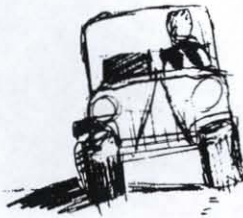




April 1975

Information Series
Number 11

College of Forestry, Wildlife and Range Sciences



OFF-ROAD VEHICLE LAW & IDAHO: AN ORV PLANNING AID



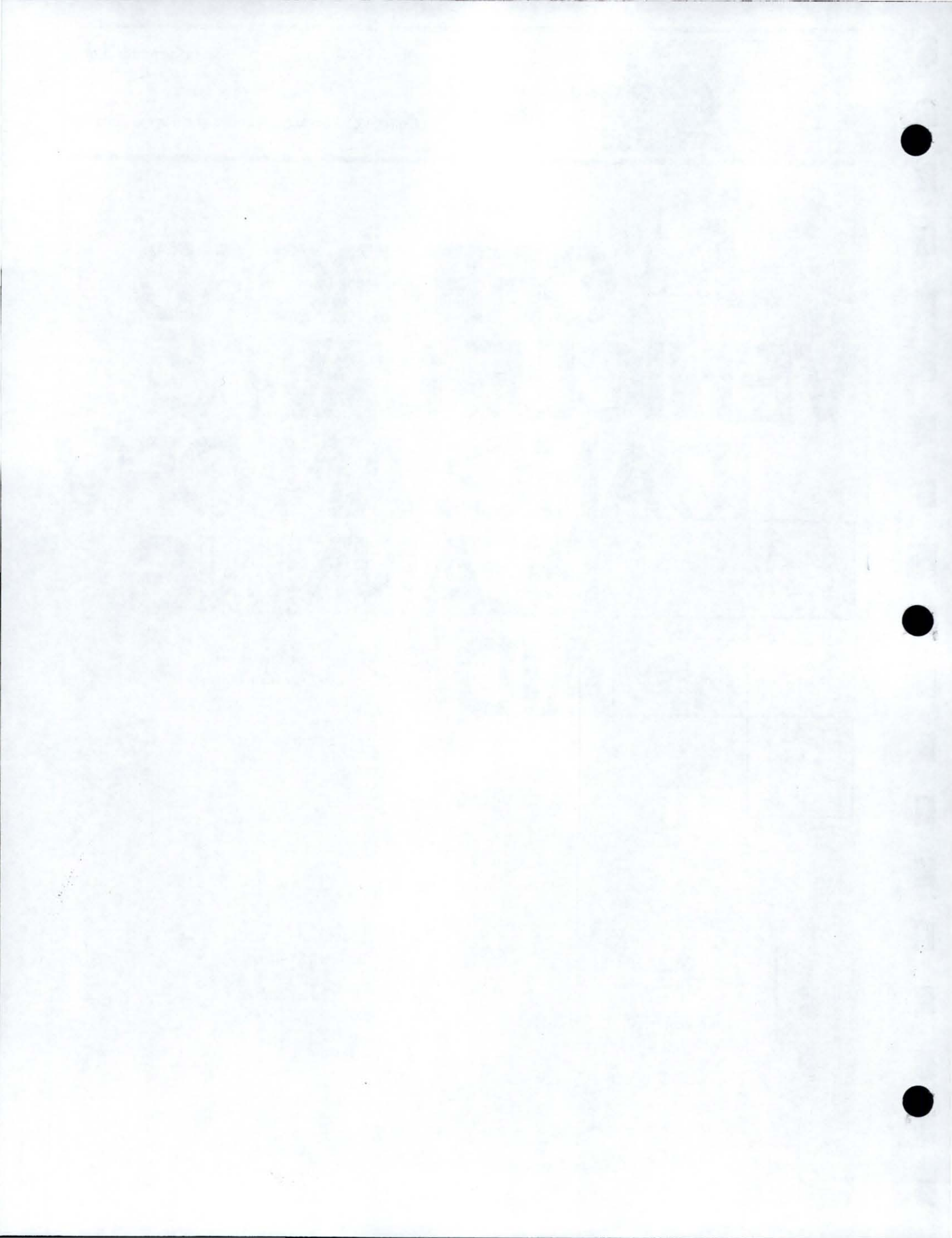
John A. Power, Legal Consultant
Ervin G. Schuster, Assistant Professor



FOREST, WILDLIFE AND RANGE
EXPERIMENT STATION

John H. Ehrenreich
Director

A. A. Moslemi
Associate Director



~~12~~
~~15~~
 no. 11
 SD
 12
 I2
 U4
 no. 11

TABLE OF CONTENTS

	<u>Page</u>
ABSTRACT	iv
INTRODUCTION	1
AN OVERVIEW OF THE PROCESS	3
Defining the Problem.	4
Identifying the Objectives.	5
Translating Objectives into Legal Language.	6
Fitting the Plan to Existing Legal Structure.	7
Choosing the Legal Tools	9
Drafting the Statute	10
ELEMENTS OF STATE ORV STATUTES	11
Element 1: General Purpose and Scope of Act.	12
Purpose and Scope Clause	12
Authority Clause	13
Severability Clause.	14
Effectiveness Clause	14
Repeal Clause.	14
Element 2: Definitions	15
Element 3: Registration.	17
Scope of Registration.	18
Exceptions to Registration	19
Delegation to Administer	20
Procedural Aspects	21
Dealer and Manufacturer.	21
Element 4: Licensing	22
Model Code Classified License System	23
Youthful Operators, Safety Education, and Certification	24
Penalties and Enforcement.	25

	<u>Page</u>
Element 5: Designation of Funds.	26
Source of Funds.	26
Accounting and Collection.	26
Disbursement of Funds.	27
Element 6: Operations.	27
Manner of Operations	28
Place of Operations.	29
Special Subjects	31
Enforcement and Penalties.	32
Element 7: Accident Reports.	33
Element 8: Insurance	34
Element 9: Equipment	36
General Equipment Requirements	37
Delegation for Additional Regulations and Tests	39
Dealer, Renter and Owner Compliance.	40
Manufacturer Equipment Requirements.	40
Exemptions from Requirements	41
Element 10: Local Regulations.	41
Element 11: Special Events	43
Element 12: Enforcement.	44
Element 13: Penalties.	46
Criminal Penalties	47
Administrative Penalties	47
Element 14: Private Landowners	48
Trespass Right and Damage.	48
Landowner Liability.	49
Element 15: Delegations.	50
ADMINISTRATIVE AGENCIES.	51



	<u>Page</u>
Role of Agencies.	52
Land-Use Classification and Control.	52
Operational Regulations.	55
Equipment Requirements	55
Educational Programs	56
Administrative Control	57
Bringing the Agency into Play	58
The Delegation Doctrine	60
CONCLUSION	64

ABSTRACT

This paper is designed to present an overview coverage of off-road vehicle law. It considers statutory as well as selected aspects of administrative and constitutional law. Focus is on the planning or development stage of ORV law. Emphasis is placed on viewing ORV legislation in a systems-context. ORV law should be cohesive subsystem of law operating within a larger legal system. The paper is divided into three major areas. The first provides an overview of the process of developing ORV legislation; it deals with an orderly, systematic approach to development of ORV law. The second part discusses fifteen elements commonly found in ORV legislation. It considers the issues of licensing, insurance and others. The final part concerns administrative agencies; the how and why of administrative agency action within the context of the "delegation of authority" doctrine is discussed.

Off-Road Vehicle Law and Idaho:

An ORV Planning Aid¹

by
John A. Power
and
Ervin G. Schuster²

INTRODUCTION

Use of off-road recreational vehicles has become a major natural resource management issue in many states over the past decade. So it is in Idaho. Operation of these machines has provided countless hours of recreational enjoyment to thousands of Idahoans. Some also believe that instances of severe environmental damage and user conflicts have occurred as a result of machine operation. In response to an increasing level of concern, Cecil D. Andrus, Governor of Idaho, established the Governor's Off-Road Vehicle Advisory Committee during July, 1972. The Committee was charged, in part, with the responsibility of investigations relative to "developing possible state legislation in the areas of user protection and environmental conservation."

¹The research reported here is part of a larger study of Selected Aspects of Off-Road Vehicle Use in Idaho (Project 45-216) jointly sponsored by the Idaho State Parks and Recreation Department and the College of Forestry, Wildlife and Range Sciences, University of Idaho.

²Authors are legal consultant (member of Idaho and Washington Bars) and assistant professor, respectively.

This report is a condensation of a study conducted by the University of Idaho for use by the Governor's Committee; it distills the salient features of that study in a compact format. Specific technical material has been excised and procedures and approaches to legal aspects of the problem have been emphasized.

It is important to emphasize that the adjective "legal" must be qualified when applied to this report. We are not attempting to dispense legal advice or brief certain questions of law. This strictly legal task would only be appropriate if we had a definite statutory proposal and a specific factual context with which to work. This paper concentrates on the creation of the law and not its application. We attempted to write this paper in an easily understood format for a reader with minimal background in law; we did not follow a strict legal writing style nor do we use many legal terms. The reader is assumed to be in the formative "idea stage". The broad overview presented in this paper discusses the experience that others have had in formulating ORV objectives and the process by which these objectives were translated into ORV law -- laws that must exist and function within a complex system of social institutions.

The law is, itself, a large system consisting of many subsystems. One measure of the overall quality of a legal system is its cohesiveness -- the structural interlinkages of the legal subsystems. Consequently, legislation in Idaho concerning off-road vehicles should be viewed, developed and implemented within a systems context. The most important subsystems, or bodies of law, relating to ORV legislation are constitutional, statutory

and administrative law. A cohesive system of ORV law necessarily entails the blending of these subsystems into a comprehensive legal package.

This report is divided into three main sections. The first section is concerned with the process of creating an effective ORV statute. The emphasis is strictly procedural. The section is intended to underscore the importance of developing ORV legislation in a systematic fashion with due regard for the quantity and complexity of factors which will have to be weighed, and with an understanding of the existing legal structure within which the ORV plan will have to fit. The second section is geared to statutory solutions which other states have created. A discussion of major statutory elements is presented. The third section keys to the role of administrative agencies within the ORV plan. Major areas of agency responsibility are outlined and some problems connected with the agency function are discussed.

It is possible to learn a great deal about the design of an ORV legislative system by investigating the experience of others. But because each state is somewhat different, the ability to learn from each other is, at times, sharply limited. In the final analysis, the system of ORV law developed for Idaho must respond to needs, problems and opportunities unique to Idaho.

AN OVERVIEW OF THE PROCESS

The ORV statute is simply the final step in a long and complicated process of refining and developing vague notions into clear and precise

ideas. This process requires the authors of the statute to identify problems, set overall objectives to solve these problems, and to develop supportive subgoals which will insure attainment of the broad objectives. This "idea development" stage is not dependant on the law. It is really a matter of understanding the social climate relating to ORVs, going to information sources, and consulting experts on such matters as ORV user patterns, vehicle safety, program development, conservation, and the like. These are the raw materials from which the proportions of the problem and outlines of the answers can be discerned. Only after this process has run its full course can the legal draftsman begin the work of expressing these ideas in statutory language.

Defining the Problem

The amount of information to be evaluated and the complexity of factors to be weighed and reconciled make an orderly, step by step, approach imperative. Unfortunately, the body of information which provides insight into the problem is the same as that which will provide the solution. Consequently, there is a temptation to extract both the definition of the problem and its solution simultaneously. This temptation should be resisted. The easy logic of the proposition that the solution should follow only after the problem has been defined is often overlooked. Definition of the problem need not be exact; a review of information should suggest the general nature of the problems to be dealt with and should establish an adequate base for seeking workable solutions. The important thing is that some characterization of the problems be made. This gives direction to the efforts which will follow.

Identifying the Objectives

The next important step in an orderly process is the identification of overall objectives. Here again, informational overload and competing considerations require systematic development of solutions. Broad objectives most commonly stated or implied in state ORV statutes include: (a) conservation of natural resources which might be adversely affected by ORV use; (b) promotion of safe ORV use and development of ORV facilities; and (c) attainment of an equitable balance among competing recreational uses of the public lands. Any one of these, or a combination, may establish the overall statute goal.

Obviously, overall objectives can and do conflict with one another. But when identified, the process of resolving those conflicts is made easier. The balancing process is much simpler when you are weighing defined objectives rather than vague notions. For example, if "conservation" is the sole goal of a program, it might logically follow that any ORV use causing damage to the land is grounds for prohibiting ORVs in an area. On the other hand, if conservation and reasonable ORV use must be balanced, other considerations have to be weighed. The decision-maker will have to ascertain what lands are being damaged, in what ways, and by what types of ORV use. Perhaps the answers to these questions will allow minor restrictions on ORVs which will alleviate the problem without complete closure of the lands. Whatever the outcome, recognition that two competing interests are involved will affect the approach to the problem and, therefore, the ultimate solution.

Stated objectives perform another valuable function. They provide a perspective or frame of reference within which available information

can be studied. Using the objective as a basis, one can more easily decide what information is relevant and what is not. Given the amount of information which can be made available, this is no small benefit. A corollary advantage to defined objectives is the ability to see further lines of inquiry or additional information areas which bear further study and development.

Major objectives also set the stage for the development of supportive subgoals. If ORV development is a goal, then information and investigation might reveal that this is contingent upon a number of other factors such as: (a) facility development, (b) driver education, (c) maintenance and enforcement of certain standards of vehicle manufacturer, and (d) development of adequate equipment and operational safety standards. Any one of these subgoals might suggest other, more specific, ideas that should be implemented. And so the process goes. One major objective will breed many more ideas and possibilities which will have to be evaluated. The sheer number of possibilities which can arise places a premium on the logical and systematic development of objectives. Without such an approach, good ideas may be lost in the confusion, means may get mismatched with ends, and an equitable balance among competing interests may not be attained. Our emphasis on systematic development of objectives is the result of an appreciation of the problem of translating objectives into good law. If objectives are clear and well-defined, the process is difficult; if confused and under-developed, the process is nearly impossible.

Translating Objectives into the Legal Language

The task of idea development is best accomplished in an atmosphere free of legal constraints. Only after objectives have been fully and



freely developed should they be modified by legal considerations. The introduction of these considerations is a multistaged process designed to: (a) coordinate the proposed law with existing law, (b) determine the proper vehicle or mechanism for legal expression, and (c) ensure that the final product drafted is a clear and effective expression of the author's desires.

Fitting the Plan to Existing Legal Structure

The first stage in the translation process involves identification of those aspects of existing laws and legal structures which, directly or indirectly, affect operation of the proposed law.

Once objectives, supportive goals and subgoals have been fully developed, the next step is to review the existing legal structure. The following elements must be ascertained.

Existing laws which address the ORV question: Laws which will either pre-empt or be pre-empted by the proposed legislation must be identified. For example, an existing statute dealing with the regulation of a subcategory of ORV, such as a trail bike or snowmobile statute, should be recognized. Comprehensive ORV legislation might require the repeal of such prior legislation in order to coordinate the overall legislative scheme. On the other hand, a prior statute might be easily coordinated with the proposed statute and therefore a decision may be made to retain it. Development of ORV statutes has generally tended to be piecemeal rather than comprehensive; many states, therefore, have had to address the question of existing statutes.

Existing laws which indirectly impact on the proposed statute: If certain classes of ORVs shall be required to have certain kinds of opera-

tional equipment such as lights, reference must be made to the motor vehicle code pertaining to that class of vehicle. Conflicting requirements may not be applied to the same vehicle; consequently, it is essential that the highway code be consulted.

The above example shows the potential for a legal conflict. But there is also the possibility of a practical conflict. For example, if registration is to be required of ORVs, the administrative responsibility will likely fall to a department of motor vehicles or similar agency. Presumably, that agency's existing registration procedure is most efficient in light of available resources. ORV registration will have to be conceived in recognition of existing procedure. Otherwise, it will run the risk of creating a conflicting system which strains agency resources and proves unproductive.

Existing statutes may be supportive of proposed legislation and render some of the proposed sections of the act as unnecessary. A prime example is the "landowner liability" statute which encourages the landowner to permit public use of private land by reducing statutory liability for injury to persons or property resulting from hazards on the land. Most states have enacted such statutes. These have served to lessen the strain on public lands. Prior enactment obviates the need to treat this area in a comprehensive ORV plan.

Existing administrative structures and jurisdiction: Almost all statutes will delegate responsibility to an agency for its administration. Therefore, the legal ability or inability of existing agencies to perform proposed duties is a major consideration.

Choosing the Legal Tools

Once major objectives and subgoals have been established and existing legislation has been identified, the next step is to choose legal tools which will give the desired results.

There are two basically complementary tools available. The first and most obvious is statutory law -- law passed by the legislature. The second is administrative regulation -- regulations created by agencies and given the force and effect of law when established in accordance with procedures, powers and purposes specified by the legislature. In ORV rulemaking, choice between the use of statutes and administrative regulations seems to depend on two major factors.

Practical factors: Flexibility and timeliness are two major concerns. Administrative regulation has the advantage of flexibility. It is much more amendable to change and modification than laws enacted through the legislative process. There are many occasions where the legislators understand that they are incapable of exercising daily control over administrative details. Consequently, provision is made for designated agencies to make regulations and judgments concerning execution of the overall plan. Also, problems of delay in the legislative process preclude an immediate and effective legislative response. In such case, lawmakers find existing administrative powers will enable the agency to effectively cope with the problem in the short term. Many states, relying primarily on administrative regulation, do so because: (a) the chances of prompt legislative action are remote; (b) the full impact of the ORV situation cannot be gauged, statutory action is postponed, and administrative regula-

tions shoulder the burden; and (c) existing needs of the state are such that present administrative powers can adequately handle the problem without recourse to a legislative solution.

Legal factors: Legislatures may not delegate the power to legislate to administrative agencies. This is the "delegation doctrine". Essentially, this is a constitutional limitation on power given to and exercised by agencies. The key question posed by the doctrine is "what constitutes a delegation of legislative power?" State courts have not been uniform in their interpretation of this prohibition. Generally, they have allowed agencies to exercise rulemaking authority if it has been granted by the legislature to be exercised by a given agency, for certain purposes and with certain guidelines. A more expanded exposition of the delegation doctrine is given later. Effects of the delegation doctrine may be felt in two ways: (a) existing agency authority may be insufficient to allow response to an ORV issue -- a new and more specific grant of authority may be needed; and (b) interpretation of this doctrine may preclude the type of delegation necessary to allow the agency to deal with ORVs. In this latter case, the major burden of an overall ORV plan will have to be borne by the statute.

Drafting the Statute

The final step in translating objective into legal language is the process of putting these ideas into the proper statutory form. For this, it is imperative to have the assistance of counsel who can prepare a draft which effectively incorporates the ideas of the authors into the language of the law. It is not a simple process. It will rarely be accomplished

in a few drafts. However, if the authors have presented the drafter with a well-developed plan, they have gone a long way toward achieving a satisfactory statutory expression of their intentions. We now turn to detailed discussion of the various types of elements often found in ORV statutes.

ELEMENTS OF STATE ORV STATUTES

Taken in its most abstract sense, an ORV statute can be defined as the answer to four fundamental questions -- questions which authors of the legislation must address before the final drafting process begins.

1. Who or what is to be regulated -- To what people, under what circumstances, and to what vehicles should the act apply?
2. Where will the above be regulated -- Should the regulations apply only to those vehicles and people who are on public land, or should they also extend to people and vehicles on private land or public roads?
3. How should they be regulated -- Which substantive regulatory provisions such as operations, equipment, registration, licensing and others should the act include?
4. By whom should they be regulated -- What agency or agencies will be delegated the authority to make additional regulations pursuant to the act and what officials have the jurisdiction and power to enforce the provisions of the act?

Nearly every provision of an ORV statute will form part of the answer to the above questions. But statutes are complex and specific; therefore a more comprehensive framework must be mapped out. The following pages present the main elements that a hypothetical, comprehensive ORV statute is likely to possess. The elements identified are the result of analyzing numerous statutes. The intent is to give the reader a good idea of the areas to be considered when beginning to formulate ideas on ORV statutes. It should be noted that not all statutes possess all or even most of these

elements. Indeed many ORV related statutes are very restrictive in scope. But the specific elements contained in any given statute will fall into the proposed breakdown. The function of this type of outline is to enable the reader to find a common reference point from which to make a comparative analysis. The following materials are not designed as answers but rather to form a basis for subsequent discussion.

This section presents a discussion of fifteen elements or subjects most frequently dealt with by ORV and snowmobile statutes. We will identify the element, explain its purpose, and provide a brief description of the range of approaches found in various statutes with regard to the element.

Element 1: General Purpose and Scope of Act

Many ORV statutes contain an introductory section describing the objective attempting to be obtained in the statute. Additionally, these introductory remarks may contain statements dealing with authority, repeal and others.

Purpose and Scope Clause

The opening paragraphs or section of an act often contain a general expression of intent and scope. The purpose of this expression may seem formalistic; but in fact, it can provide a valuable backdrop against which a court can interpret the act. It serves as a functional guideline for agencies engaging in activities pursuant to the act. The extent to which state courts rely on the expression of purpose as an interpretive aid may vary. But, the legality of agency delegation may depend on whether these activities are viewed as being in furtherance of the statute's

expressed purpose.

The expression of purpose is most frequently couched in general terms. It includes goals which the legislature seeks to achieve and it may also include reference to those conditions or practices which prompted legislative action. Often the statute will represent a compromise between competitive interests. In the ORV context, conservation and ORV operations might be considered competitive interests. The inclusion of both in the statement of purpose indicates that the legislature does not intend to promote one interest to the complete detriment of the other. Specific examples of purposes expressed in this type of section are:

1. Promotion and development of ORV use on public lands;
2. Protection of natural resources from damage occasioned by recreational uses of public lands;
3. Promotion of ORV safety and enjoyment;
4. Protection of private property;
5. Achievement of an equitable balance among competing recreational uses of public lands; and
6. Development of ORV use in a manner consistent with the protection of natural resources.

The act may address a single purpose, or a series of purposes which may be complementary or competitive. Regardless of the choices expressed, the section can be important both to the court which will have to interpret the act and to the agencies which will have to administer the act.

Authority Clause

The legislature may include a section identifying the specific constitutional authority by which they are enacting the statute. Frequently,

legislatures will pass an act which notes that it is an exercise of the police power given them by the constitution. The import of this is that they are exercising a power to which courts give more than ordinary deference when adjudicating a constitutional challenge. The court may conclude that it is an exercise of police power without the benefit of an express declaration, but the legislature may want to make a specific point of this fact.

Severability Clause

This clause, usually stated at the beginning or end of the statute, simply states that provisions of the act are "severable". They can stand on their own and are not intimately tied to each and every other provision. The utility of this declaration is to avoid the total failure of the statute by reason of the constitutional inadequacy of only one of its provisions. Here again the court could arrive at this determination but legislatures often choose to take the safe course.

Effectiveness Clause

This is a simple statement of the date when the statute shall take effect. The time period may be specific or open-ended. For example, the statute may state the effective date June, 1975. It may also specify the period June, 1975 to December, 1978.

Repeal Clause

This section merely notes those existing statutes, if any, which will be repealed when the present act takes effect. In the case of ORV legislation, there are often separate statutes which were passed to deal with

some specific aspect of the ORV question. When a comprehensive act is passed, older acts may prove difficult to blend with the new act and they are, therefore, repealed. Also, other acts may have to be amended to remove their effect from vehicles covered under the new act.

Element 2: Definitions

One of the most common devices of the statutory drafter is the use of a definition section. By setting out a list of key terms at the beginning and by giving them controlling definitions, the drafter hopes to accomplish the following objectives:

1. Convenience -- Be defining and qualifying a word at the beginning of the statute, the problem of having to define and qualify it each time used in the statute is avoided. For example, the definition of an ORV involves a rather intricate attempt at definition based on design, purpose, and engineering of the vehicle, as well as specific exclusion from the definition. By getting the definition established at the outset, the single reference to "ORV" in subsequent sections can be made without restating all the qualifications and attributes that constitute the definition.
2. Interpretive function -- Wherever a predefined term is mentioned in the body of the statute, its proper meaning can be ascertained by reference to the definition section. A term so defined becomes technically a "word of art" and will be given that prescribed meaning unless the context clearly indicates otherwise. For example, if the statute defined ORV so as to include a regular automobile when used off-road, then that definition would control even though the common meaning ascribed to "ORV" would not appear to include such a vehicle.
3. Definite Scope and Application -- The definition section may essentially specify a statute's scope and area of applicability. If the definitions include the term "person", it has gone a long way toward describing "who" will be regulated. If it defines "ORV", it has indicated generally "what" is to be regulated. If it defines public lands, streets, and highways, it has helped show "where" the subject matter will be regulated. If it defines agency or department, it has tended to indicate "who will regulate". Admittedly, ascertainment of scope by definition is ascertainment by indirection. But it seems reasonable that after analyzing a few statutes, the definition section can communicate quite a good idea of the statutes' scope.

To understand the statute, one must be able to relate all parts. One section may appear obvious on its face, but the terms used in it may be technically defined in such a way as to give an entirely different meaning. The definition section, therefore, can exert tremendous control over other sections of the statute. This makes it imperative for the statute authors to understand the various ways in which each term will be used in the statute and, if necessary, to qualify its meaning when used in a particular section. For example, most motor vehicle codes have several chapters, each addressed to a different topic such as registration or licensing. Often, each separate title will have its own definition section. By contrast, most ORV statutes which deal with multiple topics and will have only one definition section. This means that the ORV drafters must use special care to assure that each definition is satisfactory for the entire range of purposes and that where the definition does not fit the section, it is clearly indicated.

Use of a definition section has eased the semantic difficulties of statutory interpretation to a considerable extent. Simultaneously, it eliminates much qualifying language in the body of the statute. Its value as an interpretive aid and a convenience tool is apparent. Less apparent perhaps is the care required to make it work successfully.

The following is an illustrative list of terms which have been defined in various ORV and snowmobile statutes:

1. ORV
2. Recreational vehicle
3. Snowmobile
4. ATV (all terrain vehicle)
5. Vehicular way
6. Vehicular area

- | | |
|------------------------------|-------------------------------------|
| 7. Street, highway and road | 13. Person |
| 8. Owner | 14. Dealer, renter and manufacturer |
| 9. Post (as in posting land) | 15. Department |
| 10. Traffic | 16. Public land |
| 11. Operate | 17. Dangerous drug |
| 12. Operator | 18. Special event |

Element 3: Registration

Registration sections of state statutes can serve a variety of purposes. Among the most common reasons for including such a provision are:

1. Enforcement -- The fixing of vehicle ownership and the identification of a particular vehicle with a particular owner through the use of tags, plates and numbers is essential to the task of ORV regulation enforcement. In the ORV context, lack of enforcement personnel and the size of the area to be covered underscore the need for some system of vehicle identification.
2. Equipment Inspection -- The registration process provides a particularly convenient occasion for state personnel to inspect a vehicle to make sure that equipment required for safety and conservation purposes is installed and operational.
3. Funding -- Registration fees provide a source of funds easily related to ORV use and therefore may be logically applied to costs of enforcement and ORV development.
4. Financial Responsibility and Liability -- Registration establishes ownership and ostensible control of vehicles use. As such, it provides the basis for fixing liability (either actual or imputed) and requiring proof of financial responsibility.
5. Information -- Descriptive data gathered from registration applications provide a good source of information concerning the size, number, location and types of ORVs in use. This information can then be used by state and local authorities in planning ORV programs.

Scope of Registration

One of the main problems posed by registration statutes is the question of what vehicles to include. The term "ORV" may be applied to include a wide variety of vehicles, many of which may also be regulated under the registration section of the motor vehicle code. The range included in the ORV registration statute will depend in large measure on the purposes for registration. If enforcement is the only objective, vehicles already registered under the motor vehicle code should be excluded. If registration is seen as a revenue device, it may also apply to vehicles such as four-wheel drives already registered.

Registration requirements of both the motor vehicle code and of other statutes -- such as those relating to snowmobiles and off-road motor bikes -- should be checked to determine what ORVs are not covered by existing legislation. Also, care should be taken to limit use of the term ORV in the registration section if it is intended to be less expansive than the definition of the term given in the general statute.

Application and scope of ORV registration sections vary considerably.

Approaches used in various statutes include:

1. One Vehicle Type -- This is generally what the snowmobile registration statute does. It isolates one type of vehicle and makes the statute applicable no matter where the machine is operated (with the single exception of private land).
2. Multiple Vehicles not Otherwise Registered -- This type of statute looks at the entire range of motor vehicles normally considered capable of off-road use. From that group, those otherwise registered under the regular motor vehicle registration statutes will be excluded. The remainder are those vehicles to which the statute will apply.

3. Multiple Vehicles Operating on Public Land -- This is the most expansive of the statutes for it includes all vehicles, whether normally considered recreational or not and regardless of the fact that they are already registered under the regular motor vehicle act. The only qualification is that they operate at some time or another off-road on public land. This, in effect, sets up a dual registration system which would cover the family car if it ventured off-road on the public land.

Three variables are at work in the above examples: (a) the type of vehicle, (b) the place of operation, and (c) prior registration requirements.

These variables are coordinated according to the perspective of the legislative draftsman. The main reason advanced for the more expansive approach to the registration is that fee revenues should accurately reflect use of off-road facilities and those using such facilities should bear their fair share of the cost of development. The main reason against such an expansive approach is that the main purpose of registration, enforcement, is effectively established by the regular motor vehicle registration procedure; additional burdens should not be placed on the owner of the vehicle and the department charged with the administration of the registration act.

Exceptions to Registration

Registration statutes normally contain certain classified exemptions from the registration requirements. The most common are as follows:

1. Vehicles otherwise registered under a motor vehicle code.
2. Non-resident operator's vehicles -- generally this provides for either a total exemption or a 15- to 60-day grace period for those coming from states where vehicle is required to be registered; this is sometimes conditioned on reciprocity. In cases where the operator brings a vehicle into a state from a state not requiring registration, he often enjoys either an exemption for a specified number of days or will be required to obtain a temporary certificate, generally valid for one year, at nominal fee.

3. Farm equipment and construction equipment used in their normal capacities.
4. Emergency and law enforcement vehicles.
5. Vehicles used exclusively on private lands.
6. Participants in a sanctioned race or rally.
7. Dealer's stock of vehicles.
8. In the case of expansive registration **scope**, those vehicles going to a specific location on public lands and returning by the most direct route are exempted.
9. Vehicles owned and maintained by the United States, including the armed forces and other agencies, the state and its agencies, and political subdivisions.

Delegation to Administer

The legislature must choose an administrative agency to handle the administrative aspects of implementing registration. The choice of agency will vary with the state involved. Some states view ORV management as primarily affecting natural resources and, therefore, place registration responsibilities on the department of natural resources or fish and wild-life department. Other states feel that authority for registration implementation should be placed in that agency best equipped to handle registration tasks; this typically is the department of law enforcement or the department of motor vehicles. Regardless of which is chosen, the legislature must impart not merely the responsibility to administer the act, but also the authority. This would normally include a delegation to carry out the intent of the act -- e.g., the power to prescribe forms for application, set fees in some instances, and effect vehicle testing. The legislature may also elect to appropriate additional funds to carry out these added responsibilities.

Procedural Aspects

Several aspects seem common in registration procedures:

1. Submit application form with required information -- usually name, address, serial number, make and model.
2. Remittance of fees -- usually averages between \$2 and \$4 per year. Also, some states require certification from the county assessor that the operator's property tax has been paid.
3. Processing -- upon receipt of information and fee, the department:
(a) will assign registration number, plate, or a sticker which must be properly displayed on the vehicle, usually pursuant to administrative regulations specifying placement, colors and size of characters; (b) will also issue a certificate of registration that shall be good until next renewal, generally one to three years; and (c) will generally issue a tag or sticker to evidence current validation when renewal fee is paid, rather than replace the certificate.
4. Transfer, loss, abandonment -- if the certificate or vehicle is lost, stolen or abandoned, there is a duty to report to the department. In case of abandonment, the department will cancel the registration number. There is generally a time restriction on the reporting and minimal fee is customarily charged to offset administrative expenses involved.

Dealer and Manufacturer

These individuals are generally required to register vehicles. Failure to do so usually results in a fine. Under some statutes, the fine is the same for all three; under others, those engaged in business enterprise to manufacture, sell or lease face stricter penalties. Severity of penalties will usually depend not only upon the seriousness of the offense but also on enforcement difficulty. Where compulsory insurance is involved, registration becomes the key to compliance with the insurance provision; therefore, this type of statute might be more severe in its penalties.

Element 4: Licensing

The majority of states do not require any special licensing provision for the operation of ORVs. The general rule is that those individuals licensed to operate motor vehicles under the motor vehicle code may also operate ORVs without further qualification. Restrictions apply to those under the regular licensing age, such as youths 14-16 years. Those qualifying for a restricted motor vehicle license may be allowed to operate ORVs when accompanied by an adult. A fuller explanation of the youthful driver is given later.

If the decision is made to provide for a special ORV licensing system, the following questions will have to be addressed:

1. What agency will administer the program?
2. Who should be required to obtain such a license? This includes consideration of such factors as age, type of vehicle operated, place of operation, level of experience and training, and types of licenses, including permits and restricted licenses.
3. What will the testing procedure be? This includes criteria for qualifying for license, establishment of testing sites, providing for personnel, and establishing training and educational programs for the licensing program.
4. What range of fees will be set and how should they be used?
5. What will the penalties be and who will enforce them?
6. How will the procedure fit in with the regular licensing provision, especially with regard to administrative matters.

As seen, the decision to establish a licensing provision brings into play a whole series of problems that must be resolved. Perhaps most states have felt that problems of time and expense far out weigh the benefits of a comprehensive ORV licensing system. One statute -- the Model ORV Code --

however, utilizes licensing of ORV operators through a classified licensing system.³

Model Code Classified License System

The premise of the Model Code's approach is that the wide range of ORVs and variety of operation locations require the operator to demonstrate capacity to operate a given type of ORV in an off-road situation. If the operator can demonstrate skill at operating a particular class of ORV, such as a snowmobile, the license is issued to operate that specific type of vehicle. The operator is not free to operate other types of ORVs for which he has not been certified. This is similar to pilot certification procedures which restrict the class of aircraft operated.

The Model Code indicates that tests of specific vehicles should take place on terrain that approximates the off-road condition. However, the kind of terrain the applicant must negotiate to pass the test is not indicated. In a state like Idaho, it would seem practically impossible to satisfactorily and economically provide a test site which would adequately test applicant control capability on the wide variety of terrain situations. Problems are also encountered with test site location. Presumably, the site would have to be reasonably convenient to the applicant; those locations which are most convenient may not have the type of terrain necessary for a good off-road test.

One final provision of note in the Model Code concerns coordination of penalty and enforcement sections with the regular motor vehicle code. According to this plan, any violation taking place in an off-road situation

³Upper Great Lakes Regional Commission. Model legislation (for) off-road recreational vehicles. ca1972.

would draw points against the operator. This could ultimately result in revocation of all driving privileges, both regular and off-road.

Youthful Operators, Safety Education, and Certification

The multitude of problems and complications inherent in a licensing system have deterred states from adopting this approach for all ORV operators. Many states, however, have concluded that a modified system of driver qualification could provide substantial benefits without the entailing administrative problems of a universal licensing system. This modified approach is the youth certification and education program. The rationale for using this limited approach is two fold. First, the decision is made that operators licensed under the motor vehicle code possess sufficient knowledge, judgment and skill to handle ORVs; benefits of additional testing are marginal. Second, it is realized that ORVs (especially snowmobiles and trailbikes) are frequently used by youths whose age would preclude them from obtaining a regular license. This group of operators has no substantial experience in vehicle operation and has not been screened by any license testing. By making the operation of ORVs contingent on a safety education program, states have opened some types of ORV operation to age groups as low as 10 years and have provided youngsters with the type of background needed to safely operate these vehicles.

In establishing a youth safety certification program the following points should be considered:

1. Who will be required to take a training course? States have required those as old as 18 years to take the course (regardless of their regular vehicle licensing) and have opened the program

to those as young as 12 years. In many states, adults not licensed under the regular code are also required to take the program. The general approach is to aim the program at those in the 14-16 year age group. It should be noted that some states permit youths under the required age and those of the required age who have not taken the course, to operate a vehicle if they are accompanied by an adult. Most states do not place restrictions on operation by youths on private property. Some have restricted the private-property exemption to property owned by the youth's parents or guardians or property owned by a group of individuals with whom the parents have a contractual arrangement; other states do not grant the private-property exemption.

2. What types of ORVs will the youths be certified to operate? Most certification programs are aimed at snowmobile operation. Some also include mini or trail bikes (usually classed by their engine displacement). None include four-wheel-drive vehicles and other ORVs capable of highway and street use.
3. What agency will administer the program? The agency chosen to handle the program will generally be required to establish instructional objectives and develop an educational program in accordance with these objectives. Instructional materials, classroom and testing facilities, and teaching personnel are also required.
4. What will be the source of funding for the program? Modest course fees will probably not carry the program financially. Therefore, several states have allocated fuel tax, sales tax, and registration fees to help bear this burden.

Penalties and Enforcement

Regardless of whether a state uses the Model Code's classified system or simply relies on traditional licensing procedures, they will have to decide how off-road violations will affect the driver's operating privileges. The Model Code makes all violations, regardless of place of occurrence, count against the driver's record. Other states simply do not address the question. The merit of making some or all off-road violations count against the general driving record is a matter for individual states to determine in light of experience and judgment.

Element 5: Designation of Funds

Most comprehensive statutes utilize revenues from various sources, fees, penalty violations, and others. These funds can be collected and put to use by other provisions of the statute. Some statutes have a single section dealing with collection and disbursement of funds. More often, several sections in a statute deal with use of funds, each being matched with a separate source of funds. Thus registration fees or motor fuel taxes would be treated separately. General characteristics of funding sections are indicated below.

Source of Funds

A variety of sources exist. The most common of these are: (a) registration fees, (b) licensing fees, (c) gas tax, (d) sales tax on ORVs, and (e) penalty fines associated with ORV use. Additionally, transfers from general funds, by way of percentage designations which the legislature seeks to put to ORV related uses, are often present.

Accounting and Collection

Usually, an effort is made to identify the source of funds as being related to ORV use and to employ these funds in projects related to ORVs and their use. In the case of registration fees or ORV sales taxes, there is little problem in identifying the source as ORVs. With funds such as a fuel tax, identification is much more difficult. The most common approach with these sources is to estimate the percentage of funds related to ORVs and to designate a like percentage of general revenues for ORV related projects.

Interagency transfer of funds is a frequent subject of ORV statutes. Often the collecting agency, such as a department of motor vehicles, will not have responsibility for ORV development. Statute sections will, therefore, make provisions to divert these funds to the agency charged with some aspect of ORV development.

Disbursement of Funds

There are a great number of applications for collected funds. Among the most common uses designated in the statutes are: (a) defraying the administrative costs of the department which handles the fund raising activity; (b) land acquisition, facility development and maintenance, and other ORV site development projects; (c) sponsorship of ORV training, educational and informational programs; and (d) resource protection and conservation.

Authors of legislation will have to make an assessment of both financial needs and the revenues that designated sources will provide. This task is difficult, especially if the statute involves a significant increase in ORV development activities. In such a case, past budgets may not provide a very accurate basis for prediction. This factor should underscore the importance of drafting all sections of the statute in light of revenues and expenses, cost and benefit.

Element 6: Operations

As implied, the operations section of the statute deals with various aspects of ORV operation. These requirements are designed to serve both safety and conservation functions.

Many statutes relate only to snowmobiles and ORVs designed exclusively for off-road operation. Those restrictions should be apparent to the reader. The restrictions mentioned in this section are taken from many different statutes which define ORVs in many different ways; this presentation is intended to illustrate a range of ideas rather than provide the outline of a model operations section. Operation restrictions can be broadly categorized as relating to: (a) manner of operations, (b) place of operations, (c) special subjects, and (d) penalties and enforcement.

Manner of Operations

The most commonly prohibited manner of operations include operating:

1. In careless, negligent or reckless manner;
2. At a speed greater than reasonable and prudent under the conditions;
3. Without proper equipment such as lights, muffler, brakes or without other required equipment in the proper running condition;
4. Without yielding right-of-way to pedestrians and others not on vehicle;
5. Without regard for signs or directions from authorized authority;
6. While under the influence of intoxicating beverages, narcotics, or dangerous drugs;
7. Without license or registration; and
8. Without coming to a complete stop when crossing state road or highway, yielding right of way to oncoming traffic, crossing at 90 degree angle, and/or crossing divided highway at other than intersection.

As seen, these provisions are wide-ranging. The variety of ORVs and types of conditions and terrain preclude a great deal of specificity. Often these general restrictions will be supplemented by administrative action such as the posting of speed limits in certain areas.

Place of Operations

Restrictions on the place of operation serve both the safety and conservation purposes of the statute. Safety is served by restricting operations in areas that pose a danger to the ORV operator, or where the ORV poses a threat to other user groups in the area. Similar restrictions can serve the conservation purpose by prohibiting operations in those areas in which the ORVs might have a substantial environmental impact such as big game winter range. The following enumeration of provisions give indication of the approaches used.

Public Lands -- Statutes will use one of two major approaches to public lands. The permissive approach allows the use of ORVs on public lands unless such operation is specifically restricted on a site-specific basis. The second, converse approach is to restrict all ORV operation on public lands unless such use is specifically authorized. The differences in approaches reveal the differences in policies the legislature seeks to adopt. Utah, for example, uses the permissive approach provision which reads:

All Federal Agencies are encouraged and all agencies of the state and its subdivisions are directed to restrain from closing any public lands to responsible recreation vehicle use except where just and reasonable cause can be demonstrated, such as the protection of watersheds and plant and animal life. (Laws of Utah, 1971; 41-22-12)

Under the "place of operation" sections, reference to one or more state agency controlling ORV use on lands under their jurisdiction will often be found. The role of agencies in this respect will be treated later.

Private Property -- Restrictions on the use of private property usually relate to posting of land and landowner consent. A strong land posting provision would indicate that a person cannot operate on private property when it is properly posted and that lack of posting does not imply consent. The second provision is that to operate on the land of another, you need consent of the owner, lessor, tenant or one who has legal authority to grant such permission. Some statutes require permission in writing while others simply require oral consent. It should also be noted that some statutes require individuals to halt and identify themselves when so requested by the owner; following such identification the party should leave promptly if the owner requests. There are also various trespass statutes designed to give some measure of protection to the landowner.

Other Operating Provisions -- A wide range of miscellaneous operating place provisions can be found. ORV operations are sometimes prohibited in any of the following places:

1. In tree planting or nursery;
2. Within a specified distance of a dwelling during darkness;
3. On a recreational area such as ski hill or skating pond unless to service the area;
4. In certain designated hunting areas;
5. On streets or highways -- This has particular applicability to vehicles not registered under the regular motor vehicle code. The general provision is that there is absolutely no operation of ORVs on interstate or controlled access highway. There are a number of exceptions to this general rule: (a) operation on the shoulder of the highway; (b) crossing of the highway; (c) limited operation on the highway right of way for purpose of crossing a bridge or culvert when necessary; (d) limited highway operation for the purpose of loading or unloading a vehicle near a place

6. On railroad right-of-way except for railroad employees in the discharge of their duties. Many states also prohibit the crossing of railroad tracks unless at an official crossing place or within 100 feet thereof.
7. On airport grounds or land facilities except for employees in discharge of their duties.
8. On Indian lands without consent of governing tribal body. Indian lands are those held by the U.S. and subject to restrictions on alienation.

Special Subjects

This category of the operations section is really a catchall for a variety of diverse provisions. The nature and range of topics considered follows:

1. Firearms -- Cannot carry unless unloaded and encased and cannot carry bow unless unstrung. This provision usually found in snowmobile statutes.
2. Game and Wildlife -- Prohibits ORV use to chase, harass, or otherwise disturb wildlife. There are two exceptions frequently added to this provision: (a) allowance to use ORV to control livestock with consent of the owner and as part of livestock operation; and (b) research permit to study wildlife may allow use to track down and catch wildlife for legitimate scientific study and research.
3. Felony -- Unlawful to use snowmobile or ORV for the commission of a felony.
4. Helmets -- Generally required on-road but some states have passed regulations relating to off-road use. One statute notes that it will require helmet only if engine size is 45 centimeters or more; this is often the accepted cutoff line between motorcycles and mini-bikes.
5. Littering -- Unlawful to use ORV for purposes of dumping trash or litter.
6. Dealer, Renter of ORVs -- These are required to ascertain that the person they are renting or furnishing vehicle a vehicle to has an understanding of the machine, an ability to control it,

and that the operator is not incompetent to operate by reason of age, or mental or physical incapacity. This places the burden on renter or dealer to determine the skill of a client. Failure to do so can make the dealer liable for penalty or liable for damages accruing from the negligent use of a vehicle by the driver. This may also hold true for a private owner.

Penalties and Enforcement

The enforcement and penalty section will include an enumeration of those people with official enforcement capability under the section; this subject is dealt with later. Additional requirements may include supportive measures designed to assist enforcement personnel in discharging responsibility. Among these are: (a) requirement that the operator stop when hailed by an enforcement official; (b) provisions extending the implied consent law to the ORV situation; and (c) provisions making the failure to produce either license or registration presumptive proof of non-compliance with either the registration and/or licensing statute.

Penalties include those which are strictly criminal and which provide for misdemeanor infractions punishable by jail or fine or both and indirect civil sanctions which fix liability for property damage and injury on the owner of the vehicle unless he can prove the vehicle was either lost or stolen. Here again, one should consult the motor vehicle code to establish the general range of penalties provided for and to see how the statute may have altered common law liability for injury to persons or property.

We should underscore the point that the operations section should not be drafted without first consulting the state motor vehicle code. In most codes, the word "vehicle" is broadly defined, but in specific sections, qualifying phrases remove the statute's applicability to the off-road

situation. An example of such a qualifying phrase would be "operated upon a highway". By referring to the motor vehicle code, authors of ORV legislation can determine: (a) what sections of the code apply to some or all ORVs; (b) which of the applicable sections should be made inapplicable by modification or repeal; and (c) what sections of the code not presently applying to ORVs should be made applicable to some or all ORVs either by writing them into the statute or by incorporation by reference. Hopefully, any ORV statute will be drawn so as to complement existing legislation and not conflict with it. Conflicts and overlaps can be avoided only if care is taken to ascertain the content, scope and application of statutes already on the books.

Element 7: Accident Reports

Most states have provisions for accident reports when certain minimum conditions are met. Commonly, an accident report should be filed within a 10- to 30-day period when there was an accident involving death, injury or \$100 property damage. These reports are required to be filed within a specified time with the department (natural resources, motor vehicles or highway). Information requested will be specified on the form provided by the department.

These reports are typically used for analysis of accidents to help the department suggest new regulations based on actual experiences. Since they are primarily an education tool, most states provide that no contesting party on a lawsuit may obtain this information for trial purposes; the only information that can be divulged is whether or not the party complied with the filing requirement.

Three other additional provisions are likely to be included in this area: (a) duty to stop and render assistance at scene where a party has been injured; (b) duty to give information concerning name and address at the scene of an accident; and (c) duty to notify local law enforcement officials if practicable where there has been any injury or extensive property damage.

Element 8: Insurance

Owners of ORVs subject to the state motor vehicle code will be required to comply with any liability and insurance requirements of that code. However, certain classes of ORVs may not be subject to the motor vehicle code. This raises the question of extending insurance requirements to those owners. Of the statutes studied, none had extended insurance requirements to snowmobiles; some had sections imputing liability to the owner for an operator's negligence. Of the comprehensive ORV acts, only the Model Code has provided for an insurance program.

The Model Code requires insurance coverage of the owner in the amounts of (a) \$20,000 for an accidental death, (b) \$10,000 for personal liability for injury, and (c) \$5,000 for property damage. This coverage is also required of manufacturers, dealers, and renters of ORVs.

The wisdom of extending compulsory insurance requirements to vehicles that operate strictly in off-road situations is not an appropriate inquiry for this report. This question lies in the domain of the legislature and advisory groups. However, if such a program is considered desirable, there are a few points that should be considered. First, truly compulsory insurance, the kind mentioned in the Model Code, makes valid registration contingent upon proof of coverage. Many states, while

not requiring insurance proof as a prerequisite to registration, do have provisions requiring proof of financial responsibility. Circumstances which bring proof of coverage into play include accident involving death or injury, suspension of license, and commission of a specified number of violations within a given period of time. When any one of these events occur, proof of coverage must be forthcoming.

Secondly, there has been the persistent theory that the owner of a vehicle, by virtue of the fact that he is propertied (at least to the extent of his vehicle), is more capable of meeting the financial burdens of a negligence judgment. Accordingly, codes have altered common law tort liability by imputing liability to the owner of the vehicle. Thus, if an individual, other than the owner, were negligent in the operation of the vehicle, the owner would be liable. Generally, these statutes are limited to situations where the operator was using the vehicle with the express or implied permission of the owner. In addition, a dollar ceiling is placed on the extent of this liability. Ceilings have been commonly set for accidental death, injury and property damage.

Other liability altering statutes may also be made applicable to an owner or driver. The most common of these is the much debated "guest-host" statute which precludes recovery by a passenger against the operator for operator's ordinary negligence. It is reasonable to assume that if states have statutes affecting the liability of the owner, all will apply to ORVs if any apply.

Again, we must note that the entire subject of compulsory insurance is up to the legislature's perception of need. However, if it is decided to include compulsory insurance, proof of financial responsibility, or

imputed negligence, authors would be well advised to consult the motor vehicle code.

Element 9: Equipment

Equipment requirements on ORVs serve three general purposes. First, the majority of required equipment, such as lights and brakes, serves to increase operational safety. Second, spark arresters, emission control devices, mufflers and the like provide for the broad goal of environmental protection. Finally, requirements such as reflectorized numbers and plates assist enforcement by providing identification of vehicles. As with operational regulations, the regular motor vehicle code should be consulted.

The type of vehicle and the conditions under which it generally operates are important factors in determining equipment requirements. Many states have separate snowmobile and trail bike statutes. This, combined with the regular vehicle code, provides specific equipment requirements for each class of ORVs. The Model Code, on the other hand, provides one section for all ORVs. Differentiation among requirements for each type of vehicle is made within the section. For example, one headlight is required for all track and two-wheel vehicles while two headlamps are required for four-wheel vehicles. The number of wheels or the mode of traction, weight, height, length and engine displacement are all convenient means for describing vehicles subject to different requirements.

General Equipment Requirements

The following presents an abstract of the most common provisions set out in the statutes studied:

Headlights -- Headlight of a specified candle power measured by ability to illuminate an object at a specified distance at night under normal atmospheric conditions. The distance commonly required is three-hundred feet. The statutes will often require one headlight for a snowmobile and two or three-wheeled vehicles. Two headlamps are required for a four-wheeled vehicle.

Taillights -- Red taillights, capable of being seen at a specified distance, commonly 500 feet, from the rear at night under normal atmospheric conditions. The number of lights required corresponds to the requirements for headlights mentioned above.

Brakelights -- Brakelights capable of a more intense illumination than the taillights for braking and when the vehicle is operating in reverse.

Brakes -- Braking system capable of operation by hand or foot. Diversity in the statutes is seen in the performance capability requirements of the system. The most common tests are that brakes must be: (a) capable of bringing vehicle to stop from specified speed with specified weight within the parameters of a specified distance; and (b) capable of deceleration at a specified rate on level ground from a specified speed.

Muffler and Noise Control Equipment -- There are three great difficulties surrounding state legislation on this matter -- testing, enforcement and noise standards.

1. Testing procedures are very important. One of the biggest obstacles facing legislatures is the kind of test that should be used to measure compliance with noise standards? The Society of Automobile Engineers has developed a testing procedure for snowmobiles. It is suggested that a professional in this area could best explain both the operation and limitations. Generally, the system measures noise in terms of decible readings measured on a given tonal scale at a specified distance. Physically, there is a reduction of 6 decibles for every doubling of distance and there are certain decible levels that have been established in terms of hearing loss and various human activities (e.g., sleep 45 DBA). The Upper Great Lakes Model Act has a rather extended discussion of this matter and should be consulted.
2. Enforcement provisions should be considered. Even if one had an adequate testing procedure in theory, its use in the field to detect violations would be very difficult; seldom would a testing site near areas of operation insure or approximate labor-

atory conditions. With less than perfect conditions, noise levels could be significantly influenced by the variables of temperature, wind, terrain, vegetation, and the like. The implications of this are not merely in terms of adequate testing but also in terms of enforcement. When, for example, would a person know when he is in violation of a given decible standard? The operator would have neither the technical equipment nor the experience to make the determination. The question therefore raised is how to phrase a standard in terms that the potential violator would have a practical way of knowing when he has violated the statute. Several states have adopted a standard that requires the muffler and exhaust systems to be kept in good working condition so that the system does not produce any unusual or excessive noise. One problem here is that such a standard might be too vague to be enforceable. What is unusual or excessive? Such a standard does seem to be the only real way to impose requirements on the owner and operator and will probably pass constitutional muster in several states -- at least the argument could be made that "unusual and excessive" is no more vague in terms of noise than is the standard of "reasonable and prudent" when applied to speed.

3. What noise standards should be adopted? The onus of providing legislative leadership has been at least in part removed from the states by the U.S. Environmental Protection Agency (EPA) which sets standards for various types of pollution on various types of machines and vehicles. The EPA is expected to announce its standards for vehicles, including recreational vehicles. This standard will impose a decible requirement on the manufacturers and will effectively pre-empt state regulation of noise level at the manufacturing level. Vehicle manufacturing is probably the most effective place to attack the problem; the manufacturer has the technical capability to understand and measure the requirements. The manufacturer can also be easily checked and effectively sanctioned in the event of noncompliance. Undoubtedly, this federal intervention will be of great assistance to the states. It will not deny the state of several possible areas for effective control with regard to ORVs. The state may still set standards for vehicles manufactured before the date of the EPA standard but which are still currently in use. In addition they may make provision in their statutes to insure that every individual having required equipment keeps that equipment in good working condition and does not remove the equipment. The state also has control over environmental noise levels and therefore can control noise levels by regulating speed, area of operation, and time of operation.

Reflective Materials -- Some statutes require the use of reflective material on the vehicle under regulation. Often, specific requirements are delegated to the agency and the statute merely calls for compliance with administrative regulations. The most common uses of reflective material are: (a) to highlight registration numbers required to be affixed to the vehicle; and (b) as a safety device

to highlight the vehicle particularly when parked and also to highlight trailers, sleds and the like when being pulled behind the vehicle.

Miscellaneous Equipment -- Several other types of equipment have received attention: (a) horn or audible warning device -- generally no specification as to performance are set; (b) throttle -- requirement that the throttle be so designed that when pressure is released it returns immediately to the idle position; this design characteristic should be operational at all temperature ranges; (c) racer cut-off -- a device linking the body of the racing participant with the throttle or special engine cut-off so that if the racer is thrown from the vehicle the engine will shut off; (d) spark arresters -- U.S. Forest Service specification; (e) shielding or screening -- for all exposed drive belts and chains; and (f) emission control devices -- this area will probably be covered by the government at the manufacturing level and the states will simply legislate to insure that the device is in continuous operation and that it has not been tampered with, disconnected, or readjusted so as to affect operational performance.

Delegation for Additional Regulations and Tests

Vehicle equipment is undergoing constant change. Change is also reflected in understanding how vehicles and equipment affect the environment and the safety of passengers. These areas are in a state of flux and the legislature is ill-equipped to adjust quickly to new products or new insight. Consequently, a measure of responsibility and authority is often delegated to an administrative agency to keep pace with such changes and to make adjustments in the law required by these changes. These delegations authorize the agency to make any additional regulations relating to equipment necessary to implement the purpose of the act. There will usually be additional authority delegated to allow tests and research to aid the agency in determining what additional equipment, if any, will be required.

Aside from the technically difficult job of measuring noise and pollution emissions, statutes tend to go to a spot-type random inspection -- i.e., any officer, peace official, game warden, or agency official charged

with enforcement of the act will be given the primary responsibility for enforcement of the equipment regulations. More formalized inspection programs, such as those used for automobile inspection, are not very adaptable to ORVs. Many types of ORVs simply cannot be driven to a centralized inspection station. Also, depending on how broad a definition of ORV is adopted, the inspection may cover many types of vehicles; this may require a variety of specialized equipment and technical knowledge. Such an inspection policy would be difficult to administer and finance.

Dealer, Renter and Owner Compliance

Individuals who sell, furnish, rent, or lease vehicles to others as part of a regular business enterprise are frequently held liable for a misdemeanor, with penalties as heavy as \$500 fine and 6 months in jail, for each vehicle which fails to conform to equipment requirements. Assuming the dealer has a moderate stock on hand, non-compliance could prove to be a very expensive proposition. The vehicle owner is often placed under the exact same penalty requirements as the dealer for non-compliance. In addition, some states require that accompanying every application for registration or renewal thereof, the vehicle owner make a sworn statement that the vehicle meets all equipment requirements.

Manufacturer Equipment Requirements

These requirements often state that all vehicles manufactured in the state or manufactured outside but brought into the state for sale or distribution, shall be equipped in accordance with equipment requirements of the state statute. Some states require the manufacturer to execute a "certificate of compliance" for each vehicle; the certificate states

that the vehicle conforms to all requirements. Penalties for non-compliance parallel those of the owner and the dealer, with a misdemeanor fine and/or imprisonment being the standard. As with the dealer, the number of vehicles owned can make non-compliance an expensive proposition. Another approach is to set a progressive scale of penalties for second and third violations within a given period of time. This approach would probably be more effective against the dealer or manufacturer that generally complies with the statute but who may be a little lax with regard to quality control. An occasional non-conforming vehicle would not hurt the large manufacturer too much under the standard penalty scheme; but with a progressive scale, the impact of violations might be more readily felt.

Exemptions from Requirements

Exemptions from equipment requirements are, for the most part, confined to vehicles participating in special events (discussed later) and those vehicles for which the agency creates a specifically authorized exemption on a case by case basis. The exemption is limited to the place in which the special event is held and a duration corresponding to the event itself. This period of time is normally inclusive of testing, qualifying, and other necessary preliminary operations.

Element 10: Local Regulations

ORV statute sections dealing with local regulations serve two main functions depending on the constitutional structure of the state government and their legal relationship with political subdivisions. These fall under the heading of legislative and home rule states.

In states where local political subdivisions are considered creatures of the legislature -- legislative rule states -- the local regulation section serves as an authorization to the local units of government to pass ordinances or regulations in certain defined areas.

In states where the local units of government have more independent power -- home rule states -- the local regulation statute serves to define the extent to which the legislature intends to pre-empt local laws. Pre-emption is simply the doctrine that if a higher unit of government passes a law regulating a certain area, then the lower unit of government cannot pass additional regulations which conflict with the higher unit's legislation. A corollary to this is that by passing legislation in a certain area, the legislature has occupied the field as the exclusive source of law and therefore the local unit of government cannot pass any laws in the area even though not in conflict with existing laws. In this type of situation, the local regulation statute is simply the state legislature's way of saying that in its regulation, the legislature did not intend to occupy the field; local units may pass some legislation in this area. The legislature may then define the type of local ordinances that would not be considered in conflict with their legislation.

In terms of content, the local regulation section often will permit local units of government to:

1. Declare certain streets and roads under local jurisdiction as snowmobile or ORV routes and allow ORVs to mix with the regular vehicular traffic. Often, such routes must be recorded with a state administrative body; and
2. Authorize special events such as rallies and races. Here, the local unit is given responsibility for approving and supervising these events.

Local regulation statutes often specifically prohibit political subdivisions from: (a) requiring local registration or licensing of ORVs; (b) taxing ORVs; (c) prohibiting operations allowed by state or allowing operations prohibited by the state; (d) making additional equipment requirements; and (e) assessing special use fees for ORV operation on public land or for travel over any easements or rights-of-way that serve as an access to public lands.

Element 11: Special Events

Competitive events such as races and rallies are very much a part of the ORV experience. While they do not constitute the central object of ORV statutes, competitive events are popular enough to warrant mention in most statutes. The central problems posed by special events are determining: (a) what constitutes such an event; (b) who shall have the authority to sanction such events; and (c) what special restrictions and exemptions should be applied to these events.

What constitutes a special event? Among the variety of responses to this, used either separately or in combination, are the following: (a) an event sanctioned by a recognized club or association; (b) any organized event; and (c) any event in which there is exhibited substantial public interest. The term "special event" must be defined. Otherwise, the department or agency will be accused of a random approval process with no guidelines. The problem is defining the term with precision. Most states do not want to limit these events to officially sanctioned races and rallies. On the other hand, they do not want to bother with the expense of administering "events" put together by a few for the edification of a few. This is the qualifying function of the requirement that there be "substantial or

demonstrable public interest". While the term is vague and open to criticism, it does serve an important function in the definition.

Who may authorize a special event? Some states allow only a state administrative agency to approve special events. Others allow local authorities to sanction special events held on land within their jurisdiction. Often local authorities will be required to submit to the state administrative agency a notice of the special event together with plans for handling it. These notices, often in the form of a request, are required to be submitted a certain period of time in advance of the event -- 15 days is a common period used.

ORVs and snowmobiles qualifying under the special event status will be given an exemption from a number of requirements imposed on regular ORVs. These are: (a) registration, (b) muffler requirements, (c) head and taillight requirements, and (d) driver licensing if that is required by ORV statute. The department or authorizing agency has the power to impose any additional restrictions on the vehicle required by safety for the conduct of the event. In addition, state statutes often require a mechanism attached to the body of the driver that will shut off the engine should the driver be thrown from the vehicle during the race.

Element 12: Enforcement

The geographical size of the area to be covered makes enforcement of ORV laws a very difficult proposition at best. Enforcement of the motor vehicle code is achieved through state and local police which patrol comparatively well defined areas. In the off-road situation, enforcement is not that simple. First, the sheer size of the area to be covered makes

enforcement difficult. There are no regular police patrols in these areas; there are no well defined highways and roads. The size of the area to be covered contrasts sharply with the available numbers of enforcement personnel. Second, the areas involved fall under the jurisdiction of different agencies. Aside from the possibility of large Federal land holdings, a considerable amount of public land is also under the control of a variety of state agencies.

The first step for authors of the statute is to make a determination of who may enforce the provisions of the act. The answer to this question is largely a matter of determining the manpower needs and the accessibility of that manpower to areas of normal ORV operation. State and local police, sheriffs, and other peace officers are usually given enforcement authority. In addition, statutes often grant enforcement power to personnel of agencies having jurisdiction over public lands. As a matter of course, officers of departments, special deputies appointed by the departments, and game wardens are given enforcement responsibilities. Some states have extended these responsibilities to all employees of agencies with public land jurisdiction.

Enforcement procedures either restate, or incorporate by reference, the standard arrest procedure found in the state's criminal procedure code. Basically, these procedures require that the arresting officer, in a misdemeanor violation, issue the ticket summons to the violator and allow him to go about his business unless the person: (a) attempts to escape or evade the officer; (b) gives false information; (c) does not promise to appear in court or pay the fine; or (d) arresting officer believes that the person will attempt to evade his liability under the law. If any of these situations occur, the officer will take the violator before

the magistrate. To assist enforcement procedure, some statutes provide that any person directed to stop by a uniformed enforcement officer shall come to an immediate stop and provide all reasonable information requested by the officer (registration certificate, license, etc.). Any attempt to evade or escape will constitute a misdemeanor punishable by a fine and/or imprisonment.

Element 13: Penalties

In most statutes, criminal penalties provided are classified as misdemeanors. Within the classification, however, there are a wide variety of sanctions. Punishment of a misdemeanor might bring a \$25 fine or a \$500 fine and six months in jail. Penalty variation is required since there is a great variation in misdemeanor violations. Because of this variation, most statutes intersperse various sections with penalty provisions that apply in that particular area. Thus, four or five sanctions may be indicated to cover a variety of violations of the operations section alone. One state has not seen fit to provide penalty variations; it simply authorizes one penalty for any violation of the act. Fortunately, this is an exception. Most states realize the need for specificity, not just because the penalty should reflect the gravity of the violation, but also because some violations are very difficult to enforce; in those instances, the severity of the penalty helps to insure a level of compliance that enforcement alone could not achieve. Also, penalties against manufacturers would hardly be effective if they were the same as those normally applied to a single individual. There are two basic types of penalty provisions: criminal and administrative.

Criminal Penalties

These are basically misdemeanor fines and jail sentences of six months or less. Provisions are generally stated in terms of maximum or minimum penalties -- i.e., "not less than". Some provisions provide for increased penalties on the second and third offenses within a given period of time.

Administrative Penalties

Technically speaking, an administrative agency cannot assess a criminal penalty. However, the agency can sanction by the revocation of a privilege. Statutes requiring licenses generally provide that the license may be revoked or suspended after a specified number of violations within a time period. One state allows the revocation after only one offense at the agency's discretion. Revocation is also applicable to vehicle registration. Occasionally, this provision will allow for the revocation of an owner's registration if the vehicle owned is involved in a specified number of violations, regardless of the fact that the owner was not the operator of the vehicle when the violations were committed.

Care should be taken to apply various procedural safeguards provided by constitutional law. The right to hearings and appeals and the right to counsel and presentation of evidence are some of the safeguards afforded the accused violator in administrative matters. State administrative procedures acts and the enabling legislation of the various agencies will generally set forth procedures to be followed. By referring to these statutory sections, one should be able to establish a procedure which avoids discretionary administrative action and insures constitutional soundness of the penalty section. As a matter of course, penalty sections include a

clause to the effect that the penalties will apply not only to the statutorily defined violations, but also to violations of any administrative regulations made and promulgated pursuant to the act.

Element 14: Private Landowners

The private landowner has been the focus of particular attention in eastern states where the relatively small amount of public land holdings dictates active encouragement of private land in providing ORV facilities. In the western states, pressure to employ private land as a matter of policy is not as great. However, use-patterns near metropolitan areas and the incidental use of private land for access and cross-country travel compels discussion of trespass and liability.

Trespass Right and Damage

One major thrust in legislation of other states is to provide the landowner with sufficient remedies to prevent unauthorized use of his land by the ORV user. The landowner can always institute civil proceedings for damages, injunction in cases of continuing nuisances, or action for damages based on trespass. The cost, however, of such relief is usually prohibitive in relation to the recovery or benefit gained. Under the regular trespass law of most states, recovery is limited to the amount of actual damages; treble damages is awarded in some cases where intentional infliction of damage is proved. If there is no real damage to the land then the recovery is limited to token damages.

Some states, in order to assist the landowner, have established provisions requiring consent of the owner prior to entering upon private land. The user may also have the obligation to stop and identify oneself

at the landowner's request. Any violation of these provisions results in a misdemeanor violation; monetary penalty is unrelated to the amount of actual damage caused by the trespass. Therefore, by resort to the punitive power of the state, the landowner has an effective tool to prevent trespass even though no financial gain is received. Whether this type of statute would be helpful in Idaho is a matter of informed judgment based on a familiarity with private landowner views.

Landowner Liability

A second part of the landowner's relationship to the ORV involves the use of private land for recreational purposes. While the state cannot force the landowner to open premises to recreational use, it can make provision to encourage such action. One of these provisions is the limitation of landowner liability.

Even though the landowner might be favorably disposed to open property to recreational use, the possibility of liability for negligence has made the landowner think twice about such a move. Under the law of most states, the private landowner will owe a differing standard of care to each of several categories of land users. The trespasser is owed the lowest standard of care. A person coming on to the land to promote business purpose, the licensee, is owed a higher standard of care. Finally, the casual invitee, a class which most recreationists would fall into, is owed still a higher standard. The denomination of these classes of visitors and the standard of care owed to each may differ from state to state, but the important point is that the ORV operator will generally be in a class that is owed a high standard of care. This generally means that the ORV

operator can recover for ordinary negligence; the landowner has a positive duty to warn of any dangerous conditions on the land which are known or which should have been known by the exercise of ordinary care.

To relieve the landowner of this burden and to encourage the use of private property for recreational use, many state codes have limited the liability of the landowner. The provision is made that the landowner is liable only for gross negligence when people are allowed to use land for recreational purposes without remuneration. "Recreational purposes" is a term defined broadly to include everything from pleasure driving to archeology.

Liability limiting statutes are not the product of the ORV experience. Most states have had these laws on the books for a long time. Therefore, they need not be reiterated in a comprehensive ORV statute. Usually, they define recreational purposes broadly enough to apply to ORV use, even though not specifically mentioned as a recreational use. Idaho has such a statute in I.C. 36-2503. The law relieves the landowner or tenant of any obligation to keep premises safe for use by others or to give warning of any dangerous conditions on the land. It applies to the broad range of recreational purposes. Application is contingent on the free use of the land.

Element 15: Delegations

The statute alone cannot effect the overall ORV plan. Inevitably, administrative agencies will be called upon to undertake administrative duties, oversee daily operations of the plan, and make rules and regulations in furtherance of the ORV scheme. The ability of the agencies to

act will depend exclusively on the authority given in statutory acts. Enabling legislation provides the basic grant of authority. Additional pieces of legislation, such as the ORV statute, may give additional powers.

Some states take great care to set out delegations of power to the various agencies. Other state statutes treat delegations almost as if they were after-thoughts. Some statutes set out the major delegations in separate sections. Other statutes bury them in the paragraphs. Treatment varies, but the fact remains: they are a pivotal part of the overall plan and should be treated as such. Delegations allow an agency sufficient power to act and yet narrow this power enough to avoid totally discretionary agency action and to preserve the delegation from constitutional challenges.

ADMINISTRATIVE AGENCIES

ORV regulation involves a coordinated effort by the legislature on the one hand and administrative agencies on the other. The extent to which regulation responsibility is placed on one or the other will differ from state to state. The State of Washington, for example, has an ORV statute that keys primarily to registration of vehicles (Washington Laws. 1972 1st ex. sess. c46s09). The bulk of regulatory responsibility is on various agencies of that state. Other states have very complete statutes which describe the regulatory scheme with great specificity. In such cases, the agency may have only general administrative responsibility with very little substantive rule-making ability.

Role of Agencies

Some states have no ORV legislation. In such cases, agencies must look to general grants of authority in order to find basis on which they can regulate ORVs. For example, the general grant of responsibility to administer public lands so as to protect the natural environment may be sufficient to allow fairly detailed regulation of vehicles. Note, investigations concerning regulations of states without legislation indicate a wide difference in regulatory treatment. Some states have regulations which reflect a concern for ORV use. Other states have regulations which pertain only to motor vehicles and do not reflect an awareness of ORV recreational use. These seem preoccupied with regulation of traffic on state park roads. There are five general areas in which the agency seems to play a consistently prominent role: land-use classification and control, operational regulations, equipment requirements, educational programs, and administrative control.

Land-Use Classification and Control

ORV recreational use will have diverse impacts on various public land holdings within a state. Some ORVs will have little impact on land while other vehicles will have a serious effect. Changing climatic and user patterns call for flexibility in administering lands for such recreational uses. The legislative process is not amenable to a flexible approach. As a result, states invariably leave the problem of land classification to appropriate state agencies. These agencies have responsibility to inventory available land and make judgments as to closure.

There are variations in approaches to the classification task. Some states follow a "restrictive" land-use policy announcing the basic assumption that all lands are closed to vehicular use (off-designated road use) unless such use is specifically authorized by the agency having jurisdiction over the land. In other states, a "permissive" approach is used whereby the ORV is allowed off-road unless the area is posted against such use. A combination of the two approaches has been used; the more restrictive is applied to park and forest lands while the permissive approach is applied to unreserved public lands.

In order to add even more flexibility to the land classification and inventory function, some states, either by statute or administrative regulation, have introduced more specific land-use categories. Categories such as established roads, trails and cross country areas allow the agency to selectively restrict vehicle use in a given area without having to close the entire area to ORVs. For example, a state may have some lands, such as wilderness areas, that are completely closed to ORV use. Other lands might be open to such use without restriction. A third category of land open to limited use might allow vehicles to travel on established roads and trails but prohibit some or all types of ORVs from cross-country travel.

The virtue of this approach is that it recognizes that all vehicles and uses do not have an equal impact on the land. In some cases, trail bikes might have a negligible impact while the heavier four-wheel drive might cause noticeable harm. Therefore, cross-country travel might be allowed for the motorcycle but the four-wheel drive might be restricted to established trails and roads. In other circumstances, snowmobiles might

be allowed to operate cross country while all other ORVs would be confined to established roads and trails. The list of possible combinations and conditions is large; enumeration would not serve any purpose. Specific land-use categories, when used in conjunction with the general open and closed lands policy, can help minimize environmental impact while maximizing the amount of land open to ORV use.

Balancing interests such as environmental protection, wildlife protection, wildlife protection, ORV use, and other recreational uses of the land is not an easy task. Agencies must review a myriad of considerations and make policy judgments. Judgments are not final; they are but steps in a continuing process, steps which will be modified by changing conditions. It is a process which demands flexibility and daily oversight. Not all states studied made provision for land inventory and classification. Many simply announced the basic policy of restrictive or permissive use and left site-specific closure to the discretion of the agency. More comprehensive approaches require one or more agencies to inventory all land within their jurisdiction which might be available for ORV use and to classify those lands according to suitability for sustained ORV use. In addition, these agencies were directed to designate open-use areas, trails and other vehicle ways, to prepare maps for use by ORV operators, and to implement a program of sign posting to designate areas of permitted and prohibited use. The degree of responsibility placed on the agency differs considerably as does the sophistication of the land-use program.

Operational Regulations

A second area of major administrative responsibility is that of vehicle operation. As previously noted, most statutes include a section dealing with vehicle operation. Of necessity, these sections are couched in rather general language -- "speed that is reasonable and prudent under the conditions". The administrative agency is given power to bring specificity to general restrictions. They post speed limits, designate the areas of permitted use, erect and maintain a system of regulatory signs, and restrict types of operation allowed in given areas.

The agency also must be able to respond to changes in operational practices or driving conditions not anticipated by the statute. The general grant of authority to make rules and regulations pursuant to the statute allows the agency to adapt general regulations to specific situations, and to make changes as needs dictate.

Equipment Requirements

The third major area of administrative involvement is equipment regulation. A comprehensive equipment section in a statute does not preclude agency action. While equipment sections tend to be more specific than operational sections, this specificity cannot anticipate need for future change. ORV use patterns and practices will change; vehicle technology will change; the level of understanding of safety and environmental protection will increase. The agency is in the best position to assess and respond to these changing needs. This is particularly true in the area of technology. Noise control and emission standards are often set at a

minimum level by statute. But authority is given the agency to conduct tests and make more stringent requirements in light of technological advance. Stopping distances, steering devices and other operational characteristics of ORVs may improve with time. If changes are feasible and if benefit is substantial, the agency will be in a position to upgrade equipment requirements.

Authority to make additional or more stringent requirements is most often permissive in tone. There is no onus on the agency to respond to every feasible technological, safety or environmental change. The agency is usually given discretion to weigh any improved equipment standard in light of feasibility, cost and anticipated benefit.

Educational Programs

If the statute has made provision for a driver certification or educational program, an administrative agency will usually be given responsibility for its development. If ORVs are believed to be almost exclusively used in an off-road situation, the designated agency will often be a natural resource agency rather than a motor vehicle agency. Responsibilities will involve development of a curriculum, including: (a) mechanical understanding, (b) safety and survival, (c) operational procedures, (d) handling characteristics on different terrain, (e) a text, (f) administration of the course in the field and in the classroom, (g) establishment of testing criteria and procedures, and (h) the administration of tests and certification. Assistance for development and administration of programs can often be obtained from local ORV groups and other state agencies.

Time and money are prerequisites to a good educational program. In terms of both commodities, ORV education is expensive. However, the potential, in terms of future generations, can be great. Promotion of the sport, coupled with an increased awareness of safety and environmental protection, are benefits which must be weighed against costs.

Administrative Control

The statute may establish mechanics of regulation but the task of oversight falls to the administrative agency. Various agencies will be appointed to carry out and administer statutory programs such as licensing, registration, vehicle inspection, facility development, education, land-use control, and so on. The role of the agency is an important one.

Agencies most frequently relied upon fall into two main categories: natural resource agencies and motor vehicle agencies. Natural resource agencies include departments of public lands, forestry, fish and game, and parks and recreation. In some states all are consolidated into one overall department of natural resources. Where there is no such consolidation, the statutory planners must attempt to define the role and grant the power necessary to each agency separately. Reliance placed on natural resource agencies stems from two main factors. First, these agencies often have jurisdiction over much of the land used for ORV purposes. Second, they likely possess the expertise necessary to assess the environmental impact of ORVs on the land and wildlife resources.

Motor vehicle agencies would include the departments of law enforcement, motor vehicles, and highways. Exact agency structures will differ from state to state. The Department of Law Enforcement in Idaho includes both the traditional law enforcement powers and the powers of licensing, regis-

tration, inspection and vehicle regulation. The latter powers are possessed by a department of motor vehicles in other states.

The departments of law enforcement and/or motor vehicles will share enforcement duties with other agencies. In most instances, they will be given primary responsibility for registration and also licensing. Some states assign these tasks to a department of natural resources. In most states with youth education, a natural resources agency will have charge of the program but the department of law enforcement or motor vehicles will often have an advisory capacity.

The highway department by virtue of particular capabilities, is responsible for trail design, construction and maintenance. Development of a sign posting system is also a frequent function of this agency. While some statutes give the department only an advisory capacity in these matters, most statutes grant them primary responsibility.

It is important to remember that the ORV experience crosses the traditional functions of established agencies. By combining vehicle operation and public land protection we have produce a hybrid problem. This will require the attention and talent of several agencies. Statutes are usually careful to provide the framework for mutual cooperation and consultation among agencies. Such a framework will decrease the chance of unproductive overlap of functions and insure that the combined capabilities and expertise of all agencies will be brought to bear.

Bringing the Agency into Play

Administrative agencies will more often than not play a pivotal role in the execution of the ORV plan. Agencies, however, cannot simply assume

this role; they must be brought in by law. Until the legal foundation of authority has been laid, the agencies cannot function in the desired capacity. In order to establish this legal foundation, it is necessary to determine the following:

1. What functions should be given to administrative agencies?
2. What specific agencies or combinations of agencies will be given each specific function?
3. What existing powers do the agencies currently have with respect to functions and responsibilities to be given?
4. What additional authority must be delegated to allow agencies to fully and effectively discharge responsibilities under the ORV statute?

While the above process is simply an illustrative approach, it does contain key questions which must be addressed. The first step is simply another way of saying that the authors should know where they are going before they start drafting a statute. When they know what they want to accomplish and how they intend to accomplish it, they can then select who will accomplish it. This is the second step. Consideration must be given to the existing capabilities and characteristics of the agencies. Practical factors must be weighed. For example, some states have assigned registration to the department of law enforcement on the premise that this is a function which they have exercised with respect to motor vehicles; experience, structure and personnel are geared to this type of function. States giving priority to other factors have assigned registration to a natural resource department. Also, the statute authors must decide when more than one agency should be involved in a given function. Sign posting is a good example. The department of highways usually handles this for regular state roads. It has the experience and capabilities. But much posting will

take place on lands under the jurisdiction of other agencies -- agencies which might be more familiar with the terrain and the operational capabilities of ORVs. If both are given responsibility, lines of authority must be drawn.

The third step is determining what powers existing agencies have. This involves a determination of powers and the purposes for which these powers can be exercised. Enabling legislation will set out the agency's basic mandate and authority. Subsequent legislation may enlarge upon these powers. Established powers of the agency may be sufficient, but more often than not, additional authority will be required. This is the fourth step -- delegating additional power. In most comprehensive statutes, delegations will specifically name the agency, describe its duties, and grant power to establish administrative procedures and to make rules and regulations pursuant to the section. Without sufficient delegated authority, the agency cannot legally act. Consultation with agency officials and adequate legal counsel at the drafting stage should insure that the agency has sufficient authority to discharge its responsibilities.

The Delegation Doctrine

Practical necessities dictate that legislative and executive branches delegate some tasks to administrative agencies. The legislature does this by statutory grant. However, the desirable exercise of delegation is limited by legal restraints. The degree to which the ability to delegate is circumscribed by law varies from state to state. Therefore, it is important to note that the latitude given to an agency in some states could

not be given to agencies in other states. Since it is impossible to assess variances among states without a lengthy legal analysis of each state, discussion will be confined to a background explanation of the delegation problem.

Set in its simplest and perhaps overgeneralized term, the delegation problem involves two distinct aspects. The first aspect relates to the separation of powers provisions of U.S. and state constitutional law. Under our system of government, the legislative, executive and judicial branches have separately designated roles to play in the governmental process. This separation of power is the cornerstone of the system of checks and balances. In the administrative process, we witness the commingling of the legislative, executive and judicial functions. Agencies do make rules of general applicability; they do make policy and administrative decisions; they do adjudicate. On its fact, this would appear to violate the separation of powers doctrine, but the courts have taken an increasingly more tolerant view of this combination of roles. Courts have allowed this situation to exist where agency action is open to supervision and control.

The second aspect of delegation is the one of most immediate concern. This is the general constitutional prohibition against any of the three branches of government delegating power and responsibility to perform its constitutionally appointed function. The time-honored adage that "the legislature may not delegate the power to legislate" embodies this principle. Exponents of this view reason that the legislature has been given exclusive authority to legislate by the Constitution and that each legislator has been given the individual mandate by the electorate

to perform the legislative function. In view of this, some believe the legislative role should not be delegated. In theory, this approach is consistent and logical. But in practice it breaks down in the face of necessity created by size, diversity and specialization of modern governmental administration.

As a result of this breakdown, courts have liberalized their views on the matter. While not forsaking the principle that the legislature cannot delegate its power to legislate, they have whittled away the practical effect of this principle through a number of qualifications -- many of which are nothing more than convenient legal fictions. Among these qualifications is the approach stating that the legislature does not abdicate its responsibility if it gives a statutory grant of authority to an agency to perform a task, defines the purpose of that task, and sets guidelines for performance.

At the state level, the interpretation of the delegation doctrine is not uniform. While the trend is clearly toward the liberalization of "delegation restriction", there are still states which construe the doctrine strictly. Illustrative of the Idaho approach are the following cases. Note that this presentation is designed to give a general idea of doctrine interpretation; it is not intended to pre-empt legal counsel at the drafting stage.

1. The basic limitation against delegation was indicated in State v. Nelson, (36 Id 713, 213 P 358), where the court said the legislature may not delegate legislative authority to another body or authority to make laws. This is in keeping with the general prohibition against the delegation of legislative power set out in the Idaho Constitution Article 3 Section 1. The question, therefore, becomes what constitutes legislative power and what constitutes that other permissible delegation of authority made by legislatures? A fine line of distinction exists between permissible and impermissible delegation.

2. In Suppinger v. Enking (60 Id 292, 91 P 2nd 362) the court held that a delegation to the Board of Examiners to pay out appropriations at its discretion was a valid delegation since the legislature specified limitations and safeguards for the exercise of this authority. The court did not elaborate on the question of what constituted "adequate safeguards".
3. In State v. Taylor (58 Id 656, 78 P 2nd 125) the court noted that "it seems to be an accepted rule of judicial decision that the legislative function has been complied with where the terms of the statute are sufficiently definite and certain to declare the legislature may leave to the administrative agencies the selection of means and the time and the place of execution of the legislative purpose and to that end may prescribe rules and regulations."
4. In Howard v. Missman (337 P 592) the contention was made that the Idaho Highway Department did not have the authority to exercise discretion in the selection and marking of no-passing zones. In rejecting this contention the court emphasized that although the legislature must decide the basic policy to be applied and fix the legal principles which are to control given cases, the administrative body can be delegated the authority to ascertain the facts and conditions to which the policy and principles apply.
5. In the case of State v. Heitz (72 Id 107, 238 P 2nd 439) the defendant asserted that the Highway Commission (then under the Department of Public Works) could not be granted the authority to fix weight limitations for motor vehicles. The court again rejected the contention stating that the delegation of authority to make rules and regulations was valid where such rules and regulations were to be enacted to carry out an express legislative purpose or to effect the operation and enforcement of such an expressly stated purpose. Such a delegation is one of administrative power and not a delegation of legislative authority.

It would appear that the delegation doctrine stated in its most abstract terms would require a statement of legislative policy. The Heitz case stated that this statement of policy should be "expressed". Other cases did not use that adjective. Whether legislative policy needs to be specifically stated or if it can be implied from provisions of the statute appears to be an open question. Cases seem to agree that there should be

some established limitations or safeguards in the grant of authority. A specific statement of purpose would appear to provide sufficient check against abuse of discretion by the agency.

One major problem in land-use regulation by agencies is that the agency must make rules and regulations governing conflicting uses and conflicting policies. The agency must weigh these competing policies and act according to judgment. In most cases, the agency will be protected in its exercise of discretion in implementing competing policies. How much leeway the court will give depends largely on the specific fact situation.

The foregoing explanation simply points to the fact that agencies of various states are not operating on equal footing; this may be reflected in the type of plan they formulate to deal with ORV use. One cannot really consider administrative regulations without at least being aware that the problem of delegation may exist and affect agency actions. Delegation may also play some role in the disparity among the approaches adopted by the states. Such state plans will be formulated not only on the basis of what it should do, but also on the basis of what it can do.

CONCLUSION

Modern natural resource management and land-use planning is commonly viewed within a "systems" context. ORV management and planning is part of this system. Effective and efficient management and planning calls for an integrated approach to combining biological and other resource inputs in a manner that best facilitates desired outputs. All management

activities are subject to constraints imposed by biological, social, economic and other systems and institutions. One of the most critically important systems impacting on land management/planning activities is the system of rules and regulations that delimit behavioral activities -- the legal system. So it is with ORV management and planning. As part of a system of land management activities, the legal system enveloping ORV management plays a dual role: in the developmental state, it is an active management tool; when established, the legal system becomes a passive tool serving mainly as an activity constraint. It is, therefore, critically important to view ORV law as part of a land management system and to coordinate and integrate it with other system components.

In this article we have studiously avoided attempts to provide a specific substantive answer to the ORV question. It is not our prerogative to make such suggestions. Definition of the problem and proposed solutions are responsibilities of designated study groups, legislatures, and their legal counsel. Statute authors must consult other publications and actual ORV statutes. They will have to collect and review all the available information in light of their state's own particular needs and legal structure. They will have to make final determinations. The most we can hope to do is to provide a frame of reference for their efforts by sketching the paths that others have followed. Hopefully, a look at the experience of other states will generate some ideas, help to anticipate problems, and develop an appreciation for the complexity of developing quality ORV legislation.

UNIVERSITY OF IDAHO LIBRARY