

# STATEMENT OF SCOPE

## Department of Transportation

**Rule No.:** Ch. Trans 178

**Relating to:** Unified Carrier Registration System (UCR)

**Rule Type:** Permanent Rule

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

N/A

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

The objective of this rule is to fulfill the new requirements of the Unified Carrier Registration System (“UCR”) Agreement adopted by the UCR Board 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 State of Wisconsin Department of Transportation (“WisDOT”) proposes to create provisions in ch. Trans 178 to implement a Wisconsin UCR audit program. While Wisconsin statute and current rules provide for participation in the UCR and provide enforcement penalties for failure to register, there is no explicit provision for auditing, auditing collection, audit penalties, and audit sanctions. Also update language and defined terms in relevant sections in order to provide clarity and consistency.

The proposed rule will not affect total Wisconsin revenue received via 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 its entitlement figure. Therefore Wisconsin remits the excess to the Unified Carrier Registration 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).

### 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:

The following is an explanation of the proposed changes to ch. Trans 178.

1. Create provisions in Wisconsin administrative code to implement a UCR audit program. While Wisconsin statute and rule provide for participation in the UCR, and provide enforcement

penalties for failure to register, there are no explicit provisions for auditing, auditing collection, audit penalties, and audit sanctions.

2. Similar to Trans 152 for International Registration Plan (“IRP”) and International Fuel Tax Agreement (“IFTA”), adding audit provisions to Trans 178 regarding UCR is a good method to provide for these requirements in Wisconsin law. For example, adding provisions similar to:

### **Subchapter III — Audits, Assessments and Appeals**

#### **Trans 152.13 Audits and assessments. (1) AUDIT.**

The department may conduct such audits that it deems necessary to determine the adequacy of the taxes or fees paid under this chapter. All records described in this chapter shall be made available to the department at its request.

**Trans 152.16 Jeopardy assessment.** Before any tax or 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 tax or 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 tax or fee when due, the department may demand payment forthwith of all taxes and fees accrued by the licensee or registrant, which shall immediately become payable and collectible as if delinquent, and the property of the licensee or registrant shall be subject to attachment as provided in s. 78.70, Stats.

**History:** Cr. Register, May, 1997, No. 497, eff. 6-1-97.

### **Subchapter IV – Collections**

#### **Trans 152.17 Actions to collect tax, fees and penalties.**

**(1) DEPARTMENT COLLECTION.** The department shall make initial efforts to collect delinquent fuel tax and registration fees. The department may:

(a) Assess the person responsible for paying the fuel use taxes and registration fees. The department may subpoena any records necessary to determine the person responsible for paying the fuel use taxes and registration fees. Any officer, employee, fiduciary or agent who is responsible for paying taxes, fees, interest, penalties or other charges under this chapter incurred by another person but not paid is personally liable for those taxes, fees, interest, penalties or other charges. The officer, employee, fiduciary or agent may appeal that determination under the procedures of subch. III.

(b) Suspend or refuse to issue any permit, license or registration to any person who is responsible for paying the fee, taxes, interest or penalty under this chapter.

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

The rule changes under consideration include:

- Adopt audit policy and procedure to comply with UCR. Create policy and procedure for notifying carriers of an upcoming audit and requesting carriers UCR records to conduct an audit. Notify carriers of any finding of non-compliance, and provide a method for amending filing and fees.

- Adopt audit policy and procedure to comply with UCR, and also adopt policy and procedure for collecting unpaid/underpaid fees, refunding overpayments, assessing penalties for non-compliance, revoking UCR for non-compliance, and assess penalties for non-filers, consistent with audit procedures in place for IFTA and IRP in Trans 152.13.

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

The statutory authority for ch. Trans. 178 Wis. Admin. Code, is provided in s. 194.407, Wis Stats.

**194.407 Unified carrier registration system.**

(1) The department may participate in and do all things necessary to implement and administer a unified carrier registration system for motor carriers, including private motor carriers, in accordance with 49 USC 13908 and 14504a. The department may, consistent with federal law, establish by rule an annual fee under this section for a motor vehicle that is operated in this state and that is subject to the unified carrier registration system.

(3) The department may use the emergency rules procedure under s. 227.24 to promulgate rules establishing the annual fee specified in sub. (1). Notwithstanding s. 227.24 (1) (c) and (2), these emergency rules may remain in effect until a subsequent rule is promulgated under this subsection or until the date on which permanent rules take effect, whichever is sooner. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

**History:** 2007 a. 20; 2011 a. 262.

**Cross-reference:** See also ch. Trans 178, Wis. adm. code.

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

94 hours

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

Affected Party	Number of Affected	Description
Wisconsin Motor Carriers Association	1	Statewide Trucking & Bus Association
Wisconsin based interstate Trucking companies	9,000	No more than 1% will be required to be audited annually
Wisconsin based interstate Bus companies	50	No more than 1% will be required to be audited annually

**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:**

As a “base-state” program, UCR is a federally designed program with significant similarities to the IRP and IFTA programs. As base-state programs, motor carriers obtain credentials from their home state. The credentials authorize them to operate in their home state, and in all other participating states. (Note: IRP and IFTA participating jurisdictions include the District of Columbia and ten Canadian provinces. UCR does not include these jurisdictions).

Fees and taxes are collected by the base state from motor carriers based in that state. The base state then shares and nets fees and taxes each month with other jurisdictions to provide to each jurisdiction the fees and taxes due each jurisdiction.

IRP and IFTA, and now UCR, require jurisdictions to audit the compliance of its respective motor carriers with the program, and to collect or refund fees and taxes based on the audit results.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact 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 per year, per truck. It is estimated that penalties adopted in the rule would likely increase this by no more than 100%.

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. So 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.

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