

3134

# Pennsylvania Farm Bureau

510 S. 31st Street, P.O. Box 8736 | Camp Hill, PA 17001-8736 | 717.761.2740 | www.pfb.com

March 28, 2016

Richard Roman, PE, Director  
Bureau of Maintenance and Operations  
Pennsylvania Department of Transportation  
400 North Street, 6<sup>th</sup> Floor  
Harrisburg, PA 17120

2016 MAR 30 AM 10:29

RECEIVED  
IRRC

Re: **Proposed rulemaking to amend 67 Pa. Code Ch. 189, *Hauling in Excess of Posted Weight Limit*, published in the February 27, 2016 issue of the *Pennsylvania Bulletin* (46 Pa. B. 991)**

**VIA FIRST CLASS MAIL AND EMAIL TRANSMISSION (riroman@pa.gov)**

Dear Mr. Roman:

Pennsylvania Farm Bureau ("PFB") appreciates the opportunity to offer comment on the aforementioned proposed rulemaking to amend Chapter 189 of the Department of Transportation regulations, governing allowances and requirements for use of posted roads in excess of posted weight limits.

PFB considers it critically important to the viability of local farms and to the overall integrity of the local agricultural and rural economy that effective but flexible regulations to manage and facilitate local movement of vehicles on posted roads be established. In that regard, we would offer the following for your consideration relative to the proposed rulemaking.

- 1. The provisions of Chapter 189, including those amendments to result from adoption of the proposed rulemaking, should fully apply to the administration and regulation of vehicles on roads under jurisdiction of local authorities, as well as to roads under state jurisdiction.***

Traditionally, the principles and standards established under Chapter 189 for administration of traffic on posted roads and the allowances and requirements for use of vehicles in excess of posted weight limits have applied equally to both state highways and highways under the jurisdiction of local authorities. Application of the governing principles of Chapter 189 to both state officials and municipal officials in charge of regulating the use of posted roads has both provided consistency in administration and regulation of vehicle use, and best ensures that farmers and others performing local transportation activities will not be subjected to inconsistent and arbitrary mandates when operating their vehicles in multiple municipalities.

Proposed § 189.4(b)(1)(v) would expressly exclude municipalities from subjection to the *Non-Bonded Authorization* permitting provisions of proposed § 189.4(b)(1), with the proviso that an individual municipality may select to become subject to administration of any of the *Non-Bonded Authorization* permit types prescribed in § 189.4(b)(1) upon enactment of an ordinance authorizing the municipality to grant such permitting types.

We believe there is no practical reason for establishing in Chapter 189 differing administrative obligations and criteria for municipalities as are established for state administration and authorization of vehicles in excess of posted weight limits. Standards for providing *Non-Bonded Authorization* permits by state officials for operation of vehicles on state roads should apply equally to local officials in regulation and administrative management of vehicles to be operated in excess of weight limitations posted for local roads. Continuation of full and equal treatment and application of Chapter 189, as amended, to both state officials and local officials will, in our opinion, best ensure consistency and minimize arbitrariness in administrative decisions related to use of vehicles in excess of posted weight limits regionally.

**2. *The meaning and intended effect of § 189.4(b)(1)(i)'s provision for permitting of "local traffic" is confusing, and may be interpreted in a way that conflicts with the local traffic exemption provisions of § 189.3.***

Proposed § 189.4(b)(1)(i) states:

*Local Traffic. User vehicles that are classified as local traffic in accordance with § 189.3 may be authorized as a local determination permit category if requested by the user. (emphasis added)*

While several changes were made to earlier draft versions in an attempt to lessen the confusion and potential conflict between this provision and § 189.3, we continue to believe there is considerable potential for confusion, misinterpretation and misapplication of this provision in the context of § 189.3's local traffic provision, especially relative to the movement of vehicles on roads subject to jurisdiction of local authorities.

Both current and proposed provisions of § 189.3 authorize outright the operation of vehicles meeting the definition of "local traffic" on posted roads in excess of the road's posted weight limits. It is only when the posting authority takes formal action to revoke authorization of local traffic on a posted road after valid determination that continued use of local traffic in excess of the road's posted weight is likely to cause damage when any "permitting" requirements become initially imposed.

Proposed § 189.4(b)(1)(i) does not attempt to define, limit or otherwise qualify application of permitting under this provision in the context of the local traffic exemption from permitting provided under § 189.3. And, as currently written, § 189.4(b)(1)(i) expressly conditions and requires the vehicle be classified as "local traffic in accordance with § 189.3" in order for the vehicle to qualify for the "local determination permit."

Some authorities may attempt to read the adoption of the proposed rulemaking as **requiring** § 189.3 and § 189.4(b)(1)(i) to be read and interpreted together.<sup>1</sup> Instead of an outright exemption of local traffic from permitting by operation of Chapter 189, as we believe is intended under the current regulation and the proposed rulemaking, authorities may assert they are “required” to limit the application of § 189.3’s local traffic exemption to only those vehicles whose users have obtained a local determination permit under §189.4(b)(1)(i).

PFB would strongly recommend that the final-form version of the proposed rulemaking more explicitly state that the local traffic exemption provided under § 189.3 applies without qualification or condition for additional permitting that may be prescribed in other provisions of Chapter 189, and more specifically identify in § 189.4(b)(1)(i) the circumstances for which a user may and must obtain “local determination permit” under this provision.

***3. The proposed scope of roads that may qualify for use as “local traffic” can potentially be more responsive to the transportation needs of farms and businesses that predominantly utilize local roads or are serviced by local suppliers and providers of services, but further clarification is recommended.***

The rulemaking proposes to make several changes to the definitions provisions of § 189.2, which substantively change the scope and legal effect of § 189.3’s local traffic exemption. The definition of “local traffic” itself would be amended to expressly recognize several additional types of vehicles whose use on local roads would qualify for exemption from permitting as local traffic to those already recognized under Chapter 189’s current provisions. § 189.2 would also be amended to add a definition of “reachable only through posted highways” for purposes of determining vehicles that qualify as local traffic.<sup>2</sup>

The current provisions of Chapter 189 have been traditionally read and interpreted to strictly limit the scope of routes considered to be exempt from permitting as “local traffic” to those routes for which the serviced farm or business is located on a posted road or those routes for which posted roads provide exclusive means of highway access to the farm or business to be serviced, without exception. We are not aware of any instance in which the exemption has been determined to apply to a user, if the user had access to any alternate route that avoided the use of posted roads altogether. Regardless of whether that alternate route detoured the vehicle to travel twenty miles or more additionally from a route that may would provide for travel over marginal distance of a posted road, the user would be required under the current provisions of Chapter 189 to utilize that alternate route, and the local traffic exemption would not apply. Such situations have and do occur often in rural areas.

---

<sup>1</sup> Principles of statutory interpretation direct that provisions related to the same class of persons or things should be construed and interpreted as one statute, if possible (referred to as the principle of *in pari materia*).

<sup>2</sup> Our comments to the proposed amendments to § 189.2 are specific to what we believe to be a reasonable and appropriate application of § 189.3’s local traffic exemption to vehicles that are operated by a farm or that are servicing a home, farm or business. We offer no comment with respect to the reasonability or appropriateness of application of exemption other types of vehicles proposed to be expressly added to the definition of “local traffic.”

The language proposed in the definition of “reachable only through posted highways” suggests an intent to expand the scope of route options that may be available to a user that qualify for exemption as local traffic. The proposed definition provides that, “If available, a **reasonable** alternate non-posted highway must be taken.” Inclusion of this language suggests that the local traffic can still apply to a route that minimizes use of posted roads without complete avoidance, if the alternate routes that completely avoid use of a posted road would cause the user to travel an unreasonable distance or would pose an unreasonable safety risk to the vehicle operator or to operators of other vehicles along the route of travel.

If the intent of this definition is to expand the scope of routes that can qualify for exemption as local traffic, we believe it is an important, and positive improvement to the current provisions and their strict interpretation that have nullified application of the exemption if **any** alternate route is available that completely avoids use of a posted road.

We recognize that numerous factors can affect the capability of individual vehicles to be operated in excess of posted weight limits without deteriorating the function or strength of roads. But it seems that in establishing what is not a “reasonable alternative non-posted highway” (i.e. what would be considered to be a reasonable use of a posted road by a local business instead of traveling an alternative route that involves full avoidance of posted roads), several guiding principles can and should be developed in regulation, relative to private carriage that a local business may perform on posted roads:

- In the case of a farming business that operates at more than one farm and is performing transportation activities between farm locations or between a farm and a local agribusiness center, an alternate route should be considered “not reasonable” if the use of the alternate route would cause the operator to travel more than five miles in excess of the distance of travel that would occur through use of a posted road, or if the additional distance of travel to result from use of the alternate route relative to the distance of travel on the particular posted road utilized would exceed a ratio of 10 to 1 (whichever is less).
- A businesses whose characteristics and scale of transportation activities are similar to farming should be afforded similar treatment that use of alternate routes to a posted road are “not reasonable” when the additional distance of diversion to be traveled on the alternate route would exceed the threshold distance or threshold ratio identified above.
- Use of an alternate route should be considered to be “not reasonable” if the weight of the vehicle performing private carriage on a posted road would not exceed more than twice the road’s posted maximum weight.
- There should also be principles to recognize use of an alternate route by a local business is “not reasonable” if the business’s use of a particular posted road in excess of posted weight does not exceed a certain number per time period.

Some additional analysis of each of the principles identified above may need to be performed to estimate the extent of road damage that may likely occur. But we do believe there are opportunities for development of principles that can absolve smaller businesses performing routine transportation tasks from the onerous choice of lengthy detours in travel

routes or obtaining road damage bonds, and that inclusion of these and similar principles in regulation should be pursued and developed by the Department.

***4. Several further amendments are recommended for the provisions of § 189.3(c) for “proof of local traffic status.”***

Proposed §189.3(c) attempts to provide for a list of documents that, if carried on an oversize vehicle whose operation qualifies for exemption from permitting as local traffic, would serve as proof that the vehicle is traveling to a destination that is located on a posted road or is reachable only thorough posted roads. While inclusion of a list of self-proving documents is helpful, PFB recommends language be added to expressly state that the list of documents identified in the subsection is not exclusive, and other evidence or documentation may be provided to demonstrate the vehicle qualifies for local traffic status.

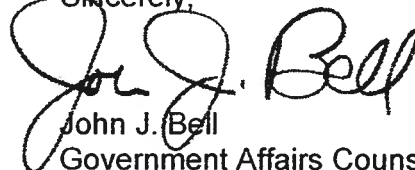
§ 189.3(c) seems to suggest only hard copy, paper documents may be used to self-prove a vehicle’s destination as qualifying for exemption as local traffic. It is not uncommon for an individual vehicle’s daily route and the destinations for delivery of materials on a particular delivery day to be altered substantially from the route and destinations originally planned and assigned for the vehicle, and for those changes to occur while “on route” after the vehicle and driver have departed from the starting location. Customer orders may be added, modified or terminated, causing a supplying vehicle to travel to new destinations or pursue alternative destinations to facilitate the business’s transportation needs.

When midstream changes do occur in a daily route, it may not be feasible for the driver to return to the employer’s business office or terminal to receive hard copies of the shipping documents. With the advancement of technologies such as smartphones and online vehicle access, drivers are able to receive electronic forms of confirmation and documentation consistent with changes in pick-ups and deliveries that the driver is directed to perform. PFB believes that shipping documents and memoranda from the driver’s company that the driver is able to produce in electronic form and confirms the qualification of the vehicle for local traffic status should also be expressly recognized in §189.3(c) as providing self-certification proof of such status.

***Conclusion.***

Thank you again for the opportunity to submit comments, relative to this proposed rulemaking. Please feel free to contact us by telephone at 717-731-3547 or by email at [jjbell@pfb.com](mailto:jjbell@pfb.com) if you have additional questions regarding the comments provided above.

Sincerely,

A handwritten signature in black ink that reads "John J. Bell". The signature is written in a cursive, flowing style.

John J. Bell  
Government Affairs Counsel