

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

GAME COMMISSION

[25 PA. CODE CH. 93]

[58 PA. CODE CHS. 135 AND 147]

Hunting and Trapping; Special Permits

Triennial Review of Water Quality Standards; Public Comment Period Extension and Additional Public Hearing

By this notice, the public comment period on the proposed rulemaking published at 47 Pa.B. 6609 (October 21, 2017) is extended to February 16, 2018. In addition to the public comment period extension, the Environmental Quality Board (Board) will be holding one additional public hearing.

The hearing will be held beginning at 2 p.m. on the following date:

January 30, 2018 Department of Environmental
Protection
Southeast Regional Office
Delaware and Schuylkill Conference
Rooms
2 East Main Street
Norristown, PA 19401

Persons wishing to present testimony at the hearing are requested to contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526 at least 1 week in advance of the hearing to reserve a time to present testimony. Testimony is limited to 5 minutes for each witness. Witnesses are requested to submit three written copies of their verbal testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs.

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding the proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by February 16, 2018. Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>. Comments may also be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission. If an acknowledgment of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

PATRICK McDONNELL,
Chairperson

[Pa.B. Doc. No. 17-2171. Filed for public inspection December 29, 2017, 9:00 a.m.]

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its June 26, 2017, meeting to amend §§ 135.2 and 135.48—135.55 and add Chapter 147, Subchapter AA (relating to disabled person access permit) to permit the use of wheelchairs anywhere persons may lawfully walk, define “mobility devices,” provide for the use of mobility devices and motor vehicles on suitable designated routes on State game lands and define the parameters of acceptable use of mobility devices on State game lands to avoid or minimize damage to wildlife resources or conflicts with other lawful users of the State game lands system.

This proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for this proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposed rulemaking was made public at the September 26, 2017, meeting of the Commission. Comments can be sent until January 26, 2018, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Purpose and Authority

The Commission recently conducted an extensive review of public access to State game lands by persons with mobility challenges. This evaluation included various public meetings and requests for public comment. Based upon the results of this evaluation, the Commission is seeking improvements that will enhance public access to its State game lands by persons with mobility disabilities while simultaneously protecting the wildlife resources and avoidance or minimization of conflicts with other lawful users of the State game lands system. To reach this purpose, the Commission is proposing to amend §§ 135.2 and 135.48—135.55 and add Chapter 147, Subchapter AA. Among other things, these proposed amendments will permit the use of wheelchairs anywhere persons may lawfully walk, define “mobility devices,” provide for the use of mobility devices and motor vehicles on suitable designated routes on State game lands and define the parameters of acceptable use of mobility devices on State game lands to avoid or minimize damage to wildlife resources or conflicts with other lawful users of the State game lands system.

Section 721(a) of the code (relating to control of property) provides “[t]he administration of all lands or waters owned, leased or otherwise controlled by the commission shall be under the sole control of the director, and the commission shall promulgate regulations consistent with the purpose of this title for its use and protection as necessary to properly manage these lands or waters.” Section 2901(b) of the code (relating to authority to issue permits) provides “the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued.”

The amendments to §§ 135.2 and 135.48—135.55 and the addition of Chapter 147, Subchapter AA are proposed under these authorities.

2. *Regulatory Requirements*

This proposed rulemaking will amend §§ 135.2 and 135.48—135.55 and add Chapter 147, Subchapter AA to permit the use of wheelchairs anywhere persons may lawfully walk, define “mobility devices,” provide for the use of mobility devices and motor vehicles on suitable designated routes on State game lands and define the parameters of acceptable use of mobility devices on State game lands to avoid or minimize damage to wildlife resources or conflicts with other lawful users of the State game lands system.

3. *Persons Affected*

Persons with mobility disabilities who wish to access State game lands within this Commonwealth will be affected by this proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in an increase in cost and paperwork.

5. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. *Contact Person*

For further information regarding this proposed rulemaking, contact Randy S. Shoup, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: 48-423. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 135. LANDS AND BUILDINGS

Subchapter A. GENERAL PROVISIONS

§ 135.2. Unlawful actions.

In addition to the prohibitions in the act on lands, waters or buildings under Commission ownership, lease, agreement, control or jurisdiction, it is unlawful, except with the permission of the person in charge of the lands, or the written permission of the Director to:

* * * * *

(3) Travel on lands by means of vehicle or conveyance propelled by motorized power. [**This prohibition does not include the travel by individuals permanently confined to a wheelchair propelled by electric power obtained from batteries. Individuals desiring to hunt from an electric powered wheelchair shall have a disabled person permit under section 2923 of the act (relating to disabled person permits). This provision is not intended to restrict travel by certain devices used for persons with mobility disabilities as specifically authorized under Subchapter C (relating to State game lands).**]

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Subchapter C. STATE GAME LANDS

§ 135.48. [**State game lands roads open to vehicular traffic for disabled persons.**] Purpose and scope.

[(a) *Vehicular traffic permitted.* Vehicular traffic will be permitted on designated roads on State game lands for persons issued a Disabled Persons Permit under section 2923(a) of the act (relating to disabled person permits). State game lands roads open to vehicular traffic for disabled persons will be designated by the Director. The Commission will make a list of these open roads available to the permittee.

(1) Roads designated for limited open travel will be open from 14 days prior to the opening day of archery season to the closing day of the muzzleloader/archery season. Any travel authorized by this section is subject to further limitation based upon existing weather or road conditions as indicated by conspicuous signage or postings.

(2) A permittee may be accompanied by only one person, and before participating in hunting in any manner that person shall be in possession of a valid Pennsylvania hunting or furtakers license. The permittee may also be accompanied by one or more of the permittee’s children who hold a valid junior hunting or furtakers license.

(b) *Additional reference.* See § 135.2 (relating to unlawful acts).]

It is the policy of the Commission to promote public access to State game lands for persons with mobility disabilities in compliance with the United States Department of Justice regulations in 28 CFR Part 35 (relating to nondiscrimination on the basis of disability in state and local government services). Sections 135.49—135.55 set forth how, where and when persons with mobility disabilities may access State game lands with powered wheelchairs, powered mobility devices and motor-vehicles.

§ 135.49. [**Scope.**] Definitions.

[Sections 135.50—135.56 regulate the use of ATVs on State game lands by disabled persons.]

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

ATV—All-terrain vehicle—A device meeting the definition in 75 Pa.C.S. § 7702 (relating to definitions).

Designated route—

(i) State game land access or maintenance roads and trails that have been designated by the Director to be open for travel by persons with mobility disabilities using certain powered vehicles and conveyances.

(ii) The term does not include roads that are open to motor vehicle access by the general public.

Disability—A person’s physical or mental impairment that substantially limits his mobility.

Disabled person access permit—A permit issued by the Commission under Chapter 147, Subchapter AA (relating to disabled person access permit) to

authorize persons with mobility disabilities to utilize mobility devices and motor vehicles to access designated routes on State game lands.

Mobility device—A power-driven device, other than a wheelchair, that is used by persons with mobility disabilities for the purpose of locomotion. The term includes ATVs, golf carts, Segways® and other mobility devices designed to operate in areas without defined pedestrian routes, regardless of whether it is designed primarily for use by persons with mobility disabilities.

Transport vehicle placard—A placard provided by the Commission to disabled person access permit holders that must be displayed on the dashboard or in a window of the transport vehicle.

Universal access symbol—A symbol displaying a wheelchair, generally blue and white, that is widely recognized as evidence that the person who is displaying the symbol is disabled.

Wheelchair—

(i) A manually-operated or power-driven device designed primarily for use by individuals with mobility disabilities for the main purpose of indoor or outdoor locomotion, or both.

(ii) The term includes power-driven scooters.

(iii) For the purposes of this subchapter, a wheelchair may not be construed as a mobility device.

§ 135.50. [Definitions.] State game lands open to wheelchair access.

[The following words and terms, when used in this section and §§ 135.49 and 135.51–135.55, have the following meanings, unless the context clearly indicates otherwise:

ATV—All-terrain vehicle—

(i) A Class I ATV as defined in 75 Pa.C.S. § 7702(1) (relating to definitions), or a motorized off-highway vehicle 58 inches or less in width, having a dry weight of 900 pounds or less traveling on four or more low-pressure tires and having a bench seat.

(ii) The term does not include a motorized off-highway vehicle excluded from the definition of the term “all-terrain vehicle or ATV” under 75 Pa.C.S. § 7702.

Designated roads—State game land access or maintenance road that have been declared open to disabled persons using ATV’s by the Director.

Permitted person—A person who qualifies for and is in possession of a permanent Disabled Person Permit to use a vehicle as a blind issued by the Commission and who possesses a valid hunting license.

Universal access symbol—A placard on which is displayed a wheelchair, generally blue and white in color that is recognized worldwide as evidence that the person who is displaying the symbol is disabled.

Towing vehicle placard—A placard provided by the Commission to permitted persons that shall be displayed on the dashboard or in a window of a vehicle.]

(a) Persons with mobility disabilities may utilize wheelchairs to access any portion of State game lands where pedestrian foot travel is authorized. In

the event that the Commission restricts pedestrian foot travel in any location through posted signage or otherwise, wheelchair access is also restricted.

(b) Access to State game lands under this section does not require a permit issued under section 2923 of the act (relating to disabled person permits) or Chapter 147, Subchapter AA (relating to disabled person access permit).

(c) Notwithstanding the prohibitions in section 2308(a)(7) of the act (relating to unlawful devices and methods), persons with mobility disabilities may utilize wheelchairs to locate or flush game or wildlife.

(d) Notwithstanding the prohibitions in section 2503 of the act (relating to loaded firearms in vehicles), persons with mobility disabilities may possess loaded firearms or other devices on or in a wheelchair, including when the wheelchair is in motion.

§ 135.51. Designated [roads on State game lands open to ATVs] routes open to mobility devices and motor vehicles.

[State game land roads that will be open for use by permitted persons operating ATVs will be designated by the Director. The Commission will make a list of these open roads available to the permittee, and will provide the list by mail to a permitted person that has applied for a towing vehicle placard.

(1) The Director, or a designee, may close State game lands or portions thereof, to recreational or other uses, when the specified uses may be or has become detrimental to those lands or the flora or fauna thereon, or where the uses conflict with legal hunting, furtaking or fishing activities or the Commission’s management or administration of State game lands. The closure may be seasonal or year-round and shall remain in effect until the Director, or a designee, removes the restrictions.]

(a) Persons in possession of a valid disabled person access permit issued under Chapter 147, Subchapter AA (relating to disabled person access permit) may utilize mobility devices and motor vehicles to access designated routes on State game lands that have been approved by the Director. Designated routes will be classified to authorize mobility device and motor vehicle combined access or mobility device only access, as determined by route selection assessment criteria approved by the Director.

[(2)] (b) Designated [roads shall] routes will be open for use by [permitted] persons with disabled person access permits from 14 days prior to the opening day of the archery season to the closing day of the late muzzleloader/archery season and during the spring turkey season. Travel authorized by this section is subject to further limitation based upon existing weather or road conditions or the need for emergency or administrative closure, as indicated by conspicuous signage or postings.

§ 135.52. Towing vehicle placard for persons using mobility devices.

[(a) A permitted person may apply for a towing vehicle placard on a form provided by the Commission.

(b) The towing vehicle placard shall be displayed on the dashboard or in a window of the towing vehicle when the towing vehicle is parked on State game lands.]

A vehicle used to transport a mobility device for use on designated routes must be marked with a transport vehicle placard issued by the Commission if the transport vehicle is parked on State game lands. The transport vehicle placard must be conspicuously displayed on the dashboard or in a window of the transport vehicle. A transport vehicle placard will be issued by the Commission upon issuance of a disabled person access permit issued under Chapter 147, Subchapter AA (relating to disabled person access permit).

§ 135.53. Operation of [ATVs on designated State game land roads by permitted persons] mobility devices and motor vehicles on designated routes.

[Permitted persons may operate an ATV on designated State game land roads under the following conditions:

(1) The ATV is operated at a speed not to exceed 10 mph.

(2) A universal access symbol for the disabled, at least 3 inches by 3 inches in size is displayed in a prominent place on the ATV while on State game lands.

(3) The ATV is registered with the Department of Conservation and Natural Resources and is displaying the valid registration plate as required under 75 Pa.C.S. §§ 7711.1 and 7711.2 (relating to registration of snowmobile or ATV; and limited registration of snowmobile or ATV).

(4) The ATV is equipped with a fully functional spark arrestor while operating on State game lands.]

Persons with a valid disabled person access permit issued under Chapter 147, Subchapter AA (relating to disabled person access permit) may operate mobility devices and motor vehicles on designated routes subject to all of the following conditions:

(1) *Safe operation.* Mobility devices and motor vehicles may not be operated on a designated route:

(i) In negligent disregard for the safety of persons or property.

(ii) In excess of 10 miles per hour on any designated route classified for mobility device and motor vehicle combined access.

(iii) In excess of 3 miles per hour on any designated route classified for mobility device only access.

(2) *Marking required.* Mobility devices operated on designated routes must be marked with a universal access symbol placard or sticker that is at least 3 inches by 3 inches in size and displayed in a conspicuous manner.

(3) *ATVs and snowmobiles as mobility devices.* An ATV or snowmobile used as a mobility device on a designated route must be registered with the Department of Conservation and Natural Resources and display the valid registration plate or registra-

tion decal as required under 75 Pa.C.S. §§ 7711.1 and 7711.2 (relating to registration of snowmobile or ATV; and limited registration of snowmobile or ATV).

(4) *Spark arrestors required.* Mobility devices powered by an internal combustion engine must be equipped with a fully functional spark arrestor while operating on a designated route.

(5) *Classification of designated route.* Mobility devices meeting the requirements of this subchapter may access designated routes classified for mobility device and motor vehicle combined access and mobility device only access. Motor vehicles meeting the requirements of this subchapter may access only designated routes classified for mobility device and motor vehicle combined access.

(6) *Limited deviation from designated route authorized.* Persons with a valid disabled person access permit issued under Chapter 147, Subchapter AA may traverse a maximum of 100 yards perpendicular to the nearest designated route road or trail edge to establish a hunting or trapping location, and may not traverse streams, springs, wet areas, food plots or other areas posted against travel.

(7) *Size, weight and noise limited.* Mobility devices may not exceed 65 inches in width and 1,200 pounds in weight. The noise level may not exceed 99 decibels when measured at 20 inches.

(8) *Loaded firearms.* Persons using mobility devices and motor vehicles on designated routes are subject to the restrictions on loaded firearms in, on or against a vehicle under section 2503 of the act (relating to loaded firearms in vehicles), except as may otherwise be authorized under section 2923 of the act (relating to disabled person permits).

§ 135.54. [Areas of operation and passengers.]
Transport of passengers limited.

[(a) A permitted person may traverse a maximum of 100 yards perpendicular from the nearest road edge to establish a hunting location but may not traverse streams, springs, wet areas or food plots or other areas posted against travel.

(b) When a permitted person is incapable of operating an ATV, the person may be accompanied by one other person who is the operator, if the ATV is designed to carry a passenger.

(c) Except as provided in subsection (b), a permitted person may not carry another person as a passenger on an ATV.]

A person with a valid disabled person access permit issued under Chapter 147, Subchapter AA (relating to disabled person access permit) who operates a mobility device or motor vehicle on a designated route may be accompanied by only one person in or on the mobility device or motor vehicle, provided the conveyance is designed to carry a passenger. The passenger shall be in possession of a valid Pennsylvania hunting or furtaking license, whichever is applicable to the season pursued, prior to participating in hunting or trapping activities. The person may also be accompanied by one or more youths, provided they possess a valid Pennsylvania junior hunting or furtakers license or applicable mentored youth hunting permit and the

conveyance is designed to carry passengers. When a permitted person is incapable of operating the mobility device or motor vehicle, the person may be accompanied by one other person who is the operator, if the mobility device or motor vehicle is designed to carry a passenger.

§ 135.55. [Penalties.] Unlawful acts; penalties.

It is unlawful to operate a mobility device, motor vehicle or other conveyance on State game lands outside of the authorizations in this subchapter. A person who violates a provision of this subchapter shall be subject to the penalties [as] provided in the act.

CHAPTER 147. SPECIAL PERMITS

(Editor's Note: The following subchapter is proposed to be added and printed in regular type to enhance readability.)

Subchapter AA. DISABLED PERSON ACCESS PERMIT

Sec.

147.1021. Purpose and scope.

147.1022. Eligibility and application.

147.1023. Disabled person access permits.

147.1024. Violations.

§ 147.1021. Purpose and scope.

This subchapter provides for disabled person access permits to be issued to eligible persons to authorize their holders to utilize mobility devices and motor vehicles to access designated routes on State game lands.

§ 147.1022. Eligibility and application.

(a) A disabled person access permit will only be issued to a person who provides satisfactory evidence of a mobility disability, which includes any of the following:

(1) A disability parking placard issued by the Department of Transportation (Department). This proof can be either the placard or an identification card issued by the Department documenting the issuance of a disability parking placard.

(2) A disability vehicle registration plate issued by the Department. This proof will be the vehicle registration card bearing a registration number beginning in "PD."

(3) A formal document issued by a state other than the Commonwealth, the District of Columbia, Puerto Rico, Guam, American Samoa, Virgin Islands, Trust Territory of the Pacific Islands and Northern Mariana Islands officially recognizing the existence of a mobility disability.

(4) A disabled person permit issued by the Commission under section 2923 of the act (relating to disabled person permits).

(5) A formal document issued by a medical doctor certifying that the applicant has a mobility disability.

(6) Other satisfactory evidence indicating that the applicant has a mobility disability.

(b) A state-issued proof of a mobility disability must be in the applicant's name and unexpired. If the state-issued proof of a mobility disability evidences an expiration date or the mobility disability is temporary in nature, the Commission will apply a corresponding expiration date to a permit issued under this subchapter.

(c) An application for a disabled person access permit issued under this subchapter shall be made on a form provided by the Commission.

(d) An application must include the name, customer identification number and contact information of the permit applicant.

(e) There is not a fee for a disabled person access permit.

§ 147.1023. Disabled person access permits.

A disabled person access permit issued under this subchapter authorizes the permittee to utilize mobility devices and motor vehicles to access designated routes on State game lands as set forth in Chapter 135, Subchapter C (relating to State game lands).

§ 147.1024. Violations.

The Director may deny, revoke or suspend a permit for a violation of this subchapter upon written notice to the permittee.

[Pa.B. Doc. No. 17-2172. Filed for public inspection December 29, 2017, 9:00 a.m.]