

**STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY**

The State of Wisconsin Department of Transportation Proposes an Order to renumber Trans 178.02(1); to amend ch. Trans 178.02 (7) and 178.04 (1) (a) 1. and (c); and to create Trans 178.02 (1g), (2m), (10m), (12g) and (12m), 178.025, 178.05, 178.06, 178.07, 178.08, and 178.09, relating to Unified Carrier Registration System, and affecting small businesses.

**PROPOSED ORDER
ADOPTING PERMANENT RULE**

Clearinghouse Rule 16-074

The Governor approved the Statement of Scope for this Permanent Rule, SS 004-16, on January 15, 2016, and it was published in Register No. 721B on January 25, 2016. The Secretary of the State of Wisconsin Department of Transportation (“Department”), Mark Gottlieb, P.E., approved the Statement of Scope on February 15, 2016, as required by s. 227.135(2), Stats. The analysis below was prepared by the Department.

ANALYSIS

Statutes Interpreted: Wis. Stat. s. 194.407.

Statutory Authority: Wis. Stat. s. 194.407 and 2007 Wisconsin Act 20.

Explanation of Agency Authority: Authority for this rulemaking is provided in Wis. Stat. s. 194.407. Wisconsin Stat. s. 194.407, requires the Department to implement and administer a Unified Carrier Registration System (“UCR”) for motor carriers, including private motor carriers in accordance with 49 U.S.C. 13908 and 14504a. Wisconsin Stat. s. 194.407 was created by 2007 Wisconsin Act 20.

Related Statute or Rule: Wisconsin Administrative Code ch. Trans 152 Wisconsin Interstate Fuel Tax and International Registration Program.

Plain Language Analysis: This rulemaking proposes to fulfill the requirements of the UCR Agreement adopted by the UCR Board in August 2014. The UCR Agreement now requires participating states, including Wisconsin, to conduct a specified number of audits of UCR motor carriers each year. The Department proposes to create provisions in Wisconsin Administrative Code ch. Trans 178 to implement a Wisconsin UCR audit program. While Wisconsin statutes and current rules provide for participation in the UCR and provide enforcement penalties for failure to register, there is no explicit provision for auditing or audit collection. The rule allows the Department to complete an audit by examining any record sufficient to determine a registrant's correct fee, whether the records are third-party records, such as federal motor carrier records previously filed by the registrant, or records provided directly by the registrant. The Department also proposes to update language and defined terms in relevant sections of Trans 178 to provide clarity and consistency.

The proposed rule will not affect total Wisconsin revenue received by the UCR program. If the proposed audits increase or reduce the revenue collected by Wisconsin from specific carriers it will not change the total retained by Wisconsin. Total Wisconsin revenue, as for all states, is capped by the State Revenue Entitlement figures described in Fees for the Unified Carrier Registration Plan and Agreement, 75 Fed. Reg. 21993, April 27, 2010, Table 5, pages 22008-22009.

Wisconsin revenue each year historically exceeds the state's entitlement figure. Wisconsin remits any revenue collected, over its entitlement, to the UCR Board per 49 USC 14504a(h)(2). The UCR Board distributes the total excess collected to states which have not received revenue exceeding their entitlement figures, per 49 U.S.C. 14504a(h)(2).

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: 49 U.S.C. 14504a authorizes the UCR board of directors to issue rules and regulations to govern the UCR agreement.

In August 2014, the UCR board of directors adopted audit requirements which now requires participating states, including Wisconsin, to conduct a specified number of audits of UCR motor carriers each year.

Comparison with Rules in Adjacent States: The Department contacted UCR officials in Wisconsin's neighboring states. None of our neighboring states have implemented an audit program. Some states have informal practices of contacting a carrier which they believe may have underpaid.

Currently the UCR Board does not issue sanctions against states that do not fulfill the audit requirements adopted by the UCR Board in 2014. Our neighboring states are waiting until sanctions are in place before they create an audit program, Wisconsin is taking a proactive approach.

Illinois. Illinois participates in the UCR program but does not have a formal audit program. Illinois was unresponsive after multiple attempts to contact their UCR officials.

Iowa. Iowa participates in the UCR program but does not have a formal audit program. Their enforcement for not registering for UCR is authorized under the following statutes; Iowa code 805.8A and 327B.1

Michigan. Michigan participates in the UCR program but does not have a formal audit program. Michigan contacts a carrier if they find that a carrier owes additional money for UCR. Michigan's only enforcement of UCR is lack of registration which is enforced by the State Patrol during roadside inspections

Minnesota. Minnesota participates in the UCR program but does not have a formal audit program. Minnesota has not conducted the research to find out if they have authority to audit UCR, audit collection, audit penalties, or audit sanctions. Minnesota will contact carriers to adjust their registration or if they have failed to register for UCR.

Summary of the Factual Data and Analytical Methodologies that the Agency Used in Support of the Proposed Rule and How Any Related Findings Support the Regulatory Approach Chosen for the Rule: The department anticipates auditing no more than 1% of Wisconsin based interstate trucking and bus companies annually. The UCR Agreement establishes 6 fee brackets based on fleet size. The UCR Agreement requires states to audit 100% of motor carriers who retreat from the two largest fee brackets (101-1000 vehicles and 1001 or more vehicles) into a lower fee bracket, and 3% of motor carriers who retreat from another bracket to a lower bracket. Only those found to have underpaid, kept inadequate records, or failed to provide records through audit, will be affected by the proposed rule. Based on our analysis of the 2015 registration year, no more than 40 businesses would have received an audit assessment in 2015. An estimated 9,000 Wisconsin based motor carriers are subject to UCR and the UCR audit requirement annually.

The UCR Agreement now requires participating states to conduct a specified number of audits of UCR motor carriers each year, but does not give direction on how to conduct UCR audits. The Department consulted with several other states and considered several approaches to verification of records. The proposed rule creates the method to conduct UCR audits.

Analysis Regarding Rule's Effect on Small Businesses: UCR audits may have a small effect on a small number of Wisconsin-based interstate trucking companies, based on the difference between the fee bracket paid and the correct fee bracket corresponding to the motor carrier's audited truck count. For companies with more than 1,000 trucks, the fee maxes out at a flat fee of \$66,597.00 for 1,001 or more vehicles. The average maximum underpayment of the fee itself would change according to the fee bracket corresponding to the number of units in the motor carrier's fleet. The current fee brackets as of January 5, 2018 are as follows: for 0-2 trucks a flat

fee of \$69; for 3-5 trucks a flat fee of \$206; for 6-20 trucks a flat fee of \$410.00; for 21-100 trucks a flat fee of \$1,431.00; for 101-1000 trucks a flat fee of \$6,820.00; and 1,001 or more vehicles a flat fee of \$66,597.00. Any motor carrier that underreports its fleet size and gets raised to the next highest tier will pay the corresponding fee difference.

The agency contact person listed below is also the small business regulatory coordinator for this proposed rule. This proposed rule, fiscal estimate, and other related documents may be viewed at <http://docs.legis.wisconsin.gov/code>.

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TEXT OF PERMANENT RULE

SECTION 1. Trans 178.02 (1) is renumbered Trans 178.02(1m).

SECTION 2. Trans 178.02 (7) is amended to read:

Trans 178.02 (7) "~~MCS-150~~" "MCSA-1" means the form prescribed by the federal Motor Carrier Safety Administration for Motor Carrier Identification Report, Application for USDOT Number, Operating Authority Registration.

SECTION 3. Trans 178.02 (1g), (12g) (12m) and (20) are created to read:

Trans 178.02 (1g) "Audit" means the department's examination of records sufficient to determine the registrant's correct UCR fee.

(12g) "UCR" means Unified Carrier Registration.

(12m) "Underpaid" means having paid less UCR fees than the amount determined by audit.

(20) "Unpaid fee" refers to the UCR fee amount due that has not been paid.

SECTION 4. Trans 178.025 is created to read:

Trans 178.025 Requirement to register. No person to which this chapter applies under Trans 178.01 may operate as a motor carrier, motor private carrier, freight forwarder, broker, or leasing company unless registered for UCR under this chapter.

SECTION 5. Trans 178.04 (1) (a) 1., is amended to read:

Trans 178.04 (1) (a) 1. The number reported on the ~~MCS-150~~ MCSA-1 most recently filed with the U. S. department of transportation.

SECTION 6. Trans 178.04 (1) (c) is amended to read:

Trans 178.04 (1) (c) Before issuing any documentation of UCR Agreement compliance, the department may require the registrant to reconcile any discrepancy between the number of motor

vehicles owned and leased as reported on the ~~MCS-150~~ MCSA-1 most recently filed with the U. S. department of transportation.

SECTION 7. Trans 178.05 is created to read:

Trans 178.05 Records requirements and retention period. A registrant shall retain complete UCR records for the current calendar year and the prior year. The records shall contain the following:

1. Unified Carrier Registration Form.
2. Unified Carrier Registration Form 1, Vehicles removed in intrastate transportation.
3. Unified Carrier Registration Form 2, Vehicles owned and operated for the 12-month period ending June 30 of the year immediately prior to the year for which the UCR registration is made.
4. MCSA-1 form filed by the registrant.

SECTION 8. Trans 178.06 is created to read:

Trans 178.06 Audits and assessments. (1) AUDIT. The department may conduct such audits that it deems necessary to determine the adequacy of the fees paid under this chapter. An applicant or registrant shall make records described in this chapter available to the department within 15 days after receiving a written request for the records.

(2) ASSESSMENTS.

- (a) The department may, by field or office audit, determine the registration fees to be paid by, or refunded to, any person described in Trans 178.01(2). The department may base its determination on facts contained in the records or upon any other information in the department's possession.

- (b) If any person fails to make records available or to maintain records from which the true fee liability may be determined, the department may assess a registration fee based upon the department's estimation of the registration fee liability.
- (c) If a person required to register under this chapter does not file registration when due, the department shall determine the fee liability based on the best information available to it, and shall serve the assessment upon the person in the same manner as an audit assessment.
- (d) Any person challenging an assessment shall bear the burden to establish by a fair preponderance of evidence that the department's assessment is erroneous or excessive and the department's assessment shall be set aside only if the correct liability is determined.

(3) NOTICE OF COMPLETED AUDIT. If the department requests records from a registrant, upon completing an audit the department shall provide written notice to the registrant that the audit is completed, the findings of the audit including clear support for the findings, and of any action taken in connection with an audit.

SECTION 9. Trans 178.07 is created to read:

Trans 178.07 Appeal procedures. (1) GENERAL. A person may petition the department's office that administers this chapter for a redetermination. If a person files a petition for redetermination, the additional fee or overpayment shall not become due and payable until 30 days after the date of notice of the completed audit.

(2) FORMAT. The petition for redetermination shall be legibly written, typed, or emailed to the head of the department's motor carrier audit program. The petition shall set forth clearly and concisely the specific grievance to the action, including a statement of the relevant facts and

propositions of law upon which the grievance is based. Each request shall be signed by the registrant or a duly authorized representative.

(3) FILING DEADLINE. A petition for redetermination shall be filed within 30 days after the date of notice of a completed audit. A petition for redetermination is considered filed on the date it is received by the department's office that completed the audit, or if it is mailed in a properly addressed envelope, with postage prepaid, the envelope is postmarked before midnight the 30th day and the petition is received by the department within 5 days of the postmark.

(4) PAYMENT. Any person who files a petition for redetermination may pay any portion of the assessment admitted to be correct. The payment shall be considered admission that that portion of the assessment is correct. The admitted portion that is paid may not be recovered in an appeal in any other action or proceeding.

(5) INFORMAL CONFERENCE. A person may request in a petition for redetermination or at any time before the department has acted upon the petition, an informal conference at which the facts and issues involved in the assessment or determination may be discussed. The conference shall be held at a time and place determined by the department. A request under this subsection does not toll the filing deadline under sub. (3).

(6) SETTLEMENT AGREEMENT. If during the appeal process the parties reach agreement, the department and the petitioner may enter a settlement agreement.

SECTION 10. Trans 178.08 is created to read:

Trans 178.08 Revocation. If an assessed fee has not been paid when due and the person has not filed a petition for redetermination within 30 days after the date of notice of a completed audit, the fee becomes delinquent and subject to collection under Trans 178.09. The department shall send a notice of delinquency and revocation to the last known address of the registrant

advising of the immediate revocation of UCR registration, fuel tax licensing, and vehicle registration privileges, or authority to operate. The department may revoke a registration under this chapter if the registrant fails to comply with the provisions of this chapter or the provisions of the UCR Agreement. The department shall send a notice of revocation to the registrant's mailing address of record. Registration revoked under this chapter shall remain revoked until the reason for the revocation has been removed. The department may revoke, suspend, or refuse any registration, certificate, or permit issued by the department upon revocation of the person's UCR registration.

SECTION 11. Trans 178.09 is created to read:

Trans 178.09 Actions to collect. (1) DEPARTMENT COLLECTION. The department shall make initial efforts to collect delinquent registration fees. The department may do any of the following to collect delinquent registration fees:

- (a) Assess the person responsible for paying the registration fees. The department may subpoena any records necessary to determine the person responsible for paying the registration fees. Any officer, employee, fiduciary or agent who is responsible for paying fees or other charges under this chapter incurred by another person but not paid is personally liable for those fees or other charges. The officer, employee, fiduciary or agent may appeal that determination under the procedures in 178.07.
- (b) Suspend or refuse to issue any permit, license or registration to any person who is responsible for paying the fee under this chapter.

(2) SETOFFS BY DEPARTMENT OF REVENUE. The department may refer for collection any delinquent registration fees to the department of revenue under s. 71.93 (2), Stats. after having

given the registrant reasonable notice and an opportunity to be heard with respect to the amount owed.

SECTION 12. Initial applicability. This rule first applies to audits commenced on the effective date of this subsection.

SECTION 13. 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.

(END OF RULE TEXT)

Signed this ____ day of _____ 2019.

Craig Thompson, Secretary