

## Comments of the Independent Regulatory Review Commission



### Pennsylvania Turnpike Commission Regulation #60-3 (IRRC #3307)

#### Traffic Regulations

August 18, 2021

We submit for your consideration the following comments on the proposed rulemaking published in the June 19, 2021 *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 Pennsylvania Turnpike Commission (Commission) to respond to all comments received from us or any other source.

**1. Compliance with the provisions of the RRA or the regulations of IRRC in promulgating the regulation; Possible conflict with statutes and regulations.**

Section 5.2 of the RRA (71 P.S. § 745.5b) directs IRRC to determine whether a regulation is in the public interest. When making this determination, IRRC considers criteria such as economic or fiscal impact and reasonableness. To make that determination, IRRC must analyze the text of the proposed regulation and the reasons for the new or amended language. IRRC also considers the information a promulgating agency is required to provide under Section 5 of the RRA in the Regulatory Analysis Form (RAF) (71 P.S. § 745.5(a)).

The information contained in the RAF submitted by the Commission at the proposed stage of review is not sufficient to allow IRRC to determine if the regulation is in the public interest. RAF #15 requires the promulgating agency to identify the types and number of persons, businesses, small businesses and organizations which will be affected by the regulation. The Commission's response does not address whether any of the approximately 800 registered vendors/businesses with "Class 9" accounts as reported for 2018-2019 would be considered small businesses, and if so, how many.

In the Preamble to the proposed regulation, the Commission states that it is funded primarily by tolls and bonds. It explains that a fiscal note was not submitted because there is no direct cost to the Commonwealth or local governments as a result of these proposed regulations. Under the Administrative Code of 1929 Section 612, the Office of the Budget must prepare a fiscal note for regulatory actions and administrative procedures of the administrative departments, boards, commissions, or authorities, receiving money from the State Treasury (71 P. S. § 232), and these entities must provide a fiscal note with every regulatory action and administrative procedure published in the *Pennsylvania Bulletin* (4 Pa. Code § 7.231).

4 Pa. Code § 7.234(a) (relating to Responsibilities) establishes the procedures for agencies that receive funds from the State Treasury and are, therefore, required to submit an RAF to IRRC under the RRA and those that are not required to submit an RAF to IRRC for a regulatory action or administrative procedure. Agencies that are required to submit an RAF, must provide one copy of the RAF and one copy of the regulatory action or administrative procedure, or changes thereto, to the Office of the Budget for review prior to it being deposited with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* (4 Pa. Code § 7.234 (b) and (c)).

The Commission reports that it does not receive appropriations from the Commonwealth other than those that are statutorily provided (oil company franchise tax revenues and motor license registration fee revenues in the form of annual capital contributions, which are the revenue stream for its bonds). We ask the Commission to explain how its *Fiscal Impact* statement is consistent with Section 612 of the Administrative Code of 1929, its accompanying regulations at 4 Pa. Code §§ 7.231-7.234 and the RRA.

## **2. Section 601.13. Evasion of fare. -- Clarity; and Possible conflict with or duplication of statutes or existing regulations.**

The Commission proposes to amend this section by referencing the language and penalties set forth in § 6110.1 (relating to Fare evasion) of the Vehicle Code and removing language that refers to paper toll tickets to reflect the conversion to a cashless tolling system.

### *Subsection (a)*

This subsection is being amended to read, in part, “Fines for evasion of fare, attempted evasion of fare **and affirmative action** are imposed by 75 Pa. C.S. §§ 6110.1(a) and (b) (relating to penalty and affirmative action).” [Emphasis added]

Section 601.13(b) identifies the actions that constitute evasion of fare or attempted evasion of fare. An individual who violates a Commission regulation under this subsection commits a summary offense under 75 Pa. C.S. A. § 6110.1(a) of the Vehicles Code. We believe it would add clarity to the regulation if the actions that constitute “affirmative action” as listed in 75 Pa. C.S.A. §6110.1(f) were included in the regulation.

In § 601.13(b)(2), the Commission proposes to delete the existing language and insert the following: “Operating a vehicle on the Turnpike System without a **valid Electronic toll collection device and/or** obstructing or covering the vehicle’s license plate.” [Emphasis added.]

The Transportation Code (Title 74) defines "*Electronic toll collection*" as “A system of collecting tolls or charges that is capable of charging an account holder for the prescribed toll by electronic transmission of information between a device on a vehicle and a device in a toll lane at a toll collection facility.” 74 Pa. C.S.A. § 8102

The term “*Electronic toll collection device*” is not defined statutorily or in the proposed regulation. It is unclear what is meant by a “valid” Electronic toll collection device. We ask the Commission, in a revised Annex to the final-form rulemaking, to define the term “*Electronic toll collection device*” and explain what makes a device valid.

Also, § 601.13(b)(2) contains non-regulatory language. The Commission should delete “and/or” and make each prohibition a separate paragraph. *See* § 6.15(b)(relating to Words and phrases) *Pennsylvania Code and Bulletin Style Manual*.

The Commission proposes to amend Section 601.13(b)(3) by deleting the existing language and replacing it with “Operating a vehicle on the Turnpike System without a license plate **and** valid vehicle registration.” [Emphasis added] Is it the Commission’s intent that both conditions must be present to be considered an attempted evasion of fare? We ask the Commission to clarify the intent of this proposed language.

### **3. Section 601.14. Over-dimensional/overweight vehicles. -- Clarity.**

In Subsection (a), the Commission proposes to delete the directory information for the Commission’s Safety Department. Subsections (a), (d)-(f) refer to the policies and procedures of the Commission. The Commission’s website provides additional information pertaining to Special Hauling Permit requirements such as when an escort vehicle is required, when the Engineering Department’s approval is needed and when a Pennsylvania State Police escort is required. We ask the Commission to explain why these additional requirements are not part of the regulation. The Commission should include in a revised Annex a statement indicating that the policies and procedures necessary to request and obtain a Special Hauling Permit can be accessed via the Commission’s website.

### **4. Miscellaneous.**

For consistency with the statutory definition of “*Electronic toll collection*,” should the term “appropriate” in proposed § 601.13(b)(4) be replaced with “prescribed?”