The statement of scope for this rule, SS 066-18, was approved by the Governor on May 18, 2018, published in Register No.749B on May 29, 2018, and approved by the Natural Resources Board on December 10, 2019. This rule was approved by the Governor on March 19, 2020.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING, REPEALING AND RECREATING AND CREATING RULES

The Wisconsin Department of Natural Resources 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.

CF-19-17

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Sections 23.335 (1) (zdm), 23.335 (2) (b) 3. and 5., 23.335 (6) (b), 23.335 (6) (e) 3., 23.335 (7) (c), 23.335 (8) (c), 23.335 (9) (a) 10., 23.335 (12) (L) 1., 23.335 (14), 23.335 (19) (e), 23.335 (17) (b) 1. and (c), 227.11, 27.01 (2) (j), 23.335 (19) (a), Stats.

2. Statutory Authority: Sections 23.335 (1) (zdm), 23.335 (2) (b) 5., 23.335 (6) (b), 23.335 (6) (e) 3., 23.335 (7) (c), 23.335 (9) (a) 10., 23.335 (12) (L) 1, 23.335 (14), 23.335 (19) (e), 23.335 (17) (c), 227.11, 27.01 (2) (j), 23.335 (19) (a), 23.09 (26), 227.11, Stats.

3. Explanation of Agency Authority: Sections 23.335 (2) (b) 5., 23.335 (6) (b), 23.335 (6) (e) 3., 23.335 (7) (c), 23.335 (9) (a) 10., 23.335 (12) (L) 1., 23.335 (14), 23.335 (19) (a), 23.335 (19) (e), 23.335 (17) (c), 27.01 (2) (j), and 227.11, Stats., all provide explicit rule writing authority for the implementation of the off-highway motorcycle program. Sections 27.01 (2) (j) and 227.11, Stats., provide additional authority to implement the program.

4. Related Statutes or Rules: Section 23.33, Stats., and ch. NR 64, Wis. Adm. Code, relating to all-terrain vehicles (ATVs).

5. Plain Language Analysis: 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.

Section-by-section details of this rule order are outlined below:

SECTION 1. Amends the definition of OHM in the department's property management regulations, ch. NR 45, Wis. Adm. Code, to make it consistent with s. 23.335 (1) (q), Stats.

SECTION 2. Establishes standards and procedures for designating OHM routes and trails on department lands.

SECTION 3. Creates a purpose and applicability section.

SECTIONS 4 and 4m. Creates a definition section to define terms used in the rule and a separate section to define three terms used only in s. 23.335, Stats.

SECTION 5. Expands the statutory list of OHMs that are exempt from registration.

SECTION 6. Supplements the rules of operation found in s. 23.335 (10), Stats.

SECTION 7. Adopts a measurement scale for noise violations.

SECTION 8. Creates minimum standards for instruction to be given to first time operators of a rented or leased OHM.

SECTION 9. Creates a program of public education that would inform the public of the prohibitions and penalties for intoxicated operation, provide for the development of signs explaining the intoxicated operation law and develop and issue an educational pamphlet on the intoxicated operation law.

SECTION 10. Creates an instructional fee for the safety certification program and the portion of the fee that may be retained by the instructor.

SECTION 11. Creates uniform signs and standards for routes and trails.

SECTION 12. Creates a system to allocate the appropriations under s. 20.370 (1) (jb), Stats., between the safety grant of s. 23.335 (15), Stats., and the enforcement activity and project funding of s. 23.335 (20), Stats.

SECTION 13. Creates a priority system for evaluating grant applications.

SECTION 14. Creates accountability requirements for grantees.

SECTION 15. Provides that the department may fund up to 100% of total costs for grant eligible OHM projects.

SECTION 16. Describes the application process.

SECTION 17. Establishes eligible costs.

SECTION 18. Requires public access to funded projects.

SECTION 19. Describes the ranking and grant award process.

SECTION 20. Allows a grant award while permits are being processed.

SECTION 21. Establishes the timing of grant payments.

SECTION 22. Authorizes grant conditions.

SECTION 23. Requires grantee reporting.

SECTION 24. Determines eligible projects for land acquisition.

SECTION 25. Establishes grant conditions for land acquisition.

SECTION 26. Creates appraisal requirements for land acquisition.

SECTION 27. Creates grant award conditions for land acquisition.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: The federal government has one program that is similar to the Wisconsin OHM grant program: the Recreational Trails Program (RTP), 23 U.S.C. s. 26. This federal program provides grant funds for the acquisition, development, and rehabilitation of trails and structures (such as bridges and culverts) and maintenance of motorized, non-motorized, and mixed-use trails. The department has received RTP funds since the program's creation in 1991 and often matches RTP grant funds from the motorized subprogram to Wisconsin motorized grant awards. The department has not yet determined how it will use RTP funds with the OHM grant program. In the RTP, maintenance and rehabilitation activities are the two highest priority categories for grant funding; these priorities are shared by the proposed Wisconsin OHM grant program.

7. Comparison with Similar Rules in Adjacent States: Illinois, Iowa, Michigan, and Minnesota all have trail grant programs for motorized users. Highlights of each are as follows:

Illinois: There is an off-highway vehicle fund which is available for the creation of trails for ATVs, UTVs or OHMs. There are no stated priorities. OHM parks are open to all users.

Iowa: There is an off-highway vehicle fund which is available for the creation of trails for ATVs, UTVs or OHMs. There are no stated priorities. OHM parks are open to all users.

Michigan: There is one grant program for all off-road recreational vehicles. The top priority is for existing facilities on a per mile basis. Special maintenance projects and restoration of damage caused by off-road vehicles, lease payments and new facilities are also eligible. Grant funding is available for up to 100% of the cost. Publicly funded trails are open to all types of off-road vehicles including OHMs. State forest roads are open to off-road vehicle use unless closed; approximately 89% are open.

Minnesota: There is one grant program for all off-road recreational vehicles. First priority is maintenance of existing trails; second priority is improvements or enhancements of existing trails or added mileage or trail connections to existing systems; and third priority is new trails, parking lots and other support facilities. There is a 35% local match requirement for acquisition and development and a 10% local match requirement for maintenance. Helmets are required for those under 18 on public lands and frozen waters.

8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen: The grant programs from other states were examined along with the department's existing ATV grant program. The department did not conduct any further analysis since the rule is primarily intended to implement a grant program rather than to regulate small businesses.

9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: As the rule does not regulate small businesses in any way, the department expects that this rule will have no negative fiscal effect on small business.

Positive Economic Impact of the OHM Grant Program in Wisconsin

Due to the recent origin of the OHM program, the department does not have a great deal of information on the potential impacts of the OHM grant program. During the registration year ending on March 31, 2019, there were approximately 4,000 OHMs registered in Wisconsin. Income produced from registration varies year to year due to the two-year registration cycle. Thus far, the program has produced approximately $36,000 in FY 2017, $60,000 in FY 2018, and $41,500 in FY 2019. However, no grants have been given as of April 2019. The results of the proposed grant program are difficult to predict. However, the Wisconsin Statewide Outdoor Recreation Plan (SCORP) use survey from June 2017 showed that 7% of Wisconsin residents participated in riding motorcycles on trails and routes at least once per year. The testimony of the Wisconsin Off-Highway Motorcycle Association at the legislative hearing in support of 2015 Wis. Act 170, which created s. 23.335, Wis. Stats., cited a Colorado study, "Economic Contribution of Off-highway Vehicle Recreation in Colorado," which indicates that average state resident household day trip expenditures for off-highway vehicle (OHV) users were about $111 and overnight trip expenditures about $315.

A March 2004 executive summary of the report, "Economic & Demographic Profile of Wisconsin's ATV Users," by the Wisconsin Department of Tourism in conjunction with the Wisconsin ATV Association (WATVA) and the University of Wisconsin – Madison Extension Department of Urban & Regional Planning, showed $295.3 million was spent by ATV trail users during the period of June through October 2003. The report showed that 86% of ATV trail users were from Wisconsin. The total annual spending in Wisconsin by out-of-state ATV users was $34.7 million. While dated, these numbers still show that motorized off-highway recreation has a significant economic impact in Wisconsin.

10. Effect on Small Business (initial regulatory flexibility analysis): Off-highway motorcycle grants assist with the cost of 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 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; food and drink at restaurants and other establishments.

11. Agency Contact Person:

Department of Natural Resources
Attn: Brigit Brown, Bureau of Recreation Management – PR/6
101 S. Webster Street
Madison, WI 53707
E-mail: Brigit.Brown@wisconsin.gov
Phone: (608) 266-2183

12. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, or email to:
Department of Natural Resources
Attn: Brigit Brown, Bureau of Recreation Management – PR/6
101 S. Webster Street
Madison, WI 53707
E-mail: Brigit.Brown@wisconsin.gov
Phone: (608) 266-2183

Written comments may also be submitted here: DNRAdminRulesComments@Wisconsin.gov

Hearing date is September 18, 2019, and the deadline for submitting written comments is September 30, 2019.

SECTION 1. NR 45.03 (16) is repealed and recreated to read:

NR 45.03 (16) "Off-highway motorcycle" has the meaning given in s. 23.335 (1) (q), Stats.

SECTION 2. NR 45.05 (3) (h) is amended to read:

NR 45.05 (3) (h) All-terrain and off-highway motorcycle routes. In accordance with ss. 23.33 (4) (b) and 23.335 (19) (a), Stats., the department may establish all-terrain vehicle routes and off-highway motorcycle routes on department lands over highways as defined in s. 340.01 (22), Stats., owned by the department or under the management, supervision, and control of the department, but not including designated trails, that are:

1. Specified as an allowed use in a department master plan under ch. NR 44.

2. Signed in accordance with ss. NR 64.12 and 65.09.

SECTION 3. NR 65.01 is repealed and recreated to read:

NR 65.01 Purpose. This chapter establishes standards for the implementation of the off-highway motorcycle program under s. 23.335, Stats.

SECTION 4. NR 65.02 is repealed and recreated to read:

NR 65.02 Definitions. In this chapter:

(1) "Acquisition costs" means the fair market value of the interest in land and reasonable costs related to the purchase of the property, but limited to the costs of appraisals, legal fees associated with closing up to a maximum of $1,000, land surveys, title and gap insurance costs, title company closing costs, recording fees, historical and cultural assessments required by the department, the cost of environmental inspections and audits. It does not include environmental clean-up costs, brokerage fees paid by the buyer, real estate transfer taxes, or any other cost not identified in this subsection.

(2) "Activity icon" means a pictogram symbol used on maps and signs to provide a common, nonverbal language to transmit that off-highway motorcycle use is allowed. A red slash over the icon indicates the prohibition of the activity.

(3) "Applicant" means the unit of government or agency applying for a grant under this chapter.

(4) "Department" means department of natural resources.

(5) "Development" includes the planning of a new trail or facility, including bridges, and construction of a trail or facility, including grading, signing, and bridges.

(6) "Final payment" means the last payment from the department to the grantee for a grant awarded under this chapter after the project has been completed to the satisfaction of the grant agreement or contract.

(7) "Final report" means a written account of project activities, accomplishments, and any obstacles encountered, along with all data collected.

(8) "Fringe benefits" means employers' contributions or expenses for social security, employee life and health insurance plans, unemployment insurance coverage, workers compensation insurance, pension retirement plans, and employee benefits in the form of regular compensation during authorized absences from the job.

(9) "Grant advance" means the portion of the grant award paid to the grantee after returning a signed grant agreement and prior to project implementation.

(10) "Grant agreement" means a contract between the grantee and the department detailing project scope, grant award, grant period, department cost share, project products, reimbursement process, and conditions that restrict actions of the grantee during the life of the project and during the operation and maintenance phase once the final payment has been issued by the department.

(11) "Grant award" means the dollar amount awarded to the grantee by the department and available to the grantee for reimbursement of eligible project costs.

(12) "Grant period" means the time period stated in the grant agreement during which the grantee may expend grant program funds for the project.

(13) "Grantee" means an eligible organization that receives a grant from the department under this chapter.

(14) "Hybrid trail" means an off-highway motorcycle trail and route combination that allows limited use off-highway motorcycles and motor vehicles to utilize the same linear surface and the combination is used as a trail connector.

(15) "Interest in land" includes fee title, easement, and lease.

(16) "Maintenance" means the activities associated with establishing and keeping a trail safe and enjoyable for use.

(17) "Major rehabilitation" means repair projects on a larger scale than annual or routine maintenance and which requires additional funds above the mileage rate allowed under s. NR 65.15 (1) (a).

(18) "Off-highway motorcycle facility" has the meaning given in s. 23.335 (20) (b) 2., Stats., but does not include a trail, hybrid trail or route.

(19) "Project" means the practices or activities for which funds are applied under this chapter.

(20) "Project period" means the period of time specified inthe project agreement during which all work shall be completed.

(21) "Project scope" means the part of the grant agreement that succinctly describes the extent or range of what the project will accomplish.

(22) "Regulatory sign" means a sign placed under the authority of a unit of government which limits the operation of an off-highway motorcycle.

(23) "Trail connector" means an off-highway motorcycle trail that connects one trail to another trail or services.

SECTION 4m. NR 65.025 is created to read:

NR 65.025 Definitions. As used in s. 23.335, Stats.:

(1) "Brake" means an operational device for stopping a vehicle.

(2) "Headgear approved by the department" means headgear of the type required by s. 347.485 (1) (a), Stats.

(3) "Raceway facility" has the meaning given in s. NR 64.02 (12e).

SECTION 5. NR 65.03 is repealed and recreated to read:

NR 65.03 Registration.

(1) REGISTRATION EXEMPTIONS.

(a) An off-highway motorcycle that is not registered pursuant to s. 23.335 (2) (a), Stats., or is not exempt from registration under s. 23.335 (2) (b) 3., Stats., or s. NR 65.03 (1) par. (b) is

exempt from out of state registration while operating on an off-highway motorcycle corridor if the off-highway motorcycle displays a current Wisconsin off-highway motorcycle nonresident trail pass and has not been in Wisconsin for more than 15 consecutive days.

(b) All of the following off-highway motorcycles are exempt from registration and trail pass requirements in s. 23.335 (2), Stats. when used for maintenance, enforcement, or emergency purposes:

1. Any off-highway motorcycle owned or leased by the United States, another state, or a political subdivision thereof, provided the name of the owner or lessee is displayed in a visible manner on the exterior of the off-highway motorcycle.

2. Owned or leased by the state or a political subdivision of the state.

Note: Wisconsin Department of Transportation registration requirements may still apply for highway use.

(c) Department-owned or leased motorcycles may be registered at no cost.

(d) All off-highway motorcycles are exempt from the trail pass requirements until April 1 following the effective date of this rule . . . [LRB inserts date].

(2) EXPIRATION. A temporary operating receipt issued under s. 23.335 (4) (c) 4., Stats., and a temporary trail use receipt issued under s. 23.335 (6) (e), Stats., shall be valid only during the term stated on the receipt.

Note: Off-highway motorcycles owned by nonresidents and operated in Wisconsin on a designated off-highway motorcycle route are required to be registered. If their home state does not offer off-highway motorcycle registration, the off-highway motorcycle must be registered in Wisconsin.

SECTION 6. NR 65.04 is repealed and recreated to read:

NR 65.04 Operating rules.

(1) No person may operate an off-highway motorcycle contrary to a regulatory sign.

(2) No operator or passenger of an off-highway motorcycle may possess any bottle or receptacle containing alcoholic beverages or nitrous oxide if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle have been partially removed or released while the off-highway motorcycle is being operated.

(3) No operator or owner may deny inspection or refuse to operate his or her off-highway motorcycle in a manner prescribed by a law enforcement officer who reasonably suspects a violation of off-highway motorcycle equipment requirements found in s. 23.335 (17), Stats.

(4) Subsections (1) and (2) only apply when operating off of a highway.

SECTION 7. NR 65.05 is repealed and recreated to read:

NR 65.05 Off-highway motorcycle noise emissions and testing. No person may manufacture, sell, rent or operate an off-highway motorcycle that is constructed or altered in a manner that noise emitted from the off-highway motorcycle exceeds 96 decibels on the A scale when measured in the manner prescribed in the revised 2017, Society of Automotive Engineers Standard J1287, titled *Measurement of Exhaust Sound Pressure Levels of Stationary Motorcycles*.

Note: Copies of the Society of Automotive Engineers (SAE) Standard J 1287 titled, "Measurement of Exhaust Sound Pressure Levels of Stationary Motorcycles," revised 2017, are available for inspection at the Department of Natural Resources, 101 South Webster St., Madison, Wisconsin 53703; and the Legislative Reference Bureau, 1 E. Main St., Ste. 200; Madison, Wisconsin 53703; and for purchase at the Society of Automotive Engineers International, 400 Commonwealth Drive, Warrendale, Pennsylvania, 15096 (412-776-4841, http://webstore.ansi.org/).

SECTION 8. NR 65.06 is repealed and recreated to read:

NR 65.06 Instruction for rental of off-highway motorcycles. The provider of the

course of instruction required under s. 23.335 (7) (a) 1., Stats., shall do all of the following:

(1) Inform the renter of the requirement that a valid registration decal shall be displayed on the off-highway motorcycle.

(2) Provide the renter with off-highway motorcycle safety information, advise the renter of local off-highway motorcycle rules and information, and review the controls of the off-highway motorcycle and off-highway motorcycle rules of operation.

SECTION 9. NR 65.07 is repealed and recreated to read:

NR 65.07 Public education program. The public education program required by s. 23.335 (12) (L), Stats., shall include an informational pamphlet that summarizes the prohibitions and penalties of operating while intoxicated for off-highway motorcycles. Signs shall be developed summarizing the prohibition of operating off-highway motorcycles while intoxicated.

SECTION 10. NR 65.08 is repealed and recreated to read:

NR 65.08 Safety certification program fees. The fee for a safety certification course conducted online shall be determined through a memorandum of understanding with the provider of the online course. The fee for a safety certification course conducted by an instructor in person shall be no more than $10 of which the instructor may retain no more than 50 percent.

SECTION 11. NR 65.09 is repealed and recreated to read:

NR 65.09 Uniform sign standards.

(1) Signs for off-highway motorcycle routes on highways, designated for use by the governmental unit having jurisdiction as authorized under s. 23.335 (19), Stats., shall meet all of the following requirements:

(a) The off-highway motorcycle route sign shall have a reflectorized white symbol, border and message on a reflectorized green background. The sign, including the three-line message "OFF-HIGHWAY MOTORCYCLE ROUTE", shall conform to the standard design on file with the department of transportation.

Note: The following is an example of a sign meeting these requirements:

Note: For information on whom to contact for the construction of signs for off-highway motorcycle routes, contact the local governmental unit maintaining the highway.

(b) The standard and size of an off-highway motorcycle route sign shall be 18 inches by 24 inches with a white border of .625 inches.

(c) An off-highway motorcycle route sign with directional arrow, where appropriate, shall be placed at the beginning of an off-highway motorcycle route and at such locations and intervals as necessary to enable off-highway motorcycle operators to follow the route.

(2) Signs for off-highway motorcycles on trails designated for use by the governmental agency having jurisdiction shall be placed at the beginning of an off-highway motorcycle trail and at such locations and intervals as necessary to enable off-highway motorcycle operators to follow the trail and shall meet all of the following requirements:

(a) The off-highway motorcycle trail signs shall have an activity icon that is a white symbol of a motorcycle rider on an off-highway motorcycle on a brown background.

(b) The activity icon shall be 6 inches by 6 inches when used on a double track trail and at least 3 inches by 3 inches when used on a single-track trail.

SECTION 12. NR 65.10 is repealed and recreated to read:

NR 65.10 Safety grant program.

(1) The department shall fund the safety grant program of s. 23.335 (15), Stats., at a rate of $1.00 per registration. Except as provided in sub. (2), this grant program is unique and separate from the grant program under NR 65.11. Grants may be made for a period of up to two years and

may be renewed for additional two-year periods. Applicants shall apply on forms prescribed by the department. Applications shall be evaluated on completeness in meeting the requirements of s. 23.335 (15), Stats.

(2) Safety grant applications and awards shall be subject to the provisions of ss. NR 65.12, 65.13, 65.14, 65.17 (1), 65.18, 65.20, and 65.21.

SECTION 13. NR 65.11 is created to read:

NR 65.11 Off-highway motorcycle project grants.

(1) After consulting with the off-highway motorcycle council, the department shall distribute off-highway motorcycle project funds for eligible projects under s. 23.335 (20), Stats., based on a priority system according to the following priority ranked purposes:

(a) Maintenance of existing off-highway motorcycle trails. Maintenance shall include annual inspection of the trail, removal of brush and deadfalls, posting of signs and trail routes, clearing of culverts, minor repairs of bridges and planking, and minor repairs to bridge approaches. Maintenance may include the purchase of liability insurance, the acquisition of easements, leases, and permits for a period of up to three years, filling and grading of trail surfaces, and the removal of trees.

(b) Maintenance of existing off-highway motorcycle facilities.

(c) Major rehabilitation of existing off-highway motorcycle trails and off-highway motorcycle facilities.

(d) Development of new off-highway motorcycle trails and facilities on publicly-owned land.

(e) Development of trails and facilities on privately-owned land using a lease or easement.

(f) Acquisition of land for off-highway trails and facilities.

(g) Signage of off-highway motorcycle routes which provide access to off-highway motorcycle trails.

(h) Other eligible off-highway motorcycle projects under s. 23.335 (20), Stats.

(2) All eligible projects in which the only designated motorized use is for off-highway motorcycles shall be funded before projects that are shared with other motorized users.

(3) Grant awards shall be distributed based on the ranking determined by subs. (1), (2) and (4).

Note: Grant awards are available for lower-ranked projects only if all eligible projects of a higher priority have been funded.

(4) In ranking and processing grant applications within each paragraph of sub. (1), the department shall consider the factors listed in s. 23.335 (20) (c) 1. to 4., Stats.

SECTION 14. NR 65.12 is created to read:

NR 65.12 Grantee accountability.

(1) ACCOUNTING AND RECORDS**.**

(a) All grantees shall conform to generally accepted accounting principles and practices during the implementation of a project funded under this chapter. If a grantee receives a grant advance from the department, the grantee shall maintain project grant funds in a separate account. If interest is earned on the account, that interest must be used for the same purposes for which the department originally awarded the grant. Grantees shall document all project costs and maintain documents to support grant expenditures in sufficient detail to show that project costs are consistent with grant agreement awarded by the department. Grantees shall maintain all financial records for a period of six years after the date on which the department issues final payment and make these financial records available to the department upon request. Financial records include all of the following:

1. Published public notice and bid summaries.

2. Records showing volunteer time, professional services, and supplies.

3. Invoices.

4. Canceled checks and bank or credit card statements.

5. Any documents not listed in subds. 1. to 4. that support project costs claimed by the grantee.

(b) Grantees shall comply with all applicable state and federal laws and regulations regarding cost-containment, bidding, contract awards, and wage and labor rates.

(2) REIMBURSEMENT. Grantees shall submit to the department a request for reimbursement on forms provided by the department. Grantees shall submit a request for final reimbursement no later than 6 months after the end of the grant period specified in the grant agreement. Grantees are eligible for reimbursement only for project costs incurred during the grant period. The department may require the grantee to submit a final report and shall not issue final reimbursement until the final report is received and approved by the department.

(3) AMENDMENTS. Grantees may request, in writing and during the life of the grant agreement, a grant agreement amendment for changes to project scope or approved expenditures or for an extension of the grant period. In evaluating the grantee's request, the department shall consider justification provided by the grantee and availability of funds. The department shall respond to the grantee's request for the grant agreement amendment in writing. Grant amendments for off-highway motorcycle project grants may not be used to alter the project priority established under s. NR 65.11.

(4) AUDIT. The department may conduct an audit of any grantee records required under sub. (1) for a grant award at any time during the project period and for up to 6 years after the department has issued final payment. The department may require that the grantee repay any prior payment issued by the department if an audit reveals that payment was made in error.

(5) DEFAULT AND TERMINATION. A grantee's failure to abide by the terms of a grant agreement renders the grantee ineligible to apply for a future grant under this chapter, until the grantee corrects the impairment and the department determines that the grantee is once again operating in accordance with the terms and conditions of the original grant agreement. Failure of a grantee to comply with one or more terms of the grant agreement issued under this chapter may result in termination of the agreement and the suspension of all obligations of the department. Grant agreements may also be terminated by the department if a grantee fails to make satisfactory progress on activities approved for grant funding, fails to complete the project to the satisfaction of the department, or makes project changes in a project scope or budget without department approval. The department will notify any grantee not in compliance with a grant agreement, in writing, and allow 30 days for the grantee to pursue corrective action. If corrective action does not address department concerns, the department may issue a final termination letter to the grantee, including the reason for termination. Upon termination of a grant agreement, the department may require the grantee to reimburse the department for any grant funds the department deems appropriate. If the compliance failure is determined by the department to be due to no fault of the grantee, the costs of any irrevocable obligations properly incurred shall be eligible for assistance under this chapter at the department's discretion.

SECTION 15. NR 65.13 is created to read:

NR 65.13 Cost-share percentages and maximum grant award amounts. Grants awarded by the department under this chapter may cover up to 100 percent of total eligible project costs. The grantee shall be responsible for any portion of project costs more than the grant award amount.

SECTION 16. NR 65.14 is created to read:

NR 65.14 Applications.

(1) The department shall establish application deadlines under this chapter and publish those deadlines on the appropriate grant web page on the department's website at least 90 days before the application deadline. Applicants must apply for grant assistance on forms provided by the department.

(2) To be considered for funding, complete grant applications must be received by the department no later than 11:59 p.m. on the application deadline published on the off-highway motorcycle webpage. Complete grant applications are those that adhere to application instructions and include complete project budgets and other required supporting documentation.

Note: Applications may be obtained from the department's website (dnr.wi.gov) keywords "OHM grants".

(3) A project scope is required in the application and shall include a summary of the specific goals and objectives, deliverables, products, tasks, and timeline for a project that is funded under this chapter. The department may request additional information from the applicant to clarify the application.

(4) Applicants failing to submit additional information to the department by the specified deadline shall not receive a grant for that specific grant cycle.

(5) Prior to making any final determinations about the grant application, the department shall consult with the off-highway motorcycle council as established in s. 15.245 (10), Stats., about funds for eligible projects.

(6) The department shall notify all grantees of application status and likely amount of grant award. If a project as described in the grant application is found to be ineligible, the department shall state in writing the basis for its non-eligibility determination to the grantee.

SECTION 17. NR 65.15 is created to read:

NR 65.15 Eligible and ineligible costs.

(1) ELIGIBLE COSTS. The department shall reimburse eligible project costs at the cost-share percentage up to the maximum allowable grant amount. Those costs shall be reasonable and necessary for the project, documented, consistent with the approved application that is part of the grant agreement, and incurred during the grant period. Eligible costs include all of the following:

(a) Costs related to maintenance. Maintenance expenses paid under s. NR 65.11 (1) (a) shall be paid on a per mile rate established by the department, in consultation with the off-highway motorcycle council, based on available funds.

(b) Major rehabilitation and development projects, which may include:

1. Costs incurred by grantee staff, whether existing or new, to carry out project activities identified in the grant agreement. Labor costs shall be based on the grantee's established labor rates identified in the grant application budget for staff time in the form of salary, hourly wages, fringe benefits and other items determined to be appropriate by the department. Fringe benefits must be equitably distributed to all employee labor activities.

2. Services and materials directly related to the implementation of the off-highway motorcycle facility or trail project.

3. Equipment used by the grantee at an hourly rate determined by the Wisconsin Department of Transportation's *Classified Equipment Rates Standard and Special Rated Units* for highway equipment as formulated under s. 84.07, Stats.

(c) Acquisition costs.

Note: For assistance in determining the fair market value, see the department's appraisal guidelines which are available from the Department of Natural Resources, Bureau of Community Financial Assistance, P.O. Box 7921, Madison, Wisconsin 53707.

(2) INELIGIBLE COSTS. Cost not directly associated with or necessary for the implementation of the project, as determined by the department, are ineligible for reimbursement. Ineligible costs include all of the following:

(a) Fines and penalties due to violation of, or failure to comply with, federal, state, or local laws and regulations.

(b) Ordinary operation expenses of grantees, such as salaries and expenses of public officials, that are not directly related to the project.

(c) Purchase of motor vehicles and equipment.

SECTION 18. NR 65.16 is created to read:

NR 65.16 Public access. Any off-highway motorcycle facility funded under this chapter shall be open to off-highway motorcycle users during the facility's normal operating hours except for special events and temporary closures.

SECTION 19. NR 65.17 is created to read:

NR 65.17 Priorities and funding consideration.

(1) PRIORITIES. The department shall prepare an award list following review of applications submitted for each application cycle. The award list shall include all eligible applications ranked by project score, indicating those projects that will receive grant funding.

(2) FUNDING CONSIDERATION. The department shall review all grant applications for applicant and project eligibility and completeness. In consultation with the off-highway motorcycle council, each complete application shall be ranked by the department pursuant to the priorities established in s. NR 65.11 then ranked by score in descending order within each paragraph. The department shall issue grant awards to the highest-ranking project and then move down through the project priority list in each paragraph of s. NR 65.11 by priority order until all available funds are exhausted. The department may offer financial assistance to an applicant in an amount less than requested if the remaining balance is insufficient to fully fund a project. In the event two or more applications have an identical score and there are insufficient moneys to fund all, the department shall split available funding evenly among all similarly scored projects.

Note: The department will use a variety of platforms to conduct outreach and notify potential applicants of funding priorities. Outreach efforts may include publication on the department's grant website, email notification, social media announcements, and other platforms of communication.

SECTION 20. NR 65.18 is created to read:

NR 65.18 Grant awards.

(1) GENERAL PROCEDURES. A grant amount may not exceed the cost-share percentage identified under s. NR 65.13 for estimated costs of the project as requested in the grant application and approved by the department. The department may award a grant under this chapter while the grantee is in the process of acquiring all required permits for the project. The grantee may not begin work on the permitted portion of a project funded under this chapter until all necessary local, state, and federal permits have been obtained.

SECTION 21. NR 65.19 is created to read:

NR 65.19 Grant payments.

(1) Except as provided for in sub. (2), grants awarded under this chapter are administered on a reimbursement basis. Grantees must incur and pay all costs before requesting a final reimbursement from the department.

(2) At the written request of the grantee, the department may distribute to the grantee an advance grant payment, up to 50 percent of the grant award, but only after the grant agreement has been signed by the grantee's authorized representative and has been returned to the department.

(3) The department may only reimburse costs incurred within the grant period and identified in the grant agreement. An approved grant application becomes part of the grant agreement by reference. Total grant payments may not exceed the grant award amount identified in the grant agreement unless modified pursuant to s. NR 65.12 (3).

(4) Final payment may not be issued by the department until final costs have been reviewed, appropriate final reports have been approved, and the department has made a determination that the project has been satisfactorily completed.

SECTION 22. NR 65.20 is created to read:

NR 65.20 Conditions for grant agreements. The department shall place conditions on grant agreements that include provisions on compliance, amendments, default, termination, subcontracting, and reimbursement, in addition to the requirements of this chapter.

SECTION 23. NR 65.21 is created to read:

NR 65.21 Grantee reporting. Data and information acquired as part of a project funded under this chapter shall be reported to the department in a format and frequency specified by the department in the grant agreement. At the same time as the grantee submits the final reimbursement request, the department may require the grantee to submit a final report suitable for distribution for use by the public in an electronic format specified by the department. The department may use the final reports and associated images for reporting and promotional purposes.

SECTION 24. NR 65.22 is created to read:

NR 65.22 Eligible and ineligible projects for land acquisition.

(1) ELIGIBLE PROJECTS. The department may award grants under this chapter to eligible applicants for any of the following:

(a) Fee simple acquisition of a property for the purpose of off-highway motorcycle trails and facilities, if the negotiations between the grantee and landowner are conducted on a willing-seller, willing-buyer basis.

(b) The purchase of easements of at least 20 years for the purpose of off-highway motorcycle trails and facilities, if the negotiations between the grantee and landowner are conducted on a willing-seller, willing-buyer basis.

(2) INELIGIBLE PROJECTS. The department may not award grants under this chapter for ineligible acquisition projects including any of the following:

(a) Any property that is subject to a reversionary right or has restrictions or covenants that would prevent the property from being managed for purposes consistent with this chapter.

(b) Any property that was acquired more than one year before a land acquisition grant application is submitted to the department.

SECTION 25. NR 65.23 is created to read:

NR 65.23 General grant conditions when interests in land are acquired.

(1) The department may not make an award for fee title acquisition by a local unit of government or tribe for land that is outside its boundaries unless the local unit of government or tribe in which the land is located approves the acquisition.

(2) For all acquisitions of interests in land, the grantee shall develop and submit to the department a trail or facility management plan. The plan shall become part of the grant agreement and will be recorded at the register of deeds in the county in which the project is located along with the grant agreement.

(3) Grantees shall agree to maintain and manage property acquired with a grant under this chapter in accordance with the provisions, conditions, and descriptions in the grant agreement.

(4) Upon prior notice to the grantee by the department, the grantee shall provide the department access to the property to inspect for compliance with the grant agreement. In the case of easements and leases, it is the responsibility of the grantee to notify and make arrangements with the landowner.

SECTION 26. NR 65.24 is created to read:

NR 65.24 Appraisals.

(1) Grantees are required to obtain and submit to the department an appraisal for fee simple or easement projects. The appraisal shall be subject to department review and approval.

Note: The department encourages grantees considering grant funding for fee simple or easement acquisition to contact the department before ordering an appraisal. The department will provide the appraiser with appropriate instructions regarding the scope and quality of the appraisal.

SECTION 27. NR 65.25 is created to read:

NR 65.25 Grant award for land acquisition projects.

(1) The department shall issue a grant agreement before it awards any funds for the purchase of a fee simple or easement interest in land. The department shall require the grantee to fully execute the grant agreement prior to disbursement of any state funds for the purchase of property.

(2) When a grantee is purchasing either fee simple or easement property, the department may distribute the entire state share of the purchase price to a non-interest-bearing escrow account, subject to department-approved title insurance commitment, to be released upon completion of an insured closing and conveyance of the property to the grantee. If the closing has not occurred within 15 days from the date when funds were distributed to the escrow account, the department shall notify the escrow agent to return the grant funds to the department.

(3) The grantee may not convert or allow to be converted any use of the property other than that specified in the grant agreement without the prior written approval of the department.

(4) The grantee may not convey any interest in the property to a third party nor allow any leases, permits, or encumbrances without the prior written approval of the department. The department may take actions necessary to avoid the placement of liens, judgments, or encumbrances against the property.

(5) The party to whom the property is transferred shall be an eligible applicant under this chapter and shall agree to assume the responsibilities and limitations of the terms and conditions of the grant agreement.

(6) The grantee may not close any property acquired with a grant under this chapter to the public except where approved by the department in writing.

(7) The grant agreement shall recognize the state's interest in the property acquired by the grantee and require that grantee provide adequate land management and maintenance, or, in the case of easements, monitor and enforce the conditions of the easement, in accordance with provisions contained in the grant agreement and in a land management plan approved by the department. The grantee shall declare the state's interest in the property on the warranty deed or other appropriate instrument of conveyance recorded in the appropriate county register of deeds

office, using language provided by the department. The grant agreement shall be recorded in the office of the register of deeds in the appropriate county.

(8) All obligations, terms, conditions, and restrictions imposed by the grant contract shall be covenants and restrictions running with the property and shall be effective limitations on the use of the property from the date of recording of the grant contract and shall bind the grantee and all successors and assigns in perpetuity.

SECTION 28. Effective Date. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 29. Board Adoption. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 10, 2019.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY _____

Preston D. Cole, Secretary

(SEAL)