

STATEMENT OF SCOPE

Department of Transportation

Rule No.: Trans 102.14 (3)

Relating to: Issuance of Commercial Driver Licenses to Temporary Workers from Foreign Countries

Rule Type: Emergency

1. Finding/nature of emergency (Emergency Rule only):

The Department has received multiple requests to authorize issuance of CDL licenses to temporary agricultural workers who are in the United States on H2A visas to perform driving tasks for Wisconsin agri-business interests. For the protection of public safety, it is important that these drivers be screened and tested for competence in operating these large vehicles. Under current s. Trans 102.14 (3) (b), those workers are ineligible for a Wisconsin driver licenses because they will be in the country for less than six months. Without the temporary workers, these Wisconsin businesses will be harmed. Moreover, if the seasonal workers operate without proper insurance and qualifications, public safety could be jeopardized.

The Department finds that an emergency exists justifying an emergency waiver of the licensing prohibition for these temporary workers.

2. Detailed description of the objective of the proposed rule:

Authorize agricultural industry employees residing in Wisconsin who have been temporarily admitted into the U.S. on temporary work visas in order to perform temporary agricultural work, to be tested for and, if qualified, authorized to operate commercial motor vehicles.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Providing enough skills test appointments for novice drivers, especially during peak periods in late spring and summer, is always challenging for DMV. Due to concerns that persons with limited duration legal presence were obtaining driver licenses with days or weeks remaining on their legal presence (and taking away options for testing from citizens and longer-term residents), the department promulgated s. Trans 102.14 (3) (b).

That rule provision makes a person who has six or fewer months of authorized stay in the U.S. ineligible for any Wisconsin driver license, and makes a person who has three or fewer months of authorized stay in the U.S. ineligible for any Wisconsin identification card.

The statutory underpinnings for the regulation are the definition of “resident” in s. 343.01 (2) (g), Wis. Stat. and the prohibition against licensing non-residents found in s. 343.06 (1) (k), Wis. Stat. The department’s rationale was that drivers who lacked evidence of legal authority to reside in the

United States for the requisite periods did not qualify as state “residents” whose “one home and customary and principal residence, to which the person has the intention of returning whenever he or she is absent, is in this state,” s. 343.01 (2) (g), Wis. Stat.

Drivers from other countries generally do not need Wisconsin licenses to operate cars in Wisconsin if their home country is a signatory to a driver license reciprocity treaty. Sections 343.05 (4) (b) 2., 3. and (c), Wis. Stat. Commercial motor vehicle operation is not permitted under those treaties, so commercial drivers need a Wisconsin license to authorize operation of those vehicles.

The new policy to be considered is whether to treat commercial motor vehicle operators who are in the United States with temporary work visas as residents for purposes of driver licensing. The interpretation would help meet this state’s short-term business needs for agricultural industry commercial motor vehicle drivers.

Other possible policy alternatives include:

- Take no action, advise the interested agri-businesses that the state will not accommodate their request, and permit United States workers to fill the positions. This alternative is being rejected because there is no evidence that a sufficient number of U.S. licensed commercial motor vehicle operators are interested in these temporary and seasonal agricultural industry positions.
- Eliminate examination of the length of time a person resides in the country as a basis for denying a driver license or ID. This alternative is being rejected at this time because it extends beyond the scope of the identified emergency, but it will be examined as part of permanent rulemaking related to ch. Trans 102, Wis. Admin Code. The Department is uncertain of the possible effect of repealing s. Trans 102.14 (3) (b) and therefore believes undertaking such an action on an emergency basis to be unwise.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The administration of the driver licensing laws is charged to the Secretary of the Department of Transportation under s. 343.02, Wis. Stat. Pursuant to that authority, and the authority of s. 227.11 (2) (a), Wis. Stat., the Department promulgated ch. Trans 102, which interprets and applies those provisions of ch. 343 related to driver license and identification card issuance. Section Trans 102.14 (3) (b) was created in 2007 in response to demand for DMV services related to driver license and ID issuance from temporary seasonal employees in the Wisconsin Dells area who held only temporary status in the U.S. and did not meet the definition of “resident” in s. 343.01 (1) (g), Wis. Stat. Those temporary workers could operate motor vehicles under driver licenses from their home countries.

This proposed rulemaking would exclude CDL license applicants from the applicability of the rule so that temporary workers entering the United States to supply temporary seasonal truck driving services to Wisconsin agri-businesses could obtain the license they need to operate commercial motor vehicles in this state. Commercial motor vehicles may not be operated under a driver’s country driver license unless the driver is from Mexico or Canada, ss. 343.05 (2) (a) 2. and 340.01 (41m), Wis. Stat.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

100 hours.

6. List with description of all entities that may be affected by the proposed rule:

All business looking to hire temporary seasonal help employing commercial motor vehicle operators from other nations.

All persons temporarily in the United States, whose legal status at the time of application is for six or fewer months, and who wish to obtain authorization to operate commercial motor vehicles.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Federal Commercial Motor Vehicle regulations at 49 C.F.R. parts 383, 384 and parts 390 to 397 regulate issuance of CDL licenses. 49 C.F.R. 383.23 (b) and 383.71 (f) allow states to issue CDL licenses to persons who are domiciled in other countries, who are legally in the United States, and who seek a CDL in this country, without considering the duration of their stay.

Department of Homeland Security regulations found at 6 C.F.R. 37.11 (g) require a foreign national provide evidence of legal status in the U.S. as a condition of issuing a REAL-ID compliant driver license to a foreign national.

The proposed rule would not conflict with those federal laws. The federal regulations appear to have been drafted to accommodate the type of licenses this proposed rule would allow.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The economic impact of implementing the rule is expected to be minimal. For small agri-businesses seeking to hire H2A admitted alien workers, the effect will be to provide seasonal worker-drivers that they are unable to hire in the current U.S. workforce. If they are unable to utilize H2A workers, they may have to turn to U.S. worker staffing agencies to meet their needs.

The agri-businesses report that CDL qualified drivers tend to take permanent positions with other trucking interests rather than stay in temporary positions with their businesses. Accordingly, a reliable source of drivers who are interested in temporary work is required. H2A admitted alien workers appear willing to take such temporary work.

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Signed this ____ day of May, 2019

Craig Thompson
Secretary
State of Wisconsin Department of Transportation