: May 22, 2013