

House Energy and Commerce Committee,
Subcommittee on Commerce, Manufacturing and Trade
United States House of Representatives
Oversight of the Consumer Product Safety Commission
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Testimony of Erik Pritchard
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Good morning Mr. Chairman, Ranking Member, and Members of the Committee. Thank you for this opportunity to testify in support of H.R. 999 – the ROV In-Depth Examination or RIDE Act.

My name is Erik Pritchard; I am the Executive Vice President and General Counsel of the Recreational Off-Highway Vehicle Association, commonly referred to as ROHVA. ROHVA is a not-for-profit trade association sponsored by Arctic Cat, BRP, Honda, John Deere, Kawasaki, Polaris, Textron, and Yamaha. ROHVA was formed to promote the safe and responsible use of recreational off-highway vehicles – called ROVs or side-by-sides – manufactured or distributed in North America.

Between 2011 and 2014 alone, ROV sales are *conservatively* estimated to total more than 750,000 in the United States. That does not include the hundreds of thousands of ROVs sold prior to 2011. These off-highway vehicles are used safely by families, emergency personnel, and the U.S. military in a variety of environments, ranging from mud to sand to forested trails. This is a vibrant, high-growth industry and a bright spot in the U.S. manufacturing economy.

ROHVA is accredited by the American National Standards Institute to develop standards for the equipment, configuration, and performance of ROVs. ROHVA has worked extensively with numerous stakeholders for almost seven years to develop voluntary standards for ROVs, commencing in 2008 and culminating in voluntary standards approved in 2010, 2011, and most recently in September 2014. The CPSC has been involved throughout that process.

The newest ROV voluntary standard features substantive changes directly relevant to the proposed rulemaking. These include, but are not limited to, a new dynamic stability and handling test/requirement, as well as new alternative seatbelt reminder requirements that were previously proposed by CPSC staff and driver-side speed-limiting seatbelt interlocks found in over 60% of the 2015 model year ROVs. As you can see in the attached September 30, 2014 Presentation to the CPSC Chairman at slides 6-8, the voluntary standard has evolved over the years and addresses many CPSC proposals, which also have evolved over the years.

Nonetheless and essentially simultaneously with the approval of the new voluntary standard, the CPSC staff prepared and the Commissioners approved a Notice of Proposed Rulemaking regarding ROVs. The NPR essentially ignores the new voluntary standard requirements. Instead the CPSC staff analyzed the prior 2011 voluntary standard and based its NPR on testing of vehicles from Model Year 2010. Of course, vehicle technology has advanced in the five to six model years since then. In a supplemental briefing submitted about three weeks after the voluntary standard was approved, the CPSC staff summarily rejected the new 2014 standard because it did not match their proposed rulemaking.

The CPSC's proposals are *not* supported by science or real-world application, a fact industry has repeatedly explained to the CPSC's Commissioners and staff. The disagreement is not merely theoretical because the CPSC's proposals raise significant safety concerns. One area of concern is the CPSC's application of on-road vehicle dynamics to rugged, off-highway environments. In the meantime, the CPSC continues to conduct testing in support of the NPR it already has voted out.

While our review of the CPSC's data underlying the rulemaking is not yet complete, I can share some initial observations with you:

- According to the CPSC's data, where seatbelt use was known, approximately *90% of riders suffering fatalities did not wear the seatbelts provided in every ROV.*
- Approximately 60% of the severe-injury, rolled-sideways incidents contained in the CPSC's data *were reported by a plaintiffs' law firm.* This is a representative example of that reporting: "[Name redacted], a 46-year-old man from Indiana, was injured by the tipover of an [ROV] whose unpadded rollcage crushed his foot on June 16, 2006. While it has been a year since his accident, foot is still swollen, he finds it extremely difficult to walk, and [name redacted] is in considerable pain." There are approximately another 70 reports like this one. Putting aside the obvious bias of a plaintiff's lawyer's reporting, this is not a scientifically sound approach to gathering data, it tells us nothing about how or why the alleged tipover occurred, and it is not possible to draw any statistical conclusions based on this limited information.
- Based on the CPSC's data, only a small fraction of the side rollover incidents actually fall under the scenarios envisioned by the CPSC, and those incidents are skewed toward the old vehicles, not the newer ones.

This is an unusual situation that goes beyond a run-of-the-mill industry-regulator dispute. These vehicles are significantly more complex than other products under the CPSC's jurisdiction. The ROV manufacturers' engineers and technical staff have serious safety concerns about the effects of the CPSC's proposals. The RIDE Act will help resolve these matters by having the CPSC's proposals examined by an independent agency, such as the National Academy of Sciences, in consultation with the National Highway Traffic Safety Administration

and the Department of Defense. This common-sense approach – resolving technical issues before considering implementation – should be supported by everyone.

I know that some have attempted to characterize the RIDE Act as just further delay in a long process. The record, however, does not support that criticism. The industry has been working hard at updating the voluntary standard as technology evolves. Additionally, the fact that the CPSC spent several years drafting the proposed rule based on Model Year 2010 vehicles cannot be evidence that the rule should be pursued. Nor is the quantity of pages in the briefing package relevant to the quality of the rulemaking. And the comment period has been extended because the CPSC failed to turn over the documents and data underlying the rulemaking until recently, as the attached March 6, 2015 letter from the CPSC's General Counsel confirms.

This morning one of the industry groups is meeting with CPSC staff to discuss voluntary standards. ROHVA members met with the CPSC staff on May 5. The effort to establish a mutually agreeable voluntary standard is the best approach, a view that I understand is shared by the CPSC. I believe this impasse can be resolved through those discussions. But in the meantime, the NPR remains pending. It would be a mistake to proceed to a mandatory rule without first conducting the testing contemplated by the RIDE Act. It is imperative that we get this right for the families, emergency personnel, and U.S. military who use these vehicles in a variety of off-highway terrains and conditions.

Thank you and please support H.R. 999.