

323 CMR: OFFICE OF LAW ENFORCEMENT

323 CMR 3.00: THE USE OF RECREATION VEHICLES AND SNOW VEHICLES

Section

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3.01: Purpose and Scope

The purpose and scope of 323 CMR 3.00 is to implement and enforce the provisions of M.G.L. c. 90B, §§ 20 through 35. The purposes of 323 CMR 3.00 are to protect the public welfare and safety, to prevent damage to private and public lands caused by the inappropriate use of snow vehicles and recreation vehicles, to promote voluntary compliance with 323 CMR 3.00, and when necessary to deter noncompliance, through fines and penalties. The Office of Law Enforcement intends to enhance, through 323 CMR 3.00, its ability to facilitate the safe and appropriate use of recreation and snow vehicles.

3.02: Definitions

All-terrain Vehicle means a motorized recreation vehicle designed or modified for travel on four low pressure tires and having a seat designed to be straddled by the operator and handlebars for steering control.

Clearly Visible for the purposes of M.G.L. c. 90B, § 22 and 323 CMR 3.05(1), means that the registration number can be viewed and read from either side of the snow machine or recreation vehicle and is not obstructed by the operator or vehicle equipment.

Cowling for the purposes of M.G.L. c. 90B, § 22 and 323 CMR 3.05(1), means the forward portion of a snow machine or recreation vehicle, usually of fiberglass or similar material, surrounding the motor.

Dealer means any person, firm, corporation or entity engaged in the business of buying, selling or exchanging recreation vehicles, snow vehicles, or both at an established or permanent place of business in the Commonwealth, with each such place maintaining a sign conspicuously displayed showing the name of the dealership and indicating that recreation vehicles or snow vehicles may be purchased at such place, so that it may be located and identified as a recreation vehicle or snow vehicle dealer by the public.

Directly Supervised means the supervising adult, 18 years of age or older, shall be sufficiently close to the operator at all times that the operator's vehicle is in operation, such that a reasonable person acting as supervisor under the totality of the circumstances including, but not limited to, vehicle and ambient noise, the landscape, topography and geography of the location, and the operator's wearing of protective headgear, would reasonably believe that he or she is maintaining visual contact and verbal communication with the operator.

Director means the Director of the Office of Law Enforcement or his designee.

Dirt Bike means a recreation vehicle that is a lightweight motorcycle, equipped with two in-line wheels, designed for operation on unpaved surfaces, dirt roads, and trails.

3.02: continued

Express or Implied Consent of Said Manufacturer or Dealer for the purpose of M.G.L. c. 90B, § 22, means that the recreation vehicle or snow vehicle is operated solely for the purpose of testing or demonstration directly related to the sale of such particular vehicle or a substantially similar vehicle; that a representative of the manufacturer or dealer other than the prospective purchaser(s) is present throughout such testing or demonstration, or that such consent is stated in writing and is carried on the person and shall include without limitation the name of the manufacturer or dealer, the name of the recipient of the consent, the registration numbers of the vehicle and the date of the consent provided that no such consent may be granted for a period of greater than 24 hours.

Law Enforcement Officer means the director, a deputy director of enforcement, a chief of enforcement, a deputy chief of enforcement, an environmental police officer and a deputy environmental police officer of the office of environmental law enforcement, the registrar or an authorized agent thereof, a police officer, a member of the state police, a city or town police officer or an employee of the commonwealth having police powers on public lands.

Municipal Permitting Authority means the chief of a municipal police department or their designee or the municipal official responsible for public safety.

Nighttime means that period of time from sunset to sunrise as determined by the chart in 323 CMR 2.02 under the definition of nighttime in 323 CMR 2.00: *The Use of Vessels* affecting motorboats and boating.

Office means the Office of Law Enforcement, also known as the Massachusetts Environmental Police.

Operate means to ride in or on and control the operation of, or to maintain, suffer, supervise or permit the operation of, or to push a snow vehicle or a recreation vehicle.

Recreation Utility Vehicle or Utility Vehicle means a motorized flotation tire vehicle with not less than four and not more than six low pressure tires that is limited in engine displacement to less than 1,500 cubic centimeters and in total dry weight to not more than 1,800 pounds and that has a seat that is of bench design, not intended to be straddled by the operator, and a steering wheel for control.

Recreation Vehicle or Off-highway Vehicle means any motor vehicle designed or modified for use over unimproved terrain for recreation or pleasure while not being operated on a public way as defined in M.G.L. c. 90 including, but not limited to, all-terrain vehicles, off-highway motorcycles, dirt bikes, recreation utility vehicles and all registered motor vehicles while not being operated on a public way as defined in M.G.L. c. 90; provided, however, that recreation vehicles and off-highway vehicles operated exclusively for agricultural, forestry, lumbering or construction purposes shall not be subject to M.G.L. c. 90B and it shall be an affirmative defense that such vehicle was being operated for such purposes at the time of an alleged violation of M.G.L. c. 90B.

Snow Vehicle means a motor vehicle designed to travel over ice or snow, having a curb weight of not more than 453 kilograms or 1,000 pounds, driven by track or tracks in contact with the snow or ice and steered by a ski or skis in contact with the snow or ice.

Unsafe Condition for the purposes of 323 CMR 3.06 means:

- (a) the recreation or snow vehicle is not displaying lights at nighttime;
- (b) the recreation or snow vehicle has a fuel leakage;
- (c) the person operating the recreation or snow vehicle or each person aboard such vehicle is not wearing the protective headgear required by M.G.L. c. 90B, § 26;
- (d) the operator is operating underage in violation of 323 CMR 3.03(1).
- (e) the operator is operating under the influence of intoxicating liquor or narcotic drugs, barbiturate or marijuana;
- (f) the recreation or snow vehicle is being used in a manner which presents a substantial risk of injury or loss of life;

3.02: continued

- (g) the recreation vehicle is not equipped with a spark arrestor;
- (h) the recreation vehicle or snow vehicle is being operated on a way as defined in M.G.L. c. 90, § 1.

3.03: Operation

(1) Age Limits and Engine Capacity.

- (a) No person younger than 18 years of age shall operate a recreation vehicle unless he has successfully completed a recreation vehicle safety and responsibility course approved by the Director. Proof of course completion shall be carried on the person when operating such recreation vehicle. A parent or legal guardian of an operator of a recreation vehicle younger than 16 years of age shall participate in at least one session of the recreation vehicle safety and responsibility course or as required by the director.
- (b) No person younger than 14 years of age shall operate a recreation utility vehicle or an all terrain vehicle, except as provided in 323 CMR 3.03(1)(e).
- (c) A person between 14 and 16 years of age may operate an all-terrain vehicle or recreation utility vehicle with an engine capacity equal to or less than 90 cubic centimeters if directly supervised by a person 18 years of age or older.
- (d) No person between 14 and 16 years of age shall operate an all-terrain vehicle or recreation utility vehicle with an engine capacity greater than 90 cubic centimeters.
- (e) A person, between the ages of ten and 14, may operate while directly supervised a recreation vehicle or snow vehicle in preparation for, or while a participant in, a sanctioned race, rally or organized event which is supervised by a person aged 18 or older and which has been authorized or approved by a municipal permitting authority. A person between ten and 14 years of age may not operate an all-terrain vehicle or recreation utility vehicle with an engine capacity greater than 90 cubic centimeters.
- (f) No person younger than ten years of age shall operate a snow vehicle or recreation vehicle except that:
 - 1. a person under ten years of age may operate an age and size appropriate dirt bike while directly supervised in preparation for, or while a participant in, a sanctioned race, rally or organized event which is supervised by a person aged 18 or older and which has been authorized or approved by a municipal permitting authority. When preparing for such race, rally or organized event, operation by a person under ten years of age shall be limited to private property.
 - 2. a person under ten years of age may operate an age and size appropriate snow vehicle while directly supervised on land on which the operator is domiciled, but in no circumstance with a stock engine capacity greater than 150 cubic centimeters.
- (g) No person aged 18 years of age or older shall knowingly permit another, who is younger than 18 years of age, to operate a snow vehicle or recreation vehicle in his custody or under his control in violation of M.G.L. c. 90B.
- (h) Any person 18 years of age or older with custody or control of a snow vehicle or recreation vehicle, who knowingly permits another, who is younger than 18 years old, to operate such vehicle shall be held liable, jointly and severally with the operator, for any damage or injuries caused by such operator's operation of the vehicle and for any fines, penalties or restitution resulting therefrom.

(2) Property Owner Permission.

- (a) No person shall operate a snow vehicle or a recreation vehicle on privately-owned property, unless:
 - 1. the operator is the owner or lessee or an immediate family member of the owner or lessee of the property;
 - 2. the operator has in his possession either a document, signed by the owner or lessee of such property or his agent, authorizing the operation of such a vehicle on the property by the operator or valid proof of current membership in a club, association or other organization to which express authorization for the operation of such vehicles on the property has been granted; provided, however, that such operation shall be consistent with the express authorization granted and any restrictions imposed therewith; or
 - 3. the owner or lessee of the property has designated the area for use by such vehicles by posting reasonable notice of such designation in a manner approved by the director.

3.03: continued

(b) No person shall operate a snow vehicle or recreation vehicle on publicly-owned property except on trails marked and designated for use by such vehicles, or without the express permission of the owner.

(3) Distance from Residences. No person shall operate a snow vehicle or recreation vehicle within 150 feet of an occupied residence without the permission of the owner, his or her agent or lessee of such residence, except in cases of emergency, when directly departing or returning to such residence or when operating on the property of another for which permission has been granted. Permission may be given to an individual, club, association or other organization.

(4) Speed. No person shall operate a snow vehicle or recreation vehicle at a speed greater than is reasonable, prudent, proper and safe under all the existing circumstances.

(5) Passing. The operator of a snow vehicle or recreation vehicle, when approaching a skier, snowshoer, hiker or other foot traveler or a horseback rider, shall immediately slow his vehicle to minimum safe operating speed, shall give such person the right of way, shall not pass until it can be accomplished with complete safety, and shall not accelerate the vehicle until there is a reasonable distance of not less than 50 feet from such person. Wherever possible, all snow and recreation vehicles shall keep to the right side of trails.

(6) Snow Cover. No person shall operate a snow vehicle on any public land where such operation is otherwise permitted by the agency in charge thereof, unless such land is covered by snow to a minimum average depth of four inches of packed snow or such other depth as is determined by the person in charge of said land or his designee to be sufficient to preserve the ground cover.

(7) Protection of Property. No person shall operate a snow vehicle or a recreation vehicle in a manner that causes damage to public or private property including, but not limited to, lands owned or managed by the department of conservation and recreation or the division of fisheries and wildlife, wetlands or other waters of the commonwealth, priority habitats delineated as such by the division of fisheries and wildlife pursuant to M.G.L. c. 131A, lands used for public water supply purposes or historic or archaeological sites. The operator of a snow vehicle or recreation vehicle when on land of another shall not, without the permission of the owner, remove or deface any sign, vegetation, poster, building or other property, or remove any barrier or alter any fence without restoring or replacing said barrier or fence.

(8) Protection of Wildlife and Habitat.

(a) No person shall operate a snow vehicle or recreation vehicle in a manner so as to harass, chase or otherwise harm deer or any other wildlife or operate said vehicle within 300 yards of a deer yard. The Director of the Division of Fisheries and Wildlife may designate and post, on public or private land, deer wintering areas or other wildlife protection areas and no snow or recreation vehicle shall be operated within those areas.

(b) No person shall operate a snow vehicle or recreation vehicle in a reforested or planted area in a manner that causes damage to growing stock.

(c) No person shall operate a snow vehicle or a recreation vehicle in a manner that causes damage to public or private property.

(9) Protection of Ocean Beaches and Sand Dunes. No person shall operate a snow vehicle or recreation vehicle on an ocean beach or sand dune in a manner so as to destroy, damage or breakdown any beach, dune or dune grass.

(10) Failure to Stop. No person operating or in control of a snow vehicle or a recreation vehicle shall refuse to stop such a vehicle after having been requested or signaled to do so by a law enforcement officer. No such person shall refuse to give his correct name, address, and registration number to such officer.

(11) Firearms. No person shall carry a firearm, rifle or shotgun in or on a snow vehicle or recreation vehicle or on a trailer or sled attached thereto unless such firearm, rifle or shotgun is unloaded and in an enclosed case. 323 CMR 3.00 shall not apply to a law enforcement officer or to a paraplegic as provided in M.G.L. c. 131, § 65.

3.03: continued

(12) Registration.

- (a) No person shall operate a snow vehicle or a recreation vehicle unless the vehicle has been registered in accordance with M.G.L. c. 90B and a registration number assigned by the Director is displayed on the vehicle.
- (b) No person shall operate a snow vehicle or recreation vehicle after the registration has been suspended or revoked.

(13) Noxious Fumes or Excessive Noise.

- (a) No snow vehicle or recreation vehicle shall be operated which emits noxious fumes or makes unusual or excessive noise using test procedures established by the Society of Automotive Engineers under Standard J1287 JUL98.
- (b) No snow vehicle or recreation vehicle manufactured on or after January 1, 1998, shall be sold, offered for sale or operated that produces a sound pressure level of more than 96 decibels when measured from a distance of 20 inches.
- (c) No snow vehicle or recreation vehicle manufactured prior to January 1, 1998, shall be offered for sale or operated that produces a sound pressure level of more than 101 decibels when measured from a distance of 20 inches.

3.04: Towing

(1) Authorization. If deemed necessary for the protection of public safety by any person authorized to enforce M.G.L. c. 90B, §§ 20 through 35 such person may cause a snow vehicle, recreation vehicle or unregistered motor vehicle to be moved by placing such vehicle in tow or by directing that a towing service move such vehicle:

- (a) when the operator of the snow vehicle or recreation vehicle willfully neglects or refuses to obey the order of a person authorized to enforce M.G.L. c. 90B, §§ 20 through 35;
- (b) when the operator of a snow vehicle or recreation vehicle is placed under arrest;
- (c) whenever a recreation vehicle, snow vehicle or motor vehicle is abandoned; or
- (d) whenever the use of such vehicle has been terminated for an unsafe condition under 323 CMR 3.06.
- (e) whenever the law enforcement officer has determined that the snow vehicle or recreation vehicle, or operator thereof, is in noncompliance with M.G.L. c. 90B or 323 CMR 3.00.

(2) Liability. In the event a vehicle is towed pursuant to 323 CMR 3.04(1) or otherwise is lawfully towed, any person authorized to enforce M.G.L. c. 90B, §§ 20 through 35 shall not be liable for any act or omission in providing or arranging such towage or other assistance unless such person acts recklessly or with gross negligence.

(3) Disposition. If a vehicle is towed pursuant to 323 CMR 3.00 the owner of such vehicle shall be liable for the cost of such tow and such vehicle shall be held and disposed of pursuant to procedures prescribed by M.G.L. c. 135.

(4) Presumption. For purposes of 323 CMR 3.00 a snow vehicle or recreation vehicle shall be presumed to be abandoned if left on property of another without consent and unattended for 72 hours or more. The last owner of record of a recreation or snow vehicle at the time it was abandoned shall be presumed to be the person who abandoned the same or caused or procured its abandonment unless such vehicle has been reported as stolen.

3.05: Registration Numbers and Decal

(1) All valid snow and recreation vehicle registrations made prior to February 1, 2011 shall have registration numbers and decals displayed in the following manner:

- (a) Registration Decal Placement - Snowmobile. For all snow vehicles, the registration number assigned by the Director shall:
 - 1. Be displayed on a decal provided by the Director;
 - 2. Such decal shall be affixed to the left side cowling of the snow vehicle or on the lower left side of the windshield, so as to be clearly visible; and
 - 3. The vehicle's owner shall also display in the upper left hand corner of such decal, the current validation sticker.

3.05: continued

(b) Registration Decal Placement - Recreation Vehicles. For all recreation vehicles, the registration number assigned by the Director shall be displayed on a plate provided by the Director and such plate shall be displayed on the back of such vehicle. In addition to displaying such plate, the owner of such vehicle shall display in the upper left corner of such plate the current registration decal of Division of Law Enforcement.

(2) All snow and recreation vehicle registrations made on or after February 1, 2011 including registration renewals of registrations made prior to February 1, 2011 shall have registration numbers and decals displayed in the following manner:

(a) Registration Number Placement. The registration number assigned to a snow vehicle or a recreation vehicle shall be painted or affixed by means of a decal or sticker firmly attached to both sides of the cowling of the vehicle and located so that both are clearly visible and not obstructed. Placement of registration numbers on dirt bikes is permissible on front fork tubes, fuel tank, or front fender so that they are clearly visible and not obstructed.

(b) Registration Number Size and Visibility. The registration number assigned to a snow vehicle or a recreation vehicle shall be not be less than three inches in height and not less than one-half inch in width and shall be in a color that is in distinct contrast to the background to which the number is applied. The registration number shall be maintained in a legible condition at all times.

(c) Expiration Decal. The expiration decal provided by the Director when the recreation vehicle or snow vehicle has been duly registered in accordance with 323 CMR 3.00, shall be affixed to the registration number sticker and shall be displayed on the left side of the snow vehicle or recreation vehicle.

3.06: Termination of Use

Any officer authorized to enforce M.G.L. c. 90B, §§ 20 through 35 who observes a snow vehicle or recreation vehicle being used in an unsafe condition, as defined in 323 CMR 3.02, and which presents a substantial risk of injury or loss of life by the use of such vehicle, may terminate such use and direct the operator to take whatever immediate and corrective steps are necessary for the safety of the operator, any passengers, and the public, including, but not limited to, directing the operator to cease operation until operation is deemed to be safe.

3.07: Equipment

(1) Lights. No person shall operate a snow vehicle or recreation vehicle without displaying one or more lighted headlights and a lighted taillight during the nighttime or at any time when, due to insufficient light or unfavorable atmospheric conditions caused by snow, fog or otherwise, other persons, vehicles, or other objects are not clearly discernible for a distance of 300 feet.

(2) Brakes. No person shall operate a snow vehicle or recreation vehicle that does not have brakes adequate to control the movement of the vehicle and to stop and hold it under any condition of operation.

(3) Muffler. No person shall use a muffler cut-out, by-pass, straight pipe or similar device on a snow vehicle or recreation vehicle.

(4) Spark Arrestor. No person shall operate a recreation vehicle other than a snowmobile unless it is equipped with a suitable spark arrestor.

(5) Helmet. No person shall operate or ride in or on a snow vehicle or a recreation vehicle or ride in or on a sled, inflated tube or similar article attached to and pulled by such vehicle, without wearing protective headgear. Such headgear shall conform to minimum standards for construction and performance as the registrar of motor vehicles may prescribe.

3.08: Dealers

(1) Permits. Every dealer in recreation vehicles and/or snow vehicles shall be permitted by the Director. No dealer in recreation vehicles and/or snow vehicles shall sell or offer for sale such a vehicle unless holding a permit from the Director.

3.08: continued

- (2) Forms. A dealer shall apply for a permit on forms provided and filed with the Director and by paying the requisite fee.
- (3) Display. The permit issued by the Director shall be conspicuously displayed by the dealer at its place of business.
- (4) Information. No dealer shall sell a recreation vehicle or snow vehicle without securing from such person the name and current address of the owner of the vehicle on a form provided by the Director.
- (5) Notice. Within 30 days of the sale of a snow vehicle or recreation vehicle by a dealer, such dealer shall provide the Director with the name and address of the purchaser of such vehicle on a form provided by the Director.
- (6) Literature. At the time of sale of any recreation vehicle or snow vehicle by a dealer such dealer shall deliver to the purchaser a copy of any appropriate informational literature or brochure provided by the Division to the dealer for such purpose.
- (7) Suspension or Revocation. Failure to comply with any provision of 323 CMR 3.08 may subject the dealer's permit to suspension or revocation by the Director, any suspension of revocation shall be in accordance with the provisions of M.G.L. c. 30A.

3.09: Local Laws

Nothing in 323 CMR 3.00 shall prohibit a city or town from adopting more stringent bylaws or ordinances, or public agencies from adopting more stringent regulations concerning land under such agency's management. Nothing in 323 CMR 3.00 shall supersede any limitations on use contained in M.G.L. c. 90B.

3.10: Penalties

- (1) For purposes of M.G.L. c. 90B, § 34 any violation of 323 CMR 3.03 shall be deemed a violation of M.G.L. c. 90B, § 26.
- (2) For purposes of M.G.L. c. 90B, § 34 any violation of 323 CMR 3.05 shall be deemed a violation of M.G.L. c. 90B, § 22.
- (3) For purposes of M.G.L. c. 90B, § 34 any violation of 323 CMR 3.07 shall be deemed a violation of M.G.L. c. 90B, § 24.
- (4) For purposes of M.G.L. c. 90B, § 34 any violation of 323 CMR 3.08 shall be deemed a violation of M.G.L. c. 90B, § 22.

REGULATORY AUTHORITY

323 CMR 3.00: M.G.L. c. 90B, § 29.

NON-TEXT PAGE