

West Virginia Division of Natural Resources  
324 Fourth Ave  
South Charleston, WV 25303

July 18, 2018

Dear Ms. Greene:

As individuals and organizations dedicated to reducing deaths and injuries caused by off-highway vehicles (OHVs), we are submitting this comment to the West Virginia Division of Natural Resources in response to the Notice of Public Comment regarding a proposed rule to regulate the two-year pilot project permitting ATVs and ORVs on designated roads and trails in Cabwaylingo State Forest. We are writing to express opposition to increasing ATV and OHV access on designated roads and trails in Cabwaylingo State Forest..

Tragically, we have identified 119 OHV-related deaths in West Virginia from 2013-2018 (as of June 30, 2018). Of these deaths, 90 (76%) occurred on-road, 23 (19%) occurred off-road, and 6 (5%) occurred in an unknown location. Unfortunately, these numbers may continue to rise as we gather more data.

Allowing OHVs to use public roads suggests to the public that roadway riding is a safe and responsible use of OHVs when in fact, industry, regulators, and consumer and public health and safety advocates, all agree that OHVs are not safe on public roads.

We write to communicate the dangers of allowing OHVs on roads and hope that this information will help inform any policy decision you make.

### **Off-Highway Vehicles**

There are two main categories of OHVs—neither of which are designed for roadway use and should not be allowed on public roads.

- **All-Terrain Vehicles (ATVs):** ATVs are “off-road, motorized vehicles having three or four low-pressure tires, a straddle seat for the operator, and handlebars for steering control.”<sup>1</sup>
- **Recreational Off-Highway Vehicles (ROVs):** ROVs have “four or more wheels with low pressure tires; bench or bucket seating for two or more occupants; automotive-type controls for steering, throttle, and braking; rollover protective structures (ROPS); occupant restraint; and maximum speed capability greater than 30 mph.”<sup>2</sup>

### **More ATV and ROV Deaths Occur On Roadways than Off-Road**

While there is federal ATV fatality data, there is a lack of ROV fatality data. To fill this need, our coalition has started collecting data on ROVs to give decision makers a better sense of the dangers posed by OHVs besides ATVs. See our data and analysis on our OHV webpage [here](#).

- **ATV Roadway Crashes:** ATV crashes on the road account for over 60% of ATV-related deaths and over 30% of serious ATV injuries.<sup>3</sup> Roadway crashes are more likely to involve multiple fatalities, collisions and head injuries. Victims in roadway crashes were less likely to be wearing protective gear such as helmets and were more likely to be carrying passengers, both things that are risk factors for ATV-related fatalities and injuries. From 1998-2007, roadway fatalities increased twice as fast as those off-road.<sup>4</sup> The National Highway Traffic Safety Administration released ATV-related fatality statistics for public roads showing that there were 3,411 deaths from 2004-2013, with 323 in 2013 alone.<sup>5</sup>
- **ROV Roadway Crashes:** There is much less data on the number and nature of ROV crashes in comparison to ATVs, but from 2013-2017 our coalition identified 472 ROV fatalities. The crash site could be identified in 457 of the 472 deaths. Of those 457 fatalities, 267 (57%) occurred on-road and 190 (40%) occurred off-road. As our coalition continues to gather more data, these figures may rise.

### **OHV Design Contributes to Roadway Deaths and Injuries**

Ultimately, OHVs are not safe on roads because they were not designed for roadway use.

- **OHVs<sup>6</sup> have a relatively narrow track and high-center of gravity:** These design features allow for riding in wooded areas and between obstacles, and provide high ground clearance for rough terrain. However, these features put OHVs at a higher risk for rollovers,<sup>7</sup> and require “that the vehicle takes wider turns than are found in standard road design.”<sup>8</sup>
- **OHVs have low-pressure, deep tread tires designed for off-road use:** Automobile tires have relatively shallow tread and are designed to continually grip and release roadway surfaces. In contrast, OHV tires are made to grab off-road terrain and can act unpredictably on roadway surfaces especially with increasing speed. The operator can easily lose control of the vehicle, potentially endangering the OHV rider, occupants of other vehicles, pedestrians, and bicyclists.<sup>9</sup>
- **Most ATVs lack a rear differential:** Most ATVs have a solid rear axle or locked rear differential which means that both the inside and outside wheels rotate at the same speed, unlike motor vehicles designed for roadways. This often requires that the OHV “take wider turns than are found in standard road design,”<sup>10</sup> and makes it more difficult for OHVs to negotiate roadway curves, especially at the speeds often traveled on roads.

### **Industry Associations Warn Against OHV Use on Public Roads and Paved Surfaces**

Both ATV and ROV trade associations warn against riding OHVs on roadways. The Specialty Vehicle Institute of America (SVIA), a not-for-profit association representing ATV manufacturers and dealers, has a strong policy statement against the use of ATVs on public roads. A training manual for ATV riders from the ATV Safety Institute, a division of SVIA, states:

Remember, ATVs are intended for off-road use only. Never operate an ATV on public roads, and always avoid paved surfaces. ATVs are not

designed for use on public roads and other motorists may not see you. ATVs are not designed to be used on paved surfaces because pavement may seriously affect handling and control.”<sup>11</sup>

Further, the SVIA makes clear that:

ATVs are designed, manufactured and sold for off-road use only. On-road vehicles must be manufactured and certified to comply with U.S. Department of Transportation Federal Motor Vehicle Safety Standards (FMVSS). These safety standards consist of extensive and detailed compliance requirements. Since ATVs are not intended to be used on-road, they are not designed, equipped or tested to meet such standards.<sup>12</sup>

The Recreational Off-Highway Vehicle Association (ROHVA) also directs riders to “avoid paved surfaces. ROVs are designed to be operated off-highway.”<sup>13</sup> These statements show that the manufactures of these vehicles, those who know the vehicles better than anyone, know that they should not be operated on roads. In addition to these statements from OHV trade associations, ATVs and ROVs are also required to have labels indicating that they should not be operated on paved roads or on public roads.

### **Unpaved and Rural Roads are Not Safe for OHV Use**

Many of the warnings against riding OHVs on roadways specifically mention the hazards of paved roads. While these warnings are accurate they are not sufficient and could incorrectly imply that unpaved roads are safe for OHV use.

A 2015 [study](#) of national ATV-related fatalities occurring from 1985-2012, found that in twenty-three states half or more of ATV roadway deaths occurred on unpaved road surfaces and that 42% of all ATV roadway deaths during this time period (6,625) took place on unpaved roads. In addition, more than two-thirds of all roadway ATV fatalities (paved and unpaved) did not involve another motor vehicle. This means that low traffic volume on rural roads does not necessarily translate into fewer deaths and injuries. In fact, riders in serious roadway crashes that occur on more remote roads may be at increased risk of death because of longer distances to trauma centers. While there is not yet similar data available for ROVs, given that ROVs are also designed for off-road use with similar design elements, there is no evidence supporting the idea that they would be safe on unpaved roads.

### **Additional Information**

The latest research about OHVs on roadways and OHV death and injuries, as well as a list of members of a national coalition formed to address this public health crisis and the advocacy efforts undertaken by this coalition are available [here](#).

We urge opposition to any proposal to allow OHV use on public roads because doing so places the public, including OHV operators, pedestrians, bicyclists, and all motor vehicle drivers and their passengers at unnecessary risk.

We hope that you will consider these comments, and if we can be of any further assistance, please feel free to contact Michelle Styczynski at Consumer Federation of America at [mstyczynski@consumerfed.org](mailto:mstyczynski@consumerfed.org) or (202) 939-100.

Sincerely,

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<sup>1</sup> CPSC, 2013 Annual Report of ATV-Related Deaths and Injuries, February 2015.

<http://www.cpsc.gov/Global/Research-and-Statistics/Injury-Statistics/Sports-and-Recreation/ATVs/2013-ATV-Annual-Rpt-of-ATV-Related-Deaths--Injuries.pdf>

<sup>2</sup> CPSC Briefing Package. Pg. 91.

[www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2014/SafetyStandardforRecreationOff-HighwayVehicles-ProposedRule.pdf](http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2014/SafetyStandardforRecreationOff-HighwayVehicles-ProposedRule.pdf)

<sup>3</sup> Denning, Harland, Ellis, Jennissen, More fatal all-terrain vehicle crashes occur on the roadway than off: increased risk-taking characterizes roadway fatalities, Injury Prevention, 2012.

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3717765/>

<sup>4</sup> Id

<sup>5</sup> NHTSA, Fatalities in Traffic Crashes Involving All-Terrain Vehicles. [http://www-](http://www-nrd.nhtsa.dot.gov/Pubs/812193.pdf)

[nrd.nhtsa.dot.gov/Pubs/812193.pdf](http://www-nrd.nhtsa.dot.gov/Pubs/812193.pdf)

<sup>6</sup> The Denning paper cited below deals with ATVs but the CPSC Briefing Package on the Proposed ROV Rule, Pg. 518, notes that ROVs are designed with narrow track widths and high ground clearance for use on off-road trails which results in a high risk of rollovers.

[www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2014/SafetyStandardforRecreationOff-HighwayVehicles-ProposedRule.pdf](http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2014/SafetyStandardforRecreationOff-HighwayVehicles-ProposedRule.pdf)

<sup>7</sup> Denning, Harland, Ellis, Jennissen, More fatal all-terrain vehicle crashes occur on the roadway than off: increased risk-taking characterizes roadway fatalities, Injury Prevention, 2012.

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3717765/>

<sup>8</sup> Id.

<sup>9</sup> Id. Discussing ATV tires. The CPSC Briefing Package. Pg. 410. Also defines ROVs as having low pressure tires. This allows one to infer that both categories of OHVs discussed here will have tires that are not suitable for on-road use and will have similar problems when used on-road as those described for ATVs in the 2012 report cited above.

[www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2014/SafetyStandardforRecreationOff-HighwayVehicles-ProposedRule.pdf](http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2014/SafetyStandardforRecreationOff-HighwayVehicles-ProposedRule.pdf)

<sup>10</sup> Denning, Harland, Ellis, Jennissen, More fatal all-terrain vehicle crashes occur on the roadway than off: increased risk-taking characterizes roadway fatalities, Injury Prevention, 2012.

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3717765/>

<sup>11</sup> Tips and Practice Guide for the All-Terrain Vehicle Rider, ATV Safety Institute.

[http://atvsafety.org/downloads/ATV\\_Riding\\_Tips.pdf](http://atvsafety.org/downloads/ATV_Riding_Tips.pdf)

<sup>12</sup> Specialty Vehicle Institute of America, Position in Opposition to On-Road Operation of ATVs.

<http://www.svia.org/Downloads/PositionPaperOpposingOn-RoadUse.pdf>

<sup>13</sup> ROV Safety Rules. <http://www.rohva.org/>