

Clearinghouse Rule 06-064

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

The Wisconsin Department of Transportation proposes an order to repeal TRANS 102.22(title), (1), (3)(intro.) and (d)1.; renumber TRANS 102.22(3)(a) to (d)(intro.) and (d)2.; renumber and amend TRANS 102.22(2); amend TRANS 102.20(1) and (8)(f), 102.23(title), (1), (2) and (4)(title); and create TRANS 102.23(5) to (7)(intro.), (d)1. and 2.(note), relating to CDL exemptions

**NOTICE OF HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to s. 343.055(5), Stats., and interpreting s. 343.055, Stats., the Department of Transportation will hold a public hearing in **Room 144-B** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **29th** day of **June**, 2006, at **1:00 PM**, to consider the amendment of provisions of Ch. Trans 102, Wisconsin Administrative Code, that are related to CDL exemptions.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance are available on the south side of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 343.055, Stats.

Statutory authority: s. 343.055(5), Stats.

Explanation of agency authority: Section 343.055(5) requires the Department to issue administrative rules implementing all federal CDL waivers.

Related statute or rule: s. 343.055, Stats., and 49 CFR 383.3

Plain language analysis: Sections 343.055, Stats., and ss. Trans 102.20 and 102.20, .22 and .23 implement a number of CDL waivers states are permitted to grant to drivers of certain commercial motor vehicles. These waivers were originally permitted under various “waivers” which were published in the Federal Register. The USDOT later codified these waivers in the Code of Federal Regulations and slightly changed some of them in that process. This proposed rule would implement the subtle changes created when the USDOT codified the regulations now found at 49 C.F.R. 383.3.

Section 343.055(5), Stats., requires the Department to issue administrative rules addressing all federal CDL waivers.

1. **Firefighters and Emergency Responders.** Section 343.055(1)(b), Stats., currently exempts firefighters from all state CDL licensing requirements while they operate specific commercial motor vehicles (fire trucks, hook and ladder trucks and foam or water transporters). They must be employed by a volunteer or paid fire fighting organization and the person is operating emergency or fire fighting equipment necessary to the preservation of life or property or the execution of emergency management functions and equipped with a siren and warning lights and the operation is in the routine performance of other duties of the fire organization.

Section 49 C.F.R. 383.3(d)(2) permits states to exempt firefighters and other persons who operate CMVs, which are necessary to the preservation of life or property or the execution of emergency governmental functions. The federal rule allows additional CMVs to be operated without a CDL, including fire trucks, hook and ladder trucks, foam or water transport trucks, police SWAT team vehicles, ambulances, or other vehicles that are used in response to emergencies. This rule making will grant an exemption from CDL requirements that is consistent with federal law.

2. **Seasonal Farm Service Workers.** Section Trans 102.20(8)(f), Wis. Admin. Code, is amended to conform to the codified requirements of 49 CFR 383.3(f)(3)(vii) with regard to the CDL exemption for certain farm service workers. Federal law now requires

the 150-mile limit to be measured from the farm being serviced instead of from the worker's place of employment. This rule change adopts that requirement.

3. **Farmers.** 49 CFR 383.3(d)(1) permits persons, such as family members, to qualify as CDL exempt farmers who were not exempted under the original federal waiver or current s. 343.055(1)(c), Stats. This rule making creates s. Trans 102.20(5) to implement the looser federal requirements and to permit family members to drive CMVs if they meet federal requirements for exemption from CDL requirements. Federal law does not define the extent of a farmer's "family" for purposes of the farmer exemption. This leaves persons who are related but are outside of a farmer's immediate family unsure as to whether they do or do not qualify for the farmer exemption. This rule making clarifies that most relatives and their spouses will qualify for the exemption. The proposed rule would allow any parent, grandparent, child, aunt, uncle, brother, sister, grandchild, nephew, niece, first cousin, legal guardian, step-parent, step-child, step-brother, step-sister, or their spouses to qualify as part of the farmer's family.

4. **Snowplow Operators.** The current provisions of s. Trans 102.22 are moved into amended s. Trans 102.23, in order to consolidate the complete CDL waiver provisions into one section of the code. The odd restricted license provisions available to farm service workers remain segregated into their own regulatory provision, s. Trans 102.20. No substantive changes are intended in consolidating the regulation. Some language changes occurred simply to make the provision consistent in drafting style with the other subsections of s. Trans 102.23.

5. ***Pyrotechnics Industry Seasonal 4th of July Waiver.*** USDOT allows states to exempt drivers hauling large, less than 500 pounds of Class 1.3G, explosives (fireworks) from some licensing requirements between June 30 and July 6 of any year. The drivers must meet various qualifications and DMV then must issue special restricted CDL licenses to such drivers. DMV has had no requests to issue such licenses and has concerns about the safety aspects of issuing CDL licenses to haul explosives to drivers who have not been trained or tested with regard to such shipping. Implementing this license type would be expensive, and DMV does not believe many drivers would qualify or seek this type of license. Therefore, DMV is not proposing to implement the pyrotechnics waiver permitted under 49 CFR 383.3(g). (None of Wisconsin's adjoining states have implemented this waiver, either.)

Summary of, and preliminary comparison with, existing or proposed federal regulation: Section 49 CFR 383.3 permits states to exempt firefighters and others operating commercial motor vehicles from CDL requirements for the preservation of life or property or the execution of emergency governmental functions and the operation is not limited to the response or return from a fire or other emergency or the routine performance of other duties of the fire organization. It also permits farmers and their

families to operate CMVs without CDLs, permits seasonal farm service workers to obtain limited CDLs without testing, permits snowplow operators from small communities to operate CMVs for snowplowing purposes in emergencies without CDLs, and permits some fireworks haulers to operate without CDLs around the 4th of July. This proposed rule making brings Wisconsin's CDL exemptions more closely into parallel with those permitted by federal law, except that it does not implement the limited pyrotechnics waiver.

Comparison with Rules in Adjacent States: All adjacent states and Washington D.C. have CDL exemptions for firefighters and emergency responders, farmers, and military members similar to those proposed in this regulation. The states are inconsistent with respect to other waivers; some have implemented them, others not. The waivers for the neighboring states and their particular requirements are discussed below by state and subject area.

Illinois

- **RV Operators.** Drivers of recreational vehicles operated primarily for personal use are exempt from CDL requirements. [625 ILCS 5/6-500(6)(b)(i)]
- **Military.** United States Department of Defense vehicles being operated by non-civilian personnel are exempt from CDL requirements. This includes any operator on active military duty, members of the Reserves, National Guard, personnel on part-time training, and National Guard military technicians (civilians who are required to wear military uniforms and are subject to the Code of Military Justice) [625 ILCS 5/6-500(6)(b)(ii)]
- **Fire/Emergency.** Drivers of firefighting and other emergency equipment with audible and visual signals, owned or operated by or for a governmental entity, which is necessary to the preservation of life or property or the execution of emergency governmental functions which are normally not subject to general traffic rules and regulations are exempt from CDL requirements. [625 ILCS 5/6-500(6)(b)(iii)]
- **Farmer.** The driver of any motor vehicle controlled or operated by or for a farmer is waived from CDL licensing requirements when the motor vehicle being used is transporting agricultural products, implements of husbandry, or farm supplies within 150 air miles from the originating farm. However, for those drivers of any truck-tractor semitrailer combination or combinations, the waiver applies only when the driver is a farmer or a member of the farmer's family and the driver is 21 years of age or more and has successfully completed any tests the Secretary of State deems necessary. A farmer or a member of the farmer's family who operates a truck-tractor semitrailer combination or combinations pursuant to the waiver is granted all of the rights and shall be subject to all of the duties and restrictions of the law applicable to the driver who possesses a commercial driver's license issued under Illinois law, with minor exceptions. For purposes of the Illinois farmer waiver, a person must be a natural or in-law spouse, child, parent, or sibling to be considered a member of the farmer's family. [625 ILCS 5/6-507(c)]
- **Emergency Snow Removal.** An employee of a township or road district with a population of less than 3,000 operating a vehicle within the boundaries of the township or road district for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting is exempt from CDL requirements when the employee is needed to operate the vehicle

because the employee of the township or road district who ordinarily operates the vehicle and who has a commercial driver's license is unable to operate the vehicle or is in need of additional assistance due to a snow emergency. [625 ILCS 5/6-507(c)(5)]

- Farm Service Seasonal Employees. Illinois provides limited licenses to farm-related service industries consistent with federal guidelines. The restricted license shall be available for a seasonal period or periods not to exceed a total of 180 days in any 12-month period. [625 ILCS 5/6-521(b); Title 92, s. 103096, Illinois Admin. Code]
- Temporary Pyrotechnics Waiver. Illinois has not implemented any pyrotechnics waiver.

Iowa

- Farmers. A farmer or a person working for a farmer while operating a commercial motor vehicle owned by the farmer within 150 air miles of the farmer's farm to transport the farmer's own agricultural products, farm machinery, or farm supplies to or from the farm is exempt from CDL requirements. The exemption applies to farmers who assist each other through an exchange of services and shall include operation of a commercial motor vehicle between the farms of the farmers who are exchanging services. [IA Stats s. 321.176A]
- Firefighters. A fire fighter while operating a fire vehicle for a volunteer or paid fire organization or a peace officer, while operating a commercial motor vehicle for a law enforcement agency, under conditions necessary to preserve life or property or to execute related governmental functions is exempt from CDL requirements. [IA Stats s. 321.176A]
- Military. The following persons are exempt from CDL requirements when operating commercial motor vehicles for military purposes:
 - Active duty military personnel.
 - Members of the military reserves.
 - Members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians.
 - Active duty United States coast guard personnel. [IA Stats s. 321.176A]

- RV Operators. A person while operating a motor home solely for personal or family use is exempt from CDL requirements. The law also exempts 5th Wheel Trailer operators if the motor vehicle has a gross vehicle weight rating of less than 26,001 pounds and the travel trailer or fifth-wheel travel trailer is towed solely for personal or family use. [IA Stats s. 321.176A]
- Farm Service Industry Drivers. Iowa Statute 321.176B permits the Iowa DOT to exempt Farm Service Industry Drivers by rule. There are a number of restrictions and requirements to qualify for this restricted license. [s. 761—607.49, IA Admin Code]
- A home care aide operating a motor vehicle in the course of the home care aide's duties.¹
- Snow Emergency Drivers. Iowa does not appear to have implemented the federal waiver for emergency snow plow operations in small municipalities.
- Temporary Pyrotechnics Haulers. Iowa has not implemented any pyrotechnics waiver.

Minnesota

- RV Operators. Persons operating a qualifying recreational vehicle may do so with a Class D license and are not required to hold a CDL. To qualify, a recreational vehicle must be a travel trailer (including those that telescope or fold down), chassis-mounted camper, motor home, tent trailer, or converted bus that provides temporary human living quarters. In addition, the vehicle may not be used as the residence of the owner or occupant, must be used while engaged in recreational or vacation activities; and must be either self-propelled or towed on the highways incidental to the recreational or vacation activities. [ss. 169.01 subd. 25, 171.02 subd. 2.(c)(3), MN Stats.]
- Military. A person in the employ or service of the United States federal government is exempt from CDL requirements while driving or operating for military purposes a commercial motor vehicle owned by or leased to the United States federal government if the person is: (1) on active duty in the U. S. Coast Guard; (2) on active duty in a branch of the U. S. Armed Forces,

¹ This exemption appears to violate federal law requirements.

which includes the Army, Air Force, Navy, and Marine Corps; (3) a member of a reserve component of the U. S. Armed Forces; or (4) on active duty in the Army National Guard or Air National Guard, which includes (i) a member on full-time National Guard duty, (ii) a member undergoing part-time National Guard training, and (iii) a National Guard military technician, who is a civilian required to wear a military uniform. The exemption does not apply to a U. S. Armed Forces Reserve technician. [171.03(b), MN Stats.]

- Fire/Emergency. Persons operating authorized emergency vehicles can do so on a Class D license and are not required to have a CDL. Vehicles included are:
 - A vehicle of a fire department;
 - A publicly owned police vehicle or a privately owned vehicle used by a police officer for police work under agreement, express or implied, with the local authority to which the officer is responsible;
 - A vehicle of a licensed land emergency ambulance service, whether publicly or privately owned;
 - An emergency vehicle of a municipal department or a public service corporation, approved by the commissioner of public safety or the chief of police of a municipality;
 - A qualified volunteer rescue squad;
 - A vehicle designated as an authorized emergency vehicle upon a finding by the commissioner of public safety that designation of that vehicle is necessary to the preservation of life or property or to the execution of emergency governmental functions. [ss. 169.01 subd. 5, 171.02 subd. 2.(c)(2), MN Stats.]

- Farmer. Persons operating farm trucks do not need a CDL if the farm truck is:
 - Controlled and operated by a farmer, including operation by an *immediate family member* or an employee of the farmer;
 - Used to transport agricultural products, farm machinery, or farm supplies, including hazardous materials, to or from a farm;
 - Not used in the operations of a common or contract motor carrier as governed by Code of Federal Regulations, Title 49, Part 365; and
 - Used within 150 miles of the farm. [171.02 subd. 2.(c)(1), MN Stats.]

- **Emergency Snow Removal.** A person who operates a commercial motor vehicle for the purpose of removing snow or ice from a roadway by plowing, salting, or sanding is not required to hold a commercial driver's license if the person: (1) is an employee of a local unit of government with a population of 3,000 or less; (2) is operating within the boundaries of the local unit of government; (3) holds a valid class D driver's license; and (4) except in the event of a lawful strike, is temporarily replacing the employee who normally operates the vehicle but either is unable to operate the vehicle or is in need of additional assistance due to a snow emergency as determined by the local unit of government. [171.02 subd. 5, MN Stats.]
- **Farm Service Seasonal Employees.** Minnesota does not appear to have adopted this exemption. Minnesota does have a restricted farm license for drivers 15 years of age who do not hold regular licenses and who drive farm vehicles in the course of working for their parents.
- **Temporary Pyrotechnics Haulers.** Minnesota has not implemented any pyrotechnics waiver.

Michigan

- **RV Operators.** Persons who drive a motor home or a vehicle used exclusively to transport personal possessions or family members for nonbusiness purposes are exempt from CDL requirements. [257.312e(13), MVC] Persons operating 5th wheel trailers or motor homes must obtain a state required non-CDL endorsement. [257.312i(1), MVC]
- **Military.** A person serving in the armed forces of the United States if furnished with a driver's permit and operating an official motor vehicle in that service is exempt from any driver license requirement in Michigan, including CDL requirements. A person who is a civilian and in the employ of the armed forces of the United States is not exempt from obtaining a license.
- **Fire/Emergency.** A police officer or a firefighter who has met the driver training standards of the Michigan fire fighters' training council are exempt from CDL requirements when operating an authorized emergency vehicle. [257.312e(12), MVC]
- **Farmer.** Michigan law exempts farmers from CDL requirements if all of the following are met:

- The vehicle is controlled and operated by a farmer or an employee or family member of the farmer;
 - The vehicle is used to transport agricultural products, farm machinery, farm supplies, or a combination of these items, to or from a farm.
 - The vehicle is not used in the operation of a common or contract motor carrier.
 - The vehicle is operated within 150 miles of the farm.
 - If the vehicle has a gross vehicle weight rating of 26,001 pounds or more on the power unit, the driver has a qualifying license endorsement that is issued upon successful completion of a knowledge test.
 - If the vehicle has a gross vehicle weight rating of 26,001 pounds or more or is a combination of vehicles having a gross vehicle weight rating of 26,001 pounds or more on the power and is carrying hazardous materials on which a placard is required under federal law, the driver needs an endorsement obtained by successfully completing both a knowledge test and a driving skills test. [257.312e(11), MVC]
- Emergency Snow Removal. Michigan does not grant this federal waiver.
 - Farm Service Seasonal Employees. Michigan does not grant this federal waiver.
 - Temporary Pyrotechnics Haulers. Michigan has not implemented any pyrotechnics waiver.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: No data or analytical methodology was employed in considering this rule making.

Analysis and supporting documentation used to determine effect on small businesses: This rule making has no effect on small business. This affects only drivers operating fire fighting type commercial vehicles necessary for the preservation of life or property. The Department's Regulatory Review Coordinator may be contacted by e-mail at andrew.ruiz@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect and anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district,

sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state revenues or liabilities, nor will the private sector incur any costs.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Terry Ewing, Department of Transportation, Division of Motor Vehicles, Bureau of Field Services, Room 266, P. O. Box 8917, Madison, WI 57708-8917. You may also contact Mr. Ewing by phone at (608) 266-0428.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Trans 102.20(1) and (8)(f) are amended to read:

Trans 102.20(1) PURPOSE. The purpose of this section is to ~~administratively interpret s. 343.055(1)(f), Stats.,~~ adopt a seasonal farm service waiver for CMV drivers consistent with those federal department of transportation regulations at 57 Fed. Reg. 13650 (April 17, 1992) 49 CFR 383.3(f).

~~NOTE: 1993 Wis. Act 19 repealed s. 343.055(1)(e) to (g), Stats.~~

~~NOTE: Federal CDL regulations make no provision for limited license privileges or license waivers for drivers described in those classes described in s. 343.055(1)(e) and (g), Stats. Pursuant to s. 343.055(4), Stats., drivers in those categories are required to hold CDLs. Drivers licensed under this section are subject to all laws and regulations pertaining to commercial motor vehicle drivers and CDL holders.~~

(8)(f) The license may not permit the operation of commercial motor vehicles beyond 150 miles of the driver's place of employment or, in the case of custom harvester

employees, 150 miles of the business or farm being served by the custom harvester business.

SECTION 2. Trans 102.22(title) and (1) are repealed.

SECTION 3 Trans 102.22(2) is renumbered Trans 102.23(2)(b) and amended to read:

Trans 102.23(2)(b) ~~DEFINITIONS. In this section, "local~~ "Local unit of government" means a county, city, village, town, school district, county utility district, sanitary district, metropolitan sewage district, or other public body created by or pursuant to state law.

SECTION 4. Trans 102.22 (3)(intro.) is repealed.

SECTION 5. Trans 102.22(3)(a) to (d)(intro.) are renumbered Trans 102.23(7)(a) to (d)(intro.).

SECTION 6. Trans 102.22(3)(d)1. is repealed.

SECTION 7. Trans 102.22(3)(d)2. is renumbered Trans 102.23(7)(d)2.

SECTION 8. Trans 102.23(title), (1), (2) and (4)(title) are amended to read:

Trans 102.23 (title) Military vehicle operator CDL exemption, firefighting, farmer and emergency government CDL exemptions. (1) PURPOSE. The purpose of this section is to administratively implement the federal waiver for vehicles operated by the United States armed forces, farmers, firefighters and emergency responders, and emergency snowplow drivers for small units of local government permitted under 49 CFR 383.3(c) and (d). This section shall be interpreted and administered consistent

with ~~that regulation~~ those regulations and in a manner that complies with federal guidelines issued pursuant to ~~that regulation~~ those regulations.

(2) DEFINITIONS. In this section:

(a) “CDL class, endorsement or restriction” means authorization to operate class A, B or C commercial motor vehicles, or any endorsement described in s. 343.17(3)(d), Stats., or any restriction specified in ss. 343.17(3)(d) or (e), Stats.

(4)(title) MILITARY WAIVER INAPPLICABLE.

SECTION 9. Trans 102.23(5) to (7)(intro.), (d)1. and (d)2.(note) are created to read:

Trans 102.23(5) FARMERS. No CDL class, endorsement or restriction shall be required of or applied to any person operating a commercial motor vehicle for farming purposes who meets all of the following criteria:

(a) The person is operating a farm vehicle that is being used to transport agricultural products, farm machinery, farm supplies or any combination of these goods to or from a farm.

(b) The vehicle is owned or controlled by a farmer. For purposes of this paragraph, “farmer” means any person who operates a farm or is directly involved with the cultivation of land, crops or livestock which are owned or directly controlled by that person. Farmer includes all persons meeting the definition in s. 340.01(18)(b), Stats. “Farmer” also includes a corporation, association, cooperative or partnership owned or controlled by farmers and engaged in the business of farming.

(c) The vehicle is operated by the farmer, the farmer's employees, or the farmer's family members. For purposes of this paragraph, "family member" means any parent, stepparent, grandparent, child, stepchild, brother, sister, stepbrother, stepsister, uncle, aunt, first cousin, nephew, niece, grandchildren, as defined in s. 990.001(16), Stats., whether related by blood or adoption, or the spouses of any such person and any spouse or guardian of the farmer.

NOTE: Section 990.001(16), Stats., includes a chart that makes the relationships described in this section easier to understand.

(d) The vehicle is used within 150 miles of the farmer's farm.

(e) The vehicle is not used in the operation of a common or contract motor carrier, as those terms are defined in s. 194.01(1) and (2), Stats.

NOTE: Any shipping for payment in cash or kind is considered contract motor carrier operations. s. 194.01(2), Stats., 49 CFR 390.5.

(6) FIREFIGHTERS AND EMERGENCY GOVERNMENT WORKERS. No CDL class, endorsement or restriction shall be required of or applied to any person operating a commercial motor vehicle necessary to the preservation of life or property or the execution of emergency government functions provided the vehicles are equipped with audible and visual signals and are not subject to normal traffic regulations when using those signals. Vehicles exempt under this subsection include all of the following:

- (a) Fire trucks.
- (b) Hook and ladder trucks.
- (c) Foam or water transport trucks.
- (d) Police SWAT team vehicles.

(e) Ambulances.

(f) Rescue squads.

(g) Command post vehicles.

NOTE: The original federal waiver permitted operation of vehicles only in response to emergencies or in the routine performance of other duties. The federal government removed that restriction in promulgating 49 CFR 383.3(d)(2), thereby extending the waiver for other non-routine functions such as parades and vehicle repair. This rule making adopts this extended waiver pursuant to the authority provided in s. 343.055(5), Stats.

(7) SNOWPLOW OPERATORS. No CDL class, endorsement or restriction shall apply to a person operating a commercial motor vehicle for the purpose of removing snow or ice from a roadway by plowing, salting, sanding, or applying other snow and ice treatment chemicals if all of the following apply:

(d)1. The properly licensed employee who ordinarily operates a commercial motor vehicle for these purposes is unable to operate the vehicle.

(d)2.(note) Wisconsin has not adopted restricted CDL license waivers for the pyrotechnic industry permitted at 49 CFR 383.3(g).

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this ____ day of
May, 2006.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation