

Clearinghouse Rule 15-044

**STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY**

The State of Wisconsin Department of Transportation Proposes an Order to Create Permanent Rule Wisconsin Administrative Code ch. Trans 319 Relating to Towing of Vehicles and affecting small businesses.

**PROPOSED ORDER
ADOPTING PERMANENT RULE**

The Statement of Scope for this Permanent Rule, SS 064-14, was approved by the Governor on July 1, 2014, published in Wisconsin Administrative Register No. 703 on July 14, 2014, and approved by Secretary of the State of Wisconsin Department of Transportation Mark Gottlieb, P.E., as required by Wis. Stat. s. 227.135(2), on July 28, 2014.

The Wisconsin Department of Transportation proposes an order to create Permanent Rule Wisconsin Administrative Code ch. Trans 319, relating to Towing of Vehicles and affecting small businesses. The analysis below was prepared by the Wisconsin Department of Transportation (Department).

ANALYSIS

Statutes Interpreted: Wis. Stat. s. 349.13(3m).

Statutory Authority: Wis. Stat. ss. 349.13(3m)(e), 85.16, 227.11(2), and 2013 Wisconsin Act 76 s. 59.

Explanation of Agency Authority:

Wis. Stat. s. 349.13(3m)(e), as created by 2013 Wisconsin Act 76, provides authority for private towing services to remove vehicles from privately owned parking areas. The act and statute provide that the Department shall 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.

Further, 2013 Wisconsin Act 76 s. 59, provides that the Department shall promulgate the permanent rule required under Wis. Stat. s. 349.13(3m)(e).

Wis. Stat. s. 85.16, provides the Department with authority to make rules deemed necessary to the discharge of the agency’s powers, functions and duties. It also provides that any person violating a rule adopted under Ch. 349, Stats., who is not subject to a statutory penalty, is subject to a \$20 to \$400 forfeiture. Violations of the requirements of proposed Ch. Trans 319 will be subject to that statutory forfeiture.

Wis. Stat. s. 227.11(2), provides the Department with authority to “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...” Wis. Stat. s. 349.13(3m)(e), expressly requires the Department to promulgate rules related to subsection Wis. Stat. s. 349.13(3m), and this proposed rulemaking reflects rulemaking the Department considers necessary to effectuate the purpose of that statutory subsection.

Related Statute or Rule: Wis. Stat. s. 349.13(3m).

Brief Summary of the Proposed Rule:

2013 Wisconsin Act 76 and Wis. Stat. s. 349.13(3m)(e), changed preexisting law governing to the towing of vehicles parked on private property without permission. Under Wis.

Stat. s. 349.13(3m) (2011), vehicles generally could not be removed from a private parking lot or facility without permission of the vehicle owner unless a repossession judgment was entered, or a traffic or police officer issued a citation for illegal parking. Persons were generally prohibited from parking on private lands without consent of the property owner or lessee, Wis. Stat. s. 346.55(3). Signs related to parking on private property were only required to indicate for whom parking was permitted, limited, restricted or prohibited, Wis. Stat. s. 346.55(4).

Under Wis. Stat. s. 349.13(3m)(c) and (d)1., as repealed and recreated by 2013 Wis. Act 76, only a towing service may now remove vehicles from private lands (not just parking lots and facilities). Under Wis. Stat. s. 349.13(3m)(a)2., parking signs on private lands must indicate that the area is private property and that unauthorized vehicles may be immediately towed. In addition, Wis. Stat. s. 346.55(4) requires that no parking signs on private property indicate for whom parking is permitted, limited, restricted or prohibited. If a property is properly posted, a towing service may remove the vehicle at the request of the property owner or the owner's agent, without involvement of law enforcement, and the charges for that removal are imposed upon the person whose vehicle is towed. Towing services also have the ability to remove vehicles from lands that are not properly posted under Wis. Stat. s. 349.13(3m)(b) and (d)1., again at the vehicle owner's expense, but only after a citation for illegal parking has been issued by law enforcement.

Wis. Stat. s. 349.13(3m)(e)2., as created by 2013 Wis. Act 76 delegates to the Department of Transportation responsibility for designating what constitutes "proper posting" under these new towing laws. Under this proposed regulation, signs would be required to meet the minimal standards that are set forth in proposed s. Trans 319.04(2) and (3). No specific design is mandated. The sign must be conspicuously colored and legibly marked and contain contrasting letters not less than two inches in height indicating that parking of unauthorized vehicles is not allowed and that

unauthorized vehicles may be towed. There is no requirement that the signs resemble or be colored consistently with no parking signs used on highways that conform to the Manual on Uniform Traffic Control Devices. The new signs can be erected at each entrance to the parking area or be posted in the area where parking occurs in a manner visible to persons at the location of the parked vehicle. There is no specific height requirement for signs erected at entrances and exits, so long as the signs are conspicuous. Signs erected in parking areas must be at least four feet above the parking surface.

Under Wis. Stat. s. 349.13(3m), no posting exemption is established for areas on private property that are not intended for motor vehicle parking or storage. This rulemaking does not establish any exception for those areas. Therefore, if a person parks on a residential property's front lawn, for example, where signs meeting the requirements of this rulemaking are not posted, the issuance of a repossession judgment or the issuance of a citation for illegal parking will be a prerequisite to removing the vehicle by tow service.

With regard to the Wis. Stat. s. 349.13(3m)(e)1., requirement that this rulemaking establish reasonable charges for removal and storage of vehicles parked without authorization from private property, the Department proposes in s. Trans 319.03 to allow a towing service to charge the towed vehicle owner an ordinary and reasonable charge for hooking up and towing a vehicle and storing a vehicle, but sets maximum amounts that may be charged. Because charges for towing and storage may vary widely from community to community across this state, and because the costs of labor and real estate to the towing company will vary widely across the state, the Department has not attempted to establish set rates for these services. To protect consumers from being unconscionably gouged by an unscrupulous actor, the towing service is not permitted to charge more than ordinary and reasonable charges.

The maximum charges permitted under the proposed rule are as follows:

- \$150 for a vehicle towed using a flatbed, hook and chain, wheel-lift, boom, or any other method.
- \$30 for each period of 24 consecutive hours that the vehicle is stored in an outdoor storage facility.
- \$50 for each period of 24 consecutive hours that the vehicle is stored in an indoor storage facility.
- \$150 for any other necessary and commercially reasonable charges or expenses incurred by the towing service, relating to the removal or storage, or both, of the vehicle.

In addition, Wis. Stat. s. 349.13(3m)(dm), requires the towing service may collect an additional service fee not exceeding \$35 if collection of the fee has been requested by the municipality in which a removed vehicle was illegally parked. Those fees are then passed along to the municipality.

For purposes of determining the length of time storage charges for a vehicle accrues, the proposed rule uses the date and time that the towing service provides notice of the towing to law enforcement as the beginning of the storage period. This provides the towing service and towed person with a reliable third party who can establish the time at which the tow occurred. Although that time would include the time of the actual tow to the storage facility in the calculation of the storage period, in the context of per-day storage charges, the short amount of time needed for the actual tow does not significantly affect the time calculation. The benefit of having a reliable beginning time outweighs the minor discrepancy in time used for the actual tow.

Subdivision. 349.13(3m)(dr)2., Stats., provides that a towing service may not collect any charges for the removal or storage of an illegally parked vehicle towed pursuant to s. 349.13(3m), Stats., unless the towing service complied with s. 349.13(3m)(d) 2., Stats., and made the required report to law enforcement before removing the vehicle.

Under this proposed rulemaking, the location of the improperly parked vehicle to be towed determines which agency should be notified. The county sheriff is the default agency to which a tow should be reported under Wis. Stat. s. 349.13(3m)(dr)1., unless the vehicle is parked within the boundaries of a municipality that has a police department. Vehicle tows made from locations within municipal boundaries are reported to the municipal police department, if one exists, and to the sheriff if there is no municipal police department. If the relevant law enforcement agency designates a method of delivery for notices given to it, the towing service is required to use that delivery method for providing notices. If the law enforcement agency does not designate a method of delivery for notices given to it, the notice may be delivered to any non-emergency recorded telephone line of that law enforcement agency.

The notice provided to law enforcement must include the following information:

- The name and telephone number of the towing service.
- The make and model of the vehicle being removed.
- The license plate number, if license plates are on the vehicle.
- The vehicle identification number for the vehicle, if visible.
- The location from which the vehicle will be removed.
- The address and phone number of the storage location to which the vehicle will be towed.
- The name of the operator of the storage facility if the storage location is not operated by the towing service.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

There is no existing or proposed federal regulation that governs the towing of vehicles from private property.

Comparison with Rules in Adjacent States:

Illinois:

In Illinois, the owner or lessor of privately owned real property, or any person authorized by the owner, may have any motor vehicle that is abandoned or left unattended upon property without permission to be removed by a towing service, without liability for the costs of removal, transportation, or storage or for damage caused by the removal, transportation, or storage. The towing or removal of any vehicle from private property without the consent of the registered owner or other legally authorized person in control of the vehicle is subject to compliance with the following conditions and restrictions:

- Any towed or removed vehicle must be stored at the site of the towing service's place of business. This site must be open during business hours, and for the purpose of redeeming vehicles, during the time that the person or firm towing that vehicle is open for towing purposes.
- The towing service must, within 30 minutes of completion of any towing or removal, notify the law enforcement agency having jurisdiction of such towing or removal, of the towed vehicle's make, model, color and license plate number, and must obtain and record the name of the person at the law enforcement agency to whom the information was reported.
- If the registered owner or legally authorized person entitled to possession of the vehicle arrives at the towing scene prior to actual removal or towing of the vehicle, the vehicle must be disconnected from the tow truck and that person must be allowed to remove the vehicle without interference, The person is required to first pay a "reasonable service fee" of not more than one-half the posted rate of the towing service, and must be given a receipt.
- The rebate of payment or payment of money or any other valuable consideration from the towing service or its owners, manager, or employees to the owners or operators of the premises from which the vehicles are towed or removed, for

the privilege of removing or towing those vehicles, is prohibited. Any person who violates this requirement is guilty of a Class A misdemeanor.

- With limited exceptions, any property owner or lessor, prior to towing or removing any vehicle from the private property without the consent of the owner or other legally authorized person in control of that vehicle, must post a notice meeting the following requirements:
 - Generally, the notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property within five feet from the public right-of-way line. If there are no curbs or access barriers, the sign must be posted not less than one sign each 100 feet of lot frontage. Alternatively, in a municipality with a population of less than 250,000, the notice for a parking lot contained within property used solely for a 2-family, 3-family, or 4-family residence may be prominently placed at the perimeter of the parking lot, in a position where the notice is visible to the occupants of the vehicles entering the lot.
 - The notice must indicate clearly, in not less than two inch high light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense.
 - The notice must also provide the name and current telephone number of the towing service towing or removing the vehicle.
 - The sign structure containing the required notices must be permanently installed with the bottom of the sign not less than four feet above ground level, and must be continuously maintained on the property for not less than 24 hours prior to the towing or removing of any vehicle.
- The posted notice requirement does not apply to property appurtenant to and obviously a part of a single family residence. Nor does it apply where notice is personally given to the owner or other legally authorized person in control of the vehicle that the area in which the vehicle is parked is reserved or otherwise unavailable to unauthorized vehicles and the vehicle is subject to being removed at the owner or operator's expense,
- Any towing service that tows or removes vehicles and proposes to require the owner, operator, or person in control of the vehicle to pay the costs of towing and storage prior to redemption of the vehicle must file and keep on record with the local law enforcement agency a complete copy of the current rates to be charged for its services. They must also post an identical rate schedule at the storage site and notice of any written contracts with property owners, lessor, or persons in control of property which authorize them to remove vehicles as

provided in this section. Rate schedules are capped, however, at rates set by the Illinois Commerce Commission.

- No person may engage in the removal of vehicles from private property in Illinois without filing a notice of intent in each community where he intends to do remove vehicles from private lands. The notice must be filed at least seven days before the person begins towing vehicles from private properties.
- Vehicles may only be removed from private property upon express written instructions of the owners or persons in charge of the private property upon which the vehicle is allegedly trespassing.
- Towing services may open a vehicle to be towed for the purpose of effectuating the tow. The towing service must exercise reasonable care in entering the vehicle and conducting the tow. The towing service is liable for any damage caused to the vehicle if reasonable care is not used when gaining entry to the vehicle.
- A vehicle towed must be released to its owners or custodian within one-half hour after requested, if requested during business hours. Any vehicle owner, custodian or agent has the right to inspect the vehicle before accepting its return. Towing services are prohibited from demanding a release or waiver of any kind which would release the towing service from liability for damages incurred during the towing and storage. A detailed, signed receipt showing the legal name of the towing service must be given to the person paying towing or storage charges at the time of payment, whether requested or not. The towing service must accept payment by any major credit card or cash.
- A person or towing service who fails to comply with these conditions and restrictions is guilty of a Class C misdemeanor and may be fined not less than \$100 nor more than \$500.

Iowa:

In Iowa, the definition of “abandoned vehicle” includes a vehicle that has been unlawfully parked on private property or has been placed on private property without the consent of the owner or person in control of the property for more than 24 hours. A police authority, upon the authority’s own initiative or upon the request of any other authority having the duties of control of highways or traffic, may take an abandoned vehicle on private property into custody. The police authority may employ its own personnel, equipment, and facilities or hire a private entity, equipment, and

facilities for the purpose of removing, preserving, storing, or disposing of abandoned vehicles. A property owner or other person in control of private property may employ a private entity who is a garagekeeper to dispose of an abandoned vehicle, and the private entity may take into custody the abandoned vehicle without a police authority's initiative. If a police authority employs a private entity to dispose of abandoned vehicles, the police authority must provide the private entity with the names and addresses of the registered owners, all lienholders of record, and any other known claimant to the vehicle or the personal property found in the vehicle.

A police authority or private entity that takes an abandoned vehicle into custody must notify, within 20 days by certified mail, the last-known registered owner of the vehicle, all lienholders of record, and any other known claimant to the vehicle or to personal property found in the vehicle. The notice must be addressed to the parties' last known addresses of record and indicate that the abandoned vehicle has been taken into custody. The notice must state the year, make, model, and vehicle identification number of the vehicle, describe any personal property found in the vehicle, set forth the location of the facility where the vehicle is being held, and inform the persons receiving the notice of their right to reclaim the vehicle and personal property within ten days after the effective date of the notice upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody and upon payment of providing this notice. The notice also must state that the failure of the owner, lienholders, or claimants to exercise their right to reclaim the vehicle or personal property within the time provided shall be deemed a waiver by the owner, lienholders, and claimants of all right, title, claim, and interest in the vehicle or personal property and that failure to reclaim the vehicle or personal property is deemed consent to the sale of the vehicle at a public auction or disposal of the vehicle to a demolisher and to disposal of the personal property by sale or destruction. Notice is deemed given when mailed.

If the abandoned vehicle was taken into custody by a private entity without a police authority's initiative, the notice shall state that the private entity may claim a garagekeeper's lien and may proceed to sell or dispose of the vehicle. If the abandoned vehicle was taken into custody by a police authority or by a private entity hired by a police authority, the notice shall state that any person claiming rightful possession of the vehicle or personal property who disputes the planned disposition of the vehicle or property by the police authority or private entity or of the assessment of fees and charges may ask for an evidentiary hearing before the police authority to contest those matters. If the persons receiving notice do not ask for a hearing or exercise their right to reclaim the vehicle or personal property within the ten-day reclaiming period, the owner, lienholders, or claimants shall no longer have any right, title, claim, or interest in or to the vehicle or the personal property. A court in any case in law or equity shall not recognize any right, title, claim, or interest of the owner, lienholders, or claimants after the expiration of the ten-day reclaiming period.

If it is impossible to determine with reasonable certainty the identity and addresses of the last registered owner and all lienholders, notice by one publication in one newspaper of general circulation in the area where the vehicle was abandoned shall be sufficient to meet all requirements of notice. The published notice may contain multiple listings of abandoned vehicles and personal property but shall be published within the same time requirements and contain the same information as prescribed for mailed notice.

If an abandoned vehicle has not been reclaimed as provided for, the police authority or private entity makes a determination as to whether the vehicle should be sold for use upon the highways. If the vehicle is to be sold for use on the highways, it must be sold at public auction. If the vehicle is not sold for use upon the highways, it is sold for junk, or demolished and sold as

scrap without public auction after the required notice period lapses. The vehicle purchaser at public auction takes title free and clear of all liens and claims of ownership, receives a sales receipt from the police authority or private entity. If the vehicle is sold for use on highways, the purchaser is entitled to register the vehicle and receive a certificate of title. If the vehicle is sold or disposed of to a demolisher for junk or scrap, the demolisher must apply to the county treasurer for a junking certificate within 30 days of purchase and must surrender the sales receipt in lieu of the certificate of title.

If the police authority did not hire a private entity, the police authority reimburses itself for the expenses of the auction from the proceeds of the sale, including the expenses related to towing, preserving, and storing that resulted from placing the abandoned vehicle in custody, expenses incurred for providing notice and publication, costs of inspection, and any other costs incurred other than bookkeeping and other administrative costs. Any remainder from the proceeds of a sale is held for the owner of the vehicle or entitled lienholder for 90 days, and is then deposited in the road use tax fund. Whenever the proceeds from a sale of the abandoned vehicles are insufficient to cover a police agency's expenses and costs, the balance is paid from the road use tax fund and become an obligation of the last vehicle owner or owners, jointly and severally.

If a private entity has been hired by a police authority, the police authority can file a claim with the State of Iowa Department of Transportation for reimbursement of towing fees which are paid from the road use tax fund. Reimbursement is limited to \$50 per vehicle for towing services, actual postage or publication costs for notice services, \$5 per day per vehicle, not to exceed 45 days, for storage services, 10% of the vehicle's sale price or \$10, whichever is less, for auction fees.

Michigan:

In Michigan, like in Iowa, the definition of “abandoned vehicle” includes a vehicle that has remained on private property without the consent of the owner. If a vehicle has remained on private property without the consent of the property owner, the owner of the private property may have the vehicle taken into custody as an abandoned vehicle by contacting a local towing agency. A local towing agency is considered a towing agency whose storage lot is located within 15 miles from the border of the local unit of government having jurisdiction over the abandoned vehicle. Before removing the vehicle from private property, the towing agency must provide reasonable notice by telephone, or otherwise, to a police agency having jurisdiction over the vehicle that the vehicle is being removed. The police agency must determine whether the vehicle has been reported stolen and must enter the vehicle into the law enforcement information network as an abandoned vehicle.

Within 24 hours after taking the abandoned vehicle into custody, the police agency must notify the secretary of state through the Michigan law enforcement information network that the vehicle has been taken into custody as abandoned. Each notification contains the following information:

- The year, make, and vehicle identification number of the vehicle if available.
- The address or approximate location from which the vehicle was taken into custody.
- The date on which the vehicle was taken into custody.
- The name and address of the police agency that had the vehicle taken into custody.
- The name and business address of the custodian of the vehicle.
- The name of the court that has jurisdiction over the case.

Within seven days after being notified, the secretary of state must do both of the following:

- Enter this information described on a website maintained by the department for public use in locating vehicles that are removed under this section as abandoned.
- Send to the owner and secured party, as shown by the records of the secretary of state, by first-class mail or personal service, notice that the vehicle is considered abandoned. The Michigan Secretary of State's form must contain the following information:
 - The year, make, and vehicle identification number of the vehicle if available.
 - The location from which the vehicle was taken into custody.
 - The date on which the vehicle was taken into custody.
 - The name of the towing agency that had the vehicle taken into custody.
 - The business address of the custodian of the vehicle.
 - The procedure to redeem the vehicle.
 - The procedure to contest the fact that the vehicle is considered abandoned or the reasonableness of the towing fees and daily storage fees.
 - A form petition that the owner may file in person or by mail with the specified court that requests a hearing on the custodian's action.
- A warning that the failure to redeem the vehicle or to request a hearing within 20 days after the date of the notice may result in the sale of the vehicle and the termination of all rights of the owner and the secured party to the vehicle or the proceeds of the sale.

If the towing fees and daily storage fees are established by contract with the local governmental unit or local law enforcement agency they may not be challenged. Otherwise, the vehicle owner may contest the fact that the vehicle is abandoned, and the reasonableness of the towing fees and/or the daily storage fees by requesting a hearing. A request for a hearing is made by filing a petition with the court specified in the notice within 20 days after the date of the notice. If the vehicle owner requests a hearing, the matter shall be resolved after a hearing. A vehicle owner who requests a hearing may obtain release of the vehicle by posting a towing and storage bond in an amount equal to \$40.00 plus the accrued towing and storage fees with the court.

Alternatively, the vehicle may deposit that amount with the court. An owner requesting a hearing but not taking possession of the vehicle must post with the court a towing and storage bond in an amount equal to \$40.00 plus the accrued towing and storage fees.

If the owner does not request a hearing, he or she may obtain the release of the vehicle by paying a fee of \$40.00 plus the accrued charges to the custodian of the vehicle. The custodian must forward \$25.00 of the fee collected to the secretary of state within 30 days after receipt in a manner prescribed by the secretary of state, who must deposit the fee into the abandoned vehicle fund. If the owner does not redeem the vehicle or request a hearing within 20 days after the date of the notice, the secured party may obtain the release of the vehicle by paying a fee of \$40.00 and the accrued towing and storage fees to the custodian of the vehicle. The custodian must forward \$25.00 of the fee collected under this subsection to the secretary of state within 30 days after receipt in a manner prescribed by the secretary of state, who deposits the fee into the abandoned vehicle fund.

Not less than 20 days after the disposition of the hearing or, if a hearing is not requested, not less than 20 days after the date of the notice, the custodian of the vehicle must offer the vehicle for sale at a public sale. If the ownership of a vehicle that is considered abandoned cannot be determined either because of the condition of the vehicle identification numbers or because a check with the records of the secretary of state does not reveal ownership, the police agency may sell the vehicle at public sale not less than 30 days after public notice of the sale has been published. The secretary of state must release a vehicle for disposition within 45 days after the vehicle is entered into the law enforcement information network as an abandoned vehicle.

Minnesota:

In Minnesota, the definition of “abandoned vehicle” includes a motor vehicle that has remained illegally on private property for a period of time without the consent of the person in control of the property; and that lacks vital component parts or is in an inoperable condition such that it has no substantial potential for further use consistent with its usual functions, unless it is kept in an enclosed garage or storage building. Further, an “unauthorized vehicle” that is not an abandoned vehicle is subject to impoundment at the following times by units of government and peace officers if has been on private property:

- Immediately, if the location is is single-family or duplex residential property.
- Immediately, if the location is private, nonresidential property that is properly posted.
- After 24 hours, if the property is private, nonresidential property, that is not posted.
- Five business days after notifying the vehicle owner by certified mail, return receipt requested, of the property owner's intention to have the vehicle removed from the property, if the property is private, nonresidential property of an operator of an establishment for the servicing, repair, or maintenance of motor vehicles.
- Immediately, if the property is any properly posted residential property.

An “unauthorized vehicle” may also be towed.

These provisions, applicable to Minnesota units of government and peace officers, do not restrict the authority of the owner of private property to authorize the towing of a motor vehicle unlawfully parked on private property. Private property owners seeking to have unauthorized vehicles removed from their property must make their own arrangements with a private towing service.

A person who tows and stores a motor vehicle at the request of a law enforcement officer has a lien on the motor vehicle for the value of the storage and towing and the right to retain possession of the motor vehicle until the lien is lawfully discharged. An impounded vehicle is eligible for disposal or sale 15 days after notice to the owner, if the vehicle is determined to be an abandoned vehicle. An unauthorized vehicle impounded by the city of Minneapolis or by the city of St. Paul is eligible for disposal or sale 15 days after notice is sent by certified mail, return receipt requested, to the registered owner, if any, of the unauthorized vehicle and to all readily identifiable lienholders of record. If, before the expiration of the 15 day period following notice of taking, the registered owner or lienholder of record delivers to the impound lot operator a written statement of intent to reclaim the vehicle, the vehicle is not eligible for disposal or sale until 45 days after the notice of taking, if the owner or lienholder has not reclaimed. If an unauthorized vehicle is impounded, other than by the city of Minneapolis or the city of St. Paul, the impounded vehicle is eligible for disposal or sale the earlier of 45 days after notice to the owner; or the date of a voluntary written title transfer by the registered owner to the impound lot operator. A voluntary written title transfer constitutes a waiver by the registered owner of any right, title, and interest in the vehicle.

For vehicles impounded by units of government and peace officers, the entity taking the vehicle into custody must give written notice of the impoundment within five days, excluding Saturdays, Sundays, and legal holidays, to the registered vehicle owner and any lienholders. The notice must:

- Set forth the date and place of the intended impoundment.
- Provide the year, make, model, and serial number of the impounded motor vehicle, if the information can be reasonably obtained, and the place where the vehicle is being held.
- Inform the owner and any lien holders of their right to reclaim the vehicle.

- State that failure of the owner or lien holders to:
 - Exercise their right to reclaim the vehicle within the time allowed and under the appropriate conditions constitutes a waiver by them of all right, title, and interest in the vehicle and consent to the transfer of title to and disposal or sale of the vehicle.
 - Exercise their right to reclaim the contents of the vehicle within the appropriate time allowed and under the appropriate conditions, constitutes a waiver by them of all right, title, and interest in the contents and consent to sell or dispose of that personal property; and
- State that a vehicle owner who provides to the impound lot operator documentation from a government or nonprofit agency or legal aid office that the owner is homeless, receives relief based on need, or is eligible for legal aid services, has the unencumbered right to retrieve any and all contents without charge.

The notice must be sent by mail to the registered owner, if any, of an impounded vehicle and to all readily identifiable lienholders of record. This information must be made available to impound lot operators for notification purposes. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice shall be published once in a newspaper of general circulation in the area where the motor vehicle was towed from or abandoned. Published notices may be grouped together for convenience and economy. If an unauthorized vehicle remains unclaimed after 30 days from the date the notice was sent, a second notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the unauthorized vehicle and to all readily identifiable lienholders of record.

The owner or any lienholder of an impounded vehicle has a right to reclaim a vehicle from the unit of government or impound lot operator taking it into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody within 15 or 45 days, after the date of the notice. Nothing impairs any lien of a garagekeeper, or the right of a lienholder to foreclose.

Summary of the Factual Data and Analytical Methodologies that the Agency Used in Support of the Proposed Rule and How Any Related Findings Support the Regulatory Approach Chosen for the Proposed Rule:

The proposed permanent rule was drafted with input from individual towing services and the Wisconsin Towing Association, governmental entities and the League of Wisconsin Municipalities, the Wisconsin Housing Alliance, the Apartment Association of South Central Wisconsin, the Tenant Resource Center, and members of the public during the public hearing and comment period for an emergency rule promulgated by the Department in 2014. That emergency rule public hearing and comment period are not considered a public hearing and comment period for this rulemaking.

The design and display of the required notice in the initial emergency rule was largely based on existing design standards for other signs, such as the requirements for handicapped parking signs set forth in Wis. Admin. Code ch. Trans 200, and standards used in other states. The guidelines for tow services to provide notice to law enforcement in the initial emergency rule were based on input from law enforcement.

The Department received substantial testimony and comments during the public hearing and comment period for the initial emergency rule. Many of these comments indicated that the fees in the schedule established in the initial emergency rule were lower than what towing services normally charged. In this permanent rulemaking, the Department proposes that towing industry ordinary or standard rates be permitted, provided they are reasonable and do not exceed maximum fee limits established in the rule. Many of the persons commenting on the initial emergency rule further indicated that the fee schedule itself did not account for complex tows involving specialized equipment and procedures. This proposed permanent rulemaking therefore includes a provision

allowing a towing service to charge for necessary and commercially reasonable towing services beyond common tow services and associated storage.

Analysis Regarding Rule’s Effect on Small Businesses:

There are many towing services throughout the state, and some likely qualify as small businesses under Wis. Stats s. 227.114. This rulemaking does not dictate standard fees that are imposed statewide. Rather, this rule requires a towing service to charge ordinary and reasonable charges for the removal and storage of a vehicle, not exceeding a limit set in this rule. Because a business’ current ordinary charges will be permitted to be charged, provided they are reasonable, subject only to the limits in this rule, the Department does not believe this rulemaking will have a significant effect upon small business towing services.

In addition, there may be some expense to small business private property owners who are required post notices in order to tow vehicles without law enforcement involvement under Wis. Stat. s. 349.13(3m). Because the posting requirements of Wis. Stat. s. 349.13(3m), as recreated by 2013 Wis. Act 76, are different than those required under Wis. Stat. s. 346.55 before passage of the act, new signs may be required containing the disclosures mandated by these two statutes. The cost of meeting these statutory requirements is placed upon any person posting private property regarding the towing of illegally parked vehicles.

This proposed rule, fiscal estimate, and other related documents may be viewed at: <https://health.wisconsin.gov/admrules/public/Home>.

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Place Where Comments Should Be Submitted and Deadline:

Comments may be submitted to the agency contact person listed above until the deadline given in the forthcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at: <http://adminrules.wisconsin.gov> after the hearing is scheduled.

TEXT OF PERMANENT RULE

SECTION 1. Ch. Trans 319 is created to read:

CHAPTER TRANS 319

PROCEDURES AND FEES FOR TOWING ILLEGALLY PARKED VEHICLES

Trans 319.01 Purpose and scope. (1) As authorized by s. 349.13 (3m) (e), Stats., the purpose of this chapter is to administratively interpret and implement s. 349.13 (3m), Stats., relating to removal of vehicles on private property that are not authorized to park in that area.

(2) This chapter applies to any person involved in the removal of vehicles parked on private property under s. 349.13 (3m), Stats.

Note: Pursuant to s. 349.13 (3m) (d) 1., Stats., only a towing service, at the request of the property owner or property owner's agent, a traffic officer, or a parking enforcer, may remove a vehicle from private property. A towing service is prohibited from removing a vehicle on private property if the vehicle has been reported as stolen to law enforcement, as specified in s. 349.13 (3m) (dr) 1., Stats.

Trans 319.02 Definitions. (1) Words and phrases defined in ss. 340.01, 349.13 (3m) (a) and 990.01, Stats., have the same meaning in this chapter unless a different definition is specifically provided. However, the definition of a word or phrase in s. 349.13 (3m) (a), Stats., shall apply when the word or phrase is defined in both ss. 349.13 (3m) (a), Stats., and 340.01 or 990.01, Stats. Additionally, the definition of a word or phrase in s. 340.01, Stats., shall apply when the word or phrase is defined in both ss. 340.01 and 990.01, Stats.

(2) In this chapter, "law enforcement agency" means a county sheriff or municipal police department.

Trans 319.03 Charges for towing and storage. (1) SCHEDULE. A towing service may charge a vehicle owner ordinary and reasonable charges related to removal and storage of the vehicle, not to exceed the following amounts:

(a) \$150 for a vehicle towed using a flatbed, hook and chain, wheel-lift, boom, or any other method.

(b) \$30 for each period of 24 consecutive hours that the vehicle is stored at an outdoor storage facility.

(c) \$50 for each period of 24 consecutive hours that the vehicle is stored at an indoor storage facility.

(d) \$150 for any other necessary and commercially reasonable charges or expenses incurred by the towing service, relating to the removal or storage, or both, of the vehicle.

Note: Pursuant to s. 349.13 (3m) (dr) 2., Stats., a towing service is prohibited from collecting any charges for the removal or storage of an illegally parked vehicle towed under s. 349.13 (3m), Stats., if the towing service has not complied with the requirement under s. 349.13 (3m) (d) 2., Stats, to notify law enforcement prior to removing the vehicle.

(2) DETERMINATION OF BEGINNING OF STORAGE PERIOD. With respect to determining the length of time for a storage period under sub. (1) (b) or (c), the date and time that the towing service provides the notice required under s. Trans 319.05 (3) shall be considered the beginning of the storage period.

(3) MUNICIPAL SERVICE FEE. Pursuant to s. 349.13 (3m) (dm), Stats., a towing service shall charge the vehicle owner a service fee not exceeding \$35, if collection of the fee has been requested by the municipality in which the removed vehicle was illegally parked. The fee specified under this subsection is in addition to any charges imposed under sub. (1).

Note: Pursuant to s. Trans 319.02 (1), the word “municipality” used in sub. (3) has the same meaning given in s. 340.01 (36m), Stats., which defines a municipality as a city, village or town.

Trans 319.04 Properly posted notice requirements. (1) DEFINITION. In this section, “sign” means a sign erected on private property to give notice to persons parking vehicles for the purpose of providing notice under s. 349.13 (3m), Stats.

(2) PROPER POSTING. An area that is private property shall be considered properly posted for purposes of s. 349.13 (3m), Stats., if any sign exists on the property in the area required under sub. (4), that provides clearly visible notice in the format required under sub. (3) of all of the following:

(a) That the area is private property.

(b) That vehicles that are not authorized to park in that area may be removed.

(3) SIGN DESCRIPTION.

(a) The sign shall be conspicuously colored and legibly marked.

(b) The sign shall contain contrasting letters not less than 2 inches in height indicating that parking of unauthorized vehicles is prohibited and that unauthorized vehicles may be removed. The lettering size requirement of this paragraph applies only to signs erected after the effective date of this rule [Revisor insert date].

(4) SIGN PLACEMENT. A parking area shall be considered properly posted for purposes of s. 349.13 (3m), Stats., if signs are placed in a manner specified in par. (a) or (b), or both.

(a) A sign shall be erected at each vehicular entrance to the parking area or property. Under this paragraph, each erected sign shall be visible from the entrance and be conspicuous to operators of vehicles driving through that entrance.

(b) A sign shall be erected on an adequate support, and shall be visible and conspicuous to persons at the location of the parked vehicle. The vertical distance from the parking area surface, or top of curb if any, to the bottom of a sign shall be not less than 4 feet. The requirements of this paragraph apply only to signs erected after the effective date of this rule [Revisor insert date].

(5) ADDITIONAL SIGNS AND NOTICES. Nothing in this section shall be construed to prohibit the erection of signs or notices in addition to those required by sub. (4), which provide

notice that an area is private property, vehicles that are not authorized to park in that area may be removed, or for whom parking is permitted, limited, restricted or prohibited. Any signs in addition to those required by sub. (4) shall not be subject to the requirements of subs. (3) to (4).

Trans 319.05 Towing service notification requirements. (1) LAW ENFORCEMENT AGENCIES. 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), Stats., each law enforcement agency shall establish and designate one or more of the following methods of delivery:

(a) By telephone, including voice mail, answering machine or answering service for recording messages received pursuant to sub. (3).

(b) By electronic transmission to an electronic mail address designated for receiving notice from towing services.

(c) By any other electronic means, including computerized or web-based systems capable of receiving and storing information from towing services related to the removal of vehicles parked on private property.

(2) COMMUNICATION OF IMPENDING TOW TO LAW ENFORCEMENT AGENCY.

(a) Prior to removing a vehicle from private property pursuant to s. 349.13 (3m), Stats., a towing service shall provide notice of the impending tow to the appropriate law enforcement agency as provided in par. (b) or (c).

(b) If the vehicle is located within the boundaries of a city, village or town, the notice given by a towing service shall be provided to the police department for that municipality in the manner designated by that police department. If the municipal police department for the area where the vehicle will be removed fails to designate a method of delivery for notices provided under sub.

(1), the notice may be delivered to a non-emergency telephone number with recording capabilities for that police department.

(c) If the city, village or town, in which the vehicle to be removed is located, has no police department, the notice given by a towing service shall be provided to the county sheriff for the area where the vehicle will be removed using the delivery method designated by the sheriff under sub. (1). If the sheriff fails to designate a method of delivery for notices provided under sub. (1), the notice may be delivered to a non-emergency telephone number with recording capabilities for that sheriff's department.

(3) NOTICE. A towing service that gives notice pursuant to sub. (2), shall provide the following information to the law enforcement agency that is responsible for receiving the information under sub. (2):

(a) The name and telephone number of the towing service.

(b) The make and model of the vehicle being removed.

(c) The license plate number of the vehicle being removed, unless license plates are not attached to the vehicle.

(d) The vehicle's vehicle identification number, unless the vehicle identification number is not visible through the vehicle windshield adjacent to the left windshield pillar.

Note: 49 CFR s. 565.13, requires that vehicle identification numbers (VINs) be affixed to passenger cars, multi-purpose passenger vehicles, low-speed vehicles and trucks of 4,536 Kg or less (10,000 lbs.) adjacent to the left windshield pillar. The vehicle manufacturer is required to make the VIN visible; however, it may be obstructed by materials within the vehicle.

(e) The location from which the vehicle will be removed.

(f) The address of the location to which the vehicle will be removed and, if that location is not operated by the towing service removing the vehicle, the name of the operator at the location.

(g) A phone number of the location identified in par. (f).

(4) **LAW ENFORCEMENT RECORDS.** Each law enforcement agency receiving notice under this section shall maintain a record of the information received under sub. (3) and a record of the date and time that the notice was given. The records shall be maintained for at least 60 days after the date of notice was given. The law enforcement agency shall identify the towing service and the date and time it received the towing notice to a records requester upon request.

SECTION 2. INITIAL APPLICABILITY. This rule first applies to vehicles that are parked on private property without authorization on the effective date of this rule.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on the first day of the third month following publication in the Wisconsin Administrative Register in accordance with s. 227.22 (2) (e), Stats.

(END OF RULE TEXT)

Signed this _____ day of May, 2015.

MARK GOTTLIEB, P.E.
Secretary
State of Wisconsin Department of Transportation