

BAD RIVER BAND OF LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS

CHIEF BLACKBIRD CENTER

P.O.Box 39 • Odanah, Wisconsin 54861

Resolution No. 11-15-16-725

Approving Technical Changes to the All Terrain Vehicle Registration, Safety and Operation Standards

WHEREAS, the Bad River Band of Lake Superior Tribe of Chippewa Indians is a federally recognized Indian tribe with a Constitution enacted pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. Sec. 476, and

WHEREAS, the Natural Resources Department, with approval by motion on October 25, 2016, distributed the proposed changes to Chapter 352 – All Terrain Vehicle Registration, Safety and Operation Standards for a fifteen (15) day comment period; and

WHEREAS, the Tribal Council finds the approval of the technical changes attached hereto as Exhibit "A" to be in the best interest of the Tribe;

NOW, THEREFORE, BE IT RESOLVED that the Tribal Council hereby:

1. Approves the technical changes to the All Terrain Vehicle Registration, Safety and Operation Standards as presented at this meeting and attached hereto as Exhibit "A."
2. Directs the Natural Resources Department to implement those procedures designed by the Chapter 352 Code to protect the environment and general safety of the public on the Bad River Reservation.

Certification

I, the undersigned, as Secretary of the Bad River Band of Lake Superior Tribe of Chippewa Indians, an Indian Tribe organized under Section 16 of the Indian Reorganization Act, hereby certify that the Tribal Council is composed of seven members, of whom 6 members, constituting a quorum, were present at a meeting hereof duly called, noticed, convened, and held on the 15 day of November, 2016; that the foregoing resolution was duly adopted at said meeting by an affirmative vote of 5 members, 0 against; and 0 abstaining, and that the said resolution has not been rescinded or amended.


RaeAnne Maday, Secretary
Bad River Tribal Council

CHAPTER 352 - ALL TERRAIN VEHICLE REGISTRATION, SAFETY AND OPERATION STANDARDS. (ATV)

SECTION 352.1 - PURPOSE AND APPLICABILITY

Section 352.1.1 - Purpose.

The purpose of this chapter is to provide for all ATV owner and operator safety, usage and registration, and to protect the environment and the general safety of the public on the Bad River Reservation.

Section 352.1.2 - Applicability.

Section 352.2 of this chapter shall apply to all Tribal member owners of ATV's located within the boundaries of the Bad River Reservation. All remaining sections of this ordinance shall apply to all owners and operators, whether Tribal members or non-members, within the boundaries of the Bad River Reservation.

SECTION 352.2 -REGISTRATION

Section 352.2.1 - Registration Required.

No tribal member shall operate, and no member who is an owner of an ATV shall give permission for the operation of any ATV, within the exterior boundaries of the Reservation unless the ATV is registered with the Bad River Natural Resources Department and displays registration decals pursuant to this Chapter or is exempt from registration as is provided at Section 352.2.2.

Section 352.2.2 - Exemptions.

An ATV is exempt from registration as is provided for at Section 351.2 if it:

- (a) Carries a valid registration from the State of Wisconsin;
- (b) Carries a valid registration from another recognized Reservation or from another State, province or Country, and such registration and identification is displayed on the ATV and it has not been on the reservation for more than 15 days;
 - (1) If any ATV is registered as provided in
 - (b) B. above, after 15 days within the exterior boundaries on the Reservation it just be licensed under this Chapter; or
- (c) Used exclusively for racing on a raceway facility.

Section 352.3 - Issuance of Certification of Registration and Decals.

- (a) The Department is authorized to draft appropriate application forms, registration forms and certificates and decals to carry out the purpose of this ordinance.
- (b) The Department is authorized to charge a fee that will cover the cost of assuring compliance with this ordinance both as to administration and enforcement. Such fee shall be set at \$5.00.
- (c) Upon receipt of a completed application form, and the required fee, the department shall issue to the applicant a registration certificate which will contain the name, address of the owner of the vehicle, the identification number from the vehicle and the registration number issued to that vehicle.
- (d) Each vehicle shall be issued two decals showing that it is registered, which shall state the expiration date for the registration.
- (e) If the registration certificate or decals are lost or destroyed, the owner of the ATV may apply

for a duplicate to be issued upon payment to the Department of the required fee of \$5.00.

(f) Whenever an ATV is junked, the owner shall return the Certificate of Registration to the Department clearly marked "JUNKED".

(g) All fees collected under this section shall be used to defray the administrative costs of operating the program, and for safety education of the ATV's.

Section 352.4 - Waiver of fees.

There is no fee for the issuance of a registration certificate to the Tribe, but the Tribe shall display such decals correctly on its vehicles.

Section 352.5 - Ownership Transfer of Vehicle.

(a) Upon transfer of ownership of an ATV for which a registration certificate has been issued by the Department, the seller shall at the time of sale deliver to the purchaser the current registration certificate.

(b) The purchaser shall complete an application for transfer of registration and cause it to be mailed or delivered to the Department within 10 days from the date of purchase. A transfer fee shall be charged by the Department. Such transfer fee shall be \$5.00.

Section 352.2.6 - Registration Period.

An ATV registration certificate is valid for two (2) years beginning the 1st of July. The registration period ends on 30 June, two years after issuance, and such expiration date shall be clearly stated on the decals.

Section 352.2.7 - Display of Registration Decals.

The owner of the ATV shall attach the registration decal to the ATV on the right and left side of the gasoline tank, and shall maintain the registration decals in a legible condition at all times.

Section 352.2.8 - Change of Address.

Whenever the owner of a registered ATV changes their address, they shall, within 15 days thereafter, notify the Department in writing of their new address and of the registration numbers on any vehicles registered under this Chapter. At the same time, they shall write their new address on their registration certificate.

SECTION 352.3 - RULES OF OPERATION

SECTION 352.3.1 General rules of Operation

(a) No person shall operate an ATV in the following manner or under the following circumstances.

(1) At the rate of speed that is unreasonable or improper under the circumstances.

(2) At any time and at any place within the Reservation boundaries at the speed of 55 miles per hour at any time or 40 miles per hour between sunset and sunrise.

(3) In any careless way so as to endanger the person or property of another.

(4) Without complying with all stop signs, yield signs or other regulatory signs that are located along ATV corridors that are open to public. On the private property of another without consent of the owner or lessee. Failure to post private property does not imply consent for ATV use.

- (5) Between the hours of 10:30 p.m. and 7 am when within 150 feet of a dwelling at the rate of speed exceeding 10 miles per hour or less.
- (6) On the frozen surface of public waters within 100 feet of a person not in or upon a vehicle or within 100 feet of a fishing shanty unless operated at the speed of 10 miles per hour or less.
- (7) On a recreation or play area, unless specifically designated by the Tribal Council for ATV recreational purposes, except for the purpose of serving the area, crossing at places where marked or after stopping and yielding the right-of-way.
- (8) On or across a cemetery, burial ground, school or church property without consent of the owner.
- (9) On Tribal lands without the consent of the tribal governing body or Indian owner. For the purposes of this paragraph, "Tribal lands" means lands owned by the United States and held for the use and benefit of the Bad River Tribe or individual Members and any lands owned by the Tribe or individual members. Failure to post Indian Lands does not imply for consent of ATV use. The Tribal Council by this Chapter hereby grants permission to Tribal Members to operate ATVs on lands owned in fee by the Tribe or held in trust for the Tribe unless otherwise posted, except for in Residential Areas between dwellings and across common areas.
- (10) ATVs may only be operated in residential areas outside roadways to gain immediate access to a dwelling or to exit from a dwelling to a roadway. ATVs shall not be operated between dwellings or across common areas unless on a posted and maintained trail or route.

SECTION 352.3.2 Trails

- (a) Operators of ATVs on any trails within the reservation boundaries shall operate the ATV in a safe and prudent manner and shall not disturb or harass wildlife or plant life.
- (b) No persons shall operate an ATV open any trail within the Reservation boundaries at a speed in excess of that which is safe under the existing conditions, however such speed shall in no circumstances exceed 55 miles per hour at any time and 40 miles per hour between sunset and sunrise and during weather conditions which limits visibility or creates wet, snow covered, or slippery road conditions.
- (c) While operating on trails, no person shall exceed the posted speed limits for roads in the community in which the trail is located.

SECTION 352.3.3 Roadways and Highways

- (a) No person may operate an ATV upon any part of U.S. Highway 2.
- (b) Persons may operate an ATV only in the following manner on any highway or roadway as otherwise authorized by law:
 - (1) Directly across any roadway, but only after stopping and yielding the right-of-way to all vehicles approaching on the roadway. Crossing under this subdivision may be made only at a place where no obstruction prevents a quick and safe crossing. For purposes of this subdivision, "obstruction" includes but is not limited to impairment of view and dangerous roadway condition.
 - (2) On the roadway of highways to cross a bridge, culvert or railroad right-of-way unless posted by the maintaining authority, but shall yield the right-of-way to all vehicular traffic.
 - (3) On highways which have been designated as routes and which are required to be marked.

(4) On a portion of the roadway or shoulder of a highway for a purpose of residential access or for the purpose of access from lodging if the Tribal Council permits by posting for that portion of the highway. An ATV operated on a portion of the roadway or shoulder of the highway under this subdivision shall observe posted roadway speed limits.

(c) ATVs may be operated adjacent to a roadway with due regard to safety in the following manner:

(1) Along U.S. Highway 2 state and country high-ways at a distance of 10 or more feet from the roadway.

(2) Along Tribal roads outside of the roadway.

(3) During daylight hours travel may be in either direction regardless of the flow of vehicular traffic.

(4) At night travel shall conform to the direction of vehicular traffic in the nearest lane unless:

(a) The ATV trail is located at least 40 feet from the roadway, or is separated from the roadway by a head lamp barrier; and

(b) The use of the ATV trail is approved by the Tribal Council with respect to ATV trails located near or crossing highways.

(5) Whenever it is impracticable to gain immediate access to an area adjacent to a highway where an ATV is to be operated, the ATV may be operated adjacent and parallel to the roadway for the purpose of gaining access to and from the area of operation.

Loading or unloading of the ATV shall be accomplished with due regard to safety at the nearest practical point to the area of operation.

(6) ATVs traveling adjacent to a roadway shall observe posted roadway speed limits, except no ATV may be operated in excess of a speed of 55 miles per hour at any time or 40 miles per hour between sunset and sunrise.

(7) On gravel roads, no person shall operate an ATV in excess of 40 miles per hour with no passengers, and no person shall operate an ATV in excess of 20 miles per hour when carrying one or more passengers. Carrying of passenger's id subject to section 352.4.1(c).

(d) ATVs may be operated for emergency purposes on any highway during a period of emergency when so determined by the Tribal Conservation Department, Tribal Police Chief, or Tribal Council.

(e) A law enforcement officer or Conservation Warden may operate an ATV on a highway in performance of his or her official duties.

(f) Under no circumstances, except as provided in this section, is a ATV to be operated on the main-traveled portion of the highway or on the plowed portion during the winter.

SECTION 352.3.4 Community Specific Operator Rules.

The following restrictions shall apply in addition to and taking precedence over other provisions in this Chapter to all ATV operation in the following communities: Birch Hill, Frank's Field, Aspen Estates, New Odanah, and Caville Road.

(a) No persons shall operate an ATV off road or trail except for entering onto from a home or exiting from the trail to a home.

(b) No persons shall exceed a speed of 10 miles per hour when operating an ATV to enter a trail from a home or to exit from the trail to a home between the hours of 10pm and 7:30am

(c) All ATVs operated within these communities must have a working motor with a spark arrestor.

SECTION 352.3.5

Go-Carts: Go-Carts shall only be operated on specifically designated go-cart recreational facilities or on fee land owned or managed by the operator or his or her immediate family.

SECTION 352.4 General Safety Rules

Section 352.4.1 Passengers and Age of Operators and Passengers

- (a) No person under the age of 12 shall be permitted to operate an ATV under any circumstances other than on land under the ownership or management and control of the person's immediate family. Management and control includes land leased through the Tribe or Housing Authority by the person's immediate family.
- (b) Persons on an ATV under the age of 18 shall be required to wear an approved helmet.
- (c) Unless an ATV vehicle is designed to carry more than two persons, only one person shall ride with the driver of a vehicle. Any driver of a vehicle which permits more than one person to ride with him, and/or if the rider is under the age of 16 and does not wear a helmet shall be guilty of a violation of this Chapter and fined in the amount of \$200.
- (d) A person who is at least 12 years of age but under 16 years of age may not operate an all-terrain vehicle unless he or she holds a valid all-terrain safety certificate or is accompanied by a person over 18 years of age if the two people are on the same vehicle. A person who is at least 12 years of age but under 16 years of age who holds an all-terrain safety certificate shall carry it while he or she operates an all-terrain vehicle and shall display it to a law enforcement officer on request.

SECTION 352.4.2 Safety Equipment

- (a) Any person who operates an all-terrain vehicle during hours of darkness or during the daylight hours on any road or on any highway right-of-way or during any weather condition which limits visibility of driver or other's ability to see ATV, is required to display a lighted head lamp and tail lamp on the all-terrain vehicle.
 - (1) The head lamp on the ATV is required to display a white light of sufficient illuminating power to reveal any person, vehicle or substantial object at a distance of at least 200 feet ahead of the ATV: and
 - (2) The tail lamp on an ATV is required to display a red light plainly visible of darkness from a distance during hours of darkness from a distance of 500 feet to the rear.
- (b) Every all-terrain vehicle is required to be equipped with at least one brake operated either by hand or by foot.
- (c) Every all-terrain vehicle is required to be equipped with a functioning muffler to prevent excessive or unusual noise and with a functioning spark arrester of type approved by the U.S. forest service.

SECTION 352.4.2 Operation of ATV While Under the Influence of Intoxicants

- (a) No person may operate an ATV while under the influence of an intoxicant to a degree which renders him or her incapable of safe operation of an all-terrain vehicle.
- (b) No person may engage in the operation of an all-terrain vehicle while the person has a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood. No person may engage in the operation of an all-terrain vehicle while the person has 0.1 grams or more of alcohol in 210 liters of his or her breath.

(c) If a person has not attained the age of 21, the person may not engage in the operation of all-terrain vehicle while he or she has a blood alcohol concentration of more than 0.0%; or more than 0.0 grams of alcohol in 210 liters of his or her breath.

**SECTION 352.4. Owner's Liability for Other's Operation/
Parental Liability for Actions of Children**

(a) The registered owner shall be liable for violations of this ordinance committed by minor.

(b) No owner or other person having charge or control of an ATV may knowingly authorize or permit any person to operate the ATV if the person is prohibited from operating an ATV under this Chapter, if the person is incapable of operating an ATV because of physical or mental disability or if the person is under the influence of an intoxicant.

SECTION 352.5 This section is reserved for future use.

SECTION 352.6 Right of Way.

The operator of an ATV shall slow the vehicle to a speed not to exceed 10 miles per hour and yield the right-of-way when traveling within 100 feet of a person who is not in or on a ATV.

SECTION 352.7 Restricted Area

SECTION 352.7.1 Areas Closed to ATV Operation.

This section is reserved for future use.

SECTION 352.7.2 Tribal Council Emergency Closure Declaration.

(a) The Tribal Chairman, upon recommendation of the Bad River Natural Resources Department or the Bad River Police Department, in the interest of public safety and/or preservation of natural resources, may declare any area within the boundaries of the Reservation as closed to ATV operation.

(b) Such closure shall be effective immediately upon the Tribal Chairman issuing such declaration, but shall be approved by the Tribal Council at the next scheduled Tribal Council meeting at which the Tribal Council shall continue or discontinue the closure

(c) The closure shall continue until the Tribal Council removes such closure from the area by motion.

(d) Posting of the closure in the Tribal Administration and Natural Resources Department, as well at the primary access point for the closed area shall serve as sufficient notice of the closure.

SECTION 352.8 Enforcement of this Chapter.

(a) Bad River Tribal Wardens and the Bad River Police Department are authorized to enforce this ordinance and to cite parties violating this ordinance into Tribal Court, using the Tribal Natural Resource Department citation form then approved or the state uniform citation form then approved.

(b) No person operating an ATV shall refuse to stop after requested or signaled to do so by an officer of any department listed in Section 352.9(a).

SECTION 352.9 Adjudication.

Violation of this ordinance shall be adjudicated in the Bad River Tribal Court pursuant to the rules and procedures promulgated in the Bad River Tribal Court Code.

SECTION 352.10 Penalties.

SECTION 352.10.1 The penalties for violation of any provision of this chapter shall be as follows:

- (a) a civil forfeiture of not to exceed \$500.00;
- (b) performance of community service, as determined by the Tribal Court;
- (c) both (a) and (b) above.

SECTION 352.10.2

Any ATV or other equipment used in violation of this chapter may be seized by the any Officer authorized to enforce the ordinance and order forfeited by the Tribal Court.

SECTION 352.10.3

Neither the imposition of a penalty as provide for above, nor satisfaction of the terms of such penalty, shall constitute a waiver or release from any additional civil or criminal liabilities, including but not limited to liability for damages to natural resources.

SECTION 352.11 Information Exchange

SECTION 352.11.1

To State of Wisconsin. Pursuant to the Tribe's ATV Reciprocal Registration Agreement with the State of Wisconsin, the Department shall on the first working day of each month, or more frequently, supply copies of all registration certificates, including renewals, and changes of address and transfers to the Wisconsin Department of Natural Resources, and the Wisconsin Department of Transportation and the Ashland County Sheriff's Department. Each such agency shall receive current registration information upon request made to the Department.

SECTION 352.11.2

To The Applicant. The Department shall provide to any qualifying applicant who properly completes a registration application and pays the fee required, a receipt of approved application to be used as proof of registration pending delivery to the applicant of the registration and registration decals.

SECTION 352.12 Natural Resource/Conservation Code Ordinance.

This shall be considered a natural resource/conservation code ordinance for the definition of such under the Tribal Code.

SECTION 352.13 Definitions

SECTION 352.13.1 Terms as used in this Chapter are defined as follows:

- (a) "Alcohol beverages" means fermented malt beverages and intoxicating liquor.
- (b) "All-Terrain Vehicle" or "ATV" ~~shall mean an engine-driven device which has a net~~

~~weight of 700 pounds or less, which has a width of 38 inches or less, which is equipped with a seat designed to be straddled by the operator and which is designed to travel on 3 or more low-pressure tires. A low-pressure tire which has a minimum width of 6 inches, which is designed to be mounted on a rim with the maximum diameter of 12 inches and which is designed to be inflated with an operating pressure not to exceed 6 pounds per square inch as recommended by the manufacture.~~

() **All-terrain vehicle (ATV)** – a commercially designed and manufactured motor-driven device that has a weight, without fluids, of 900 pounds or less, has a width of 50 inches or less, is equipped with a seat designed to be straddled by the operator and on 3 or more low- pressure or non-pneumatic tires. See also: Small ATV

(c) **"Approved helmet"** means a helmet which is certified to meet the standards set by 49CFR 571.218 and which has the chin strap properly fastened.

(d) **"Department"** shall mean the Bad River Natural Resources Department.

(e) **"Junked"** shall mean an ATV which is not operational and has been dismantled for parts and scraps.

(f) **"Intoxicating liquor"** means all ardent, spirituous, distilled, or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, which are beverages, but does not include "fermented malt beverages".

(g) **"Legal drinking age"** means 21 years of age.

(h) **"Member"** shall mean an enrolled member of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(i) **"Operate"** means to exercise the physical control over the speed or direction of an all terrain vehicle or to physically manipulate or activate any of the controls of an all-terrain vehicle necessary to put it in motion.

() **Operate** – To exercise physical control over the speed or direction of an ATV or UTV or to physically manipulate or activate any of the controls of an ATV or UTV necessary to put it in motion.

(j) **"Operation"** means the exercise of physical control over the speed or direction of an all-terrain vehicle or the physical manipulation or activation of any of the controls of an all-terrain vehicle.

() **Operator** – A person who operates an ATV or UTV, who is responsible for the operation of an ATV or UTV or who is supervising the operation of an ATV or UTV.

(k) **"Owner"** means a person who has lawful possession of an all-terrain vehicle by virtue of legal title or equitable interest in the all-terrain vehicle which entitles the person to possession of the all-terrain vehicle.

() **Owner** – A person who has lawful possession of an ATV or UTV by virtue of legal title or equitable interest in the machine which entitles the person to possession of it.

(l) **"Person"** means natural person, sole proprietorship, partnership, corporation or association, and includes any member of the Bad River Tribe and any non-member of this Tribe who is operating an ATV within the exterior boundaries of the reservation.

(m) **"Recognized Reservation"** shall mean any Reservation of any Federally Recognized Indian Tribe recognized by Department of the Interior, Bureau of Indian Affairs.

(n) **"Reservation"** shall mean all lands and waters within the exterior boundaries of the Bad River Reservation.

() **Small All-Terrain Vehicle** – An all-terrain vehicle that has 4 wheels and that has either an engine certified by the manufacturer at not more than 90 cubic centimeters or an equivalent power unit. These machines must be registered.

(o) **"Tribal Court"** shall mean the Court located on the Bad River Reservation under the authority of the Bad River Band of Lake Superior Chippewa Indians Constitution.

(p) **"Underage person"** a person who has not attained the legal drinking age of 21 years of age.

() **Utility Terrain Vehicle** – means any of the following: • A commercially designed and manufactured motor driven device that does not meet federal motor vehicle safety standards in effect on July 1, 2012, that is not a golf cart, low-speed vehicle, dune buggy, mini-truck, or tracked vehicle, that is designed to be used primarily off of a highway, and that has, and was originally manufactured with, all of the following:

- ◊ A net weight, without fluids, of 2,000 pounds or less.
- ◊ Four or more low pressure or non-pneumatic tires.
- ◊ A steering wheel.

• **Definitions**

- ◊ A tail light.
- ◊ A brake light.
- ◊ Two headlights.
- ◊ A width of not more than 65 inches.
- ◊ A system of seat belts, or a similar system, for restraining each occupant of the device in the event of an accident.
- ◊ A system of structural members designed to reduce the likelihood that an occupant would be crushed as the result of a rollover of the device.