

Memorandum

TO: Alex Beata, CMAP

FROM: Nick Vlahos

DATE: October 21, 2016

RE: Local Permitting Final Report - Insertion for Section 2.1

The following text is designed to be inserted as Section 2.1 (Analysis of Relevant Laws) in the draft final report transmitted to CMAP last week.

2.1 Analysis of Relevant Laws and Policies

Oversize/Overweight Permitting in the United States is governed by a mix of laws and regulations, ranging from Federal to municipal or township. In this section, we summarize the relevant levels of laws and regulations.

Federal Laws and Regulations

Section 658 of Title 23 of the Code of Federal Regulations guides the discussion of legal weight on the Interstate Highway System from a federal perspective¹. Section 658.17 establishes several parameters for weight, including:

- 658.17 (f) states that “except as provided herein, States may not enforce on the Interstate System vehicle weight limits of less than 20,000 pounds on a single axle, 34,000 pounds on a tandem axle, or the weights derived from the Bridge Formula, up to a maximum of 80,000 pounds, including all enforcement tolerances. States may not limit tire loads to less than 500 pounds per inch of tire or tread width, except that such limits may not be applied to tires on the steering axle. States may not limit steering axle weights to less than 20,000 pounds or the axle rating established by the manufacturer, whichever is lower.”
- 658.17 (h) states that “states may issue special permits without regard to the axle, gross, or Federal Bridge Formula requirements for nondivisible vehicles or loads;” and
- 658.17 (i) states that “the provisions of paragraphs (b),(c), and (d) of this section shall not apply to single-, or tandem-axle weights, or gross weights legally authorized under State law on July 1, 1956. The group of axles requirement established in this section shall not apply to vehicles legally grandfathered under State groups of axles tables or formulas on January 4,

¹ Section 658 can be found at: <http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0658b.htm>

1975. Grandfathered weight limits are vested on the date specified by Congress and remain available to a State even if it chooses to adopt a lower weight limit for a time.”

Illinois State Laws and Regulations

Transportation of overweight and overdimensional movements on Illinois’ state highways is primarily governed through the following items:

- Section 625 ILCS 5/15 -301 of the Illinois Vehicle Code; and
- Title 92 of the Illinois Administrative Code, specifically in Chapter I, Subchapter f, Part 554.

Movement of vehicles and/or loads which exceed legal sizes and weights must have an IDOT permit if the movement includes upon or across a highway for which the State is responsible. An IDOT permit is not considered for travel on highways for which the State is not responsible. The vehicle code, however, does state that a permit is needed for extralegal travel in Illinois. As a result, the counties and local governments are burdened with a permitting process when motor carriers wish to pick up, deliver, or travel on roads in Illinois for which the State is not responsible.

County Permits

Each county in Northeastern Illinois issues permits for oversize and overweight loads. Each county publishes online information regarding its permitting process.

Table 2-1: County Permitting in Northeastern Illinois

County	Web Site	Reference to Permits in Code
Cook	https://apps.cookcountyil.gov/highway/login.aspx	Chapter 66, Article IV
DuPage	http://www.dupageco.org/DOT/Highway_Permitting/1568/	OWOD ODT-0006C-92 and OWOD Resolution DT-0024C-07
Lake	https://www.lakecountyil.gov/659/Permits	Title VII, Chapter 70.15
Kane	http://www.co.kane.il.us/dot/permits/moving.aspx	Section 17-1 (A)
Kendall	http://www.co.kendall.il.us/wp-content/uploads/truck_permit_fee.pdf	Need to obtain citation
McHenry	https://www.co.mchenry.il.us/county-government/departments-j-z/transportation/doing-business/overweight-oversize-truck-permit	Need to obtain citation
Will	http://www.willcountyillinois.com/County-Offices/Economic-Development/Division-of-Transportation/Permit-and-Access-Regulations/Oversize-and-Overweight-Vehicles-Details	Resolution 93-15, and IVC Chapter 15, Sections 70.12 and 70.13

Municipal and Township Permits

For OSOW travel in Northeastern Illinois that is not on a State or County-maintained road, a local permit is required from either the municipality (incorporated areas) or township (unincorporated areas). Our interviews with stakeholders as well as research by the Illinois Truck Enforcement

Association² demonstrates that not all local agencies have ordinances regarding OSOW transport on their maintained roads.

In multiple interviews with stakeholders, project team members were told that Illinois courts require a physical permit (including electronically transmitted permits) for any particular section of highway on which a motor carrier is transporting an OSOW load. Representatives of several municipalities interviewed for this report indicated, however, that verbal permits were routinely issued, with either an incident reference number or a contact telephone number should an enforcement official ask to see permit documentation.

In general, jurisdictions in Northeastern Illinois only issue permits for their own jurisdiction. One notable exception is in Kane County, where the county issues permits on behalf of each of the county's townships³.

Non-Divisible OSOW Loads in Illinois

Section 658.17 of the Code of Federal Regulations and the recent Federal authorization legislation⁴ identify sections of the Interstate network which are exempt from these restrictions. No Interstate highways in Illinois meet these criteria. Furthermore, Illinois is not a "grandfathered" state under 658.17 (i). As a result, transport exceeding 80,000 pounds in gross vehicle weight may not occur on Illinois's Interstate Highways, unless the load is deemed to be non-divisible.

Defining a Non-Divisible Load

Section 658.5 defines non-divisible as: "any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

- (i) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;
- (ii) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or
- (iii) Require more than 8 workhours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load."

Given the definition for being "non-divisible," many commodities cannot generally be transported in vehicles where the gross vehicle weight exceeds 80,000 pounds. Example of such commodities include produce, electronics and machinery, consumer household products packaged for retail, and raw materials such as copper. Putting less material into a vehicle's storage unit does not compromise the intended use of the vehicle (i), nor does it require dismantling (iii). As a result, the only avenue for consideration of transport of such loads over 80,000 pounds of gross weight is the question of destruction of value of the load.

² http://illinoistruckcops.org/?page_id=912

³ Implemented via Resolution No. 14-72, available at <http://kdot.countyofkane.org>

⁴ <http://transportation.house.gov/fast-act/>

The “Barnhardt Letter” and International Intermodal Shipping Containers

When goods are transported across national borders into the United States, they are subject to a customs process by United States Customs and Border Protection (CBP)⁵. A container of cargo is typically sealed when transported to maintain the integrity of the contents. When CBP inspects a vehicle, it places another seal on the container to "preserve the integrity of containerized cargo leaving CBP possession."

The question has previously been asked of the United States Department of Transportation whether a container which has its seal broken before its final destination, in order to divide the contents across multiple trips to meet the Federal 80,000 pound limit "destroys the value of the load" as per 658.5 (ii). The Federal Highway Administration provided guidance for this question in a letter⁶ from 1984 regarding international intermodal transport via the state of South Carolina. Additional clarifications to the letter have not been provided by the Federal Highway Administration in the intervening years.

Over 20 states have chosen to interpret the Federal guidance to determine situations where sealed containers can travel on Interstate highways in their state as part of international intermodal transport. In Illinois, the Illinois Department of Transportation allows sealed containers as non-divisible loads on its highways, while each county or local jurisdiction is allowed to make a distinction for the highways the jurisdiction maintains.

⁵ A summary of the process is provided by CBP at: <https://www.cbp.gov/border-security/ports-entry/cargo-security/csi/sealing-policy>

⁶ The letter from Ray A. Barnhardt, FHWA Administrator, is referenced in Alea M. Brown, "It is not Just Politics that is Local: A Look at the Constitutionality of State Regulation of Truck Weights," *Quinnipiac Law Review* Vol 30:201, page 213.