

ROV IN-DEPTH EXAMINATION ACT OF 2015

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 1040



SEPTEMBER 22, 2016.—Ordered to be printed

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### ROV IN-DEPTH EXAMINATION ACT OF 2015

SEPTEMBER 22, 2016.—Ordered to be printed

Mr. THUNE, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### R E P O R T

[To accompany S. 1040]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1040) to direct the Consumer Product Safety Commission and the National Academy of Sciences to study the vehicle handling requirements proposed by the Commission for recreational off-highway vehicles and to prohibit the adoption of any such requirements until the completion of the study, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

The purpose of S. 1040, the ROV In-Depth Examination Act of 2015, is to direct the Consumer Product Safety Commission (CPSC) and the National Academy of Sciences (NAS) to study the vehicle handling requirements proposed by the CPSC for recreational off-highway vehicles (ROVs) and to prohibit the adoption of any such requirements until the completion of the study.

#### BACKGROUND AND NEEDS

ROVs are motorized vehicles having four or more tires designed for off-road use and intended by the manufacturer for recreational use by one or more persons. ROVs are distinct from all-terrain vehicles (ATVs) in that they have a steering wheel instead of a handle bar for steering, bench or bucket seats for the driver and passenger(s) instead of straddle seating, and foot controls for throttle and breaking instead of handle bar controls.

According to the CPSC, they have reviewed 428 reports of ROV-related incidents that occurred between January 1, 2003, and December 31, 2011, from its Injury and Potential Incident and In-Depth Investigation databases.<sup>1</sup> These reports document a total of 826 victims involved in the 428 incidents, with 231 reported fatalities and 388 reported injuries.<sup>2</sup>

The CPSC found that, of the “428 reported ROV-related incidents, 291 (68 percent) involved rollover of the vehicle, more than half of which occurred when the vehicle was in a turn (52 percent).”<sup>3</sup> CPSC staff also found that, “of the 224 fatal incidents, 147 (66 percent) involved rollover of the vehicle, and 56 of those incidents (38 percent) occurred on flat terrain.”<sup>4</sup> Additionally, staff also found that:

Of the 225 fatal victims who were in or on the ROV at the time of the incident, 194 (86 percent) were ejected partially or fully from the vehicle, and 146 (75 percent) were struck by a part of the vehicle after ejection. Seat belt use is known for 155 of the 194 ejected victims; of these, 141 (91 percent) were not wearing a seatbelt.<sup>5</sup>

In October 2009, the CPSC issued an advance notice of proposed rulemaking on ROVs due to CPSC staff concerns regarding specific aspects of the voluntary industry *draft* standard being discussed at the time.<sup>6</sup> Specifically, CPSC staff were concerned that the lateral stability and occupant protection aspects of the draft were not sufficient to prevent rollovers or protect occupants in the event of a crash.

A voluntary industry standard promulgated by the American National Standards Institute (ANSI) accredited Recreational Off-Highway Vehicle Association (ROHVA) was later issued in 2010. The ANSI-ROHVA standard establishes minimum requirements for ROVs, including, among other things, lateral and pitch stability, occupant protection systems, and safety labeling. This standard was subsequently updated, with the benefit of CPSC staff participation, in 2011 and again in 2014. At the time, staff was prohibited by regulation from voting on the adoption of voluntary standards, but CPSC staff provided input and technical expertise to assist the ANSI process.<sup>7</sup>

Under the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051 et seq.), the CPSC may promulgate mandatory safety standards reasonably necessary to prevent or reduce an unreasonable risk of injury associated with a consumer product.<sup>8</sup> As in this case, when a voluntary standard exists, the CPSC must rely on the voluntary standard if it determines both that compliance with the standard would eliminate or adequately reduce the risk of injury addressed

<sup>1</sup> Consumer Product Safety Commission, “Safety Standards for Recreational Off-Highway Vehicles (ROVs)”, November 19, 2014, Proposed Rule, 79 Fed. Reg. 68964, 68965.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id. at 68965-66.

<sup>6</sup> Consumer Product Safety Commission, “Safety Standards for Recreational Off-Highway Vehicles (ROVs)”, proposed October 28, 2009, 74 Fed. Reg. 55495.

<sup>7</sup> 16 C.F.R. 1031.11d.

<sup>8</sup> 15 U.S.C. 2056 et seq.

and that there will be substantial compliance with the voluntary standard.<sup>9</sup>

In the initial briefing packet to CPSC Commissioners recommending that the CPSC issue a proposed rule, CPSC staff based the recommendation to proceed with a mandatory standard on an outdated version of the ANSI-ROHVA standard, which was updated in 2014 to address CPSC concerns. This staff proposal drew significant criticism from some stakeholders and from a bipartisan group of Senators (Senators Klobuchar, Heller, Johnson, Blunt, Pryor, Cruz, Rubio, Fischer, Ayotte, Franken, McCaskill, and Manchin), that wrote in support of delaying the rulemaking to review the updated voluntary standard.<sup>10</sup> In addition, the Senators recommended that “CPSC staff and the industry reach an agreement on voluntary standards that adequately address the risk of injury concerning ROVs.”<sup>11</sup>

CPSC participated in the voluntary standards process to revise the then-existing standard, but did not agree with the proposed new ANSI-ROHVA standard. CPSC Commissioners voted along a 3-2 party line vote to proceed with the publication of a Notice of Proposed Rulemaking (NPRM) on grounds that the ANSI-ROHVA standard does not adequately address vehicle stability, vehicle handling, and occupant protection and safety labeling.<sup>12</sup> The NPRM was published on November 19, 2014.

On January 7, 2015, the CPSC held a public meeting during which it heard testimony from stakeholders regarding its ROV NPRM. During that meeting, consumer groups expressed general support for the CPSC’s decision to proceed with its rulemaking while industry stakeholders and members of the user community questioned the scientific validity of the proposed rule and expressed concerns, for instance, that “the remedies prescribed . . . could well have unintended consequences of making these vehicles less safe in the off-road environment.”<sup>13</sup>

On April 2, 2015, the CPSC Commissioners voted unanimously to extend the comment period for the NPRM concerning ROVs. The comment period remained open until June 19, 2015.

#### SUMMARY OF PROVISIONS

S. 1040 would suspend the authority of the CPSC to establish standards concerning the performance or configuration of ROVs pending independent examination of the mandatory design standards proposed in the NPRM. S. 1040 would require that CPSC enter into an agreement with the NAS to conduct a study on matters concerning the ROV lateral stability and vehicle handling requirements proposed by the CPSC. In carrying out its study, the NAS would be required to consult with the Administrator of the National Highway Traffic Safety Administration (NHTSA) and the

<sup>9</sup> 15 U.S.C. 2056(b)(1).

<sup>10</sup> Letter from Sen. Klobuchar et al. to Elliot Kaye, Chairman, U.S. Consumer Product Safety Commission, October 17, 2014, at <http://www.heller.senate.gov/public/~cache/files/bab9c722-7405-4c13-88ce-350ef5ca7b29/10-17-2014-letter-from-senators-to-CPSC.PDF>.

<sup>11</sup> *Id.* at 1.

<sup>12</sup> Consumer Product Safety Commission, “Safety Standards for Recreational Off-Highway Vehicles (ROVs)”, proposed November 19, 2014, 79 Fed. Reg. 68964, (to be codified at 16 C.F.R. pt. 1422).

<sup>13</sup> Public Meeting: Oral Presentations Regarding the Recreational Off-Highway Vehicles Notice of Proposed Rulemaking Before the U.S. Consumer Product Safety Commission at 346, January 7, 2015, (statement of Larry E. Smith, Exec. Dir., Ams. For Responsible Recreational Access).

Secretary of Defense. S. 1040 would establish a deadline of no later than 480 days from the date of enactment for the NAS to complete its study and would require that the NAS transmit its report to the CPSC, the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives. S. 1040 would require that the CPSC consider the results of the study in any subsequent rulemaking regarding the performance or configuration of ROVs, or the provision of point-of-sale information regarding ROV performance. S. 1040 would allow the CPSC to contract with an appropriate organization other than the NAS to conduct the study, in the event that the CPSC is unable to enter into an agreement with the NAS, and provided that the organization is: (1) not part of the Government; (2) operates as a not-for-profit entity; and (3) has expertise and objectivity comparable to that of the NAS.

#### LEGISLATIVE HISTORY

Senators Heller and Manchin introduced S. 1040 on April 22, 2015. The bill is also co-sponsored by Senators Ayotte, Boozman, Cotton, Crapo, Daines, Gardner, Lankford, and Sullivan. On May 20, 2015, the Committee considered the bill and reported S. 1040, as amended. For purposes of consideration and subject to additional amendments, the Committee first adopted an amendment (in the nature of a substitute) offered by Senators Heller and Manchin that would clarify the elements to be included in the study and would adjust the bill's reporting requirements.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

##### *S. 1040—ROV In-Depth Examination Act of 2015*

S. 1040 would direct the Consumer Product Safety Commission (CPSC) to study standards for recreational off-highway vehicles (ROVs) that are specified in a proposed rule issued by the CPSC in 2014. The bill would prohibit CPSC from adopting any requirements on the performance or configuration of ROVs—including those in the proposed rule related to lateral stability, vehicle handling, occupant protection, and consumer information—until after completion of the study. Based on information from the agency, CBO estimates that the study would cost about \$1 million, assuming appropriation of the necessary amounts. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 1040 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Daniel Hoople. The estimate was approved by Holly Harvey, Deputy Assistant Director for Budget Analysis.

## REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

The bill, as reported, would modify the CPSC's authority to establish current standards concerning the performance or configuration of ROVs. In this regard, S. 1040 would prevent the CPSC from establishing any such standards until the completion of a study on proposed lateral stability and vehicle handling requirements. S. 1040 includes a prohibition on the CPSC's exercise of any authority pursuant to section 27(e) of the Consumer Product Safety Act (15 U.S.C. 2076(e)) to require ROV manufacturers to provide performance and technical data to prospective purchasers and to the first purchase of a recreational off-highway vehicle for purposes other than resale until the completion of study on proposed lateral stability and vehicle handling requirements.

The Committee agrees with the Congressional Budget Office that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The bill would impose no costs on States or tribal organizations.

## NUMBER OF PERSONS COVERED

This bill would direct the CPSC and the NAS or alternate contract organization to study the vehicle handling requirements proposed by the CPSC for ROVs and to prohibit the adoption of any such requirements until the completion of the study. It does not authorize any new regulations and therefore will not subject any individuals or businesses to new regulations.

## ECONOMIC IMPACT

The bill is not expected to have an adverse impact on the Nation's economy.

## PRIVACY

The bill would not have any adverse impact on the personal privacy of individuals.

## PAPERWORK

S. 1040 would create a new reporting requirement for the NAS or alternate contract organization. The NAS or alternate contract organization would be directed to complete and transmit to the CPSC and Congress a report of its study on proposed lateral stability and vehicle handling requirements.

## CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

This section would designate the bill's short title as the "ROV In-Depth Examination Act of 2015."

*Section 2. Recreational off-highway vehicle standards study*

Section 2 of the bill would define various terms used within the section. It would establish that the CPSC shall have no authority to establish any standards concerning the performance or configuration of ROVs until after the completion of a study on the proposed lateral stability and vehicle handling requirements. It contains a savings clause which states that nothing in this section would be construed as suggesting that ROVs shall not be manufactured in compliance with applicable voluntary standards. Section 2 would require that the CPSC enter into an agreement with the NAS to determine the technical validity of the lateral stability and vehicle handling requirements for purposes of reducing the risk of ROV rollovers in the off-road environment, including the repeatability and reproducibility of testing for compliance with such requirements. The study also would determine whether there is a technical basis to provide information on a point-of-sale hangtag about a vehicle's rollover resistance on a progressive scale.

Section 2 would further require the NAS, in carrying out its study, to consult with the Administrator of NHTSA and the Secretary of Defense. Section 2 would establish a deadline of no later than 480 days from the date of enactment for the NAS to complete its study and would require that the NAS transmit its report to the CPSC, the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives. Section 2 would require that the CPSC consider the results of the study in any subsequent rulemaking regarding the performance or configuration of ROVs, or the provision of point-of-sale information regarding ROV performance. Section 2 would further allow the CPSC to contract with an appropriate organization other than the NAS to conduct the study, in the event that the CPSC is unable to enter into an agreement with the NAS, and provided that the organization is: (1) not part of the Government; (2) operates as a not-for-profit entity; and (3) has expertise and objectivity comparable to that of the NAS. Subsection (c)(4)(B) of this section would incorporate by reference the other appropriate organization to the requirements of the Act, in the event that the CPSC exercises this option.

## VOTES IN COMMITTEE

Senator Blumenthal offered an amendment, to the amendment (in the nature of a substitute) offered by Senators Heller and Manchin, to authorize the CPSC to accept amounts from manufacturers of ROVs to carry out the study on proposed lateral stability and vehicle handling requirements. By a rollcall vote of 8 yeas and 16 nays as follows, the amendment was defeated:

## YEAS—8

Mr. Nelson  
 Ms. Cantwell<sup>1</sup>  
 Mr. Blumenthal  
 Mr. Schatz  
 Mr. Markey<sup>1</sup>  
 Mr. Booker  
 Mr. Udall<sup>1</sup>  
 Mr. Peters

## NAYS—16

Mr. Wicker  
 Mr. Blunt  
 Mr. Rubio<sup>1</sup>  
 Ms. Ayotte  
 Mr. Cruz  
 Ms. Fischer  
 Mr. Moran<sup>1</sup>  
 Mr. Sullivan  
 Mr. Johnson<sup>1</sup>  
 Mr. Heller  
 Mr. Gardner  
 Mr. Daines  
 Ms. McCaskill  
 Ms. Klobuchar  
 Mr. Manchin<sup>1</sup>  
 Mr. Thune

<sup>1</sup>By proxy

Senator Blumenthal offered an amendment, to the amendment (in the nature of a substitute) offered by Senators Heller and Manchin, to authorize NHTSA to regulate ROVs. By a rollcall vote of 7 yeas and 17 nays as follows, the amendment was defeated:

## YEAS—7

Ms. Cantwell<sup>1</sup>  
 Mr. Blumenthal  
 Mr. Schatz  
 Mr. Markey<sup>1</sup>  
 Mr. Booker  
 Mr. Udall<sup>1</sup>  
 Mr. Peters

## NAYS—17

Mr. Wicker  
 Mr. Blunt  
 Mr. Rubio<sup>1</sup>  
 Ms. Ayotte  
 Mr. Cruz  
 Ms. Fischer  
 Mr. Moran<sup>1</sup>  
 Mr. Sullivan<sup>1</sup>  
 Mr. Johnson<sup>1</sup>  
 Mr. Heller  
 Mr. Gardner<sup>1</sup>  
 Mr. Daines  
 Mr. Nelson  
 Ms. McCaskill  
 Ms. Klobuchar  
 Mr. Manchin  
 Mr. Thune

<sup>1</sup>By proxy

By a rollcall vote of 15 yeas and 9 nays as follows, the bill was ordered reported with amendments:

YEAS—15	NAYS—9
Mr. Wicker	Ms. Cantwell <sup>1</sup>
Mr. Blunt	Ms. McCaskill
Mr. Rubio <sup>1</sup>	Ms. Klobuchar
Ms. Ayotte	Mr. Blumenthal
Mr. Cruz	Mr. Schatz
Ms. Fischer	Mr. Markey <sup>1</sup>
Mr. Moran <sup>1</sup>	Mr. Booker
Mr. Sullivan <sup>1</sup>	Mr. Udall <sup>1</sup>
Mr. Johnson <sup>1</sup>	Mr. Peters
Mr. Heller	
Mr. Gardner <sup>1</sup>	
Mr. Daines	
Mr. Nelson	
Mr. Manchin	
Mr. Thune	

<sup>1</sup>By proxy

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.