

Clearinghouse Rule 16-074

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

The State of Wisconsin Department of Transportation Proposes an Order to Amend Permanent Rule Ch. Trans 178 Relating to Unified Carrier Registration System, and affecting small businesses.

**PROPOSED ORDER
AMENDING PERMANENT RULE**

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 new requirements of “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, audit collection, audit penalties, and audit sanctions. The Department also proposes to update language and defined terms in relevant sections of Trans 178 in order 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 USC 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: No more than 1% of Wisconsin based interstate trucking and bus companies will be audited annually. Only those found to have underpaid, kept inadequate records, or failed to produce 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 Department consulted with several other states and considered several approaches to verification of records. The proposed rule creates the method to conduct UCR audits. 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 also considered a range of approaches to structure penalties. The proposed rule provides penalties for four types of offenses. The penalties escalate by the seriousness of the type of offense and as a result of subsequent offenses.

The Department considered a non-escalating approach, but that approach would be less fair due to the difference in the severity of violations. The Department also considered a more complex penalty structure, but that approach was complex and unclear, which would make this structure more difficult to administer. The rulemaking proposes a compromise of the two approaches.

The proposed penalties bear a mathematic relationship to the delinquent fee. While fees are noticeable, they are a small fraction of truck revenue. The penalties should not generally put a trucking company out of business.

Analysis Regarding Rule's Effect on Small Businesses: UCR may have a small effect on a small number of Wisconsin based interstate trucking companies. For companies up to 1,000

trucks, the maximum underpayment would be up to \$76.00 per year, per truck. For companies with more than 1,000 trucks, the fee per vehicle maxes out at flat fee for \$73,346 for 1,001 or more vehicles. The average maximum underpayment of the fee itself would decline arithmetically from \$73.346 per vehicle as the number of a company's vehicles exceeds 1,000.

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>.

Agency Contact Person:

Jody Grossman, Motor Carrier Audit Supervisor
Wisconsin Department of Transportation – Division of Motor Vehicles
4802 Sheboygan Avenue, Room 151
Madison, WI, 53707
Phone: (608) 264-7239
Email: jody.grossman@dot.wi.gov

Place Where Comments Should Be Submitted and Deadline: Comments may be submitted to the agency contact person listed above until the deadline given in the forthcoming notice of public hearing.

TEXT OF PERMANENT RULE

SECTION 1. 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 2. Trans 178.02 (14), (15), and (16) are created to read:

Trans 178.02 (14) "Inadequate records" means a registrant failed to maintain adequate records in compliance with the requirements of s. Trans 178.05.

Trans 178.02 (15) "Offense" means an occurrence of a violation of UCR record requirements or retention period, failure to provide required records when requested, or failure to register for UCR by a registrant, as determined by audit.

Trans 178.02 (16) "Audit" means the department's physical examination of the records supporting the registrant's payment of the correct UCR fee.

SECTION 3. 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 4. 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 5. Trans 178.05 is created to read:

Trans 178.05 Records requirements and retention period. A registrant shall preserve 2 years

of UCR records, 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 forms filed during the required 2 year retention period.

SECTION 6. Trans 178 Subchapter I (title) is created to read:

Trans 178 Subchapter I (title) Audits, Assessments and Appeals

SECTION 7. 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. All records described in this chapter shall be made available to the department upon proper request within 15 days of the receipt of notice.

(2) Auditor Expenses. If the records of an applicant, a licensee or a registrant are not made available to the department in Wisconsin, the department shall require the applicant, licensee or registrant to reimburse the department for actual and necessary expenses, including the following:

- (a) Wages pursuant to the appropriate state compensation plan or applicable labor agreement.
- (b) Travel expenses.
- (c) Meal expenses.
- (d) Lodging expenses.
- (e) Telephone expenses.

(f) Copying and data processing.

(3) Assessments.

(a) The department may, by field or office audit, determine the registration fees to be paid or refunded to any person. The determination may be made on the basis of facts contained in the reports or upon any other information in the department's possession. The department may examine and inspect books, records, memoranda and property of any person in order to verify the registration fees of that person or another person. The department may subpoena any person to give testimony under oath before it and produce whatever books, records or memoranda are necessary in order to enable the department to verify the registration fees of that person or another person. The determination by the department shall be presumed to be correct. If that determination is challenged, the burden of proving its invalidity shall be on the person challenging it.

(b) If any person fails to make records available upon proper request, or if any person fails 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. The assessment made by the department pursuant to this procedure shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person to establish by a fair preponderance of evidence that the assessment is erroneous or excessive.

(c) In the event that a person fails, neglects or refuses to file registration when due, the department shall, on the basis of the best information available to it, determine the

fee liability and shall, after adding the appropriate penalties, serve the assessment upon the person in the same manner as an audit assessment.

(4) Notice of action. The department shall notify the licensee or other person audited in writing of the notice of action of any audit they perform. The department may issue a proposed notice of action to a licensee or other person audited before issuing the notice of action.

SECTION 8. Trans 178.07 is created to read:

Trans 178.07 Appeal procedures. (1) General. A person feeling aggrieved by the notice of an action may petition the department's motor carrier section 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 matter becomes final.

(2) Format. The petition for redetermination shall be written, preferably typed, on only one side of plain white paper 8 ½ inches wide by 11 inches long, or emailed. This request 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 receipt of notice of an action. A petition for redetermination is not considered filed within the 30 day period unless it is actually received by the department's motor carrier section, or unless it is mailed in a properly addressed envelope, with postage prepaid, the envelope is postmarked before midnight the 30th day and the petition is actually received by the department within 5 days of the prescribed 30th day date.

(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 petitioner 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.

(6) Closing Stipulations. If by the informal conference or otherwise the parties reach an agreement as to the facts, issues and applicable law, the department and the petitioner may enter into a closing stipulation.

(7) Full Disclosure. No person against whom an assessment of fees has been made shall be allowed in any action either as a plaintiff or a defendant or in any other proceeding to question such assessment unless such person has complied with s. Trans 178.07 (1) to (3).

SECTION 9. 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 written appeal within 30 days of the notification of action or audit finding, the fee becomes delinquent. A notice of delinquency and revocation shall be sent to the last known address of the licensee or registrant advising of the immediate revocation of UCR registration, fuel tax licensing, and vehicle registration privileges, or hire operating authority. A license may also be revoked if the licensee fails to comply with the provisions of this chapter or the provisions of the UCR. An appealable notice of revocation shall be mailed to the licensee's or registrant's mailing address of record. If the appeal is not filed within 30 days, the revocation shall be final and conclusive. A licensee or registrant's licensing privileges shall remain revoked until the reason for the revocation has been removed. In addition, the department may revoke, suspend, or refuse any

registration, certificate, or permit issued under the authority of the department upon revocation of a person's UCR registration.

SECTION 10. Trans 178.09 is created to read:

Trans 178.09 Jeopardy assessment. Before any fee becomes due, if the department has reason to believe that any licensee or registrant, including former registrants or licensees, intends or is likely to evade or attempt to evade payment of the fee when due, or intends or is likely to convey, dispose of, or conceal his or her property or abscond from the state, or do any other act which would render the state insecure in the collecting the fee when due, the department may demand payment forthwith of all fees accrued by the licensee or registrant, which shall immediately become payable and collectable as if delinquent, and the property of the licensee or registrant shall be subject to attachment provided in s. 78.70, Stats.

SECTION 11. Trans 178.10 is created to read:

Trans 178.10 Penalties. If any person has underpaid by failing to pay the correct fee, maintains inadequate records, has failed to make the records required under s. Trans 178.05 available upon proper request, or has failed to register for UCR by failing to complete the proper forms and paying the appropriate fees, the department shall assess the licensee an appealable penalty, as outlined in section 178.07, depending on the number of offense or upon the nature of the offense. The fee difference is the difference between the UCR bracket for which registered and the UCR bracket as determined by audit. The unpaid fee refers to the UCR fee amount due that has not been paid. Penalties shall be assessed according to the following schedule:

<u>Type of offense</u>	1 st Offense	2 nd Offense	3 rd /Subsequent offense
Underpaid	\$200 + 2x Fee Difference	\$400 + 2x Fee Difference	\$600 + 2x Fee Difference

Inadequate Records	\$400 + 2x Fee Difference	\$800 + 2x Fee Difference	\$1200 + 2x Fee Difference
Failure to Provide Records	\$600 + 2x Fee Difference	\$1200 + 2x Fee Difference	\$1800 + 2x Fee Difference
Failure to Register	\$800 + 2x Unpaid Fee	\$1600 + 2x Unpaid Fee	\$2400 + 2x Unpaid Fee

SECTION 12. Trans 178 Subchapter II (title) is created to read:

Trans 178 Subchapter II (title) Collections.

SECTION 13. Trans 178.11 is created to read:

Trans 178.11 Actions to collect. (1) Department Collection. The department shall make initial efforts to collect delinquent registration fees. The department may:

(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, penalties or other charges under this chapter incurred by another person but not paid is personally liable for those fees, penalties 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, or penalty under this chapter.

(2) Third Party Collection. The department may refer for collection any delinquent registration fees to the department of revenue. The department of revenue may collect any delinquent registration fees as it collects motor vehicle fuel and alternative fuel general aviation taxes under s. 78.70, Stats.

SECTION 14. 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 _____ 2016.

Mark Gottlieb, P.E.
Secretary
State of Wisconsin Department of Transportation