

Comments of the Independent Regulatory Review Commission



Department of Transportation Regulation #18-466 (IRRC #3166)

Vehicle Equipment and Inspection

May 24, 2017

We submit for your consideration the following comments on the proposed rulemaking published in the March 25, 2017 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA)(71 P.S. § 745.5b). Section 5.1(a) of the RRA (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. Determining if the regulation is in the public interest.

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

The Preamble included with this proposal is not sufficient enough to allow the Commission to determine if the regulation is in the public interest. While the Preamble provides a general overview of the changes made to the subchapters, it does not provide a rationale or detailed description for each section being amended. We ask the Department to provide a more detailed explanation of the intent of and need for all new language included in the rulemaking.

2. Legislative Comment.

Representative William F. Keller, Democratic Chairperson of the Pennsylvania House of Representatives Transportation Committee, submitted comments requesting the Department add language that would allow an inspection station to verify electronic vehicle registrations when they become available. He also requests that §§ 175.28(a), 175.43 and 175.51(a)(2)(iii), in addition to any other relevant sections, be amended to allow an inspection station, as opposed to the safety inspector, to verify financial responsibility in an electronic format. We will review the Department's response to Representative Keller's comments as part of our consideration of the final regulation.

Subchapter A. GENERAL PROVISIONS

3. Section 175.2. Definitions. – Clarity and lack of ambiguity; Consistent with statutes or existing regulations.

The Department is deleting the term “certified inspection mechanic” and replacing it with the term “safety inspector.” The Preamble to the proposed regulation does not explain why the Department is making the change. The Department should explain the need and statutory basis for the proposed amendment and how it plans to make the regulation consistent with Title 75 Chapter 47 (relating to Inspection of Vehicle) which references the terms: mechanic, certified official inspection mechanic and certified inspection mechanic.

Similarly, there are sections and subchapters of Chapter 175 (relating to Vehicle Equipment and Inspection) that reference the term “mechanic” that are not part of this proposal. For instance, Section 175.29 Paragraph (7) and Subsection (e) Paragraph (2) reference the term “certified mechanic.” Likewise “certified inspection mechanic” also appears in Subchapter K (relating to Street Rods, Specially Constructed and Reconstructed Vehicles). The Department should consider submitting a separate rulemaking to make consistent all the sections and subchapters of Chapter 175 with regard to terminology.

Subchapter B. OFFICIAL INSPECTION STATIONS

4. Section 175.21. Appointment. – Clarity, feasibility and reasonableness; Economic or fiscal impact of the regulation;

The Department is amending Subsection (b) to require a station that is applying for reappointment after a suspension to enroll in the Department’s e-Safety program prior to reappointment. A station must maintain its participation in the program as a condition of keeping its certificate of appointment. The Department does not provide a rationale for this amendment nor does it include a description of the e-Safety program. As such, we have three questions:

- What is the e-Safety program?
- What are the costs/savings to station owners that enroll, either voluntarily or mandated, in the state’s e-Safety program?
- What are the costs/savings to the Commonwealth to operate the e-Safety program?

The Department should provide a description and rationale for this amendment. The Department responded “N/A” to RAF #23, which requests an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local and state governments. Based on our review of the e-Safety program, we learned that there is a management fee of 18 cents per transaction. Therefore, “N/A” is not an appropriate answer as it does not consider the costs to members of the regulated community mandated to enroll in the state’s e-Safety program. The Department should report estimates of the costs associated with compliance of this section in RAF #23 along with costs to the Commonwealth to operate the e-Safety program.

As we understand, one of the benefits of the e-Safety program is that it “eliminates the need to maintain or retain MV431 or MV480 record books.” Since the e-Safety program is replacing manual forms with electronic records, the Department should revise its response to RAF #22 and provide either a link, copies of the forms, or a detailed description of the information to be reported. Section 5(a)(5) of the RRA requires that copies of forms or reports be submitted along with the proposed regulation and the RAF.

The Pennsylvania Automotive Association (PAA) commented that requiring an electronic safety inspection program is appropriate when a station has been suspended, but opposes requiring the station to enroll in the state’s e-Safety program indefinitely. PAA states there are a variety of providers that currently offer a compliant electronic safety inspection program that can provide assistance to a station after a suspension other than the state’s e-Safety program. PAA suggests the language be amended to allow for the use of other electronic safety inspection programs and to set a limit for mandated enrollment to a period of at least two years. In light of the PAA’s comments, we ask the Department to explain the rationale for this provision in the Preamble to the final-form regulation.

5. Section 175.22. Making application. – Clarity.

Subsection (b) Paragraph (4) is being amended to read that “cancellation of the bond or insurance shall automatically void the certificate of appointment. Inspections shall cease until the Bureau receives a new bond or proof of insurance **and the station has applied for appointment.**”

We believe the proposed language does not clearly indicate that the applicant must also serve a mandatory 3 month suspension and enroll in the e-Safety program before they can be reappointed and resume inspections. In the final regulation, we suggest the Department reference §§ 175.21(b) and 175.51 (4) “*Category 4*” new (x) in this section to make clear the Department’s intent.

6. Section 175.24. Required certificates and station signs. – Clarity, feasibility and reasonableness.

In Paragraph (2) the Department is proposing to include “the electronic processing of inspection data” to the sign that stations must display regarding the fees associated with state inspection. What is “electronic processing of inspection data” and how is it calculated or determined? The Department should explain in the Preamble to the final-form regulation what this fee is and how station owners will calculate it.

7. Section 175.25. Inspection area. – Clarity and lack of ambiguity.

New language in Subsection (a) Paragraph (5) requires that work areas remain free of debris with the required tools easily accessible. Is a “work area” different than an “inspection area?” If they are two separate areas, the Department should make a clear distinction between the two areas. Otherwise it is difficult for the regulated community to know what required tools must be easily

accessible in the work area. The Department should define “work areas” in the final-form regulation and include a list of required tools for the “work area” or state where the regulated community can obtain the list.

8. Section 175.28. Certified [inspection mechanics] Safety Inspectors. – Clarity.

The amendments to Subsection (a) relating to safety inspectors being able test drive vehicles equipped with adaptive controls lacks clarity. What are the circumstances under which a safety inspector would not be allowed to perform the test drive? Does the new language apply only to mechanics with a physical disability? In situations where the vehicle has been deferred to the entity that installed the adaptive device, does that entity need to be authorized to perform state safety inspections? If not, what is the process by which the entity verifies that the vehicle has passed the test drive portion of the state safety inspection? The Department should explain how it plans to implement this provision.

Subchapter D. SCHEDULE OF PENALTIES AND SUSPENSIONS: OFFICIAL INSPECTION STATIONS AND CERTIFIED [MECHANICS] SAFETY INSPECTORS

9. Section 175.51. Cause for suspension. – Clarity, feasibility and reasonableness; Economic or fiscal impact of the regulation.

In this section, the Department is proposing to significantly lengthen the duration of suspensions for certain violations and is adding three new types of violations to the schedule. In the *Summary of Significant Amendments* section of the Preamble, the Department does not provide a rationale for doubling or tripling the suspension time for certain violations and summarizes only two of the three new violations being added. The Department should provide the rationale and a complete summary of the proposed changes in the final version of the rulemaking.

PAA expressed concern that doubling or tripling suspensions for first-time violations could potentially put an inspection station out of business. It shares the same concern for the new violations being added to the schedule of penalties and suspensions. The PAA comments refer to Act 165 of 2016 (Act 165) which grants the Department greater flexibility in the types of sanctions it can impose on inspection stations and certified mechanics. Under Act 165, the Department may develop and implement a penalty schedule that would allow for the imposition of monetary penalties and warnings in lieu of suspensions when it deems them appropriate. We ask the Department to explain in the final-form regulation the rationale for increasing suspension times for certain offenses. The Department should also include whether it considered alternative sanctions such as monetary penalties as authorized by Act 165. If the Department considered and rejected other forms of sanctions in developing the schedule, it should revise its response to RAF #26 to reflect that discussion.

Subchapter E. PASSENGER CARS AND LIGHT TRUCKS

10. Section 175.80. Inspection procedure. – Clarity and lack of ambiguity.

Subparagraph (b)(1)(vi) is amended to read “The flexible steering coupler, **rag joint, or universal/flex joint is badly misaligned**, twisted or out of alignment between attaching collars.” The phrase “badly misaligned” was used in the original language and the Department is including it in its new language. How is “badly” measured? The same comment applies to Subparagraph (e)(3)(viii). The Department should revise the subparagraphs to establish standards that are measurable and easily understood by the regulated community and the public.

Subchapter G. RECREATIONAL, SEMI AND UTILITY TRAILERS

11. Section 175.130. Inspection procedure. – Clarity; Protection of the public health, safety and welfare.

The Department is deleting the reference to proof of financial responsibility for recreational, semi and utility trailers as part of the external inspection procedure. The Department states that it is no longer a requirement. We ask the Department to provide an explanation for the proposed amendment in the Preamble to the final-form regulation.

12. Miscellaneous.

- The Department should review its responses to RAF #24 (c). We believe there is an error as the language refers to “hazardous materials” and “federal standards.” The Department should delete these references.
- § 175.29(a)(3) uses the phrase “certified safety inspector” which is redundant based on the definition of “safety inspector.” The Department should remove the term “certified” before the word “safety.”
- § 175.80 (e)(6)(ix) reads “**The catalytic converter has had an external repair, been removed, disconnected or has an external repair.**” The Department should remove the redundant phrase from this sentence.