

Report From Agency
STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION

**IN THE MATTER OF RULEMAKING
PROCEEDINGS BEFORE THE DEPARTMENT
OF TRANSPORTATION**

REPORT TO THE LEGISLATURE

Trans 319 Wis. Adm. Code Relating to:
Towing of Vehicles and affecting small
businesses

CLEARINGHOUSE RULE 15-044

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:**

2013 Wisconsin Act 76, authorizes private towing services to remove vehicles from privately owned parking areas. That act requires the Department to promulgate rules establishing all of the following:

1. Reasonable charges for removal and storage of vehicles under Wis. Stat. s. 349.13(3m).
2. The form and manner of display of notice necessary to qualify as “properly posted” under Wis. Stat. s. 349.13(3m)(a)2.
3. Guidelines for towing services to notify law enforcement under Wis. Stat. s. 349.13(3m)(d), upon removal of a vehicle.

This rulemaking complies with the requirements of section 59 of 2013 Wisconsin Act 76.

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

The following is a summary of comments made at a Public Hearing conducted by the Wisconsin Department of Transportation ("WisDOT") on July 21, 2015. Comments were made in support, and in opposition, to the promulgation of Trans 319 as submitted to the rule text filed with the Rules Clearinghouse.

Ross Kinzler (Executive Director, Wisconsin Housing Alliance), supports the rule as drafted. Mr. Kinzler stated that unauthorized parking on private property is an ongoing issue in Wisconsin's Mobile Home parks, and that this rule helps in part to alleviate that problem. Mr. Kinzler does not believe Trans 319 should differentiate by weight, as this is not within the scope of § 349.13(3m). The rule was not changed in response to these comments.

Paulina de Haan (Legislative Fiscal Manager, City of Milwaukee) and David Lawrence (Tow Lot Manager, City of Milwaukee), expressed concern for residents due to a lack of enforcement mechanism against bad actors in the towing industry. Similarly, Joanna Cervantes (Associate Director, Hispanic Chamber of Commerce of Wisconsin) spoke in opposition to the rule. Ms. Cervantes believed that the fee structure is too high and wants stricter enforcement mechanisms to deal with bad actors. Mr. Lawrence is also concerned about the additional \$150 fee added to the original emergency rule (EmR1425) for miscellaneous fees in addition to the \$150 for the towing of an unauthorized vehicle. Mr. Lawrence expressed further concern over the storage rates for vehicles at private lots as they are "higher than in New York City." In written comments, the City of Milwaukee stated that it has received numerous complaints about the Emergency Rule (EmR1514) from residents, including "allegations of illegal tows,

predatory practices, and exorbitant fees” and requested a penalty for violations by tow operators and an enforcement mechanism. Mr. Lawrence also stated that some tow services are not reporting the vehicles they are towing to the city, and, therefore, wants a notice posted on the signs stating where towed vehicles were taken.

In response to these comments, the department acknowledges that some vehicles may be towed in error. However, the department declines to create a remedy or mechanism for resolving fee disputes as that exceeds the scope of its rulemaking authority. Pursuant to Wis. Stat. s. 349.13(3m)(c), a vehicle may only be removed from private property if the property is properly posted and the parked vehicle is not authorized to be parked there, regardless of whether a citation is issued for illegal parking. In addition, pursuant to Wis. Stat. s. 349.13(3m)(dr)2., a towing service may not collect any charges for the removal or storage of an illegally parked vehicle if the towing service fails to notify a local law enforcement agency of the impending tow. The department did, however, lower the fee related to both outdoor and indoor storage. The department declines to require towing services to be identified on ‘no parking’ signs, because property owners may use different towing services simultaneously, or from time to time. The department also limited the circumstances under which the additional charges up to \$150 may apply, as discussed below.

Dan Johnson (Vice President, Wisconsin Towing Association), stated that the fee structure was reasonable. Mr. Johnson believes that the rule should not apply to vehicles weighing over 11,000 pounds. In written comments, the Wisconsin Towing Association also said it believed the fee structure represented a reasonable balance of interests, particularly with the inclusion of “ancillary charges that may arise” from a towing and storage of illegally parked vehicles. Todd Menzel (Chief Operating Officer, Prairie Land Towing), Jason Pehowski

(President, Always Towing), and Michael Tarantino (General Manager, Always Towing) also supported a weight limit cap.

In response to these comments, several commenters suggested establishing a maximum vehicle weight, above which the fee limits should not apply. The department declines to do this. The additional charges up to \$150 were intended to cover increased costs of removing or storing heavy vehicles or vehicles having a size condition, removing vehicles parked at a location with spatial constraints or limited access to the vehicle impeding the tow, or related to necessary travel. The department modified the rule so that charges of up to \$150 for any other necessary and commercially reasonable charges are only related to the use of special equipment required by unusual characteristics of the parked vehicle, including having a gross vehicle weight greater than 10,000 pounds, or required for a vehicle parked in an area with spatial constraints or limited access to the vehicle that impedes the tow, and for expenses incurred by the towing service relating to towing more than 10 miles. The rule prohibits additional charges for administrative fees, gate fees, or other services or supplies ordinarily required by the removal or storage of a motor vehicle to qualify for additional charges of up to \$150 for towing or storage.

Mr. Menzel also believes the rates are reasonable, but is concerned about the need to increase rates over time, as costs rise.

The department acknowledges that inflation and other changes over time may require the periodic adjustment of fees established by this rule, but declines to create a mechanism to increase fees. The department will commence a new rulemaking to revise this rule when fee changes are considered necessary.

Mr. Tarantino also supported the new fee structure as he believed that the fee structure

from the original emergency rule was too low. Mr. Tarantino further spoke to the confusing nature of the municipal service fee. Mr. Tarantino believed the rule was unclear if the towing companies would be charged a municipal fee if they did not end up towing the vehicle after notifying the municipality, or if the vehicle is ultimately not retrieved by the vehicle owner. Mr. Pehowski also spoke in favor of the fee structure.

In response to these comments, the department revised the rule to clarify that the towing company is authorized to charge the same municipal fee to the vehicle owner, up to \$35. The department has not revised the rule to address occasions in which police are notified of a vehicle that is not towed. Under the towing lien statute, section 779.415(1g)(a) of the Wisconsin Statutes, municipal fees cannot be recovered by the towing service through a towing lien unless the vehicle is towed at the direction of police.

Jaime Blas (President, Cars, Inc.) spoke in favor of the new fee structure, and spoke to the disparity in costs his business faces compared to a municipality such as the City of Milwaukee. The department did not revise the rule in response to these comments.

Mike Maistelman (Attorney for Always Towing and 24 Hour Towing) spoke in favor of the current fee structure. Mr. Maistelman also addressed comments from the City of Milwaukee and stated that private companies face greater costs, and, therefore, need to charge higher fees. Mr. Maistelman also stated that the private towing companies are competing directly with the City of Milwaukee for business. Moreover, Mr. Maistelman stated that municipalities have the ability to further regulate the industry, beyond the enforcement mechanisms existing in the statute and administrative rule. The rule was revised to authorize a towing service to charge an additional fee up to the same amount passed along to the municipality, if a municipality requests payment of the municipal service fee.

Steven G. Olson (Towing Manager, Don's Towing and Repair) spoke in favor of the rule and the current fee structure.

Following the broadcast of a television news report in late July on vehicles recently towed in the city of Milwaukee, the department received 26 written comments between July 26, 2015, and August 4, 2015, all critical of the fees and towing practices cited in the news story. Although these emails were received after the close of the public comment period and the department made no changes to the rule specifically in response to these comments, many of the comments requested changes that were already suggested at the public hearing and that were included in the final rule.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF COMMENTS:

The department made numerous revisions in response to the Rules Clearinghouse's 23 comments.

In response to comments regarding statutory authority, the department eliminated any requirements on local units of government, other than a requirement to retain towing notices for 60 days and to provide those notices to towed vehicle owners and their agents. The department believes these requirements are consistent with s. 349.13(3m), Stats., and with open records laws.

In response to comments concerning form, style and placement in the administrative code, the department significantly revised the organization of the rule, including placement and phrasing. The department made the suggested changes. However, the department declined to modify the initial applicability provision (though inartfully phrased) to avoid creating any ambiguity between the expiration of the emergency rule and the implementation of the permanent rule.

The department made all recommended changes relating to clarity, grammar, punctuation and use of plain language, except retained the statutory references in certain provisions to clarify they were required by statute.

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

The rule will affect small businesses as defined in s. 227.114 (1), Stats., but will not have a significant economic impact on a substantial number of businesses.