CHAPTER 190. LETTER OF LOCAL DETERMINATION—STATEMENT OF POLICY

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Authority

The provisions of this Chapter 190 issued under section 7 of the act of February 14, 2012 (P. L. 87, No. 13) (75 Pa.C.S. § 4902, Note) and the Vehicle Code, 75 Pa.C.S. §§ 4902 and 6103, unless otherwise noted.

Source

The provisions of this Chapter 190 adopted May 11, 2012, effective May 12, 2012, 42 Pa.B. 2481. Under the Vehicle Code, 75 Pa.C.S. § 4902, this Chapter 190 remains in effect until December 31, 2018.

§ 190.1. Purpose.

(a) This chapter is adopted under section 7 of Act 13 and section 33 of the act of November 25, 2013 (P. L. 974, No. 89) (75 Pa.C.S. § 4902 (relating to restrictions on use of highways and bridges)). 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.

(d) Letters of Local Determination do not apply to local authorities unless the local authority elects to enact an ordinance adopting the policies and procedures as such.

Authority

The provisions of this § 190.1 amended under section 7 of the act of February 14, 2012 (P. L. 87, No. 13), the act of November 25, 2013 (P. L. 974, No. 89) and the Vehicle Code, 75 Pa.C.S. §§ 4902 and 6103.

Source

The provisions of this § 190.1 amended December 4, 2015, effective December 5, 2015, 45 Pa.B. 6886. Immediately preceding text appears at serial page (361459).

§ 190.2. Definitions.

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

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

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

Commercial site—The location of a commercial establishment.

Department—The Department of Transportation of the Commonwealth.

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

Extract—The 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 onsite stockpiling.

Harvest—The 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.

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

Natural resource—

(i) Material from nature having potential economic value including, but not limited to, timber, minerals, oil, gas, wind and water.

(ii) The term does 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.

Permanent coal reprocessing or preparation plant—

(i) 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.

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(ii) The term does not include ancillary facilities located separately from the initial processing facility site or at the coal extraction site.

Permanent forest product processing mill—

(i) 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 bark removal, sawing, resawing, slicing, chipping, pelletizing, edging, trimming, planing or machining.

(ii) The term includes log stockpile facilities.

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

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 Act 13.

(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).

Authority

The provisions of this § 190.2 amended under section 7 of the act of February 14, 2012 (P. L. 87, No. 13), the act of November 25, 2013 (P. L. 974, No. 89) and the Vehicle Code, 75 Pa.C.S. §§ 4902 and 6103.

Source

The provisions of this § 190.2 amended December 4, 2015, effective December 5, 2015, 45 Pa.B. 6886. Immediately preceding text appears at serial pages (361459) to (361460).

§ 190.3. Local traffic and Letters of Local Determination.

(a) *Self certification as local traffic.* A hauling activity, but not hauling activity related to natural resource development, harvesting or extraction, going to or coming from a site, may be self-certified as local traffic if it meets the definition of ''local traffic'' in § 189.2 (relating to definitions), the provisions of § 189.3(c) (relating to local traffic) or as specifically provided in 75 Pa.C.S. § 4902 (relating to restrictions on use of highways and bridges).

(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.

(3) Timber and coal local traffic routes are limited to only delivery or pickup of:

(i) Logs and other forest products on one or more posted highways required to travel to or from a permanent forest product processing mill to or from the nearest nonposted highway by the most direct route possible.

(ii) Coal on those posted roads required to travel to or from a permanent coal reprocessing and preparation plant to or from the nearest nonposted highway by the most direct route possible. Hauling in excess of a posted weight limit related to delivery or pickup of coal to or from permanent coal reprocessing and preparation plants may qualify as local only when the permanent coal reprocessing and preparation plant is not on the same posted highway as a site at which coal is extracted.

(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 Act 13 will qualify as local:

(A) On highways 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 highways 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 Act 13 which is not for highways 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 may qualify as local if all of the following apply:

(i) It cannot be self-certified under subsection (a).

(ii) It is not related to an at-risk industry as defined in Act 13.

(iii) The Department, upon the submission and review of a completed application for a Letter of Local Determination, determines the scale of hauling activity and nature of the business is not likely to cause damage to the highway requested in the application based on all of the following:

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(A) The type and amount of hauling activity.

(B) The structure of the requested highway.

(C) The availability and suitability of alternate highways 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 highway specified in the application based on the structure of the requested highway and the availability and suitability of alternate highways 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 highways by segments and offsets or intersecting roads) to be used on the hauling highway.

(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 documents 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 highways based on the available State highway network. Weight-restricted municipal highways will not be evaluated by the Department. If the hauler's proposed highway includes a weight-restricted municipal highway, the hauler shall contact the proper local authority for permission to utilize that weight-restricted highway.

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

(1) The scope of a Letter of Local Determination will be based on the vehicles, highways 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.

(4) Existing bonded permits held by the requesting hauler for the requested highway must be closed out in accordance with the terms of the excess maintenance agreement. The bonded permits will not be closed out until repairs and final inspections are completed. Letters of Local Determination are not valid during the freeze-thaw period. If desired, an excess maintenance agreement and or a security bond may be retained for issuance of a bonded permit during freeze-thaw periods or other restriction period.

Authority

The provisions of this § 190.3 amended under section 7 of the act of February 14, 2012 (P. L. 87, No. 13), the act of November 25, 2013 (P. L. 974, No. 89) and the Vehicle Code, 75 Pa.C.S. §§ 4902 and 6103.

Source

The provisions of this § 190.3 amended December 4, 2015, effective December 5, 2015, 45 Pa.B. 6886. Immediately preceding text appears at serial pages (361460) to (361462).

Cross References

This section cited in 67 Pa. Code § 190.5 (relating to revocation of Letter of Local Determination).

§ 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.

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§ 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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