

**1210 RIGHT OF WAY: ON APPROACH OF EMERGENCY VEHICLE**

The Wisconsin statutes define "right of way" as the privilege of the immediate use of the roadway and, further provide, that upon the approach of any authorized emergency vehicle giving audible signal by siren, the driver of a vehicle shall yield the right of way and shall immediately drive the vehicle to a position as near as possible and parallel to the right curb or to the right-hand edge of the shoulder of the roadway, clear of any intersection and, unless otherwise directed by a traffic officer, shall stop and remain standing in such position until the authorized emergency vehicle has passed.

[The (type of vehicle) was an emergency vehicle, as defined in the statutes.]

[Note: In the alternative, the language of Wis. Stat. § 340.01(3)(a), (b), (c), (d), (e), (f), or (g) may appropriately be used in defining "emergency vehicle."]

"Audible" means capable of being heard.

"Roadway" means that portion of a highway between the regularly established curb lines or that portion which is improved, designed or ordinarily used for vehicular travel.

If you find that the emergency automobile of (name) was approaching, giving audible signal by siren, then it became the duty of (name) to yield the right of way.

**COMMENT**

The instruction and comment were originally published in their present form in 1960. The instruction was revised in 2008. An editorial correction was made in 1996.

The first paragraph refers to Wis. Stat. §§ 340.01(51) and 346.19(1).

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If "operator" is more appropriate to the evidence, then substitute "operator" for "driver."

The definition of "audible" is its common meaning. "Roadway" is defined in Wis. Stat. § 340.01(54).

As to "audible signal," see Frankland v. Peterson, 268 Wis. 394, 397, 67 N.W.2d 865, 866 (1955); Swinkles v. Wisconsin Michigan Power Co., 221 Wis. 280, 287-88, 267 N.W. 1, 4-5 (1936).

If the fact of hearing the signal is in issue, and the evidence warrants, it may be desirable to expand the definition of "audible" to cover a siren in good operating condition, and a reasonably attentive vehicle operator or pedestrian. The operator giving the signal need not show that the signal was actually heard by the operator. Werner Trans. Co. v. Zimmerman, 201 F.2d 687, 691 (1953). Testimony that the signal was not heard may be negative testimony and may require an instruction on the value of such testimony. Anderson v. Stricker, 266 Wis. 1, 5-6, 62 N.W.2d 396, 398 (1953); Hunter v. Sirianni Candy Co., 233 Wis. 130, 132-33, 288 N.W. 766, 769 (1939); Zenner v. Chicago, St. P., M. & O. Ry., 219 Wis. 124, 126-27, 262 N.W.2d 581, 582-83 (1935). See Wis JI-Civil 315, Negative Testimony.

This instruction is based on the assumption that there is no issue on the emergency nature of the vehicle involved. If this issue develops, it may require a separate preliminary question with an instruction defining emergency vehicles.