

# STATEMENT OF SCOPE

## Department of Natural Resources

Rule No.: CF-19-17

Relating to: Creating rules authorized under s. 23.335, Stats., for the purpose of implementing an off-highway motorcycle program.

Rule Type: Permanent

### 1. Finding/nature of emergency (Emergency Rule only):

NOT APPLICABLE

### 2. Detailed description of the objective of the proposed rule:

The general purpose of the rule is to create a program of recreational off-highway motorcycle use by implementing the rule authority granted by s. 23.335, Stats. The proposed rule will repeal and replace ch. NR 65, Wis. Adm. Code, which was created in 1978 and is no longer used or funded. In doing so, the proposed rule will define terms and provide administrative procedures needed for implementation; clarify registration and trail pass requirements; establish a program of safety instruction, including applicable fees; supplement the statutory rules of operation; implement the safety grant and local project funding; establish procedures for designating off-highway motorcycle routes on Department lands, as well as, create uniform signs and standards for routes and trails; create a measurement system for noise violations and amend ch. NR 45, Wis. Adm. Code to make the off-highway motorcycle provisions on department lands consistent with s. 23.335, Stats., and any other changes, if necessary, to be consistent with the statutes.

### 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The regulation and promotion of off-highway motorcycles is a new program created by 2015 Wis. Act 170. Accordingly, the Department has few existing policies relevant to the management of off-highway motorcycles on a state-wide basis. Their use is currently allowed on department properties under s. NR 45.05, Wis. Adm. Code, provided the property has an area specifically posted for off-highway motorcycle use. Currently the Richard Bong Recreation area and the Black River State Forest have such areas in addition to the Cattail, Pecatonica, Wolf River and Nicolet State Trails. Other off-highway motorcycle areas exist on properties not affiliated with the Department. The definition of off-highway motorcycle used in s. NR 45.03(16), Wis. Adm. Code, of "a motor vehicle not more than 45 inches in overall width designed to travel on not more than two wheels in contact with the ground and is designed or modified for off-road use and is not eligible for registration with the Wisconsin department of transportation for on-road use" differs from the statutory definition found in s. 23.335(1)(q), Stats., and will be modified to make them consistent.

The Department currently has safety and registration programs in place for boats, snowmobiles and all-terrain/utility terrain vehicles and would look to those programs for guidance. Similarly, the trail pass requirements for snowmobiles and ATV's will be used as guidance. The safety grant program under s.

23.335, Stats., is similar to the all-terrain vehicle/utility terrain vehicle safety enhancement grant program of s. 23.33(5m), Stats., which will be used for guidance. Similarly, the all-terrain/utility terrain vehicle program has a leased vehicle instructional requirement similar to the one found in s. 23.335(7)(c), Stats., and a noise measurement standard in s. NR 64.07(3), Wis. Adm. Code, which will also be used for guidance.

The primary policy decision to be made in this rule will be how to allocate the limited amount of funds available for the grant program. This will be done using the aforementioned boat, snowmobile and ATV programs for guidance and in close consultation with the Off-Highway Motorcycle Council and other user groups.

#### **4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Pursuant to s. 23.335(12)(L)1., Stats., the Department shall promulgate rules to provide for a public education program which would inform the public of 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 23.335(14), Stats., authorizes the Department to establish by rule an instruction fee for the off-highway motorcycle program. "The department may determine the portion of this fee which may not exceed 50 percent that the instructor may retain . . . ." Section 23.335(14), Stats.

Pursuant to s. 23.335(6)(d)3, Stats., "[t]he department shall establish by rule procedures for the issuance of nonresident trail passes and temporary trail use receipts and the department may promulgate rules regulating the activities of persons who are appointed to be sales agents under this paragraph."

Section 23.335(1)(zdm), Stats., provides that "[p]roof" when used in reference to a registration document, safety certificate nonresident trail pass, or temporary trail pass means. . . or any alternative form of proof designated by rule under s. 23.47(1)." Pursuant to s. 23.47(1), Stats., "[t]he department may designate, by rule, forms of acceptable proof of the following items . . . [a] registration document, safety certificate, nonresident trail pass, or temporary trail use receipt under s. 23.335."

Under s. 23.335(2)(b)5, Stats., "[t]he off-highway motorcycle is specified as exempt from registration by department rule."

Pursuant to s. 23.335(6)(b), Stats.: "[t]he Department may promulgate a rule to exempt off-highway motorcycles that are exempt from registration under sub.(20)(b)5 from having nonresident trail passes or temporary trail use receipts displayed . . . or may promulgate a rule to exempt owners from such vehicles from having to pay any applicable nonresident trail pass fee."

Pursuant to s. 23.335(7)(c), Stats., the Department may promulgate rules to establish minimum standards for instructions given to first time operators of a rented or leased off-highway motorcycle.

Section 23.335(9)(a)10., Stats., states: "No person who is operating an off-highway motorcycle off a highway may . . . [o]perate the off-highway motorcycle in a manner which violates rules promulgated by the department. This subdivision does not authorize the Department to promulgate or enforce a rule that imposes a speed restriction that is more stringent than a speed restriction specified in this chapter."

Pursuant to s. 27.01(2)(j), Stats., the Department shall "[p]romulgate rules necessary to govern the conduct of state park visitors, and for the protection of state park property, or the use of facilities, . . . and the use of roads, trails or bridle paths."

Pursuant to s. 23.335(19)(a), Stats., the Department “may establish standards and procedures for designating off-highway motorcycle trails and off-highway motorcycle routes under the jurisdiction of the department.”

Pursuant to s. 23.335(19)(e), Stats., the Department shall establish uniform signs for off-highway motorcycle routes and trails in cooperation with the department of transportation.

Pursuant to ss. 23.335(15) and (20), Stats., establish a program to award grants to organizations. Determine the standards to be used when the Department is an applicant for grants. Create a system to allocate the appropriations under s. 20.370(1)(b), Stats., between the safety grant of s. 23.335(15) and the enforcement activity and project funding of s. 23.335(20), Stats. *While rulemaking is not specifically referenced in this subsection, a directive to establish a program to award grants must by necessity involve rulemaking.*

Section 23.335(17)(c), Stats., states that “[n]o person may operate a limited use off-highway motorcycle . . . in such a manner . . . that the noise . . . does not exceed 96 decibels on the A scale as measured in the manner required under rules promulgated by the department.”

Under s. 227.11, Stats., the Department is authorized to promulgate rules to interpret s. 23.335, Stats., such as defining terms not included in the statute, creating a purpose section, clarifying registration and trail pass procedures and other administrative provisions needed to effectuate the purpose of the statute.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :**

Approximately 1000 hours will be needed by the Department. This will include drafting the scope statement and proposed rule along with the supporting documentation needed for approval. In addition, time will be spent working with the Off-highway Motorcycle Council and user groups and holding public hearing(s) to obtain input from the public. Appearances before the Natural Resources Board will be required for scope statement approval, authorization to hold public hearings and final approval. Because this rule involves multiple department programs, (law enforcement, licensing and grants) meeting and coordination among representatives of those programs will be required. The Department’s rule coordinator will be involved to assist in publication of required notices and submission of the various requests for approval. Department legal counsel will assure compliance with the requirements of ch. 227, Stats.

**6. List with description of all entities that may be affected by the proposed rule :**

This rule will primarily impact users of off-highway motorcycles and those who sell these machines. There are two organizations in the state that are solely dedicated to issues involving off-highway motorcycles: the Wisconsin Off-Highway Motorcycle Association and the Off-Highway Motorcycle Council created by s. 15.347(10), Stats. The grant portions of this rule may impact local and state units of government that are interested in obtaining grants for the purpose of acquiring or improving lands for off-highway motorcycle routes and trails. While the proposed rule does not directly authorize the use of off-highway motorcycles at any location, its provisions may ultimately enhance the number of off-highway motorcycles on trails and routes that are often shared with other users.

Consistent with s. 23.335(19)(e), Stats., the Wisconsin Department of Transportation will be consulted when the uniform signs and standards for routes and trails are created.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :**

There are federal noise standards for the manufacture of off-highway motorcycles. The testing procedures for these standards are found in the Appendix to 40 CFR § 205.152. The rule will assure that the federal and state testing procedures are consistent. The Department will also assure that any highway related signs created as a result of this rule are consistent with the Federal Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) published under 23 CFR § 655 Subpart F.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):**

At present the statutory registration and trail pass requirements generate approximately \$40,000 per year. This rule will not significantly alter that amount. Revenue is expected to slowly increase with an established mechanism for the use of agents to sell trail passes and with expanded riding opportunities as a result of the grant programs implemented by this rule. Small businesses are not eligible for the grant program as established by the legislation. Small businesses will receive some benefit (.50 cents per transaction) from clarified procedures for registration and trail pass agents. There may also be some indirect benefits to local communities and small businesses from the creation of off-highway motorcycle facilities as a result of the grant programs. The exact value of these benefits is undetermined.

The administrative cost of this rule is anticipated to be less than \$20,000. This may include council meeting expenses and part-time labor to assist with program administration. Costs to the state would be nominal and could be covered by program revenues. Additional DNR staff time will be required to establish and run this program, some of which is generated in part by this rule, (e.g., additional requirements for the sale of registrations and trail passes, setting up and running the grant program, safety instruction, and enforcement of noise limits); permanent staff time is expected to be absorbed into the current work schedules.

No additional costs are expected for motorcyclists to comply with the requirements of this rule as the underlying requirements are statutory.

**9. Anticipated number, month and locations of public hearings:**

The Department anticipates holding one hearing in Madison with a simultaneous broadcast to DNR regional offices to obtain statewide comments. The Department anticipates the hearing will take place in the late summer of 2019.

**Contact Person:** Brigit Brown, 608-266-2183

---

Daniel L. Meyer, Secretary

---

Date Submitted