



Consumer Federation of America

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Committee on Commerce, Science and Transportation

Hearing on All Terrain Vehicles

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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. CFA has been working on ATV safety issues for many years.

Consumer Federation of America has been deeply concerned about ATV safety issues for many years. We have been involved in ATV safety issues since the 1980s when three-wheel ATVs dominated the market. We opposed the consent decree because we felt that it did not go far enough to protect consumers, we petitioned CPSC in the 1990s and again in 2002, and legally challenged CPSC's abandonment of their ATV rulemaking in the 1990's. 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 the use by children under sixteen years of age. We have testified before the Commission on two occasions in support of our petition.² While CPSC deferred action on the petition, in October 2005, after CPSC staff recommended that the Commission deny our petition, we understand that CPSC staff considered the request CFA and others made in the petition as part of the

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.

current ANPR on ATVs. The CPSC briefing package, just released by CPSC staff makes recommendations to the CPSC Chairman and Commissioners about how they should proceed. While CFA has enormous respect for CPSC staff, we respectfully 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 injuries as a result of ATVs 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 or 44,700 injuries in 2004 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 making up these statistics.

III. Failure of the Current Voluntary Approach

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>

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 such increases are not 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. These elements make up the current voluntary approach which is failing to curb the rising tide of ATV death and injuries.

In 2003,⁴ CPSC issued the latest in a long line of studies documenting the dramatic increase in ATV injuries and deaths. 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 increased 108 percent from 52,800 to 110,100 while the number of ATVs in use increased by less than 40 percent;

⁴ 2003 CPSC study

- 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; and
- 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 four 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 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

Not only do ATVs cost the lives of almost 750 people each year in the United States, but these lives lost, as well as the over 135,000 injuries cost society considerable amounts of money. An analysis of ATV deaths,⁵ found that in West Virginia alone from 1999 to 2003, taking into account medical costs, the costs of work loss and cost of quality of life, ATVs have cost \$441,369,620. Based upon estimated deaths in the United states from 1999 to 2003, taking into account the same cost factors, ATV deaths cost the United states \$10,345,25,097. These figures do not consider the cost of ATV injuries and do not

⁵ Helmkamp Study

take into account 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 which appear 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.

From June 2000 to November 2005, CPSC conducted 48 recalls of ATVs involving a total of 1,206,400 units. In 2005, from January to November, there were 17 ATV recalls involving 80,910 units. The ATVs recalled in 2005 alone make up 35% of the number of ATV recalls and 7% of the total number of units recalled. 94% (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. We mean to capture the type of system failure upon which the recall was predicated:

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

System Failure: We sought to characterize ATVs by a more specific, system-wide failure type. The chart below (Chart 2) depicts the following:

- 36% of all ATV recalls involve a suspension failure.
- 18% of all ATV recalls involve a drivetrain failure.
- 16% of all ATV recalls involve a brake failure.
- 11% of all ATV recalls involve a fuel leak.
- 9% of all ATV recalls involve a throttle failure.
- 7% of all ATV recalls involve wheel failures.

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>

- 4% of all ATV recalls involve a computer failure.
- 2% of all ATV recalls involve an electrical or wiring failure.
- 2% of all ATV recalls involve an oil leak.
- 2% 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 % of all recalls were due to suspension failures and why 18% of all recalls were due to drive train failures. Together, these two system failures make up 52%- 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.

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

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

The hazard posed by over a 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 critically look 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

V. Weakness of CPSC briefing package

VI. Benefit of a Federal Rule- Role of CPSC

A. Children Should Not Ride Ault-Size ATVs

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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 otherwise ride

adult-size ATVs. Our petition seeks 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.

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.⁸

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 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 ATV were driving vehicles that are larger than they should be. 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. No Transitional ATVs

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The formal policies of respected medical organizations, the long standing opinions of CPSC, and the “golden-rules” of the ATV industry make clear that children should not ride adult-size ATVs, which are defined as vehicles with an engine size of 90cc’s or larger. There has been no change to these policies and positions 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

⁸ U.S. Consumer Product Safety Commission, *Briefing Package on All-Terrain Vehicles*, March 1991, p. 19.

ATVs, which would serve to place children on larger, heavier and more powerful ATVs.

C. CPSC's Role

Federal regulation barring the sale of certain ATVs for children would significantly change legal and other dynamics facing the ATV industry, and dealers in particular. When the consent decrees were in effect, CPSC reports that compliance was consistently high and it dropped dramatically when replaced with the 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. The downward trend also demonstrates that 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 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.

VII. 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 requirements, set training requirements for riders of ATVs, 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.

X. Congressional Role

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

B. Requesting a GAO study on:

- 1) CPSC compliance efforts on the ATV voluntary action plans**
- 2) Actual costs to society on ATV deaths and injuries**
- 3) An analysis on enforcement mechanisms to ensure compliance with existing state laws and the potential for enforcement of a federal law???**

XI. Foreign Imports- Evidence of Contribution to Death and injuries?

- Of 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).⁹
 - In 2005 alone, 94% (16 out of 17) of ATVs recalled were manufactured by major ATV manufacturers.

XII. Conclusion

⁹ Polaris joined SVIA in September of 2005.

2. Voluntary Standards Already Require that Children Not Ride Adult-Size ATVs so CPSC Requiring it would Not Make Any Difference

Staff make this argument in numerous ways: staff maintain that a federal regulation barring the sale of adult ATVs for use by children is unlikely to have more impact on prospective purchasers than industry warning labels; staff articulate that there is already a voluntary standard that exists so making that mandatory would not have an effect; and staff assert that the petition requests a federal warning which is no different than the voluntary warning that exists already.

Importantly, the Consumer Product Safety Act (CPSA) was written with the belief that mandatory standards can offer more benefits than voluntary ones. The staff appears to ignore this point. CPSC, as stated in section 9 of the CPSA, can promulgate a “consumer product safety rule” which relates to a risk of injury only when a voluntary standard has not resulted in the elimination or adequate reduction of the risk of injury; or it is unlikely that there will be substantial compliance with the voluntary standard. It is clear that, though CPSC can move forward with a mandatory rule if one of these factors is met, with regard to ATVs, both have been met.

A. The Voluntary Standard has Failed

CPSC staff conclude that specific components of the ATV Action Plan's educational efforts are not being followed. Again and again the staff found that: children are riding adult-size ATVs (The briefing package finds that 89% of child drivers who were injured were riding adult size ATVs.); people are riding as passengers; protective gear is not being worn; and ATVs are being ridden on paved roads. (ATV Briefing Package, p. 14) All of these behaviors are warned against by the ATV industry in the voluntary standards. Yet, they persist under the voluntary standard and all of these factors contribute to the risk of injury or death.

With respect to the Commission's authority under CPSA, staff also provides ample evidence that the risks associated with ATV use have increased since the onset of the voluntary approach. Staff concludes that there "was a large increase in risk between 1997 and 2001."(ATV Briefing Package, p. 78) This covers the period during which the consent decrees were replaced with the voluntary standards. Moreover, staff reports that during this same period: "[I]njuries have increased at a greater rate than any of the five exposure measures. This disparity between the increase in injuries and exposure is reflected in the risk measures, which show that risk increased anywhere from an estimated 39% to 65% depending on the risk measure."(ATV Briefing Package, p.71) This analysis demonstrates that the voluntary approach has not reduced risk, which satisfies one of the requirements under the CPSA for developing a mandatory safety standard. However, while the risk analysis is quite clear and compelling in Tab D, staff's overall recommendation fails to acknowledge or challenge it.

The failure of the voluntary approach to affect these critical factors should reinforce the case for a mandatory solution as set forth in the CPSA and make clear that

consumers have not been persuaded about the necessity of the elements of the voluntary standard. However, CPSC staff takes note of this failure and then turn it on its head to support the premise that the rule requested in the petition would have “uncertain” benefits. This is problematic at best and tragically flawed at worst. The fact that the voluntary approach is failing should indicate that more aggressive action –in the form of a mandatory standard -- is needed to better protect public health and reduce the risk of serious injury and death.

B. Compliance with the Voluntary Standard

While the public has not been provided with the full picture of compliance regarding the ATV voluntary standard due to the General Counsel’s restriction on release of the relevant sections of the briefing package, minimal compliance data was provided. This data shows that compliance was highest when there was most scrutiny. Compliance rates were at 90% during the consent decree and fell significantly after the consent decree expired, though percentages of compliance were given for very few years. This increased compliance when the consent decree was in effect, is evidence that compliance was better when there was more of a force of law behind the standard, which would occur if there were a relevant mandatory rule. CPSC staff also concludes (ATV Briefing Package, p. 15) that the declining rate of compliance from 1998 to 2004 could be due to “reduced stringency” of the ATV action plans.

3. Consumers are Aware of the Warnings and Knowingly Choose to Ignore them

CPSC staff state frequently in the briefing package that consumers are 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.

Furthermore, staff appears to equate the presence of a label on a product with consumer understanding and knowledge about the dangers of that product. However, they do 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. In seeking to explain the ineffective nature of warning labels, the staff should have considered, for example, that ATV dealers may not be providing prospective purchasers with the information necessary to effectively evaluate risks and make truly informed decisions.

4. No Data Exists to Show that a Mandatory Rule would be More Effective than the Voluntary Standard

We disagree with this argument. Staff overlooks the fact that compliance was higher when the consent decree was in effect. In our view, this is as close as CPSC has come to a mandatory rule. The evidence from that experience is clear and convincing. When the consent decrees were in place, industry compliance was consistently higher when compared to the period covered by the voluntary standards. Once the consent decree expired, and with it a semblance of a force of law, compliance rates declined. This demonstrates quite clearly that benefits, in this case higher dealer compliance, accrue when CPSC applies binding requirements on this industry and its interlocking parts.

As CFA has articulated previously, a regulatory ban on sales of adult-size ATVs for use by children will give CPSC a remedy against dealers who fail to comply with the “age recommendations” of the ATV action plans. Unfortunately, staff fails to consider this in the briefing package. A regulatory ban will fill that void, since the penalty provisions of the CPSC’s statutes, which apply directly to dealers, make it unlawful to “manufacture for sale, offer for sale, distribute in commerce, or import into the United States” a consumer product that does not conform to an applicable standard, including a regulatory ban. In reality, a ban will act as an incentive to dealers and manufacturers to comply with age restrictions which will increase compliance.

In addition, CFA continues to believe that a regulatory ban would accomplish what the “age recommendation” of the ATV Action Plans have failed to do: send a powerful message to parents about how dangerous large ATVs are for children.

Staff largely dismisses this benefit by characterizing the federal regulation requested in the petition as a warning nearly indistinguishable from industry labels already placed on ATVs. (see ATV Briefing Package, p. 16) Staff states that there is little research “to indicate that consumers would view a **federal government warning** as being more credible than other warning.”(emphasis added)(ATV Briefing Package, p. 16) The fundamental flaw in this analysis is that the petition does not request another warning label, but a federal regulation barring the sale of adult-size ATVs for use by children under age 16. Under the approach we request, the message parents should receive from complying dealers is “federal law prohibits me from selling any adult-size ATV for use by a child under 16.” The comparison of a regulation to a warning is inaccurate and misleading.

Further, a regulatory ban would also make clear that the “age recommendations” are not merely warning labels devised by the ATV industry to protect itself against personal injury lawsuits. For the first time since CPSC began to work on this issue, an unequivocal message would be sent to manufacturers, dealers and consumers that no child can operate any adult-size ATV under any circumstances.

V. Conclusion

The death and injury data, and the failure of the voluntary approach have not only been confirmed by CPSC staff, but have also brought consumer groups, physicians, and conservation groups together to take collective steps to reduce the hazards posed to children by adult-size four wheel ATVs.

We urge CPSC not to let the “perfect” be the enemy of the “good” and we therefore, urge CPSC to reject CPSC staff’s analysis and act soon to protect children from the well documented hazards of riding adult-size ATVs.