

SOUTH DAKOTA DEPARTMENT OF PUBLIC SAFETY MEMORANDUM OF UNDERSTANDING WITH THE IOWA DEPARTMENT OF TRANSPORTATION

THIS MEMORANDUM OF UNDERSTANDING (hereinafter “MOU”) is made and entered into by the State of South Dakota, Department of Public Safety, 118 West Capitol Avenue, Pierre, South Dakota 57501, acting by and through it’s Secretary (hereinafter referred to as “SD DPS”) and the Iowa Department of Transportation, Office of Motor Vehicle Enforcement, PO Box 10473, Des Moines, IA 50306-0473 (hereinafter referred to as “IA DOT”).

WITNESSETH:

WHEREAS, in its administrative rules implementing the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570 (49 United States Code Chapter 313), the Federal Motor Carrier Safety Administration has authorized states to exempt certain drivers, including operators of farm vehicles, as defined by Title 49, Code of Federal Regulations (hereinafter “CFR”) Part 390.5, from the commercial driver’s license requirements pursuant to 49 CFR 383.3(d); and

WHEREAS, operating under the authority granted by 49 CFR 383.3(d), the South Dakota and Iowa legislatures have both enacted laws exempting operators of farm vehicles from the commercial driver’s license requirement (see South Dakota Codified Law § 32-12A-9; Iowa Code § 321.176A); and

WHEREAS, 49 CFR 383.3(d) limits the use of a farm vehicle exemption to the driver’s home state, unless the home state has entered into a reciprocity agreement with adjoining states; and

WHEREAS, the SD DPS and the IA DOT wish to enter into a reciprocity agreement to allow operators of farm vehicles licensed in either South Dakota or Iowa to be exempt from the

commercial driver's license requirement when such operators are operating farm vehicles in the other participating state, provided such operation is consistent with the exemption in 49 CFR 383.3(d) and each state's respective state law on farm vehicle exemptions to the commercial driver's license requirement; and

WHEREAS, an agreement is necessary to document the rights and responsibilities of the SD DPS and the IA DOT regarding this reciprocity agreement; and

NOW THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties agree as follows:

1. This MOU shall be in effect commencing on the date the MOU is last executed by both the SD DPS and the IA DOT and shall continue until one of the parties terminates the agreement, as described in paragraph (4) below, or a statutory change becomes effective that prohibits the use of reciprocity agreements to extend commercial driver's license exemptions to adjoining states.

2. The SD DPS and the IA DOT agree that any driver from either South Dakota or Iowa who possesses a valid non-commercial driver's license may operate a farm vehicle within either state if the farm vehicle:

- A. Is properly operated as a farm vehicle under the laws of either state;
- B. Is controlled and operated by a farmer, including operation by his or her employees or family members, so long as the operator holds a valid driver's license in either state and is eighteen (18) years of age or older;
- C. Is used exclusively to transport either agricultural products, farm machinery, farm supplies, or both to or from the farmer's farm;
- D. Is not used in the operations of a common or contract carrier; and
- E. Is only used within 150 air miles of the farmer's farm.

3. The parties each have the authority to terminate this MOU at any time for a material breach of contractual obligations by providing the other party with written notice of termination. Should either party exercise its right to terminate this MOU for such reasons, termination will become effective 30 days after written notice is provided to the stakeholders of this MOU.

4. Unless terminated pursuant to paragraph 3, this MOU shall remain in effect for so long as the reciprocity contemplated herein is statutorily authorized. Should either state or federal law ever prohibit the reciprocity contemplated herein, this MOU is null and void.

5. The parties agree that this MOU and all agreements entered into under the provisions of this MOU shall be binding upon the parties and their successors and assigns.

6. Each party will be responsible for its own acts and the results from those acts and shall not be responsible for the acts of the other party and the results arising from those acts. Each party agrees, to the extent allowed by law, that it will assume all risk and liability to itself, its agents or employees for any injury to persons or property resulting from any operations or conduct of its agents or employees under this MOU. Each party's liabilities shall be governed by applicable state law.

7. Any action at law, suit in equity, or other judicial proceeding to enforce or construe this MOU, or regarding its alleged breach, shall be instituted only in the Sixth Judicial Circuit Court, Hughes County, South Dakota or in the District Court of Polk County, Iowa.

8. This MOU is made for the sole benefit of the parties hereto and nothing in this MOU shall be construed to give any rights or benefits to anyone other than SD DPS or IA DOT.

9. The Parties declare that no specific entity as contemplated in SDCL 1-24-4(2) is being created to implement this Agreement, and that the cooperative undertaking herein described shall be administered by the Secretary for SD DPS and the IA DOT or such authorized designees as the parties may designate in writing.

10. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Secretary of the Department of Public Safety on behalf of SD DPS, and by and to the Chief of Motor Vehicle Enforcement on behalf of IA DOT, or such authorized designees as the parties may designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

11. Any change in this MOU, whether by modification or supplementation, must be accomplished by a formal amendment signed and approved by the duly authorized representatives of SD DPS and IA DOT.

12. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

13. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

14. Nothing herein waives or limits sovereign immunity under federal or state statutory or constitutional law. Nothing in this Agreement shall be construed as an indemnification by one party of the other for liabilities of a participating agency or third persons for property loss or damage or death or personal injury arising out of and during the performance of activities under this Agreement. Any liabilities or claims for property loss or damage or for the death or personal injury by a party or its employees or by third persons, arising out of or during the performance of activities under this Agreement shall be determined according to applicable law.

15. This Agreement is intended to only govern the rights and interest of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.

16. The parties acknowledge that a true and correct copy of this Agreement be filed with the South Dakota Office of Attorney General and the South Dakota Legislative Research Council within fourteen (14) days of its final execution pursuant to SDCL 1-24-6.1.

17. By the signature of their representative below, SD DPS and IA DOT certify that approval of this Agreement by appropriate means has been obtained by that governmental body's officer and that the representative is authorized to sign on the party's behalf.

SIGNATURES ON FOLLOWING PAGE

In Witness Whereof, the parties signify their agreement effective on the date above first written by the signatures affixed below.

SOUTH DAKOTA DEPARTMENT OF
PUBLIC SAFETY

Tom Dravland 3/2/09
Tom Dravland
Secretary

IOWA DEPARTMENT OF TRANSPORTATION:

By Dan L 03-09-09

Title CHIEF MOTOR VEHICLE ENFORCEMENT

By Kim Alesh

Title Director, Office of Driver Services

Approved as to Form:

M. A.
SD DPS Counsel

M. J.
IA DOT Counsel