

CR 90-148

CERTIFICATE

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DEPARTMENT OF TRANSPORTATION)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, RONALD R. FIEDLER, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to **the issuance of occupational drivers licenses**, was duly approved and adopted by this Department on **October 29, 1990**.

I further certify that this copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Transportation at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 29th day of **October**, 1990.



for

Donald R. Fiedler, Deputy

RONALD R. FIEDLER, P.E.
Secretary

A RULE to create chapter Trans 117, Wisconsin Administrative Code, relating to the Issuance of Occupational Drivers Licenses.

ORDER ADOPTING RULE

Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: ss. 85.16(1) and 343.02, Stats.

Statutes Interpreted: ss. 343.10 and 351.07, Stats.

General Summary of Rule. This rule creates Chapter Trans 117 to establish by rule the department's policies and procedures relating to the issuance of occupational drivers licenses and the conditions and limitations that may be imposed on all occupational licenses issued by the department.

Sections 343.10 and 351.07, Stats., set the grounds for the issuance of occupational licenses to those persons who have had a license or operating privilege revoked or suspended. Issuance of an occupational license is limited to Wisconsin residents. This rule provides a summary of the process defined by statute for obtaining an occupational license.

Interim occupational licenses will be issued during the conversion to Commercial Driver Licenses to drivers who hold a chauffeur license or interim license. This rule explains the expiration periods for interim and interim occupational licenses.

Sections Trans 117.04 and 117.05 are created to interpret ss. 343.10(1)(b) and 351.07(1), Stats. This rule requires a person applying for an occupational license to explain how the person's job duties are related to the hours of operation and areas or routes of travel sought in the petition. The rule also sets standards for the approval of petitions for the issuance of occupational licenses and explains what materials must be presented to the department in an application for an occupational license.

Section Trans 117.06 codifies the department's long standing practice of not issuing occupational licenses for the operation of school buses in accordance with ss. 343.10(7) and 343.12, Stats.

The department's long standing practice of issuing occupational licenses for the longest possible period is also explained in s. Trans 117.08. This practice is followed so that the driver can operate until the regular operating privilege is restored without needing to obtain an occupational license more than once.

Section Trans 117.07 explains the manner in which a person can amend or reinstate an occupational license. Occupational licenses can be amended to change the restrictions on the

license. This sometimes becomes necessary for persons because of changes in their job duties or work hours. Section Trans 117.07 requires a person seeking to reinstate an occupational license after a revocation, cancellation or disqualification, to follow the same procedure that is required for obtaining an original occupational license. The section also establishes the handling of occupational license petition fees consistent with s. 343.10(6), Stats.

Section Trans 117.09(1), explains the department's long standing policy requiring a petitioner to specifically state the exact days of the week and times of the day during which operation of a motor vehicle is required. Section 343.10(5), Stats., provides that hours of operation allowed with an occupational license cannot exceed 12 hours per day and 60 hours per week.

Under the 1987 statutes, chauffeurs and limited chauffeurs allowed basically unlimited operation for those persons with chauffeur duties. The enactment of 1989 Wisconsin Act 105 resulted in the repeal of the provisions of the statutes authorizing those licenses and would have made commercial drivers subject to the same specific hours and days of week standards as holders of Class D and M licenses.

This change in the law created a problem for those persons needing the authority to operate a motor vehicle at times other than those that can be specifically stated as required in s. Trans 117.09(1), and required the department to alter its occupational license policies. To deal with this problem, two exceptions to the long standing policy explained in s. Trans 117.09(1) are being adopted.

First, s. Trans 117.09(2) allows a person who provides emergency services to the public to operate a motor vehicle, during an emergency, to travel only to and from the location of the emergency or their place of employment. This provision makes drivers responsible for proving they are providing emergency services to the public when operating outside the specific hours set forth in the license.

Second, s. Trans 117.09(3), allows a commercial motor vehicle operator to operate up to 12 hours per day and 60 hours per week without definite specification of hours of operation as required in s. Trans 117.11(1). This privilege is allowed only to commercial motor vehicle operators. A person seeking this type of operation is required to specify the hours in which the person operates a vehicle by maintaining an operating log. The person must make the log available to a law enforcement officer upon request. Information required in the operating log is specified in this section. Most drivers will not need to maintain a separate log, but will be able to use the duty status log they are required to maintain by federal law.

Finally, s. Trans 117.10 establishes the department's policy regarding the issuance of occupational licenses during the transition period to the classified license system. Interim licenses will be issued to persons who require authority to operate commercial motor vehicles after January 1, 1991, and before April 1, 1991. Persons who hold valid chauffeurs or interim licenses may obtain an interim occupational if their driving privileges are suspended or revoked during the interim period. Section 343.03(b), Stats., provides that after April 1, 1991, all licenses issued must be classified licenses. Therefore, after April 1, 1991, s. Trans 117.10 will become obsolete.

Final Regulatory Flexibility Analysis. The rule will have no adverse impact on small businesses.

Fiscal Estimate. 1989 Wis. Act 105 creates a system in which only one operator's license document will be issued. Previously chauffeur's licenses were a separate licensing document and under former law a driver who lost his or her regular license for operating while intoxicated or for an accumulation of points would not lose their chauffeur's license if the OWI offense was not committed while operating as a chauffeur or the points were assessed only against their regular license. On January 1, 1991, revocation and suspension will affect all licenses. It is estimated that this change will result in 3,000 more occupational licenses being issued each year for a total of 25,000.

Prior to 1989 Wis. Act 105, all petitions for an occupational license were filed with a court. Now petitions from persons having a commercial drivers license may be filed with the department. It is estimated that 6,550 petitions will be filed with the department accompanied by a \$40 filing fee, generating revenues of \$262,000.

On or after January 1, 1991, occupational licenses will be photo license documents issued at motor vehicle service centers throughout the state. Previously, these licenses were issued from the department's headquarters in Madison. Due to the need for communication between the field offices and the department's central office in Madison relating to occupational licenses, it is estimated that there will be one time costs of approximately \$70,000 for purchase and installation of facsimile machines and telephone lines. Annual costs of the occupational licensing program are expected to increase by approximately \$170,000 as a result of changes associated with 1989 Wis. Act 105. These costs include salary for additional staff time associated with the issuance of photo licenses for all occupational licenses and total processing time for the 3,000 additional occupational licenses which the department expects will need to be issued. It also includes additional materials for these 3,000 licenses and annual maintenance of facsimile machines and telephone lines devoted to the program.

Contact Persons. The persons to contact for further information are Richard Kleist, (608) 266-2261 or John Sobotik (608) 266-8810.

RULE TEXT

Under the authority vested in the Wisconsin department of transportation by ss. 85.16(1), 343.02(1), and 343.10 Stats., the department of transportation hereby creates chapter Trans 117, Wis. Admin. Code, implementing ss. 343.10 and 351.07, Stats., as follows:

Section 1. Chapter Trans 117 is created to read:

CHAPTER TRANS 117

OCCUPATIONAL DRIVERS LICENSE

TRANS 117.01 PURPOSE AND SCOPE. (1) The purpose of this rule is to administratively interpret ss. 343.10 and 351.07, Stats. The rule supplements the statutory procedure for obtaining an order authorizing the issuance of an occupational license and for applying for the issuance of an occupational license. It establishes department policy regarding the granting of CDL-occupational license petitions.

(2) This chapter applies to any person petitioning a court or the department for an order authorizing the issuance of an occupational license.

NOTE: Procedure and eligibility requirements for occupational licenses are set forth in ss. 343.10 and 351.07, Stats.

TRANS 117.02 DEFINITIONS. (1) The words and phrases defined in ss. 340.01, 343.01 and 343.04(1), Stats., have the same meaning in this chapter unless a different meaning is specifically provided.

(2) In this chapter:

(a) "Basic occupational license" means an occupational license authorizing the operation of class D or class M motor vehicles, or both, but not commercial motor vehicles.

(b) "CDL-occupational license" means an occupational license authorizing the operation of commercial motor vehicles. A CDL-occupational license may also authorize the operation of class D or class M motor vehicles, or both.

(c) "Interim license" means a license that is not a commercial driver license, which consolidates some or all of the privileges of chauffeur, school bus and regular operator's licenses into one license document and which expires no later than March 31, 1992.

d) "Interim occupational license" means an occupational license that is not a commercial driver license, which consolidates some or all of the privileges of chauffeur and basic operator's licenses into one license document and which expires no later than March 31, 1992.

(e) "License" means any authority to operate a motor vehicle issued under ch. 343, Stats., or this chapter.

(f) "Occupational license" means a license issued under s. 343.10, Stats.

TRANS 117.03 ELIGIBILITY. An occupational license may be issued to a Wisconsin resident who meets the requirements of s. 343.10, Stats., who is otherwise eligible to receive a license in the state of Wisconsin, and whose petition for an occupational license is granted by a court or by the department.

117.04 PETITION. (1) A petition for occupational license shall be made on a form prescribed by the department and shall include all requested information.

(2) The explanation of why operating a motor vehicle is essential to a person's livelihood made in a person's petition for occupational license under s. 343.10 (1)(b), Stats., shall describe the person's occupation and shall state why it is necessary for the person seeking the occupational license to have the authority to operate a motor vehicle during the hours and at the locations specified in the petition.

(3) The compelling reason why a person should be granted an occupational license given in a petition for an occupational license under s. 351.07(1), Stats., shall describe the person's occupation and shall state why it is necessary for the person seeking the occupational license to have the authority to operate a motor vehicle during the hours and at the locations specified in the petition and such other information as the court may require.

(4) A petition for occupational license shall not be granted unless the times and areas or routes of travel for which occupational privileges are requested in the petition are reasonable in light of the nature of the person's occupation, trade, or duties as a homemaker or student.

NOTE: Form MV3027, Petition, Order of Issuance and Temporary Occupational License is available at motor vehicle service centers and from clerks of court.

TRANS 117.05 APPLICATION. (1) All applications for occupational licenses shall include:

(a) An operator's license application form.

(b) A conviction status report from the court that convicted the applicant of the offense for which the applicant's license has been revoked or suspended, unless the court has previously reported the conviction to the department and the conviction appears on the department's computer data base of driver records.

(2) The application for a CDL-occupational license of a person whose license is revoked under s. 351.025, Stats., shall include the original or a certified copy of the court order authorizing the issuance of a basic occupational license to the person and a petition for a CDL occupational license.

(3) The application for a CDL-occupational license of a person whose license is revoked or suspended under ch. 343, Stats., shall include a petition to the department for issuance of a CDL-occupational license and the fee specified in s. 343.10(6), Stats.

(4) All applications, conviction status reports and petitions for occupational license submitted in applying for an occupational license shall be on department forms and shall include all requested information.

NOTE: Form MV3001, Application for License, is available at motor vehicle service centers. Form MV3435, Conviction Status Report, is issued to eligible drivers by clerks of court. Form MV3027, Petition, Order of Issuance and Temporary Occupational License, is available both at motor vehicle service centers and from clerks of court.

TRANS 117.06 NO OCCUPATIONAL LICENSES FOR SCHOOL BUSES. The department shall not issue an occupational license authorizing the operation of a school bus.

TRANS 117.07 PETITIONS TO AMEND OR REINSTATE OCCUPATIONAL LICENSES. (1) A petition to amend an occupational license or to reinstate a revoked occupational license shall be made in the same manner as an original petition for an occupational license.

(2) A petition seeking to amend an occupational license issued pursuant to an order entered by a court shall be presented to and approved or denied by the court which originally ordered issuance of the occupational license, or, if the driver has changed his place of residence to a location outside the jurisdiction of the original court, by a court in the person's county of residence.

(3) A petition seeking to amend an occupational license issued pursuant to an order entered by the department shall be presented to and approved or denied by the department.

(4) A person applying to reinstate or amend an occupational license shall pay the fee specified in s. 343.10(6), Stats. No fee shall be paid if the application is to amend the license and the application seeks only to correct a clerical error made by the court or the department in the issuance of the occupational license. Fees collected under this subsection shall be distributed in accordance with s. 343.10(6), Stats.

NOTE: See s. 343.26 regarding reinstatement of canceled licenses.

TRANS 117.08 DURATION PERIOD OF OCCUPATIONAL LICENSES. When a person's operating privilege is subject to more than one suspension or revocation, an occupational license issued to that person shall expire at the end of the longest running suspension or revocation period.

TRANS 117.09 SPECIFIC TIME AND ROUTES OR AREAS OF TRAVEL LIMITATIONS. (1) GENERAL. A petition for occupational license shall specify definite hours of operation by specifying the exact times and days of the week during which the operator requires authority to operate a motor vehicle to or from church, in connection with a driver safety plan, or in order to perform their occupation, trade, or duties as a homemaker or student.

(2) EMERGENCY SERVICE PROVIDERS. (a) "Emergency service provider" means a person who is employed by a unit of government, is providing services to a unit of government, or is employed by a public utility or medical services provider, and whose occupation involves providing emergency services to the public. The term includes, but is not limited to, law enforcement officers, fire fighters, forest rangers, correctional officers, snow plow and emergency vehicle drivers, doctors, emergency medical technicians, paramedics, and electric, telephone and natural or propane gas repair technicians. A person who claims to be an emergency service provider may be required to provide documentation to the department proving they provide emergency services to the public as part of their occupation.

(b) In a petition for occupational license, an emergency services provider may request authorization to operate a motor vehicle, during an emergency threatening injury to person or property, outside the specific hours of operation set forth in the petition. An order authorizing such operation shall authorize only the operation of motor vehicles directly to and from the

location of the emergency or the person's place of employment and shall not authorize operation of a motor vehicle in excess of 12 hours per day or 60 hours per week.

(c) An emergency services provider who has authority to operate a motor vehicle under sub (b) and who is charged with an offense stemming from the person's operating a motor vehicle outside the specified hours of operation set forth in the occupational license shall not be convicted if the person produces in court or in the office of the arresting officer satisfactory documentation that the person was operating a motor vehicle in response to a bona fide emergency at the time of the citation.

(3) COMMERCIAL OPERATORS. (a) A person whose essential occupational duties involve the operation of a commercial motor vehicle at any hour of the day or night may request in their petition to the department for a CDL-occupational license a request for 24 hour authorization. The petition shall also specify specific hours during which the operator seeks authority to operate a class D or class M vehicle.

(b) A 24 hour authorization on a CDL-occupational license shall authorize the licensed person to operate specified commercial motor vehicles for up to 12 hours per day, not to exceed 60 hours per week, in addition to any authority granted to operate class D or class M vehicles during specific hours. In no event shall the total specific hours plus authorized CDL-occupational hours total more than 12 hours per day or 60 hours per week.

(c) A person operating a commercial motor vehicle under a 24 hour authorization shall maintain an operating log, shall have the operating log in the vehicle when operating a motor vehicle, and shall make the log available to a law enforcement officer upon request.

(d) A person who fails to maintain an operating log, maintains a materially inaccurate operating log, or fails to produce an operator's log upon the request of a law enforcement officer

shall be deemed to have operated a commercial motor vehicle outside the hours of operation permitted under the CDL-occupational license.

(e) An operating log shall include the following:

1. The date on which the person operated a commercial motor vehicle.
2. An identification of the vehicle driven.
3. The starting time, including notations for a.m. and p.m. Midnight and noon shall be transcribed as midnight and noon.

4. Origin and destination of the trip.

5. The odometer reading of the vehicle driven at the beginning of the trip.

6. The odometer reading of the vehicle driven at the end of the trip.

7. The number of miles driven.

8. The total hours driven.

(f) An operating log shall be kept current at all times. An operator shall transcribe the items set forth in sub. (e) 1 to 5 in the operating log at the beginning of each trip and shall record the remaining items immediately upon arrival at the person's destination.

(g) A driver's record of duty status maintained in accordance with 49 CFR s. 395.8 shall satisfy the operating log requirement.

TRANS 117.10 INTERIM OCCUPATIONAL LICENSES. (1) During the period from January 1, 1991 to March 31, 1991, the department may issue an interim occupational license to a person who presents an order from a Wisconsin court to issue the person an occupational license if the person held a valid interim license or chauffeur license at the time the person's license was revoked or suspended.

(2) An interim occupational license shall expire on the earlier of:

- (a) March 31, 1992;

(b) The expiration date on the license; or

(c) The date on which the driver who holds the license is issued a classified driver license

under s. 343.03, Stats.

NOTE: 1989 Wisconsin Act 105 established the commercial driver license system in Wisconsin in order to comply with the federal commercial motor vehicle safety act of 1986.

(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 30th day of October, 1990.

for Donald H. Jangiewicz, Deputy
Ronald R. Fiedler, P.E.
Secretary
Wisconsin Department of Transportation



Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Ronald R. Fiedler, PE
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

October 29, 1990

Mr. Gary Poulson
Assistant Revisor of Statutes
119 Martin Luther King, Jr. Blvd.
2nd Floor
Madison, Wisconsin 53703

RE: **CLEARINGHOUSE RULE 90-148**

In the Matter of the Adoption of **TRANS 117**, Wisconsin Administrative Code, Relating to the Issuance of Occupational Driver Licenses.

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of **CR 89-148**, an administrative rule relating to the above-mentioned matter. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,


Julie A. Johnson
Paralegal

Enclosures

cc: Tom Walker
Linda Thelke
Sandy Beaupre
Joyce Gelderman
Wes Geringer
Rick Kleist