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March 28, 2016

Mr. Rich N. Roman, P.E., Director  
Bureau of Maintenance and Operations  
Department of Transportation  
400 North Street, 6<sup>th</sup> Floor  
Commonwealth Keystone Building  
Harrisburg, PA 17120

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(Docket Number: 16-320)

**Re: Comments on Chapter 189 – Hauling in Excess of Posted Weight Limits**

Dear Mr. Rich Roman:

Stahl Sheaffer Engineering, LLC submits the following comments on the Proposed Rulemaking for Hauling in Excess of Posted Weight Limits.

If there are any questions, comments, or concerns please contact me at 814-689-1562 or via email at [bhoffheins@sse-llc.com](mailto:bhoffheins@sse-llc.com).

Sincerely,



Brian Hoffheins, P.E.  
Project Manager

Chapter	Location	Title	Current	Revision/Comment	Justification
Preamble		Sunset Date	The Department is not establishing sunset date	A sunset date needs to be maintained for "At-Risk Industry Sectors"	Act 13 Section 7 establishes the Department's authority to provide letters of local determination for at-risk industry sectors, and includes a sunset date of Dec 31, 2015. Act 89 extended the sunset date to December 31, 2018. Title 75 § 4902(a)(5) includes the December 31, 2018 sunset date. It is not the intent of these laws to enact this "at-risk industry sectors" for perpetuity.
189	.2	Definitions	At-Risk industry Sector - ... and additional industry sectors that the Department determines, in consultation with the Department of Labor and Industry, to show evidence of economic decline.	Provide quantification and qualifications of "economic decline"	Title 75 § 4902(a)(4) states that an at-risk industry is one that has experienced a 20% decline from 2002-2011 as determined by the Department of Labor and Industry, Proposed Ch. 189 now gives the Department of Transportation discretion to classify industries as "at-risk", without defined statistical or period limiting criteria. This would allow the Department to potentially define any industry showing even a de minimis decline as "at-risk" (i.e. the hypothetical industry which made \$1 less profit from one quarter to the next), which is not equitable, nor the intention of Act 13, Act 89 and Title 75 § 4902.
189	.2	Definitions	Excess Maintenance - [caused by use of over-posted weight vehicles]	Do not delete. Replace with caused by user vehicles.	The clause "caused by use of over posted weight vehicles" should not be removed, but should be revised to read "caused by user vehicles" for consistency with the new definitions. Title 75 § 4902(c)(1) states that "the commonwealth... may issue permits for movement of vehicles of size and weight in excess of restrictions... and may require such agreement or security as they deem necessary to cover the cost of repairs and restoration necessitated by the permitted movement". The intention of the permit, bond and agreement is to make users pay for damage necessitated by their use, or in other words, "caused by user vehicles." This is a key clause in the definition of Excess Maintenance and one that is referred to commonly in practice. Users should not be required to pay for excess maintenance caused by others unless specifically allowed by statute (i.e. at-risk industry users). There is no specific statutory authorization for requiring permitted users to pay for damage caused by local users or other unusual circumstances unrelated to their hauling.
189	.2	Definitions	Freeze-thaw period -	Add - If the posting authority alters or modifies the time period, all bonded users affected by the change shall be notified.	Bonded users are financially responsible for excess maintenance created by user vehicles exempted by section 189.3. The Excess Maintenance Agreements requires the bonded users to notify the posting authority if they become aware of unpermitted haulers as described in the Haulers Without Permits section. Notifying the bonded users will inform them that exempted vehicles can legally haul during the unmodified thaw dates.
189	.2	Definitions	Heavy User - The user responsible for generating 700 loads in an 12-month period on a particular posted highway.	Add - The posting authority may increase the load minimum-use threshold based upon highway conditions.	There are weight restricted roadways that have adequate structural strength to accommodate more than 350 loads per travel lane per year. This is allowed in Title 75 § 4902(c)(2)(iii) The department may alter the 700 loads per year minimum-use threshold if it determines the structural capacity of the State highways can accept a higher or lower amount of over-posted weight traffic

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189	.2	Definitions	Heavy User - The user responsible for generating user vehicles equal to or exceeding 700 loads in any 12-month period on a particular posted highway.	Revise to: A user responsible for generating user vehicles equal to or exceeding 700 loads in any 12-month period on a particular portion of posted highway.	Provides additional clarity that the heavy user threshold is only triggered per a portion of posted highways. Ex: user has multiple locations along a posted highway, but only the segment nearest the non-posted highway is over the 350 loads/lane threshold, thus only that segment is heavy use.
189	.2	Definitions	Industry Sector - A sector included in the North American Industry Classification System.	Revisions are required to M-4902APP	Clarify that this Industry Sector may not be the Industry code on M-4902APP Application to Add or Remove Highway.
189	.2	Definitions	Letter of local determination - A determination made by the Department identifying particular vehicles, routes or uses as local in nature.	Revise to: A determination made by the posting authority identifying particular user vehicles as local in nature and therefore exempt from excess maintenance, forbearing an violation of this 4902, section, or pertinent regulation or agreement.	Provides additional clarity. Allows for posting authorities to enact ordinances that utilize this definition. Additionally, "routes" cannot be deemed "local". (It is noted however that the current definition in Chapter 189 is consistent with Act 13 and Title 75 § 4902).
189	.2	Definitions		Add definition of Highway from Excess Maintenance Agreement. Highway - Any highway or bridge on the posting authority's system of highways and bridges, including the entire width between right-of-way lines, together with any improvement placed within this right of way, over which the posting authority has assumed, or has been legislatively given, jurisdiction.	Highway is used in Chapter 189 and 190 but not defined. This is an important definition to incorporate because it includes bridges, and the entire width between the right-of-way lines. This will provide direction to local authorities concerning which items are susceptible to excess maintenance. Additionally, all mentions of "roadway" should be replaced with highway.
189	.2	Definitions		Add definition of Betterment from Excess Maintenance Agreement. Betterment - Improvements to the highway beyond the state of repair existing at the date of the initial inspection.	Betterment is used in the definition of Excess Maintenance, but not defined.
189	.2	Definitions	Local Traffic - (iii) Government-owned vehicles	Provide clarity concerning "government"	It may be the intent to consider these user vehicles local, but additional clarity would confirm/deny. Do state agencies outside of PA qualify? Do Federal agencies qualify? U.S. Army Corp of Engineers, Department of Corrections, AMTRAK, Susquehanna River Basin Commission, Counties.
189	.2	Definitions	Local Traffic - (iv) User vehicles of local governmental agency or Department contractors engaged in or providing material for construction or maintenance located on or reachable only through posted highways.	Revise to: User vehicles contracted by government agencies per Section iii and engaged in or providing material for construction or maintenance of government agency property (including posted highways) located on or reachable only through posted highways.	Provides additional clarity. Original definition lacks clarity concerning "local" and what can be constructed or maintained.
189	.2	Definitions	Local Traffic - (v) User vehicles of utilities or their contractors engaged in maintenance located on or reachable only through posted highways.	Revise to: User vehicles owned by utilities or user vehicles contracted by utilities engaged in maintenance of utility facilities located on or reachable only through posted highways.	Provides additional clarity.

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189	.2	Definitions	<p><i>Local Traffic</i> - (vi) User vehicles going to or coming from a residence, commercial site, farm or local government or Department facility located on or reachable only through posted highways.</p> <p><i>Normal Maintenance</i> - The usual and typical activities necessary to maintain the highway, roadway, shoulders and drainage facilities in the state of repair existing at the date of the inspection....</p>	Revise to be consistent with section (iii) and (iv).	Important to include highway (and include a definition of highway) in order to incorporate the clauses "highways and bridges, including the entire width between right-of-way lines, together with any improvement placed within this right of way"
189	.2	Definitions	<p><i>Reachable only through posted highways</i> - One or more posted highways needed to travel to a location from the nearest nonposted highway or from the location to the nearest nonposted highway by the most direct route possible. The most direct route may not include posted highways which can be avoided by travel on nonposted highways. If available, a reasonable alternate nonposted highway must be taken.</p>	Revise to: Normal Maintenance - The usual and typical activities necessary to maintain the highway, roadway, shoulders and drainage facilities in the state of repair existing at the date of the inspection....  Revise to: <i>Reachable only through posted highways</i> - A location that cannot be accessed with the avoidance of posted highways, or the avoidance creates an unreasonable alternate route. If a reasonable nonposted route conducive to the user operation is available, the user must use the nonposted highway portions. The reasonable alternate route(s) along nonposted highways may be less direct than the posted highways.	Revise to be consistent with Title 75 § 4902 (c)(1).
189	.3(b)	User Vehicles	<p><i>User Vehicles determined likely to damage highway.</i> After 2 business days following delivery of the notice, or after 5 days following mailing of the notice user vehicles may not exceed the posted weight limits....</p>	Revise to: After 2 business days following confirmed delivery of notice, by certified mail or otherwise, user vehicles may not exceed the posted weight limits ....	Consider the situation where posting authority makes a "notice" that is unreceived by user, either it be a text, voicemail, email, etc. Notice needs to have a confirmed delivery/receipt.

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189	.3(b)	User Vehicles	User Vehicles determined likely to damage highway.	Add: Upon receipt of a notice from bonded users indicating that local traffic may have caused excess maintenance, the posting authority shall conduct an interim inspection and distribute the report to all bonded users. The interim inspection shall result in a written report detailing the results of the inspection, and the report shall be distributed to bonded user(s). If there has been a change in roadway condition due to local traffic, the report shall include a determination of the excess maintenance for which the bonded user(s) shall not be liable and any further administrative requirements of the local traffic. If the authority has determined that local traffic has caused or is likely to cause damage, the authority shall act in accordance with section 189.3(b).	It is requested that there be a mechanism by which other Users can notify the department of local user vehicles causing damage, triggering (1) posting authority investigation to determine local user damage and to act according to 189.3(b) or (2) the posting authority to record damage caused by Local Users which the Department has decided not to restrict, and confirm that the recorded damage is not the responsibility of other bonded Users.
189	.4(a)	Use Under Permit	General Rule. ....A single permit may authorize permit categories for local.....	Revise to: A single permit shall not authorize permit categories for local....	The grouping of multiple permits and/or highway segments onto one permit creates undue hardship for the user to control the use of said permits as dictated by the Excess Maintenance agreement (The USER is responsible for controlling its permit). How should a user authorize contractors to utilize only portions of a permit that contains multiple highways? Is the Department willing to issue modified permits that indicate specific limits? Currently District 4 issues multiple roadway segments on a permit, and when the roadway segments are modified, the permit is reissued: with the original issue date, and permit number, thus there is no means to determine which version of the permit is current.
189	.4(a)	Use Under Permit	General Rule. ....An original or copy of the issued permit must be carried in the user vehicle at all times.	Delete in its entirety.	This is simply not practical, and is an undue hardship, for bonded users with that are contracted with multiple contractors and sub-contractors. The requirements for documentation is sufficiently defined for bonded and local determination permit categories is sufficiently defined in 189.3(c), 189.4(a) and 189.4(b)(1)(vi). Publication 23 Chapter 15 includes this statement which is accurate and identifies the difficulties of carrying permits "Normally, the vehicles in question belong to (or are hauling under contract with) customers or suppliers of the USER and would include such businesses as quarries, power plants and manufacturing."
189	.4(b)(1)(ii)	At Risk	At-risk. The Department may use an at-risk permit category when the user belongs to an at-risk industry sector and is hauling on a posted highway currently bonded by an unconventional oil and gas development company.	Delete "and is hauling on a posted highway currently bonded by an unconventional oil and gas development company."	75 § 4902(a)(4) does not require that exemptions for at-risk industry sectors be limited to highways bonded by unconventional oil and gas development companies, and doing so unfairly and inappropriately singles out the unconventional oil and gas industry.



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189	.4(b)(1)	Local Determination	Local determination. User vehicles may be authorized to exceed a posted weight limit on local determination highways without an excess maintenance agreement and security if the user vehicles meet one or more of the following criteria.	Revise to: User vehicles may be authorized under section 189.3 to exceed a posted weight limit without entering into an excess maintenance agreement and security, if the user vehicles meet one or more of the following criteria:	"local determination highways" needs to be deleted because highways are NOT determined local, rather the USER VEHICLES that utilize highways are determined to be local. Additional revisions are for clarity.
189	.4(b)(1)(iv)	Local Determination	Minimum Use. ...a heavy user for a particular highway.	Revise to: a heavy user for a particular portion of highway.	Consistency with definitions of Heavy User and Load.
189	.4(b)(1)(iv)	Local Determination	Minimum Use. ...This category is restricted during the designated freeze-thaw period....	Revise to: This permit shall not be valid during the designated freeze-thaw period...	Provides clarity to the "restriction".
189	.4(b)(1)	Local Determination	Subsections (ii) and (iii)	Add the clause: This permit shall not be valid during the designated freeze-thaw period...	Provides clarity. These authorizations are currently limited in Chapter 190, but the clause is not easily identified. Chapter 190.3(e)(4) Letters of Local Determination are not valid during the freeze-thaw period.
189	.4(b)(1)(v)	Local Determination	Application to local highways. ...unless the local authority elects to enact an ordinance adopting the minimum use permit category.	Revise to: ...unless the local authority elects to enact an ordinance adopting the policies and procedures as such.	Consistency with Chapter 190. Why would the "at-risk" and "de minimis" categories specifically require a "minimum use" category ordinance, rather than an ordinance adopting their own categories?
189	.4(b)(1)(vi)	Local Determination	Use of Copy. A user may copy a permit issued for a local determination highway for vehicles owned or operated by the user but may not copy and share a permit issued for a local determination highway with any other user or their contractors and subcontractors.	Revise to: A user may copy a local determination permit for authorization of vehicles owned or operated by the user but may not copy and share a local determination permit with any other user or their contractors and subcontractors..	Add local determination for clarity. The clause "local determination highway" needs to be deleted because highways are NOT determined local, rather the USER VEHICLES that utilize highways are determined to be local.
189	.4(b)(2)	Annual and seasonal bonded	Annual and seasonal bonded. User vehicles may be authorized to exceed a posted weight limit on highways which cannot be authorized under paragraph (1)...	Revise to: User vehicles may be authorized to exceed a posted weight limit on highways for operations which cannot be authorized under paragraph (1)...	Clarity.
189	.4(b)(2)	Annual and seasonal bonded	Annual and seasonal bonded.	Delete "annual" and "seasonal" in their entirety from Chapter 189, and replace with one "bonded" permit category.	Simplicity. The performance requirements of a bonded user are the same for all bonded users, regardless of the portion of the calendar year, duration, freeze-thaw, or other authorizations granted during other dates.
189	.4(c)	Excess Maintenance Agreement	Excess Maintenance Agreement - Bonded authorization shall be condition on an agreement by the user to accept financial responsibility for excess maintenance of the posted highway or portion thereof to be used by the user.	Revise to: Bonded authorization shall be condition on an agreement by the user to accept financial responsibility for excess maintenance.	Simplicity and clarity. The inclusion of "portion thereof to be used by the user" allows for misinterpretation. Example based upon current language: a portion of highway is permitted but not USED, therefore user could argue they are not financially responsible for that portion.

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189	.4(c)	Excess Maintenance Agreement	Excess Maintenance Agreement - 189.4(b)(1)(v) 189.4(b)(2)(ii) 189.4(d)	Add a clause allowing payment in lieu. Suggested: The posting authority and user(s) may agree to pursue a payment in lieu of the performance of excess maintenance. At the mutual option of the user and posting authority, the user(s) agree to make payment to the posting authority for all estimated costs, which shall fulfill the users obligation under the Excess Maintenance Agreement. The posting authority reserves the right to utilize the payment at their discretion.	In some cases, the excess maintenance may be minor in nature, or not sufficient to warrant repair, or not cost effective to repair, or may be superseded by a betterment or maintenance project. The posting authority could elect to use these funds for other higher priority needs under their jurisdiction.
189	various		189.4(b)(1)(v) 189.4(b)(2)(ii) 189.4(d)	Comment: remove the term "nonbonded" from the three occurrences.	The term is redundant. Can be simplified by replacing with "local determination".
189	.4(d)(1)(I)(C)	Bonding Amounts	\$50,000 per linear mile for any highway which the posting authority allows to be maintained below a level consistent with the type of highway.	Revise to: ....consistent with the initial condition.	The type of highways data provided by the Department in Publication 23 Chapter 15 Appendix 15A-10 are antiquated. The revised clause provided additional flexibility to the authority.
189	.4(d)(1)(iii)	Duration of Security	The security will remain in effect until it is release by the posting authority.	Replace with: The user shall maintain the security, and posting authority shall hold the security until the obligations under the excess maintenance agreement have been fulfilled.	Fundamentally there needs to be qualifications concerning the release of the security. The current language implies that the authority can hold it indefinitely.
189	.4(d)(1)(iii)	Schedule of Bonding Amounts	Schedule of bonding amounts - The department may from time to time.... Publish a revised schedule of bonding amounts based on increase or decreased maintenance costs. Additional Security - ....may require the highway to be maintained or reconstructed within 30 days unless the user agrees to provide additional security...	Suggested revision: delete "based on increase or decreased maintenance costs."	The current bonding amounts are not established by maintenance costs. Provides more flexibility to the Department.
189	.4(d)(3)	Additional Security	Additional Security - ....may require the highway to be maintained or reconstructed within 30 days unless the user agrees to provide additional security...	Replace with... may require the excess maintenance to be performed within 30 calendar days upon confirmed receipt of notice unless the user agrees to provide additional security..	Clarity and consistency with other sections of Chapter 189.
189	.4(e)	Multiple Users	Multiple Users - Multiple users shall conform with the following: Agreement to share excess maintenance responsibility - ...for the cost of excess maintenance and the posting authority will enter into agreements and accept security on the basis of the agreed shares.	Replace with: Multiple bonded users -Multiple bonded users shall conform with the following	Clarity.
189	.4(e)(1)	Multiple Users	Multiple Users - ...for the cost of excess maintenance and the posting authority will enter into agreements and accept security on the basis of the agreed shares.	Delete: "and the posting authority will enter into agreements and accept security on the basis of the agreed shares."	This provision is not necessary.
189	.4(e)(2)	Multiple Users	Determination by posting authority - ... the posting authority may determine their relative shares.... Determination by posting authority - ... and enter into agreements with and accept security from any person agreeing to the determination....	Change may back to shall	This section is prefaced by the assumption that multiple users cannot agree on their cost sharing percentage. When that occurs, there needs to be an entity that shall/will establish cost sharing.
189	.4(e)(2)	Multiple Users	Multiple Users	Change "person" to bonded user	"person" is not an entity in this regulation.

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189	.4(e)(2)	Multiple Users	Determination by posting authority - ... and enter into agreements with and accept security from any person agreeing to the determination...	Replace with: and enter into agreements with an accept security from bonded users as established by the determination..	The multiple users shall agree upon the determination. If not, they have Administrative Agency Law, 2 Pa. C.S §§ 101-754.
189	.4(f)	Determination of highway condition	Determination of highway condition - ... shall consist of the following:...	Replace with: ... shall consist of a visual inspection in accordance with PennDOT Publication 336 and documented in writing and supplemented with video and photos, and the following:	This is Department standard practice, but should be specifically incorporated into the regulation legislated so that it applies to all posting authorities.
189	.4(f)(1)	Determination of highway condition	Inspection -	Change title to: <i>Initial Inspection</i> .	Consistency with Publication 23 Chapter 15 and clarity.
189	.4(f)(1)	Determination of highway condition	Inspection - ...immediately before issuance of a permit to determine its condition.	Revise to: ... immediately before issuance of a bonded authorization to determine its condition.	Inspections are only required for bonded permits/authorizations, and not necessary for local determinations. Bonded users should not be charged for inspections that are a result of local traffic determinations.
189	.4(f)(2)	Determination of highway condition	Interim inspection or reinspection. The posted highway will be reinspected:	Revise to: Interim and final inspections. The posted highway will be reinspected:	Consistency with Publication 23 Chapter 15 and clarity.
189	.4(f)(2)(i)	Determination of highway condition	Upon issuance of any new permit.	Revise to: Within fifteen (15) calendar days of receipt of request to add bonded user.	Inspection should be before issuance of new permit. Inspections are only for bonded permits/authorizations. Consistency with Publication 23 Chapter 15, Inspection Procedures, and to apply to all posting authorities.
189	.4(f)(2)(ii)	Determination of highway condition	From time to time as the posting authority determine repairs may be required.	Revise to: From time to time as the posting authority is notified of or concerned that excess maintenance may be required.	Consistency with Publication 23 Chapter 15 and clarity, and to apply to all posting authorities. Fundamentally, there should be a process for the posting authority to follow when they receive notice of a change in roadway condition. Notice may come from users or public.
189	.4(f)(2)(iii)	Determination of highway condition	Upon termination of any permit to determine the amount of damage for which the user or users are responsible.	Revise to: Within fifteen (15) calendar days of receipt of request to remove bonded user to determine if the user or users are responsible for any excess maintenance.	Consistency with Publication 23 Chapter 15 and clarity, and to apply to all posting authorities. Damage is not a defined term. Inspections are only for bonded permits/authorizations.
189	.4(f)(3)	Determination of highway condition	Roadway condition surveys - The posting authority may conduct frequent but less detailed roadway condition surveys to determine overall condition and identify any areas in need of repair.	Revise to: ... to determine overall condition and if the user or users may be responsible for any excess maintenance. Add: The survey will be performed when the type or volume of the hauling operation poses an increased risk of roadway damage or threat to public safety.	Consistency with Publication 23 Chapter 15 and clarity. Repair is not a defined term. The frequency of condition surveys needs to be better defined or limited to only when the type or volume of the hauling operation poses an increased risk of roadway damage or threat to public safety, because it is a financial obligation of the bonded user.
189	.4(f)(4)	Determination of highway condition	Notification of inspections and reinspections. All bonded users on a posted highway... will be notified of all inspections and reinspections on the highway or portion, and may participate in the inspections and reinspections. The posting authority is not required to notify bonded users of roadway condition surveys.	Revise to: All bonded users on a posted highway... will be notified of all initial, interim and final inspections on the highway or portion, and may participate in such inspections. The posting authority is not required to notify bonded users of roadway condition surveys.	Consistency with other portion of section (f) and Publication 23 Chapter 15, and to apply to all posting authorities.



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189	.4(f)(4)	Determination of highway condition	Notification of inspections and reinspections. All bonded users on a posted highway.. will be notified of all inspections and reinspections on the highway or portion, and may participate in the inspections and reinspections.	Add: The posting authority shall forward a copy of the initial, interim and final inspection report(s) to the user(s)	This is a standard Department practice per Publication 23 Chapter 15, and should apply to all posting authorities.
189	.4(f)(5)	Determination of highway condition	Inspection Costs. .... shall be paid by the user or users.	Revise to: "... shall be paid by the bonded user or users.	Clarify that only bonded users are billed
189	.4(g)	Administrative Fee	Administrative fee.	Add: There is no fee allowed or costs incurred to users authorized under section 189.3 and section 189.4(a)(1).	Clarify that local determination users are not financially liable.
189	.5	Investigations and Audits		Revise to: The posting authority has the right per Title 75 § 4902(g)(i) to conduct or cause to be conducted an investigation and audit. Users shall provided requested information within 30 calendar days of the request.....etc.	This section is already sufficiently describe in Title 75 § 4902, and should only be amended here.
189	.5	Investigations and Audits	Audits shall be limited..... Investigations may be used for any permit category.	Please define the difference between audit and investigation. Why are audits limited to local, but investigations may be used for any category?	The terms audit and investigation are very broad. The scope of this section should be limited "to determine if there has been a violation of this section, pertinent regulation or agreement" as described in Title 75 § 4902(g)(i).
189	.6	Suspending, revoking or denying agreements or permits		Revise to: The posting authority has the right per Title 75 § 4902(j) to suspend, revoke or deny a permit and agreement if it is determined that there has been a violation of this § 4902, pertinent regulation or agreement. The posting authority shall provide advanced notification and justification to the user prior to revocation of a permit. A permit may be suspended without prior notice if a user has failed to promptly perform excess maintenance which has created safety concerns to the traveling public.	This section is already sufficiently describe in Title 75 § 4902, and should only be amended here. The terms unsafe and impassable are too vague, and may apply without being caused by the non-performance of excess maintenance.