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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 19-107

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### I. Statutory Authority

a. Section 23.335 (1) (zdm), Stats., is a definition and not an explicit grant of rule-making authority as stated in the “explanation of agency authority” section of the rule summary. The reference to this statute in the “statutes interpreted” section is more appropriate.

b. Section 23.335 (6) (d) 3., Stats., does not exist, but is listed incorrectly under the “statutes interpreted”, “statutory authority”, and “explanation of agency authority” sections of the rule summary. It appears likely the department intended to reference s. 23.335 (6) (e) 3., Stats.

c. Section 23.335 (19) (e), Stats., cited as statutory authority, requires the department, in cooperation with the Department of Transportation, to establish uniform signs and standards for off-highway motorcycle routes and off-highway motorcycle trails. The department should explain how it cooperated with the Department of Transportation to establish uniform signs and standards.

d. The material under s. NR 65.05 (1) appears to apply to a person who is engaged in the rental or leasing of limited use off-highway motorcycles to the public, and not to the “course of instruction” required under statute. The departmental statutory authority under s. 23.335 (7) (c), Stats., appears to be limited to the course of instruction. Does the department have the authority to promulgate a rule that regulates a person who is engaged in the rental or leasing of limited use off-highway motorcycles to the public more strictly than statute?

e. The intended effect of s. NR 65.20 is unclear. Does the department intend to vary the requirements of this provision between grant recipients? If not, the department requirements could

easily be incorporated into the administrative code. If so, what criteria will the department use to determine which requirements are applicable to any particular grant recipient? Generally, the department should better explain its authority to include other grant requirements in addition to requirements specified by rule.

## **2. Form, Style and Placement in Administrative Code**

a. SECTIONS 4 to 28 of the proposed rule should be consolidated into one section and the introductory clause modified to reflect that ch. NR 65 is repealed and recreated. Additionally, the enumeration of provisions treated by the rule should be updated to reflect the provisions actually treated in the rule text.

b. Should material be added before the creation of the definition section to clarify that the definitions apply within the chapter? The plain language analysis states that SECTION 5 of the rule “creates a definition section to define terms used in the rule”, but a number of defined terms are not used anywhere in the proposed rule. The department should clarify the purpose of the definition section.

c. The proposed rule creates a definition for “baseline document”, but that term is not used anywhere in the rule, though “baseline documentation” is referenced within the definition of acquisition costs. Additionally, the last sentence of the definition for “baseline document” is a substantive provision improperly incorporated into a definition. [s. 1.01 (7) (b), Manual.]

d. The proposed rule creates a definition for “brake”, but that term is not used anywhere in the rule.

e. The proposed rule creates a definition for “headgear approved by the department”, but that term is not used anywhere in the rule.

f. The proposed rule creates a definition for “OHM activity icon”, but that term is not used anywhere in the rule. Consider modifying the rule to create a definition for “activity icon”, as that term is used in the rule. Renumber the definition accordingly.

g. The proposed rule creates a definition for “raceway facility”, but that term is not used anywhere in the rule.

h. The proposed rule creates a definition for “secretary”, but that term is not used anywhere in the rule.

i. In s. NR 65.03 (1) (a), the cross-reference to s. NR 65.03 (1) (b) should be written as “par. (b)”.

j. 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?

k. The beginning of s. NR 65.04 (4) should be written “Subsections (1) and (2)”.

l. The phrase “, Stats.” should follow the citation at the end of s. NR 65.10.

m. There are two provisions numbered s. NR 65.11 (1) (a). The second provision should be labeled s. NR 65.11 (1) (b).

n. In s. NR 65.11 (2), the department should write “s. 23.335 (20) (c) 1. to 4., Stats.”.

o. In s. NR 65.14 (5), the department should write “s. 15.245 (10), Stats.”.

p. Section NR 65.15 (1) (a) 2. references “hybrid trail maintenance paid under s. NR 65.11 (1) (a) 1. and (b) 1.”, but those cross-references do not explicitly reference hybrid trails, which is a defined term. Should these provisions be modified for clarity?

q. In s. NR 65.15 (1) (b) 3., the parenthetical reference “(WisDOT)” appears unnecessary as the acronym is not used elsewhere in the rule text.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The proposed rule creates a definition for “other established off-highway motorcycle corridor”, and references s. 23.225 (1) (s), Stats., in the definition. That term is not used throughout the rule and s. 23.225 (1) (s), Stats., is not referenced in “statutes interpreted”, “statutory authority”, or “explanation of agency authority” sections of the rule summary.

b. Section NR 65.10 provides that grants may be made for a period of up to two years and may be renewed for additional two-year periods, but s. NR 65.12 (3) provides that a grantee may request a grant agreement amendment “for an extension of the grant period”. Should these provisions reference each other?

c. Section NR 65.15 (1) (a) references the definition of “maintenance costs”, but the cross-reference definition is only for “maintenance”. Should this reference be modified to say “Costs related to maintenance, as defined in s. NR 65.02 (18)”?

d. Section NR 65.18 references “the cost-share percentage identified under s. NR 65.12”, but cost-share percentages are addressed under s. NR 65.13.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. Section NR 65.10 specifies that applicants for the safety grant program shall apply in the manner specified by the department, but the department does not specify that manner in the rule. Consider clarifying this so applicants know how to apply for the program.

b. It is unclear how the “priority system” listed in s. NR 65.11 (1) (a) 1. to 8. and s. NR 65.11 (1) (a) [sic—should be (b)] 1. to 8. works. For example, does any project that is open only for use by off-highway motorcycles out-rank any project that is open to off-highway motorcycle use and shared with other users?

c. The uses of the word “will” should be changed to “shall” within ss. NR 65.10, 65.12 (5), 65.14 (4), 65.15 (1), 65.17 (2), 65.23 (2) and 65.25 (1).

d. Section NR 65.13 requires that a grantee shall “confer with the department if any grantee match includes federal funds”. It is unclear what it means to “confer with the department” and when a grantee has a “grantee match”, given that the same provision allows the department to cover up to 100 percent of total eligible project costs.

e. Section NR 65.23 (4) appears to apply to any grant contract, but it is included under a section regarding grant conditions when interests in land are acquired. The department should clarify whether this requirement applies to any grant contract or just grant contracts for projects when interests in land are acquired. Additionally, elsewhere in the rule, the defined term “grant agreement” is used. The department should use a defined term for consistency instead of “grant contract”.

f. Section NR 65.24 (Note) could be modified for clarity. Does the department promise to include instructions to any appraiser if requested by the grantee?