

Report From Agency
STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION

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, 178.09, 178.10 and (Note), and 178.11, relating to Unified Carrier Registration System, and affecting small businesses.

REPORT FROM AGENCY

Clearinghouse Rule 16-074

I. THE PROPOSED RULE:

The proposed rule revisions and the analysis are attached.

II. REFERENCE TO APPLICABLE FORMS:

No forms are newly required by these rule revisions.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA are attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The Unified Carrier Registration (“UCR”) is a program that replaced there single-state registration system (“SSRS”). The UCR program requires individuals and companies that operate commercial motor vehicle in interstate or international commerce to register their businesses with a participating state and pay an annual fee based on the size of their fleet. This includes all carriers: private, exempt or for hire. Brokers, freight forwarders and leasing companies are also required to register and pay a fee unless they operate as a motor carrier. Like SSRS, fees collected from the UCR program are used by states to support their truck safety programs and USDOT officer training.

This rulemaking proposes to fulfill the latest 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 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, the UCR agreement does not provide for auditing specifics, audit collection, audit penalties, and audit sanctions.

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, at \$2,196,680 per year.

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 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 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.

V. SUMMARY OF PUBLIC COMMENTS AND THE DEPARTMENT'S RESPONSES, AND EXPLANATION OF ANY RESULTING MODIFICATIONS TO THE PROPOSED RULES:

The Department held a public hearing on the proposed rule on January 5, 2017. No one testified or appeared at the Hearing, and no written comments were received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF COMMENTS:

The Department received the Clearinghouse Report on December 12, 2016, which reported comments related to: statutory authority, form, style and placement in administrative code, along with clarity, grammar, punctuation and use of plain language. The Department made all recommended changes relating to form, style and placement in administrative code. The Department also made all recommended changes relating to clarity, grammar, punctuation and use of plain language. With respect to the three individual comments:

Section 1. Statutory Authority: The department modified the draft to allow use of the income tax refund intercept provisions under s. 71.93, Stats., after exhausting due process requirements.

Section 5 d.: The department deleted the presumption of correctness, but retained the burden of proof on the taxpayer.

Section 5.e.: The department revised the section to require additional details in the notice of completed audit. There are several actions that could result from an audit, and any such action will be stated in the notice of completed audit.

Section 5m.: Because the penalty is a sum comprised of a fixed dollar amount and a multiple of the fee difference, there will always be a penalty amount even if there is no fee difference. It is possible that a penalty accrues upon failure to provide records at the outset if an audit, although the fee difference is unknown until the completion of the audit.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

The Department did not receive any statement, suggested changes, or other material from the Small Business Regulatory Review Board.