

Report From Agency

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

CR 08-080

The Wisconsin Department of Transportation proposes an order to create ch. TRANS 145, relating to neighborhood electric vehicles.

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the chief clerks of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:

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PART 1
Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 349.26, 341.04(1), 341.297(1), Stats.

Statutory authority: ss. 84.01(2), 227.10(1), 227.11(2)(a), 342.255(3), 349.26, 340.01(36r), 341.04(1) and 341.297(1), Stats.

Explanation of agency authority: Current law prohibits the operation of any motor vehicle on any public road unless the motor vehicle is registered, or for which registration application is made. The Department of Transportation is required to issue biennial registration for a neighborhood electric vehicle for which it receives a proper application. Municipalities may authorize the operation of neighborhood electric vehicles on public roads under its jurisdiction having a speed limit of 35 miles per hour or slower. Current law contains no specific prohibition against the driver of a neighborhood electric vehicle operating on any public road not approved by the municipality for such operation. The Department concludes that the registration of a neighborhood electric vehicle is effective only on public roads authorized by municipalities for such travel, and that traveling on any other public road is done without valid registration.

Related statute or rule: ss. 340.01(36r), 341.04(1), 341.297(1) and 349.26, Stats.

Plain language analysis: Section 349.26, Stats., allows a city, town or village by ordinance to authorize operation of Neighborhood Electric Vehicles (NEVs) on its roadways that have speed limits of 35 mph or less. The law specifies that the ordinance may apply to State Trunk Highways (STH) in only two circumstances: (1) crossing an STH at a location approved by DOT; or (2) traveling longitudinally upon a connecting highway segment approved by DOT.

While s. 349.26, Stats., implies that NEVs cannot operate on local roads not specified in the ordinance or at any unapproved location on STHs, statutes do not specifically prohibit NEV operation on those roads. Sections 341.25(1)(b) and 341.297, Stats., establish NEV registration under Chapter 341, Stats. Because NEVs bear DMV-issued registration plates, NEVs traveling on unapproved roads may appear to violate no laws, despite s. 349.26 restriction on approved roads for NEV operation. This proposed rule clarifies that NEV registration is valid only on approved roads under s. 349.26, Stats.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Federal motor vehicle safety standards, promulgated by the National Highway Traffic Safety Administration, define an NEV as a lightweight, four-wheeled motor vehicle incapable of exceeding a top speed of 25 miles per hour. The federal regulations do not address registration and operation of NEVs, leaving that to states to determine.

Comparison with Rules in the Following States:

Michigan: An NEV (low speed vehicle) may not be operated on any street with a posted speed limit greater than 35 mph. A low speed vehicle may cross a street with a posted speed limit greater than 35 mph. Low speed vehicles are required to be registered by the state.

Minnesota: An NEV may not be operated on a street with a posted speed limit greater than 35 mph. An NEV may cross a street with a posted speed limit greater than 35 mph. NEVs are required to be registered by state.

Illinois: An NEV may not be operated on a street with a posted speed limit greater than 35 mph. An NEV may cross a street with a posted speed limit greater than 35 mph, only at an intersection. NEVs are required to be registered by state.

Iowa: An NEV (low-speed vehicle) may not be operated on a street with a posted speed limit greater than 35 mph. A low-speed vehicle may cross a street with a posted speed limit greater than 35 mph. Low-speed vehicles are required to be registered by state.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: This proposed rule clarifies that NEVs, while registered under ch. 341, Stats., are authorized to operate only on roadways authorized under local ordinance, under s. 349.26, Stats. The Department uses only this statutory intent in determining this proposed rule.

Analysis and supporting documentation used to determine effect on small businesses: This rule clarifies that NEV operation is only allowed on roadways designated by local authorities under s. 349.26, Stats. Any NEV owner, including any small business, is subject to the same operation limitations.

Effect on small business: This proposed rule will have no effect on small business other than limitation on NEV operation to which all NEV owners are subject. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands.

Anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Agency contact person and copies of proposed rule: Copies of the proposed rule may be obtained, without cost, by writing to Carson P. Frazier, Department of Transportation, Division of Motor Vehicles, Room 255, P. O. Box 7911, Madison, WI

53707-7911. You may also contact Ms. Frazier regarding the proposed rule by phone at (608) 266-7857 or via e-mail: carson.frazier@dot.state.wi.us.

PART 2
TEXT OF PROPOSED RULE

SECTION 1. Chapter Trans 145 is created to read:

CHAPTER TRANS 145
NEIGHBORHOOD ELECTRIC VEHICLE

Trans 145.01 Purpose. The purpose of this chapter is to state that registration of neighborhood electric vehicles under s. 341.25(1)(b), Stats., is valid only on roadways designated under s. 349.26, Stats.

Trans 145.02 Roadway designation. Section 349.26, Stats., authorizes the governing body of any city, town or village to enact an ordinance allowing the use of a neighborhood electric vehicle on a roadway that has a speed limit of 35 miles per hour or less and over which the city, town or village has jurisdiction.

Trans 145.03 Registration. Sections 341.25(1)(b) and 341.297(1), Stats., authorize biennial registration of a neighborhood electric vehicle with the department.

Trans 145.04 Registration limited. Registration of a neighborhood electric vehicle is valid only on roadways designated in an ordinance adopted under s. 349.26, Stats. Operation of a neighborhood electric vehicle on any highway not designated in an ordinance adopted under s. 349.26, Stats., is unregistered operation subject to penalties provided in s. 341.04, Stats.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this ____ day of
December, 2008.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

PART 4
CR 08-080

ANALYSIS OF FINAL DRAFT OF TRANS 145

(a) **Basis and Purpose of Rule.** Section 349.26, Stats., allows a city, town or village by ordinance to authorize operation of Neighborhood Electric Vehicles (NEVs) on its roadways that have speed limits of 35 mph or less. The law specifies that the ordinance may apply to State Trunk Highways (STH) in only two circumstances: (1) crossing an STH at a location approved by DOT; or (2) traveling longitudinally upon a connecting highway segment approved by DOT.

While s. 349.26, Stats., implies that NEVs cannot operate on local roads not specified in the ordinance or at any unapproved location on STHs, statutes do not specifically prohibit NEV operation on those roads. Sections 341.25(1)(b) and 341.297, Stats., establish NEV registration under Chapter 341, Stats. Because NEVs bear DMV-issued registration plates, NEVs traveling on unapproved roads may appear to violate no laws, despite s. 349.26 restriction on approved roads for NEV operation. This proposed rule clarifies that NEV registration is valid only on approved roads under s. 349.26, Stats.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on October 15, 2008. As a result of testimony at the hearing, a word change was made in s. Trans 145.04 when it was pointed out that the word “operation” should be substituted for “registration” in the second sentence. See par. (d) below. No other modifications were made a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following persons appeared/registered at the hearing:

Tim Thompson, Green Autos, Janesville, WI – spoke in favor of the rule and provided written testimony.

Paul Brickson, Cambridge, WI – spoke in favor of the rule.

Ed Blume, Madison Peak Oil Group, Madison, WI – spoke for information on the rule and provided written testimony.

William Martin, Martin’s Garage, Union Grove, WI – spoke for information on the rule.

Steven Sobiek, Economic Development/Energy Sustainability Director, Columbus, WI – spoke for information on the rule.

Bob Mair, Major Accounts Manager/Fleet Manager, MEE Material Handling/Columbia Par Car, Sheboygan, WI – spoke for information on the rule.

Jay Goldbeck, Columbia Par Car representative, Stoughton, WI – spoke for information.

Mike Zweep, Partner, Ozee Cars, LLC, Columbia Par Car, Stoughton, WI – spoke for information on the rule.

Earl Huebner, Columbia Par Car Corp. representative, Reedsburg, WI – spoke for information.

Representative Sheryl Albers, 50th Assembly District, Reedsburg, WI – spoke in favor and for information on the rule.

(d) **Summary of Public Comments and Agency Response to those Comments:** Listed below are the public comments received at the hearing and the Department's responses. No written comments were received.

Tim Thompson questioned the apparently inconsistent use of "roadway" and "highway" in the rule. The terms are used correctly in the rule and will not be changed. The statutes authorize ordinances for the use of NEVs on a "roadway," which is defined as the paved travel portion of a highway. Local ordinances cannot approve the use of NEVs off of the paved travel portion of a highway. The term "roadway" is consistent with the statutes. The term "highway" includes the full width of the right-of-way, including the "roadway" and any unpaved shoulder. Use of the term "highway" in proposed s. Trans 145.04 is intended to apply to this broader area, to clarify that travel on the unpaved portion of the highway is not permitted.

Tim Thompson questioned the use of the term "Registration" in the last sentence of proposed s. Trans 145.04. The Department agrees that this appears to be a typographical error. The correct word should be "Operation." The Department made this change to the rule.

Paul Brickson supported Neighborhood Electric Vehicles in general, rather than any rule provision, and their propensity to reduce speeds of all traffic within the areas that they would be operating within, which could increase safety of all vehicle operators and pedestrians.

Ed Blume described the peak and trend of oil production and consumption, arguing for increased use of not only NEVs but also all electric cars. He recommended that the Department review all its statutes and rules to anticipate increased popularity, and encouragement, of electric cars.

Steven Sobiek described the City of Columbus' twin objectives of "green sustainability" as well as economic development. He suggested that any NEV statutes allow cities flexibility in how they allow NEV operation, including on state trunk highways, so that cities could establish "NEV corridors" maximizing NEV (green) operation among businesses and jobs (economic development).

Bob Mair sought clarification of NEV operation on state trunk highways, and crossing state trunk highways.

Jay Goldbeck was interested in changes to allow more state trunk highway operation, concluding that his interest would be addressed in statutory changes.

Mike Zweep sought clarification on operation on and crossing state trunk highways, which is a statutory change.

Earl Huebner requested that the Department suggest to communities that they give NEV operators a map of NEV routes and place a sticker on NEV windshield, as has one community in Western Wisconsin. This is not an appropriate role for the Department, and general discussion suggested this might be appropriate role for the local governments' associations to disseminate such best practices ideas.

Representative Sheryl Albers stated that the rule should not be delayed, and that if statutory changes are needed they could be made even if the rule advances.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate:** No changes were made.

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained no recommendations.

(g) **Final Regulatory Flexibility Analysis.** This proposed rule will have no effect on small business other than limitation on NEV operation to which all NEV owners are subject.