

# STATEMENTS OF POLICY

## Title 67—TRANSPORTATION

### DEPARTMENT OF TRANSPORTATION

#### [ 67 PA. CODE CH. 190 ]

#### Determination of Local Traffic

The Department of Transportation, under section 7 of the act of February 14, 2012 (P. L. 87, No. 13) (Act 13) (75 Pa.C.S. § 4902, Note) and 75 Pa.C.S. §§ 4902 and 6103 (relating to restrictions on use of highways and bridges; and promulgation of rules and regulations by department), supplements Chapters 189, 191 and 193 (relating to hauling in excess of posted weight limit; authorization to use bridges posted due to condition of bridge; and authorization to use highways posted due to traffic conditions) to establish the framework within which the Department will exercise its administrative discretion by adding Chapter 190 (relating to letter of local determination—statement of policy) to read as set forth in Annex A.

#### *Purpose of Chapter 190*

The purpose of Chapter 190 is to establish Department policy regarding the use of Letters of Local Determination by vehicles and combinations having a gross weight in excess of the posted weight limit on highways posted with weight restrictions as authorized under 75 Pa.C.S. § 4902.

#### *Purpose of the Statement of Policy*

The purpose of the statement of policy is to provide a mechanism by which the Department can better identify and regulate over-posted-weight traffic and distinguish local over-posted-weight traffic which causes minimal road damage from local over-posted-weight traffic which causes significant damage to highways in this Commonwealth. Increased heavy truck traffic on many highways in this Commonwealth is causing, or threatening to cause, damage to the highways at levels beyond which the Commonwealth has resources to maintain in good repair, causing the Commonwealth to have to impose weight restrictions on numerous highways under its jurisdiction.

Act 13 amended 75 Pa.C.S. § 4902 and directed the Department to issue a statement of policy to provide for the issuance of Letters of Local Determination for hauling on posted highways related to at-risk industries as defined in Act 13.

#### *Significant Provisions of this Statement of Policy*

Definitions of “at-risk industry sector” and “unconventional oil and gas development” in § 190.2 (relating to definitions) follow the definitions of those and similar terms in Act 13 to clarify the interface of Act 13 and the local traffic exception in § 189.2 (relating to definitions). Paragraph (4) of the definition of “local traffic” in § 189.2 states “vehicles and combinations going to or coming from residence, commercial establishment, or farm located on a posted highway or which can be reached only via a posted highway.” As required under Act 13, hauling related to at-risk industry sectors have been granted an exemption and hauling related to unconventional oil and gas development has been precluded from eligibility for hauling as local traffic.

Section 190.3 (relating to local traffic and Letters of Local Determination) provides eligibility and application

criteria for the issuance of Letters of Local Determination. Over-posted-weight haulers will still be able to take advantage of the local traffic exception in § 189.2 but will also be able to apply for Letters of Local Determination if they are hauling related to at-risk industry sectors. The Letter of Local Determination will be available if the at-risk industry sector hauling activity will be on roads bonded by unconventional oil and gas companies or if a hauler can demonstrate the proposed hauling activity will have only a de minimis impact on the highways. These Letters of Local Determination will also be utilized for over-posted-weight vehicles when it is determined that the over-posted-weight vehicle can only reach its destination by means of a posted highway or highways and it is determined that the damage to the posted highway will be minimal. The statement of policy also provides that if a hauling time frame is not specified in the Letter of Determination it will be valid for no more than 12 months from the date of issuance.

Section 190.4 (relating to use of Letters of Local Determination) provides that the Letter of Local Determination must be present in the vehicle at all times during the hauling activity. Section 190.5 (relating to revocation of Letter of Local Determination) provides parameters for revocation of a Letter of Local Determination similar to § 189.3(b) (relating to local traffic).

#### *Persons and Entities Affected*

This statement of policy affects persons and entities who own or operate, or both, over-posted-weight vehicles which they desire to operate over weight-posted highways. In addition, the State Police will be affected in the enforcement of Department regulations.

#### *Sunset Date*

Section 7 of Act 13 provides that the exemptions established in this statement of policy remain in effect until December 31, 2015.

#### *Contact Person*

The contact person for technical questions related to this statement of policy is John Serian, Bureau of Maintenance and Operations, Department of Transportation, 400 North Street, 6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120, (717) 705-1420, fax (717) 705-5520.

#### *Effective Date*

This statement of policy is effective upon publication in the *Pennsylvania Bulletin*.

BARRY J. SCHOCH, P.E.,  
*Secretary*

*(Editor’s Note: Title 67 of the Pennsylvania Code is amended by adding statements of policy in §§ 190.1—190.5 to read as set forth in Annex A.)*

**Fiscal Note:** 18-430. No fiscal impact; (8) recommends adoption.

#### Annex A

#### TITLE 67. TRANSPORTATION

#### PART I. DEPARTMENT OF TRANSPORTATION

#### Subpart A. VEHICLE CODE PROVISIONS

#### ARTICLE VII. VEHICLE CHARACTERISTICS

#### CHAPTER 190. LETTER OF LOCAL DETERMINATION—STATEMENT OF POLICY

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### § 190.1. Purpose.

(a) This chapter is adopted under section 7 of the act (75 Pa.C.S. § 4902, Note). The purpose of this chapter is to provide guidance for the implementation of a program to provide Letters of Local Determination identifying particular vehicles, routes or uses as local in nature to provide exemption from the requirements of Chapter 189 (relating to hauling in excess of posted weight limit).

(b) This chapter only applies to Chapter 189 and does not apply to roads and bridges posted under Chapters 191 and 193 (relating to authorization to use bridges posted due to condition of bridge; and authorization to use highways posted due to traffic conditions).

(c) The policies and procedures in this chapter are intended to supplement existing requirements. Nothing in this chapter will affect regulatory requirements. This chapter is not an adjudication or a regulation. This chapter establishes the framework within which the Department will exercise its administrative discretion. The Department reserves the discretion to deviate from this chapter if circumstances warrant.

### § 190.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The act of February 14, 2012 (P. L. 87, No. 13).

*At-risk industry sector*—

(i) Industry sectors defined by the Department of Labor and Industry as having experienced a 20% or more decline in Statewide employment between 2002 and 2011 and additional industry sectors that the Department determines, in consultation with the Department of Labor and Industry, to show evidence of economic decline.

(ii) The term does not include an industry which, after November 12, 2013, the Department determines, in consultation with the Department of Labor and Industry, no longer shows evidence of a 20% or more decline in Statewide employment since 2002.

*Department*—The Department of Transportation of the Commonwealth.

*Industry sector*—A sector included in the North American Industry Classification System.

*Unconventional oil and gas development*—

(i) The activities associated with unconventional oil or gas well construction including site preparation and reclamation, drilling, completion and pipeline construction on oil and gas gathering pipelines, not including transmission and distribution pipelines.

(ii) The term shall be read consistently with “unconventional formation” and “unconventional gas well” as defined in the act.

(iii) The terms “gathering,” “transmission” and “distribution pipelines” shall be read consistently with the definitions of those terms in the Federal pipeline safety regulations of the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration in 49 CFR 192.3 (relating to definitions).

### § 190.3. Local traffic and Letters of Local Determination.

(a) *Self certification as local traffic.* A hauling activity, but not hauling activity related to unconventional oil and gas development, may be self certified as local traffic if it meets the definition of “local traffic” in § 189.2 (relating to definitions) and the provisions of § 189.3(c) (relating to local traffic).

(1) An application to the Department or Letter of Local Determination is not necessary.

(2) If a completed application for a Letter of Local Determination is submitted by the hauler, the Department may, at its discretion, issue a Letter of Local Determination.

(b) *Criteria for local determination.* A hauling activity may qualify for a Letter of Local Determination under the following circumstances:

(1) *At-risk industry sector.*

(i) Hauling in excess of a posted weight limit related to an at-risk industry as defined in the act will qualify as local:

(A) On routes bonded by unconventional oil and gas development companies.

(B) Upon submission of a completed application for a Letter of Local Determination.

(C) Provided that existing excess maintenance agreements and permits held by the requesting hauler for the requested route are closed out in accordance with the terms of the excess maintenance agreement. The excess maintenance agreement and permits will not be closed out until repairs and final inspections are completed.

(ii) Hauling in excess of a posted weight limit related to an at-risk industry as defined in the act which is not for routes bonded by unconventional oil and gas development companies may, at the Department’s discretion, qualify as local upon the submission and review of a completed application for a Letter of Local Determination in accordance with subsection (d).

(2) *De minimis operations.* Hauling activity that cannot be self-certified under paragraph (1) and that is not related to an at-risk industry as defined in the act may qualify as local if, upon the submission and review of a completed application for a Letter of Local Determination, the Department determines that the scale of hauling activity and nature of the business is not likely to cause damage to the route requested in the application based on the structural capacity of the requested route and the availability and suitability of alternate routes in the region.

(3) *Unconventional oil and gas industry.*

(i) Hauling related to unconventional oil and gas development as defined in this chapter does not qualify for a Letter of Local Determination.

(ii) Hauling related to unconventional oil and gas industries may qualify for a Letter of Local Determination if, upon the submission and review of a completed application, the Department determines that:

(A) The hauling is not related to unconventional oil and gas development.

(B) The scale of the hauling activity is not likely to cause damage to the route specified in the application

based on the structural capacity of the requested route and the availability and suitability of alternate routes in the region.

(c) *Application for Letter of Local Determination.* A completed application for a Letter of Local Determination must contain the following information:

- (1) The type of business and industry sector code.
- (2) The type and weight of vehicle.
- (3) A list of the roads (State routes by segments and offsets or intersecting roads) to be used on the hauling route.
- (4) The number and frequency of trips per day, week and month.
- (5) The time of year and dates and duration of expected hauling.
- (6) Other evidence showing that the hauler is engaged in hauling for an at-risk industry for the duration of the hauling.
- (7) Other information the Department may require.

(d) *Review of application for Letter of Local Determination.*

(1) In reviewing an application for a Letter of Local Determination, the Department may consider various factors including the following:

- (i) Protection of the integrity of the Commonwealth's highways.
- (ii) The existing pavement strength, including the condition, thickness and age.
- (iii) The existing average daily truck traffic.
- (iv) The number and type of expected additional over-posted-weight vehicles.
- (v) The impact of the freeze-thaw cycle, including whether hauling activities are planned during the calendar period between approximately February 15th and April 15th during which times the temperature results in changes (weakening) to the structural strength of the road surface.
- (vi) The total expected loading and historical roadway performance.

(2) The Department will determine and acknowledge receipt of the application as administratively complete if it contains the necessary information and documents. If the application is not administratively complete, the Department will return it to the applicant along with a written statement of the specific information or docu-

ments required for administrative completeness. Returned applications will be deemed denied if not resubmitted within 15 days.

(3) The Department will only evaluate the hauler's proposed routes based on the available State route network. Weight-restricted municipal routes will not be evaluated by the Department. If the hauler's proposed route includes a weight-restricted municipal route, the hauler shall contact the proper local authority for permission to utilize that weight-restricted route.

(e) *Issuance of a Letter of Local Determination.*

(1) The scope of a Letter of Local Determination will be based on the vehicles, routes and uses identified in the application.

(2) The Department may restrict the operation of vehicles and hauling for which a Letter of Local Determination is issued by time of day, date, location or use. Restrictions will be specified in the Letter of Local Determination.

(3) The term of a Letter of Local Determination will not be longer than 12 months from the date of issuance.

#### **§ 190.4. Use of Letters of Local Determination.**

A Letter of Local Determination, proof of ownership or authorized use of the vehicle, evidence under § 189.3(c) (relating to local traffic) and additional documents required by the Department must be carried in the vehicle at all times while traveling on the weight-restricted highways identified within the Letter of Local Determination.

#### **§ 190.5. Revocation of Letter of Local Determination.**

(a) If the Department determines that over-posted-weight vehicle or hauling activity for which a Letter of Local Determination has been issued is likely to or has caused damage to a posted highway, the Department may revoke the Letter of Local Determination in a manner consistent with § 189.3(b) (relating to local traffic).

(b) A Letter of Local Determination issued under § 190.3(b)(1)(i) (relating to local traffic and Letters of Local Determination) will be revoked if the bonding of a road by unconventional oil and gas development companies specified in the Letter of Local Determination terminates. This subsection does not prohibit the hauler from applying for a subsequent Letter of Local Determination under § 190.3(b)(1)(ii) or (2).

(c) A hauler who has had a Letter of Local Determination revoked may apply for a permit under Chapter 189 (relating to hauling in excess of posted weight limit).

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