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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 15-044

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### 1. Statutory Authority

Proposed s. Trans 319.05 directs law enforcement agencies to establish and designate a method for towing service operators to provide notice that a vehicle will be removed from private property. As relevant to this provision, s. 349.13 (3m) (e), Stats., directs the department to promulgate rules establishing guidelines “for towing services to notify law enforcement” upon removal of a vehicle. The department should comment on whether this provision, or any other statute, authorizes it to promulgate a rule directing law enforcement agencies to establish notification procedures. Alternatively, the requirement for law enforcement agencies to establish notification procedures could be removed, and the proposed rule could simply direct towing services to notify an agency by any method that is designated by the agency, specifying that the methods may include telephonic or electronic communications, and that if no method is established, then the notification should be given to the agency’s nonemergency telephone number.

#### 2. Form, Style and Placement in Administrative Code

a. The title for ch. Trans 319 should be revised to reflect the chapter’s applicability only to towing of unauthorized vehicles parked on private property. The chapter does not apply to all illegally parked vehicles. Also, the phrase “procedures and fees for” could be removed from the chapter title.

b. The rule summary’s listing of the place to submit comments should provide a specific date by which comments should be submitted.

c. The department should consider modifying proposed s. Trans 319.02, which provides definitions for proposed ch. Trans 319. As drafted, proposed s. Trans 319.02 does not identify the specific terms that have defined meanings in the chapter, but instead establishes a hierarchy of statutory definitions sections. It would be clearer if the department instead identified the terms that have defined meanings in the proposed rule and specified the definition that applies to each term. [See s. 1.01 (7) (d), Manual.] Additionally, if the department believes it is important to define the word “sign”, it should move the definition for this term from proposed s. Trans 319.04 to s. Trans 319.02. It might, however, consider whether it is necessary to define this term. [See s. 2.0 WISCONSIN BILL DRAFTING MANUAL 2015-2016 (“Use a definition when there is more than one meaning for a word or phrase and the intended meaning is either not apparent from the context or more specific than the generally recognized meaning.”).] Further, the department may also wish to consider whether it is accurate to use the word “sign” as a term in the rule text because the authorizing statute refers only to “posting notice”.

d. Proposed s. Trans 319.04 combines the definition of “properly posted” from s. 349.13 (3m), Stats., with additional substantive requirements. It may be clearer to instead more closely parallel the language of the statutes by separating the definition of “properly posted” from the “form and manner of posting” requirements. Accordingly, the department might consider instead defining “properly posted”, as it is defined in s. 349.13 (3m), Stats., within the definitions section of the rule, and then titling s. Trans 319.04 “Form and manner of display of notice”. To more closely parallel the authorizing statutory language, the department should also consider changing the subsection title “sign description” to “form of posting” and the subsection title “sign placement” to “manner of posting”.

e. The department should review and consider whether any of the material in the explanatory notes should be included in the rule’s substantive provisions. [See s. 1.09 (1), Manual (“Notes may not include substantive requirements and are not part of the substantive law created by rule.”).]

f. Is proposed s. Trans 319.04 (5) necessary?

g. In proposed s. Trans 319.05 (2) (a), the word “appropriate” is unnecessary because pars. (b) and (c) identify the law enforcement agency to which notice should be given. Additionally, the phrase “as provided in par. (b) and (c)” should be replaced with the phrase “as follows:”, and the subsection should be restructured so that par. (a) provides the introductory material for pars. (b) and (c), which are renumbered to (a) and (b).

h. If not revised as suggested in comment 1., above, the provisions relating to notifying a law enforcement agency that a vehicle will be towed should be reorganized. Among other issues, proposed s. Trans 319.05 mixes requirements placed on law enforcement agencies with requirements placed on towing services (proposed s. Trans 319.05 (1) and (4) are directed toward law enforcement agencies, and proposed s. Trans 319.05 (2) and (3) are directed to towing services).

i. The initial applicability provision should be revised to more directly state the intended applicability. For example, is it intended that the proposed rule apply to a vehicle that is newly parked, after the effective date of the rule, only to properly posted private property?

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In proposed s. Trans 319.01 (1), it is unnecessary to say “as authorized by s. 349.13 (3m) 3), Stats.”, and the phrase should be removed. The word “administratively” is also unnecessary, and should be removed, because all agency rule-makings are administrative interpretations.

b. In proposed s. Trans 319.01 (2), it may be more precise to say that the chapter applies “to the towing of vehicles parked on private property”, rather than “persons involved in the removal of vehicles parked on private property”.

c. Throughout the rule text, vague requirements should be replaced with terms that describe these requirements with more specificity. For example, proposed s. Trans 319.04 (4) (b) provides that a sign shall be erected on an “adequate” support. Whether a particular thing is “adequate” is open to interpretation. Likewise, it is not clear what is intended by the requirement that a sign be “conspicuously colored”, as provided by proposed s. Trans 319.04 (3) (a), particularly because the rule text also provides that a sign contain contrasting letters. Would a sign with a white background and black letters meet the requirement of being “conspicuously colored”? The requirement that a sign “indicate” that parking of unauthorized vehicles is prohibited and unauthorized vehicles may be towed is also vague. Must the sign state this? Can the concepts be conveyed by pictures on the sign?

d. The department should avoid wordy, imprecise phrases. The following suggestions apply to this comment:

- In proposed s. Trans 319.03 (3), the phrase “Pursuant to s. 349.13 (3m), Stats.,” is unnecessary and should be removed.
- In proposed s. Trans 319.03 (2), the clause, “With respect to determining the length of time for a storage period under sub. 1(1) (b) or (c)” is unnecessary and should be removed.
- In proposed s. Trans 319.04 (2) and in proposed s. Trans 319.04 (4), the phrase “shall be considered” should be replaced with the word “is”.
- Also in proposed s. Trans 319.04 (2) and in proposed s. Trans 319.04 (4), the phrase “for the purpose of s. 349.13 (3m), Stats.” is unnecessary and should be removed, because proposed s. Trans 319.01 provides that the purpose of proposed ch. Trans 319 is to interpret s. 349.13 (3m), Stats.
- In proposed s. Trans 319.04 (2), the phrase “if any sign exists on the property in the area required under sub. (4)” is wordy. It is also unnecessary if the department rule specifies, under the “manner of posting” section, where a notice must be displayed. [See comment 2. d., above, regarding separating the definition of “proper posting” from the “form and placement” requirements.]
- In proposed s. Trans 319.04 (4), the clause “if signs are placed in a manner specified in par. (a) or (b), or both” should be replaced with “if either of the following apply:”. Paragraphs (a) and (b) of proposed s. Trans 319.04 (4) should then be rewritten to

be descriptive: e.g., “A sign is erected at each vehicle entrance to the parking area or property...”.

- In proposed s. Trans 319.05 (1), the clause, “With respect to receiving the information specified in sub. (3) from towing services that provide notice to a law enforcement agency of the removal of an unauthorized vehicle parked on private property, pursuant to s. 349.13 (3m)” is unnecessary and should be removed.

e. Throughout the text of the proposed rule, requirements should be stated directly. For example, in proposed s. Trans 319.05 (2) (b), the phrase “the notice given by a towing service shall be provided to the police department...” could be rewritten as “a towing service shall notify the police department...”.

f. There are minor grammatical and typographical errors throughout the rule summary, which could be reviewed and corrected.