

TRANSPORTATION CABINET

Department of Highways

Division of Planning

(Amendment)

603 KAR 5:350. Off-highway vehicles, safety, and routes.

RELATES TO: KRS 12.020, 148.0222, 174.020, 189.281, 189.390, 189.515, 189.520, 304.39-110, 16 C.F.R. sec. 1420.3

STATUTORY AUTHORITY: KRS 189.281

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.281 requires the cabinet to promulgate administrative regulations relating to the local government pilot program for off-highway vehicles (OHV). This administrative regulation establishes the criteria for OHV ordinances, petitions, and the rescinding thereof, OHV enforcement requirements, and OHV safety plan requirements and establishes the OHV safety requirements and the safety equipment verification protocol. This administrative regulation shall expire on July 1, ~~2027~~~~[2024]~~, pursuant to KRS 189.281.

Section 1. Definitions.

- (1) "Agreement" means the written document executed by the designees of the local government and the cabinet, detailing the terms and conditions of OHV use on designated state owned or maintained highways.
- (2) "Business district" is defined by KRS 189.390(1)(a).
- (3) "Cabinet" means the Transportation Cabinet.
- (4) "Local government" is defined by KRS 189.281(1)(a)~~1-2~~.
- (5) "Off-highway vehicle" or "OHV" is defined by KRS 189.281(1)(b).
- (6) "Regional authority" is defined by KRS 189.281(1)(c).
- (7) "State highway" is defined by KRS 189.390(1)(c).

Section 2. Local Government Pilot Program Ordinance Related to OHVs.

- (1) As established in KRS 189.281(2)(c)~~(a)~~, a local government may petition the Transportation Cabinet to authorize and regulate the use and operation of OHVs on state highways or sections of state highways located within the local government's jurisdictional boundaries. Before the local government may file a petition, the local government shall first adopt an OHV ordinance. Procedures for adopting an OHV ordinance are stated in KRS 189.281(2)(b)~~1-3~~~~(1)(2)(3)~~. All statutory requirements regarding proposed OHV ordinance shall be met.
- (2) Pursuant to KRS 189.281(3), a fully controlled access highway shall not be designated or otherwise adopted in any OHV ordinance.

Section 3. Local Government Petition for OHV use on State Highways.

- (1) A local government seeking to include state highways as part of the local government's proposed OHV ordinance pursuant to KRS 189.281(2)(c) and Section 2 of this administrative regulation shall submit a petition as required by KRS 189.281(2)(c)~~(1-6)~~.
- (2) A completed petition shall be submitted to the Transportation Cabinet District Office where the local government is geographically located.
- (3) The District Office, Chief District Engineer shall review the petition along with supporting documentation required by KRS 189.281(2)(c). If the petition is found deficient, the local Chief District Engineer shall return the petition to the local government with a written explanation of the petition defects. The local government shall correct the petition defects and re-submit the petition to the district office. If the petition defects are not corrected, the petition shall not be deemed as being filed. If the petition is

completed properly with required documentation, the Chief District Engineer, shall verify and forward the completed petition to the State Highway Engineer for review.

(4) Within ninety (90) days of a properly filed and completed petition from a local government, the Transportation Cabinet, through the State Highway Engineer's Office shall notify the local government as to whether the petition has been approved or if the petition is deficient. The ninety (90) day period shall not begin to run, until the properly completed petition is filed. Deficient petitions shall not be deemed as being filed until corrected and re-submitted.

(5) If the petition is approved, the local government, through its designee shall enter into an agreement with representatives of the Transportation Cabinet detailing the terms and conditions of the proposed route use. The agreement effective date is the date fully executed.

(6) Once the agreement is executed the proposed locations shall be forwarded to the Central Office, Division of Planning for placement on the OHV Route Network.

(7) Agreements shall be eligible to be renewed at the request of the local government on an annual basis.

(8) If the petition is denied, the Transportation Cabinet shall provide the Petitioner with the cause of the denial.

(9) In addition to the fully executed agreement, the local government shall establish an enforcement plan to ensure that all OHVs operating on roadways under this section meet all requirements outlined in KRS 189.281, which shall:

- (a) List the local enforcement agencies involved;
- (b) Detail the inspection process;
- (c) Adopt a safety plan for OHV use;
- (d) Be responsible for monthly inspection of state and local OHV signage; and
- (e) Develop a recording and reporting mechanism to report ongoing crashes, collisions, injuries, and other events that relate to safety or failures regarding the operation of OHV vehicles on routes designated.

Section 4. Agreements or Approved Petitions may be Rescinded.

(1) Approved petitions and agreements may be rescinded for the following reasons:

- (a) The petition contains fraudulent or misleading information that would have resulted in the petition being denied;
- (b) Noncompliance with any requirements set forth in KRS 189.281, this administrative regulation, or the agreement itself; or
- (c) Crash history, unforeseen circumstances, public safety, or any other reason deemed necessary to protect the public or the interests of the cabinet.

(2) If the approved petition is rescinded prior to entry of the agreement, or if an executed agreement is in place, the cabinet shall provide written explanation as to why the approved petition or existing agreement is now rescinded.

Section 5. Minimum Vehicle Requirements.

(1) All petitions submitted to the cabinet for approval shall adopt and enforce the definition of an OHV.

(2) All petitions to the cabinet for approval shall include an enforcement plan to ensure that OHVs operating on proposed roadways and trails conform with the vehicle standards established in KRS 189.281(1)(b), and this administrative regulation, and that required insurance coverage is verified.

Section 6. Route Requirements and Standards. As established in KRS 189.281(3), a fully controlled access highway shall not be designated for OHV use. Any petition to the cabinet naming a fully controlled access highway shall be denied.

Section 7. Incorporation by Reference.

(1) "TC 59-112, OHV Safety Plan", September 2024~~[July 2022]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Department of Highways, 6th Floor, Transportation Cabinet Office Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m. EST. This material may also be obtained at the cabinet's Web site at www.transportation.ky.gov.

(49 Ky.R. 498, 1255; eff. 3-1-2023; 51 Ky.R. 789; eff. 2-18-2025.)

JIM GRAY, Secretary

JAMES E. BALLINGER, State Highway Engineer

APPROVED BY AGENCY: September 13, 2024

FILED WITH LRC: September 13, 2024 at 11:45 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2024, at 11:00 a.m. EST, at the Transportation Cabinet, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. EST on November 30, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager / Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 782-8180, fax (502) 564-5238, email Jon.Johnson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This regulation relating to the local government pilot program for off-highway vehicles (OHV) establishes the criteria for OHV ordinances, petitions, and the rescinding thereof, OHV enforcement requirements, and OHV safety plan requirements and establishes the OHV safety requirements and the safety equipment verification protocol. This pilot program and administrative regulation shall expire on July 1, 2027, pursuant to KRS 189.281.

(b) The necessity of this administrative regulation:

This administrative regulation is required by KRS 189.281 to establish standards for OHV ordinances, enforcement, safety and safety verification protocol.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statute by providing guidelines for local governments to pass OHV ordinances, and to petition the Cabinet to use portions of state owned and maintained roads for OHV use. This regulation establishes criteria for OHV safety plan, OHV enforcement requirements, and OHV safety protocol and verification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will establish the regulatory requirements of KRS 189.281 in relation to approved OHV routes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This administrative regulation is an amendment to an existing administrative regulation. This amendment will extend the date of the pilot program.

(b) The necessity of the amendment to this administrative regulation:

This administrative regulation is an amendment to an existing administrative regulation. This amendment will extend the date of the pilot program.

(c) How the amendment conforms to the content of the authorizing statutes:

This administrative regulation is an amendment to an existing administrative regulation. This amendment will extend the date of the pilot program.

(d) How the amendment will assist in the effective administration of the statutes:

This administrative regulation is an amendment to an existing administrative regulation. This amendment will extend the date of the pilot program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation will affect: Local governments, which means a city, county, charter county government, urban-county government, consolidated local government, or unified local government that is located within the boundaries of a regional authority, or the Kentucky Mountain Regional Authority established under KRS 148.0222, acting on behalf of a local government that part of the authority.

Owners and operators of OHV vehicles, passengers; Kentucky State Police and KSP sub-grantees; other local law enforcement, emergency services, Kentucky Transportation Cabinet.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

This administrative regulation establishes requirements for local governments to pass ordinances for OHV use along with general procedures for safety plans, and safety equipment verification. This regulation allows the local government to petition the Cabinet to allow use of state owned or maintained roads. All law enforcement and emergency services will be available to assist in enforcement and safety in relation to OHV use or operation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Costs may occur to the local governments that get involved with the pilot program. These costs will only occur if the local government chooses to participate in this pilot program. Other costs associated with signage and enforcement have not yet been determined.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Compliance with this administrative regulation will allow safe operation of OHV vehicles at designated areas throughout the Commonwealth of Kentucky.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

Costs cannot be determined at this time.

(b) On a continuing basis:

Costs cannot be determined at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

There are known costs associated with KRS 189.281(10). These will be paid with district traffic funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

Unknown at this time.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

Explain why or why not. No tiering is required under any law nor is it necessary for proper application of the law.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 189.281.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

Kentucky State Police and KSP sub-grantees; Kentucky Transportation Cabinet, and local governments as defined by this regulation.

(a) Estimate the following for the first year:

Expenditures: This is unknown at this time.

Revenues: This is unknown at this time.

Cost Savings: This is unknown at this time.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

This is unknown at this time.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

Local governments, which means a city, county, charter county government, urban-county government, consolidated local government, or unified local government that is located within the boundaries of a regional authority, or the Kentucky Mountain Regional Authority established under KRS 148.0222, acting on behalf of a local government. Kentucky State Police and KSP sub-grantees; other local law enforcement, emergency services, Kentucky Transportation Cabinet.

(a) Estimate the following for the first year:

Expenditures: This is unknown at this time.

Revenues: This is unknown at this time.

Cost Savings: This is unknown at this time.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

This is unknown at this time.

(4) Identify additional regulated entities not listed in questions (2) or (3):

N/A

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

N/A

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

Fiscal impact is unknown at this time.

(b) Methodology and resources used to determine the fiscal impact:

Since this is a pilot program, we have no data, economic or otherwise, to measure economic impact at this time.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

: It is unknown whether this administrative regulation will have a major economic impact at this time.

(b) The methodology and resources used to reach this conclusion:

Since this is a pilot program, we have no data, economic or otherwise, to measure economic impact at this time.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

There are no federal statutes or regulations that constitute a federal mandate.

(2) State compliance standards.

KRS 189.281.

(3) Minimum or uniform standards contained in the federal mandate.

The only federal standard, though not a mandate relates to safety features of the OHV vehicles pursuant to 49 C.F.R. sec. 571.209.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation establishes requirements that are consistent with those relating to OHV safety features or devices established in 49 C.F.R. sec. 571.209.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

No stricter standard, or additional or different responsibilities or requirements are imposed.