

# Statement of Scope

## Department of Transportation

Rule No.: Wisconsin Admin. Code ch. Trans 104

Relating to: Examination Procedures for Operator's License

Rule Type: Permanent

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

N/A

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

Wisconsin Admin. Code ch. Trans 104, *Examination Procedures for Operator's License*, is an existing rule that interprets 49 C.F.R. part 383, *Commercial Driver's License Standards; Requirements and Penalties*, 49 C.F.R. part 384, *State Compliance with Commercial Driver License Program*, and Wis. Stat. ch. 343, *Operator's Licenses*. These federal and state laws relate to procedures used in testing applicants for any classification of operator's license, endorsements to licenses, and the imposition and removal of license restrictions. The Wisconsin Department of Transportation ("WisDOT") last amended Wis. Admin. Code ch. Trans 104 in 1996.

Since that time, changes to federal regulations implementing the Commercial Motor Vehicle Safety Act of 1986 ("CMVSA") have affected the exam procedures state and third party examiners must employ. These changes require WisDOT's compliance by July 2015. The anticipated amendments to Wis. Admin. Code ch. Trans 104 reflect these changes and will ensure WisDOT's compliance with federal law.

WisDOT must also amend Wis. Admin. Code ch. Trans 104 to conform to Wis. Stat. s. 343.16(3), which generally requires a person whose operator's license has expired by more than 8 years and who has no proof of valid licensed operation during that 8 year period to take all knowledge and skill tests associated with the class of license previously held.

The anticipated modifications do not change the objective of the rule.

### 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:

#### *a. Existing state statutes and WisDOT policies that need to be updated in the rule:*

Wisconsin Stat. s. 343.16(3) generally requires a person whose operator's license has expired by more than 8 years and who has no proof of valid licensed operation during that 8 year period to take all knowledge and skill tests associated with the class of license previously held.

#### *b. New federal policies:*

Revisions to 49 C.F.R. parts 383 and 384 add requirements for the issuance of a Commercial Driver's License ("CDL") to Commercial Motor Vehicle operators. Some revisions impact the examination procedures for the CDL written and skills tests that state field agents and third party testers administer.

***c. Policy alternatives:***

All anticipated modifications to Wis. Admin. Code ch. Trans 104 are required to comply with federal and state laws. Accordingly, no policy alternatives exist.

**4. Detailed explanation of statutory authority for the rule :**

WisDOT is authorized to administer and modify Wis. Admin. Code ch. Trans 104 under various provisions of Wis. Stat. ch. 343 and Wis. Stat. s. 85.16 (1).

Wisconsin Stat. s. 343.02 requires that WisDOT administer and enforce the issuance of operator licenses and state identification cards and authorizes WisDOT to promulgate rules WisDOT's secretary considers necessary.

Wisconsin Stat. s. 343.03 (1) (a) and (b) requires that WisDOT institute a classified driver license system that meets all federal standards.

Wisconsin Stat. s. 343.16 (1) (b) requires that WisDOT conduct written and skills tests.

Wisconsin Stat. s. 85.16(1) authorizes WisDOT's secretary to make reasonable and uniform orders and rules deemed necessary.

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

WisDOT currently estimates that modifications to Wis. Admin. Code ch. Trans 104 will require approximately 500 hours of staff time. Other resources necessary to develop the rule include the general public, other impacted state agencies, impacted federal agencies, the Wisconsin Legislature, and the Governor's Office.

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

All persons obtaining a class D, M or CDL license taking knowledge and skills test through WisDOT's Division of Motor Vehicles ("DMV") or a third party tester.

All third party testers and examiners who conduct CDL skills tests.

All WisDOT DMV agents who conduct knowledge or skills test exams.

Any state agency that employs Commercial Motor Vehicle operators or who conducts training or testing of applicants for class D, M or CDL's.

The United States Department of Transportation's Federal Motor Carrier Safety Administration, to the extent that it is authorized to review and determine whether WisDOT has complied with the CMVSA.

**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 :**

Of import, 49 C.F.R parts 383 and 384 establish minimum standards for the required tests, testing, standards, and monitoring of issuance of CDLs in accordance with the Commercial Motor Vehicle Safety Act of 1986. A brief comparison of the applicable revisions to 49 C.F.R. Parts 383 and 384 to Wis. Admin. Code ch. Trans 104 follows.

## Definitions

Both 49 C.F.R. Part 383 and Wis. Admin. Code ch. Trans 104 contain sections defining relevant words and phrases. While 49 C.F.R. s. 383.5 defines “Basic Control Skills,” “Commercial Learner’s Permit (CLP),” “State of domicile,” and “Tank vehicle,” Wis. Admin. Code ch. Trans 104 does not, but ultimately must ensure compliance with additional changes to federal regulations.

## Commercial Learner’s Permit

49 C.F.R. s. 383.25(c) provides that a CLP is valid for no more than 180 days from the date of issuance, but may be renewed for an additional 180 days without requiring the CLP holder to retake the general and endorsement knowledge tests. Wisconsin Admin. Code ch. Trans 104 does not contain this requirement.

49 C.F.R. s. 383.25(e) prohibits a CLP holder from taking the CDL skills test during the first 14 days after initial issuance of the CLP. Wisconsin Admin. Code ch. Trans 104 does not contain this requirement.

49 C.F.R. s. 385.25(a)(5)(iii) provides that a CLP holder with a tank vehicle (N) endorsement must have taken and passed the N endorsement knowledge test. A CLP holder with an N endorsement may only operate an empty tank vehicle and is prohibited from operating any tank vehicle that previously contained hazardous materials that has not been purged of any residue. Wisconsin Admin. Code ch. Trans 104 needs to be reviewed for compliance with this requirement.

## Knowledge and Pre-trip Inspection Tests

49 C.F.R. s. 383.113(a) includes, as part of the three part CDL skills test, a pre-trip vehicle inspection skills test that contains a component testing air brake inspection and operation. Wisconsin Admin. Code ch. Trans 104 currently treats the pre-trip vehicle inspection test, and the air broke component, distinctly from the skills test.

49 C.F.R. s. 383.133(b)(3) provides that knowledge tests may be administered in written form, verbally, or in automated format and can be administered in a foreign language, provided that no interpreter is used in administering the test. Wisconsin Admin. Code ch. Trans 104 does not contain this requirement.

## Skills Tests

49 C.F.R. s. 383.113(b) requires that all CDL applicants pass a three part skills test including a basic control skills test. Applicants must take and pass this component of the skills test before moving on to the full skills test. Wisconsin Admin. Code ch. Trans 104 does not require this basic control skills test.

49 C.F.R. s. 383.133(c)(5) prohibits interpreters during the administration of skills tests. Applicants must be able to understand and respond to verbal commands and instructions given by a skills test examiner in English. Neither the applicant nor the examiner may communicate in a language other than English during the skills test. Wisconsin Admin. Code ch. Trans 104 does not contain this requirement.

49 C.F.R. s. 383.79(b) permits a State to administer its skills test to a person who has taken training in that State and is to be licensed in another United States jurisdiction, i.e., his or her State of domicile. These test results must be transmitted electronically from the testing State to the licensing State. The State of domicile of a CDL applicant must accept the results of a skills test administered by any other State. Wisconsin Admin. Code ch. Trans 104 does not contain these requirements.

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

At this time, WisDOT anticipates that updates to the existing Wis. Admin. Code ch. Trans 104, which are expected to include modifications that reflect existing state and federal law, will have an indeterminate economic impact. Until the rule is actually drafted, determining the economic impact of the rule is difficult.

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