

# STATEMENT OF SCOPE

## Department of Transportation

**Rule No.:** Chapters Trans RR-1, 29, 56, 57, 100, 102, 104, 106, 107, 112, 115, 117, 119, 128, 130, 133, 134, 139, 141, 142, 145, 146, 148, 154, 176, 195, 200, 204, 205, 206, 207, 210, 212, 214, 230, 256, 259, 260, 261, 262, 276, 300, 307, 319, 326, 327, 400, 401, 405, 510, 512

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**Relating to:** Various Rules of the Department of Transportation affected by 2017 Wisconsin Act 108

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**Rule Type:** Permanent

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

N/A

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

The objective of this proposed rule is to make technical changes to existing rules that the Wisconsin Department of Transportation (“the Department”) identified as in need of revision in compliance with 2017 Wisconsin Act 108 because the rules are unauthorized, obsolete, duplicative, or economically burdensome.

As such, the Department identified the following rules in need of revision:

#### **Trans-RR 1**

- Trans-RR 1.02 duplicates s. 15.465, Stats.
- Trans-RR 1.05: This rule contains references to the processes for handling jurisdictional transfers that are covered under other statutes and Trans code chapters.
- Trans-RR 1.12 (4) (b): Section Trans-RR 1.12 (4) (b) describes a process for obtaining and maintaining an inventory of signs on designated rustic roads. The process described is both unnecessary and economically burdensome.

#### **Trans 29**

- Trans 29 contains multiple references to outdated standard, "American Railway Engineering Association, manual for railway engineering" from 1993 and substitute current standards from the successor organization, American Railway Engineering and Maintenance of Way Association.

#### **Trans 56**

- Trans 56.05 (1): Contains reference to outdated Federal Aviation Administration (“FAA”) publication.

#### **Trans 57**

- Trans 57.04 (1) (b): Refers to outdated FAA standards for airport pavement markings and lighting.

### **Trans 100**

- Trans 100.02 (6): Definition of "First Responder" has been changed/expanded in ch. Trans 256.
- Trans 100.10 (7): Prohibition of telephone testimony is economically burdensome.
- Trans 100.18 (1) (e): 20-year timeframe dropped to 5-year per 2011 Act 112.

### **Trans 102**

- Trans 102.15 (2) (c) 6.: Instructor's licenses are no longer revoked or suspended due to loss of driver's license.
- Trans 102.16 (5): Refers to a repealed statute, s. 343.20 (1) (e), Stats.
- Trans 102.20 (2) (i): Refers to repealed rule, s. ATCP 11.14.

### **Trans 104**

- Trans 104.06 (3) (Note): Per 49 CFR 383.25 (e), commercial learner's permit holders must wait 14 days prior to testing. Rule does not match CFR requirements.

### **Trans 106**

- Trans 106.02 (2) and (Note): Department of Health Services (DHS) renamed, renumbered, and reorganized their rules, "ss. HFS 61.54 to 61.57 and 61.59 to 61.68" to "ch. DHS 75." Reference to DHS needs to be changed to maintain accuracy of ss. Trans 106.02 (2) and (Note).

### **Trans 107**

- Trans 107.06, 107.07, 107.08 (1), 107.08 (1) (d), 107.08 (1) (h), 107.08 (1) (hm), 107.08 (1) (j), 107.08 (1) (m), 107.08 (2) (d), 107.08 (3), 107.09 (1), 107.09 (5), 107.09 (6), 107.11 (4) all refer to "suspensions." Effective 1/1/02, all OWIs result in revocation.
- Trans 107.08(3): Section 346.63 (2m), Stats., now refers to "legal drinking age" rather than specific age.

### **Trans 112**

- Trans 112.15 (1) (s): The current rule cites s. 948.35, Stats., which was folded into s. 948.40, Stats.

### **Trans 115**

- Trans 115.03: Created in 1990, the rule currently bars all department employees rather than just the testing division. This is an overreach.
- Trans 115.04 (1) (a) 4. and Trans 115.04 (1) (a) 10.: Listed contents required on application.
- Trans 115.04 (3) (f): Policy is burdensome and can be loosened in accordance with 49 CFR 383.75.
- Trans 115.04 (3) (h): Test results are now received electronically.
- Trans 115.05 (2) (e): Form is no longer required, and course fees are no longer paid to the department. The remaining processes are completed by division staff.

### **Trans 117**

- Trans 117.025 (3): As of 2010, there are no hand-written receipts issued for occupational licenses. DMV issues temporary driving receipts for occupational licenses only after processing the occupational driver license request. DMV does not hand out any actual licenses or ID cards at the DMV service centers. Section Trans 117.025 (3) refers to a temporary driving receipt being issued while the occupational driver license application is being evaluated (before processing). That approach along with all the criteria (subs. a, b, c) indicating how long the “occupational application evaluation” driving receipt remains valid no longer applies.

### **Trans 119**

- Trans 119.02 (2): Law enforcement no longer seizes the physical driver license cards of individuals. The out-of-service order still qualifies as a temporary license, and as such, that aspect should not be removed.

### **Trans 128**

- Trans 128.05 (5) (b): No statutory authority under s. 345.28 (5m) (c) or (5r) (c), Stats., to require only 50% of forfeiture.
- Trans 128.15: Control group testing is past sunset date.

### **Trans 130**

- Trans 130.03 (2): Rule requires application must be a form or a letter and s. 343.51 (1) (m), Stats., requires a form for application.

### **Trans 133**

- Trans 133: Trans 133 Telephone Authorization is in conflict with 2003 Act 294 expanding electronic options. Online fulfillment should be allowable.

### **Trans 134**

- Trans 134.03 (1) (b) 2.: Refers to repealed statutes: ss. 11.01 (4) and (10), Stats.
- Trans 134.06 (1) (d) 4. and (2) (b): Refers to repealed statute: s. 341.14 (6r) (fm) 5., Stats.

### **Trans 139**

- Trans 139 is obsolete as a result of 2011 Wisconsin Act 91.

### **Trans 141**

- Trans 141.02 (9): Refers to obsolete architecture. There is no longer a host computer system.
- Trans 141.04 (1) (b): Remove the need for letterhead and make the process electronic. Otherwise, the rule is burdensome.
- Trans 141.04 (1) (f): Burdensome and unnecessary to require two processors.
- Trans 141.07 (1): Burdensome on business. Narrowing the scope instead of being regulatory.
- Trans 141.08 (1): Paper documents are not the only submission method due to OnBase electronic document storage system.

### **Trans 142**

- Trans 142.02 (7) (a) 1.: Manufactured home retailers are no longer considered “dealers” under 218.10 (1g), Stats., so it is no longer necessary to exclude manufactured home dealers.

#### **Trans 145**

- Repeal rule to conform with 2009 Act 311.

#### **Trans 146**

- Trans 146.06 (1): Obsolete. Department no longer issues its own fuel tax license.

#### **Trans 148**

- eMV Agent is being replaced with a new system and should only be referred to as a web application.

#### **Trans 154**

- Trans 154.12 (4) (c): Section. 347.415 (5), Stats., does not limit the requirements for repairing or replacing odometers and are not limited to vehicles less than 10 years old.

#### **Trans 176**

- Trans 176.02 (1) (b): Obsolete form no longer required.
- Trans 176.06 (1) (b): 2017 Act 224 created an exception to the general requirement that, as a prerequisite to obtaining a permit, a common motor carrier must maintain certain minimum levels of insurance coverage as established under federal law.
- Trans 176.07 (1) and (2): Obsolete antiquated language. Forms are completed online no longer typewritten nor printed on rectangular cards.
- Trans 176.08 (1): Obsolete and antiquated language. Emergency filings replaced with online process.

#### **Trans 195**

- Numerous revisions are required for online access to motor vehicle records.
- Trans 195.09 (9): Section Trans 195.09 (9) authorizing fees for the time to redact should be deleted (declared illegal in *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65 ¶ 29) as superseded per 2017 Act 108.

#### **Trans 200**

- Trans 200.06 (2g) (note) and 200.06 (2r) (e) (2): References obsolete standard. Replace with generic reference to MUTCD.

#### **Trans 204**

- Trans 204.03: Standards in Tables A, B, and C are obsolete; conflicts with table in s. Trans 214.04
- Trans 204.04: Exceptions to standards authority conflicts with s. Trans 205.04.

#### **Trans 205**

- Trans 205.02 (5): Chapter Trans 76 repealed. “Functional Classification” definition needs crafting.
- Trans 205.02 (6): Standard reference is obsolete.
- Trans 205.03 (2) and 205.035 (6): Standards in Tables A, B, and C are obsolete
- Trans 205.04: Exceptions to standards authority conflicts with s. Trans 204.04

### **Trans 206**

- Trans 206.03 (10) (b): Contains an outdated cost threshold of \$50,000.
- Trans 206.06 (4): Lists PASER as an acceptable model but should be amended to reflect more recently developed acceptable models.

### **Trans 207**

- Trans 207.09 (1): Standard specification reference is obsolete, as is the address.

### **Trans 210**

- Trans 210.05 (2) (b) (Note) and 210.06 (3) (f) (Note): Refer to outdated FHWA standard and address.
- Trans 210.06 (1) (a) 1.: Uses outdated term "accident," amend to substitute "crash."
- Trans 210.06 (1) (c) (Note) and 210.07 (figure 1): Refer to outdated "Corridors 2020," amend to substitute current highway development plan.

### **Trans 212**

- Trans 212.02 (1) and (3): Obsolete standard referenced.

### **Trans 214**

- Trans 214.04: Table conflicts with tables in Trans 204.03, which have been identified as obsolete.

### **Trans 230**

- Trans 230.01 (3) (e) 30.: Obsolete reference to Trans 230.12

### **Trans 256**

- Trans 256.03 (2) (a): No in-person apps accepted. All virtual.
- Trans 256.03 (2) (b): A drop box replaced the in-person application.

### **Trans 259**

- Trans 259.03 (2) (a): No in-person apps accepted. All virtual.
- Trans 259.03 (2) (b): A drop box replaced the in-person application

### **Trans 260**

- Trans 260.03 (2) (a): No in-person apps accepted. All virtual.
- Trans 260.03 (2) (b): A drop box replaced the in-person application

### **Trans 261**

- Trans 261.03 (2) (a): No in-person apps accepted. All virtual.
- Trans 261.03 (2) (b): A drop box replaced the in-person application

### **Trans 262**

- Trans 262.03 (2) (a): No in-person apps accepted. All virtual.
- Trans 262.03 (2) (b): A drop box replaced the in-person application

### **Trans 276**

- Trans 276.09 (1) and (4): Refers to obsolete reference, s. 84.013 (3) (rb), Stats., which was repealed by 2017 Act 59.

### **Trans 300**

- Trans 300.16 (14): The subsection is duplicative since s. 346.57 (5), Stats., already specifies that driving above the posted speed limit is not allowed.

### **Trans 307**

- Chapter Trans 307 was superseded by federal law 49 CFR 393.116 (2004).

### **Trans 319**

- Trans 319.05 (2) (d) (Note): The note under s. 319.05 (2) (d), Stats., states that a vehicle's vin can be obscured by items in the vehicle but that is not explicitly stated in 49 CFR s. 565.13 or in s. 342.30, Stats.

### **Trans 326**

- Trans 326: A condition for Wisconsin to receive a motor carrier safety assistance program (MCSAP) grant is that it must adopt hazardous materials regulations for both interstate and intrastate commerce that are identical to federal hazardous materials regulations. Amend various sections to comply with MCSAP requirements, particularly Trans 326.07.

### **Trans 327**

- A 2009 audit of Trans 327 concluded that Wisconsin does not appropriately adopt and enforce state laws and regulations that are compatible with the Federal Motor Carrier Safety Regulations. Amend various sections to comply with FMCSRs, particularly Trans 327.03 (2) (a) 1, (10), 327.05 (3), 327.09 (2) (b), (4).

### **Trans 400**

- Trans 400 A: Appendix in its entirety is obsolete, duplicative, and conflicts with current federal law. 40 CFR 1500 provisions are obsolete and conflict with significant changes/updates in 2020. 23 CFR 771 provisions are obsolete and in conflict with significant changes/updates in 2018. 49 CFR 266.19 provisions are duplicative and unnecessary, as the department is required to follow this law regardless of the appendix.
- Trans 400.04 (3) (Note): Note about appendix would be obsolete if Trans 400 A is repealed.
- Trans 400.05: Obsolete dates referenced for federal laws. References to appendix would be obsolete if Trans 400 A is repealed.
- Trans 400.06 (6): The reference to the appendix would be obsolete if Trans 400 A is repealed.

### **Trans 401**

- Trans 401.01 (2): Potential conflict with s. 30.2022, Stats., and authorities for ss. NR 151 and 216 based on changes as a result of the Transportation Construction General Permit.

### **Trans 405**

- Trans 405.03 (1): Conflicts with 23 CFR 772.7(a).
- Trans 405.03 (2): Conflicts with the overall intent/purpose of 23 CFR 772, and as evidenced by the other conflicts noted here, the overall rule does not currently comply with federal law on multiple levels, rendering it also unnecessary.
- Trans 405.04 (2) (a): Conflicts with 23 CFR 772.5 definition of "traffic noise impacts."
- Trans 405.04 (1): Conflicts with 23 CFR 772.5 definition of "multifamily dwelling."

— Trans 405.05 (2) (a): Conflicts with 23 CFR 772.11(f).

### **Trans 510**

— Trans 510 contains 19 references to 'jobs.' 2019 Act 63 authorized 'retained jobs' to be counted among eligibility criteria for Transportation Facilities Economic Assistance Program ("TEA Grants").

### **Trans 512**

— Trans 512.06 (2) (a) and (3) (c) 1.: Sections Trans 512.06 (2) (a) and (3) (c) 1. refer to 'grants' however, this is a loan only programs.

## **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:**

2017 Wisconsin Act 108 required each state agency that has promulgated rules in the Wisconsin Administrative Code to submit a biennial report to the Joint Committee for Review of Administrative Rules. Under 227.29 (1), Stats., the report must list any rules that are: “(a) unauthorized, as defined in s. 227.26 (4) (a), together with a description of the legislation that eliminated the agency's authority to promulgate any such rule. (b) Rules for which the authority to promulgate has been restricted, together with a description of the legislation that restricted that authority. (c) Rules that are obsolete or that have been rendered unnecessary, together with a description of why those rules are obsolete or have been rendered unnecessary. (d) Rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction, together with a citation to or the text of any such statute, regulation, or ruling. (e) Rules that the agency determines are economically burdensome.”

Per 2017 Act 108, the report must also describe the agency's actions, if any, to address each of the rules listed and must include an explanation for any listed rule for which the agency has not taken any action. The proposed rules listed in this statement of scope are technical changes to rules with provisions that meet the criteria listed in the report.

The proposed rule changes are believed to be technical in nature and do not contain any substantive changes in policy. The rule changes are designed to update the Department's rules by deleting obsolete rule provisions, duplicative language, and dates that have passed, and conforming the Department's rules with recent statutory changes and agency practice and terminology. Without these rule changes, the Department will continue to administer the rules as they currently exist, which may create confusion for persons impacted by each rule as many provisions in rule are currently obsolete or out of date.

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

s. 227.11 (2) (a), Stats., Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

s. 85.16 (1), Stats., The secretary may make reasonable and uniform orders and rules deemed necessary to the discharge of the powers, duties and functions vested in the department. The secretary may also prescribe forms for applications, notices and reports required by law to be made to the department or which are deemed necessary to the efficient discharge of all powers, duties and functions and prescribe the form and manner in which those applications, notices and reports may be filed or submitted.

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

2,000 hours.

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

No entities will be affected by this proposed rule as these rule changes will only clarify existing language and omit obsolete language.

**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:**

None.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

Because these rule changes simply look to clarify existing language and omit obsolete language, the proposed rules will have no significant economic impact on small businesses.

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