

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
ROBERT J. HARBISON, III
JOHN F. MIZNER, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 6, 2002

Honorable John C. Oliver, Secretary
Department of Conservation and Natural Resources
400 Market Street, 15th Floor
Harrisburg, PA 17101

Re: Regulation #7B-5 (IRRC #2284)
Department of Conservation and Natural Resources
Snowmobile and All-Terrain Vehicle Registration
and Operation

Dear Secretary Oliver:

Enclosed are the Commission's Comments which list objections and suggestions for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval; however, they specify the regulatory criteria which have not been met.

The Comments will soon be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director
evp
Enclosure

cc: Honorable Arthur D. Hershey, Majority Chairman, House Environmental Resources and Energy Committee
Honorable Camille George, Democratic Chairman, House Environmental Resources and Energy Committee
Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee

Comments of the Independent Regulatory Review Commission

on

Department of Conservation and Natural Resources Regulation No. 7B-5

Snowmobile and All-Terrain Vehicle Registration and Operation

December 6, 2002

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Department of Conservation and Natural Resources (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Form furnished by the Department. – Clarity.

Sections 51.12 and 51.15 use the phrase “form furnished by the Department.” The form names or numbers should be included in the final-form regulation.

2. Section 51.12. Applications for title and registration. – Clarity.

Subsection (a) Contents of application

This subsection lists the information that must be included on an application for a certificate of title and registration. Paragraph (9) states that a temporary registration number must be included on the form submitted to the Department. For clarity, the phrase “A temporary registration number” should be replaced with “The temporary registration number issued by the dealer.”

Subsection (b) Proof of ownership; fees

This subsection lists items that must be included with the application. Paragraph (1) requires an applicant to provide proof of ownership. The final-form regulation should include examples of documentation that qualifies as acceptable proof of ownership.

3. Section 51.35. Sanctions for violations by dealers. – Clarity; Reasonableness.

Subsection (b) Second and subsequent violations

This subsection addresses second and subsequent “violations.” We note that Subsection (a) addresses first and subsequent “offenses.” We request the Department explain the difference between a “violation” and an “offense.” The title of Section 51.35 refers to “violations.” If there is no difference between “offense” and “violation,” the term “violation” should be used consistently throughout Section 51.35.

Subsection (c) Multiple violations

Under this subsection, the Department may determine that suspensions imposed for multiple violations be served concurrently or consecutively. The final-form regulation should include the criteria the Department will use to determine whether suspensions will be served concurrently or consecutively.

Subsection (f) Return of dealer certificate, plates and cards

Subsection (f)(1) provides a three day time frame after the effective date of a suspension or revocation for a dealer to return the registration certificate, registration plates and registration cards. Is this sufficient time to return the required material?

Subsection (f)(2) allows for “an acceleration of the application of sanctions” if a dealer fails to return the items listed in Subsection (f)(1). The phrase “acceleration of the application of sanctions” is vague. We request the Department clarify the meaning of this phrase.

4. Section 51.45. Fees for additional dealer plates. – Reasonableness.

This section increases the fees for additional snowmobile and ATV dealer plates. We request the Department explain the basis for these fee increases.

5. Section 51.51. Safety training. – Clarity.

Paragraph (1) requires snowmobile and ATV safety training to be conducted by instructors or organizations approved by the Department. The final-form regulation should clarify how a person would know if an instructor or organization was approved by the Department. Does the Department publish a list of approved instructors and organizations? What is the process for an instructor or organization to become approved by the Department?

6. Section 51.54. Safety certificates. – Clarity.

Subsection (c) states that safety certificates from other states or provinces of Canada will be accepted if the Department deems the safety training programs of the other jurisdictions to be comparable to the Department’s safety training program. How will the Department determine if an outside safety training program is comparable to its own safety training program? How would a person know if a safety certificate from another state or a province of Canada is acceptable to the Department?

7. Section 51.72. Operation of ATV with a passenger. – Legislative intent; Policy decision of such a substantial nature that it requires legislative action.

This section states the following:

Operating an ATV with a passenger, unless the ATV was originally designed by the manufacturer to carry a passenger, is a violation of section 7726 (a)(2) of the Vehicle Code (relating to operation in safe manner—general rule) and is prohibited.

Section 7726(a) of the Vehicle Code states the following:

No person shall operate a snowmobile or an ATV in any of the following ways:

- (1) At a rate of speed that is unreasonable or improper under existing conditions or in excess of the maximum limits posted for vehicular traffic.
- (2) In any careless way so as to endanger the person or property of another.
- (3) While under the influence of alcohol or any other controlled substance.

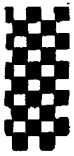
House Bill 154 of the 2001-2002 legislative session, signed into law on June 25, 2001, amended what is commonly referred to as the Snowmobile and All-Terrain Vehicle Law (75 Pa.C.S. §§ 7702-7752). Representatives Merle H. Phillips, Richard A. Geist and Keith McCall, sponsors of House Bill 154 and Representatives Art Hershey, Robert Godshall and Michael Hanna have submitted comments indicating that Section 51.72 of this proposed rulemaking exceeds the legislative intent of the General Assembly. They note language similar to Section 51.72 was intentionally deleted from House Bill 154.

In addition, Representative Godshall, has submitted comments stating that, "Safety measures in dealing with ATV's should be dealt with legislatively and not by the bureaucratic body."

Given the legislative history and above-referenced concerns, the Department should delete Section 51.72, or explain how it is consistent with the legislative intent of HB 154.

8. Section 51.91. Snowmobile sound level requirements. – Clarity.

Under Subsection (c), the phrase "alternate proof, acceptable to the Department" is vague. The final-form regulation should specify the forms of "alternate proof" which are acceptable.



INDEPENDENT REGULATORY REVIEW COMMISSION

To: Glenda Miller
Agency: Department of Conservation & Natural Resources
Phone: 2-9087
Fax: 2-9106

From: Kristine M. Shomper
Administrative Officer
Company: Independent Regulatory Review
Commission
Phone: (717) 783-5419 or (717) 783-5417
Fax: (717) 783-2664

Date: December 6, 2002
of Pages: 5

RECEIVED
2002 DEC -6 AM 10:27
INDEPENDENT REGULATORY
REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Conservation & Natural Resources's regulation #7B-5 (#2284). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Glenda J. Miller Date: 12-6-02