

# **WISCONSIN LEGISLATIVE COUNCIL STAFF**

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 95-064**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### **1. Statutory Authority**

SECTIONS 1 and 5 in the rule state that words and phrases defined in s. 340.01, Stats., and 49 C.F.R. s. 390.5 are used in the same sense in ch. Trans 327 except, in addition to the exception in SECTION 3, “(w)hen a different definition is specifically provided in this chapter.” This implies that the department can create definitions that are in full or in part different than those required under the applicable state statute [s. 340.01, Stats.] or the applicable federal regulation [49 C.F.R. Part 390.5]. The department does not have the authority to create definitions at odds with state statute (or, in certain cases,--areas preempted by federal law--federal regulations). One possible way to restructure the rule is the following:

- (1) Words and phrases defined in s. 340.01, Stats., and 49 CFR Part 390.5 have the same meaning in this chapter, except the definition of a word or phrase in s. 340.01, Stats., shall apply when the word or phrase is defined in both s. 340.01, Stats., and 49 CFR Part 390.5.
- (2) In this chapter:

After that (intro.), the definitions should be shown as set forth in the rule (i.e., SECTIONS 2, 4 and 6 to 11 would remain the same). Also, should current s. Trans 327.01 (4) be placed in proposed sub. (2)?

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

a. In s. Trans 327.01 (2) (a), the last clause (i.e., “which must be maintained...”) is substantive and therefore should not be included in a definition. [See s. 1.01 (7) (b), Manual.]

b. In s. Trans 327.01 (2) (d) (intro.), first sentence, “~~all the~~ that time period” should replace “all the time.”

c. In SECTIONS 8 and 11, in the text, a period should be inserted after the numbers of the subdivision [e.g., after the “3” in “Trans 327.01 (2) (d) 3”].

d. Section Trans 327.05 (3) (c) and (d) should be created in a separate SECTION of the rule. [See s. 1.06 (1), Manual.] This comment applies also to s. Trans 327.09 (5) (a) to (d).

e. In s. Trans 327.05 (4), “driver’s” should be inserted before “traveling time” and “his or her” should be inserted before “destination.”

f. In s. Trans 327.09 (2) (a), “except to vehicles” should be “except that this provision does not apply to vehicles.”

g. In the treatment clause to SECTION 21, “(intro.)” should be inserted after “(5).” In the text, the stricken material should precede the adjacent underscored material.

h. In s. Trans 327.09 (6), the comma after “safety” in the second sentence should be deleted and the comma after “year” in the third sentence should be deleted.

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

Section Trans 327.09 (6) should state who will declare the “declared emergency.”