

To: Chief, Domestic Policy Staff  
From: ANONYMIZED  
Re: Implementation of Proposed Executive Order on Off-Road  
Vehicle Use on Federal Lands

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In response to your request, I have analyzed the President's proposed Executive Order on Off-Road Vehicle Use. Described below are the potential implementation problems, in order of significance. Deemed most detrimental to the program's success are problems resulting from the shared authority given to federal, state, and local agencies. Operational demands within agencies, lack of resources, and ambiguity within the executive order also create foreseeable problems.

### **Consequences of Sharing Program Authority**

I foresee significant problems associated with giving shared authority to the Secretary of Interior, the Secretary of Agriculture, the Secretary of Defense, and the TVA Board of Directors. Each agency head must implement an ORV policy on the land they control, but due to the agencies' disparate cultures, interests, and areas of expertise, the resultant policies will not be unified. The agencies will have different zoning rationales, rules, and penalties, and this fragmentation will make enforcement less efficient and unnecessarily complicated. ORV users will both take advantage of this fragmentation (by overusing areas with fewer restrictions) and unknowingly break regulations when crossing from one jurisdiction to the next.

Relying on state and local agencies to disperse public information and enforce regulations is also problematic. Without additional funding, these agencies will have no incentive to help, especially if they value the economic gains—the business and tourism—generated by ORV use.

### **Operational Demands**

The proposed ORV policy requires agencies to develop new organizational routines to complete the necessary tasks and cohesively coordinate them. Additionally, measures to protect

the environment and public health will conflict with current SOPs of the agencies who normally promote multi-use. Agency culture and inertia will leave them more susceptible to pressure from ORV recreationists and local multi-use organizations than the executive order intends.

Agencies will face obstacles in carrying out required tasks due to the nature of the ORV conflict. ORVs inevitably damage environmental quality, and agencies will have trouble establishing ORV-appropriate areas not in proximity to threatened or endangered species, watersheds, or other recreational activities. Public involvement may prevent timely establishment of zoning and regulations; hearings will involve debates between scientists, environmentalists, bicyclists, and ORV recreationists, and finding a suitable compromise will be difficult. The agencies will most likely face litigation from groups suing on the basis of NEPA and ESA.

Agencies will also face problems in maintaining the efficacy of the program. Past efforts to designate ORV trails show that once they are established, more riders are drawn to the areas, leading to increased environmental damage and creation of side trails. Enforcement will be especially difficult, given that ORV users can travel vast distances and often prefer riding off trails. Agencies must establish new SOPs for patrolling and finding offenders across large areas, on both ORV lands (to enforce operating conditions) and non-ORV lands (to enforce zoning).

### **Resource Availability**

The affected agencies do not currently have the resources necessary to implement the ORV policy. To establish appropriate ORV zoning, agencies will need money and scientific expertise to conduct studies that determine potential impacts on natural resources, wildlife, and public health. Agencies will need additional resources to conduct hearings, hire facilitators with expertise in handling contentious issues, undertake effective public outreach, and design informational materials. To monitor lands and enforce regulations, agencies will need to hire

skilled staff and increase the size of their own ORV fleet. New and current staff will need training in catching offenders, given the different nature of ORV use. Without adequate resources, agencies will not meet goals of eliminating 90% of violations. Alternatively, they may see incentives for issuing fewer violations in order to meet this goal.

Section 7 guidelines require an ongoing investment of money and expertise to monitor efficacy and implement improvements. Ongoing resources will also be necessary to maintain the designated ORV trails and areas. Even if deemed “ORV-appropriate,” the land will need restoration to maintain ecological integrity and prevent ORV users from turning to more pristine areas, which is likely if they are dissatisfied with the designated areas.

### **Communication of Program Objectives**

I foresee several implementation problems arising from how the program’s objectives are communicated. The program’s objective—to establish a unified Federal policy—is inconsistent with delegating authority to respective agency heads. Furthermore, the executive order does not explain to what extent agency heads should coordinate (if at all) with each other to establish complementary ORV regulations. Additionally, the executive order does not prioritize the ORV program relative to other agency programs.

The executive order is ambiguous about the level of protection the agencies should put in place. Agencies will interpret the phrases *minimize damage*, *minimize harassment*, and *minimize conflicts* flexibly, based on their own capacity and external influences. The operating conditions in Section 4 are also vague and do not prioritize the objectives of protecting resource values, public welfare, and land-use conflicts. This vagueness allows agency heads to develop lax operating conditions and not instigate firmer measures, such as a permit system, that may be necessary to limit ORVs and protect natural resources and public health.