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Office of the Secretary
Consumer Product Safety Commission
Room 502
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Bethesda, Maryland 20814
Via: www.regulations.gov

**Comments of Consumer Federation of America
and Consumers Union to the U.S. Consumer Product Safety Commission
On**

**“Amendment to Standard for All Terrain Vehicles; Notice of Proposed
Rulemaking”**

CPSC Docket No. CPSC-2011-0047

Consumer Federation of America (CFA) and Consumers Union submit these comments in response to the Federal Register Notice, Federal Register, Vol. 76, No. 142, published on Monday, July 25, 2011.

The Consumer Product Safety Improvement Act of 2008 (CPSIA) required the Consumer Product Safety Commission (CPSC) to publish, as a mandatory consumer product safety standard, the American National Standard for Four-Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements, developed by the Specialty Vehicle Institute of America (ANSI/SVIA 1-2007). This Notice of Proposed Rulemaking responds to the 2010 update of the ANSI/SVIA standard.

Our organizations have a long history of working to decrease injuries and deaths caused by ATVs. In particular, CFA opposed the 2001, 2007 and 2010 (September 8, 1999 and November 13, 2006, May 6, 2010) SVIA/ANSI ATV standard. In those comments we expressed our concern that the standard was inadequate to reduce injuries and deaths. We also have previously supported the CPSC’s previous comments submitted to ANSI/SVIA, which signaled concern about the lack of new provisions on warning labels, hang tags, owner’s manuals and rider training. We still stand by those comments and reiterate them as many of our concerns have not been addressed adequately or at all.

While the CPSC Notice of Proposed Rulemaking noted that many of the changes made to the 2010 version were minor, there were two provisions that CPSC initially found to reduce safety: 1) How the speed for the braking test of youth ATVs is calculated, and 2) the force applied to passenger handholds during testing.¹ We agree with CPSC that these provisions may have the result of reducing safety. We understand that industry is addressing one of these issues and is not opposed to addressing the second, though are unaware of the specific details. Further, as we commented to ANSI/SVIA, we opposed the 2010 standard for numerous reasons² and we urge CPSC to consider and seek to rectify the issues we describe below as it promulgates a mandatory standard.

Of great concern to our organizations is that this standard does not seem to address the death and injury data CPSC has released on ATV injuries and fatalities, nor do these standards seem to take strides to reduce risks posed by ATVs in any way. According to the latest CPSC data.³

- Estimates of serious injuries requiring emergency room treatment among people of all ages decreased by a not statistically significant 2.4 percent, from 135,100 in 2008 to 131,900 in 2009.
- The overall increase of 20 percent between the estimated number of injuries in 2001 (110,100) and 2009 (131,900) is statistically significant. Trend analysis by CPSC indicates that for all ATVs, there is a statistically significant upward trend in emergency room visits for people of all ages during the years 2001 through 2009.
- The estimated number of ATV-related fatalities for all ages decreased from 857 in 2007 to 780 in 2009. The agency notes, however, that the 2009 data is not considered complete.
- In 2009, ATVs killed at least 61 children younger than 16, accounting for 16 percent of fatalities. Forty eight percent of children killed were younger than 12 years old.
- Children under 16 suffered an estimated 32,400 serious injuries in 2009 – or 25 percent of all injuries. The 2009 emergency department-treated injury estimate for children younger than 16 years of age represents a 14 percent decrease, which is a statistically significant decrease over the 2008 estimate.⁴

These standards should consistently seek to reduce injuries and deaths caused by ATVs. What follows is a list of concerns with explanations that our organizations have with this standard:

¹ Fed Register, Vol. 76, No. 142, Monday, July 25, 2011 at 44290.

² Comments Offered by CFA in Response to the Canvass Draft ANSI/ SVIA Standard for Four Wheel All-Terrain Vehicles, May 6, 2010, are available upon request to CFA.

³ U.S. Consumer Product Safety Commission, 2009 Annual Report of ATV-Related Deaths and Injuries, December 2010. Available on the web at: <http://www.cpsc.gov/library/foia/foia11/os/atv2009.pdf>

1. Category-T and Youth Model ATVs

In the 1986 report from the CPSC ATV task force, “Regulatory Options for All-terrain Vehicles”, the human factors staff concluded that,

Between the ages of 6 and 11 years, while physically capable of handling the small (50 and 60 cc engine displacement) ATV models, children still lack the cognitive and perceptual abilities to do so safely. Their motor abilities at this age range still tend to be erratic and slower than desirable . . . the findings are clear that most children under 12 should not be on child-size ATVs due to lack of maturity. Therefore, a ban on ATVs intended for use by children under 12 years of age should be considered if the industry will not withdraw them from the market voluntarily.

SVIA appears to have ignored this recommendation, although there has been no indication from the injury and death statistics compiled by CPSC that would suggest abandoning this principle. Neither rationale nor evidence has emerged to justify the creation of a new “transitional” class of ATVs, which would serve to place children on larger, faster, heavier and more powerful ATVs. The 2010 standard creates the Category T-youth model ATV and provides that it would have a maximum unrestricted speed capability of 38 miles per hour. No data was provided to justify why 38 mph was selected. We are concerned that this could lead to more children being seriously harmed by ATVs.

Further, there is no evidence provided that justifies any of the speeds for any of the youth model ATVs. We also object to the speeds of the other classes of youth models: the Category Y-6+ with a maximum speed of 15 mph; Category Y-10+ with a maximum speed of 30 mph; and Category Y-12+ with a maximum speed of 30 mph. These speeds are not compatible with the developmental abilities of the children who theoretically can operate them. No evidence has been provided that proves that children of these ages can safely operate vehicles at the speeds indicated. While the ATV industry has argued that the existence of these youth model ATVs will keep children off of adult size ATVs, the industry has not justified the speed limits for these models as being safe for children.

In addition, the weight of the ATV is a critical factor that adds to the seriousness of injuries and ATV deaths. The 2010 standard should provide a maximum weight based upon scientific evidence for each class of ATV. This must include consideration of the impact of the weight on a turned over ATV, the risk of traumatic brain injury in rollovers, and the threshold weight preventing the crushing of the chest cavity of a child operating the “appropriate sized” machine.

2. Speed Limiting Devices

The 2010 standard relies upon speed-limiting devices to limit the speed of the various classes of youth- size ATVs. We are concerned that there are insufficient barriers in place to prevent children from defeating these devices. The standard now requires tools

to remove or adjust the device. We recommend that the standard be amended so that the speed-limiting device is not serviceable by a consumer or, at a minimum, that measures are put in place that would make accessing the device impossible by a child. The fact that a child or a parent could defeat the speed-limiting device entirely diminishes the use of the device. To best limit the speed of the vehicle, the speed-limiting device should not be accessible to consumers. We are further concerned that the speed-limiting devices have unacceptably high failure rates.

In addition, there is no provision in the standard that requires that the speed-limiting device works as intended other than the test procedure, which does not take into account reasonable use and abuse over the lifetime of the product. CPSC has found that some ATVs have speed-limiting devices that do not work as intended.⁵ We recommend the inclusion of a performance standard for the speed-limiting devices.

3. Type I ATVs- Should Make Carrying a Passenger Impossible

Type I ATVs are designed for one driver and no passengers. Warning labels on ATVs and recommendations by the ATV industry, CPSC, and other organizations have stated that there should never be passengers on ATVs. However, the long seat on ATVs makes it not only possible but also inviting for a passenger to ride. The seat length should be shortened and designed differently, making it impossible for more than one person to sit on the seat at one time. Other design standards should be considered to make carrying passengers impossible.

4. Type II ATVs

Type II ATVs have been developed to allow for an operator to carry a passenger. However, given the long-held view of CPSC and the SVIA that have maintained that ATVs should not be operated with a passenger because of dire safety consequences, it is unclear what evidence exists to support the creation of such a tandem ATV. Further, it is not clear how the Type II ATV is designed to allow for the addition of a passenger. Other than additional factors to allow for the physical presence of another person such as footrests and handholds, there seems to be an absence of a standard for lateral stability or other standards making the machine better equipped to carry two passengers. The addition of a passenger reduces the stability of a slow moving ATV by at least 11%⁶; nevertheless, the pitch stability standard in this draft standard is unchanged for both Type I and Type II ATVs. At a minimum, the standard should be amended to take into account the Type II ATVs' increased instability while operated with a passenger.

Further, since there is an increase in instability, the standard should require the addition of a roll cage. A roll cage would ensure that a user would be contained in the

⁵ CPSC Staff Response Regarding Follow-Up questions from Commissioner Moore after the June 15, 2006 ATV Safety Review Briefing, July 11, 2006.

⁶ Mathematical modeling of the stability of passenger-carrying tandem seat all terrain vehicle (ATV), prepared by MIRA Ltd. For the Health and Safety Executive, United Kingdom, 2004. (available on the web at <http://www.hse.gov.uk/research/rrpdf/rr223.pdf>)

event of a rollover, thus preventing the possibility of fatal crushing injuries. Finally, the warning label on the Type II ATVs should indicate its increased instability, warn operators and passengers of this and recommend the riding positions that least increase the instability of the vehicle.

5. Death and Injury Data

The most recent death and injury data from CPSC should be conspicuously provided to consumers in as many places and methods that can increase a consumer's knowledge about the risk they are assuming by operating or allowing their child to operate an ATV. The owner's manual should include the most recent CPSC death and injury data. In addition, all training videos or DVDs should include this information.

6. Language in Labels

The General Warning Label should include a statement about the inappropriateness and danger of children under 16 riding ATVs that are too large, too fast and too powerful for them. The language of the warning labels for all ATVs should include the following statement, "WARNING: Risk of death. ATV's intended for adults should not be used by children."

7. Lateral Stability/ Pitch Stability

The inherent instability of ATVs is a serious problem that this standard does not address. CPSC examined incidence from its 2001 injury study and found that 45 percent of injuries occurred in incidents in which an ATV overturned. The 2010 ATV standard must be amended to add a lateral stability test and improve the pitch stability equation by requiring a higher pitch stability coefficient, or the current pitch stability computation should be abandoned. A better approach is to include a lateral stability test, which would include both static and dynamic rollover test, such as the test the National Highway Traffic Safety Administration (NHTSA) uses for motor vehicles, and a comparative analysis of vehicle performance. An effective test method for lateral stability should be developed and set forth in this draft standard.

8. Seat Belts Should be Standard and Roll Cages Should be Required

All ATVs should be equipped with seat belts and standards should create a minimum standard for seat belt integrity. In addition to seat belts, this standard should also require all ATVs to be equipped with a roll cage to prevent the driver from being crushed by the weight of the vehicle in the event of a rollover. The standard should set forth the necessary dimensions and should provide for a standard setting a minimum force and weight that the roll cage can withstand.

9. Headlights

This standard should provide that all ATVs be equipped with headlights that automatically turn on when the engine is started. Numerous riding conditions could be improved by headlights, such as rain, fog, snow, and dirt.

10. Service Brake Performance

Sixteen percent of all ATV recalls until November 2005 involved a brake failure. The implications of brake failures are vast; however, the 2007 standards weakened existing brake performance standards, and the 2010 standard does not fix that problem. We urge the draft standard to return to the 2001 language.

The 2010 standard, like the 2007 version, had been changed from the 2001 standard: the number of stops was set at 200 stops but has now been changed to, “stops recommended by the manufacturer.” A justification for this change has not been included nor have a minimum number of stops been set forth. If the number of stops is greatly reduced by a manufacturer, it seems possible that the brakes may not be tested to reflect reasonable use over the lifetime of the vehicle. In addition, the performance test should be conducted at full load capacity.

Regarding ATVs with higher maximum speed capability, the 2010 standard states that one out for four stops has to demonstrate braking deceleration of 5.88 m/s^2 or greater. Since the safety impact of stopping a vehicle is so important, a 25 percent success rate is too low. We are concerned that requiring four stops under this test may not effectively replicate actual use of the vehicle, and recommend that all four stops should meet this threshold. In addition, the time between braking tests must be kept to a minimum, such as less than one minute between runs. That would allow the test to determine if brake fade would adversely affect stopping distance. At a minimum, properly working brakes could prevent ATV collisions. This standard must be amended to improve brake performance and reduce the risk for serious injury and death that failed brakes create.

11. Free Training

The standard should require free “hands-on” ATV training for operators and all riders of ATVs. The training should be geographically accessible to all ATV operators and riders. The standard should set forth the requirements for the training classes, taking into account riders’ different age levels and abilities and ensuring that the training is substantive and improves ATV operator and rider knowledge about safe ATV operation.

12. Marketing and Advertising must be Consistent with Warning Labels

The *General Warning Label* provisions of the standard require warning labels which indicate that the operator must always “use proper riding techniques to avoid overturns on hills and rough terrain and in turns.” We recommend that this standard also include a provision that states, “All marketing and advertisements for all-terrain vehicles must not contradict any warning label in this standard or any warning in a training

manual.” Too often, advertisements have been identified that market ATVs by showing riding behavior that contradicts messages in warning labels and manuals. An article published in the *Oregonian* on May 14, 2007 highlights specific examples of these contradictory messages.⁷ These contradictions, which compromise safety, should be prohibited in this standard.

13. Selling the Appropriate Size ATV

This standard should include a provision that prohibits ATV retailers from selling inappropriate sized ATVs. A 2010 GAO Report found that “manufacturers and distributors have agreed to use their best efforts to prevent their dealers from selling adult-sized ATVs for use by children, but recent GAO undercover checks of selected dealers in four states indicated that 7 of 10 were willing to sell an adult-sized ATV for use by children.”⁸ Since the selling of the wrong-sized ATV occurs so often and has such a significant impact on safety, the new standard should include a provision that prohibits this practice.

Conclusion

For all of the aforementioned reasons, we oppose this standard and urge CPSC to address the issues raised in these comments in their Proposed Rulemaking.

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⁷ The May 14, 2007 *Oregonian* article is available on the web at:
http://blog.oregonlive.com/oregonianatv/2007/05/atv_labels_read_rider_beware.html

⁸ Government Accountability Office (GAO), ALL-TERRAIN VEHICLES: How They Are Used, Crashes, and Sales of Adult-Sized Vehicles for Children’s Use, April 2010. (available on the web at <http://www.gao.gov/new.items/d10418.pdf>)