

Application of MAP-21 To Interstate Weight Restrictions

According to information from T.J. Engstrom of Clean Harbors his company is currently hauling loads in Iowa at the 90,000 pounds limit for state roads pursuant to the Governor's disaster proclamation in effect for our state. His drivers carrying these loads are not traveling the Interstate system since the loads are over the 80,000 pound limit for divisible loads on the Interstate system as allowed under 23 USC § 127 (a) (1).

Section 1511 of the 2012 federal highway bill MAP 21 (23 U.S.C. §127 (i)) deals with matters entitled "Special Permits During Periods of National Emergency." This section provides a means of waiving the Interstate limits in the state of Iowa so that Clean Harbors can carry the same 90,000 pound loads on the Interstate.

This section reads as follows:

(1) In general.— Notwithstanding any other provision of this section, a State may issue special permits during an emergency to overweight vehicles and loads that can easily be dismantled or divided if—

(A) The President has declared the emergency to be a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

(B) The permits are issued in accordance with State law; and

(C) The permits are issued exclusively to vehicles and loads that are delivering relief supplies.

(2) Expiration.— A permit issued under paragraph (1) shall expire not later than 120 days after the date of the declaration of emergency under subparagraph (A) of that paragraph¹.

In essence, this statute says that a state may issue permits for overweight vehicles hauling divisible loads on the Interstates during an emergency if the following four conditions are true:

1. The President has declared a major disaster declaration.
2. The loads are "delivering relief supplies" related to the major disaster.

¹ 23 U.S.C. §127 (i)

3. The permits are issued according to state law.
4. The permits expire within 120 days after the declaration of the emergency.

Assuming we receive a Presidential declaration in this matter, only condition two will be at issue: are the loads carrying “delivering relief supplies” related to the major disaster?

FHWA is given some guidance on determining what the “delivery of relief supplies” means within the context of the special permitting process:² FHWA perhaps helps us on this question by stating that the issue is whether the permit process will “facilitate[e] [the] delivery of relief supplies.”³ It gives the following as examples of what might “facilitate” the delivery of relief supplies:

Such activities might include activities that clear roadways, staging areas, or locations for temporary structures immediately after the disaster in order to facilitate the delivery of relief supplies. This could include debris removal, but only to the extent that the divisible overweight load expedites the clearing process, and any permits issued should only be for specific areas or locations and for a limited duration.⁴

FHWA’s Crystal Jones, DC Office of Freight Management and Operation, has stated that in fact this special state permitting process was used during Hurricane Sandy to haul debris to other states. She also said it was only done so that routes could be cleared to haul relief supplies. However, the debris removal process during Sandy was a huge undertaking, and we suspect the permitting process was used more extensively to expedite the debris-hauling process than was needed to merely clear emergency routes. We are talking with our counterparts in New York and New Jersey to confirm this.

Assuming that debris-hauling during Sandy was used solely to clear emergency traffic routes so relief supplies could be delivered, how could the disposal of dead chickens in Iowa be seen as “facilitating [the] delivery of relief supplies” that FHWA says is required by 23 U.S.C. §127 (i)?

² <http://www.fhwa.dot.gov/map21/guidance/guideemergency.cfm>

³ *Id.* at page 4, question 8.

⁴ *Id.*

The best argument is that the dead chicken carcasses must be removed and disposed of before new chickens can be placed in the infected facilities. What food and shelter are to the victims of flooding and tornados, new and uninfected chickens will be to the producers whose flocks have been decimated by the HPAI outbreak in Iowa.

Finally, it is important to note that Iowa issues the permits and not FHWA. It's also significant that the DOT Secretary and the FHWA Administrator are not given the authority to allow a state to issue these permits. That is, unlike the previous subsection in this section, 23 U.S.C. §127 (h), dealing with waivers for routes in the state of Maine during an emergency, "the Secretary, in consultation with the Secretary of Defense," is not required to "waive or limit the application of any vehicle weight limit under this section." The difference between these two subsections—both dealing with waiver of weight limits during emergencies—would appear to give greater flexibility to the State to implement this permitting process.