



Consumer Federation of America

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Consumer Federation of America

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Compliance with All-Terrain Vehicle (ATV) Standards

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I. Introduction

Chairman Allen, Ranking Member Pryor and members of the subcommittee, thank you for the opportunity to speak today and for holding this meeting. My name is Rachel Weintraub; I am Director of Product Safety and Senior Counsel at Consumer Federation of America (“CFA”). CFA is a non-profit organization association of 300 consumer groups, with a combined membership of more than 50 million people. CFA was founded in 1968 to advance the consumers’ interest through advocacy and education.

Consumer Federation of America has been deeply concerned about the safety of ATVs for many years. In fact, we have been involved in ATV safety issues since the 1980s when three-wheel ATVs dominated the market. We opposed the consent decree between CPSC and ATV manufacturers in 1988 because we felt that it did not adequately protect consumers. We petitioned CPSC in the 1990s and again in 2002, and legally challenged CPSC’s abandonment of their ATV rulemaking in the 1990s. The Commission deferred action on our most recent petition, CP-02-4/ HP-02-1¹, which requests that the U.S. Consumer Product Safety Commission ban the sale of adult-size four wheel all-terrain vehicles “ATVs” sold for use by children under sixteen years of age. We have testified before the Commission on two occasions in support of our petition.² The CPSC briefing package that has just been released makes recommendations to the CPSC Chairman and Commissioners about how they should proceed on this issue. While CFA has enormous respect for CPSC staff, we respectfully

¹ Consumer Federation of America filed the petition on August 20, 2002 along with the American Academy of Pediatrics, American College of Emergency Physicians, Bluewater Network, Danny Foundation for Crib & Child Product Safety; Kids in Danger, National Association of Orthopaedic Nurses and the U.S. Public Interest Research Group.

² CFA testified in the June 5, 2003 field hearing in West Virginia and in the March 2005 hearing on CPSC staff’s briefing package.

disagree with their recommendations and believe that CPSC should play a much more active role in preventing ATV deaths and injuries.

II. ATV Death and Injury Data

According to the latest data from CPSC on ATV deaths and injuries, released in October 2005,³ at least 136,100 people have suffered ATV injuries that were serious enough to require emergency room treatment in 2004. This is an increase of almost 8 percent, from 125,500 in 2003. Children under 16 suffered 31 percent of all injuries in 2004, or 44,700 injuries, up from 38,600 injuries in 2003, 37,100 injuries in 2002 and 34,300 in 2001. This age group received more serious injuries than any other. The estimated number of ATV-related fatalities increased from 621 in 2002 to 740 in 2003, according to the latest data from CPSC. In 2004, ATVs killed at least 130 children younger than 16, accounting for 28 percent of all fatalities. Between 1985 and 2004, children under 16 accounted for 31 percent of all injuries and 31 percent of all deaths.

Numbers alone can be cold and sterile. I want to talk about some of the children who make up these statistics.

On May 6, 2002, 10 year-old Kyle Rabe went riding with his friend Zach in a grassy field in rural Oregon. Kyle was a cautious rider and he took the time to put on riding boots, gloves, layered clothing, and a full-face, approved helmet. On his way home, Kyle took a shortcut down a gentle slope, hit a rut in his path, and lost control of the ATV, sending it careening to the left and throwing Kyle down the hill. The ATV rolled on its side, pinning Kyle to the ground by the small of his back. Kyle was unable

³ U.S. Consumer Product Safety Commission, 2004 Annual Report on All-Terrain Vehicle (ATV)-Related Deaths and Injuries, October 2005. available on the web at <http://www.cpsc.gov/library/foia/foia05/brief/atv2004.pdf>

to breathe despite being uninjured. CPR was administered 15 minutes after the crash but it was too late. Kyle had been riding for over a year and a half without an accident. Despite Kyle's experience, when the 500-pound ATV landed on top of him, he was too small to escape.

James Anderson was just 14 years old when he died on August 8, 2004. On a vacation in New Hampshire with a group of friends, a supervising parent allowed James to ride a 700-pound 500cc ATV that could travel highway speeds. James crashed that ATV into a tree on a backwoods trail, killing him instantly. Before that weekend, James had never ridden anything but a bicycle.

Bryan "B.J." Smith was a confident young man who dreamed of being a football star. One Monday, he and his cousin decided to show off for a few neighborhood friends on a newly purchased ATV. B.J. was driving the ATV at a very high speed when a dog ran out and clipped one of the front wheels, spinning the ATV and throwing B.J. 25 feet. B.J. remained in a coma for 3 weeks at the hospital, enduring multiple brain surgeries, infections, and seizures. It took four and a half months in the hospital and two stints in rehab facilities for B.J. to return home. B.J. was lucky to survive his accident but will never be able to play football again.

III. Failure of the Current Voluntary Approach

CFA's recommended policy solution is premised on the fact that the current approach to ATV safety-- the industry's self-regulating approach-- is not working. Not only has self-regulation by the ATV industry led to larger and faster ATVs and more children being killed and injured, but each year the number of deaths and injuries climb. These increases have frequently been by statistically significant margins and the

Commission has routinely noted in annual reports of ATV deaths and injuries that these increases cannot be explained solely by rising ATV sales or usage. We believe that the failure of the current approach compels CPSC, Congress and state governments to be involved, in part, through the enforcement of a mandatory standard.

A court-approved consent decree between ATV manufacturers and the U.S. Consumer Product Safety Commission, which forced the industry to end production of highly dangerous three-wheel ATVs, expired in 1998. Since that time, some manufacturers have been operating under voluntary, unenforceable “action plans.” These action plans rely on fine print in ads, warning labels, and recommendations enforced at the discretion of manufacturers. This voluntary approach is failing to curb the rising tide of ATV death and injuries and CPSC staff’s recommendations do nothing more than continue this failed approach.

In 2003 CPSC issued the latest in a long line of studies documenting the dramatic increase in ATV injuries and deaths.⁴ In assessing trends between 1997 and 2001, the Commission provides compelling evidence that the industry is failing to protect consumers. CPSC concludes that:

- ATV-related injuries requiring emergency room treatment more than doubled, rising to 108 percent from 52,800 to 110,100, while the number of ATVs in use increased by less than 40 percent;
- Injuries suffered by children under 16 increased 66 percent to more than 34,000 in 2001. The proportion of these children among the driving population grew by 13 percent;

⁴ Levenson, Mark S, U.S. Consumer Product Safety Commission, “All Terrain Vehicle 2001 Injury and Exposure Studies,” January 2003.

- Injuries caused by bigger and more powerful ATVs, defined by the Commission as machines with engines bigger than 400 cc, shot up 567 percent, from 3,662 to 24,437, while the number of these machines grew by less than half as much;
- Less than 4 percent of injured ATV drivers received formal safety training from a dealer, salesperson or organized training program. This proportion is unchanged since 1997;
- More than 40 percent of drivers injured in 2001 stated that their ATV did not have warning labels or they did not know if it did at the time of their accident; and
- Nearly 90 percent of children under 16 years-of-age were injured while riding adult-size ATVs, in spite of the industry's voluntary policy not to sell these machines for use by children. This proportion is also unchanged since 1997.

IV. Cost to Society

Our society suffers not only because ATVs cost the lives of almost 750 people each year in the United States. These deaths and the over 135,000 ATV injuries incurred each year also cost society considerable amounts of money. An analysis of ATV deaths in West Virginia alone from 1999 to 2003 found that ATVs have cost \$3.4 million, taking into account medical costs, the costs of work loss and cost of quality of life.⁵ Taking into account the same cost factors, estimated ATV deaths in the United States from 1999 to 2003 have cost \$8.9 billion. These figures do not consider the cost of ATV injuries and

⁵ Helmkamp, Jim, Ph.D., MS, FACE Director, West Virginia University Injury Control Research Center, Research Professor, Department of Community Medicine West Virginia University conducted a Human Capital approach study incorporating medical, work loss and quality of life components to estimate the cost of reported ATV-related fatalities. This approach is based upon the 2002 National Highway Administration report, "The Economic Impact of Motor Vehicle Crashes, 2000" (Report DOT HS 809-446). The assumption was made that ATVs are motor vehicles, and in the absence of a specific model for ATV-related fatalities, the NHTSA model is used for ATV crashes.

do not take into account the costs of medivac transport, for example, that many jurisdictions have to pay for when an ATV crash in a rural area occurs far from a hospital trauma center. Tragically, these vast costs compel government action. With appropriate federal and state regulations, lives as well as billions of dollars could be saved.

V. Recall Analysis- Problems Illustrated

CFA analyzed⁶ all ATV recalls conducted by CPSC that are cited on CPSC's web site.⁷ Our initial goal was to determine whether there were any pervasive hazards appearing among recalled ATVs. Specifically, we encourage CPSC to propose safety standards that could solve the most pervasive problems appearing in recalls.

CPSC conducted 48 recalls of ATVs involving a total of 1,206,400 units from June 2000 to November 2005. From January to November 2005, there were 17 ATV recalls involving 80,910 units. The ATVs recalled in 2005 alone make up 35 percent of the number of ATV recalls and 7 percent of the total number of units recalled. 94 percent (45 out of 48) of all ATV recalls were conducted due to the potential for serious bodily injury or death.

Failure Type: We categorized ATV recalls by type of failure to capture the type of system failure upon which the recall was predicated:

- 77 percent of all recalls were due to a mechanical failure.
- 13 percent of all recalls were due to a fuel or fire risk.
- 8 percent of all recalls were due to an electrical failure
- 2 percent of all recalls were due to a labeling error.

⁶ CFA was assisted in this effort by an engineer who works for Consumers' Union, publisher of Consumer Reports Magazine. This engineer helped to categorize the failure type, system failure and type of hazard.

⁷ <http://www.cpsc.gov/cgi-bin/recalldb/prodpr.asp>

System Failure: We sought to characterize ATVs by a more specific, system-wide failure type:

- 36 percent of all ATV recalls involve a suspension failure.
- 18 percent of all ATV recalls involve a drivetrain failure.
- 16 percent of all ATV recalls involve a brake failure.
- 11 percent of all ATV recalls involve a fuel leak.
- 9 percent of all ATV recalls involve a throttle failure.
- 7 percent of all ATV recalls involve wheel failures.
- 4 percent of all ATV recalls involve a computer failure.
- 2 percent of all ATV recalls involve an electrical or wiring failure.
- 2 percent of all ATV recalls involve an oil leak.
- 2 percent of all ATV recalls involve a missing label.

We believe that failures in the suspension category are particularly important for CPSC to consider as it moves forward with an ANPR on ATVs. CPSC should seek to determine why 34 percent of all recalls were due to suspension failures and why 18 percent of all recalls were due to drive train failures. Together, these two system failures make up 52 percent -- over half -- of all ATV recalls. We urge CPSC to use its institutional expertise to determine why these suspension and drive train failures occurred in ATVs manufactured by numerous companies and what types of performance or design standards could be instituted to prevent these types of failures in the future. We are concerned that the CPSC staff's Briefing package does not adequately take this information into account.

● **Hazards posed by recalled ATVs**: We sought to categorize ATV recalls by the type of hazard posed by the ATV. We found:

- 62 percent of all ATVs were recalled due to the potential for the operator to lose control of the ATV.
- 19 percent of all ATVs were recalled due to the potential for fire.
- 15 percent of all ATVs were recalled due to the potential for a failure of the ATV to stop.
- 2 percent of all ATVs were recalled for a failure to comply with labeling requirements.
- 2 percent of all ATVs were recalled due to the potential for a flying projectile to hit an ATV operator or bystander.

The hazard posed by a large majority of recalled ATVs is severe, leading to the potential for a loss of control, serious injury or death. The seriousness of the potential hazard should compel CPSC to look critically at the pervasive causes for ATV recalls and to seriously consider solutions that will solve some of these problems. CFA is unaware of any other category of recalled products which could, in such large percentages, lead to such life threatening hazards

VI. Weakness of CPSC Briefing Package

CFA is profoundly disappointed with the recommendations contained in the CPSC staff's Briefing Package. Significantly, the staff fails to recommend that the Commission take strong actions to truly protect children from ATV deaths and injuries. Further, the staff's recommendation largely keeps in place the same failed voluntary

system which relies upon the ATV industry to communicate safety information to consumers as a way to curb ATV death and injuries.

CFA is concerned about the following components of the CPSC staff's recommendations:

- The specific mechanical performance requirements fail to take into account all factors leading to ATV recalls as well as all technological means of increasing safety.

- CPSC staffs recommendation to weaken the definition of youth size ATVs by removing the engine size component is incredibly problematic. There has been no evidence presented that such a change will save lives nor any indication from the injury and death statistics compiled by CPSC that would suggest abandoning this principle.

Thus, we see no support for the creation of a new "transitional" class of ATVs, which would serve to place children on larger, heavier and more powerful ATVs. Further, we have no confidence that the speed governors will not be easily removed or modified to decrease or eliminate their utility.

- The safety warnings, hang tags, etc. will be used to communicate safety information to consumers. This is merely a perpetuation of the same failed components of the ATV Action Plans. This relies upon the premise that consumers are actually aware of the warned against behaviors as advertised on warning labels of ATVs. Unfortunately, CPSC staff failed to analyze important data which proves that the contrary is true.

In looking at CPSC and the ATV industry's survey of people injured on ATVs, CFA analyzed the Injury Special Study Raw Data Files for 1997 and 2001, which were provided as Attachment 2 to CPSC's response to FOIA request from CFA, dated February 11, 2003, for 1997 and 2001, and it is clear that only a small percentage of the

public is aware of the recommended size limitation for child operation. Only 13 percent of the injured ATV riders who responded to the CPSC's special survey of a representative sample of those injured in ATV accidents, were aware of a warning label about vehicle size for children under 12 and only 38 percent were aware of a warning label for children under 16. Thus, the conclusion in the briefing package is vastly incorrect when it assumes that the public is aware of the warning messages and falls short when it recommends the same flawed approach.

Furthermore, there is no evidence confirming that the presence of a label on a product assures consumer understanding and knowledge about the dangers of that product. However, CPSC staff does not cite a single source which demonstrates that parents fully understand the meaning and ramifications of those labels and then purchase adult-size ATVs for their children anyway. The failure to provide evidence in and of itself undermines staff's position. By extension, it maintains that parents knowingly ignore that fact that their children face significant risk or serious injury and death when riding adult-size ATVs. We reject this supposition. In fact, parents from across the country have told us that they did not understand the risks or how dangerous ATVs can be. While the disclosure statement warning consumers about the possible consequences of riding ATVs is better than the status quo it is insufficient, alone, to significantly decrease ATV deaths and injuries.

- The “training” portion of the staff's recommendation does not appear to be substantially different from the status quo, fails to ensure the substantive quality of the training and doesn't do enough to ensure that training will be made geographically available.

- The ban on three wheel ATVs should be accompanied by a recall of all three wheel ATVs in the market.

- The briefing package contains numerous references to the “problem of imported ATVs.” While, it is clear that the large ATV manufacturers fear the rising percentage of less expensive ATVs as an economic threat, there has been no evidence put forth in the briefing package or anywhere else indicating that these ATVs pose an added threat to health and safety. In contrast, CFA has found that:

- For ATV recalls listing the country of manufacture, 20 were manufactured in the United States, 3 were manufactured in Canada, 3 were manufactured in Japan, 1 was manufactured in Taiwan; and 1 was manufactured in China.

- 91.7% of ATVs recalled involved ATVs manufactured by major ATV manufacturers who are members of the Specialty Vehicle Institute of America (SVIA).⁸

- In 2005 alone, 94% (16 out of 17) of ATVs recalled were manufactured by major ATV manufacturers.

Thus, CFA is concerned that efforts to deal with imported ATVs will have a marginal if any benefit to the health and safety of Americans riding ATVs.

VII. Benefit of a Federal Rule- Role of CPSC

A. Children Should Not Ride Ault-Size ATVs

The Commission, as well as the American Academy of Pediatrics (AAP), the American Academy of Orthopaedic Surgeons (AAOS) and the ATV industry’s trade association, the Specialty Vehicle Institute of America (SVIA) have long standing policies stating that it is inappropriate for children under 16 years-old to operate or

⁸ Polaris joined SVIA in September of 2005.

otherwise ride adult-size ATVs. Our petition sought to give CPSC the necessary tools to enforce this guideline since no federal mandatory ATV safety laws currently exist now. The Commission and experts in child health have concluded that children should not ride adult-size ATVs because ATVs are inherently difficult to operate for adults and beyond the development capability of children to control. Unfortunately, the staff's briefing package does not even consider the substance of our petition, but rather dismisses it out of hand.

According to CPSC, drivers of ATVs must make complex split-second decisions: If the ATV hits a bump, the driver has to determine almost instantaneously, the throttle setting, steering angle, and position of his/her body on the ATV. Such information can only be processed so fast and if the occurrence of the circumstances exceeds the ability of the driver to react appropriately, an incident will likely occur.⁹

CPSC has determined that children do not have the physical or mental abilities to make these complex, split-second decisions. We are not aware of any change in this perspective by CPSC.

The AAP and AAOS have issued formal policies concluding that ATVs are a significant public health risk; that children younger than 16 should not be allowed to operate ATVs, and that the safe use of ATVs requires the same or greater skill, judgment and experience as needed to operate an automobile.

While there seems to be almost universal agreement among experts that children should not be riding adult-size ATVs, no mechanisms are in place to ensure that this does

⁹ U.S. Consumer Product Safety Commission, *Briefing Package on All-Terrain Vehicles*, March 1991, p. 19.

not happen. Unfortunately, we know that children do ride adult size ATVs and that that too many children are getting killed and injured when they drive vehicles that are too large for them. For example, over 90 percent of children who were injured on ATVs were driving vehicles that are too large. Our petition seeks to solve this problem through the issuance of a mandatory regulation that would give CPSC enforcement authority over ATV dealers who knowingly sell adult-size ATVs for use by children under age 16.

B. CPSC's Role

Federal regulation barring the sale of certain ATVs for children could significantly change legal and other dynamics facing the ATV industry, and dealers in particular. When the consent decrees were in effect, CPSC reported that compliance was consistently high. Compliance dropped dramatically when replaced with a voluntary approach. When the legal hammer was removed, dealers appear to have concluded that the risks of violating the voluntary standard are outweighed by the benefits associated with selling adult-size ATVs in violation of those standards. On-going monitoring by manufacturers failed to encourage widespread and consistent compliance. With a federal regulation in place and stepped up enforcement by CPSC, we believe the legal dynamics would be very similar to those that existed under the consent decrees. If dealer compliance rises, then sales of adult-size ATVs for use by children would decline. Reduction in such sales would indirectly affect use, because a smaller number of adult-size ATVs would be available to this age group.

VIII. Role for States in Conjunction with Federal Role

We recognize that CPSC does not have the authority to take every action necessary to solve the full scope of the problems currently caused by ATVs. While

CPSC can ban the sale of adult-size ATVs for use by children under 16, we urge CPSC and industry to support state efforts to set licensing and rider training requirements, prohibit riders from carrying passengers, and require ATV riders to wear helmets and other protective equipment. We also believe that, with the Federal and state governments taking strong action and providing more information to consumers, parental responsibility will increase as well.

IX. Congressional Role

CFA believes that there is an important role for Congress to play in seeking to solve the public health crisis caused by ATVs.

A. Legislation prohibiting knowingly selling an adult size ATV for use for children a violation of the Consumer Product Safety Act

Since CPSC staff has failed to recommend that the Commission issue a regulation banning the sale of adult size ATVs for use for children, we urge the introduction of legislation that would make the knowing sale of an adult size ATV for use for children a violation of the Consumer Product Safety Act.

B. Request GAO Studies

We also suggest the request for GAO studies analyzing CPSC compliance efforts on the ATV voluntary action plans; actual costs to society of ATV deaths and injuries; and an analysis of enforcement mechanisms to ensure compliance with existing state laws and the potential for enforcement of a federal law. We believe that these studies will fill existing gaps in the current knowledge of what is known about ATVs and their consequences.

X. Conclusion

Each and every year, more and more people, especially children, get killed or injured as they ride ATVs. The current voluntary approach to safety has allowed these deaths and injuries to not only continue but also to increase. Every year, more and more families have to deal with the loss of loved ones, caring for a severely injured family member as well as the vast costs of medical care all caused by riding ATVs. Unfortunately, the staff's briefing package recommends a continuation of the current voluntary regime. Thus, CFA is vastly disappointed that CPSC staff has not urged a bolder course of action for CPSC. Finally, due to the absence of a strong recommendation from CPSC staff, CFA urges this committee to consider requesting studies from GAO to fill in gaps in our knowledge about ATVs as well as introducing legislation that would actually protect children from the well documented hazards of riding adult-size ATVs.