

## Report From Agency

### REPORT TO LEGISLATURE

NR 45 and 65, Wis. Adm. Code

Board Order No. CF-19-17  
Clearinghouse Rule No. CR 19-107

#### Basis and Purpose of the Proposed Rule

The Wisconsin Department of Natural Resources (DNR) proposes an order to amend NR 45.05 (3) (h), relating to property management regulations; and to repeal and recreate NR 45.03 (16), 45.05 (5), and 65, and to create NR 65, relating to the off-highway motorcycle program.

Chapter NR 65, Wis. Adm. Code, establishes standards for the implementation of an off-highway motorcycle (OHM) program, including safety, enforcement and trail grant programs. This rule defines OHM terms not included in s. 23.335 (1), Stats., creates a purpose section, clarifies registration and trail pass procedures, and contains other administrative procedures needed for implementation.

#### Summary of Public Comments

Seventy-seven total comments were received about the proposed rule. Fifteen commenters spoke at the public hearing, sixty-one comments were received via email, and one letter was received via U.S. Postal Service. Many of the comments were substantially similar in wording and content. The comments can be categorized as follows:

1. General support of the rule (no changes proposed): one comment received
2. Suggested alternative language regarding termination of a grant in s. NR 65.12 (5): one comment received
3. Opposed to the OHM icon: one comment received
4. Against requiring a helmet: 16 comments received
5. Against requiring a helmet and opposed to the OHM icon: 58 comments received

#### Modifications Made

DNR responses to comments requesting changes are as follows (numbers correspond to numbered comments in section above):

2. The language suggested by the commenter was reviewed by the DNR and felt to be a reasonable change to the draft language. Commenter's suggested language was incorporated in total.
3. and 5. The OHM icon was included as an example of an OHM icon and is deleted from the final proposed rule.
4. and 5. Based on many of the comments, there may be a lack of awareness of the existing Administrative Code provision (s. NR 45.05 (5), Wis. Adm. Code) requiring helmet use for OHM operation on all department lands. The proposed language limited the requirement for helmet use to trails on department lands. Several comments stated that helmet usage on department lands was preempted by s. 23.335 (8), Wis. Stats.

Rather than granting the right to operate without a helmet, the DNR considers that s. 23.335 (8), Wis. Stats., requires helmet usage with certain exceptions. Thus, it was the position of the DNR that the authority existed for the helmet requirement on DNR lands to remain in place. As such, a roll back of the existing helmet requirement to only apply to trails on DNR lands was proposed. However, due to the ambiguity of the intent of s. 23.335 (8), Wis. Stats., regarding helmet usage, the DNR has now removed all ch. NR 45 provisions in the proposed rule regarding helmet use.

#### Appearances at the Public Hearing

The following people appeared in person at the 08-18-2019 public hearing.

- Duane Baer, Wisconsin Dual Sport Riders
- Carissa Conine
- David Charlebois, ABATE of Wisconsin
- Charles Ingold
- Craig Johnson
- Jack McGinnis
- Nathan Meyers
- Paul Meyers
- Matthew Moury, Wisconsin Off-Highway Motorcycle Association
- Bryan Much, Wisconsin Off-Highway Motorcycle Association
- Scott Muellner, ABATE of Wisconsin
- John Reblin, ABATE of Wisconsin
- Steve Ripplinger
- Tom Timken Jr., Landover Dualsporters Club, Conover, Administrator
- Mitch Winder

All comments at the public hearing concerned the OHM icon and helmet use. All comments were addressed with changes to the proposed rules.

#### Changes to Rule Analysis and Fiscal Estimate

No changes were made to the rule analysis and fiscal estimate.

#### Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on August 27, 2019, regarding statutory authority; form, style and placement in administrative code; adequacy of references to related statute, rules and forms; and clarity, grammar, punctuation and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for the recommendation in section 2., letter j, concerning the delayed effective date for the nonresident trail pass:

“In s. NR 65.03 (1) (d), the department should direct the Legislative Reference Bureau to insert the appropriate effective date instead of writing “until April 1 following the effective date of this rule”. Also, with respect to this provision, does the department intend for the exemption to be as short as one day or as long as 11 months, depending on the actual effective date of the rule?”

The department kept the April 1 effective date in the proposed rule, as the license year begins April 1. The delayed effective date of April 1 following the enactment of the rule is designed to ensure users receive a full year of use for their trail pass fee. Until the April 1 effective date, nonresidents can purchase Wisconsin registration.

### Final Regulatory Flexibility Analysis

Off-highway motorcycle grants may be used for construction, development, and maintenance of specific trails and facilities. Those trails draw riders and their disposable income. Small businesses located in the area of OHM trails benefit when trail users make purchases for items such as: fuel and other items at convenience stores; retail items; accommodations or lodging; sales of replacement vehicle parts; repair or maintenance of OHMs; rider clothing, protective gear, and accessories; and food and drink at restaurants and other establishments.

While this program was not designed to improve small businesses, it will have a positive impact on small businesses located near OHM trails and routes and on small businesses providing goods and services to OHM riders.

### Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.