

RULES AND REGULATIONS

Title 17—CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

[17 PA. CODE CH. 53]

Snowmobile and All-Terrain Vehicle Grants

The Department of Conservation and Natural Resources (Department), under the authority of sections 7704 and 7706(b.1) of the act of July 20, 2016 (P.L. 837, No. 97) (Act 97) (75 Pa.C.S. §§ 7704 and 7706(b.1) (relating to rules and regulations; and restricted accounts)) and section 313 of the Conservation and Natural Resources Act (71 P.S. § 1340.313), hereby adds Chapter 53 (relating to snowmobile and all-terrain vehicle grants) to read as set forth in Annex A.

Purpose

The purpose of this final-form rulemaking is to comply with the Act 97 amendment to the Snowmobile and All-Terrain Vehicle (ATV) Law (Law) (75 Pa.C.S. §§ 7701—7753) establishing the ATV Management Restricted Account and the Snowmobile Management Restricted Account (75 Pa.C.S. § 7706(a)) and requiring the Department to promulgate regulations necessary to implement the program granting funds from the restricted accounts (75 Pa.C.S. §§ 7706(b) and (b.1)).

Discussion

Under section 7706(b) of the Law (75 Pa.C.S. § 7706(b)), the Department administers a program granting funds from the ATV Management Restricted Account and the Snowmobile Management Restricted Account, which funds are generated from, inter alia, ATV and snowmobile registration, certification, sale of publications or services and enforcement activities (75 Pa.C.S. § 7706(a)).

Prior to Act 97, the funds generated by the ATV and snowmobile activities/user groups were placed in one restricted account and could be granted for either ATV or snowmobile eligible activities without designation for which activities/user groups generated the funds. Act 97 ensures that ATV funds are specifically directed to ATV activities.

Act 97 established two restricted accounts, the ATV Management Restricted Account and the Snowmobile Management Restricted Account (75 Pa.C.S. § 7706(a)). Under Act 97, all moneys generated from ATV activities must be deposited into the ATV Management Restricted Account (75 Pa.C.S. § 7706(a)), from which moneys are dispersed, inter alia, as grants that may only be used for ATV activities/projects (75 Pa.C.S. § 7706(b)). Similarly, all moneys generated from snowmobile activities must be deposited into the Snowmobile Management Restricted Account (75 Pa.C.S. § 7706(a)), from which moneys are dispersed, inter alia, as grants that may only be used for snowmobile activities/projects (75 Pa.C.S. § 7706(b)). Act 97 ensures that moneys generated from ATV activities are not dispersed for snowmobile activities and vice versa.

Further, 75 Pa.C.S. § 7706(b.1) requires the Department to promulgate the regulation to implement the Snowmobile and All-Terrain Vehicle program granting

funds from the ATV Management Restricted Account and the Snowmobile Management Restricted Account.

The proposed rulemaking was published at 48 Pa.B. 515 (January 20, 2018). The public comment period closed on February 20, 2018. The Department received public comments from three commentators. The Independent Regulatory Review Commission (IRRC) also provided a comment. Responses to the comments follow.

Comments to Proposed Rulemaking

Use of funds

A commentator stated the change in rules will make it easier for ATV users to access funds, thereby creating more riding opportunities in this Commonwealth. The commentator further stated that the commentator would like to see a limit put on how much of the restricted funds can be used by State agencies, since restricted funds should not be used for paying personnel for grooming and other State employee functions.

Response

The Department is required to grant money from the restricted accounts for various activities related to snowmobile and ATV use (75 Pa.C.S. § 7706(b)). Further, the Department is statutorily required to draw moneys from the respective restricted accounts for use in performing any activities necessary to carry out the purposes of Chapter 77, including registration and certificate of title activities, training, education, enforcement activities, construction and maintenance of snowmobile and ATV trails and acquisition of equipment, supplies and interests in land (75 Pa.C.S. § 7706(a)(2)).

General support

A comment was received from the Pennsylvania Off Highway Vehicle Association stating that the Association is pleased to endorse these regulations and support their adoption as written. The comment commended the Department for including in the regulations two grant application and award periods, and for not including in the regulations specific matching funds requirements, as the Association had recommended.

Response

In preparing the regulations, the Department sought and received valuable feedback from ATV and snowmobile user groups. The Department ultimately removed specific matching funds requirements to encourage more prospective grant applications. However, the Department included grant selection criteria to ensure that the most viable grant projects are funded, which criteria, pursuant to the comment, the Association supports.

ATV funds

IRRC and a commentator stated in their comment to the proposed rulemaking that:

A Commenter raises concerns that ATV registration monies are being channeled toward non-trail-providing motocross facilities. The commenter suggests that the grant selection process and criteria be revised to include further qualifying criteria that prioritize projects providing ATV riding areas and trail mileage. We ask the Department to clarify how the grant selection process and criteria in the final-form regulation ensure that all funds from the ATV Management Restricted Account will be used for ATV projects. The Department should also explain the

reasonableness of providing monies from the ATV Management Restricted Account to non-trail-providing motocross facilities if such facilities are eligible for grants under the final-form regulation.

Response

Under the Snowmobile and All-Terrain Vehicle Law, the Department is required to administer various activities—not just increased riding areas and trail mileage. Specifically, the Department is required to draw moneys from the respective restricted accounts for use in performing any activities necessary to carry out the purposes of the chapter, including registration and certificate of title activities, training, education, enforcement activities, construction and maintenance of snowmobile and ATV trails and acquisition of equipment, supplies and interests in land (75 Pa.C.S. § 7706(a)(2)), in addition to making grants to eligible applicants for eligible activities, including the construction, maintenance and rehabilitation of ATV trails and other facilities (75 Pa.C.S. § 7706(b)). Thus, the grant selection process and criteria may not provide that all funds from the ATV Management Restricted Account will be used for providing ATV trails.

Further, the Law and regulation address, inter alia, the grant of funds from the ATV Management Restricted Account for the listed eligible ATV activities, including the construction, maintenance and rehabilitation of ATV trails and other facilities (75 Pa.C.S. § 7706(b); 17 Pa. Code § 53.12). Use of funds from the ATV restricted account is only limited to ATV trails with regard to grants to for-profit and nonprofit organizations for the maintenance, rehabilitation and construction of ATV trails on Commonwealth lands (75 Pa.C.S. § 7706(b)(3); 17 Pa. Code § 53.12(c)). Otherwise, grant funds may be awarded for eligible ATV activities at non-trail providing facilities, as long as the funds are used to support ATV riding opportunity at the facilities.

The Law does not prohibit eligible ATV activities at motocross facilities. In addition, revision of the regulation (and the grant application) to prioritize ATV trail mileage and riding areas does not comply with the scope of the Law.

The Department has only provided ATV registration grant moneys to motocross facilities that provide ATV riding experiences. The Department has been awarding grants from snowmobile and ATV registration moneys for over 18 years. In that time, the Department has awarded 66 grants. Only three of those grants have been awarded to facilities that offer motocross riding experiences in addition to ATV riding experiences. More importantly, the three grants were specifically awarded to support ATV riding experiences.

Also, 75 Pa.C.S. § 7706(a)(2) specifically provides that “. . . under no circumstances shall the department expend any moneys from the accounts except for the activity that generated those accounts.” This language expressly prohibits the Department from using ATV registration moneys for anything other than ATV activity. Similarly, section 53.11 of the final regulation (ATV Management Restricted Account) specifically restricts grant awards from the ATV Management Restricted Account to ATV projects.

Summary of Rulemaking

Section 53.1 provides definitions of “ATV,” “ATV Management Restricted Account,” “acquisition,” “development,” “joint-use trail,” “land,” “maintenance,” “municipal-

ity,” “nonprofit organization,” “project,” “rehabilitation,” “snowmobile,” “Snowmobile Management Restricted Account” and “Vehicle Code.”

Section 53.2 states the statutory authority under which this final-form rulemaking is promulgated.

Section 53.3 provides the grant application procedure. In this final-form rulemaking, this section is revised from the proposed rulemaking by changing the opening date of the first grant round from the first business day in January to the first business day in February. In addition, in this final-form rulemaking, this section is revised from the proposed rulemaking by changing the closing date of the second grant round from the last business day in October to the last business day in September. The length of the grant round application periods is reduced to ensure sufficient time to thoroughly review applications and award grants in a timely manner.

Section 53.4 provides the grant selection process and criteria.

Section 53.5 provides the levels at which grant projects will be funded.

Section 53.11 provides the projects for which funds from the ATV Management Restricted Account may be granted.

Section 53.12 provides the applicants and activities eligible to receive grant funds from the ATV Management Restricted Account. In this final-form rulemaking, this section is revised from the proposed regulation by inserting for clarity in subsections (b), (c) and (d) a list of the applicants eligible to receive grant funds under each subsection.

Section 53.21 provides the projects for which funds from the Snowmobile Management Restricted Account may be granted.

Section 53.22 provides the applicants and activities eligible to receive grant funds from the Snowmobile Management Restricted Account. In this final-form rulemaking, this section is revised from the proposed rulemaking by inserting for clarity in subsections (b), (c) and (d) a list of the applicants eligible to receive grant funds under each said subsection.

Fiscal Impact

Commonwealth. This final-form rulemaking will not have a fiscal impact on the Commonwealth. No additional costs are imposed under this regulation, since the Department currently administers the grant program.

Political subdivisions. This final-form rulemaking will not have a fiscal impact on political subdivisions.

Public. This final-form rulemaking will not have a fiscal impact on the public. No additional costs are imposed under this final-form rulemaking.

Benefits, Costs and Compliance

Benefits. This final-form rulemaking will benefit grant applicants by affording them the opportunity to apply for grant awards twice a year and by ensuring that ATV moneys are used for ATV projects and snowmobile moneys are used for snowmobile projects.

Costs and compliance. This final-form rulemaking will not impose additional compliance costs.

Paperwork requirements. There are no additional paperwork requirements associated with this final-form rulemaking. Grant applicants are already required to com-

plete a grant application to apply for funds. Further, the application is available online at <https://brcgrants.dcnr.pa.gov/>.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 9, 2018, the Department submitted a copy of the proposed rulemaking, published at 48 Pa.B. 515, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of all comments received, as well as other documentation. In preparing this final-form regulation the Department has considered all comments received from IRRC and the public. No comments were received from the House and Senate Committees.

Under section 5.1(j.2) of the Regulatory Review Act, (71 P.S. § 745.5a(j.2)) on June 17, 2020, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 18, 2020, and approved the final-form rulemaking.

Effective Date

(a) This final-form rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*.

(b) This final-form rulemaking will be monitored on an annual basis and updated as needed.

Contact Person

For an explanation of these regulations contact Alex MacDonald, Chief, Trails, Greenways and Statewide Planning Section, Bureau of Recreation and Conservation, Department of Conservation and Natural Resources, Rachel Carson State Office Building, 400 Market Street, 5th Floor, P.O. Box 8475, Harrisburg, PA 17105-8475, (717) 772-4586, almacdonal@pa.gov.

Findings

The Department finds that:

(1) Public notice of intention to adopt the regulations has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), known as the Commonwealth Documents Law and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) At least a 30-day public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 48 Pa.B. 515.

(4) This final-form rulemaking is necessary and appropriate for the administration and enforcement of the authorizing acts identified in this preamble.

Order

The Department, acting under the authorizing statutes, orders that:

(1) The regulations of the Department, 17 Pa. Code, Chapter 53 are amended by adding §§ 53.1—53.5, 53.11, 53.12, 53.21 and 53.22 to read as set forth in Annex A.

(2) The Secretary shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality as required by law.

(3) The Secretary shall submit this order and Annex A to the IRRC and the House and Senate Committees as required by law.

(4) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(5) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

CINDY ADAMS DUNN,
Secretary

(*Editor’s Note:* See 50 Pa.B. 3355 (July 4, 2020) for IRRC’s approval order.)

Fiscal Note: Fiscal Note 7B-9 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 17. CONSERVATION AND NATURAL RESOURCES

PART I. DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Subpart E. OUTDOOR RECREATION

CHAPTER 53. SNOWMOBILE AND ALL-TERRAIN VEHICLE GRANTS

Subchap.

- A. GENERAL PROVISIONS**
- B. ALL-TERRAIN VEHICLE GRANTS**
- C. SNOWMOBILE GRANTS**

Subchapter A. GENERAL PROVISIONS

- | | |
|-------|---------------------------------------|
| Sec. | |
| 53.1. | Definitions. |
| 53.2. | Authority. |
| 53.3. | Application procedure. |
| 53.4. | Grant selection process and criteria. |
| 53.5. | Funding levels. |

§ 53.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ATV—An all-terrain vehicle as defined in section 7706(e) of the Vehicle Code (relating to restricted accounts).

ATV Management Restricted Account—A restricted revenue account for funds that may only be used for ATV related activities, or activities related to joint-use trails, as required under section 7706(a)(2) of the Vehicle Code.

Acquisition—The purchase or lease of land or buildings for snowmobile or ATV activities, or both.

Development—Construction, alteration or renovation required for and compatible with the physical improvement of land.

Joint-use trail—A trail that may be used by snowmobiles and ATVs.

Land—Real property, including improvements thereon, rights-of-way, water, riparian and other rights, easements, privileges and any other physical property or rights of interest of any kind or description relating to or connected with real property.

Maintenance—Recurring upkeep needed on a regular basis on snowmobile, ATV or joint-use trails, trail related facilities and equipment.

Municipality—A county, city, borough, incorporated town, township or an official agency created by the foregoing units of government under the laws of the Commonwealth.

Nonprofit organization—An organization that is exempt from income tax under section 501 of the Internal Revenue Code (26 U.S.C.A. § 501).

Project—A proposal to acquire or develop land, research the feasibility of acquiring or developing land, prepare or perform right-of-way lease agreements, purchase or lease equipment, or conduct educational or training programs relating to snowmobile or ATV activities, or both.

Rehabilitation—The improvement or restoration, excluding routine maintenance, of existing snowmobile, ATV or joint-use trails.

Snowmobile—The term as defined in section 7702 of the Vehicle Code (relating to definitions).

Snowmobile Management Restricted Account—A restricted revenue account for funds that may only be used for snowmobile related activities, or activities related to joint-use trails, as required under section 7706(a)(2) of the Vehicle Code.

Vehicle Code—75 Pa.C.S. §§ 101—9701.

§ 53.2. Authority.

This chapter is adopted under section 7706(b.1) of the Vehicle Code (relating to restricted accounts) and applies to municipalities, for-profit organizations and nonprofit organizations seeking grants under this chapter.

§ 53.3. Application procedure.

(a) Grant applicants may apply for grants under this chapter by submitting an application through the Department's online grant portal on the Department's web site.

(b) By completing, signing and submitting a grant application to the Department, the grant applicant will be deemed to have certified to the Department that it shall be legally bound by the terms, conditions and provisions of the grant.

(c) There will be two grant rounds annually during which the Department will accept grant applications. The first grant round will open on the first business day in February and close on the last business day in March. The second grant round will open on the first business day in August and close on the last business day in September.

§ 53.4. Grant selection process and criteria.

(a) Following the closing date of each grant round, the Department will consider properly filed applications for approval and award.

(b) If the Department determines that an application is incomplete and that additional information is necessary, the grant applicant shall provide that additional information to allow for further consideration of the application.

(c) In reviewing an application, the Department will give priority to all of the following criteria:

- (1) The anticipated benefits of the project.
- (2) The local and regional impact of the project.
- (3) The estimated cost of the project.
- (4) The availability of matching funds for the project.
- (5) Cost sharing by the grant applicant and other entities.

(6) The results of similar types of projects that have already been completed.

(7) The results of previous projects completed by the grant applicant.

(8) The Department's priorities for motorized recreational trails.

(d) The Department will complete its review and approval of properly filed applications prior to the opening of the following grant round.

§ 53.5. Funding levels.

Grants under this chapter may cover part or all of the cost of an eligible project.

Subchapter B. ALL-TERRAIN VEHICLE GRANTS

Sec.
53.11. ATV Management Restricted Account.
53.12. Eligibility.

§ 53.11. ATV Management Restricted Account.

(a) The Department may only award grants for ATV projects under this subchapter.

(b) The Department may only fund grants with money from the ATV Management Restricted Account under this subchapter.

(c) Joint-use trail projects are considered ATV projects under this subchapter.

§ 53.12. Eligibility.

(a) The Department may award grants to the following groups and organizations:

- (1) For-profit organizations.
- (2) Nonprofit organizations.
- (3) Municipalities.

(b) The Department may award grants to for-profit organizations, nonprofit organizations and municipalities for the following project costs on lands not owned by the Commonwealth:

- (1) Plans, specifications and engineering surveys.
- (2) Fees and costs related to the preparation or performance of right-of-way lease agreements.
- (3) Land acquisition.
- (4) Construction, maintenance and rehabilitation of trails and other facilities for ATVs.

(c) The Department may award grants to for-profit and nonprofit organizations for the maintenance, rehabilitation and construction of ATV trails on lands owned by the Commonwealth.

(d) The Department may award grants to for-profit organizations, nonprofit organizations and municipalities for equipment, training and educational activities relating to ATV use.

Subchapter C. SNOWMOBILE GRANTS

Sec.
53.21. Snowmobile Management Restricted Account.
53.22. Eligibility.

§ 53.21. Snowmobile Management Restricted Account.

(a) The Department may only award grants for snowmobile projects under this subchapter.

(b) The Department may only fund grants with money from the Snowmobile Management Restricted Account under this subchapter.

(c) Joint-use trail projects are considered snowmobile projects under this subchapter.

§ 53.22. Eligibility.

(a) The Department may award grants to the following groups and organizations:

- (1) For-profit organizations.
- (2) Nonprofit organizations.
- (3) Municipalities.

(b) The Department may award grants to for-profit organizations, nonprofit organizations and municipalities for the following project costs on lands not owned by the Commonwealth:

- (1) Plans, specifications and engineering surveys.

(2) Fees and costs related to the preparation or performance of right-of-way lease agreements.

(3) Land acquisition.

(4) Construction, maintenance and rehabilitation of trails and other facilities for snowmobiles.

(c) The Department may award grants to for-profit and nonprofit organizations for the maintenance, rehabilitation and construction of snowmobile trails on lands owned by the Commonwealth.

(d) The Department may award grants to for-profit organizations, nonprofit organizations and municipalities for equipment, training and educational activities relating to snowmobile use.

[Pa.B. Doc. No. 20-1210. Filed for public inspection September 4, 2020, 9:00 a.m.]
