



Consumer Federation of America

Comments Offered by CFA in Response to the CPSC's NPR on ATVs

December 21, 2006

Consumer Federation of America (CFA) submits these comments in response to the U.S. Consumer Product Safety Commission's (CPSC) Notice of Proposed Rulemaking on all-terrain vehicles (ATVs).

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 denied our most recent petition, CP-02-4/ HP-02-1¹, which requested 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 continue to believe that the rule we suggested in our petition is the CPSC's best solution for reducing ATV deaths and injuries. We have testified before the Commission on two occasions in support of

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.

our petition² as well as before the U.S. Senate. CFA has also issued reports over the years to document what we perceive as an unchecked public health crisis caused by ATVs

The focus of CFA's comments will respond to specific provisions that were or were not included in the Notice of Proposed Rulemaking. However, we are concerned that this NPR was not based upon the usual rigor that the Commission normally undertakes as part of such a rulemaking. We are concerned that the standards within the NPR do not include critically important provisions. We are also incredibly alarmed that the NPR relies upon the same old methods and standards that have failed in the past. This public health crisis is in need of aggressive and innovative solutions and we don't see those things in this NPR. The NPR includes numerous statements indicating that the voluntary standards have been working. This reliance on the voluntary standards seems to serve as a basis for this proposed rule. However, the evidence for the success of the voluntary standards is not presented. We believe that the evidence supports the proposition that the elements of the Letters of Undertaking have not been successfully carried out especially in the context of numerous documented instances of ATV dealers knowingly selling adult size ATVs for children.

The fact that children operate adult size ATVs in large numbers and that many ATV riders are not following the substance of the warning labels compels new ideas, not a perpetuation of the status quo.

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.

Further, we are concerned that the NPR seems to reflect industry's contention that imported ATVs should be the focus of any and all efforts to improve ATV safety. The NPR dedicates considerable attention to the "problem of imported ATVs" and provides "special emphasis on the current practices of importers." 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 indicating that these ATVs pose an added threat to health and safety over and above the threats posed by all ATVs. They seem to lack some or all warning labels but evidence documenting the impact of these ATVs has not been presented.

In contrast, CFA has analyzed ATV recalls until November 2005 and 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. Of ATVs recalled during this period, 91.7% involved ATVs manufactured by major ATV manufacturers who are members of the Specialty Vehicle Institute of America (SVIA).³ In addition, 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 may be better spent dealing with the vast majority of ATVs involved in recalls and linked to deaths and injuries of consumers. Certainly, since this sector of the market is growing, it should be observed closely but all ATVs no matter where they are manufactured could pose significant risks to consumers if enforcement mechanisms and meaningful regulations are not in place. Thus, we see no evidence supporting the special emphasis that CPSC has placed on the issue.

³ Polaris joined SVIA in September of 2005.

CFA fears that the inadequate response articulated in the NPR will have no or little impact on preventing future ATV deaths and injuries. In fact, CPSC has stated that it has not performed an analysis of the percentage of deaths addressable by the draft rule.⁴ CPSC has the opportunity to affect significant change but CPSC is failing to embrace that challenge.

What follows are CFA's detailed comments on particular aspects of the NPR:

1. New Categorization of ATVs

This NPR proposes to change the categorization of ATVs from one that historically was based on engine size to a categorization based upon maximum speed. CPSC is making this decision based upon limited information of the role speed has played in deaths and injuries to children on ATVs. CPSC's limited data is based upon its 2001 Injury Study which found that 11% of all injuries occurred while racing or performing stunts.⁵ This hardly provides sufficient evidence to justify this new categorization. We oppose this new categorization and fear dire unintended consequences of this proposal.

First, it appears that this new categorization ignores CPSC's own age determination guidelines and is based on little or no evidence. For example, the NPR includes the following statement from CPSC staff's Age determination guidelines:

The CPSC staff's Age Determination Guidelines state that children age 6 through 8 years can operate slow moving motorized vehicles, and that children age 9

⁴ CPSC Staff Response Regarding Follow-Up Questions from Commissioner Moore after the June 15, 2006 ATV Safety Review Briefing, July 11, 2006, page 1.

⁵ CPSC Staff Response Regarding Follow-Up Questions from Commissioner Moore after the June 15, 2006 ATV Safety Review Briefing, July 11, 2006, page 6.

through 12 years can operate motorized vehicles with gear shifting up to 10 miles per hour. The guidelines state a clear demarcation with the teenage years: “faster [than 10 mph] moving motorized [vehicles] are generally not appropriate even for 12 year olds because of the difficulty associated with both balancing and steering the vehicle while moving.”⁶

Thus, the age guidelines suggest that children ages 9-12 not operate a vehicle over 10 mph. However, the proposed rule proposes (Junior) 6 + years on a 10 mph vehicle or less without gear shifting; (Pre-teen) 9 + years on a 10- 15 mph; (Teen) 12 + on 15-30 mph; and (Adult) 16 + without restriction. Under this scenario, a 9 year old could permissibly ride a machine with gear shifting that goes 10-15 mph, if the speed limiting device actually works. This scenario flies in the face of CPSC’s own age guidelines as well as common sense.

The proposed rules include another statement that contradicts the youth model categorization by speed and the proposed speed limits:

Operating an ATV is somewhat comparable to operating other complex motorized vehicles. ATVs have top speeds approaching that of automobiles on highways; yet have little protection from oncoming objects such as a motorcycle. Even at relatively low speeds (20-30 mph) they can take as much skill to operate as an automobile because the operator requires: (1) Situational awareness to negotiate

⁶ Federal Register, Vol. 71, No.154, Thursday, August 10, 2006, page 45908.

unpaved terrain with both eye-level hazards (trees, other ATVs) and trail-level hazards (ditches, rocks, hidden holes); and (2) quick judgments including not only steering, speed, and braking, but also terrain suitability, weight shifting and other active riding behaviors.⁷

This statement is in the proposed rule's section on training to provide support for the need for hands on training; however it highlights how difficult ATVs can be to operate even at "low speeds" of 20 to 30 mph. Incredulously, this proposal is recommending that children between 12 and 15 years old operate these complex motorized vehicles at these speeds.

We have concerns about the Commissions decision to set the speed range for teen 12+ ATVs at 15-30 miles per hour. CPSC does not, but should provide evidence for this decision.

This proposed rule places CPSC's stamp of approval on children riding ATVs that are too fast and too complicated for them to operate. We fear the consequences.

Also, of deep concern to CFA is that categorization based on speed is one dimensional and ignores other critical factors that have vast impact on the safe operation of these vehicles, especially as they relate to operation by children. The weight and size of the machine alone as well as in relation to the weight of a child is a critically important factor that this proposed rule ignores. As the Commission is well too aware, a significant portion of child deaths occur when the ATV falls on the child. CPSC has indicated that it would be "difficult" and "require significant resources" to test the interaction between the

⁷ Federal Register, Vol. 71, No.154, Thursday, August 10, 2006, page 45909.

weight of an ATV and a rider.⁸ So instead of analyzing this admittedly complex issue, the proposed rule ignores it completely—an untenable solution that fails to protect the public.

Speed Limiting Devices

CPSC’s new categorization relies upon speed limiting devices for the pre-teen and junior models. The proposed rule would require that two tools would be necessary to alter the speed limiting device. This is inadequate. To best protect operators of these vehicles, the consumer should not be able to modify the speed in any way. We recommend that the proposed rule be amended so that the speed limiting device is not serviceable by a consumer. The fact that a child or their parent can remove 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 may fail. The proposed rule does not take this issue into consideration as there is no standard set forth to ensure that the speed limiting device works as it should other than the use of a maximum speed capability test which does not take into account use and abuse over the lifetime or even reasonable use of the product. CPSC has found that some ATVs have speed limiting devices that do not work.⁹ However this proposed rule relies upon them. We recommend the inclusion of a performance standard for the speed limiting devices or the reliance on a more effective method of speed limitation.

⁸ CPSC Staff Response Regarding Follow-Up Questions from Commissioner Moore after the June 15, 2006 ATV Safety Review Briefing, July 11, 2006, page 7.

⁹ CPSC Staff Response Regarding Follow-Up Questions from Commissioner Moore after the June 15, 2006 ATV Safety Review Briefing, July 11, 2006, page 6.

It is not clear that this new speed categorization and the resulting new youth models will do anything to keep children on the “appropriate” machine, rather; the fact that there are four models of ATVs may provide an even larger incentive for a parent to purchase one ATV that is too large and too powerful for a child to operate.

2. Requirements for Single Rider Adult Sized ATVs- Make Carrying a Passenger

Impossible

Adult-sized ATVs are designed for one driver and no passengers. Warning labels on ATVs and recommendations by the ATV industry and 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.

3. Tandem ATVs

Tandem ATVs have been developed to allow for an operator to carry a passenger. Given that public health organizations, the long held view of CPSC and the SVIA have maintained that ATVs should not be operated with a passenger because of dire safety consequences, what evidence exists to support the creation of a tandem ATV? Has there been a cost benefit analysis conducted that considers the increased risk these vehicles may pose to consumers? Further, how is the tandem ATV designed differently 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 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%.¹⁰ While the rule, included a pitch stability standard for tandem ATVs, it is inadequate because it deals with measurement of a coefficient of pitch based on the point that the vehicle loses stability during a wheelie and can fall backward on the rider. The test includes passenger weights when measuring pitch for tandems, which is positive, but the minimum limit is set at 1.0. The Commission does not include a rationale for this number. Furthermore, the rule does not address lateral stability – the propensity for tandem ATVs to tip over on its side. We believe that the rule should include this. Finally, there are many inconsistencies between the pitch stability provisions for single rider and tandem ATVs with no rationale given for this.

Further, since there is an increase in instability, the standard should require the addition of a roll cage.

The warning label on the Tandem ATVs should indicate its increased instability, warn operators and passengers of this and further recommend the riding positions that least increases the instability of the vehicle. Finally, what evidence exists to support the statement on a label that a child 12 or older could ride as a passenger on a tandem ATV?

¹⁰ 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>)

No evidence was documented and such an ill informed proposition could lead to dire consequences.

4. Ban on Three- Wheel ATVs

CFA supports the proposed rule's provision that would ban three wheel ATVs. However, this provision should be accompanied by a recall of all three- wheel ATVs in the market. If three-wheel ATVs should not be introduced into commerce because of their inherent risk, then those that are already in the market should be removed to reduce the risk of injury to consumers.

5. Death and Injury Data Disclosure

The most recent death and injury data should be 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 death and injury data. In addition all training videos or DVDs should include this information. While we support providing consumers with death and injury data at the time of purchasing the ATV, we are concerned that it may become yet another piece of paper that they glance at and sign as they are purchasing their new ATV. The rule should require that the ATV dealer verbally indicate the existence of this form and its content before the sale is completed.

6. Warning Labels

The safety warnings on labels and hang tags will be used to communicate safety information to consumers. This is merely a perpetuation of the same failed components of

the Letters of Undertaking. 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 rule 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. 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.

7. Lateral Stability/ Pitch Stability

The inherent instability of ATVs is a serious problem that this rule fails to address. CPSC examined incidence from CPSC's 2001 injury study and found that 45 percent of injuries occurred in incidents in which an ATV overturned. This rule must include 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. The pitch stability coefficient is made without the weight of a rider, which will have a dramatic effect on the center of gravity and, therefore, the pitch coefficient. A better approach is to include a lateral stability test which would include a 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. It is dire that an effective test method for lateral stability be developed and set forth in this rule.

8. Seat Belts should be Standard

All ATVS should be equipped with seat belts and standards should be set forth that would create a minimum standard for seat belt integrity.

9. Roll Cage Required

This rule should include a provision that requires 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 rule should set forth the necessary dimensions and should provide for a standard setting a minimum force and weight that the roll cage can withstand.

10. Headlights

This rule should provide that all ATVs be equipped with headlights that automatically turn on when the engine is started. This would improve visibility by other vehicles.

11. Require Helmet Sold with ATV

CPSC should require that helmets, that meet safety standards, are sold with ATVs to improve the likelihood of consumer use.

12. Free Training

We support the training provision of the Commission's proposed rule which would require manufacturers to provide free hands on ATV training for operators and all riders of ATVs. The addition of the "course accessibility" requirement for training is laudable; however, the Commission should provide guidelines for what "reasonable time from the date of purchase" and "reasonable distance from the place of purchase" mean. We also urge the Commission to monitor the training sessions to ensure that the courses are substantively appropriate and compliant.

13. Recalled ATVs Highlight Need for Standards to Address Many Types of Failures

CFA provided CPSC with its November of 2005, CFA analysis¹¹ all ATV recalls conducted by CPSC which appeared on CPSC's web site.¹² Our goal was to determine whether there were any pervasive hazards appearing among recalled ATVs. 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 requires a critical look at the pervasive causes of ATV recalls and the serious consideration of solutions that

¹¹ 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.

¹² <http://www.cpsc.gov/cgi-bin/recalldb/prodpr.asp>

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.

CPSC's response to our analysis was that, "these particular recalls were virtually all manufacturing or quality control issues at the component level. They do not suggest the need for changes in the design of these components."¹³ CPSC has not provided any facts, any theories, or any evidence to support this response. These pervasive problems could be solved by adequate standards however CPSC has chosen to ignore these issues.

14. Actual Size, Speed and Power of ATVs—Unchecked

CPSC has documented that ATVs have gotten larger, faster and more powerful since they were first introduced into the market. CPSC has also documented that higher risks are associated with larger engine sizes. However, CPSC is ignoring this critical fact and doing nothing to potentially curb the ever increasing size, power and risk of ATVs. CPSC should not be silent on this issue.

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 thrust of CPSC's proposed rule not only incorrectly touts the success of the voluntary standards but also recommends a continuation of the current voluntary regime. Thus,

¹³ CPSC Staff Response Regarding Follow-Up Questions from Commissioner Moore after the June 15, 2006 ATV Safety Review Briefing, July 11, 2006, page 10.

CFA is vastly disappointed that the proposed rule does not chart a bolder course of action for CPSC that would reduce deaths and injuries associated with these vehicles.

Submitted by,

A handwritten signature in black ink that reads "Rachel Weintraub". The signature is written in a cursive style with a long horizontal stroke at the end.

Rachel Weintraub

Director of Product Safety and Senior Counsel

Consumer Federation of America