

NOTICE OF PROPOSED RULEMAKING

CHAPTER 736

PARKS AND RECREATION DEPARTMENT

FILING CAPTION: ATV Definition Update

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/03/2023 5:00 PM

NEED FOR THE RULE(S):

In 2019, a provision included in HB 2592 enacted by the legislature, changed the definition of Class IV All-Terrain Vehicles (ATV). The definition of ATVs, located in ORS.801.191-194, was changed again in 2023 by SB 889. The statutory definitions, including language describing each class is used as a reference in OAR 736-004-0015. Under the proposed rule amendment, language describing each class of ATV would be removed and the rule would refer simply to statute. Due to frequent changes made to the definitions of ATV's, changing our rules to simply refer to the statute and not include descriptions of each class will allow us to maintain a greater level of accuracy.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

SB 889

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB889/Enrolled>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE:

The proposed rule amendments do not have a known impact on racial equity in Oregon.

FISCAL AND ECONOMIC IMPACT:

There will be no additional fiscal or economic impact caused by changing OPRD OAR's to match and refer to statute.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1) This rule will not increase costs for state agencies, local governments or members of the public.

2) This rule does not have an effect on small businesses. a) there are no small businesses affected by this rule change. b) no additional record keeping for small businesses c) no increase in costs for compliance.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

This rule does not impact small businesses, so they were not involved in development.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

This rule change is being made based on the statutory change to the definitions of ATS's. With this statutory change we did not consult a rule advisory committee to implement these changes.

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AMEND: 736-004-0015

RULE TITLE: Definitions

RULE SUMMARY: Definitions utilized in ATV rules. Changes remove descriptions for each class of ATV, leaving only statutory reference.

RULE TEXT:

For purposes of this division, the following definitions shall apply:

- (1) "Acquisition" means the gaining of real property rights for public use by donation or purchase including, but not limited to, fee title or easements.
- (2) "Approved Course Provider" is any individual or organization who instructs or provides an OPRD-approved Class I, III or IV ATV safety course.
- (3) "ATV" or "All-Terrain Vehicle" means:
 - (a) Class I ATV, as defined in ORS 801.190;
 - (b) Class II ATV, as defined in ORS 801.193;
 - (c) Class III ATV, as defined in ORS 801.194; and
 - (d) Class IV ATV, as defined in ORS 801.194.
 - (e) May also be referred to as an OHV or Off-Highway Vehicle.
- (4) "ATV-AC" means the seventeen-member All-Terrain Vehicle Advisory Committee established by

ORS 390.565 and appointed by the commission.

(5) "ATV Account" means those moneys described in ORS 390.555 and deposited in a separate account in the State Parks and Recreation Department Fund. Moneys in the ATV Account may also be called "ATV grant funds."

(6) "ATV Grant Instruction Manual" means a manual prepared by OPRD containing state and federal policies, procedures, guidelines, and instructions to assist current and potential project sponsors.

(7) "ATV Grant Subcommittee" means the seven-member subcommittee established by ORS 390.565(5)(a).

(8) "ATV Operating Permit" means a permit (decal) issued through OPRD and which is permanently affixed to the vehicle. The permit authorizes the use of ATV's on trails and within designated areas authorized by the appropriate authorities.

(9) "ATV Operating Permit Agent" means a person, business or government agency to whom OPRD consigns ATV operating permits and decals for sale as a service to the general public.

(10) "ATV Operator Permit" means the ATV Safety Education Card issued upon completion of an OPRD-approved ATV Safety Education course and passage of the minimum standards test of ATV Safety Education competency as established by OPRD.

(11) "ATV Safety Checklist" is a document provided to a dealer, guide service, rental, or livery agent by OPRD that consists of selected facts about Oregon ATV laws.

(12) "ATV Safety Course" is any OPRD-approved course of instruction that is offered by an approved course provider and concludes with an examination.

(13) "ATV Safety Education" means those grant projects that include but are not limited to training programs, media with information for the public, safe riding practices, environmental ethics, or any combination thereof.

(14) "All-Terrain Vehicle Safety Education Card" is the ATV Operator's Permit required by ORS 390.570, 390.575, and 390.577.

(15) "Certificate of Completion" is a certificate generated by OPRD indicating completion of the internet ATV Safety Course.

(16) "Commission" means the State Parks and Recreation Commission.

(17) "Conversion" means any real property acquisition or development that is later wholly or in part converted to another use other than its intended and stated use as described in the grant application and the grant agreement.

(18) "Correspondence Course and Self-Test" means a Class I, III or IV ATV safety course and

examination provided by the OPRD that is taken at home without a proctor. This correspondence course and self-test will satisfy minimum standard of ATV safety education competency only for those individuals who have qualified for hardship status.

(19) "Dealer" means any person or business duly certified under ORS 822.020 and 822.040 to sell Class I, III, or IV ATVs.

(20) "Development" means the planning, design, construction and improvement of ATV recreational facilities, trails, and riding areas.

(21) "Director" means the director of the Oregon Parks and Recreation Department.

(22) "Dry Weight" means the unloaded weight, absent of all fluids, passengers, and any materials such as ice, snow or mud.

(23) "Emergency Medical Services" means medical services performed by certified personnel and the necessary items to perform their duties.

(24) "Endorsement Code" means an identifying color, text or mark on the ATV Safety Education Card that indicates the operator meets or exceeds OPRD's minimum standards in an approved hands-on ATV evaluation program.

(25) "Equivalency Exam" means a comprehensive written examination created by OPRD to provide either Class I or Class III operators, who are at least 16 years of age and have five or more years operating a Class I or a Class III vehicle, the opportunity to meet the minimum standard of ATV safety education competency.

(26) "Evaluation Course" means a course that measures the ATV operator's ability to demonstrate control of an ATV.

(27) "Grant Agreement" means an agreement between OPRD and a project sponsor describing the terms and conditions of a project and its associated grant of funds.

(28) "Grant Application" means the form and its format as developed by OPRD that the project sponsor uses to request ATV grant funds.

(29) "Hands-on Training" means any OPRD-approved evaluation course offered by an OPRD-approved course provider.

(30) "Hardship Status" means a situation or condition that prevents an individual from taking the ATV safety internet course. A hardship situation may allow an individual to use a correspondence course and self-test provided by OPRD. An individual must submit a written request for hardship status. The OPRD Director or designee has the authority to grant or deny hardship status.

(31) "Instruction Permit" is a provisional permit issued by OPRD to youth under the age of 16 upon successful completion of the OPRD internet course.

- (32) "Internet Course" means an OPRD-approved course of instruction that is offered through the internet.
- (33) "Law Enforcement Services" means law enforcement services performed by certified personnel and the necessary items to perform their duties.
- (34) "Minimum Standards of ATV Safety Education Competency" means a standard of proficiency established by OPRD that determines whether an applicant for a Class I, III, or IV ATV Safety Education Card has met or exceeded the requirements of an ATV safety course.
- (35) "Notice to Proceed" means the notification from OPRD that the Director or designee and the project sponsor have signed the grant agreement authorizing the project.
- (36) "OHV" means Off Highway Vehicle, also called ATV.
- (37) "Operations and Maintenance" means the preservation, rehabilitation, restoration, operation and upkeep of the facilities, riding areas, and equipment, including the purchase of equipment necessary to perform these functions.
- (38) "OPRD" means the Oregon Parks and Recreation Department.
- (39) "Personal Property" means tangible property other than land: movable property including but not limited to items such as an ATV, trail repair equipment, or other movable property purchased through the ATV Grant Program.
- (40) "Planning" means the research, design, engineering, environmental, and site survey of ATV recreation areas, trails, or facilities.
- (41) "Project Sponsor" means the recipient of the grant funds and the responsible party for implementation of the project.
- (42) "Public Lands" includes publicly and privately-owned land that is open to the general public for the use of all-terrain vehicles.
- (43) "Real Property" means immovable property: land together with all the property on it that cannot be moved, together with any attached rights.
- (44) "Rider Fit" means the minimum physical size requirements that a Class I ATV operator under 16 years of age must meet in relationship to the vehicle to be operated as established by OPRD and described in OAR 736-004-0115.
- (45) "Successor" means a governmental entity that has agreed to accept the terms and conditions of the project sponsor's responsibilities as contained in the project sponsor's grant agreement and grant application should the project sponsor cease to exist; for example, if a club or non-profit organization should dissolve or disband. The successor shall agree to operate the project continuously for the public

benefit and recreational purposes identified in the grant agreement and the grant application. If OPRD is a successor under OAR 736-004-0025(1)(c), OPRD may operate, sell, or qualify another successor to the project.

(46) "Sustainability" means using, developing, protecting, and managing the resource in a manner that enables people to meet current and future generation needs from the multiple perspective of environmental, economic, and community objectives.

(47) "Temporary ATV Safety Education Card" is a document issued by OPRD or an approved course provider allowing the bearer to operate a Class I, III, or IV ATV in Oregon for a period of time not to exceed 30 days.

STATUTORY/OTHER AUTHORITY: ORS 390.180, 390.585

STATUTES/OTHER IMPLEMENTED: ORS 390.180

