

### New IOH Law Overview

On Wednesday, April 23, 2014, Governor Scott Walker signed 2013 Wis. Act 377 (which had been SB 509). It was published on April 24, 2014, which means parts of the new law are in effect now, and some parts become effective in the future as outlined later in this article. This bill as passed by the legislature is a compromise which is intended to give operators of Implements of Husbandry (IOHs) more flexibility to operate on highways as to weight, length and width, while retaining a balance for local officials to protect their highways and highway users from the risks of ever increasing weights, lengths and widths of IOHs. This new act has many aspects and some important points for both IOH operators and local officials to understand. It is hoped by all interested stakeholders that the next few months can be a learning period for all parties.

#### What does Act 377 do?

First, the new act created new definitions for various types of implements of husbandry. (1) An **Implement of Husbandry (IOH)** is defined as “a self-propelled or towed vehicle that is manufactured, designed, or reconstructed to be used and that is exclusively used in the conduct of agricultural operations.” An IOH may include any of the following four categories:

- (a) Farm tractors (**Referred to a Category A vehicles**)
- (b) A self-propelled combine, a self-propelled forage harvester, or pesticide application equipment *but not including manure application equipment*; towed tillage, planting, and cultivation equipment and its towing power unit; or another self-propelled vehicle that

directly engages in harvesting farm products, directly applies fertilizer, spray, or seeds *but not manure* or distributes feed to livestock. (**Referred to as Category B vehicles**)

- (c) A farm wagon, farm trailer, manure trailer, or trailer adapted to be towed by, or to tow or pull, another implement of husbandry. (**Referred to as Category C vehicles**)

The new act goes on to say that a combination of vehicles in which each vehicle in the vehicle combination is an implement of husbandry as described in (1) above or in which an implement of husbandry described (c) {the category C vehicles} above is towed by a farm truck, farm truck tractor, or motor truck.

The new act goes on to say specifically that an IOH does not include any of the following: 1. An agricultural commercial motor vehicle (which has its own new definition, see below), and 2. A vehicle that is a commercial motor vehicle under federal code 49CFR 390.5.

The new definition in the act for **agricultural commercial vehicle (Ag CMV)** means a commercial motor vehicle to which all the following apply:

- (a) The vehicle is substantially designed or equipped or materially altered from its original construction, for the purpose of agricultural use.
- (b) The vehicle was designed and manufactured primarily for highway use.
- (c) Unless the manufactured prior to 1970, the vehicle was manufactured to meet federal motor vehicles safety standard certification label

requirements as specified in 49 CFR 567.

- (d) The vehicle is used exclusively in the conduct of agricultural operations.
- (e) The vehicle is directly engaged in harvesting farm products, directly applies fertilizer, spray, or seeds to a farm field, or distributes feed to livestock.

The significance of the various categories and specific definitions referred to above is that some provisions of the new act apply different to certain categories but not others. In general the Category B (typically self-propelled units) gain some protections that other IOHs do not have under the new act. Please note that typical manure tankers are not included in Category B, and thus are treated more generally as general IOHs, without the protections of Category B IOHs.

The new Ag CMV definition typically applies to the straight trucks that have a box or tank, or units on a tractor body with a box or tank. These Ag CMV's have not been subject to registration requirements and will continue not to be required to be registered as other CMVs are required if all the provisions (a) through (e) above are complied with. Subsections (d) {used exclusively in the conduct of agricultural operations} and (e) {directly engaged in harvesting farm products, directly applies fertilizer, spray, or seeds to a farm field, or distributes feed to livestock} will be limiting factors that keep this definition narrower than all straight trucks with a box or tank that are used on the highways.

#### **Provisions of Act 377 as it Relates to Height, Length, and Width**

##### **Height**

There is no limit for height for IOH, under the new Act 377. However, the operator remains responsible for ensuring clearance for all bridges and utility lines that are constructed to proper height over highways. Unlike weight limits (which is discussed below) *there is no state or local permit that*

*will allow a 18 foot piece of IOH to go under a 15 foot bridge or telephone line.* The IOH operator is responsible to make sure that proper clearance can be maintained any highway the taller IOHs are operated.

For Ag CMVs, the maximum height is 13 feet 6 inches under Act 377.

##### **Length Issues**

For single IOH vehicles (see definition above, but note this does not include Ag CMV's) the Act permits up 60 feet in length. The Act goes on to allow single IOHs vehicles to exceed this maximum length with a "no fee permit" (which will be discussed later in this article) from either the state on state highways, or local jurisdictions on town, village, city or county highways.

For two vehicle IOHs combination the maximum length is 100 feet under Act 377. "No-fee permits" may be required again to exceed this maximum length.

For three vehicle IOHs combination the maximum length of no more than 100 feet when operated with a maximum speed restriction 25 mph or less, or 70 feet at speeds greater than 25mph. "No-fee permits" may be required to again exceed this maximum length. Towed units being drawn by a motor truck, truck tractor, or Ag CMV must be empty. (Empty means less than 20% full.)

All length limits apply to IOHs being **operated or transported for delivery, service, repair by a dealer or farmer within 75-mile radius of business or farm.** Beyond these dimensions (see maximums above), standard commercial single or annual permits are required. (Note that there is an exemption from axle weight limits and total gross vehicle limits for this type of operation by dealer or farmer. See below under weight discussion.)

For a single Ag CMV the maximum length is 45 feet, but a "no-fee permit" may be required for a Ag CMV to exceed 45 feet.

For a two vehicle Ag CMV combination the maximum length is 70 feet,

but a “no fee permit” may be required over 70 feet.

For a three vehicle Ag CMV combination the maximum length is 100 feet with speed restriction of 25 mph or less or 70 feet maximum length for speeds greater than 25 mph. Note that IOH trailers in combination must be empty (which means less than 20% full).

### **Width**

No width limitations for IOHs were written into the new Act 377, except additional lighting and marking requirements are effective November 1, 2015. See a more detailed discussion of these lighting and marking limitations in a table provided following this article. This provision of no width limitation and additional lighting and marking requirements after November 1, 2015 applies to IOH being operated or transported for delivery, service, repair by dealer or farmer within 75 miles of radius of business or farm.

For Ag CMV the maximum width is 10 feet including attachments or accessories. There is an exception for pesticides sprayers, lime and fertilizer spreaders (not including manure) with extending tires, fenders, or fender flares but may not exceed 12 feet in width.

### **Act 377 as it applies to Weight**

First, it needs to be noted that prior to this new Act 377 being passed agricultural vehicles have been subject to the same weight limits as any other vehicles, with an exception for 15% additional weight during seasonal harvest from September 1<sup>st</sup> to December 31<sup>st</sup> for certain agricultural products (corn, soybeans, cranberries, potatoes, vegetables and manure) from field to storage or from pit to field. This seasonal harvest exception still remains after Act 377 was passed, but is not in addition to the weights established in the act.

Second, under the new Act 377 all IOHs and Ag CMVs still are required to abide by special or seasonal postings of weight limits. This general authority is under Sec. 349.16 of Wis. Statutes for local governments to post for special or seasonal conditions of a local highway at less than the established state weight limits. Please remember that under Sec. 349.16 (2) of Wis. Statutes if this authority is used, **the local jurisdiction must erect signs on or along the highway imposing the special or seasonal weight limit sufficient to give reasonable notice that a special weight limitation is in effect and the nature of that limitation.** This is the same requirement for posting of special weight limitations for bridges or culverts. This posting requirement under Sec. 349.16 (2) is not new in the law and has been the law for many years.

The new provisions under Act 377 in general provide that all IOHs and Ag CMVs will have an additional 15% per axle and 15% gross vehicle weights as established by a new IOH/Ag CMV Maximum Weight Table. The new weight table is based upon the “federal bridge law” and requires for total gross weight increases that there be adequate axles and axle spacing. The 15% per axle increase is from 20,000 lbs. per axle to 23,000 lbs. per axle. The maximum gross vehicle weight is from 80,000 lbs gross weight to 92,000 lbs gross weight is the vehicle has at least five axles and the spread from the foremost axle to the rearmost axle is at least 51 feet. (Be aware that a lot of tractor and manure tankers do not meet the 51 foot distance requirement and thus will not get to 92,000 lbs.)

It was mentioned in the first part of this article that the Category B (typically self-propelled IOHs) gain some additional protections under the new act. It is with weight that Category B has the most significance. Category B IOHs: (1.) exempt from the 23,000 lb. per axle limitation, unless the local jurisdiction adopts an ordinance to

impose the same per axle limit of 23,000 lb.; (2.) exempt from gross vehicle weight and axle weight limits when operating between fields and operated on the highway for a distance of ½ mile or less from farm to field; and (3.) exempt from Class B highway weight limit postings. {The local jurisdiction option to impose the same 23,000 lbs. per axle limitation on Category B is one of the ordinance options (Option E) to be discussed later in this article.} For all IOHs, including Category B self propelled, “no-fee permits” may be required to exceed the axle limitations or gross vehicle weights established by the new IOH/Ag CMV table or established by the local jurisdiction. For Category B self-propelled units, if a “no-fee permit” is applied for the local jurisdiction must give an approved route for the operation of such a Category B unit, which may be on other highways in the local jurisdiction or neighboring highways of other municipalities, the county or state highway system.

It should be noted that for most Category B self-propelled units they are used for planting, tilling, or harvesting and will not be making repetitive trips on local highways. They typically make limited trips from farm to field to do the planting, tilling or harvesting. Category C IOHs (including manure tankers) are the types of units that make repetitive hauls and do not have the right to an approved alternative route if a “no-fee permit” is applied for.

Ag CMVs will be also allowed the 23,000 lb. maximum weights on highways that are not posted for special or seasonal weight limits under Sec. 349.16, plus the total gross weight as established by the new IOH/Ag CMV table, which is dependent upon the number of axles and axle spacing. Ag CMVs must abide by all special and seasonal postings on highways, culverts and bridges. There is an exemption from the maximum weight limits under the new IOH/Ag CMV table and Class B highway weight postings

for Ag CMV traveling for delivery, service, repair, by dealer or farmer within 75 miles of business or farm. Ag CMV’s may also apply for a “no-fee permit” from the local jurisdictions, but no alternate route is required to be given for Ag CMVs as is required for Category B self-propelled units as described above.

While this may appear very complicated at first, there will be training provided around the state by University of Wisconsin Extension and other groups. Our Association will be sending notices of the training opportunities that we are aware of. We will be including this topic on the Fall Workshops and at the State Convention in October for those that want more training and information.

#### **“No-Fee Permits”**

As described above there are several opportunities for IOH owners and operators to apply for “no-fee permits” from local jurisdictions to operate in excess of length and weight limitations as established in this new Act and as established by local jurisdictions (the local options will be discussed later).

The “no-fee permit” was included in the new act to encourage IOH/Ag CMV owners and operators to work with their local jurisdictions to allow the most flexibility to these vehicles while retaining local control over the local highways. **Current law under Sec. 66.0628 of Wis. Statutes provides that “any fee imposed by a political jurisdiction shall bear a reasonable relationship to the service fee for which the fee is imposed.”** Therefore any fee imposed for exceeding weight limits would have been limited to the cost of issuing the permit. The law would not allow a permit fee to charge a fee for use of the highway to raise revenues. Again the no-fee permit was a part of the overall compromise in this act to gain cooperation and discussion by the IOH/Ag CMV owners/operators and local jurisdictions.

“No-fee permits” may impose conditions upon the operators of IOHs and Ag CMVs to provide additional protection to the highways. For example, limiting IOHs that exceed axle limitations to conditions such as one way routes established by the local jurisdiction, Category B self-propelled units to run empty without any product in the bin or attachments. “No-fee permits,” particularly for Category C combinations of IOHs and Ag CMVs to provide financial assurance for security if excess weights are permitted under the “no-fee permits.” We would suggest that language be included in all “no-fee permits” that if damage is done to a local highway by an IOH or Ag CMV, that the permit does not exempt the owner or operator from liability for such damage, but in fact **the permit should expressly state that the owner or operator is still liable for any damage done by excess weight to the highway.** {The issue here may well be the problem of proving that such damage was done by that vehicle, but where the damage is provable, such as entrances to farms and fields, the liability will still be imposed for that damage, although operated under a permit.}

There are some fairly stringent timeline requirements under the new act for local jurisdictions to act. First the State of Wis. DOT has prepared a standard application and permit form that can be used by IOH and Ag CMV owners and operators to apply for these permits from local jurisdictions. This standard application and permit form can be obtained at the DOT website at: [www.dot.state.wi.us/business/ag/index.htm](http://www.dot.state.wi.us/business/ag/index.htm) We have linked this site on our home page of our association website for your reference.

If an application is made to a town, village, city, or county, the jurisdiction has three weeks to approve or deny the application. If the application is denied for any particular highway, the local jurisdiction must deny the application in writing and give notice to the applicant. The reasons for denial

must be reasonable and structurally based explanation of the denial that relates to the preservation of the roadway. Remember if the application is a Category B self-propelled type unit described on the first page of this article, the local jurisdiction must give an approved alternate route or map of highways for operation of these types of units.

The local jurisdiction must deny or approve the application for all IOH/Ag CMVs request within three weeks of receipt of the application, or the application is presumed approved for up to six weeks from date of receipt by the local jurisdiction. If the application is still not approved or denied with six weeks of the original application, the application is presumed approved for the remainder of the year. Anyone who has applied for a no-fee permit may apply for an amendment at any time. Upon receipt of an amendment the local jurisdiction has five business days to approve or deny the amendment.

We want to recommend that each town board or village board establish as specific person authorized to consider these IOH/Ag CMV permits within the time limits provided or retain the authority by the full town or village board. **We want to discourage boards from designating their clerks for this responsibility.** Town boards and village boards are responsible for the supervision of their highways, clerks are not required under clerks’ duties to supervise the highways. If a highway superintendent is designated in a town or village to consider the applications and make the decision on approval or denial of the IOH/Ag CMV permits, an appeal can be made to the town or village board on a denial. Any decision at the local level can be appealed to a circuit court, therefore, local decisions should be made on reasonable, rational basis, giving due consideration to the needs of agriculture, while still protecting the public investment in the local highway system.

## **Ordinance Options for Local Jurisdictions**

As was stated earlier there are several options that local jurisdictions (towns, village, cities, and counties) have as to implementation of this new act. Basically there are six potential options under the new law, some of which do not require any action, and others that do require adoption of an ordinance or resolution. (Our Association has prepared draft ordinances for those options that would require an ordinance and have posted these on our Association website for your use. We encourage towns and villages to work with their local legal counsel for legal advice in adoption of these ordinances.)

We will call the options A through F for ease of identifying them in the samples prepared and for future questions. Again not all of these options require ordinances, only options B through E require the adoption of an ordinance or resolution.

### **Option A Special or Seasonal Posting Bridge or Culvert Special Posting**

This option does not require an ordinance to be adopted. Under **Sec. 349.16 (1)(a)** of Wis. Statutes, a local jurisdiction may post special or seasonal postings on highways or portion of a highway under their jurisdiction, **“because of weakness of the roadbed due to deterioration or climatic conditions or special or temporary condition, would likely be seriously damaged or destroyed in the absence of such special limitation.”** Sec. 349.16 (1)(b) provides special weight limitations may be imposed on bridges or culverts when in the judgment of the local jurisdiction such bridge or culvert cannot safely sustain the maximum weights permitted by statute.

Nothing in 2013 Wis. Act 377 takes away any authority of a local jurisdiction to impose any special or seasonal limitations on highways, bridges, or culverts that are reasonable and rational based upon sound judgment of the governing body. It should be noted that for bridge posting, should be based

upon the biennial bridge inspections. Culverts are not subject to such inspections, therefore some special expertise may be wise to justify posting of culverts. We have heard that some towns are considering to limit the impact of Act 377, considering posting their highways for a maximum of 20,000 lbs per axle and 80,000 gross vehicle weight for all vehicles, which were the weights prior to Act 377 for IOHs and Ag CMVs. It needs to be pointed out (as was stated earlier in this article) if weight limits are imposed under this section, Sec. 349.16 (2) of Wis. Statutes, requires that each highway, bridge, and culvert that is posted must be properly signed for the special weight limitation, and must comply with the Manual on Uniform Traffic Control Devices. It should also be pointed out that attempting to limit the use of local highways with such a standard could well be challenged in court, if there is not adequate reasons or evidence to support this type of standard weight on all highways. We would discourage this type of special or seasonal posting on all highways to try to avoid the intent of Act 377.

### **Option B Total Opt out of IOH and Ag CMV Length and Weight Limits**

This option does require an ordinance be adopted and a copy provided to the Wisconsin DOT. (Information of where to provide a copy of the ordinance is on our website with the sample ordinances.)

Option B means that your town or village does not intend to impose any of the weight limits established by state statute under the new IOH/Ag CMV table or limits on length under the new act on your town or village highways. This is a total opt out of these requirements and mean that any IOH or Ag CMV can operate at any unlimited weight or length in your town or village. This option was included in the law because a few town officers indicated at public hearings last year that they did not care what weight IOHs or Ag CMVs operated in their town and they did not

intend to require any permits for excess weight.

Option B is not an option that our Association legal staff recommends. While it is the easy way out of having to consider applications for “no-fee permits,” it means that your highways may potentially carry weights that could easily damage the highways. While the opt out is only for IOHs and Ag CMVs do you really think that other heavy vehicles such as loggers, gravel trucks, septic haulers, etc. won’t be knocking on your door asking for permits to exceed weight limits on your highways year around? Option B is the least desirable for keeping local control over excess weights and lengths on your town or village highways.

**Option C Opt out of IOH and Ag CMV,  
But impose limits in excess of state limits  
On all highways under their authority**

This option does require an ordinance to be adopted and a copy provided to DOT.

Option C means that your town or village is setting higher length and/or weight limits than the state weight limits under the new IOH/Ag CMV table on all highways. This would generally mean that the town or village would have axle limits greater than 23,000 lbs. per axle (which is what Act 377 allows) and more than 92,000 lbs. total gross weight for five or more axles with proper spacing. Under Option C the ordinance provides that the limits adopted in this ordinance **apply to all highways** in the town or village. {Note that the Option D, provides that only certain designated highways would have the higher limits).

While Option C provides uniformity throughout the town or village, the question is whether all highways in the town or village can handle the increased weight limits? IOH/Ag CMV owners or operators who have units that exceed these higher limits still have the option of asking for “no-fee permits” to exceed the limits adopted by this ordinance.

Category B self-propelled also must be provided an alternate route if they need to exceed the higher limits imposed in Option C.

**Option D Opt out of IOH and Ag CMV, but  
impose limits in excess of state limits  
Only on designated highways**

This option does require an ordinance to be adopted and a copy provided to DOT.

Option D means that your town or village is setting higher length and/or weight limits than the state weight limits under the new IOH/Ag CMV table on designated highways, as opposed to Option C which increases length and/or weight limits on all highways. Again, “no-fee permits” can be requested on any highway, including the designated highways if an IOH/Ag CMV unit exceeds either the axle weight limits or total gross weight limits.

Option D allows the town or village to retain the state weight limits under the new IOH/Ag CMV table for certain highways and allow a higher weight limit for highways that can handle higher weights. This option may reduce the number of “no-fee permits” that may be required depending on the increased weight and if the designated highways can accommodate the local IOH/Ag CMV needs. This option gives more flexibility to the agriculture community, but retains local authority on highways that need to limit excess weights.

**Option E Opt in for Category B Units**

This option does require an ordinance to be adopted and a copy provided to DOT.

Option E means that your town or village is requiring Category B IOHs (typically the self-propelled units, see definition on first page of this article) to comply with the 23,000 lbs. per axle limit. Act 377 allows Category B IOHs to exceed the per axle limit of 23,000 lbs. unless the local jurisdiction “opts in” under this option for applying the limit on Category B IOHs.

All other categories remain subject to the 23,000 lbs. and total gross weight as established in the new IOH/Ag CMV table.

This option allows the municipality to exercise the most local control over their highways as to the weight limits. It may require more “no-fee permits” than any other option, because the weight limits on Category B are the lowest. Also remember that under Act 377 Category B self-propelled units must be given an alternate route if the requested route can not be approved.

### **Option F No Action Taken**

This option does not require an ordinance, because there is no change from the lengths and weights imposed under Act 377. This will mean that the 23,000 lbs per axle apply to IOHs and Ag CMVs and the new IOH/Ag CMV table will control, except for Category B IOHs where there is exemption from 23,000 lb per axle weight but no exemption from total gross weight up to 92,000 lbs. There still can be “no-fee permits” requested to exceed the state limits on length and weights. Under Act 377, Category B units must be given an alternate route if the requested route is denied.

Option F provides both flexibility to the agriculture community, but retains local control over weights beyond the new IOH/Ag CMV table.

Again for Options B, C, D, and E ordinances need to be adopted by the town, village, city or county. Options A and F do not require adoption of an ordinance. “No-fee permits” may be applied for under all options.

Our Association will post the sample ordinances for the various options where an ordinance is required on our website. We would also encourage everyone to go to the Wis. DOT website for agricultural equipment: <http://www.dot.state.wi.us/business/ag/index.htm>

At this site, you can link to the full Act 377, the state application/permit for local

governments, the new IOH/Ag CMV weight table, and other information of use on this subject. It is our hope that this calendar year, will be a year of education and discussion between IOH/Ag CMV owners/operators and local governments. University of Wisconsin Extension has developed a powerpoint presentation for Extension agents to use in training any interested persons on the new law. Our Association will be providing notice of training sessions that we are made aware of. WTA will also be doing training this fall and at the state convention to answer more questions as they arise.

### **Hiring of New Executive Director**

The WTA board of directors has conducted interviews of several candidates for the WTA Executive Director position. An offer has been made and accepted. The announcement of the new Executive Director’s name will be made by June 1<sup>st</sup> and posted on our WTA website. Further information will be provided in the July WTA magazine. The new Executive Director is expected to start work on August 1<sup>st</sup>. Rick Stadelman, the current Executive Director will be retiring on August 31<sup>st</sup>. More information to come on the WTA website and in the July WTA magazine.

### **One day Workshop on DNR Role in Industrial Sand Permits**

Late in June (June 23, 24, & 25<sup>th</sup>) a one day workshop will be co-sponsored by the Wis. DNR, Wisconsin Counties Association, Wisconsin League of Municipalities, and Wisconsin Towns Association on the various permits that DNR issues for Industrial Sand Mines and operations. **See the announcement later in this magazine.** The sites of the workshops are Eau Claire, Menomonie, and Tomah. We would encourage all town officers, town plan commissioners and anyone interested in this issue to attend one of these workshops.