

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Department of Transportation

(2) Agency Number:

Identification Number: 18-467

IRRC Number: 3139

(3) PA Code Cite:

67 Pa. Code, Chapter 189

(4) Short Title:

Hauling in Excess of Posted Weight Limit

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

Chapter 189 establishes Department regulations regarding the use of weight restricted highways by over-posted-weight vehicles and combinations as authorized under 75 Pa.C.S. § 4902. Unless over-posted weight vehicles meet the criteria of local delivery as defined by this chapter as "Local Traffic", an excess maintenance agreement, permit, and security bond are required. Recent amendments to 75 Pa. C.S. § 4902 provide expanded categories of Local Traffic, a new minimum use permit, authority and rules for posting authorities in regard to investigations and audits as well as agreement and permit revocation, suspension and denial.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The regulation is authorized under the Act of November 25, 2013, P.L. 974, No. 89 and the Act of June 17, 1976, P.L. 162 No. 81, *as amended* (Sections 4902 and 6103 of the Vehicle Code, 75 Pa. C.S. §§ 4902 and 6103). *See also* Section 7 of the Act of February 14, 2012, P.L. 87, No. 13 (75 Pa.C.S. § 4902, Note).

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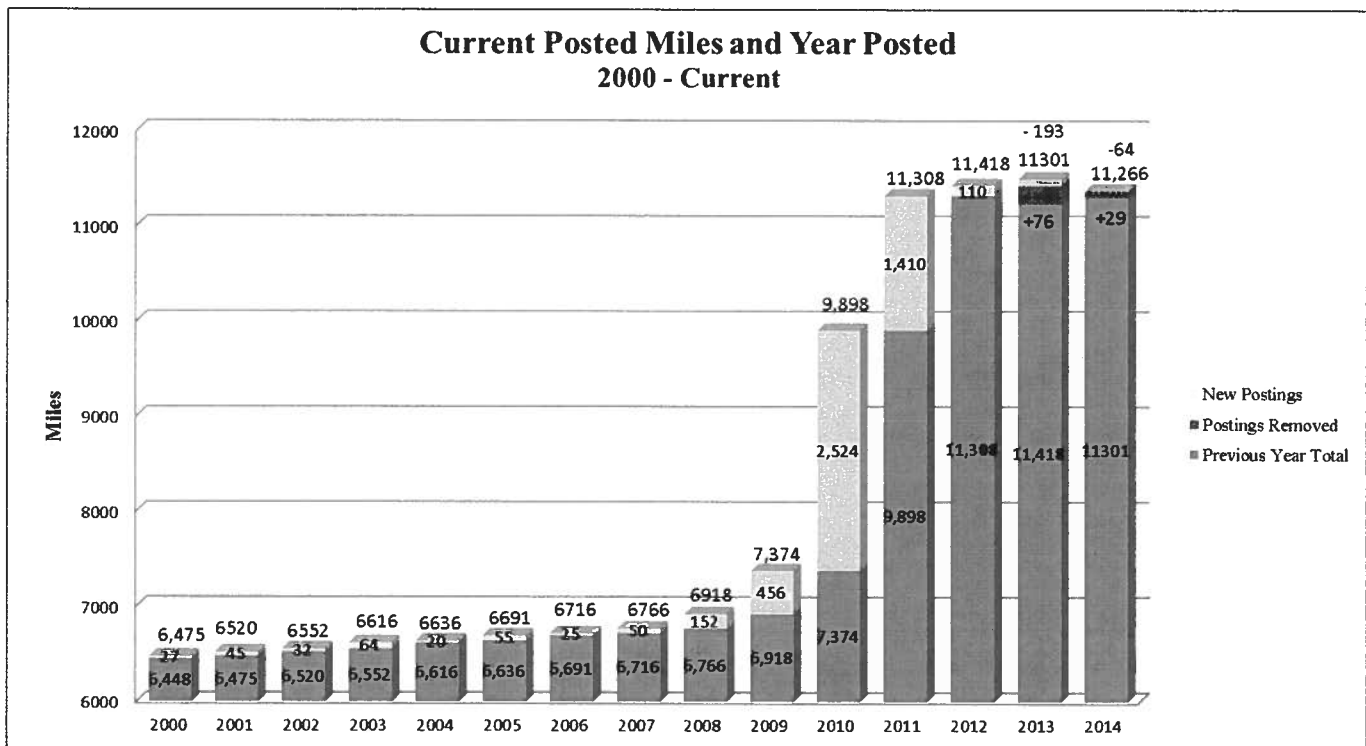
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(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

These amendments to an existing regulation are not mandated, but are instead expressly authorized by and necessary to implement 75 Pa.C.S. § 4902, *as amended*.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Since the advent of the Unconventional Oil and Gas (UOG) industry in Pennsylvania, (i.e. the Marcellus and Utica Shale Gas Industry), The Department has posted weight restrictions on an additional 4,800 miles of roadway to protect infrastructure from the dramatically increased volume of trucks associated with this industry. The chart below depicts the increase in posted miles.



The increase in the additional miles of posted roads impacts every industry in Pennsylvania receiving or shipping goods by truck, and particularly those industries located in the rural counties where UOG development takes place. Small businesses are faced with financial responsibility for roads for which they may have had unrestricted use prior to the onset of UOG-related use. Businesses are faced with the need to obtain Department permits, permit related costs, greater financial liability, and the potential for fines from law enforcement if the weight-restricted highways are used without authorization.

Pennsylvania's Posted and Bonded Roadway Program outlines the process that allows haulers to operate vehicles on weight-restricted highways. A permit is conditioned on the hauler's commitment to be financially responsible for damages to roadways that are in excess of the damages that would normally be expected were that hauler not present.

The goals of the program are to have:

- No net deterioration of highways and infrastructure;
- Recover all associated costs, while remaining revenue-neutral;
- Follow a formal, uniform process; and
- Partner with industry.

To haul on a weight-restricted roadway, haulers, other than those who meet the exceptions provided in the regulation, are required to:

- Enter into an Excess Maintenance Agreement in which the hauler is responsible for excess roadway maintenance;
- Provide a Maintenance Plan which describes and documents the hauler's contacts, hauling activities, and strategy to repair and maintain the roadway to its existing condition;
- Provide a surety which is typically a bond; and
- Provide proof of liability insurance.

Hauling related to UOG well development damages roadways at a faster rate and to a larger degree than the Department experienced prior to the rapid growth of the UOG industry in Pennsylvania. The Posted and Bonded Roadway program has kept pace with the growth and development of the UOG and other Pennsylvania industries. In particular, the Department has:

- Strengthened and clarified the Excess Maintenance Agreement, Maintenance Plan, Surety policy, and Insurance requirements;
- Implemented new technologies to standardize roadway inspection methods that improve cost recovery from haulers;
- Strengthened enforcement procedures with regard to permit suspension, Local Traffic exemptions, and permit closure procedures; and
- Developed a partnership program that allows the Department to leverage its funds by encouraging industry participation in roadway upgrade projects.

Act 13 of 2012 (Act 13), which relates to the UOG industry generally, includes a provision that allows the Department to exempt additional haulers through the creation of the methodology for Letters of Local Determination (LoLD). Act 13 identifies "At-Risk" industry sectors that are permitted exemptions (See Section 7 of the Act of February 14, 2012, P.L. 87, No. 13 (75 Pa. C.S. § 4902, Note). These "At-Risk" industries include those which were traditionally engaged in Pennsylvania's Posted and Bonded Roadway Program, such as the timber industry.

The revised regulations clarify and expand the Local Traffic exemptions by defining the hauling activities that qualify for the specific exempt categories contained in Act 89 of 2013, and those which may now be eligible for a new Minimum Use permit (less than 700 loads per year per route). Non-exempt haulers will be classified as "Heavy Users" and will be required to obtain an over-posted-weight permit. A "Heavy User" will therefore be defined as the user responsible for generating user vehicles equal to or exceeding 700 loads in any 12 month period on a particular route.

This Chapter provides for elimination of multiple permits for oversize and overweight vehicles utilizing weight-restricted highways. Under this revision, a vehicle or combination that has obtained a Special Hauling Permit issued pursuant to 67 Pa. Code, Chapter 179 (relating to oversize and overweight loads and vehicles) will no longer require an additional permit under this Chapter for use on a weight-

restricted highway. This change benefits haulers who will no longer bear the regulatory and financial burden of obtaining two permits for a single movement.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Upon information and belief, there are no other states with similar regulations.

In other states with UOG industries, funds for highway maintenance are collected through taxes, deposited into the state general fund, and then appropriated to the transportation department. In North Dakota and Texas, for example, the transportation departments do not have a mechanism to directly recover roadway damage and excess maintenance costs related to a hauler's operations. As hauling generally occurs on lower class roadways, these roadways do not receive priority for funding and generally suffer from deterioration.

Pennsylvania's Posted and Bonded Roadway Program requires haulers to be financially responsible for excess maintenance by repairing or reimbursing the Department for damage costs as they occur. If the hauler directly repairs its damages the reinvestment goes directly to the roadway that was damaged. The payment of invoices for reimbursement of Department costs flow through to the Department county maintenance office that repaired the damage. UOG industry participation through upgrades and reconstruction of Pennsylvania roadways, to date, is estimated at \$855 million in repairs to State and local highways, including \$375 million in major upgrades and reconstruction.

Unlike the general tax model used by other states, the costs imposed on the haulers under Pennsylvania's program are only the amount spent to repair the roads, providing a revenue-neutral model. The money collected is spent where the damages occur.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes. This Chapter provides for elimination of multiple permits for oversize and overweight vehicles utilizing weight-restricted highways. Under this revision, a vehicle or combination that has obtained a Special Hauling Permit issued pursuant to 67 Pa. Code, Chapter 179 (relating to oversize and overweight loads and vehicles) will no longer require an additional permit under this Chapter for use on a weight-restricted highway.

In addition, 67 Pa. Code, Chapter 190 (a statement of policy regarding letters of local determination) is also being revised to conform to this Chapter to provide new terminology and expand use of weight-restricted highways by local businesses.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

In addition to internal review and comment, the Department has requested comments on the proposed amendments from industry representatives including the: Marcellus Shale Coalition, Pennsylvania Forest Products Association, Pennsylvania Hardwood Development Council, Pennsylvania Coal Alliance, Pennsylvania Farm Bureau, Dairy Farmers of America, Equipment Dealers Association, Penn Ag Industries Association, Pennsylvania State Association of Township Supervisors, the Department of Conservation and Natural Resources and the Pennsylvania State Police.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The Department’s records show permit holders by permit types and the size and frequency of their hauling. As a result, the Department is able to estimate the number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation based on the nature of the hauler’s use but not by the annual revenue or the numbers of employees. The Department’s numbers therefore must be considered as estimates only, keeping in mind that this regulation affects all businesses involved in transportation of goods on Pennsylvania highways.

The Department estimates that there are over 300 persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations that currently use Type 3 (County wide) permits under the current regulations, although some of those 300 might be larger businesses. As a result of Act 89 and these proposed changes to Chapter 189, many of these haulers will now be exempt from bonded permit obligations.

These businesses currently using Type 3 permits fall under (but are not limited to) the following list of businesses:

- Coal
- Lumber
- Non-UOG Natural Gas
- Non-UOG Oil
- Quarry
- Timber
- Utility
- General

The Department currently imposes an Excess Maintenance Agreement/ Maintenance Plan obligation on Heavy Users with Type 1 and 2 permits, which is a user responsible for generating 700 loads or more on a particular weight-restricted route in any 12-month period. There are currently more than 400

individual users classified as Heavy Users with active Type 1 and 2 over-posted-weight permits from various industry sectors including natural gas, oil, coal, utilities, timber, lumber, quarry, and other miscellaneous industries. The Department estimates that many larger businesses will continue to meet the Heavy User definition in the regulation, which will remain at 700 loads or more in any 12-month period on a particular route or posted highway. Those Heavy Users and those not meeting the exemption criteria will continue to be financially responsible for excess damages to the roadway.

(16) List the persons, groups or entities, including small businesses that will be required to comply with the regulation. Approximate the number that will be required to comply.

All persons, groups or entities who wish to operate vehicles or combinations exceeding a posted weight restriction must comply with this regulation. Those who wish to operate higher volumes must obtain permits, and others may be allowed to operate as local traffic under the specific statutory exemptions.

Compliance means that the hauler may:

- Qualify as Local Traffic
- Operate under the authorization of a no-cost Letter of Local Determination (At-Risk or De-Minimis LoLD)
- Obtain a Minimum Use permit if their operations involve hauling less than 700 loads per year per route
- Obtain an Annual Bonded or Seasonal Bonded permit

Local Traffic exemptions are available to:

- Emergency vehicles
- School buses
- Government-owned vehicles
- Vehicles of local governmental agency or Department contractors engaged in or providing material for construction or maintenance.
- Vehicles of utilities or their contractors engaged in maintenance.
- Vehicles and combinations going to or from a residence, commercial establishment, or farm
- Vehicles and combinations delivering logs or other forest products to or from permanent processing mills located on or reachable only through posted highways.
- Vehicles and combinations delivering coal to or from permanent coal reprocessing or preparation plants located on or reachable only through posted highways and not on the same posted highway as a site at which coal is extracted.

75 Pa. C.S. § 4902 also grants the Department authority to issue a statement of policy adopting an appropriate methodology to provide an LoLD identifying particular vehicles, routes or uses as local in nature. That policy is contained in 67 Pa. Code, Chapter 190. Section 4902 preserves the Department's ability to issue LoLD's for At-Risk industries, which are those industries that have experienced a 20% or more decline in employment between 2002 and 2011. At-Risk industry haulers continue to be able to obtain an At-Risk LoLD that allows them to operate over-posted-weight vehicles through December 31, 2018 on roads bonded by the UOG industry.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The Department expects that the individuals, small businesses, businesses and labor communities and other public and private organizations that are currently required to obtain Type 3 permits, which the Department estimates relates most to small businesses, will benefit from the exemptions created by Section 4902, and implemented through this revision. Newly exempt businesses, including but not limited to small businesses, will be relieved of the financial obligation to repair highway damages caused by their over-posted-weight vehicle traffic on weight-restricted highways. In addition, they will not need to bear the costs of regulatory compliance, including costs related to obtaining bonds and paying for necessary road inspections.

Weight-restricted highways used only by small businesses with over-posted-weight truck traffic less than 700 loads per year typically require only minimal excess maintenance and limited reimbursement from permit holders. When those small business permit holders share a road with a Heavy User the damage caused by the Heavy User can drive the repair costs higher, forcing the small businesses to share in repair costs. As an example, if a particular section of weight-restricted highway is found to require repairs, the Department would invoice the responsible haulers a pro-rated share of the cost based on the hauler's proportionate share of the hauling. If one of the haulers were a Heavy User and the rest small businesses, the sheer size of the cost of the damages caused by the Heavy User would increase the pro-rated share to an amount that the small businesses could not bear. Under Section 4902, as amended, and these revisions, the newly-created exemptions will relieve more small businesses from the financial responsibility of repairing roadways damaged by Heavy Users.

At the same time, the revised regulations preserve the Department's ability to control and obtain repairs to weight-restricted highways that do not have the structural capacity to withstand large volumes of heavy trucks, particularly if heavily utilized during times when the highway is experiencing freeze/thaw stress. The proposed revisions therefore allow restrictions to be maintained during freeze/thaw periods.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There are no easily quantifiable adverse costs or effects associated with the proposed amendments as the regulation presently in place continues, with the exception of entities not defined as Local Traffic, which will remain responsible for repairing highway damages. The industries falling under the Heavy User category will likely be required to pay a larger proportional share of roadway damage costs.

Also, the Department will be assuming the costs of repairs to highways due to damage from the newly exempt haulers. Fortunately, since the passage of Act 89, the Department is better able to assume these costs.

The costs to the regulated community are outweighed by the public interest in ensuring that responsible parties are financially responsible for highway damage.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The cost to the regulated community, namely those qualifying as Local Traffic, will decrease. There are at least 300 small, local businesses which will be relieved from the financial obligation to repair excess maintenance damages their hauling operations may have caused. Based on highway inspections and invoices provided in the past 2 years, the estimated savings may range from \$1 million to \$5 million per year for small, local businesses.

No legal, accounting or consulting procedures are anticipated to arise from this regulation; however, legal procedures regarding suspension, revocation and denial of agreements and permits have been clarified.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Local governments will not experience an increase in costs as only the Local Traffic exemptions will apply to municipal roads. This does not change their status in this regard from their status prior to the growth of the UOG industry.

The exemptions provided through the use of Letters of Local Determination and through the use of Minimum Use permits do not apply to local roads and will not increase costs to local governments. In this instance, a local government may create and utilize their own-permitting process to insure that industries are financially responsible for damage to local roads.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Department will incur costs of highway damages caused by newly exempt over-posted-weight vehicles and combinations for highways where there are no other posted and bonded over-posted-weight traffic. These additional costs may range from \$1 million and \$5 million per year but are generally consistent with existing annual costs and any increased costs can be absorbed by the Department.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

There should be no change in legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, required from implementation of these amendments. For newly defined Local Traffic, legal, accounting or consulting procedures will be minimal in comparison to other existing statutory sources of bonding and responsibility for highway damage under 67 Pa. Code, Chapter 189. For those entities directly impacted by Chapter 189, no additional paperwork, legal, accounting or consulting procedures are anticipated to arise from this regulation; however, legal procedures regarding suspension, revocation and denial of agreements and permits have been clarified.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	¹ \$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year
Local Government	N/A	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
State Government	N/A	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Total Savings	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year
COSTS:						
Regulated Community	N/A	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Local Government	N/A	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
State Government	¹ \$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year
Total Costs	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year	\$1 to 5 Million Per Year
REVENUE LOSSES:						
Regulated Community	N/A	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Local Government	N/A	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
State Government	N/A	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Total Revenue Losses	N/A	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0

¹ These costs are consistent with existing costs to over-posted-weight traffic becoming newly exempt through the proposed regulations. The Department will incur the cost of roadway damages.

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Posted and Bonded Roads Program (Bureau of Maintenance and Operations).	\$2,386,772.03	\$ 2,419,481.11	\$ 1,873,562.08	\$1,720,741.72 (to date)

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, record keeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

No adverse impacts are anticipated but the Department offers the following economic impact statement:

- (a) A precise number of small businesses considered “local traffic” is difficult to quantify. It is estimated that at least 75,000 local traffic trips are made daily on Department posted highways.
- (b) No reporting, record keeping and other administrative costs required for compliance with the proposed regulation are anticipated.
- (c) The probable effect on impacted small businesses qualifying as Local Traffic includes a waiver of posted and bonded highway requirements that would be more costly (considering that the small businesses would bear a proportional share of costs related to repairing damages to highways).

(d) There are no less intrusive or less costly methods of achieving the purpose of the proposed amendments, as this regulatory package already accomplishes meaningful reductions in costs associated with repairing damaged highways.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

Definitions have been added for the forest products industry and coal industry, and any small local business with less than 700 loads per year per highway, in furtherance of meeting the needs of affected Local Traffic that were bearing a share of the costs for damage.

As noted in paragraph 16, Act 13 allowed for an At-Risk Letter of Local Determination for industries that have experienced a 20% or more decline in employment between 2002 and 2011. Act 89 extended this through December 31, 2018 and the exemption is included in Chapter 189. Those At-Risk industries will continue to be able to obtain an At-Risk LoLD that will allow them operate over-posted-weight vehicles on roads bonded by the UOG industry with the UOG being financially responsible for all excess maintenance on the road.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions were considered in that these amendments reflect the least burdensome acceptable alternative as expressed by the Pennsylvania General Assembly in Section 33 of Act 89 of 2013.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The Department offers the following regulatory flexibility analysis:

(a) These amendments reduce compliance and reporting requirements for Local Traffic, including small businesses, that would otherwise be responsible for entering into excess maintenance agreements, providing security (to address damage) and proportional costs for roadway repairs. Highway maintenance plans and schedule of operations are also not required for Local Traffic.

(b) While less stringent schedules or deadlines are not contemplated, details about transitioning from traditional posted and bonded highway requirements is provided within the existing language of Chapter 189.

(c) These amendments focus on the simplification of compliance and reporting requirements for all Local Traffic, including small businesses, that will not be required to create highway maintenance plans (to address damage) and bear proportional costs for highway repairs.

(d) As design or operational standards are not required for Local Traffic, performance standards by virtue of the expanded definition of Local Traffic are implemented by way of these amendments.

(e) Because the amendments waive traditional posted and bonded highway requirements applicable to certain over-posted-weight traffic, no further exemptions for Local Traffic, including small businesses, can be developed.

(28) If data is the basis for this regulation, please provide a description of the data; explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data was not the basis for this regulation, except as noted above.

(29) Include a schedule for review of the regulation including:

- | | |
|---|---|
| A. The date by which the agency must receive public comments: | <u>03/28/2016</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>06/30/2016</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon publication in the Pennsylvania Bulletin (approximately 09/30/2016)</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>Upon publication in the Pennsylvania Bulletin (approximately 09/30/2016)</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

These regulations will be reviewed periodically as appropriate to ensure continued effectiveness.

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FOR FILING DOCUMENTS
WITH THE
LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved as to form and legality.
Attorney General.

Amy M. Elliott
By: _____
(Deputy Attorney General)

FEB 02 2016

Date of Approval

Check if applicable
Copy not approved. Objections attached.

Copy of below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

Department
of
Transportation
(Agency)

DOCUMENT/FISCAL NOTE NO. 18-467

DATE OF ADOPTION _____

BY *James S. Ruler*
Secretary of Transportation

Copy below is hereby approved as to
form and legality. Executive or
Independent Agencies

[Signature]

NOV 16 2015

(Date of Approval)

(Deputy General Counsel)
(~~Chief Counsel, Independent Agency~~)
(Strike Inapplicable Title)

Check if applicable. No attorney
General Approval or Objection within
30 days after submission.

NOTICE OF PROPOSED RULEMAKING

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

SUBPART A. VEHICLE CODE PROVISIONS

ARTICLE VII. VEHICLE CHARACTERISTICS

CHAPTER 189. HAULING IN EXCESS OF POSTED WEIGHT LIMIT

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

SUBPART A. VEHICLE CODE PROVISIONS

ARTICLE VII. VEHICLE CHARACTERISTICS

CHAPTER 189. HAULING IN EXCESS OF POSTED WEIGHT LIMIT

PREAMBLE

Notice is hereby given that the Pennsylvania Department of Transportation, pursuant to the authority contained in the Act of November 25, 2013, P.L. 974, No. 89 and the Act of June 17, 1976, P.L. 162 No. 81, *as amended* (Sections 4902 and 6103 of the Vehicle Code, 75 Pa. C.S. §§ 4902 and 6103), amends the regulation set forth in 67 Pa. Code, Chapter 189 (relating to hauling in excess of posted weight limit), as set forth in Annex A.

Purpose of Chapter

The purpose of Chapter 189 is to establish Department regulations regarding the use of weight restricted highways by vehicles and combinations having a gross weight in excess of the posted weight limit on highways posted with weight restrictions under 75 Pa.C.S. § 4902.

Purpose of the Proposed Amendments

Currently, Chapter 189 provides definitions and key terminology including local traffic criteria, and establishes agreements, permits, security requirements and conditions to allow over-posted-weight vehicles to travel on weight-restricted highways. Recent amendments to 75 Pa. C.S. § 4902 require amendments to this regulation to reflect a broader definition of “local

traffic”, refine requirements relative to letters of local determination and minimum use permits, establish mandatory guidance for investigations and audits, and institute mandatory guidance relative to suspending, revoking and denying agreements and permits.

Significant Provisions of this Regulation

These amendments include definitions of key terms set forth in the recent amendments to 75 Pa. C.S. § 4902, which include the following: At-risk industry sector, Commercial site, Department, Develop, Harvest, Extract, Freeze-thaw period, Heavy user, Letters of Local Determination, Load, Local traffic, Natural resources, Permanent Coal Reprocessing or Preparation Plant, Permanent Forest Product Processing Mill, “Reachable only through posted highways”, Unconventional oil and gas development, User and User vehicle.

The available types of permits and letters of local determination were combined to allow a single permit to be issued with various permit categories including the minimum use permit category for hauling activity of less than 700 loads per year per road.

The regulation describes the posting authority’s ability to conduct investigations and audits and also to suspend, revoke and deny agreements and permits. Lastly, Special Hauling Permits issued under 67 Pa. Code, Chapter 179 are recognized as valid authorization to travel on a weight restricted highway.

Persons and Entities Affected

The proposed amendments will allow travel on weight-restricted highways and reduce administrative requirements for businesses and special hauling permits by all over-posted-weight haulers.

Fiscal Impact

Implementation of these regulations will not require the expenditure of any additional funds by the Commonwealth or local municipalities. These regulations will potentially impact all over-posted-weight traffic; however, those impacts are minimal because of clarity provided by this proposed regulation and extensive feedback from the regulated community.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act, Act of June 25, 1982 (P.L. 633, No. 181), *as amended*, 71 P.S. 745.5(a), the agency submitted a copy of this proposed regulation on February 17, 2016 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Transportation Committees. In addition to submitting these regulations, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of comments, recommendations or objections.

Sunset Date

The Department of Transportation will make these regulations effective upon publication in final form following appropriate evaluation of any comments, suggestions or objections received

during the period allowed for public comment. The Department is not establishing a sunset date for these regulations, as the regulations are needed to administer provisions required pursuant to the Vehicle Code (75 Pa. C.S. § 101, *et seq.*). The Department, however, will continue to closely monitor these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amendments to the regulations to Richard N. Roman, P.E., Director, Bureau of Maintenance & Operations, Pennsylvania Department of Transportation, 400 North Street – 6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120; e-mail: RIROMAN@pa.gov; Fax: (717) 705-5520 within thirty days of the publication of this notice in the *Pennsylvania Bulletin*.

Contact Person

The contact person for technical questions related to this Statement of Policy is Halley Cole, P.E., Bureau of Maintenance & Operations, Pennsylvania Department of Transportation, 400 North Street – 7th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120; Telephone: (717) 783-6146; Fax: (717) 705-5520.

Leslie S. Richards,
Secretary of Transportation

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VII. VEHICLE CHARACTERISTICS

Chapter 189. HAULING IN EXCESS OF POSTED WEIGHT LIMIT

§ 189.1. Scope; authority.

(a) This chapter regulates the use of highways posted with weight restrictions authorized under 75 Pa.C.S. § 4902 by vehicles and combinations having a gross weight in excess of the posted weight limit, and applies to both State highways and highways under the jurisdiction of local authorities unless otherwise stated.

* * * * *

§ 189.2. Definitions.

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

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

Commercial site — A place including the rooms, buildings and interior or exterior places where commodities or services are exchanged, bought, or sold.

Department—The Department of Transportation of the Commonwealth.

Develop—All processes associated with conventional and unconventional oil and gas development.

Excess maintenance—[Maintenance]Repairs or restoration or both (but not betterment) of a posted highway in excess of normal maintenance[, caused by use of over-posted weight vehicles].

Extract— All processes associated with gathering or removal of minerals, wind, and other natural resources from the air, surface or subsurface, including but not limited to coal, stone, water and related site preparation, construction, and on-site stockpiling.

Freeze-thaw period—The calendar period between February 15th and April 15th during which time thawing of previously frozen roadbed materials compromises the structural integrity of the pavement system. The posting authority may alter or modify this time period based on recent and anticipated weather conditions for a permit or agreement.

Harvest— All processes associated with the cutting, gathering, stacking or removal of timber and other similar natural resources for future use, whether cultivated or wild, including but not limited to site excavation, grading and construction activities.

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.

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

Letter of local determination— A determination made by the Department identifying particular vehicles, routes or uses as local in nature.

Load— A single user vehicle and cargo traversing a posted highway in a single direction.

Local traffic—The following shall be regarded as local traffic for the purposes of § 189.3 (relating to local traffic):

(1) Emergency vehicles.

(2) School buses.

(3) [Vehicles and combinations of governmental agencies and utilities or their contractors engaged in construction or maintenance on a posted highway or in a location which can be reached only via a posted highway]Government-owned vehicles.

(4) [Vehicles and combinations going to coming from a residence, commercial establishment, or farm located on a posted highway or which can be reached only via a posted highway]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.

(5) User vehicles of utilities or their contractors engaged in maintenance located on or reachable only through posted highways.

(6) 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.

(7) User vehicles going to or coming from a permanent forest product processing mill located on or reachable only through posted highways.

(8) User vehicles going to or coming from a permanent coal reprocessing or preparation plant located on or reachable only through posted highways and not located on the same posted highway as a site where coal is extracted.

Natural resource—Any material from nature having potential economic value including but not limited to timber, minerals, oil, gas, wind, and water. The term shall not include trees grown specifically for use in landscaping or as Christmas trees, or food crops, animals, or animal products intended for human or animal consumption such as corn, wheat and milk.

* * * * *

[*Over-posted-weight vehicle*—A vehicle or combination having a gross weight in excess of a posted weight limit.]

Permanent coal reprocessing or preparation plant— One or more permanent facilities located adjacently on a single roadway where coal is delivered directly from the natural resource extraction site and is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. Stockpile or storage facilities located on the same posted highway as the processing facility may be included. It does not include ancillary facilities located separately from the initial processing facility site or at the coal extraction site.

Permanent forest product processing mill— One or more permanent facilities located adjacently on a single roadway where logs, pulpwood, wood chips or other forest products are delivered directly from the natural resource harvest site to undergo processing. Processing includes any of the following procedures: bark removal, sawing, resawing, slicing, chipping, pelletizing, edging, trimming, planing or machining. Log stockpile facilities may be included. It

does not include log landing sites or portable sawmills unless the portable sawmill has become permanently affixed to the real estate.

* * * * *

Reachable only through posted highways – One or more posted highways needed to travel to a location from the nearest non-posted highway or from the location to the nearest non-posted highway by the most direct route possible. The most direct route may not include posted highways which can be avoided by travel on non-posted highways. If available, a reasonable alternate non-posted highway must be taken.

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 58 Pa. C.S. § 2301.

(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).

User – The individual or entity responsible for generating user vehicle traffic.

User vehicle—A vehicle or combination having a gross weight in excess of a posted weight limit.

§ 189.3. Local traffic.

(a) *General rule.* [Over-posted-weight I] Local traffic user vehicles may exceed posted weight limits unless the posting authority determines that [an over-posted-weight] a user vehicle or vehicles being driven to or from a particular [destination] location or [destinations] locations are likely to cause damage to the highway. User vehicles related to natural resource development, harvesting, or extraction are not local traffic when going to or coming from a site at which minerals, gas or natural resources are developed, harvested, or extracted, notwithstanding whether the site is located at a residence, a commercial site or on farmland or a local government or Department facility.

(b) *User [V]vehicles determined likely to damage highway.* If the posting authority determines that one or more [over-posted-weight] user vehicles are likely to damage the highway, the posting authority will so notify the registrants of the [over-posted-weight] user vehicles or owners of the [destination] location or [destinations] locations, or both, and will also notify State and local police. After 2 business days following delivery of the notice, or after 5 days following mailing of the notice, such [over-posted-weight] user vehicles shall not exceed the posted weight limits except in accordance with the provisions of § 189.4 (relating to use under permit).

(c) *Self-certification; [P] proof of local traffic status.* The following types of documents will constitute evidence that a [vehicle is local traffic:

(1) A bill of lading, shipping order or similar document which shows a destination on the posted highway.

(2) Certification by the permittee or an official of a permittee company on the company letterhead describing the local traffic nature of the activity which the vehicle is engaged in.]

user vehicle is traveling to or from a particular site with an address located on or reachable only through posted highways: bills of lading, shipping orders, service orders, or other documents on company letterhead which indicate the address of the site and purpose of the user vehicle. The use of the posted road and purpose of the user vehicle must comply with the definition of local traffic as defined in this chapter. An authorized permit from the posting authority is not required unless the local traffic status has been previously revoked in writing, however if requested, a local determination permit may be issued for the user's benefit.

§ 189.4. Use under permit.

(a) *General rule.* No [over-posted-weight] user vehicles, except local traffic user vehicles authorized under §189.3(a) (relating to local traffic), shall be driven on a posted highway with a gross weight in excess of the posted weight limit unless the posting authority has issued a permit for the user vehicle or vehicles in accordance with this section. A user shall, at all times, carry evidence of the user vehicle's destination, which shall consist of documents of the type set forth in § 189.3(c) (relating to local traffic). A single permit may authorize permit categories for local determination highways, annual bonded highways, and seasonal bonded highways. An original or copy of the issued permit must be carried in the user vehicle at all times. The Department may determine through policy to allow use of electronic permits and self-certification documents to be utilized as acceptable proof of authorized hauling.

(b) ~~[Types of permits.]~~Permit categories. ~~[Types of permits]~~Permit categories shall include the following:

[(1) A Type 1 permit authorizes use of a particular posted highway or portion thereof by an over-posted-weight vehicle. It is valid only when carried in the over-posted-weight vehicle.

(2) A Type 2 permit authorizes use of a particular posted highway or portion thereof by any number of over-posted-weight vehicles being driven to or from a common destination.

(i) Documents of the type set forth in § 189.3(c) (relating to local traffic) will constitute evidence of the destination of a vehicle.

(ii) A Type 2 permit will be issued only upon request of the permittee and if the posting authority determines that it is not feasible to issue a Type 1 permit for each vehicle, for example, most over-posted-weight vehicles hauling to and from the place of business of the permittee belong to or are hauling under contract with customers or suppliers of the permittee.

(3) A Type 3 permit authorizes use of a number of specified posted highways or portions thereof by an over-posted-weight vehicle.

(i) A Type 3 permit is valid only when carried in the over-posted-weight vehicle.

(ii) A Type 3 permit is issued only if the posting authority determines that damage to the posted highway covered by the permit will be minimal because of the limited number of moves by over-posted-weight vehicles and short term use of the highways anticipated by the permittee.]

(1) 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:

(i) Local Traffic. User vehicles that are classified as local traffic in accordance with 67 Pa. Code § 189.3 may be authorized as a local determination permit category, if requested by the user.

(ii) At-Risk. The Department may use an at-risk permit category where 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.

(iii) De minimis. Hauling activity identified as *de minimis* under 67 Pa. Code, Chapter 190 may be authorized as a local determination permit category.

(iv) Minimum Use. The Department may use a minimum use permit category where the user responsible for generating user vehicles is not a heavy user as defined in this chapter for a particular highway. This category is restricted during the designated freeze-thaw period unless written authorization from the Department is provided.

(v) Application to local highways. The non-bonded local determination categories set forth above in subsections (ii), (iii), and (iv) do not apply to local authorities unless the local authority elects to enact an ordinance adopting the minimum use permit category.

(vi) Use of copy. The Department may issue a paper or electronic original permit to a user. 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.

(2) Annual and seasonal bonded. User vehicles may be authorized to exceed a posted weight limit on highways which cannot be authorized under (b)(1) conditioned upon the user entering an excess maintenance agreement and providing security during the permit authorization period. The posting authority may provide, or require a user to provide at the users expense, detailed inspections or condition reports showing the condition of the highway at beginning and end of any authorized permit period. Bonded permit categories may include:

(i) Annual bonded. An annual bonded permit category may be used for any requested posted highway for all desired times of the calendar year including the freeze-thaw period.

(ii) Seasonal bonded. A seasonal bonded permit category maybe used for any requested posted highway for any portion of the calendar. This permit category may be used in conjunction with a non-bonded local determination permit category which is otherwise restricted for reoccurring or readily anticipated periods of the year.

(c) Excess maintenance agreement. [Issuance of a permit to exceed a posted weight limit or limits will be conditioned on the agreement by the permittee to accept financial responsibility for excess maintenance of the posted highway or portion thereof to be used by the permittee. The agreement may provide for the work to be performed by the posting authority or its contractor or by the permittee or its contractor, except that in the case of a self-bonded agreement, the Department will require that all work be performed by the permittee or its contractor.] Bonded authorization shall be conditioned 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. The

agreement may provide for the work to be performed by the posting authority or its contractor or by the user or its contractor, except that in the case of a self-bonded agreement, the Department will require that all work be performed by the user or its contractor.

(d) *Security.* Except as provided in paragraph (4), the [permittee] user shall be required to provide security in favor of the posting authority to assure compliance with an [maintenance-reconstruction agreement] excess maintenance agreement. Security shall not be required for non-bonded authorizations.

(1) *Amount of security.* Amount of security shall be as follows:

(i) *Type 1 and Type 2 permits.* Type 1 and Type 2 permits shall include:

(A) \$6,000 per linear mile for unpaved highways to be maintained at a level consistent with the type of highway.

(B) \$12,500 per linear mile for paved highways to be maintained at a level consistent with the type of highway.

(C) \$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.

(ii) *Type 3 permits.* \$10,000 for each county or municipality covered by the permit.]

(i) *Annual or seasonal bonded highways.* Bonded highway amounts shall include:

(A) \$6,000 per linear mile for unpaved highways to be maintained at a level consistent with the type of highway.

(B) \$12,500 per linear mile for paved highways to be maintained at a level consistent with the type of highway. The posting authority may alternatively elect \$10,000 per county for state highways or \$10,000 per municipality for local government highways.

(C) \$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.

(ii) *Duration of security.* A user may hold a security bond indefinitely in order to sustain use during annual or seasonal bond permit periods, or may purchase and make available any bond or other acceptable security of any appropriate duration for use during annual bonded or seasonal bonded permit periods. The security will remain in effect until it is released by the Posting Authority.

(iii) *Schedule of bonding amounts.* The Department may from time to time, but not more often than annually, publish a revised schedule of bonding amounts based on increased or decreased maintenance costs.

(2) *Form of security.* The security may be in the form of a performance bond with surety by a company authorized to do business in the Commonwealth; or, at the option of the [permittee]user, in the form of a certified or cashier's check, bank account, or irrevocable letter of credit in favor of the posting authority; or in some other form of security acceptable to the posting authority.

(3) *Additional security.* When the amount of damage in excess of normal maintenance to a posted highway is estimated by the posting authority to constitute 75% or more of the amount of the security, the posting authority may require the highway to be maintained or reconstructed

within 30 days unless the [permittee]user agrees to provide such additional security as the posting authority shall determine.

(4) *Self-bonding.* The posting authority may authorize self-bonding if it determines, on the basis of the financial ability of the [permittee]user, that it is unlikely that the posting authority will be unable to collect a judgment rendered against the [permittee]user for failure to comply with [the]an excess maintenance agreement.

* * * * *

(ii) The posting authority may require the [permittee]user to execute liens on real or personal property, or both, as a condition for authorizing self-bonding.

(iii) In order to be considered for self-bonding by the Department, a [permittee]user shall file Contractor's Financial Statement, Department Form CS 4300, Part 1. The financial statement shall be updated annually, and within 30 days of any Department request for an update.

(e) *Multiple [permittees]users.* Multiple [permittees]users shall conform with the following:

(1) *Agreement to share excess maintenance responsibility.* If two or more [persons]users wish to obtain [Type 1 or Type 2 permits]bonded authorization to operate [over-posted-weight]vehicles on the same posted highway or portion thereof, they may agree among themselves as to their relative 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.

(2) *Determination by posting authority.* If multiple [applicants for Type 1 or Type 2 permits]bonded users cannot agree on their relative responsibility, the posting authority may determine their relative shares, and enter into agreements with and accept security from any person agreeing to such determination.

(3) *Subsequent permit applicants.* Paragraphs (1) and (2) shall apply even if one or more [persons]users have already entered into [a Type 1 or Type 2 permit agreement]a bonded authorization and posted security when another [person]user expresses the desire to obtain a [Type 1 or Type 2 permit]bonded authorization to operate [over-posted-weight]vehicles on the same posted highway.

(f) *Determination of highway condition.* Determination of highway condition shall consist of the following:

(1) *Inspection.* Representatives of the posting authority and of the [permittee or permittees]user or users will make an onsite inspection of the posted highway immediately before issuance of [each] a permit in order to determine its condition.

(2) *Interim inspection or [R]reinspection.* The posted highway will be reinspected:

* * * * *

(iii) Upon termination of any permit, in order to determine the amount of damage for which the [permittee or permittees]user or users are responsible.

(3) [*Type 3 permits.* Before and after using a Type 3 permit on any posted highway specified in the permit, the representatives of the permittee and the posting authority will make an onsite inspection to determine the relative condition of the highway before and after the use and to assess any excess maintenance caused by the permittee.] 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.

(4) *Notification of inspections and reinspections.* All [Type 1 and Type 2 permittees] bonded users on a posted highway or portion thereof will be notified of all inspections and reinspections on the highway or portion, and may participate in the inspections and reinspections. The posting authority shall not be required to notify bonded users of roadway condition surveys.

(5) *Inspection costs.* The inspection costs of the posting authority, including the costs of roadway condition surveys, shall be paid by the [permittee or permittees. Inspection costs related to a county wide or municipality wide—Type 3—permit will be paid solely by the Type 3 permittee] user or users.

(g) *Administrative fee.* The Department will charge a \$15 administrative fee for issuance of each [Type 3] bonded permit. Local authorities may charge an administrative fee of no more than \$15 for issuance of each [Type 3] bonded permit.

§ 189.5. Investigations and audits.

The posting authority may conduct investigations and audits. Users shall provide requested information within 30 days of the request. Users may designate records or portions of records as trade secrets or confidential proprietary information, and the records or parts of records so designated shall be used and retained for audit and investigation purposes only, and shall be protected from disclosure to the extent possible under the law; redaction may be undertaken by the users if the posting authority agrees in advance. Audits shall be limited to determining hauling activity under local determination permit categories to ensure the user has not exceeded the authorized hauling activity. Investigations may be used for any permit category.

§ 189.6. Suspending, revoking or denying agreements or permits.

If the posting authority has determined and notified the user that a violation of a legal or contractual obligation has occurred, the posting authority may suspend, revoke and/or deny any current or future agreements and permits under its jurisdiction. 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 highway becomes unsafe and impassable. Nothing in this section is intended to diminish the user's due process and administrative appeal rights or the posting authority's right to take any other action allowed by law, including but not limited to imposing appropriate traffic restrictions and closing a highway.

§ 189.7. Use of special hauling permits for certain vehicles.

Users using permits pursuant to 67 Pa. Code, Chapter 179 (relating to oversize and overweight loads and vehicles) may be exempt from obtaining a permit under this chapter if adequate security is otherwise provided.



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

February 17, 2016

David Sumner, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

Re: Proposed Rulemaking
18-467 — 67 Pa. Code, Chapter 189
Hauling in Excess of Posted Weight Limit

Dear Mr. Sumner:

Enclosed please find a copy of the Face Sheet, Preamble, Annex A and Regulatory Analysis Form, for amendments to Chapter 189 of the Department of Transportation's (Department) regulations which the Department intends to adopt in accordance with the provisions of the Regulatory Review Act, Act of June 25, 1982, P.L. 633, *as amended*.

Copies of these materials were also delivered today to the Legislative Reference Bureau and the majority and minority chairpersons of the Pennsylvania House and Senate Transportation Committees.

The Department will provide the Independent Regulatory Review Commission with any assistance required to facilitate a thorough review of this regulation. Thank you for your attention.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jeffrey M. Spotts".

Jeffrey M. Spotts,
Regulatory Counsel

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: #18-467
 SUBJECT: Hauling in Excess of Posted Weight Limit
 67 Pa. Code, Chapter 189
 AGENCY: Department of Transportation




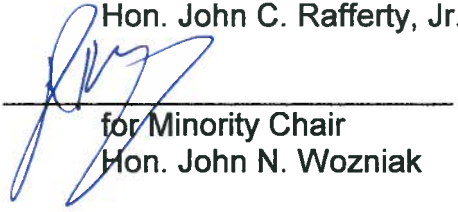

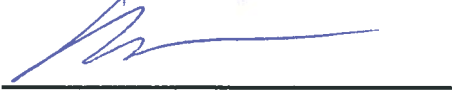
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TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
2/17/16	 for Majority Chair Hon. John Taylor	HOUSE COMMITTEE ON TRANSPORTATION
2/17/16	 for Minority Chair Hon. William F. Keller	
2-17-16	 for Majority Chair Hon. John C. Rafferty, Jr.	SENATE COMMITTEE ON TRANSPORTATION
2/17/16	 for Minority Chair Hon. John N. Wozniak	
	N/A	OFFICE OF ATTORNEY GENERAL
2/17/16	 K. Cooper	INDEPENDENT REGULATORY REVIEW COMMISSION
2-17-16		LEGISLATIVE REFERENCE BUREAU
Date:	February 17, 2016	