



UNITED STATES
 CONSUMER PRODUCT SAFETY COMMISSION
 WASHINGTON, DC 20207

VOTE SHEET

DATE: **MAY 31 2006**

TO: The Commission
 Todd A. Stevenson, Secretary

THRU: Page C. Faulk, General Counsel *PCF*

FROM: Patricia M. Pollitzer, Regulatory Affairs Division *PMP*

SUBJECT: All Terrain Vehicle Initiative.

The attached staff briefing package recommends that the Commission issue a notice of proposed rulemaking (“NPR”) to address the safety of youth and adult all terrain vehicles (“ATVs”). Specifically, the staff recommends that the Commission propose, under authority of the Consumer Product Safety Act (“CPSA”), a consumer product safety standard for ATVs intended for use by adults and a ban on three-wheeled ATVs intended for use by adults. The staff also recommends that the Commission propose, under authority of the Federal Hazardous Substances Act (“FHSA”), a standard for ATVs intended for use by youths. The effect of this action with respect to youth ATVs would be a ban on youth ATVs that do not comply with the standard, including all three-wheeled youth ATVs. A draft NPR that would accomplish these actions is provided as Tab F of the staff briefing package.

In addition, the staff recommends that the Commission approve a web site devoted to safety of ATVs and information related thereto. The information to access the restricted, prototype version of the web site has been provided separately to the Commissioners. The staff briefing package also makes other suggestions for non-regulatory activities that might be undertaken to enhance ATV safety.

Please indicate your vote on the following two issues:

I. Notice of Proposed Rulemaking

1. Approve publication of the draft NPR in the *Federal Register* without change.

 Signature

 Date

CPSC Hotline: 1-800-638-CPSC(2772) CPSC's Web Site: <http://www.cpsc.gov>

NOTE: This document has not been reviewed or accepted by the Commission.
 Initial rl Date 5/31/06

FOR OFFICIAL USE ONLY
 DATE: 5/31/06
 PRODUCTS DIVISION

2. Approve publication of the draft NPR in the *Federal Register* with changes. (Please specify.)

Signature Date

3. Do not approve publication of the draft NPR in the *Federal Register*.

Signature Date

II. ATV Safety Web Site

1. Approve the ATV safety web site as currently configured.

Signature Date

2. Approve the ATV safety web site with changes. (Please specify.)

Signature Date

3. Do not approve the ATV safety web site.

Signature Date

Attachment: 1.) Memo to the Commission from Elizabeth Leland, ATV Project Manager, Economics Directorate, Office of Hazard Identification and Reduction, *All-Terrain Vehicles: CPSC Staff proposals for Consideration*, May 31, 2006.

Briefing Package
ATV Safety Review
May 2006

For information, contact:
Elizabeth W. Leland
Directorate for Economic Analysis
U.S. Consumer Product Safety Commission
301-504-7706

CPSA 50BY10LE
— NO MFRS/PRVT LRS
PRODUCTS IDENTIFIED 5/31/06
EXCEPTED BY: PETITION
RULEMAKING ADMIN. PROCG
— WITH PORTIONS REMOVED: —

NOTE: This document has not been reviewed or accepted by the Commission.
Initial rh Date 5/31/06

Executive Summary

On June 8, 2005, Chairman Hal Stratton delivered a memorandum to the staff asking the staff to review all ATV safety actions and make recommendations on a number of issues. The memo directed the staff to consider whether: (1) The current ATV voluntary standards are adequate in light of trends in ATV-related deaths and injuries; (2) the current ATV voluntary standards or other standards pertaining to ATVs should be adopted as mandatory standards by the Commission; and (3) other actions, including rulemaking, should be taken to enhance ATV safety.

In October, 2005, the Commission issued an advance notice of proposed rulemaking (ANPR) to initiate a regulatory proceeding for ATVs under the authority of the Consumer Product Safety Act (CPSA), and the Federal Hazardous Substances Act (FHSA). The ANPR was issued as part of the comprehensive review of regulatory and non-regulatory options for addressing the risk of injury and death associated with ATVs, and it invited written comments from the public regarding the risk of injury associated with ATVs and ways in which these risks might be addressed.

Based on its evaluation of the regulatory alternatives and the comments that were submitted in response to the ANPR, the CPSC staff recommends issuing a notice of proposed rulemaking (NPR) requiring:

- adult (single-person and tandem) ATVs to meet specific mechanical performance requirements;
- youth ATVs to meet specific mechanical performance and design requirements and to be categorized by speed limitation alone rather than by speed limitation *and* engine size;
- specific safety warnings to be provided to the purchaser through hang tags, labels, a safety video, and the owner's instruction manual;
- a means for reporting safety-related complaints to the manufacturer be provided to the purchaser;
- a disclosure statement warning against the use of adult ATVs by children and describing the possible consequences of children riding adult ATVs be provided to and signed by purchasers of all adult ATVs;
- an acknowledgement-of-age statement be provided to and signed by purchasers of children's ATVs;
- a certificate offering free training to each member of the purchaser's immediate family for which the ATV is age-appropriate be provided to all purchasers of ATVs;
- three-wheeled ATVs to be banned.

In addition to these regulatory actions, the staff also recommends that the Commission implement a series of non-regulatory activities to enhance ATV safety. These would include continuing to work with industry in voluntary standards activities, launching an ATV safety Web site including an ATV data resource "bank" with information on state legislative and regulatory activity, and implementing an additional two-phase information and education effort.

TABLE OF CONTENTS

	<i>Page</i>
Executive Summary	2
Briefing Memorandum	6
1. Introduction	6
2. Background	7
A. CPSC’s Involvement with ATVs: History and Recent Activities	7
B. ATV-Related Injury and Death Data	8
C. Characteristics of the Current Market for ATVs	9
3. Issues That Need to be Addressed by a Mandatory Standard	9
4. Regulatory Activity: Notice of Proposed Rulemaking (NPR)	10
5. Requirements for Adult, Tandem, and Youth ATVs	10
A. Four-Wheeled Single-Person Adult ATVs	10
B. Four-Wheeled Two-Person Tandem ATVs	11
C. Four-Wheeled Youth ATVs	11
D. Discussion: Mechanical Requirements	13
6. Information Requirements	15
A. Labels, Hang Tags, Owner’s Manuals, and Safety Video	15
B. Risk Disclosure Form	16
7. Offer-of-Training Requirement	17
8. Ban: Three-Wheeled ATVs	19
9. Non-Regulatory Activities	19
A. Voluntary Standards Activities	20
B. Development of a Data Resource for Those Interested in State Legislation	20
C. Safety Information and Education, Including the Launch of a Dedicated Web Site	20
10. Additional Staff Comments	21
A. Encouraging the Use of Protective Gear	21
B. Insurance Discounts for Training	21
11. Summary	21
12. Options Available to the Commission	21
A. Approve All of the Staff’s Recommendations	21
B. Approve Some, but Not All, of the Staff’s Recommendations	22
C. Defer Making a Decision on the Staff’s Recommendations	22
D. Do Not Implement Any of the Staff’s Recommendations	22
13. Staff Recommendation	22
Tabs	
A: Consumer Product Safety Commission, 16 CFR Chapter II, “All Terrain Vehicles: Advance Notice of Proposed Rulemaking: Request for Comments and Information”, 70 <i>Federal Register</i> 60031 – 60036 (October 14, 2005).	23

B: List of Public Comments Submitted in Response to the October 14, 2005, <i>Federal Register</i> Notice	29
C: “October 14, 2005, All-Terrain Vehicle (ATV) Advance Notice of Proposed Rulemaking (ANPR): CPSC Staff Response to Public Comments”, Memorandum from Elizabeth W. Leland, Economic Analysis, Manager, ATV Safety Review Project, CPSC, to Jacqueline Elder, Assistant Executive Director for Hazard Identification and Reduction, May 26, 2006.	40
D: <i>2004 Annual Report of ATV Deaths and Injuries</i> , Report from Robin L. Ingle, Directorate for Epidemiology, Division of Hazard Analysis, CPSC, September 2005.	48
E: “Current Market Conditions --- ATVs”, Memorandum from Terrance R. Karels, Directorate for Economic Analysis, CPSC, to Elizabeth W. Leland, EC, Project Manager, ATVs, May 23, 2006.	67
F: Preamble to Proposed Rules.	74
Proposed Rule: Part 1307 - Ban of Three-Wheeled All Terrain Vehicles.	220
Proposed Rule: Part 1410 - Requirements for Adult All Terrain Vehicles.	224
Proposed Rule: Part 1515 – Requirements for Youth All Terrain Vehicles.	295
G: “Draft Proposed Requirements for All-Terrain Vehicles”, Memorandum from Caroleene Paul, Division of Mechanical Engineering, Directorate for Engineering Sciences, CPSC, to Elizabeth Leland, Project Manager, ATV Safety Review Team, May 23, 2006.	351
H: “ATV Age Guidelines”, Memorandum from Hope E. Johnson, Engineering Psychologist, Division of Human Factors, Directorate for Engineering Sciences, CPSC, to Elizabeth Leland, Project Manager, ATV Team, May 23, 2006.	360
I: “ATV Lighting”, Memorandum from Sarah B. Brown, Engineering Psychologist, Division of Human Factors, Directorate for Engineering Sciences, CPSC, to Elizabeth Leland, Project Manager, ATV Project, May 22, 2006.	371
J: “All Terrain Vehicle Mandatory Standard: Preliminary Regulatory Analysis”, Report from Robert Franklin, Directorate for Economic Analysis, CPSC, May 2006, and “All Terrain Vehicles: Initial Regulatory Flexibility Analysis”, Report from Robert Franklin, Directorate for Economic Analysis, CPSC, May 2006.	378
K: “Minimum requirements for ATV hang tags, product labels, and manual warnings”, Memorandum from Timothy P. Smith, Engineering Psychologist, Division of Human Factors, Directorate for Engineering	

Sciences, CPSC, to Elizabeth W. Leland, Project Manager, ATV Safety Review Project, May 23, 2006.	411
L: “Recommended disclosure statement for adult-ATV purchasers”, Memorandum from Timothy P. Smith, Engineering Psychologist, Division of Human Factors, Directorate for Engineering Sciences, CPSC, May 23, 2006.	422
M: “ATV Training”, Memorandum from Hope E. Johnson, Engineering Psychologist, Division of Human Factors, Directorate for Engineering Sciences, to Elizabeth Leland, Project Manager, ATV Team May 17, 2006.	426
N: “Explanation of Trained ATV Rider Risk Statement”, Memorandum from Robin L. Ingle, Health Statistician, Hazard Analysis Division, Directorate for Epidemiology, CPSC, to Elizabeth Leland, Project Manager, Directorate for Economic Analysis, April 11, 2006.	436
O: “Three-Wheeled All-Terrain Vehicles”, Memorandum from Tanya Topka, Compliance Officer, Recalls and Compliance Division, CPSC Office of Compliance, CPSC, to Elizabeth Leland, Project Manager ATV, May 22, 2006.	438
P: “Promoting ATV Safety – A Media & Information Outreach Plan of Action”, Memorandum from Nancy Sachs, Public Affairs Specialist, Office of Information & Public Affairs, CPSC, to Elizabeth Leland, Project Manager, ATV Safety Review Team, May 24, 2006.	440



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Memorandum

MAY 31 2006

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Page C. Faulk, General Counsel
Patricia Semple, Executive Director,
Lowell Martin, Deputy Executive Director

FROM : Jacqueline Elder, Assistant Executive Director for Hazard Identification and Reduction
Elizabeth W. Leland, Economic Analysis, ATV Safety Review Project Manager

SUBJECT : All-Terrain Vehicles: CPSC Staff Proposals for Consideration

1. Introduction

In a memorandum dated June 8, 2005, Hal Stratton, the Chairman of the U.S. Consumer Product Safety Commission (CPSC) directed the CPSC staff to review current all-terrain vehicle (ATV)-related voluntary safety standards and to provide recommendations to the Commission as to whether rulemaking should be used to make those standards mandatory. In addition, the staff was directed to review various ATV safety-related proposals and to provide recommendations about any other actions the Commission should take to “appropriately enhance the safety of ATV operation and performance in the United States.”

This was followed in October 2005 with the Commission’s issuance of an Advance Notice of Proposed Rulemaking (ANPR) that called for critical information and practical solutions to improving ATV safety.¹ All interested stakeholders were encouraged to provide the Commission with “meaningful data, comments, and suggestions” concerning ways to reduce the deaths and injuries associated with the use of ATVs. By the closing date of the comment period, December 13, 2005, 165 comments were received, with one of those comments being signed by about 1,500 interested individuals. A copy of the ANPR is included in this briefing package at Tab A, a listing of those who submitted comments is at Tab B, and the CPSC staff response to those comments is included at Tab C.

This briefing package presents proposals for Commission consideration; these proposals are based on the staff’s review of the voluntary standards, the ATV safety-related proposals mentioned above, and the comments that were received in response to the ANPR.

¹ Consumer Product Safety Commission, “All Terrain Vehicles: Advance Notice of Proposed Rulemaking: Request for Comments and Information”, 70 *Federal Register* 60031-60036 (October 14, 2005).

CPSC ONLY - NOT FOR PUBLIC RELEASE
NO MEMOS/PRIVATE USE OF PRODUCTS IDENTIFIED
EXCEPTED BY: PETITION RULEMAKING ADMIN, PRODOG

NOTE: This document has not been reviewed or accepted by the Commission.
Initial rh Date 5/31/06
CPSC Hotline: 1-800-638-CPSC (2772) *CPSC's Web Site: <http://www.cpsc.gov>

2. Background

A. CPSC's Involvement with ATVs: History and Current Activities

CPSC has had a long and extensive history with ATVs, punctuated by legal, regulatory, and voluntary actions. In 1985, the Commission issued an ANPR to consider several regulatory options to address ATV-related deaths and injuries. In 1987, the Commission filed a lawsuit under Section 12 of the Consumer Product Safety Act (CPSA) to declare ATVs an imminently hazardous consumer product [15U.S.C. §2061(b)(1)]. The lawsuit was settled in 1988 by consent decrees between the Commission and the ATV distributors who were active in the domestic market (American Honda Motor Company, Inc.; American Suzuki Motor Corporation; Polaris Industries, L.P.; Yamaha Motor Corporation, USA; and Kawasaki Motors Corporation); the consent decrees were to be effective for 10 years.

Under the consent decrees, the distributors agreed to take several actions ranging from stopping the distribution of three-wheeled ATVs and developing a performance standard for four-wheeled ATVs to providing safety information to consumers through various media, including labeling on the product itself. With respect to the use of ATVs by children, the distributors agreed to represent that ATVs with engine sizes between 70 and 90 cubic centimeters (cc) should be used by those age 12 and older and that ATVs with engine sizes larger than 90cc should be used only by those age 16 years and older. In addition, the companies agreed to use their best efforts to assure that ATVs would not be purchased by or for the use of anyone who did not meet the age restrictions.

While the consent decrees were in effect, the distributors entered into agreements with the Commission and the U.S. Department of Justice to monitor their dealers' compliance with the age recommendations; they further agreed to terminate the franchises of dealers who repeatedly failed to provide information about the age recommendations to prospective purchasers. The Commission compliance staff also began conducting a dealer monitoring program.

In 1990, the voluntary standard for *Four Wheel All-Terrain Vehicles – Equipment, Configuration, and Performance Requirements*, ANSI/SVIA-1-1990, was published. The Commission withdrew its ATV ANPR in 1991, thus ending the rulemaking proceeding begun in 1985. The Commission stated that a product standard that would adequately reduce injuries and deaths from ATVs was not feasible at the time and that a ban of all ATVs was not appropriate due to the extensive use of ATVs for non-recreational purposes, their significant recreational value, and the lack of any close substitutes.

The Consumer Federation of America (CFA) and the U.S. Public Interest Research Group (USPIRG), believing that the Commission should have pursued a ban on the sale of adult ATVs for use by children under 16, challenged the Commission's termination of its rulemaking proceeding in a 1993 lawsuit. In the lawsuit, CFA and USPIRG argued that the Commission acted arbitrarily and capriciously when it withdrew the ANPR. The United States Court of Appeals for the District of Columbia Circuit upheld the Commission's action.

In 1998, the consent decrees expired, and the Commission entered into Voluntary Action Plans (also known as Letters of Undertaking or LOUs) with individual ATV distributors who had been subject to the consent decrees and with three other ATV distributors (Cannondale

Corporation, Arctic Cat Inc., and Bombardier Recreational Products, Inc.) who had entered the market after the consent decrees had been established. (Cannondale no longer makes ATVs.) The LOUs are agreements that encompass many of the provisions of the consent decrees, including the age recommendations. These action plans continue in effect today. Additionally, the Commission staff and industry continue to monitor separately the actions of dealers in providing information about the age recommendations.

In 2001, the voluntary standard was revised to add several provisions to enhance and clarify the standard. In 2002, the CFA and eight other groups asked the Commission to take four actions to address hazards presented by ATVs. The CPSC Office of the General Counsel (OGC) docketed only the portion of their request that asked for a rule banning the sale of adult-size four-wheeled ATVs sold for the use of children under 16 years of age. The Commission solicited comments on the petition through issuance of a *Federal Register* notice in October 2002. In 2003, the Commission held a public field hearing in West Virginia and the Chairman held two public meetings, one in Alaska and one in New Mexico, to hear the comments of interested parties; these included ATV riders, state and local government officials, consumer organizations, medical professionals, and manufacturers, distributors, and retail dealers of ATVs.

In early 2005, the CPSC staff submitted a briefing package to the Commission recommending that the CFA petition be denied.² The recommendation to deny was based primarily on four factors: the sales ban requested by the petitioners would primarily address how ATVs are sold, rather than how they would be used after they are purchased by consumers; the CPSC lacks the ability to regulate or enforce how consumers use products after purchase; while the Commission can affect to some degree how ATVs are sold, it cannot control the behavior of consumers or prevent adults from allowing children to ride adult-size ATVs; and no data are available to show that a ban of the sale of adult-size ATVs for use by children under the age of 16 years would be more effective in preventing such use than the age recommendations already in place under the LOUs. On October 6, 2005, the Commission voted unanimously to defer action on the petition.

B. ATV-Related Injury and Death Data

In September 2005, the CPSC Directorate for Epidemiology completed the *2004 Annual Report of ATV Deaths and Injuries*. This report, included at Tab D in this briefing package, showed that:

- In 2003, there were an estimated 740 deaths associated with ATVs.³ In 2001, the most recent year for which death data collection is complete, 26 percent of the reported deaths were of children under 16 years old.
- The estimated risk of death was 1.1 deaths per 10,000 4-wheeled ATVs in use in 2003.⁴
- The estimated number of ATV-related emergency-room-treated injuries for all ages in 2004 was 136,100, an increase of 10,600 from 2003. This increase was statistically significant.

² U.S. Consumer Product Safety Commission staff, "Briefing Package: Petition No. CP-02-4/HP-02-1, Request to Ban All-Terrain Vehicles Sold for Use by Children under 16 Years Old", February 2005.

³ Death data collection for 2002 onward is incomplete.

⁴ See footnote 3.

- Children under 16 years of age accounted for 44,700, or 33 percent, of the total estimated number of injuries in 2004.
- There were about 188 emergency-room-treated injuries per 10,000 four-wheel ATVs in use in 2004.

The annual report at Tab D also provides historical data on ATV-related deaths and injuries.

C. Characteristics of the Current Market for ATVs

A detailed description of the ATV market was provided in the staff's February 2005 briefing package⁵; Tab E in this briefing package, from the Directorate for Economic Analysis, provides an update of that information. The characteristics of the current ATV market that are particularly relevant to the focus of this briefing package are:

- ATV sales reached an estimated 921,000 units in 2005 and preliminary data indicate that sales will continue to increase in 2006. While the annual rates of increase have leveled off to less than 5 percent since 2002 (after much larger rates of increase in the late 1990s and early 2000s), annual sales volumes remain at record levels by historical standards.
- Imports, primarily from China and Taiwan, account for an estimated 10 percent share of the U.S. market. It is anticipated that the lower-cost imports from China and Taiwan will continue to gain influence in the market.
- The number of firms supplying ATVs to the U.S. market continues to grow. In 2006, staff identified 80 importers of ATVs sold in the U.S. Most of these importers also import and sell scooters, motorcycles, and other wheeled recreational products.
- Imported ATVs can be purchased on the Internet and from mass merchandisers such as Pep Boys, Wal-Mart, and others. This is a change from the traditional method of selling ATVs through established dealers and franchises.

3. Issues that Need to be Addressed by a Mandatory Standard

The October 2005 ANPR initiated a regulatory proceeding and was the first formal step in the review of regulatory and/or non-regulatory options to address the hazards associated with the use of ATVs. Based on the staff's evaluation of regulatory alternatives and the comments that were submitted in response to the ANPR, the CPSC staff believes that the following issues need to be addressed by a mandatory standard to ensure a minimum level of safety associated with the use of ATVs:

- ATVs sold in the domestic market, including those sold over the Internet and through importers, should conform to accepted uniform mechanical requirements.
- ATV users should have information sufficient to enable them to use the vehicle safely. This information should be provided in hang tags, owner's manuals, warning labels, and an ATV safety video.
- Potential ATV purchasers, as well as ATV users, should be warned about the serious possible consequences of allowing children to use adult ATVs.
- Each ATV purchaser and members of their immediate family for whom the ATV is appropriate should be given an opportunity to participate in free hands-on ATV training.

⁵ U.S. Consumer Product Safety Commission staff, op. cit., Tab C, p. 55.

- The guidelines for youth ATVs should be redefined, so that children under the age of 16 can ride and be trained on ATVs which are more likely to fit them physically and which conform to their developmental capabilities.
- Three-wheeled ATVs should be formally banned.

4. Regulatory Activity: Notice of Proposed Rulemaking (NPR)

To address the issues listed above, the CPSC staff asks that the Commission consider issuing a notice of proposed rulemaking (NPR) that would mandate safety requirements for ATVs. The staff's draft proposed rule would require that:

- adult (single-person and tandem) ATVs meet specific mechanical performance requirements;
- youth ATVs meet specific mechanical performance and design requirements and be categorized by speed limitation alone rather than by speed limitation *and* engine size;
- specific safety warnings be provided to the purchaser through hang tags, labels, a safety video, and the owner's manual;
- a means for reporting safety-related complaints to the manufacturer be provided to the purchaser;
- a disclosure statement warning against the use of adult ATVs by children and describing the possible consequences of children riding adult ATVs be provided to and signed by purchasers of all adult ATVs;
- a statement of appropriate ages for youth ATVs be provided to and signed by purchasers of children's ATVs;
- a certificate offering free training be provided to all purchasers of ATVs and each member of the purchaser's immediate family for which the ATV is age-appropriate;
- three-wheeled ATVs be banned.

These requirements are set forth in the staff's draft proposed rule in Tab F. The rule consists of *Requirements for Adult All Terrain Vehicles* (this includes requirements for both single-person and tandem ATVs); *Requirements for Youth All Terrain Vehicles*; and *Ban of Three-Wheeled All Terrain Vehicles*.

5. Requirements for Adult, Tandem, and Youth ATVs

The staff's draft proposed rule incorporates many of the mechanical requirements from the current voluntary standard for single-person ATVs⁶ and draft provisions for two-person tandem ATVs.⁷ The specific requirements and rationales are described below and discussed further in Tab G from the Directorate for Engineering Sciences.

A. Four-Wheeled Single-Person Adult ATVs

The staff's draft proposed rule for four-wheeled adult single-person ATVs includes performance requirements for service brakes, parking brake; mechanical suspension; engine stop switch; controls, indicators, and gearing; electric start interlock; means for conspicuity; handlebars; operator foot environment; lighting equipment; spark arrester; tire marking; security;

⁶ American National Standards Institute, Inc., American National Standard for Four Wheel All-Terrain Vehicles – Equipment, Configuration, and Performance Requirements, ANSI / SVIA -1-2001, c.2001.

⁷ The draft provisions of two-person tandem ATVs were provided to Chairman Stratton in a letter dated May 19, 2006, from Thomas S. Yager, Vice President, Safety Programs, Specialty Vehicle Institute of America.

vehicle identification number; and pitch stability. As shown in Table 1, each of these requirements is intended to reduce the risk of injury and death associated with the use of four-wheeled adult single-person ATVs.

**Table 1
Mechanical Requirements for Four-Wheeled Adult Single-Person ATVs**

ATV Equipment	Safety Intent of Requirement
Service Brake	Ensure ability to stop vehicle
Parking Brake	Prevent rolling of an unattended ATV
Mechanical Suspension	Improve pitch response and handling of vehicle
Engine Stop Switch	Ensure ability to shut off engine in emergency
Controls, Indicators, Gearing	Ensure ability to drive and control the vehicle
Electric Start Interlock	Prevent unintended movement when engine is started by electric cranking
Means for Conspicuity	Provide conspicuity during daylight hours
Handlebars	Minimize risk of injury from contact
Operator Foot Environment	Reduce possibility of inadvertent contact between operator boot and ground in front of rear tire or between boot and tire itself
Lighting Equipment	Provide nighttime visibility and conspicuity
Spark Arrester	Reduce fire potential
Tire Marking	Ensure proper tire inflation for use on non-paved surfaces
Security	Prevent unauthorized access and use
Vehicle Identification Number	Provide a means for identification and notification of the owner and manufacturer
Pitch Stability	Reduce propensity to tip rearward or forward

B. Four-Wheeled Two-Person Tandem ATVs

Tandem ATVs are designed to carry one driver and one passenger; the driver and passenger are seated in tandem, i.e., one behind the other. Tandem ATV manufacturers recommend that the passenger be at least 12 years old.

Under the staff's draft proposed rule, tandem ATVs would be required to meet the mechanical performance requirements shown in Table 1, with some additions and variations to account for the presence of a passenger. The additions and variations would include: pitch stability requirement test conditions, mechanical suspension requirements (minimum travel distance is greater), lighting equipment (depending on the width of the ATV, two headlamps and two tail lamps might be required), passenger environment (backrest, location of the seat, restraint, and handholds), and operator and passenger foot environment requirements.

C. Four-Wheeled Youth ATVs

The staff's draft proposed rule for four-wheeled youth ATVs includes equipment and performance requirements for service brakes; parking brake; mechanical suspension; engine stop switch; controls and indicators; electric start interlock; handlebars; operator foot environment;

lighting equipment; spark arrester; tire marking; security; vehicle identification number; and pitch stability. The intended safety effect of those requirements is the same as that for adult single-person ATVs, shown above in Table 1.

In addition, the staff’s draft proposed rule for youth ATVs includes *design* requirements for service brakes; engine stop switch; throttle control, and handlebars and *special requirements* for other equipment. These special requirements include: required automatic transmission (no manual transmission); no projecting headlamp; required stop lamp; required speed limiting device for pre-teen and teen models; and required flag pole bracket. These special requirements and their safety intent are displayed in Table 2.

Table 2
Special Mechanical Requirements for Youth ATVs

ATV Equipment	Safety Intent of Requirement
Automatic Transmission	Reduce complexity of driving, match requirements with skills
Lighting	
No projecting headlamp and no forward-facing light	Discourage nighttime driving
Stop lamp required	Improve conspicuity during braking to help reduce rear-end collisions
Speed Limiting Device on Teen and Pre-teen models	Allow children to develop skills over time while limiting maximum speed to that which they are capable of handling
Flag Pole Bracket	Provide means to have flag for conspicuity
Brakes, Engine Stop Switch, Throttle Control	Design requirements will standardize location and method of operation

The current voluntary standard allows youth ATVs with a manual transmission, while the staff’s draft proposed rule would disallow this. Due to the many cognitive skills required for safe ATV driving, CPSC staff believes that it is best to allow children to master driving skills before learning to coordinate gear shifting with the many other skills involved when operating an ATV. See Tab H from the CPSC Division of Human Factors.

As described in Tab I from the Division of Human Factors, the staff believes that riding ATVs at night is a significant risk factor for children and should be discouraged. Because headlamps on youth ATVs may encourage nighttime and unsupervised riding in challenging conditions, the staff believes that the prohibition of headlamps in the voluntary standard should be carried over into the staff’s draft proposed rule. In order to lessen the likelihood of rear-end collisions, however, the draft proposed rule is requiring a stop lamp on youth ATVs.

The staff’s draft proposed rule includes a new categorization of the age guidelines for four-wheeled youth ATVs. Based on an analysis by CPSC’s Division of Human Factors (Tab H), speed, *not* engine size, is a more appropriate criterion for determining which ATVs should be recommended for children under the age of 16. Thus, the staff’s draft proposed rule would base youth ATV age categories on speed limitation, rather than speed limitation *and* engine size. Under the staff’s draft proposed rule, all references to engine size as a category marker would be

eliminated. Provided a manufacturer commits to the speed limitations of the staff’s draft proposed rule, the staff would not oppose and would recommend a modification of the LOUs to delete the engine size limitations.

CPSC staff believes that limiting maximum speed is the most critical safety factor for youth ATV models. By eliminating the engine size restriction, manufacturers will be able to produce a variety of ATV models that meet speed restrictions but are more appropriately sized to account for the wide variation in physical dimensions of young people. By having the option of riding better-fitting ATVs that are not performance limited by undersized engines, staff believes that more youth will ride age-appropriate and speed restricted ATVs rather than gravitating toward adult ATV models. Staff also believes that having more engine power available to the youth rider could provide a safety cushion under certain circumstances such as climbing hills. Staff has no information to indicate that other performance characteristics associated with larger engine sizes, such as increased torque, acceleration, or weight, would have a potential negative safety effect on youth riders.

The staff’s draft proposed rule would limit the maximum speeds of ATVs intended for children under the age of 16 years. As shown in Table 3 below and as described in more detail in Tab H, *Teen* ATVs, intended for children ages 12 and above, would have a maximum unrestricted speed of 30 miles per hour (mph) and a device that could limit the maximum speed to 15 mph. *Pre-teen* ATVs, intended for children ages 9 and above, would have a maximum unrestricted speed of 15 mph and a device that could limit the maximum speed to 10 mph. The *Junior* ATV, intended for children ages 6 and above, would have an unrestricted speed of 10 mph or less, with no required speed limiting device.

**Table 3
Age and Speed Categories: Four-Wheeled Youth ATVs**

Category	Age (years)	Max Speed Capability	Speed Limitation (with Speed Limiter)
Junior	6 +	10 mph or less	None
Pre-teen	9 +	15 mph	10 mph
Teen	12 +	30 mph	15 mph

D. Discussion: Mechanical Requirements

As noted above and in Tab E from the Directorate for Economic Analysis, ATVs imported by new entrants into the U.S. market have increased in recent years, and this trend is likely to continue. The ATVs sold by these companies are available to consumers through the Internet, mass marketers, and importers. They are being marketed by companies that have not been a part of the consent decrees or voluntary action plan agreements with the Commission. As indicated in Tab G from the Directorate for Engineering Sciences, available evidence suggests that ATVs made by these companies do not meet some of the mechanical requirements of the current ANSI/SVIA-1-2001 voluntary standard. Mandating the mechanical requirements of the staff’s draft proposed rule would therefore help ensure that these ATVs meet basic safety standards.

In addition, as noted in the preliminary regulatory analysis from the Directorate for Economic Analysis (Tab J), the existence of a mandatory standard will enhance CPSC's ability to enforce mechanical safety requirements at a time when many new manufacturers are entering the market. At the present time, conformance to the mechanical safety requirements of ANSI/SVIA-1-2001 is voluntary. As new firms enter the market, the presence of a mandatory standard that can be more easily enforced will make it more likely that new entrants will comply with mechanical safety requirements.

Since the ATV manufacturers that have negotiated LOUs with CPSC are believed to be substantially in conformance with the requirements of the voluntary mechanical standard, mandating these mechanical requirements will have, at most, a modest impact on injury and death risk. These firms account for about 90 percent of the ATVs now being sold in the U.S. market. However, because these manufacturers with the largest share of the market are in substantial compliance with the voluntary standard, the additional cost that would be incurred by manufacturers to meet the mechanical requirements of the proposed rule likely will be low. In fact, the costs for many manufacturers may be limited to the cost of adding stop lamps to youth ATVs. The cost of adding a stop lamp would amount to a few dollars or more, especially in the case of youth ATVs which are not currently equipped with any wiring for lighting. Most adult ATVs are thought to be already equipped with a stop lamp.

With respect to youth ATVs, restricting ATV use by engine size likely discourages consumers from purchasing appropriate ATVs for some young riders. The frame size of youth ATVs as defined currently might not comfortably fit larger children. Some children of ages 12 through 15 are larger than some adults; these adolescents and their parents may prefer that they ride a larger ATV that better fits them physically. Additionally, if the engine of the youth ATV lacks sufficient power for acceleration or hill climbing, some children may resist using the youth model and their parents may prefer that their children ride an adult ATV.

Eliminating engine size as a criterion for categorizing youth ATVs may, for several reasons, enhance safety by providing children with an appropriate alternative to riding an adult ATV. It would allow ATV manufacturers to introduce a wider variety of youth models, including models with larger, more-physically-appropriate frames. Parents of young riders would have an easier time finding a suitably-sized ATV for their children and likely would be more willing to accept ATVs with the recommended speed restrictions; in addition, parents might be more willing to purchase youth models because they could be used for a longer period of time without the need for replacement because their children outgrew them. Moreover, acceptance and use of ATVs with the age-recommended speed restrictions could reduce the number of ATV-related injuries and deaths.

Increasing the availability of age-appropriate ATVs could also increase safety by increasing the proportion of child ATV drivers who receive formal ATV safety training. Currently, there are training programs that will not allow a child ATV driver to be trained unless he or she is on a youth ATV with a 90 cc or less-sized engine. If modifying the age recommendations for ATVs leads manufacturers to introduce more ATVs with the recommended speed restrictions for young riders, and, as a result, more children begin riding youth ATVs, it will be possible for more young riders to receive formal safety training.

The speed limitations for ATVs intended for children should not impose substantial additional costs on manufacturers because they are similar to those already in the ANSI/SVIA voluntary standard. Moreover, the speed limitations in the staff's draft proposed rule are less restrictive than the requirements for youth ATVs specified in the LOUs, since they do not include the engine size limitations. Consequently, the staff believes that this provision of the staff's draft proposed rule increases the potential for safety in the form of reduced injuries and deaths, without imposing additional costs and burdens on manufacturers. See Tab J.

6. Information Requirements

A. Labels, Hang Tags, Owner's Manuals, and Safety Video

The staff's draft proposed rule includes several requirements for safety warnings and safety information to be provided to consumers. These would be provided on warning labels and hang tags and in owner's manuals and safety videos. As discussed in Tab K from the Division of Human Factors, hazard communications, such as warning labels, hang tags, safety videos, and owner's manuals, rely on persuading consumers to alter their behavior to actively avoid a hazard and, if understood and capable of being followed, can enable consumers to make better and more informed decisions about how to use the product safely.

The warning information on hang tags and labels will advise consumers of the age recommendations for ATVs and warn that it is unsafe to allow children to operate ATVs intended for adults or older children and to carry passengers on a single-person ATV. Additional safety messages about ATV operation would be required in owners' manuals and in the safety video.

As noted in Tab J from the Directorate for Economic Analysis, the ATV manufacturers with the greatest share of the market are thought to be already substantially conforming to this requirement through the LOUs. The warning requirements of the staff's draft proposed rule should not impose any new costs on these manufacturers. For the manufacturers that are not now in conformance, the cost of coming into conformance will be minimal on a per unit basis. Even for manufacturers with a very low sales volume, the cost of designing, printing, and attaching a label or a hang tag or adding pages in an owner's manual will be probably no more than a few dollars per vehicle.

The major manufacturers already are providing the safety video, and the draft proposed standard will have no impact on their costs. For those manufacturers who currently are not providing a safety video to their consumers, the costs could be higher. The cost of duplicating a video or DVD is no more than a few dollars. However, the cost of producing a safety video could be several thousand dollars. For a manufacturer or distributor with a low sales volume, this could be a more significant cost. The cost or impact could be lower if a third party video could be licensed or shared by many small manufacturers or distributors.

The benefit of this provision is that it will ensure that all consumers receive consistent basic safety and hazard information regarding ATV use and operation. Although the benefit cannot be quantified, it is possible, as discussed in Tab J from the Directorate for Economic Analysis, that

even a small reduction in the number of ATV-related injuries to children as a result of fewer children riding adult ATVs would result in benefits being larger than costs.

As noted above, the staff's draft proposed rule requires that each manufacturer provide consumers with a means of relaying safety-related complaints and concerns to the manufacturer or importer. Manufacturers must make available for this purpose a domestic telephone number and mailing address, Web site or e-mail address. This contact information must be contained in the owner's manual. Owner's manuals will also be required to provide consumers with the instructions for reporting safety-related information to CPSC.

This requirement could provide manufacturers with an early alert if there is a potential hazard or defect with an ATV. This could allow manufacturers to take preemptive actions to minimize the risk of injury that might result. The cost of providing a means to report safety-related problems would be small. Virtually all manufacturers or distributors that sell ATVs in the U.S. already have domestic telephone numbers, addresses and Internet sites. Moreover, many manufacturers and distributors already include this information in the owner's manual.

B. Risk Disclosure Form

The staff's draft proposed rule would require that ATV dealers provide purchasers of adult ATVs with a written statement that 1) clearly states that adult ATVs are not intended for the use of children under the age of 16; and 2) gives the consumer specific information about the possible injury consequences of allowing children to ride adult ATVs. A proposed disclosure statement developed by the Division of Human Factors is displayed in Tab L.

This requirement is a direct response to the high risk of injury of children riding adult ATVs and to the comments of many parents, including some whose child died while driving an adult ATV, that they had never been warned about the risk.

The disclosure statement would be provided to purchasers prior to completion of the sale. Consumers would be required to sign the statement to acknowledge that they had been warned about the risks of allowing children to drive adult ATVs. Dealers would be required to keep the signed disclosure statement on file for at least five years after the purchase so that compliance with the disclosure statement requirement could be monitored and demonstrated. Similar disclosure forms would be provided to purchasers of youth ATVs; these disclosure forms would indicate the age of the child for which the youth model was designed.

According to the Directorate for Economic Analysis (Tab J), the benefits of requiring a disclosure statement would be twofold: first, it would help consumers make a more informed choice when they purchase an ATV and, second, as discussed in the memorandum from the Division of Human Factors (Tab L), signing the adult ATV disclosure form may prevent some adult purchasers from allowing children to ride adult ATVs. Similar benefits may result from the disclosure forms for youth ATVs.

Generally, when ATVs are sold, there is already some amount of paperwork generated, including purchase contracts and financing agreements. Therefore, the marginal costs of an additional form would be minimal. Moreover, under the LOUs, manufacturers already require

that their dealers inform consumers about the age recommendations for ATVs and monitor dealer compliance with that requirement. It is possible, therefore, that the direct enforcement mechanism provided by this disclosure statement would be no more costly than the current methods of monitoring compliance with the LOUs. Consequently, if this requirement would lead to even a small reduction in the number of children who ride and are injured on adult ATVs, it is likely that the benefits of the provision would exceed its costs.

7. Offer-of-Training Requirement

The staff's draft proposed rule would require manufacturers and distributors of ATVs to provide to every purchaser of an ATV a training certificate that would entitle the purchaser and members of the purchaser's immediate family for whom the ATV is age-appropriate to attend a free hands-on training course; the training course would have to be designed to satisfy the requirements of the staff's draft proposed rule. Manufacturers and distributors would be required to maintain a written record that the certificate was provided.

The staff's draft proposed rule would require that certain topics be included in the course content. The course would teach the student how to handle a variety of circumstances encountered when driving and would familiarize the rider with safety behavior and messages. Classroom, field, and trail activities would be included.

According to the Division of Human Factors (Tab M), ATV training is important because operating an ATV seems deceptively easy; steering controls are similar to a bicycle, and the throttle is generally simply lever-operated with the thumb. ATVs, however, are high-speed motorized vehicles that require repeated practice to drive proficiently. Operating an ATV is somewhat comparable to operating other complex high-speed motorized vehicles and requires repeated practice to decrease the risk of injury. Formal training may act as a surrogate for experience because it exposes new ATV drivers to situations they will encounter while riding off-road and teaches them the proper driving behavior to navigate those situations.

ATV manufacturers that account for about 90 percent of the U.S. market already offer free training to purchasers of their ATVs and members of their immediate families; purchasers of ATVs made by other manufacturers or importers can take the course, but are required to pay a fee.⁸ So, the primary impact of this requirement will be to extend the *free* training offer to people who purchase ATVs from manufacturers or importers that do not now offer free training. These manufacturers account for about 10 percent of total domestic ATV sales.

As described in Tab J from the Directorate for Economic Analysis, the requirement that manufacturers offer free training is in effect a requirement that they *subsidize* ATV safety training. The purpose of a subsidy is to lower the cost of a product, e.g., ATV training, so that individuals will be encouraged to purchase the product or, in this case, to take training. A subsidy can be an appropriate policy when it is believed that consumers will not purchase the socially optimal quantity of a good without some intervention. A consumer might not purchase

⁸ As noted in Tab J, some manufacturers also offer additional incentives to encourage first-time buyers to take ATV safety training. Some manufacturers give first-time purchasers an additional \$100 if they complete the training; while others offer free training to other members of the purchaser's family.

the optimum quantity of a good for a variety of reasons; for example, a consumer might underestimate the value of the good to herself or himself.

In the case of ATV safety training, it is likely that many consumers underestimate the benefits of training. According to the Division of Human Factors, ATVs can appear “deceptively easy” to operate but in fact require “repeated practice to drive safely.” Even at low speeds, ATV drivers need to have “situational awareness necessary to negotiate hazards on unpaved terrain” and make “quick judgments” with regards to steering, speed, braking, weight shifting, and terrain suitability. Consumers who underestimate the difficulty of riding ATVs may conclude that the cost of the training, including the cost in terms of time and travel, will exceed the benefits.

The cost to the manufacturer of offering free training depends upon a number of factors, such as the length of the course, the number of trainers, and the number of enrollees. If the training were similar to that provided currently by the ATV Safety Institute to children and adults, the value of a training certificate entitling the holder to a four-to-five hour training course might be \$75 to \$125. Thus, the value of the training subsidy might be \$75 to \$125 per trainee.

The cost to the ATV purchaser who has a training certificate would be the time and cost involved in finding an available time and training site and then arranging for transportation to the training. In addition, there would be a cost associated with the possible transportation of an ATV to the training site, and, for parents, the transportation of a child to the site. In addition, for all who take the training, there is the cost involved in spending several hours in training rather than in an alternate activity.

The benefits of training to new ATV drivers could be substantial. The Directorate for Epidemiology (Tab N) estimates, based on the results of the 2001 ATV injury and exposure surveys, that formal training may reduce the risk of injury by about half. Based on this information, the Division of Human Factors’ finding that formal training can act as a surrogate for experience, and the results of a recent ATV risk analysis that found a strong inverse relationship between driving experience and the risk of hospital emergency department-treated injury,⁹ the Directorate for Economic Analysis (Tab J) estimates that the benefits of training to new riders could be about \$770 per rider. The estimated cost, in terms of time spent getting to and from and taking the course, would be about \$295. Consequently, the net benefits of training per consumer could be about \$475.

Based on a 2004 Rider Training Summary from SVIA, about 35 percent of *first-time* ATV purchasers who were offered this training by member firms actually took advantage of it. Only 7 percent of *all* purchasers took any type of organized formal training, including dealer, SVIA, local, and 4-H training courses. The Directorate for Economic Analysis estimates that this requirement would likely increase the number of riders trained annually by about 6,000 to 7,000; these riders would primarily be those who would purchase ATVs from companies who do not currently offer training. If the benefits of the training are \$770 per trainee and the cost of the training is \$295, this could result in a net benefit of about \$3.3 million annually.

⁹ Gregory B. Rodgers and Prowpit Adler, “Risk Factors for All-Terrain Vehicle Injuries: A National Case-Control Study,” *American Journal of Epidemiology*, Vol. 153, No.11 (2001).

8. Ban: Three-Wheeled ATVs

Under the consent decrees, the major ATV manufacturers agreed to stop the sale of new three-wheeled ATVs, which had been shown to be less stable and more risky than four-wheeled ATVs. Until recently, no new three-wheeled ATVs are known to have been marketed in the United States since the late 1980s. However, as described in Tab O, the CPSC Office of Compliance has found evidence that there are three-wheeled vehicles that meet the definition of an ATV and that are being advertised and marketed as all-terrain vehicles for sale in the United States. The ban on the sale of three-wheeled ATVs contained in the staff's draft proposed rule would formalize the implicit ban that has been in place for almost 20 years. Formalizing the ban will likely not reduce ATV-related injuries from their present levels, but it will help ensure that three-wheeled ATVs will not be reintroduced into the U.S. market.

As described in the regulatory analysis at Tab J, the justification for a ban on the sale of three-wheeled ATVs is based on the substantially higher expected injury costs associated with the use of three-wheeled ATVs, relative to four-wheeled ATVs, and the likelihood that these higher costs outweigh any additional utility three-wheeled ATVs would arguably provide to their owners.

The real costs of ATVs include the expected injury costs associated with their use as well as their purchase price. According to a recent multivariate analysis of the risks associated with ATVs, the risk of injury on a three-wheeled ATV was about three times the risk on a similar four-wheeled model.¹⁰ Using this estimate of relative risk, the present value of the higher expected injury costs associated with the use of a three-wheeled ATV would (at a 3 percent discount rate) amount to about \$23,700 over its expected useful life (Tab J).

The injury cost differential between the three-wheeled ATV and the four-wheeled ATV would be offset somewhat by the lower estimated price of a three-wheeled ATV. Assuming that three-wheeled ATVs cost about \$300 less than their four-wheeled counterparts, the total cost of a three-wheeled ATV (including both the injury cost and the costs of purchasing the ATV) might amount to about \$23,400 more than the costs of a similar four-wheeled ATV (over its useful life.)

A ban of three-wheeled ATVs would be beneficial (on average) if the average extra valuation (utility or use value) that individuals put on a three-wheeled ATV is less than about \$23,400 over the useful life of the product. Consequently, if the utility from a four-wheeled ATV is not substantially different from the utility from a three-wheeled ATV, the ban would be justified. Although the utility that individuals receive from using ATVs cannot be quantified, available evidence described in Tab J suggests that for most individuals, the utility differential between three-wheeled and four-wheeled vehicles is minimal. Therefore, a ban of new three-wheeled ATVs appears to be justified.

9. Non-Regulatory Activities

The CPSC staff believes that the staff should continue to work with industry to improve aspects of the voluntary standard for ATVs, provide data resources for state and local legislators, and conduct an ATV safety information and education effort.

¹⁰ Ibid.

A. Voluntary Standards Activities

Many of the elements of the voluntary standard are incorporated into the staff's draft proposed rule. CPSC staff does not intend, by that action, to suggest that there is no need for voluntary standard activities to continue.

CPSC staff believes that the voluntary standards process can play an important role in dealing with any unanticipated mechanical issues or new safety technology that may arise in the future. CPSC staff believes that there are some technical issues that would benefit from further testing and study. This work, however, will require time and the coordinated application of both CPSC and private sector resources. CPSC staff believes that the most effective way to carry this out is through close, ongoing interaction with standards committees that are addressing ATVs in that regard.

B. Development of a Data Resource for Those Interested in State Legislation

CPSC staff believes that the states have a critical role to play in reducing ATV deaths and injuries. To be of assistance in efforts by the states or local government to pursue legislation or other safety actions, CPSC staff suggests that the Commission develop an online state data resource "bank." This "bank" would include information on ATV-related activities in each of the states, death data by state, and other pertinent state-related information.

C. Safety Information and Education, Including the Launch of a Dedicated Web Site

CPSC staff believes that information and education are critical to any effort to reduce the deaths and injuries associated with the use of ATVs. With that in mind, the staff is recommending that the Commission consider a coordinated media and information effort. The proposed activities are described in Tab P from the Office of Information and Public Affairs; part I would commence if the Commission votes to approve the NPR and would educate the public about recent developments in ATV safety. The following elements would be included in this plan:

- a national press conference
- satellite media tours (a speaker at one location conducts interviews nationwide via satellite)
- partnership and outreach through the CPSC Neighborhood Safety Network

Part II would consist of the establishment of an ATV Safety Information and Education Working Group, whose purpose would be to coordinate and enhance voluntary, ongoing safety education efforts for ATV riders and purchasers. The Working Group would include representatives from the public and private sectors, who would consider the most effective and up-to-date strategies to influence safety behavior regarding ATV use and, where appropriate, encourage a coordinated effort to promote those strategies. CPSC staff believes that a coordinated approach to ATV safety information and education is the most efficient way to use resources, eliminate duplicative efforts, and to help ensure that a consistent message is being presented to the ATV user.

In addition, the staff has developed a proposed ATV safety Web site for the Commission's consideration. Information to access that (restricted access) Web site has been provided to the

Commissioners so that they can review the format and content. The site includes the state data resource bank outlined above. The staff recommends that the Commission approve launch of the site as a public access ATV safety resource.

10. Additional Staff Comments

A. Encouraging the Use of Protective Gear

CPSC staff continues to strongly encourage the use of helmets and other protective gear by ATV riders. In addition, CPSC staff encourages ATV retailers to co-merchandise ATV safety gear, particularly helmets, alongside ATVs. Staff knows of one ATV manufacturer that offers vouchers to ATV purchasers towards the purchase of a helmet and another that displays protective gear nearby ATVs; CPSC staff applauds this type of action and encourages similar co-merchandising on the part of all manufacturers.

B. Insurance Discounts for Training

In early 2006, CPSC Office of Compliance staff attempted to contact nine major insurance companies who reportedly provide insurance to ATV owners. Information provided by seven of the nine companies which responded to the staff's inquiry show that at least 345,000 ATV owners have some type of ATV insurance, including bodily injury, personal damage, collision, and coverage for a guest passenger (including a guest passenger on a single-person ATV). Premiums are about \$200 annually, and three of the responding insurance companies offer some type of premium discount, ranging from five to ten percent, for participation in ATV training.

11. Summary

The CPSC staff believes that a comprehensive effort by the Commission to address the deaths and injuries associated with ATV use is warranted. This effort needs to include regulatory and non-regulatory activities. The CPSC staff is proposing that the Commission consider issuing a *Notice of Proposed Rulemaking* (NPR) which would mandate mechanical, labeling, safety information, and training requirements for four-wheeled single-person adult ATVs, four-wheeled two-person tandem ATVs, and four-wheeled youth ATVs; the NPR also would mandate a ban on three-wheeled ATVs intended for adults and children. The CPSC staff is proposing that the Commission also consider implementing non-regulatory activities including continued voluntary standards activities, an "ATV Safety" Web site including ongoing development of a data resource for state legislators and local government officials, and a safety information and education effort.

12. Options Available to the Commission

A. Approve All of the Staff's Recommendations

If the Commission determines that available information indicates that regulatory and non-regulatory approaches should be used to address the deaths and injuries associated with the use of ATVs, it could approve all of the staff's recommendations and approve the draft Notice of Proposed Rulemaking (NPR) for publication in the *Federal Register* under authority of the Consumer Product Safety Act (CPSA) and the Federal Hazardous Substances Act (FHSA), approve launch of the Web site, and direct the staff to pursue the other activities mentioned in this briefing package.

B. Approve Some, but Not All, of the Staff's Recommendations

If the Commission determines that available information does not warrant the use of all of the activities described in this briefing package, it could direct the staff to implement those activities which the Commission believes should be used to address the deaths and injuries associated with the use of ATVs.

C. Defer Making a Decision on the Staff's Recommendations

If the Commission believes that there is insufficient information to make a decision about the staff recommendation, it could defer its decision and direct the staff to gather the additional information.

D. Do Not Implement Any of the Staff's Recommendations

If the Commission concludes that the available information does not support proceeding with rulemaking or with implementing the non-regulatory activities, it could direct the staff to terminate rulemaking and to not proceed with implementing any of the non-regulatory activities.

13. Staff Recommendation

The CPSC staff recommends that the Commission approve all of the staff's recommendations put forth in this briefing package.

A

by which the bank is chartered, and (ii) with respect to a national bank, the State in which the main office of the bank is located.

(2) The term "*host State*" means with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(3) The term "*out-of-State bank*" means, with respect to any State, a bank whose home State is another State.

(4) The phrase "*activity conducted at a branch*" means an activity of, by, through, in, from, or substantially involving, a branch.

(b) Except as provided in paragraph (c) of this section, the laws of a host State apply to an activity conducted at a branch in the host State by an out-of-State, State bank.

(c) A host State law does not apply to an activity conducted at a branch in the host State of an out-of-State, State bank to the same extent that a Federal court or the Office of the Comptroller of the Currency has determined in writing that the particular host State law does not apply to an activity conducted at a branch in the host State of an out-of-State, national bank. If a particular host State law does not apply to such activity of an out-of-State, State bank because of the preceding sentence, the home State law of the out-of-State, State bank applies.

(d) Subject to the restrictions of subparts A through E of this part 362, an out-of-State, State bank that has a branch in a host State may conduct any activity at such branch that is permissible under its home State law, if it is either

(1) Permissible for a bank chartered by the host State, or

(2) Permissible for a branch in the host State of an out-of-State, national bank.

(e) Savings provision. No provision of this section shall be construed as affecting the applicability of—

(1) Any State law of any home State under subsection (b), (c), or (d) of 12 U.S.C. 1831u; or

(2) Federal law to State banks and State bank branches in the home State or the host State.

Dated at Washington DC, this 6th day of October, 2005.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

[FR Doc. 05-20582 Filed 10-13-05; 8:45 am]

BILLING CODE 6714-01-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

All Terrain Vehicles; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is considering whether there may be unreasonable risks of injury and death associated with some all terrain vehicles ("ATVs"). The Commission is considering what actions, both regulatory and non-regulatory, it could take to reduce ATV-related deaths and injuries. As described below, the Commission has had extensive involvement with ATVs since 1984. However, in recent years there has been a dramatic increase in both the numbers of ATVs in use and the numbers of ATV-related deaths and injuries. According to the Commission's 2004 annual report of ATV deaths and injuries (the most recent annual report issued by the Commission), on December 31, 2004, the Commission had reports of 6,494 ATV-related deaths that have occurred since 1982. Of these, 2,019 (31 percent of the total) were under age 16, and 845 (13 percent of the total) were under age 12. The 2004 annual report states that in 2004 alone, an estimated 129,500 four-wheel ATV-related injuries were treated in hospital emergency rooms nationwide. While this represents an increase in injuries in 2004 compared with 2003, the total number of four-wheel ATVs in use in the United States has increased and the estimated risk of injury per 10,000 four-wheel ATVs in use remained essentially level over the previous year.

This advance notice of proposed rulemaking ("ANPR") initiates a rulemaking proceeding under the Consumer Product Safety Act ("CPSA") and the Federal Hazardous Substances Act ("FHSA").¹ However, the notice discusses a broad range of regulatory and non-regulatory alternatives that could be used to reduce ATV-related deaths and injuries. The Commission invites public comment on these alternatives and any other approaches that could reduce ATV-related deaths and injuries. The Commission also

¹ Chairman Hal Stratton and Commissioners Thomas H. Moore and Nancy A. Nord issued statements, copies of which are available from the Commission's Office of the Secretary or from the Commission's Web site, <http://www.cpsc.gov>.

solicits written comments concerning the risks of injury associated with ATVs, ways these risks could be addressed, and the economic impacts of the various alternatives discussed. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risk of injury described in this ANPR.

DATES: Written comments and submissions in response to this ANPR must be received by December 13, 2005.

ADDRESSES: Comments should be e-mailed to cpssc-os@cpssc.gov. Comments should be captioned "ATV ANPR." Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504-7923. Comments also may be filed by facsimile to (301) 504-0127.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leland, Project Manager, ATV Safety Review, Directorate for Economic Analysis, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-7706 or e-mail: eleland@cpssc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission's involvement with ATVs is longstanding. ATVs first appeared on the market in the early 1970's. After a marked increase in their sales and in ATV-related incidents, the Commission became concerned about their safety in the early 1980's. On May 31, 1985, the Commission published an ANPR stating the Commission's safety concerns and outlining a range of options the Commission was considering to address ATV-related hazards. 50 FR 23139. At that time, the Commission had reports of 161 ATV-related fatalities which had occurred between January 1982 and April 1985, and the estimated number of emergency room treated injuries associated with ATVs was 66,956 in 1984. The majority of ATVs in use at that time were three-wheel models. One of the options mentioned in the ANPR was proceeding under section 12 of the CPSA to declare ATVs an imminently hazardous consumer product, see 15 U.S.C. 2061(b)(1). In 1987, the Commission filed such a lawsuit against the five companies that were major ATV distributors at that time. The lawsuit was settled by Consent Decrees filed on

April 28, 1988 that were effective for ten years.²

1. The Consent Decrees

The Consent Decrees included a broad range of provisions. In them, the distributors agreed to: (1) Halt the distribution of three-wheel ATVs, (2) attempt "in good faith" to devise a voluntary performance standard satisfactory to the Commission; (3) label ATVs with four types of warnings, the language and format of which were specified in the Consent Decrees; (4) supplement existing owners manuals with safety text and illustrations specified in the Consent Decrees and to prepare new owners manuals with specified safety information; (5) provide point of purchase safety materials meeting guidelines specified by the Consent Decrees, including hangtags, a safety video, a safety alert for dissemination to all purchasers stating the number of ATV deaths (to be updated annually), a 4 foot by 4 foot safety poster for dealers to display stating the number of ATV-associated fatalities (updated annually); (6) offer a rider training course to ATV purchasers and members of their immediate families at no cost; (7) run prime-time television spots on ATV safety; (8) include safety messages in all subsequent advertising and promotional materials and (9) conduct a nationwide ATV safety public awareness and media campaign. The distributors also agreed in the Consent Decrees that they would "represent affirmatively" that ATVs with engine sizes between 70 and 90 cc should be used only by those age 12 and older, and that ATVs with engine sizes larger than 90 cc should be used only by those 16 and older. Because distributors did not sell their products directly to consumers but through dealerships (which were not parties to the Consent Decrees), distributors agreed to "use their best efforts to reasonably assure" that ATVs would "not be purchased by or for the use of" anyone who did not meet the age restrictions. While the Consent Decrees were in effect, the distributors entered into agreements with the Commission and the Department of Justice agreeing to monitor their dealers to determine whether they were complying with the age recommendations and to terminate

the franchises of dealers who repeatedly failed to provide the appropriate age recommendations.

2. The Voluntary Standard

Industry had begun work on a voluntary standard before the Consent Decrees were in place. Distributors that were parties to the Decrees agreed to work in good faith to develop a voluntary standard that was satisfactory to the Commission within four months of the signing of the Consent Decrees. The five companies, working through the Specialty Vehicle Institute of America ("SVIA"), submitted a standard for approval as an American National Standards Institute ("ANSI") standard in December 1988. On January 13, 1989, the Commission published a notice in the *Federal Register* concluding that the voluntary standard was "satisfactory" to the Commission.³ 54 FR 1407. The standard, known as ANSI/SVIA 1-2001, *The American National Standard for Four Wheel All-Terrain Vehicles—Equipment, Configuration, and Performance Requirements*, was first published in 1990, and was revised in 2001. The ANSI standard has requirements for equipment, configuration, and performance of four-wheel ATVs. It does not contain any provisions concerning labeling, owners manuals or other information to be provided to the purchaser because such requirements were stated in the Consent Decrees that were in effect when the ANSI standard was developed. Provisions of the ANSI standard are discussed in more detail in section D.1 below.

3. ATV Action Plans

The Consent Decrees expired in April 1998. The Commission entered into "Action Plans" (also known as letters of undertaking) with seven major ATV distributors (the five who had been parties to the Consent Decrees, plus Arctic Cat, Inc. and Bombardier, Inc.) See 63 FR 48199 (summarizing Action Plans). Except for Bombardier's, all of the Action Plans took effect in April 1998 at the expiration of the Consent Decrees. (Bombardier's took effect in 1999 when the company began selling ATVs.) The substance of the Action Plans is described in letters of undertaking submitted by each of the companies.⁴ The letters are not

identical, but the companies agreed to take substantially similar actions.

Generally, under the Action Plans the companies agreed to continue many of the actions the Consent Decrees had required concerning the age recommendations, point of sale information (i.e., warning labels, owners manuals, hang tags, safety alerts, and safety video), advertising and promotional materials, training, and stopping distribution of three-wheel ATVs. The companies also agreed to implement an information/education program directed primarily at discouraging children under 16 from operating adult-size ATVs. The Action Plans are discussed in greater detail in section D.2 below.

4. Termination of Previous Rulemaking

As mentioned above, the Commission issued an ANPR concerning ATVs in 1985. However, the Commission chose to pursue legal action under section 12 to address ATV deaths and injuries rather than taking regulatory action. In 1991, the Commission terminated the rulemaking proceeding it had started with the 1985 ANPR. 56 FR 47166. At the time of the rulemaking termination, the Consent Decrees were in effect, the five ATV distributors had agreed to conduct monitoring of dealers' compliance with the Consent Decrees' provisions, and ATV-related injuries and deaths were declining. The termination notice stated that the ATV-related injury rate for the general population (per ATV) had dropped by about 50 percent between 1985 and 1989, and ATV-related fatalities had declined from an estimated 347 in 1986 to about 258 in 1989. *Id.* At 47170. The Commission concluded that under the circumstances present at that time, a rule was not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with ATVs.

The Commission's termination of its rulemaking proceeding was challenged by Consumer Federation of America ("CFA") and U.S. PIRG arguing that withdrawing the ANPR rather than pursuing a ban on the sale of new adult-size ATVs for use by children under 16 was arbitrary and capricious. The court upheld the Commission's decision. *Consumer Federation Of America v. Consumer Product Safety Commission*, 990 F.2d 1298 (D.C. Cir. 1993). The court noted that it was reasonable for the Commission to determine the

² The five distributors were American Honda Motor Co., Inc., American Suzuki Motor Corp., Polaris Industries, L.P., Yamaha Motor Corp., USA, and Kawasaki Motors Corp., USA. In 1996, Arctic Cat, Inc. began manufacturing ATVs and entered into an Agreement and Action Plan with the Commission in which the company agreed to take substantially the same actions as required under the Consent Decrees.

³ In the FR notice, the Commission noted that it "specifically reserved its rights under the consent decrees to institute certain enforcement or rulemaking proceedings in the future." 54 FR 1407.

⁴ These documents are available on CPSC's Web site at <http://www.cpsc.gov/library/foia/foia98/fedreg/honda.pdf>; <http://www.cpsc.gov/library/foia/foia98/fedreg/suzuki.pdf>; <http://www.cpsc.gov/library/foia/foia98/fedreg/kawasaki.pdf>; <http://www.cpsc.gov/library/foia/foia98/fedreg/polaris.pdf>; <http://www.cpsc.gov/library/foia/foia98/fedreg/yamaha.pdf>; and <http://www.cpsc.gov/library/foia/foia99/pubcom/bobard.pdf>.

effectiveness of the Consent Decrees and monitoring activities before considering whether additional action would be necessary. *Id.* at 1306.

5. CFA's Petition and the Chairman's Memo

In August 2002, CFA and eight other groups requested that the Commission take several actions regarding ATVs. CPSC docketed the portion of the request that met the Commission's docketing requirements in 16 CFR 1051.5(a). That request asked for a rule banning the sale of adult-size four wheel ATVs for the use of children under 16 years old. The staff prepared a briefing package analyzing the petition which was provided to the Commission on February 2, 2005 (available on CPSC's Web site in four parts beginning with <http://www.cpsc.gov/library/foia/foia05/brief/atvpt1.pdf>). The staff concluded that, given the Commission's lack of authority to regulate the use of ATVs and the difficulties of enforcing a sales ban, the requested sales ban would likely have little impact on reducing ATV-related deaths and injuries.

On June 8, 2005, Chairman Hal Stratton delivered a memorandum to the staff asking the staff to review all ATV safety actions and make recommendations on a number of issues. The memo directed the staff to consider whether: (1) The current ATV voluntary standards are adequate in light of trends in ATV-related deaths and injuries; (2) the current ATV voluntary standards or other standards pertaining to ATVs should be adopted as mandatory standards by the Commission; and (3) other actions, including rulemaking, should be taken to enhance ATV safety. The memo also identified several specific issues for the staff to review, namely: (1) Pre-sale training/certification requirements; (2) enhanced warning labels; (3) formal notification of safety rules by dealers to buyers; (4) the addition of a youth ATV model appropriate for 14-year olds; (5) written notification of child injury data at the time of sale; (6) separate standards for vehicles designed for two riders; and (7) performance safety standards. The memo directed the staff to give particular attention to improving the safety of young riders.

The Commission is issuing this ANPR as part of the review requested by the Chairman. The staff will consider the general and specific issues highlighted in the Chairman's memo, as well as any other approaches that could reduce ATV-related deaths and injuries. This ANPR is issued under the authority of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051 *et seq.*, and

the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.*

B. The Product

ATVs are motorized vehicles having broad, low pressure tires and are designed for off-road use. Originally, three-wheel ATVs predominated. However, since the Consent Decrees, only four-wheel ATVs have been marketed and sold in the United States (although some three-wheel ATVs are still in use).

Sales of ATVs have increased dramatically in recent years. Between 1996 and 2003 annual sales increased each year for a cumulative increase of about 150 percent to about 800,000 units in 2003. Annual rates of increase in sales may be slowing, but sales during 2000–2002 were still at record levels compared to the mid-1980s when sales were about 500,000 units annually. There also appears to be a trend toward producing larger ATVs. The engine sizes of ATVs currently for sale range from 40 cc to 760 cc, with at least one company planning to have an 800 cc ATV in its 2006 product line. The 1985 ANPR stated that typical ATVs at that time had engines between 50 cc and 250 cc. In the mid-1990s, new entrants began developing and marketing youth ATV models. Sales of youth models have continued to increase, and in 2002, an estimated 80,000 youth ATVs (or about 10–12 percent of all new ATVs) were sold.

The staff identified 32 domestic and foreign manufacturers of model year 2003 ATVs. About half of these manufacturers have business operations in the U.S. Some of these produce ATVs in the U.S. while others produce ATVs abroad but have a U.S. subsidiary or affiliate that distributes them in the U.S. The remaining 16 of the 32 manufacturers are foreign manufacturers that export ATVs to independently owned American importers who distribute the ATVs under the name of the foreign manufacturer, under their own name or under the name of a private labeler, or who deal directly with the ultimate consumer. Many of these foreign manufacturers entered the U.S. market in the past five years, originally selling only a youth ATV model. They are now beginning to market and sell adult ATVs as well.

Most ATVs are sold through manufacturers' networks of dealers. About 5000 dealers are affiliated with the major ATV distributors. ATVs are also sold in such places as lawn and garden shops, boat and marine product dealerships and farm equipment dealerships. ATVs, particularly those manufactured by the newer foreign

entrants, are also now sold on various Web sites, through "big box" retailers, and in some instances directly to consumers by the manufacturer.

C. The Risk of Injury

The most recent annual report of ATV deaths and injuries that the Commission has issued is the 2004 Annual Report (issued in September 2005). According to that report, the Commission had reports of 6,494 ATV-related deaths that have occurred since 1982. Of these, 2,019 (31 percent of the total) were under 16 years of age and 845 (13 percent of the total) were under 12 years of age. According to the 2004 Annual Report, 569 ATV-related deaths were reported to the Commission for 2003. Deaths reported to the Commission represent a minimum count of ATV-related deaths. To account for ATV-related deaths that are not reported to the Commission, the staff calculates an estimated number of ATV deaths. The most recent estimate of ATV-related deaths for 2003 is 740.

CPSC collects information on hospital emergency room treated injuries. The estimated number of ATV-related injuries treated in hospital emergency rooms in 2004 was 136,100. This is an increase of about eight percent over the 2003 estimate. The estimated number of injuries to children under 16 in 2004 was 44,700 (about 33 percent of the total estimated injuries for 2004).

The staff also estimates the risk of injury and the risk of death per 10,000 ATVs in use. According to the 2004 Annual Report, the estimated risk of injury for four-wheel ATVs for 2004 was 187.9 injuries per 10,000 four-wheel ATVs in use. A recent high in the estimated risk of injury occurred at 200.9 in 2001. The estimated risk of death for four-wheel ATVs in 2003 was 1.1 deaths per 10,000 four-wheel ATVs in use. In 1999, the earliest comparable year due to changes in data collection, the estimated risk of death was 1.4 deaths per 10,000 four-wheel ATVs in use.

Based on injury and exposure studies conducted in 1997 and, most recently, in 2001, the estimated number of ATV-related injuries treated in hospital emergency rooms rose from 52,800 to 110,100 (a 109 percent increase). Injuries to children under 16 rose 60 percent. During these years, the estimated number of ATV drivers rose from 12 to 16.3 million (a 36 percent increase); the estimated number of driving hours rose from 1,580 to 2,360 million (a 50 percent increase); and the estimated number of ATVs rose from 4 to 5.6 million (a 40 percent increase). The chief finding of the 2001 Report

was that increases in the estimated numbers of drivers, driving hours and vehicles did not account for all of the increase in the estimated number of ATV injuries.

D. Current Safety Efforts

1. ANSI Standard

The ANSI voluntary standard for ATVs, ANSI/SVIA 1-2001, was first published in 1990 and was revised in 2001. The ANSI standard defines an ATV as a vehicle designed to travel on four low pressure tires, having a seat designed to be straddled by the operator, having handlebars for steering control, and intended for use by a single operator. Under the standard, ATVs are divided into four categories: Category G for general recreational and utility use; Category S for recreational use by experienced operators; Category U intended primarily for utility use; and Category Y intended for operators under 16 years old. The Category Y is further subdivided into Y-6 for children age 6 and older and Y-12 for children age 12 and older.

General requirements cover service and parking brakes, mechanical suspension, clutch and gearshift controls, engine and fuel cutoff devices, throttle controls, lighting, tires, operator foot environment, electromagnetic compatibility, and sound level limits. Vehicle performance requirements are specified for service and parking brake operation, and pitch stability. In addition, for youth ATVs, there are requirements for maximum speed capability and for speed limiting devices. ATVs in the Y-6 category must have a speed limit capability of 10 mph and a maximum unrestricted speed of 15 mph. ATVs in the Y-12 category must have speed limit capability of 15 mph and a maximum unrestricted speed of 30 mph. The ANSI standard does not contain any labeling requirements or other provisions concerning safety information.

The major ATV distributors have indicated that they comply with the voluntary standard. However, the staff has not conducted any studies to determine the level of compliance by all ATV companies. The degree to which all ATV companies comply with the voluntary standard's provisions is an issue that the staff will examine as it pursues its review. Additionally, the adequacy of the voluntary standard is an issue that the staff will examine in the course of its review.

2. ATV Action Plans

As explained above, the ATV Action Plans are voluntary agreements that the

seven major ATV distributors have with the Commission. Through their Action Plans, these distributors agreed to continue many of the actions that the Consent Decrees required. Specifically, the companies agreed to continue to (1) abide by the age recommendations in the Consent Decrees and to monitor their dealers for compliance;⁵ (2) use the warning labels previously approved by the Commission on all ATVs;⁶ (3) use owners manuals that include the substantive informational content required under the Consent Decrees; (4) use advertising and promotional materials that conform to the advertising guidelines in the Consent Decrees; (5) affix hang tags to their ATVs that provide the same substantive safety messages as required under the Consent Decrees; (6) provide to dealers, for dissemination to purchasers, information that contains the same substantive safety messages as the ATV safety alerts required under the Consent Decrees (except for Honda); (7) provide each purchaser with a safety video with the same substantive safety messages as required under the Consent Decrees; (8) offer free hands-on ATV training to ATV purchasers and their immediate families;⁷ and (9) not market or sell three-wheel ATVs. Some of these actions are discussed in greater detail below.

Dealer Monitoring. The Consent Decrees were signed by the five major ATV distributors of the time, but they did not bind ATV dealers. The distributors agreed to use their best efforts to accomplish the goals of the age recommendations through their retail dealers or other representatives selling ATVs. To gauge the level of dealer compliance with the age recommendations, the Commission conducted two surveys. See 56 FR 47166. In December 1988, the Commission surveyed all dealers in Virginia and found that approximately 70 percent were making age recommendations that were inconsistent with provisions of the Consent Decrees. In June and July of 1989, the Commission conducted a nationwide statistical survey using a sample of 227 ATV dealers to determine the level of compliance with the age recommendations. This survey found

⁵ Arctic Cat had established a minimum age of 16 for its ATVs with engine size greater than 90 cc up to 350 cc, and a minimum age of 18 for its ATVs with an engine size greater than 350 cc.

⁶ The labels were revised in the mid-1990s based on recommendations of the Commission's Human Factors staff.

⁷ The companies also agreed to offer incentives for training to first time ATV purchasers without prior training (most offer \$100 cash, while Honda offers entrance into a contest for prizes).

that about 56 percent of dealers surveyed were not complying with the age recommendations. The Commission and the Justice Department negotiated with the distributors, and the distributors agreed to monitor their dealers and take steps to terminate the franchises of dealers who repeatedly failed to comply with the age recommendations. Under the Action Plans, ATV distributors continue to monitor their dealers. The Commission staff has continued to conduct monitoring as well.

From 2000-2003 the seven ATV manufacturers with Action Plans conducted undercover monitoring and reported their results to CPSC. During this time period, they reported that in 76 percent of the undercover monitoring visits, dealers were in compliance with the age recommendations. During this 2000-2003 period CPSC staff or its contractors also conducted monitoring. Of the dealers visited, 60 percent were in compliance with the age recommendations. The 2004 undercover monitoring results show a compliance rate of 70 percent of dealers visited. Note, however, that the monitoring is not a statistical sample and may not be representative of a nationwide level of compliance.

Training. The Commission has consistently taken the position that ATV training is an important aspect of safety. The Commission's studies have shown that ATV drivers who receive formal ATV training have a lower risk of injury than those who do not receive formal training. Yet, according to the 2001 exposure study, only 7 percent of all ATV drivers had received formal training.

Under the Action Plans, manufacturers agreed to continue to provide free hands-on training to purchasers and family members as had been required under the Consent Decrees. Most of these companies provide training through the ATV Safety Institute ("ASI"). Usually within 48 hours of purchase, ASI contacts the new owner (and family) to give them information about available rider training courses and encouraging them to enroll. Courses are available at nearly 1,000 locations in the U.S.

Warning Labels. The Consent Decrees required that manufacturers affix four warning labels to ATVs: (1) A general warning label,⁸ (2) a warning label stating that operating the ATV if you are under the appropriate age (12 or 16

⁸ This label was required to state that the vehicle can be hazardous to operate and that "severe injury or death" can result unless specified instructions are followed (such as having proper training, wearing a helmet etc.).

depending on the ATV) increases the chance of injury or death, (3) a warning label stating that riding as a passenger can cause the ATV to go out of control, and (4) a warning label (or labels) warning against use of improper air pressure in the ATV's tires and against overloading. The Consent Decrees specified the precise wording, format and location for these warnings based on information and advice from CPSC staff. In the mid-1990s, the content of the warning labels was revised, in consultation with CPSC staff. In the Action Plans the companies agreed to continue using the warning labels required under the Consent Decrees (as modified by the mid-90s revisions). As part of its review, the staff will examine the adequacy of the Action Plans.

3. Corrective Actions

Under section 15 of the CPSA, if the Commission determines that a product presents a substantial product hazard the Commission may order the manufacturer, distributor or retailer of the product to repair the problem in the product, replace the product, or refund the purchase price of the product. 15 U.S.C. 2064(d). Most corrective actions (often called recalls) are undertaken voluntarily by the manufacturer of a product. There have been numerous recalls of ATVs covering a variety of mechanical problems—about 50 between July 2001 and August 2005 (see Commission's Web site <http://www.cpsc.gov>).

E. Regulatory and Non-Regulatory Alternatives To Address the Risks of Injury

The Chairman's memo directed the staff to conduct a broad review of existing ATV safety measures and make recommendations to reduce ATV-related deaths and injuries. The memo requested the staff to consider rulemaking as well as other activities. Following is a discussion of options available to the Commission and issues raised by the Chairman's memo.

1. *Rulemaking.* As directed by the Chairman's memo, the staff will examine the possibility of rulemaking to make aspects of the voluntary standard or of the Voluntary Action Plans mandatory requirements, or to issue other mandatory requirements.

Under section 7 of the CPSA, the Commission has the authority to issue a consumer product safety standard consisting of performance requirements for the product and/or requirements that the product be marked with or accompanied by warnings or instructions when such requirements are reasonably necessary to prevent or

reduce an unreasonable risk of injury associated with the product. Such a rule could also include a certification requirement as authorized by section 14 of the CPSA.

Under section 8 of the CPSA, 15 U.S.C. 2057, the Commission has the authority to act if the Commission finds that no feasible consumer product safety rule would adequately protect the public from an unreasonable risk of injury associated with ATVs. Additionally, under section 12 of the CPSA, 15 U.S.C. 2061, the Commission has authority to file an action in Federal district court against an imminently hazardous consumer product, against the manufacturer, distributor or retailer of such a product, or against both.

With regard to ATVs intended for use by children, section 3(e) of the FHSA authorizes the Commission to issue a rule declaring ATVs that do not meet specified requirements to be hazardous substances if they present a mechanical hazard as defined by section 2(s) of the FHSA. An article that is intended for children and is or contains a hazardous substance is banned under section 2(q)(1)(A) of the FHSA. In addition, section 10 of the FHSA could be used by the Commission as the basis for establishing a certification requirement for ATVs.

2. *Voluntary standard.* As discussed above, the current voluntary standard for ATVs, ANSI/SVIA-1-2001, contains requirements for equipment, configuration, and performance of four-wheel ATVs. The staff will consider whether any possible changes or additions to the voluntary standard could help reduce ATV-related deaths and injuries.

3. *Corrective Actions under Section 15.* The Commission has authority under section 15 of the CPSA, 15 U.S.C. 2064, to pursue corrective actions on a case-by-case basis if the Commission determines that a product presents a substantial product hazard.

4. *Submission of Performance and Technical Data.* Section 27(e) of the CPSA authorizes the Commission to require (by rule) that manufacturers provide the Commission with performance and technical data related to performance and safety. The Commission also may require that manufacturers provide such performance and technical data to prospective purchasers. The staff will consider whether a rule under section 27(e) could help reduce ATV-related deaths and injuries.

5. *Information and Education.* Section 5 of the CPSA authorizes the Commission to disseminate information to the public concerning data and

information related to the causes and prevention of death and injury associated with consumer products. The staff will consider whether an information and education ("I&E") program could be developed that would help reduce ATV-related deaths and injuries and what such a program might include.

In accordance with the Chairman's memo, the staff will also consider the need for and possible means to accomplish the following proposals mentioned in the Chairman's memo:

- (1) Pre-sale training/certification requirements;
- (2) Formal notification of safety rules by dealers to buyers;
- (3) The addition of a youth ATV model appropriate for 14-year olds;
- (4) Written notification of child injury data at the time of sale; and
- (5) Separate standards for tandem (two up) vehicles.

F. Request for Information and Comments

This ANPR is the first step in a review of ATV activities to develop regulatory and/or non-regulatory actions that will reduce ATV-related deaths and injuries. The proceeding could result in a mandatory rule for ATVs. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above.

In accordance with section 9(a) of the CPSA, the Commission solicits:

1. Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.

2. Any existing standard or portion of a standard which could be issued as a proposed regulation.

3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

In addition, the Commission is interested in receiving the following information:

1. Research suggesting a maximum safe speed for teens for any off-road vehicle;
2. Information about the adequacy of age/size guidelines for today's youth;
3. Technical reports of testing, evaluation and analysis of the dynamic stability, braking and handling characteristics of ATVs currently on the market;
4. Technical reports or standards that describe the minimum performance requirements for stability, braking and handling characteristics for ATVs;

5. Technical information on test and evaluation methods for defining ATV characteristics that are specifically relevant to the vehicles' stability.

6. Technical information on motion sensing technology that can be used to measure displacement, velocity, and acceleration of both the test operator and test vehicle.

7. Technical reports and evaluations of any prototype ATVs with enhanced safety designs.

8. Technical reports and evaluations of ATV low pressure tire performance on various surfaces.

9. Information about ATV rider training programs, including descriptions of these programs, copies of materials used, expertise of instructors, consumer reactions to the programs, evaluations of the effectiveness of these programs, etc.

10. Information about ATV rider training and education programs (including public service campaigns, videos, school materials, Web sites, etc.) targeted to children and teenagers and/or targeted to parents and any evaluations of the effectiveness of these programs.

11. Studies, reports, focus group information, etc. dealing with children and teenagers' attitudes and/or behavior regarding ATVs or other off-road vehicles.

12. Information about the feasibility and marketability of a transitional ATV geared to larger children and/or small adults, and the effect such an ATV might have on safety.

13. Information about the applicability of sensor technology to improve the safety of ATVs;

14. Studies documenting the effectiveness of state and local legislation;

15. Studies documenting the effectiveness of ATV helmet use; and

16. Information about tandem ATVs, particularly their similarities to and differences from traditional ATVs.

17. All other relevant information and suggestions about ways in which ATV safety might be improved, including proposals and specific suggestions for greater public information efforts, enhanced safety activities by ATV dealers, associations and clubs, etc.

Comments should be e-mailed to cpssc-os@cpssc.gov, and should be captioned "ATV ANPR." Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone

(301) 504-0800. Comments also may be filed by telefacsimile to (301) 504-0127. All comments and submissions should be received no later than December 13, 2005.

Dated: October 7, 2005.

Todd A. Stevenson,
Secretary, Consumer Product Safety
Commission.

[FR Doc. 05-20557 Filed 10-13-05; 8:45 am]

BILLING CODE 6355-01-P

POSTAL SERVICE

39 CFR Part 111

Use of Ancillary Service Endorsement for Mailing Certain Types of Checks

AGENCY: Postal Service.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Postal Service is withdrawing a proposed rule that would require ancillary service endorsements on mailpieces containing certain types of checks.

DATES: Withdrawal effective October 14, 2005.

FOR FURTHER INFORMATION CONTACT: William Chatfield, Mailing Standards, United States Postal Service, 202-268-7278.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the *Federal Register* on October 27, 2004 (69 FR 6263), the Postal Service presented for public comment a proposed revision to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM®) to require the use of ancillary service endorsements on mailpieces containing certain types of checks mailed at Standard Mail postage rates. The proposed revision was intended to protect postal customers.

We received comments from the financial industry discussing a number of safeguards for customers that reduce the incidence of fraud and the misuse of information on these checks. We have concluded that the requirements in our proposal are unnecessary, and we withdraw our proposal.

Neva R. Watson,
Attorney, Legislative.
[FR Doc. 05-20563 Filed 10-13-05; 8:45 am]
BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R09-OAR-2005-CA-0009; FRL-7975-2]

Revisions to the California State Implementation Plan, Monterey Bay United Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Monterey Bay United Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_x) and sulfur compounds emitted by various sources. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by November 14, 2005.

ADDRESSES: Submit comments, identified by docket number R09-OAR-2005-CA-0009, by one of the following methods:

1. Agency Web site: <http://docket.epa.gov/rmepub/>. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.

3. E-mail: steckel.andrew@epa.gov.

4. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at

<http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal or e-mail. The agency Web site and eRulemaking portal are "anonymous access" systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and

B



United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

MEMORANDUM

DATE: January 12, 2006

TO : EC

Through: Todd A. Stevenson, Secretary, OS

FROM : Martha A. Kosh, OS

SUBJECT: All Terrain Vehicles; Advance Notice of Proposed Rulemaking; Request for Comments and Information

ATTACHED ARE COMMENTS ON THE CA 06-1

<u>COMMENT</u>	<u>DATE</u>	<u>SIGNED BY</u>	<u>AFFILIATION</u>
CA 06-1-1	10/07/05	Philip Trivilino	811 Mansion Aave. Ogdensburg, NY 13669
CA 06-1-2	10/07/05	Candy	<u>candy2005@alltel.net</u>
CA 06-1-3	10/11/05	Debbie Johnson State Senator	Senate State of Minnesota
CA 06-1-4	10/11/05	Mike Kowis Attorney	<u>mkowis@hotmail.com</u>
CA 06-1-5	10/11/05	Randy Crane	<u>ecrane@rochester.rr.com</u>
CA 06-1-6	10/11/05	Michael Phillips	<u>motorfisher1@msn.com</u>
CA 06-1-7	10/11/05	Dave Sunderman MNDNR ATV Safety Instructor	30535 Cedar Lane Le Suer, MN 56058
CA 06-1-8	10/11/05	Brian Owens	2912 Linda Drive New Albany, IN 47152
CA 06-1-9	10/11/05	Richard Bloomdahl	<u>rbloomda@mon-cre.net</u>
CA 06-1-10	10/12/05	Kevin Geiger	P.O. Box 321 North Pomfret, VT 05053
CA 06-1-11	10/13/05	Kay & Bill Stull	1224 State Highway, Pp Scott City, MO 63780
CA 06-1-12	10/14/05	B. Sachau	15 Elm Street Florham Park, NJ 07932

**All Terrain Vehicles; Advance Notice of Proposed Rulemaking;
Request for Comments and Information**

CA 06-1-13	10/14/05	Steve Nedved Firefighter	nedved@nedved.org
CA 06-1-14	10/14/05	Joyce Adams	jjadams@crosstel.net
CA 06-1-15	10/15/05	Tom Wolf	202 Barclay Street Lolo Montana, 59847
CA 06-1-16	10/20/05	Mary Serano	mjserrano@mail.baldcom.net
CA 06-1-17	10/21/05	Robert Allen	P.O. Box 624 Grants Pass, OR 97528
CA 06-1-18	10/21/05	Robert Kingsnorth	2550 Old Military Road Central Point, OR 97502
CA 06-1-19	10/31/05	Dean Greenwalt	Rock Springs Ranch Apple Valley, CA
CA 06-1-20	10/31/05	Consumer	equinecat@adelphia.net
CA 06-1-21	10/31/05	Steve Rouchleau	5965 Newcomb St. San Bernardino, CA 92404
CA 06-1-22	11/02/05	Keith Allen	P.O. Box 704 773 Douglas Ave. Palmer Lake, CO 80133
CA 06-1-23	11/02/05	D. Poppelreiter	ivwheller@yahoo.com
CA 06-1-24	11/04/05	T. Prendergast President, ASI Instructor	AMA/ATVA D-18 38 Shadow Creek Dr. St. Peters, MO 63376
CA 06-1-25	11/04/05	Goeffrey George	geoff@gtechdesign.com
CA 06-1-26	11/04/05	Tyler Nelson	Tylern@metc.net
CA 06-1-27	11/04/05	Michael Gregroy	4wheeler@socket.net
CA 06-1-28	11/05/05	Ray Advisor, ATV Traction Site Administrator	Ray Merriman Corp. 237 Allen Road Beaverfalls, PA 15010
CA 06-1-29	11/06/05	Beth Laurine	bethlaurine@raodlynx.net
CA 06-1-30	11/06/05	Consumer	Firefighter7102@aol.com
CA 06-1-31	11/06/05	Brian Hammons	Bhammons34@aol.com
CA 06-1-32	11/07/05	Mike Elmore	fugitaboutit@verizon.net

**All Terrain Vehicles; Advance Notice of Proposed Rulemaking;
Request for Comments and Information**

CA 06-1-33	11/07/05	King Henderson	15703 Biarritz Court Moreno Valley, CA 92555
CA 06-1-34	11/08/05	Suzanne Vazquez	7990 SW 139 Terrace Palmetto Bay, FL 33158
CA 06-1-35	11/08/05	Nelli Gold	24 Paul Revere Rd. Sharon, MA 02067
CA 06-1-36	11/08/05	Mark Andrews	markandrewsmd@yahoo.com
CA 06-1-37	11/09/05	L. Lottenberg Assoc. Professor Of Surgery & Anesthesiology	University of Florida Division of Acute Care Surgery 1600 SW Archer Rd, RM M602 Gainesville, FL 32610
CA 06-1-38	11/09/05	Jeffrey Upperman Asst Professor Of Surgery	Children's Hospital of Pittsburgh Dept of Pediatric Surgery 3705 Fifth Ave, 4A-485 Pittsburgh, PA 15213
CA 06-1-39	11/10/05	Chris Nichols Assist. Vice President of Construction	AmREIT Construction Co. LLC, 8 Greenway Plaza Suite 1000 Houston, TX 77046
CA 06-1-40	11/10/05	Jim & Judy Rabe	1468 N Ohohio Lanai City, HI 96763
CA 06-1-41	11/10/05	Thomas Suggs	tlsuggs70@yahoo.com
CA 06-1-42	11/10/05	Greg McNemar	lilloveminihorse@core.com
CA 06-1-43	11/10/05	Jeff Peters	tricitydale@usamedia.tv
CA 06-1-44	11/10/05	Angela Burden	19887 Case Rd, NE Arora, OR 97002
CA 06-1-45	11/10/05	Marli Albrecht	13768 W. 61 st St. Lane Arvada, CO 80004
CA 06-1-46	11/11/05	L. McCullough	LuvRosesXLV@aol.com
CA 06-1-47	11/11/05	Rob Zimmerman	Rzimmerman@oh.hra.com
CA 06-1-48	11/11/05	William Arens	bill3575@hotmail.com
CA 06-1-49	11/11/05	Cory Kubinak & Family	admin@koolkidzatv.com

**All Terrain Vehicles; Advance Notice of Proposed Rulemaking;
Request for Comments and Information**

CA 06-1-50	11/11/05	M. Gage Ochsner MD FACS, Director Trauma Services Professor of Surgery	Mercer University School of Medicine Memorial Health University Medical Center Savannah, GA
CA 06-1-51	11/12/05	Rue Family	ruefamily7@sbcglobal.net
CA 06-1-52	11/12/05	Kim Mendell	5 Fairlawn Ave. Fairhaven, MA 02719
CA 06-1-53	11/13/05	Ken Dye	dkend@pacbell.net
CA 06-1-54	11/14/05	Hamilton Family	44 Coleman Lane Hazard, KY 41701
CA 06-1-55	11/14/05	Rob Weis	F1407 Blueberry Rd. Edgar, WI 54426
CA 06-1-56	11/14/05	Gibson Family	gibsonracing@neo.rr.com
CA 06-1-57	11/14/05	Consumers (approx. 1,500)	Concerned Families
CA 06-1-57a	11/14/05	Consumers	Concerned Famililies
CA 06-1-58	11/15/05	R. Schubert	1363 Fireweed Dr. Rio Rancho, NM 87144
CA 06-1-59	11/15/05	Ruth Shults Captain	US Public Health Service Injury Center Centers for Disease Control & Prevention 4770 Buford Hwy, NE Mailstop K-63 Atlanta, GA 30341
CA 06-1-60	11/15/05	Linda Voorhis	3978 2 nd St Riverside, CA 92501
CA 06-1-61	11/15/05	Janice Bentley	Memorial Health University Medical Center Savannah, GA
CA 06-1-62	11/16/05	Brian Chapman	weathermeister@yahoo.com
CA 06-1-63	11/18/05	Kristie Potts Trauma Coord.	Holland Hospital 602 Michigan Ave. Holland, MI 49423
CA 06-1-64	11/18/05	Alta Bruce Injury Control	Indian Health Service Box 160, #1 Hospital Rd Belcourt, ND 58316

**All Terrain Vehicles; Advance Notice of Proposed Rulemaking;
Request for Comments and Information**

CA 06-1-65	11/18/05	Samantha Fett	sfett@inanevs.com
CA 06-1-66	11/18/05	Craig Smith Cheryl Smith	craigasmith@mac.com Henderson, NV
CA 06-1-67	11/18/05	Brent Shipman	LuvDaRacinThrill@aol.com
CA 06-1-68	11/19/05	Michael Mantor	hinesdg@comcast.net
CA 06-1-69	11/19/05	Gary Moore	gmoore@socket.net
CA 06-1-70	11/21/05	Hope Whitehead	Qualitymotor11@aol.com
CA 06-1-71	11/21/05	Matthew Rhea	mcrhea2@alltel.net
CA 06-1-72	11/22/05	James Pardo	41255 Cimmaron Clinton Twp. MI 48038
CA 06-1-73	11/22/05	Lisa Matthes	2153 N. Taylor Arlington, VA 22207
CA 06-1-74	11/22/05	Joy Tiz	Joshua Tree Realty
CA 06-1-75	11/22/05	Debbie Melius	MELIUSD@cajonvalley.net
CA 06-1-76	11/22/05	Hank, Sandy Deven	City of Miami Beach Police Department Miami, Florida 33139
CA 06-1-77	11/24/05	Students (6)	Florida Int'l University
CA 06-1-78	11/25/05	W. Quinlivan Pastor	Blessed Sacrament Church 263 Claremont Ave. Tonawanda, NY 14223
CA 06-1-79	11/25/05	Suzanne Christ	schrist@2ki.net
CA 06-1-80	11/26/05	Ann Sauers	atks44@webtv.net
CA 06-1-81	11/26/05	E. Hohensee	edhohensee@aol.com
CA 06-1-82	11/26/05	Barbara Schaller	lschallersr@yahoo.com
CA 06-1-83	11/26/05	Marjory Morett	mjmoretta@yahoo.com
CA 06-1-84	11/26/05	Thomas Hurley	hurleytns@msn.com
CA 06-1-85	11/26/05	R. Bissonette	rbissone@buffalo.edu
CA 06-1-86	11/26/05	Barbara Berger	1450 Rice Road Elma, NY 14059
CA 06-1-87	11/26/05	Barbara Rook	Barbe140@aol.com

**All Terrain Vehicles; Advance Notice of Proposed Rulemaking;
Request for Comments and Information**

CA 06-1-88	11/27/05	K. Gajkowski	51 Brunck Rd. Lancaster, NY 14086
CA 06-1-89	11/27/05	P. Romesser Elisa Romesser	43 Laurel Drive Attica, NY 14011
CA 06-1-90	11/28/05	Lynn Leek Manager	Free Maxick & Battaglia 800 Liberty Building Buffalo, NY 14202
CA 06-1-91	12/06/05	Consumer Organizations	Nancy Cowles
CA 06-1-92	12/06/05	Tim Sherry	coppicat@comcast.net
CA 06-1-92a	12/06/05	Charles Sherry	coppicat@comcast.net
CA 06-1-93	12/06/05	Gary Crumrine	gary.crumrine@verizon.net
CA 06-1-94	12/07/05	Rachel Weintraub Director of Product Safety & Senior Counsel	Consumer Federation of America 1620 Eye St, NW, Suite 200 Washington, DC 20006
CA 06-1-95	12/06/05	Consumer Groups	Rosemary Shahan Consumers for Auto Reliability and Safety 1303 J St, Suite 270 Sacramento, CA 95814
CA 06-1-96	12/06/05 Ltr dated 12/1	Social Workers	Emory University School of Medicine 1405 Clifton Rd, NE Atlanta, GA 30322
CA 06-1-97	12/08/05	C. Alexander	cbcalexander@alltel.net
CA 06-1-98	12/13/05 Ltr dated 121/1	Beverly McCall	104 Hanwell Place Depew, NY 14043
CA 06-1-99	12/08/05	J.A. Sullivan	andy-sullivan@ouhsc.edu
CA 06-1-100	12/08/05	Jason Andrews	jandrews@fairfax.k12.ca.us
CA 06-1-101	12/08/05	Philip Berg	1690 Rush Haven Way Simi Valley, CA 93065
CA 06-1-102	12/09/05	Effie Noren	Effie Noren
CA 06-1-103	12/09/05	K. Korobey	lancerchick25@yahoo.com
CA 06-1-104	12/09/05	C. Wennemark	110 Autumn Lane Tullahoma, TN 37388

**All Terrain Vehicles; Advance Notice of Proposed Rulemaking;
Request for Comments and Information**

CA 06-1-105	12/09/05	Anthony Layton	4442 Mathews Rd. Spring Arbor, MI 49283
CA 06-1-106	12/09/05	Daniel Layton	4442 Mathews Rd. Spring Arbor, MI 49283
CA 06-1-107	12/10/05	J.C. Crouch Asst. Sales Mgr	Two Wheels, Inc. Kauai, HI
CA 06-1-108	12/11/05	Jeff Oliver	<u>runt@hcis.net</u>
CA 06-1-109	12/11/05	Marianne Smith	<u>marianne@offsetprep.com</u>
CA 06-1-110	12/11/05	Renee Mirza Nick Mirza	1 Jonden Trail Orchard Park, NY 14127
CA 06-1-111	12/11/05	Jeff Rizzo	<u>Cbrsjr96@aol.com</u>
CA 06-1-112	12/11/05	Joseph Bellinger	<u>racers@twcny.rr.com</u>
CA 06-1-113	12/11/05	Susan Reynolds Exec. Director	Progressive Agriculture Foundation P.O. Box 530425 Birmingham, AL 35253
CA 06-1-114	12/12/05	Ron McCallum Jr Parts Manager	Atlantic Powersports Brick, NY
CA 06-1-115	12/12/05	M. Underberger Director	Safe Kids North Central Florida
CA 06-1-116	12/13/05	G Harry Ransom	4925 W Glenarden Dr. Las Vegas, NV 89130
CA 06-1-117	12/13/05	R. Rondeau President	Michigan All Terrain Vehicle Association P.O. Box 2448 Dearborn, MI 48123
CH 06-1-118	12/13/05	R. Kregenow Instructor in Pediatrics	Washington University St. Lous, MO 63110
CH 06-1-119	12/13/05	Mark Storcks Operations Mgr.	Tecumseh Products Co.
CH 06-1-120	12/13/05	Alan Korn	Safe Kids Worldwide
CH 06-1-121	12/13/05	Thomas Yager Vice President	Specialty Vehicle Institute of America 2 Jenner St, Suite 150 Irvine, CA 92618

**All Terrain Vehicles; Advance Notice of Proposed Rulemaking;
Request for Comments and Information**

CH 06-1-122	12/13/05	Janell Duncan	Consumers Union
CH 06-1-123	12/13/05	Annamarie Daley Counsel for	Arctic Cat Inc.
		Yves St Arnaud Counsel for	Bombardier Recreational Products
		Mary McConnell Counsel for	Polaris Industries Inc.
CH 06-1-124	12/13/05	Paula Yuma	<u>Paula.Yuma@childrens.com</u>
CH 06-1-125	12/10/05	Susan Reynolds Exec. Director	Progressive Agriculture Foundation P.O. Box 530425 Birmingham, AL 35253
CH 06-1-126	12/12/05	Doug Morris	843 Ellis St. Pickerington, OH 43147
CH 06-1-127	12/13/05	W. Prunella	10911 Wickshire Way Rockville, MD 20852
CH 06-1-128	11/30/05	T. Vitaglione Co Chair	NC Child Fatality Task Force 1928 Mail Service Center Raleigh, NC 27699
CH 06-1-129	12/01/05	David Mooney MD	Children's Hospital Boston 300 Longwood Ave. Boston, MS 02115
CH 06-1-130	12/01/05	James Graham MD	University of Arkansas 800 Marshall St. Slot 512-16 Little Rock, AR 72202
CH 06-1-131	12/01/05	Staff (10)	Children's Healthcare of Atlanta 1001 Johnson Ferry Rd, NE Atlanta, GA 30342
CH 06-1-132	12/02/05	Joseph Wright Medical Dir.	Children's National Medical Center 111 Michigan Ave, NW Washington, DC 20010
CH 06-1-133	12/07/05	R.Pettignano	3837 Peachtree Dunwoody Rd, NE Atlanta, GA 30342

**All Terrain Vehicles; Advance Notice of Proposed Rulemaking;
Request for Comments and Information**

CH 06-1-134	11/09/05	Jim Helmkamp Director	West Virginia University Injury Control Research Center P.O. Box 9151 Morgantown, WV 26506
CH 06-1-134a	11/29/05	Jim Helmkamp	Address same as above
CH 06-1-135	11/18/05	B. Rodgers	University of Virginia P.O. Box 800709 Charlottesville, VA 22908
CH 06-1-136	12/09/05	Sharon Pahlman	Maryland Cooperative Extension US Dept of Agriculture University of Maryland College Park, MD 20742
CH 06-1-137	12/13/05	Distributors Of ATVs (8)	Willkie Farr & Gallagher 1875 K St, NW Washington, DC 20006
		Counsel for American Honda Motor Co, Inc	Michael A. Brown Brown & Gidding 3201 New Mexico Ave, NW Suite 242 Washington, DC 20016
		Counsel for American Suzuki Motor Corp.	John B. Walsh American Suzuki Motor Corporation 3251 Imperial Highway Brea, CA 92821
		Counsel for Arctic Cat Inc.	Annamarie Daley Robins, Kaplan, Miller & Ciresi LLP 2800 LaSalle Plaza 800 LaSalle Avenue Minneapolis, MN 55402
		Counsel for Bombardier Recreational Products	Yves St. Arnaud Bombardier Recreational Products 1061 Parent Street Saint-Bruno, Quebec J3V 6P1 Canada
		Counsel for Deere & Co.	Deborah J. Morrison Deere & Company One John Deere Place Moline, IL 61265

**All Terrain Vehicles; Advance Notice of Proposed Rulemaking;
Request for Comments and Information**

Con't		Counsel for Kawasaki Motors Corp. USA	Michael A. Wiegard Eckert Seamans Cherin & Mellot 1250 24 th St, NW Suite 700 Washington, DC 20037
		Counsel for Polaris Industries	Mary McConnell Polaris Industries Inc. 2100 Highway 55 Medina, MN 55340
		Counsel for Yamaha Motor Corp. USA	David P. Murray Willkie Farr & Gallagher 1875 K St, NW Washington, DC 20006
CH 06-1-138	12/18/05	Robert Foglia Surgeon in Chief, Medical Director, Trauma & Burn Program	St Louis Children's Hospital Washington Univ. Physicians One Children's Place St. Louis, MO 63110
		Assoc. Professor Surgery, Washington School of Medicine Missouri State Chairman for the American College of Surgeons Committee on Trauma	
CH 06-1-139	11/27/05	Sybil Foote	11 Saybrook Pl Buffalo, NY 14209
CH 06-1-140	11/28/05	Camille Klein	kleinc@erie.gov
CH 06-1-141	11/28/05	Maria LaMalfa	P.O. 2005 St. James, NY 11780
CH 06-1-142	11/30/05	G. Alderson F. Alderson	112 Hilton Ave. Baltimore, MD 21228
CH 06-1-143	11/30/05	Jackie Branch Project Mgr.	Gelia Wells & Mohr 11342 Main St. Clarence, NY 14031
CH 06-1-144	11/30/05	Donna D Neyman	quad14mom@yahoo.com
CH 06-1-145	11/30/05	Tom Weber	tweber@gelia.com
CH 06-1-146	11/30/05	S. Van Dette	Shirleyann716@aol.com

**All Terrain Vehicles; Advance Notice of Proposed Rulemaking;
Request for Comments and Information**

CH 06-1-147	11/30/05	D. Shalaby	deshalaby@yahoo.com
CH 06-1-148	12/01/05	C. Punturiero	cpunturiero@gelia.com
CH 06-1-149	12/01/05	Joseph Mango	jmango@gelia.com
CH 06-1-150	12/01/05	Karen Rushford	krushford@gelia-media.com
CH 06-1-151	12/04/05	J Crinzi	Jcrinzi@aol.com
CH 06-1-152	12/05/05	Amy Wilson	ajwilson@gelia.com
CH 06-1-153	12/05/05	Andrew Walters Director	ATV Watch P.O. Box 34 Fitzwilliam, NH 03447
CH 06-1-154	12/05/05	Bill Gilbert	Haynez2@aol.com
CH 06-1-155	12/08/05	P. Flanagan	paflanagan@verizon.net
CH 06-1-156	12/08/05	W. Pomerantz Pediatrician	3333 Burnet Ave, ML 2008 Cincinnati, OH 45229
CH 06-1-157	12/08/05	Gwen McIntosh Pediatrician	600 Highland Ave. Madison, WE 53792
CH 06-1-158	12/08/05	R. Nabaweesi Pediatrician	600 N Wolfe St Harvey 302B Baltimore, MD 21287
CH 06-1-159	12/08/05	B. Markovitz Pediatrician	One Childrens Place St. Louis, MO 63110
CH 06-1-160	12/08/05	Bassam Gebara Pediatrician	3601 W 13 Nile Rd. Royal Oak, MI 48073
CH 06-1-161	12/08/05	Raj Aneja Pediatrician	Children's Hospital of Pittsburgh 3705 5 th Ave Pittsburgh, PA 15213
CH 06-1-162	12/08/05	Vikki Stefans Pediatrician	Arkansas Childrens Hospital 800 Marshall St. Little Rock, AR 72204
CH 06-1-163	12/08/05	L. Fitzmaurice Pediatrician	4301 SW Hickory Ln Blue Springs, MO 64015
CH 06-1-164	12/08/05	Mary Aitken Pediatrician	800 Marshall St. Little Rock, AR 72202
CH 06-1-165	12/13/05	ATV Riders	Pan American Body Shop

C



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Memorandum

TO : Jacqueline Elder, Assistant Executive Director for Hazard Identification and Reduction

THROUGH: Gregory Rodgers, Associate Executive Director, Economic Analysis *GBR*

FROM : Elizabeth W. Leland, Economic Analysis, Manager, ATV Safety Review Project *ELW*

SUBJECT : October 14, 2005, All-Terrain Vehicle (ATV) *Advance Notice of Proposed Rulemaking* (ANPR): CPSC Staff Response to Public Comments

I. Introduction

With the publication of an *Advance Notice of Proposed Rulemaking* (ANPR) on October 14, 2005, the U.S. Consumer Product Safety Commission (CPSC) initiated rulemaking to address the deaths and injuries associated with the use of all-terrain vehicles (ATVs).¹ The ANPR described various regulatory and non-regulatory alternatives that could be used to address the hazard associated with ATV use, asked the public to comment on those alternatives, and solicited suggestions for other safety-related actions. The closing date for comments was December 13, 2005. This memorandum provides a summary of the comments received during the comment period and the staff's response to those comments.

II. Summary of Comments

The Office of the Secretary received 165 comments; one of those comments was a form letter, copies of which were submitted by about 1,500 consumers. Among those who sent comments to the Commission were ATV Safety Institute instructors; a state senator; ATV riders; parents and relatives of riders; parents, relatives, and friends of fatality and injury victims; consumers; medical professionals; consumer organizations; ATV industry associations; employees of the ATV industry; the Centers for Disease Control; and graduate students at a U.S. university.

The issues that were raised most frequently concerned the importance of training and safety education; state and local laws and enforcement; the use of protective gear; age/size guidelines, the proper fit of a child on an ATV, and a transitional vehicle; the need to provide ATV purchasers with ATV-related death and injury statistics; ATV design; and parental rights and

¹ Consumer Product Safety Commission, "All Terrain Vehicles: Advance Notice of Proposed Rulemaking: Request for Comments and Information", 70 Federal Register 60031-60036 (October 14, 2005).

responsibilities. Other comments provided ATV-related injury and fatality statistics for specific states, regions, and hospitals. Some comments stated a position on the petition that was submitted in 2002 by the Consumer Federation of America and eight other groups.² Another issue raised in a handful of comments was the non-recreational use of ATVs and the marketing of ATVs for that purpose.

Each of these issues, with the CPSC staff response, is summarized below. Many of the issues raised in the comments are discussed in more detail in the staff's input memoranda included in this package, and the reader is referred to those memoranda, where applicable. The public comments cited in the footnotes can be found in the listings in Tab B of this package. The last two digits refer to the number of the comment as cited in the footnote. For example, comment 12 in Tab B is listed as CA-06-1-12 and comment 21 is listed as CA-06-1-21.

Issue 1: Training

Many comments expressed the importance of training for safe ATV driving.³ Some comments spoke about training in general being important, while a few others suggested that training should be mandated, that training should be required before purchase of an ATV, or that training should be free of charge to all ATV riders.

CPSC Staff Response

CPSC staff agrees that formal hands-on training teaches drivers how the ATV responds in situations that are typically encountered. Staff believes that ATV training is important because, as mentioned in Tab M from the Division of Human Factors, operating an ATV seems deceptively easy; steering controls are similar to a bicycle's, and the throttle is generally lever-operated with the thumb. ATVs, however, are high-speed motorized vehicles that require repeated practice to drive proficiently. In addition, riding an ATV is "rider-active", that is, the rider must actively shift his or her body to maintain proper control of the vehicle. Operating an ATV requires repeated practice to become a proficient driver. Formal training may act as a surrogate for experience because it exposes new ATV drivers to situations they will encounter while riding off-road and teaches them the proper driving behavior to navigate those situations.

To address the issue of training, CPSC staff is proposing that retailers of ATVs provide to every purchaser of an ATV a training certificate that would offer free hands-on training to members of the purchaser's immediate household. The course content would be specified and would include information on ATV-related deaths and injuries; the role of safety equipment; rider responsibilities and safety messages; identifying displays and controls on the ATV itself; recognizing one's limitations while driving; evaluating a variety of situations to predict a proper course of action, including terrain obstacles and behavior of other riders; demonstrating successful learning of riding skills, including starting, stopping, and negotiating turns of all types; stopping in a turn; emergency braking; negotiating full-track and partial-track obstacles; driving up hills; and combining skills together in a non-predictable manner. The course would include classroom, field, and trail activities, and a means for the student to demonstrate skills.

² CP-02-4/HP-02-1: *Petition Requesting Ban of All-Terrain Vehicles Sold for Use by Children under 16 Years Old*

³ See, for example, comments 1, 3, 4, 5, 6, 7, 8, 13, 21, 22, 24, 25, 27, 28, 29, 32, 42, 47, 49, 51, 54, 56, 58, 61, 62, 65, 68, 69, 71, 72, 76, 77, 85, 87, 91, 92, 93, 94, 95, 97, 101, 104, 105, 106, 108, 110, 112, 113, 114, 115, 116, 117, 119, 121, 126, 136, and 154.

Issue 2: State and Local Laws and Enforcement

Many comments reflected on the role of states and localities in addressing the risks associated with ATVs.⁴ Some commenters expressed the need to enact state legislation, while others expressed the need for the states to clarify and enforce the laws that already are in place. Some commenters called for ATV licensing, just as automobile drivers have driver's licenses. Others suggested fines for riding on public roads, as well as sales taxes or city taxes on ATVs. Some commenters felt that more laws are not the answer because they still will not cause irresponsible drivers to drive safely. One commenter suggested that state laws should set minimum age limits for ATV riders and require licensing, registration, training, safety equipment, and prohibit passengers, while another commenter suggested that Congressional action should be taken to provide financial incentives for states to adopt safer ATV laws. Other commenters asked that CPSC join the ATV companies and other interested parties in actively supporting enactment of comprehensive ATV safety legislation in states where it is under consideration. A state senator from Minnesota expressed opposition to any federal regulation that "removes the state as the primary regulatory mechanism" for ATVs. Other commenters wrote about having graduated licensing of ATV drivers as some states have for automobiles.

CPSC Staff Response

CPSC staff believes that states and localities have a critical role to play in any strategy to address the risk of injury and death associated with ATVs. Legislative activity, or interest in such activity, has been on the increase in the states. As noted in the staff's briefing memorandum, the staff is proposing that the Commission establish an online state data resource bank for use by those who might want to pursue legislation or other ATV safety-related actions.

Issue 3: Helmets and the Use of Protective Gear

Some commenters noted that the use of helmets and protective gear is important in reducing deaths and injuries.⁵ One commenter cited CPSC staff research suggests that between 42 and 64 percent of fatalities and hospitalized injuries involving the head "could have been averted by helmet use in cases where a helmet was not being worn."⁶ Others mentioned that ATV riders and parents of riders need to know the importance of helmet use, while another commenter suggested that the helmet should be "required to be thrown in as part of the package."

CPSC Staff Response

CPSC staff has always emphasized the importance of using helmets and other protective safety gear. As noted elsewhere in this package, CPSC staff encourages retailers to co-merchandise ATV safety gear, particularly helmets, alongside ATVs. The importance of wearing helmets and safety gear is one of the messages in the staff's draft proposed rule; the message would be required on the general warning label and in the owner's manual. Wearing suitable equipment also is included as an element in the training course that staff recommends be required.

⁴ See, for example, comments 2, 6, 10, 11, 12, 14, 16, 17, 20, 23, 36, 74, 77, 80, 81, 82, 83, 84, 88, 93, 95, 96, 99, 100, 101, 112, 114, 116, 117, 118, 122, 136, 137, 142, and 165.

⁵ See, for example, comments 4, 5, 6, 10, 14, 20, 21, 22, 28, 29, 31, 39, 43, 50, 54, 55, 58, 61, 65, 69, 71, 72, 74, 76, 77, 93, 95, 99, 102, 118, 129,

⁶ See comment 137 which cites Rodgers, Gregory B., "The Effectiveness of Helmets in Reducing All-Terrain Vehicle Injuries and Deaths," *Accident Analysis & Prevention*, 1990, Vol. 22, No. 1, pp. 47 - 58.

Issue 4: Age/Size Guidelines, Proper Fit, and Transitional Vehicle

Many commenters addressed the current age/size guidelines and the importance of finding a “right fit” for a child who rides an ATV; they also supported or opposed a transitional vehicle.⁷ Commenters talked about the difficulty of children being able to get training when they were on an adult ATV; others said that the current CPSC guidelines matching engine size to age are too narrow in focus. One commenter suggested focusing less on the age of the rider and more on size, weight, and experience. Another commenter pointed out that the market now has some mid-sized ATVs and that they are safer for a child to ride than the smaller 90cc ATVs, while another suggested that children ages 12 to 15 years old should be able to ride up to a 250cc 4-stroke ATV. Other commenters pointed out that the age restriction actually leads to a safety problem because riding an undersized ATV is as much a safety concern as riding an oversized ATV. A few commenters mentioned that being able to adjust the throttle limits was a particularly useful feature as children grow physically and learn to ride.

With respect to a transitional vehicle, many commenters expressed opposition and stated that any proposal to put a child on an ATV larger than 90cc should be rejected, that this would be a step backward, and it would put children at an even greater risk of death and injury. Commenters who were in opposition to a transitional vehicle seemed to equate a transitional vehicle as one that was heavier, larger and faster.⁸

CPSC Staff Response

As noted in the briefing memo and in Tab H of this briefing package, CPSC staff believes that speed, not engine size, is a more appropriate criterion for determining which ATVs should be recommended for children and youth under the age of 16. The staff’s draft proposed age guidelines for youth ATVs as well as the rationale for those guidelines are presented in this briefing package. Under the staff’s draft proposed rule, all references to engine size as a category marker would be eliminated.

Under the staff’s draft proposed rule, youth models would be speed-restricted: the maximum speed of the junior model (for ages 6 and above) would be 10 miles per hour (mph); the maximum speed of the pre-teen model (for ages 9 and above) would be 15 mph and the vehicle would be equipped with a speed limiter that would allow the maximum speed to be limited to 10 mph. The maximum speed of the teen model (for ages 12 and above) would be 30 mph and the vehicle would be equipped with a speed limiter that would allow the maximum speed to be limited to 15 mph. In addition, all youth model ATVs will be required to have an automatic transmission, so that children can focus on mastering driving skills before learning to coordinate gear shifting with the many other skills involved in operating an ATV.

CPSC staff believes that limiting maximum speed is the most critical safety factor for youth ATV models. By eliminating the engine size restriction, manufacturers will be able to produce a variety of ATV models that meet speed restrictions but are more appropriately sized to account

⁷ See, for example, comments 4, 5, 7, 8, 21, 24, 27, 31, 32, 34, 35, 37, 38, 41, 42, 44, 45, 47, 52, 53, 54, 55, 57, 62, 64, 65, 66, 71, 72, 73, 76, 77, 91, 92, 93, 94, 95, 104, 110, 111, 114, 116, 117, 118, and 119.

⁸ Those who opposed a transitional vehicle for these reasons included the 1,500 persons who submitted the letters that have been entered as comment 57.

for the wide variation in physical dimensions of young people. By having the option of riding better-fitting ATVs that are not performance limited by undersized engines, staff believes that more youth will ride age-appropriate and speed-restricted ATVs rather than gravitating toward adult ATV models. Staff also believes that having more engine power available to the youth rider could provide a safety cushion under certain circumstances such as climbing hills. Staff has no information to indicate that other performance characteristics associated with larger engine sizes, such as increased torque, acceleration or weight, would have a potential negative safety effect on youth riders.

Issue 5: Disclosure of Death and Injury Data

Several comments expressed the belief that information about the risk of injury and death associated with riding ATVs, especially with regard to children riding adult ATVs, has not been available to prospective purchasers and that such information should be provided at the point of sale.⁹ One of these comments includes the 1,500 individuals who submitted the letters that are entered as comment 57.

CPSC Staff Response

The CPSC staff's draft proposed rule would require that ATV dealers provide purchasers of adult ATVs with a written statement that 1) clearly states that adult ATVs are not intended for use by children under the age of 16, and 2) gives consumers specific information about the possible injury consequences of allowing children to ride adult ATVs. A proposed disclosure statement developed by the Division of Human Factors is displayed in Tab L in this briefing package. The disclosure statement would be provided to purchasers prior to any sales-related paperwork. Consumers would be required to sign the statement to acknowledge that they had been informed about the CPSC age guidelines for youth models and the risks associated with children riding adult ATVs. Similar disclosure forms would be provided to purchasers of youth ATVs; those forms would indicate the age of the child for which the youth model was designed.

Issue 6: ATV Design

Comments on ATV design ranged from the belief that deaths and injuries are operator error and not the result of the machine's design to some specific suggested design changes.¹⁰ One commenter said that manufacturers should not be required to significantly modify their designs for the sake of adding safety equipment, while a few others stated that ATVs should have a roll bar and safety belt. Other suggested design changes included: tags (license plates) on machines so they can be identified; make the ATVs two inches wider; provide a seat actuator which would turn the engine off if a passenger was on a single-person ATV; provide daytime running lights and headlights on ATVs. One commenter suggested that CPSC should determine the appropriate testing that needs to be done in order to assess dynamic stability, rollover propensity, and braking, suspension, and handling systems.

⁹ See, for example, comments 34, 35, 37, 38, 44, 45, 52, 57, 64, 73, 77, 91, 92, 93, 94, 95, 104, 110, 116, 118, 120, 128, 134, 138, and 142.

¹⁰ See, for example, comments 8, 14, 22, 24, 25, 33, 36, 42, 43, 56, 67, 69, 72, 77, 93, 94, 105, 109, 110, 122, 137, 138, and 147.

CPSC Staff Response

CPSC staff noted in Tab G from the Directorate for Engineering Sciences that there are technical issues that would benefit from further testing and study. This work, however, will require time and the coordinated application of CPSC and private sector resources. CPSC staff believes that the most effective way to carry this out is through close, ongoing interaction with voluntary standards committees that are addressing ATVs in that regard.

With respect to lighting equipment, the staff's draft proposed rule for adult ATVs would require at least one headlamp projecting a white light to the front of the ATV, at least one tail lamp projecting a red light to the rear and at least one stop lamp or combination tail/stop lamp. Daytime running lights would be allowed on adult ATVs.

All youth ATVs would be required to have at least one stop light. As described in Tab I of this package, the staff believes that riding ATVs at night is a significant risk factor for children and should be discouraged. Because headlamps or any forward-facing light on youth ATVs may encourage nighttime and unsupervised riding in challenging conditions, the staff believes that these lights should not be allowed. Under the staff's draft proposed rule, forward-facing daytime running lights for conspicuity would be prohibited on a youth ATV; but daytime running lights would be allowed on any other part of the ATV would be allowed on other parts of youth ATVs. A brake light would be required on youth ATVs.

Issue 7: Parental Rights and Responsibilities

Many comments focused on parental rights and responsibilities.¹¹ For the most part, these comments expressed the belief that parents have the right and the responsibility to make decisions for their children and are the best judges of their children's abilities and skill levels. Other comments stated that some parents have neglected supervising their children and that the rights of many should not be taken away because of the actions of a few.

CPSC Staff Response

The staff agrees that parents must play a critical role in supervising their children's use of ATVs. This includes decisions about the size of ATV their child /children should use and their child's riding behavior. As mentioned above, the staff's draft proposed rule requires that information be provided to help parents in their decision-making. The mandatory labels for youth ATVs provide a notice to parents that children should ride only age-appropriate ATVs, while the hangtags and the owner's manual are required to include messages about the importance of supervision.

Issue 8: Injury and Fatality Statistics

Some comments included death and/or injury statistics for specific regions of the country, specific hospital emergency rooms, and specific states; some of the information was contained in articles that had been published in professional journals.¹² A few commenters talked about the

¹¹ See, for example, comments 8, 9, 11, 13, 15, 16, 17, 19, 20, 21, 22, 27, 28, 29, 31, 32, 39, 40, 41, 43, 47, 49, 53, 54, 55, 56, 62, 65, 66, 67, 69, 72, 74, 76, 77, 79, 85, 99, 100, 104, 105, 108, 111, 112, 114, 119, 136, 147, 154, 155, 165.

¹² See, for example, comments 8, 9, 26, 28, 33, 49, 50, 59, 60, 66, 67, 74, 77, 85, 89, 98, 99, 105, 107, 116, 120, 131, 132, 134, 134a, 137, and 138.

comparative risk of ATV riding and the risk associated with other activities. One commenter stated that overall ATV injury risk, as measured per vehicle in use (for all ages or for children) has been stable since the expiration of the consent decrees in 1998 and that ATV-related fatality risk (for all ages or for children) has declined or remained stable since 1999.

CPSC Staff Response

With respect to the comment that overall ATV injury risk has been stable since the expiration of the consent decrees, the Directorate for Epidemiology notes that the *2004 Annual Report of ATV Deaths and Injuries* compared the 2004 injury risk to the 2001 injury risk and concluded that there was no statistically significant trend in injury risk, positive or negative, from 2001 to 2004. However, the report noted that the statistical testing of differences in injury risk prior to 2001 is not possible due to the unavailability of measures of variation for risk estimates during those years.

With respect to fatality risk, CPSC staff notes that, because data collection was incomplete for the years 2002 – 2004 at the time of the most recent report, no conclusions could be made about fatality risk for those years. The commenter's assertion that fatality risk has declined or remained stable does not appear to be the result of a statistical test, since no measures of variation are provided in the commenter's report. CPSC staff has not performed statistical testing on risk of death for similar reasons.

As noted in Tab D of this briefing package, there were an estimated 136,100 emergency room-treated injuries for all ages in 2004. This was an increase of 10,600 from 2003. In 2003, there were an estimated 740 deaths associated with ATVs. Twenty-six percent of the reported deaths in 2001 were of children under 16 years old.

Issue 9: Ban the Sale of Adult-Size ATVs for the Use of Children Under 16 Years Old

Several comments were submitted that specifically expressed a position on the Consumer Federation of America (CFA) petition to ban the sale of adult sized vehicles for use by children under 16 years old.¹³ This included the 1,500 form letters submitted as comment 57, which expressed the opinion (without mentioning the petition) that the sale or rental of adult-sized ATVs to anyone under 16 should be prohibited. A few letters expressed opposition to the petition.

CPSC Staff Response:

The petition to ban the sale of adult ATVs for the use of children under 16 years old was the focus of the staff's 2005 briefing package.¹⁴ The staff comments on the petition are contained in that document.

Issue 10: Non-Recreational Use of ATVs, ATV Marketing

A few commenters mentioned the non-recreational aspect of ATVs,¹⁵ the perceived need to limit their marketing to farm or utility use alone, and that the advertised recreational use of

¹³ See, for example, comments 34, 35, 37, 38, 44, 45, 52, 57, 64, 91, 92, 95, 104, 105, 106, 116, 118, 120, 122, 129, 130, 131, 134, 135, 141, 142, 156, 157, 158, 159, 160, 161, 162, 163, and 164.

¹⁴ U.S. Consumer Product Safety Commission staff, "Briefing Package: Petition no. CP-02-4/HP-02-1, Request to Ban All-Terrain Vehicles Sold for use by Children under 16 Years Old", February 2005.

ATVs is not a practical or safe form of activity. Some of these commenters expressed concern about the injuries and deaths associated with the use of ATVs in farm or utility work.

CPSC Staff Response

CPSC staff believes the issue of how ATVs are marketed as recreational or utility vehicles is better addressed by the Federal Trade Commission.

¹⁵ See, for example, comments 11, 13, 58, 113, and 127.

D



[Redacted]

2004 Annual Report of ATV Deaths and Injuries

[Redacted]

September 2005

Robin L. Ingle
Directorate for Epidemiology
Division of Hazard Analysis
U.S. Consumer Product Safety Commission
Washington, DC 20207

~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED~~
 NO INFO REVEALS THE CPSC PRODUCTS IDENTIFIED
9/28/05
[Signature]

NOTE: This document has not been reviewed or accepted by the Commission.
Initial: RLI Date: 9/28/05
EXCEPT BY PETITION
FOLLOWING ADMIN. PROCDS
WHICH PORTION IS INVOLVED

This analysis was prepared by CPSC staff, has not been reviewed or approved by, and may not necessarily reflect the views of the Commission.

Table of Contents

Introduction.....	3
Deaths Reported to the Commission.....	3
Table 1: Reported Deaths by Year.....	4
Table 2: Reported Deaths by State.....	5
Characteristics of ATVs and Fatalities	6
Table 3: Reported Deaths of Children Under Age 16.....	6
Estimated Deaths and Risk of Death, 1985 to 2004.....	7
Table 4: Death Estimates and Risk of Death by Year.....	7
Estimated Hospital Emergency-Room-Treated Injuries	8
Table 5: Injury Estimates for ATVs with 3, 4 or an Unknown Number of Wheels, by Year	9
Figure 1: Injury Estimates for ATVs with 3, 4 or an Unknown Number of Wheels, by Age Group.....	10
Table 6: Injury Estimates and Risk of Injury for 4-Wheel ATVs.....	11
Discussion.....	12
Appendix A.....	14
Table 7: Reported Deaths by Year and Age Group	14
Appendix B: Methodology.....	15
References.....	19

Introduction

U.S. Consumer Product Safety Commission (CPSC) staff first began analyzing data on all-terrain vehicles (ATVs) in the early 1980s as a means to provide statistics on the numbers of deaths and injuries associated with three-wheel ATVs. In April of 1988, CPSC entered into consent decrees with five ATV distributors in which they agreed, among other things, to halt production of three-wheelers, offer safety training to all new ATV owners, and recommend adult-sized ATVs only for those aged 16 and older. Those decrees expired in April of 1998. Following their expiration, the five distributors and two others have agreed to continue most of the elements of the consent decrees through voluntary action plans. Most of the vehicles on the market today are four-wheel ATVs, though some of the three-wheelers survive in use by consumers.

This report provides an update of CPSC data on ATV deaths and injuries. This update includes death reports available as of December 31, 2004 and data on injuries occurring up to December 31, 2004.

Deaths Reported to the Commission

On December 31, 2004, the Commission had reports of 6,494 ATV-related deaths that have occurred since 1982 (Table 1). The number of new reports increased by 703 since the December 31, 2003 tabulation reported by Commission staff on January 1, 2005. The new reports include deaths occurring over the period 2000 to 2004 inclusive. While collection of death reports for 2000 and 2001 is substantially complete (but may not be fully complete), data collection for 2002 through 2004 is ongoing. Consequently, the numbers of reported deaths for 2002 through 2004 are expected to rise before the next annual report. The numbers of reported deaths for 2000 and 2001 may rise only very slightly.

Values above the heavy line in Table 1 reflect a revised classification system from the one used prior to 1999. Specifically, the line marks the switch from data collection under the Ninth Revision of the International Classification of Diseases (ICD-9) to collection under the Tenth Revision (ICD-10), a transition that occurred worldwide in January of 1999. Any comparison of numbers above and below the line should be undertaken with caution. The ICD-10 transition and related methodological issues are discussed more fully in Appendix B.

Table 2 gives the numbers of reported ATV-related deaths for each state, the District of Columbia and Puerto Rico. Deaths occurring in the period 1982 through 2001 are tabulated in the second column and allow for the comparable ranking of states. The years 1982 to 2001 constitute the period for which death report collection is substantially complete. The highest numbers of deaths occurring in the complete period were for California (297 deaths), Pennsylvania (273), Texas (221), Michigan (210), and New York (207). Together these five states accounted for 25 percent of all reported deaths in the U.S., as shown in column three.

Counts of deaths reported as of December 31, 2004 in each state for the period 2002-2004 are tabulated in the fourth column of Table 2. This tabulation of deaths reported in these years cannot be used for comparisons among states because data collection in some states is more complete than in other states for those years. Each state's total number of reported deaths is listed in the fifth column.

Table 1
Reported ATV-Related Deaths by Year
ATVs with 3, 4 or Unknown Number of Wheels
January 1, 1982 to December 31, 2004

Year ¹	Number of Deaths	Difference Since Last Update (12/31/2003)
Total	6,494	+703
<i>2004</i>	<i>470</i>	<i>+470</i>
<i>2003</i>	<i>569</i>	<i>+162</i>
<i>2002</i>	<i>532</i>	<i>+59</i>
<i>2001</i>	<i>505</i>	<i>+11</i>
<i>2000</i>	<i>449</i>	<i>+1</i>
<i>1999²</i>	<i>399</i>	<i>0</i>
1998	251	0
1997	241	0
1996	248	0
1995	200	0
1994	198	0
1993	183	0
1992	221	0
1991	230	0
1990	234	0
1989	230	0
1988	250	0
1987	264	0
1986	299	0
1985	251	0
1984	156	0
1983	85	0
1982	29	0

Source: U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis. Italics denote the period for which reporting is incomplete.

¹ Reporting is incomplete for 2002-2004. Reporting for 2000 and 2001 is substantially complete, but future death reports for these years may result in slight differences in Tables 1 through 4.

² Beginning in 1999, deaths were coded under the Tenth Revision of the International Classification of Diseases (ICD-10). See Appendix B for an explanation of the effect of this change.

Table 2
Deaths Associated With ATVs by State
ATVs with 3, 4 or Unknown Number of Wheels
Reported for the Period January 1, 1982 Through December 31, 2004

State	Reported Deaths 1982-2001	Cumulative Percent of U.S. 1982-2001	Reported Deaths 2002-2004*	Total Reported Deaths*
CALIFORNIA	297	6%	50	347
PENNSYLVANIA	273	12	84	357
TEXAS	221	16	49	270
MICHIGAN	210	20	52	262
NEW YORK	207	25	49	256
WEST VIRGINIA	197	29	93	290
TENNESSEE	189	32	58	247
FLORIDA	185	36	72	257
KENTUCKY	182	40	106	288
NORTH CAROLINA	170	43	77	247
ARKANSAS	160	47	16	176
MISSISSIPPI	156	50	36	192
GEORGIA	148	53	56	204
WISCONSIN	140	56	38	178
MINNESOTA	135	58	43	178
OHIO	134	61	52	186
MISSOURI	133	64	46	179
ALABAMA	116	66	29	145
LOUISIANA	114	68	31	145
ARIZONA	108	71	37	145
ILLINOIS	108	73	30	138
UTAH	90	75	23	113
VIRGINIA	89	76	34	123
INDIANA	85	78	33	118
ALASKA	84	80	14	98
OREGON	82	82	27	109
OKLAHOMA	70	83	24	94
MAINE	66	84	22	88
IOWA	65	86	21	86
KANSAS	65	87	20	85
IDAHO	57	88	26	83
COLORADO	54	89	23	77
NEW MEXICO	50	90	19	69
WASHINGTON	49	91	19	68
SOUTH CAROLINA	46	92	29	75
NEBRASKA	46	93	11	57
MASSACHUSETTS	41	94	14	55
NEW HAMPSHIRE	37	95	13	50
NEW JERSEY	36	95	12	48
VERMONT	36	96	6	42
NEVADA	32	97	13	45
MARYLAND	29	97	16	45
SOUTH DAKOTA	29	98	5	34
NORTH DAKOTA	27	98	5	32
MONTANA	26	99	15	41
CONNECTICUT	18	99	8	26
WYOMING	15	100	8	23
DELAWARE	5	100	1	6
HAWAII	3	100	4	7
RHODE ISLAND	3	100	2	5
DISTRICT OF COLUMBIA	3	100	0	3
PUERTO RICO	2	100	0	2

Source: U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis.

Italics denote the period for which reporting is incomplete.

*Data collection for 2002-2004 is incomplete. Columns 4 and 5 should not be used for comparison among states.

Characteristics of ATVs and Fatalities

A review of the reported fatalities indicated that 2,019 victims (31 percent of the 6,494 total) were under 16 years of age and 845 (13 percent of the total) were under 12 years of age. Table 3 gives the numbers and percentages of reported fatalities by year for the 0- to 15-year-old age group. Appendix A contains a more detailed breakdown of numbers of reported deaths in this age group.

**Table 3
Reported ATV-Related Deaths of Children Under 16 Years Old
ATVs with 3, 4 or Unknown Number of Wheels
January 1, 1982 to December 31, 2004**

Year³	0-15 Years Old	0-15 Years Old Percent of Total
Total	2,019	31%
<i>2004</i>	<i>130</i>	<i>28</i>
<i>2003</i>	<i>140</i>	<i>25</i>
<i>2002</i>	<i>133</i>	<i>25</i>
2001	130	26
2000	124	28
1999 ⁴	90	23
1998	82	33
1997	79	33
1996	87	35
1995	64	32
1994	54	27
1993	59	32
1992	71	32
1991	68	30
1990	81	35
1982-1989	627	40

Source: U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis.
Italics denote the period for which reporting is incomplete.

While the percentage of victims under age 16 appears to have declined since 1998, it is more probable that adult deaths were under-reported during the period 1982 to 1998. Because of coding issues associated with ATV-related fatalities under the old ICD-9 system, CPSC was less able to gather reports of deaths on public roads during those years. If adults were more likely to use ATVs on public roads than children were during that time frame, then deaths of children may appear to have been over-reported. See Appendix B for more discussion of this effect.

Production of three-wheel ATVs ceased in the mid- to late-1980s, and all ATVs currently distributed in the U.S. are four-wheel ATVs. The percent of reported fatalities that involved four-wheel ATVs has

³ Reporting is incomplete for 2002-2004. Percentages for years for which reporting is incomplete should be interpreted with caution because the rate at which deaths are reported may not be consistent across all age groups.

⁴ Beginning in 1999, deaths were coded under the Tenth Revision of the International Classification of Diseases (ICD-10). See Appendix B for a discussion of the effect of this change.

increased from seven percent or less prior to 1985 to about 90 percent during the 2000s, based on those fatalities reported as of December 31, 2004 (at which time data collection for 2002-2004 was not complete).

Estimated Deaths and Risk of Death, 1985 to 2003

The deaths reported to the Commission represent a minimum count of ATV-related deaths. To account for deaths not reported to the Commission, estimates of the annual deaths were calculated for 1985 through 2003 using a statistical estimation method. Table 4 shows the annual reported and estimated numbers of ATV-related deaths for ATVs with three, four or unknown number of wheels, in addition to the annual estimates and risk of death for four-wheel ATVs (per 10,000 in use) from 1985 to 2003.

**Table 4
Annual Estimates of ATV-Related Deaths
And Risk of Death for Four-Wheel ATVs
As of December 31, 2004**

Year	Reported Deaths⁵	Estimated Deaths Associated With ATVs with 3, 4 or Unknown Wheels	Estimated Deaths Involving 4-Wheel ATVs	Estimated 4-Wheel ATVs in Use (millions)⁶	Estimated Risk of Death per 10,000 4-Wheel ATVs In Use
<i>2003</i>	<i>569</i>	<i>740</i>	<i>703</i>	<i>6.2</i>	<i>1.1</i>
<i>2002</i>	<i>532</i>	<i>617</i>	<i>578</i>	<i>5.5</i>	<i>1.0</i>
<i>2001</i>	<i>505</i>	<i>599</i>	<i>553</i>	<i>4.9</i>	<i>1.1</i>
<i>2000</i>	<i>449</i>	<i>553</i>	<i>502</i>	<i>4.2</i>	<i>1.2</i>
<i>1999⁷</i>	<i>399</i>	<i>538</i>	<i>490</i>	<i>3.6</i>	<i>1.4</i>
1998	251	287	245	3.1	0.8
1997	241	291	243	2.7	0.9
1996	248	267	208	2.4	0.9
1995	200	276	212	2.2	1.0
1994	198	244	168	2.0	0.8
1993	183	211	144	1.9	0.7
1992	221	241	158	1.9	0.8
1991	230	255	152	1.8	0.8
1990	234	250	151	1.8	0.9
1989	230	258	153	1.6	0.9
1988	250	286	152	1.4	1.1
1987	264	282	126	1.1	1.1
1986	299	347	95	0.7	1.3
1985	251	295	55	0.4	1.5

Source: U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis. Italics denote the period for which reporting is incomplete.

⁵ Reporting is incomplete for 2002-2004.

⁶ Rounded.

⁷ Beginning in 1999, deaths were coded under the Tenth Revision of the International Classification of Diseases (ICD-10). See Appendix B for an explanation of the effect of this change.

The heavy line between 1998 and 1999 in Table 4 demarcates the previously discussed switch from data collection under ICD-9 to ICD-10. The ICD-10 transition and the resulting necessary changes in methodology are explained more fully in Appendix B. Because ICD-10 allows CPSC to gather data on more ATV-related deaths on public roads than had been possible under ICD-9, some of the increase in deaths from 1998 to 1999 is probably due to changes in data collection, although the magnitude of the effect of this change is unclear. Such a conclusion would indicate that the death and risk estimates calculated by the pre-1999 methodology were underestimates, though they were the best estimates possible using available data.

Column 5 of Table 4 gives annual estimates for the numbers of four-wheel ATVs in use. According to CPSC staff's *All Terrain Vehicle 2001 Injury and Exposure Studies*, in 2001, about 5.6 million three- and four-wheel ATVs were in use, and about 86 percent of these were four-wheelers (Levenson, 2003a).

A discussion of the methodology used for the calculation of the estimates of the numbers of deaths and the risk of death associated with ATVs is given in Appendix B.

Estimated Hospital Emergency-Room-Treated Injuries

Table 5 shows estimates of ATV-related injuries treated in hospital emergency rooms nationwide between January 1, 1982 and December 31, 2004. These estimates are generated from CPSC's National Electronic Injury Surveillance System, a probability sample of U.S. hospitals with 24-hour emergency rooms and more than six beds. In this analysis, the current estimates are compared to the estimates from the immediately previous year, as well as to a base year. The base year chosen for comparison was 1998. The existence of a trend in injuries associated with ATVs with three, four or an unknown number of wheels is also considered.

The injury estimate for all ages for 2004 reflects an increase of about eight percent over the 2003 estimate. This increase was not statistically significant ($p = 0.1178$). However, the increase of 101 percent over the estimated number of injuries in 1998 is a statistically significant increase ($p < 0.0001$).

The 2004 estimate for children under 16 represents a 16 percent increase over the 2003 estimate. This increase was statistically significant ($p = 0.0457$). The 2004 under-16 estimate is a 78 percent increase over the 1998 estimate. This increase was also statistically significant ($p < 0.0001$).

Children under 16 years of age accounted for about 33 percent of the estimated number of injuries in 2004. Historically, children under 16 have accounted for about 37 percent of the total estimated number of injuries from 1985 through 2004 inclusive.

Table 5
Annual Estimates⁸ of ATV-related Emergency-Room-Treated Injuries
ATVs with 3, 4 or Unknown Number of Wheels
January 1, 1982 through December 31, 2004

Year	Estimated Number of Injuries All Ages	Estimated Number of Injuries Ages Less Than 16 Years	Percent of Total Ages Less Than 16 Years
2004	136,100	44,700	33%
2003	125,500	38,600	31
2002	113,900	37,100	33
2001	110,100	34,300	31
2000	92,200	32,000	35
1999	82,000	27,700	34
1998	67,800	25,100	37
1997	52,800	20,600	39
1996	53,600	20,200	38
1995	52,200	19,300	37
1994	50,800	21,400	42
1993	49,800	17,900	36
1992	58,200	22,000	38
1991	58,100	22,500	39
1990	59,500	22,400	38
1989	70,300	25,700	37
1988	74,600	28,500	38
1987	93,600	38,600	41
1986	106,000	47,600	45
1985	105,700	42,700	40
1984	77,900	⁹	
1983	32,100	⁹	
1982	10,100	⁹	

Source: National Electronic Injury Surveillance System, U.S. Consumer Product Safety Commission.

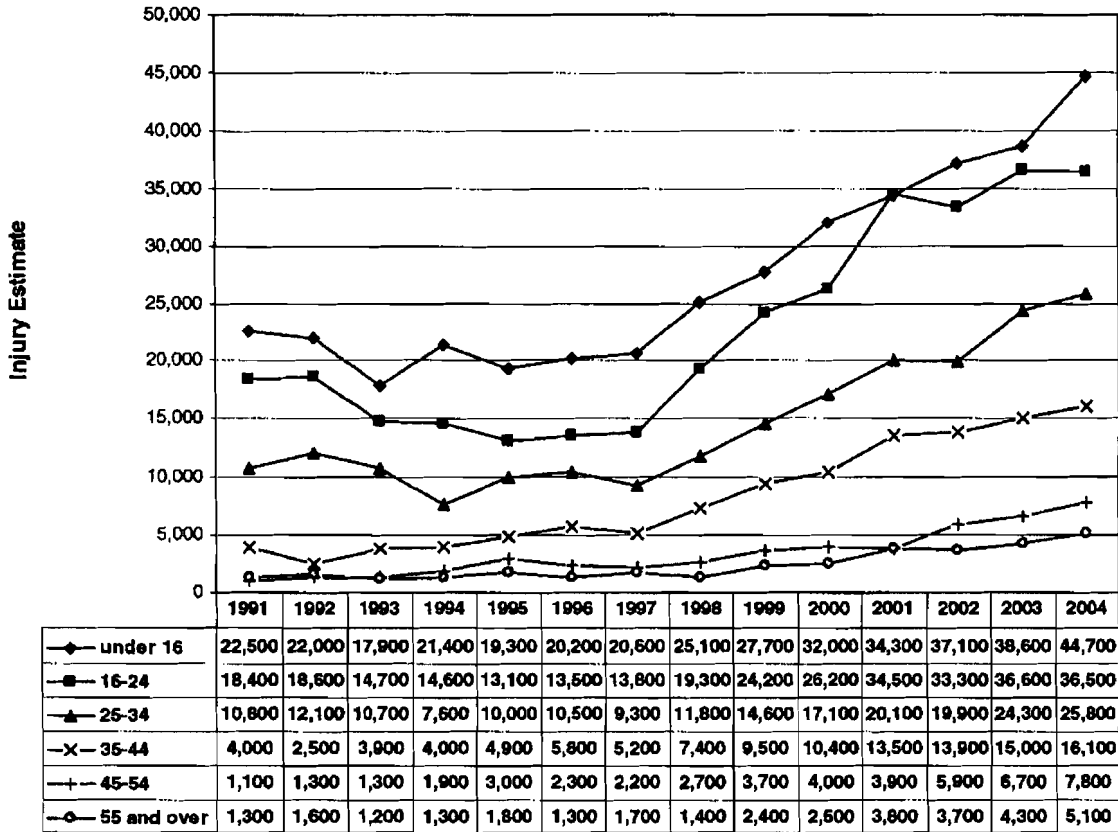
Note: Coefficients of variation for injury estimates for all ages between 1997 and 2004 range from 9 percent to 11 percent. For ages under 16, the CVs of the injury estimates between 1997 and 2004 range from 9 percent to 13 percent. CVs for years prior to 1997 are not available. See Appendix B for an explanation of the use and calculation of CVs.

Figure 1 on the next page presents annual estimates by age group for ATV-related injuries treated in hospital emergency rooms since 1991.

⁸ Estimates have been adjusted according to the methodology in Appendix B.

⁹ Adjusted estimates for children under 16 years old were not computed prior to 1985.

Figure 1
Annual ATV-Related Injury Estimates¹⁰
ATVs with 3, 4 or Unknown Number of Wheels
1991-2004



Source: National Electronic Injury Surveillance System, U.S. Consumer Product Safety Commission.
 Columns may not add to annual totals due to rounding.

In 2004, the estimated number of injuries increased in every age group except the 16- to 24-year-old age group, though most of the increases were not statistically significant. The greatest percentage change in number of injuries occurred in the 55-and-over age group, which experienced a 19 percent increase. This increase was not statistically significant. The 45- to 54-year-old age group and the under-16 age group both experienced increases of about 16 percent. The increase in the 45- to 54-year-old age group was not statistically significant, but the increase in the under-16 age group was. The 35- to 44-year-old age group underwent a seven percent increase; the 25- to 34-year-old age group had a six percent increase; and the 16- to 24-year-old group decreased by less than one percent. None of these three changes was statistically significant.

Table 6 shows estimates of four-wheel ATV-related injuries and risk of injury for January 1, 1985 through December 31, 2004. Four-wheel injuries constituted 95 percent of the total estimate for ATVs with three, four or an unknown number of wheels in 2004. The injury estimate for 2004 represents an increase of 11 percent over the estimate for 2003 and is statistically significant ($p = 0.0446$). It also is a

¹⁰ Estimates have been adjusted according to the methodology in Appendix B.

statistically significant increase over the injury estimate for 1998 ($p < 0.0001$). There was a statistically significant upward trend in injuries ($p = 0.0003$) associated with four-wheel ATVs between 1998 and 2004.

In Table 6 risk is defined as the estimated number of injuries divided by the number of vehicles in use, multiplied by 10,000. Levenson's analysis of ATV injury risk estimates showed that there was no statistically significant trend, positive or negative, in injury risk from 2001 to 2004, the years for which the necessary data for testing is available ($p = 0.4483$) (Levenson, 2005b).

Table 6
Estimated Number of Injuries And Risk of Injury
Associated with Four-Wheel ATVs
January 1, 1985 – December 31, 2004

Year	Injury Estimate ¹¹	Estimated 4-Wheel ATVs in Use (millions) ¹²	Risk Estimate per 10,000 4-Wheel ATVs
2004	129,500	6.9	187.9
2003	116,600	6.2	188.4
2002	104,800	5.5	190.0
2001	98,200	4.9	200.9
2000	82,300	4.2	197.2
1999	68,900	3.6	193.0
1998	57,100	3.1	184.7
1997	39,700	2.7	146.1
1996	40,700	2.4	168.1
1995	36,200	2.2	165.7
1994	33,300	2.0	165.4
1993	32,000	1.9	164.9
1992	33,000	1.9	175.1
1991	34,400	1.8	188.1
1990	30,800	1.8	175.1
1989	35,700	1.6	217.8
1988	39,400	1.4	276.1
1987	33,900	1.1	305.9
1986	23,400	0.7	319.2
1985	14,700	0.4	391.1

Source: U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis; National Electronic Injury Surveillance System; and the Directorate for Economic Analysis.

Note: CVs for estimates in column 2 of this table for the years 1997 to 2004 range from 8.8 percent to 10.7 percent. CVs for estimates in column 3 for the years 2001 to 2004 range from 3.2 percent to 3.6 percent. CVs for estimates in column 4 for the years 2001 to 2004 range from 9.3 percent to 10.0 percent (Levenson, 2005b and 2005c). CVs for years prior to 2001 for columns 3 and 4 are not available.

¹¹ Annual estimates have been adjusted according to the methodology in Appendix B.

¹² Rounded.

Discussion

In analyzing deaths and injuries associated with ATVs, it is useful to consider three distinct periods, the boundaries of which are determined by changes in CPSC's data collection abilities. By considering these three periods separately, we can compare years within periods, thereby controlling for changes in data collection abilities or effects of external factors. While the boundaries of the periods considered here will be defined for convenience by factors involving the collection of death data, it is also useful to consider the injury estimates within the same periods and their relationship to the death estimates.

The first period, from 1982 to 1998, started when CPSC began calculating estimates of deaths associated with ATVs and ended at the transition from the use of ICD-9 for classification of deaths to ICD-10. This transition is discussed in the methodology section of this report (Appendix B). While not by design, this period contains the years in which the Consent Decrees were in effect. The second period, from 1999 to 2001, began with the transition to ICD-10. The second period ended at the last complete year of death data collection, which is currently 2001. The third period, from 2002 to 2004, spans the period of incomplete data collection for deaths to the present. The third period also begins with the year that the Consumer Federation of America petitioned CPSC to ban the sale of adult-sized ATVs for use by children under 16. One result of the petition has been an increase in media attention to deaths associated with ATVs, thus increasing CPSC's ability to gather death reports.

During the first period (1982 to 1998), reported deaths reached a high of 299 in 1986. Reported deaths that year were mostly deaths associated with three-wheel ATVs, which were still being manufactured and sold. The estimated number of injuries associated with ATVs (with three, four or an unknown number of wheels) rose above 100,000 for the first times in 1985 and 1986. The estimated number of deaths on four-wheel ATVs was relatively low in the earlier half of this period, probably because three-wheel ATVs were still heavily in use and four-wheelers were only beginning to gain in popularity.

CPSC's ability to gather reports of deaths during the first period was limited by certain ICD-9 reporting requirements (see Appendix B). Because of this, the estimated numbers of deaths in the first period were likely underestimates. However, general upward or downward directions may still be evident even with underestimates if the underestimation was fairly constant from year to year. It is likely that the estimated numbers of deaths in the first period were in fact underestimated by the same amount. Factors contributing to this are discussed below.

The ICD-9 reporting requirements made it difficult for CPSC to purchase death certificates from the states for deaths associated with ATVs occurring on public roads. If ATV fatalities were more likely to have occurred on a public road than in a private location in (for example) 1997 than in 1991, then the estimates for the two years would not have been equally underestimated. Likewise, if deaths of four-wheel ATV riders were more likely to occur on public roads than deaths of three-wheel ATV riders, then estimates for the two years would not have been equally underestimated. We have no reason to believe that either of these factors was present (nor any other factor influencing underestimation other than ICD-9).

Because data collection was substantially constant in methodology throughout the first period, relative comparisons among the annual estimated numbers of deaths within the first period can be made with caution. For instance, we note that it is likely that the number of deaths associated with three, four or an unknown number of wheels peaked around 1986 and experienced a low point around 1993 during

the first period. Similarly, a general increase may be noted in the estimated deaths associated with four-wheel ATVs from around 1993 to the end of the period (2001). Note that these generalizations do not require a discussion of the magnitude of the estimates.¹³

A similar pattern of peaks and valleys occurred with the estimated number of injuries associated with ATVs with three, four or an unknown number of wheels during the first period, suggesting that the pattern seen in the estimated number of deaths is not an artifact of the data.

The second period contains three years in which CPSC had unparalleled opportunities to collect comprehensive death data on ATVs. It also predated the 2002 petition from the Consumer Federation of America currently before the Commission. Consequently, the effect of increased media exposure of the ATV issue on data collection was not in play during the second period, as it is during the third period. Reported deaths increased by 27 percent during the second period. The estimated numbers of injuries associated with three, four or an unknown number of wheels during this period are part of a larger increasing trend from 1998 to 2004, but there are yearly significant increases within the second period as well.

The third period contains three years of incomplete death data collection. Because the number of reported deaths for these years will likely increase and the estimated numbers of deaths and the estimated risk of death will change in future reports, conclusions using these estimates from the third period should be made with caution. The injury estimates in the third period for both ATVs associated with three, four or an unknown number of wheels and for four-wheel ATVs alone – for which data collection is complete – are high. However, analysis has demonstrated that there is no statistically upward or downward trend in the risk of injury from 2001 to 2004 (the years for which the necessary data are available) (Levenson, 2005a).

¹³ The reader is cautioned against making similar generalizations regarding the estimated number of ATVs in use and the estimated risk of death, since these estimates may be subject to sources of error other than those mentioned here.

Appendix A

Table 7
Reported ATV-Related Deaths by Year and Age Group
ATVs with 3, 4 or Unknown Number of Wheels
January 1, 1982 to December 31, 2004

Year¹⁴	0-11 Years Old	0-11 Years Old Percent of Total	0-15 Years Old	0-15 Years Old Percent of Total
Total	845	13%	2,019	31%
<i>2004</i>	<i>49</i>	<i>10</i>	<i>130</i>	<i>28</i>
<i>2003</i>	<i>64</i>	<i>11</i>	<i>140</i>	<i>25</i>
<i>2002</i>	<i>44</i>	<i>8</i>	<i>133</i>	<i>25</i>
<i>2001</i>	<i>57</i>	<i>11</i>	<i>130</i>	<i>26</i>
<i>2000</i>	<i>50</i>	<i>11</i>	<i>124</i>	<i>28</i>
<i>1999¹⁵</i>	<i>34</i>	<i>9</i>	<i>90</i>	<i>23</i>
1998	30	12	82	33
1997	38	16	79	33
1996	40	16	87	35
1995	26	13	64	32
1994	20	10	54	27
1993	18	10	59	32
1992	32	14	71	32
1991	40	17	68	30
1990	27	12	81	35
1982-1989	276	18	627	40

Source: U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis.
 Italics denote the period for which reporting is incomplete.

¹⁴ Reporting is incomplete for 2002-2004. Reporting for 2000 and 2001 is substantially complete, but future reports for these years may result in slight differences in Table 7 in future reports. Percentages for years for which reporting is incomplete should be interpreted with caution because the rate at which deaths are reported may not be consistent across all age groups.

¹⁵ Beginning in 1999, deaths were coded under the Tenth Revision of the International Classification of Diseases (ICD-10). See Appendix B for a discussion of the effect of this change.

Appendix B

Methodology

Deaths

CPSC staff estimates the number of deaths associated with ATVs by use of a capture-recapture approach. This approach involves examining the numbers of reports of fatalities gathered by two different methods. The first method is the collection of death certificates purchased from the states, where the death was deemed ATV-related by the medical examiner. These incidents are entered into CPSC's death certificate database (DTHS). The second method is the collection of various types of reports of fatal ATV-related incidents by any other means available to the agency: news clips, reports from the Medical Examiners' and Coroners' Alert Project (MECAP), reports from consumers via phone or Internet, hospital reports from the National Electronic Injury Surveillance System (NEISS), as well as other types of reports.

Table 1 presents counts of deaths reported to CPSC that have not been reported in previous years. Additional reports that are duplicates of ones counted in previous versions of this annual report may have been received (e.g., CPSC may have received a news clip about a death that originally was reported via a MECAP report in a prior year). Counts of these duplicate reports are not included in Table 1.

The calculation of the capture-recapture estimate entails examining the number of incidents included in DTHS or from non-DTHS sources as well as the number included on both lists of incidents. The estimate is given by

$$estimate = \frac{(M + 1)(N + 1)}{n + 1} - 1 \quad \text{Formula 1}$$

where

M is the number of incidents captured by purchase of death certificates from the states,

N is the number of incidents collected by other means, and

n is the number of incidents captured by both death certificate purchase and by at least one other source.

Estimates of fatalities occurring after January 1, 1999 that were associated with ATVs with three, four or an unknown number of wheels were calculated using formula 1.

In 1999, CPSC began collecting death certificates of all fatalities involving an ATV, as coded under the Tenth Revision of the International Classification of Diseases (ICD-10). ICD-10 marks the first revision for which all ATV-related fatalities are grouped under a single code, thus facilitating more complete collection of these incidents by CPSC than was accomplished prior to 1999.

Prior to 1999, CPSC received death certificates only of fatalities occurring in places other than public roads and of fatalities occurring in public road locations that were erroneously reported as non-public-road locations. Because of this, the procedure for estimating ATV-related deaths had two parts. Because death certificates generally were not collected for public road fatalities, the count for these fatalities was the number of reports received, mostly in the Injury or Potential Injury Incident file (IPII). For incidents occurring in other places, the capture-recapture approach was applied. The two parts (incidents occurring on public roads and incidents occurring in other places) were then combined for the annual estimate of deaths, as in the following formula:

$$estimate = \frac{(M_{NP} + 1)(N_{NP} + 1)}{n_{NP} + 1} - 1 + C_p \tag{Formula 2}$$

where

- M_{NP} is the number of reports of non-public-road fatalities captured by purchase of death certificates from the states,
- N_{NP} is the number of reports of non-public-road fatalities collected by other means,
- n_{NP} is the number of reports of non-public-road fatalities captured by both death certificate purchase and by at least one other source,
- and
- C_p is the count of reports of ATV-related fatalities occurring on public roads from any source.

We believe estimates for years prior to 1999 to be under-estimates because those estimates used only the available count of public road fatalities, and did not account for missing reports. Since CPSC now receives death certificates for ATV incidents occurring anywhere, the capture-recapture approach has been utilized for the entire estimate of ATV-related deaths from 1999 forward. The resulting estimates of deaths after January 1, 1999 represent a better approximation of the number of deaths associated with ATVs.

A number of incidents reported to CPSC involve ATVs for which the number of wheels is unknown. Because some of these actually involve four-wheel ATVs, the unknowns are apportioned in the calculation of the estimated number of deaths associated with four-wheelers. This estimate was calculated by first dividing the reported number of deaths for four-wheel ATVs by the combined reported number of deaths for three- and four-wheel ATVs, then multiplying this quotient by the estimated number of deaths for all ATVs (three, four or unknown number of wheels). Thus, the estimate of deaths associated with four-wheel ATVs is given by

$$Estimate_{4w} = \frac{rep_{4w}}{rep_{3w+4w}} Est_{3w+4w+uw} \tag{Formula 3}$$

where

- $Estimate_{4w}$ is the estimated number of fatalities associated with four-wheel ATVs,
- rep_{4w} is the reported number of fatalities associated with four-wheel ATVs,

rep_{3W+4W} is the reported number of fatalities associated with three- and four-wheel ATVs,
and

$Est_{3W+4W+UW}$ is the estimated number of fatalities associated with ATVs with three, four or an
unknown number of wheels.

Risk of death associated with four-wheel ATVs was calculated by dividing the annual estimate by the number of ATVs in use in a given year. Annual ATV population estimates are based on ATV sales and operability rates based on exposure studies conducted by industry.¹⁶ Annual population estimates for 1994 and prior years were computed from a survival model derived from 1994 data. Annual population estimates for years 2001 and after were computed from a survival model derived from 2001 data. Population estimates for the intervening years come from a model that provides a smooth transition between the 1994 and the 2001 models. The estimated number of four-wheel ATVs in use in Tables 4 and 5 are rounded figures. Risk estimates calculated using these rounded figures may not match those in the tables because of this.

Because reliable operability rate data are not available for three-wheel ATVs, the risk of death is given in this report only for four-wheel ATVs.

Fatal incidents considered in-scope in this report include any unintentional incident involving an ATV, whether or not the ATV was in operation at the time of the incident. Because of the difficulties inherent in distinguishing between occupational and non-occupational use, occupational fatalities are included when reported to CPSC. For instance, a fatality that occurs when a victim is riding alongside a fence on a ranch for the purpose of checking it and then overturns his ATV while deviating from his usual work routine to take a "joy ride" up a nearby hill may be difficult to classify. In addition, ATVs are primarily recreational products, and the relative proportion of occupational fatalities in this report is small.

Injuries

All injury estimates in this report were derived from data collected through CPSC's National Electronic Injury Surveillance System, a probability sample of U.S. hospitals with 24-hour emergency rooms and more than six beds (Schroeder and Ault, 2001a and 2001b). Estimates have been adjusted due to revisions in the NEISS Coding Manual in 1985, as well as to account for NEISS sampling frame updates (Marker, et al, 1988; Marker and Lo, 1996). Estimates for 1982 through 1985 were adjusted based on a review of NEISS comments to exclude dune buggies and identify ATVs classified as mini or trail bikes.

Injury estimates for 1985, 1989, 1997 and 2001 are based on injury surveys using NEISS cases. Injury estimates for other years have been adjusted by factors to account for out-of-scope (non-ATV) cases based on injury studies in those years (Levenson, 2003c; Rodgers and Zamula, 1986; Rodgers, 1990; U.S. CPSC, 1998). An in-scope case was defined to be any non-occupational, unintentional case involving an ATV, whether or not the victim was operating the ATV at the time of the incident.

¹⁶ See Levenson, M., 2001 ATV Operability Rate Analysis, memorandum. May 6, 2003. U.S. Consumer Product Safety Commission. Also see Levenson, M. *All-Terrain Vehicle 2001 Injury and Exposure Studies*. U.S. Consumer Product Safety Commission. January 2003.

(NEISS does not collect occupational injuries.) The adjustment factors were 0.93 for 1986 through 1988, 0.95 for 1990 through 1996, 0.903 for 1998 through 2000 (amended from 0.935) and 0.922 for 2002 and after.

A coefficient of variation (or CV) is an expression of the variability of an estimate relative to the estimate itself. In this report CVs for injury estimates are given as percents. The adjustment factors discussed above are also estimated and have associated variability. This variability (along with the variability of the injury estimates) affects significance tests and tests for trends. These concepts are more fully discussed in Levenson 2003c and Levenson 2005c.

NEISS includes incidents associated with ATVs for which the number of wheels is unknown. Because of this, the unknowns are apportioned in the calculation of the estimated injuries associated with four-wheelers. The four-wheel calculation was accomplished by the following formula:

$$Total\ Estimate_{4W} = \frac{Estimate_{4W}}{Estimate_{3W+4W}} (Estimate_{3W+4W+UW}) \quad Formula\ 4$$

where

Total Estimate_{4W} is the total estimated injuries associated with four-wheel ATVs with unknowns apportioned,

Estimate_{4W} is the estimated injuries associated with four-wheel ATVs not including unknowns,

Estimate_{3W+4W} is the combined estimated injuries associated with three- and four-wheel ATVs (not including unknowns),

Estimate_{3W+4W+UW} is the combined estimated injuries associated with ATVs with three, four or an unknown number of wheels.

Risk of injury in this report is defined as the estimated number of injuries divided by the number of vehicles in use, multiplied by 10,000. Annual ATV population estimates were the same as those used in the calculation of risk of death and are discussed elsewhere in this appendix.

References

- Levenson, M. (2003a) *All-Terrain Vehicle 2001 Injury and Exposure Studies*. January 2003. U.S. Consumer Product Safety Commission.
- Levenson, M. (2003b) 2001 ATV Operability Rate Analysis, memorandum. May 6, 2003. U.S. Consumer Product Safety Commission.
- Levenson, M. (2003c) ATV Injury Adjustment Factors for 1997 and 2001, memorandum. September 12, 2003. U.S. Consumer Product Safety Commission.
- Levenson, M. (2005a) *Analysis of U.S. ATV Injury Risk Between 1997 and 2001*. August 2005. U. S. Consumer Product Safety Commission.
- Levenson, M. (2005b) Uncertainty Estimates of Annual ATV Risk Estimates, memorandum. August 22, 2005. U.S. Consumer Product Safety Commission.
- Levenson, M. (2005c) Uncertainty Estimates of ATV Adjusted Injury Estimates, memorandum. August 22, 2005. U.S. Consumer Product Safety Commission.
- Marker, D.; Waksberg, J.; and Braden, J. *NEISS Sample Update*. June 3, 1988. Westat, Inc.
- Marker, D., and Lo, A. *Update of the NEISS Sampling Frame and Sample*. October 11, 1996. Westat, Inc.
- Rodgers, G.B. *Descriptive Results of the 1989 All-Terrain Vehicle Exposure Survey*. September 1990. U.S. Consumer Product Safety Commission.
- Rodgers, G. and Zamula, W. Results of the ATV Exposure Study, memorandum. September 12, 1986. U.S. Consumer Product Safety Commission.
- Schroeder, T. and Ault, K. (2001a) *The NEISS Sample (Design and Implementation) From 1979 to 1996*. June 2001. U.S. Consumer Product Safety Commission.
- Schroeder, T. and Ault, K. (2001b) *The NEISS Sample (Design and Implementation) From 1997 to the Present*. June 2001. U.S. Consumer Product Safety Commission.
- U.S. Consumer Product Safety Commission. *All-Terrain Vehicle Exposure, Injury, Death and Risk Studies*. April 1998.

E



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Memorandum

Date: May 23, 2006

TO : Elizabeth W. Leland, EC
Project Manager, ATVs

THROUGH: Gregory B. Rodgers, Ph.D. *GBR*
Associate Executive Director for Economics Analysis

Deborah V. Aiken, Ph.D. *DVA*
Senior Staff Coordinator, Economic Analysis

FROM : Terrance R. Karels *TRK*
Directorate for Economic Analysis

SUBJECT : Current Market Conditions --- ATVs

In response to the staff development of a draft notice of proposed rulemaking (NPR), this memorandum provides an updated analysis of recent changes in the market for ATVs and the market segments that could be most affected by a mandatory standard for these products. This analysis is a supplement to the July 2004 Market Sketch¹, and provides special emphasis on the current practices of importers and additional information on unconventional marketing practices.

A major consideration in a discussion of the market is the extent of the market represented by the seven major distributors of ATVs, who now assemble these products in North America², and that of newer, smaller entrants that import their products to the US. For the sake of consistency, this memo will refer to these entities as "North American distributors" and "importers," respectively. The seven major North American distributors were parties to Letters of Undertaking (also referred to as Voluntary Action Plans) with the Commission to take effect after the ATV Consent Decrees expired in 1998³.

¹ "All-Terrain Vehicles (ATVs): Market Information," Elizabeth W. Leland, EC, July 2004.

² One North American manufacturer, Bombardier, is located in Canada, and the remaining six are located in the US.

³ Letters of Undertaking: Honda, Yamaha, Kawasaki, Suzuki, Polaris in 1998, Bombardier in 1999, and Arctic Cat in 2005.

Since 1998, three other North American firms (Bush Hog, Cannondale, and Deere & Company) also have agreed to Letters of Undertaking. Cannondale no longer makes or distributes ATVs, Deere contracts for its ATV production from Bombardier, and Bush Hog accounts for a very small share of the US market for ATVs. Only one importer-entrant to the ATV market (Tomberlin) has submitted a Letter of Undertaking to the Commission staff.

North American Distributors

The seven major North American distributors of ATVs are: Arctic Cat, Honda, Kawasaki, Polaris, Suzuki, Yamaha, and Bombardier (now BRP). They are also members of the Specialty Vehicle Institute of America (SVIA). The estimated 2005 market shares of production for the seven firms are shown below, as well as the market share that is estimated to be controlled by importers/new entrants.

Table 1: Shares of US ATV Market⁴

2005

Honda 28%
Yamaha 20%
Polaris 19%
Suzuki 8%
Arctic Cat 7%
Kawasaki 5%
Bombardier 3%

Importers/New Entrants 10%

Source: Market Data Book 2005⁵ and staff estimates.

⁴ Includes North American manufacturers as well as the estimated market share of imports.

⁵ Published by Powersports Business.

Number of ATVs in Use and Unit Sales

The SVIA estimated that, in 2005, there were about 6.9 million ATVs in use in the US. The trade association also estimated ridership at about 15 million people.⁶ Thus, ATVs would be expected to be ridden by about 2.2 people per unit in use.

US retail sales of ATVs by the seven major North American distributors have increased steadily over the past decade, from 293,000 in 1995 to 829,000 in 2005. Over the past decade, US sales by these firms have nearly tripled. Trade data forecasted sales increases of about 2% from 2004 to 2005, and an additional 3% increase in 2006.⁷ However, one recent news report suggests caution as to projected increases in sales for 2006.⁸

TABLE 2: US Total Sales Distribution

Year	Sales by North American Manufacturers	Sales by Importers	Total Sales
1995	293,000	--nil--	293,000
2000	649,000	--nil--	649,000
2001	729,000	38,000	767,000
2002	769,000	40,000	809,000
2003	799,000	42,000	841,000
2004	813,000	90,000	903,000
p 2005	829,000	92,000	921,000
p2006	854,000	95,000	949,000

p= projected.

Source: Market Data Book 2005, and staff estimates of imports

⁶ "Special Report, Fall 2005," Specialty Vehicle Institute of America.

⁷ Market Data Book 2005.

⁸ "Polaris earnings plummet on declining ATV sales," Automotive Business Review, April 13, 2006.

In 2001, imports were estimated to account for about 5% of total US sales, from near zero for earlier years. By 2004, the share accounted for by imports had increased to 10% of the total market.⁹ For the above estimate, we assumed that the increased level of import penetration occurred at each of the two points for which data are available (i.e., 2001 and 2004). Thus, in 2001, some 767,000 ATVs would have been sold in the US, about 38,000 of which were imported. By 2005, 921,000 would have been sold in the US, of which about 92,000 would have been imported. The SVIA reported that, in 2005, 912,000 ATVs were sold in the US. This is consistent with the above estimate, with a variance of about 2% from the estimated staff total (921,000 units).

Imports

The number of importers supplying ATVs has experienced substantial growth in recent years. In the late 1990s, virtually no ATVs were imported into the US. In 2006, CPSC Compliance staff has identified upwards of 80 importers of foreign ATVs.¹⁰

The US importers do not appear to be concentrated in ATV marketing. For example, CPSC staff conducted 22 establishment inspections of ATV import operations in 2005. Of these, *none* relied on ATVs as their primary offering. These firms also imported other wheeled recreational products; their product lines most often consisted of a variety of these products, including powered scooters (both electric and gas), dirt bikes and other motor bikes, ATVs, go-carts, and snowmobiles.¹¹

According to a recent trade report, there were 100 to 150 Chinese manufacturers who exported ATVs to the worldwide market in 2005.¹² Additionally, the report estimated that there were 22 Taiwanese exporters of these products in that year. It is unclear what share of these firms' output is exported to the US, although the report stated that the US accounted for about 31% of total ATV exports from Mainland China in 2004. Mainland China exported an average

⁹“All-Terrain Vehicles (ATVs): Market Information,” Elizabeth W. Leland, EC, July 2004.

¹⁰“ATVs --- Adherence to Voluntary Measures and Consent Decrees,” Tanya Topka Ivins, CPSC, April 2006 (Restricted)

¹¹ Ibid.

of about 21,300 ATVs per month in 2004, or an annualized 256,000 units in 2004. Thus, the share of exports destined for the US would be about 80,000 units per year. Another trade analysis estimates that Taiwan produced as many as 45,000 units in 2004.¹³ If we assume that the US would likely represent an equivalent share of Taiwan's exports, then perhaps 14,000 units from Taiwan would be shipped to the US. Thus, imports from China and Taiwan could have reached about 94,000 units in 2004. This is consistent with earlier estimates that imports accounted for about 10% of the total US market for ATVs. While there is anecdotal information referring to ATV imports from Europe and other Southeast Asian countries (notably, South Korea and Vietnam), information as to the extent of such imports is not available.¹⁴

Marketing

The North American distributors traditionally have marketed ATVs through franchises, either as free-standing locations or in conjunction with other related retail operations (such as motorcycle retailers).

Imported ATVs are sold in a variety of ways. For instance, Her Chee (a Taiwanese firm) "has appointed at least a dozen different distributors of their ATVs over the past four 4 years, including Arctic Cat and BRP."¹⁵ Foreign firms also market through US importer/wholesalers who, in turn, may market the products to retailers (including such mass marketers as Pep Boys, Fleet and Farm, Wal-Mart, Sam's Club, and BJ's). Some importer/suppliers also have dealer networks.

Imported ATVs also are offered for sale directly to consumers through import brokers who transship imported units to retailers (or consumers), often without taking physical control of the products. In this case, the wording of the contracts often specifies that consumers are the "importer of record," and thus are responsible for shipping and other costs, including applicable duties and taxes, as well as any liability concerns. Websites offering ATVs for sale are

¹² "All Terrain Vehicles China Sourcing Report," Global Sources 2005.

¹³ "Suppliers rev up R&D on powerful units," Hardwares, Global Sources, March 29, 2005.

¹⁴ "Taiwan's Small Displacement ATV Exports Suffer Volume Decreases," TMC.Net, March 31, 2006.

¹⁵ Powersports Business, May 26, 2005

ubiquitous. A recent CPSC surveillance effort reported that there were literally hundreds of websites offering ATVs for sale; the extent of actual purchases through the Internet is unknown.

Consumer Prices

As noted in the staff's 2004 market study (Leland, 2004), the North American distributors' suggested retail prices for ATVs ranged from about \$2,000 to \$8,000; the median suggested retail price was \$5,150. As a subgroup, the price ranges for youth ATVs from these manufacturers was \$1,800 to \$2,500. The median suggested retail price for youth ATVs was about \$2,300.

Staff conducted a search of ATV offerings available through Ebay on April 29, 2006. The search was confined to new ATVs with brand names other than those of the North American distributors, offered for sale by business entities, without regard to the quantities ordered (i.e., can include individuals or other entities who, in turn, would resell them). Within the category of "Powersports/ATVs," staff found 69 in-scope advertisements, 37 of which had engines of 90 cc. or less ("youth models"), and the remaining 32 with advertised engine displacements of 90 cc. or greater. Youth models ranged from about \$320 to \$950 each, with an average price of about \$630. Larger ATVs ranged from about \$600 to \$2,400, with an average of \$1,340. The cited prices included the cost of shipping to points within the lower 48 states from the dealers' US warehouses. Thus, it appears that ATVs from importers/new entrants may have a significant price advantage over the North American products.

Resale Market

Because of the relatively high price of new ATVs (with a median price of about \$5,000 for traditional adult ATVs) and their long useful life (in excess of 10 years),¹⁶ it is not surprising that a significant number of ATVs in current use was purchased through the resale market.

¹⁶Levenson, M., "2001 ATV Operability Rate Analysis," CPSC, May 6, 2003.

The earlier ATV market study (Leland, 2004) reported that an estimated 45% of all ATVs in use in 2001 were resale units. One industry expert stated that "...in recent years, indications are [that] more owners are trading in for larger displacement machines."¹⁷

There is an established market for resale ATVs, using various methods. For instance, used ATVs are available from retailer/dealer trade-ins for new sales, person-to-person sales, and through internet sites (such as Ebay). There are extant publications (such as the National Automobile Dealers Association Appraisal Guide) that publish the value of ATVs by year and model, similar to that of automobiles and motorcycles, establishing pricing guides for the ATV resale market.

¹⁷ Dave Crocket, Senior Partner, Power Product Marketing, 2005.

F

DRAFT 5/30/06

[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1307, 1410, 1500 and 1515

Standards for All Terrain Vehicles and Ban of Three-Wheeled All

Terrain Vehicles;

Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Proposed Rulemaking

SUMMARY: To address the unreasonable risks of injury and death associated with all terrain vehicles ("ATVs"), the Commission is proposing rules for adult and youth ATVs. The proposed rules include requirements concerning the mechanical operation of ATVs, requirements for providing safety information about operating ATVs (such as through labeling and training), and requirements for certification, testing and recordkeeping. The proposed standards would apply to adult single-rider and tandem ATVs and to youth ATVs. The Commission is also proposing a rule to ban three-wheeled ATVs. The proposed rules are issued under the authority of both the Consumer Product Safety Act ("CPSA") and the Federal Hazardous Substances Act ("FHSA").

DATES: Written comments in response to this document must be received by the Commission no later than [**insert date that is 75 days after publication**]. Comments on elements of the proposed

DRAFT 5/30/06

rule that, if issued in final form would constitute collection of information requirements under the Paperwork Reduction Act, may be filed with the Office of Management and Budget ("OMB") and with the Commission. Comments will be received by OMB until [insert date that is 60 days after publication].

ADDRESSES: Comments should be filed by email to cpsc-os.gov. Comments also may be filed by telefacsimile to (301)504-0127 or they may be mailed or delivered, preferably in five copies, to the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301)504-7923. Comments should be captioned "ATV NPR."

Comments to OMB should be directed to the Desk Officer for the Consumer Product Safety Commission, Office of Information and Regulatory Affairs, OMB, Washington, DC 20503. The Commission asks commenters to provide copies of such comments to the Commission's Office of the Secretary, with a caption or cover letter identifying the materials as copies of comments submitted to OMB on the proposed collection of information requirements for the proposed ATV standard.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leland, Project Manager, ATV Safety Review, Directorate for Economic Analysis,

DRAFT 5/30/06

Consumer Product Safety Commission, 4330 East West Highway,
Bethesda, Maryland 20814-4408; telephone (301) 504-7706 or e-
mail: eleland@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission is proposing rules that will cover single-rider ATVs, tandem ATVs (intended for two people) and ATVs intended for children under 16 years of age. These proposed rules include proposed standards that specify mechanical requirements for ATVs and informational requirements so that ATV purchasers and operators will have safety information about ATVs. The Commission is also proposing to ban three-wheeled ATVs. The Commission believes that these proposed rules are necessary to address an unreasonable risk of injury and death associated with ATVs.

ATVs were first available in this country in the early 1970's, and became increasingly popular in the early 1980's. With their rise in popularity, the number of ATV-related incidents also rose. On May 31, 1985, the Commission published an advance notice of proposed rulemaking ("ANPR") stating the Commission's safety concerns and outlining options the Commission was considering to address ATV-related hazards. 50

FR 23139. In 1987, the Commission filed a lawsuit under section 12 of the CPSA against the five companies that were major ATV distributors at that time to declare ATVs an imminently hazardous consumer product, see 15 U.S.C. § 2061(b)(1).² The lawsuit was settled by Consent Decrees filed on April 28, 1988 that were effective for ten years. [Insert cite to web site URL for decrees]

1. The Consent Decrees

In the Consent Decrees, the distributors agreed to: (1) halt the distribution of three-wheel ATVs, (2) attempt "in good faith" to devise a voluntary performance standard satisfactory to the Commission; (3) label ATVs with four types of warnings, the language and format of which were specified in the Consent Decrees; (4) supplement existing owners manuals with safety text and illustrations specified in the Consent Decrees and to prepare new owners manuals with specified safety information; (5) provide point of purchase safety materials meeting guidelines specified by the Consent Decrees, including hangtags,

² The five distributors were American Honda Motor Co., Inc., American Suzuki Motor Corp., Polaris Industries, L.P., Yamaha Motor Corp., USA, and Kawasaki Motors Corp., USA. In 1996, Arctic Cat, Inc. began manufacturing ATVs and entered into an Agreement and Action Plan with the Commission in which the company agreed to take substantially the same actions as required under the Consent Decrees.

a safety video, and other safety information; (6) and offer a rider training course to ATV purchasers and members of their immediate families at no cost. In addition, the Consent Decrees contained several media and marketing provisions.

The distributors also agreed in the Consent Decrees that they would "represent affirmatively" that ATVs with engine sizes between 70 and 90 cc should be used only by those age 12 and older, and that ATVs with engine sizes larger than 90 cc should be used only by those 16 and older. Because distributors did not sell their products directly to consumers but through dealerships (which were not parties to the Consent Decrees), distributors agreed to "use their best efforts to reasonably assure" that ATVs would "not be purchased by or for the use of" anyone who did not meet the age restrictions. While the Consent Decrees were in effect, the distributors entered into agreements with the Commission and the Department of Justice agreeing to monitor their dealers to determine whether they were complying with the age recommendations and to terminate the franchises of dealers who repeatedly failed to provide the appropriate age recommendations.

2. Development of the Voluntary Standard for Single-rider ATVs

Industry had begun work on a voluntary standard before the Consent Decrees were in place. Distributors that were parties to the Decrees agreed to work in good faith to develop a voluntary standard that was satisfactory to the Commission within four months of the signing of the Consent Decrees. The five companies, working through the Specialty Vehicle Institute of America ("SVIA"), submitted a standard for approval as an American National Standards Institute ("ANSI") standard in December 1988. On January 13, 1989, the Commission published a notice in the Federal Register concluding that the voluntary standard was "satisfactory" to the Commission.³ 54 FR 1407. The standard, known as ANSI/SVIA 1-2001, *The American National Standard for Four Wheel All-Terrain Vehicles - Equipment, Configuration, and Performance Requirements*, was first published in 1990, and was revised in 2001. The ANSI standard has requirements for the mechanical operation of ATVs, but does not contain any provisions concerning labeling, owners manuals or other information to be provided to the purchaser because such requirements were stated in the Consent Decrees that were in

³ In the FR notice, the Commission noted that it "specifically reserved its rights under the consent decrees to institute certain enforcement or rulemaking proceedings in the future." 54 FR 1407.

effect when the ANSI standard was developed. As discussed in section G.3, ANSI now has a draft voluntary standard for tandem ATVs.

3. ATV Action Plans/Letters of Undertaking

The Consent Decrees expired in April 1998. The Commission entered into voluntary "Action Plans," also known as "Letters of Undertaking" or "LOUs," with eight major ATV distributors (the five who had been parties to the Consent Decrees, plus Arctic Cat, Inc., Bombardier, Inc. and Cannondale Corporation, which no longer makes ATVs) See 63 FR 48199 (summarizing Action Plans).⁴ Except for Bombardier's, all of the Action Plans took effect in April 1998 at the expiration of the Consent Decrees. (Bombardier's took effect in 1999 when the company began selling ATVs.) The companies agreed to continue many of the actions the Consent Decrees had required concerning the age recommendations, point of sale information (i.e., warning labels, owners manuals, hang tags, safety alerts, and safety video), advertising and

⁴ These documents are available on CPSC's website at www.cpsc.gov/library/foia/foia98/fedreg/honda.pdf; www.cpsc.gov/library/foia/foia98/fedreg/suzuki.pdf ; www.cpsc.gov/library/foia/foia98/fedreg/kawasaki.pdf ; www.cpsc.gov/library/foia/foia98/fedreg/polaris ; www.cpsc.gov/library/foia/foia98/fedreg/yamaha.pdf ; www.cpsc.gov/library/foia/foia98/fedred/arctic.pdf ; and www.cpsc.gov/library/foia/foia99/pubcom/bobard.pdf.

promotional materials, training, and stopping distribution of three-wheeled ATVs.

4. Termination of Previous Rulemaking

As mentioned above, the Commission issued an ANPR concerning ATVs in 1985, but chose to pursue legal action under section 12 of the CPSA instead of taking regulatory action. In 1991, the Commission terminated the rulemaking proceeding it had started with the 1985 ANPR. 56 FR 47166. The Commission observed in its termination notice that, at the time of the termination, the Consent Decrees were in effect, the five ATV distributors had agreed to conduct monitoring of dealers' compliance with the Consent Decrees' provisions, and ATV-related injuries and deaths were declining. The ATV-related injury rate for the general population (per ATV) had dropped by about 50 percent between 1985 and 1989, and ATV-related fatalities had declined from an estimated 347 in 1986 to about 258 in 1989. Id. At 47170.

The Commission's termination of its rulemaking proceeding was challenged by the Consumer Federation of America ("CFA") and US Public Interest Research Group ("PIRG") arguing that withdrawing the ANPR rather than pursuing a ban on the sale of new adult-size ATVs for use by children under 16 was arbitrary and capricious. The court upheld the Commission's decision.

Consumer Federation of America v. Consumer Product Safety

Commission, 990 F.2d 1298 (D.C. Cir. 1993). The court noted that it was reasonable for the Commission to determine the effectiveness of the Consent Decrees and monitoring activities before considering whether additional action would be necessary. Id. at 1306.

5. CFA's Petition and the Chairman's Memo

In August 2002, CFA and eight other groups requested that the Commission take several actions regarding ATVs. CPSC docketed the portion of the request that met the Commission's docketing requirements in 16 CFR § 1051.5(a). That request asked for a rule banning the sale of adult-size four wheel ATVs for the use of children under 16 years old. The Commission solicited public comments on the petition. 67 FR 64353 (2002). In 2003, the Commission held a public hearing in West Virginia, and the Chairman held hearings in Alaska and New Mexico to hear oral presentation from the public about ATVs. The staff prepared a briefing package analyzing the petition and recommending that the Commission deny the petition (available on the Commission's website at www.cpsc.gov/library/foia/foia05/brief/briefing.html). The Commission voted to defer a decision on the petition.

On June 8, 2005, Chairman Hal Stratton delivered a memorandum to the staff asking the staff to review all ATV safety actions and make recommendations on a number of issues. The memo directed the staff to consider whether: (1) the current ATV voluntary standards are adequate in light of trends in ATV-related deaths and injuries; (2) the current ATV voluntary standards or other standards pertaining to ATVs should be adopted as mandatory standards by the Commission; and (3) other actions, including rulemaking, should be taken to enhance ATV safety. The memo also identified several specific issues for the staff to review, namely: (1) pre-sale training/certification requirements; (2) enhanced warning labels; (3) formal notification of safety rules by dealers to buyers; (4) the addition of a youth ATV model appropriate for 14-year olds; (5) written notification of child injury data at the time of sale; (6) separate standards for vehicles designed for two riders; and (7) performance safety standards. The memo directed the staff to give particular attention to improving the safety of young riders.

6. 2005 ANPR

On October 14, 2005, the Commission published an ANPR that began this proceeding. 70 FR 60031. The ANPR reviewed the history of the Commission's involvement with ATVs, summarized

the ANSI/SVIA-1-2001 standard, described regulatory and non-regulatory options to address ATV-related injuries and deaths, and requested comments from the public. Comments on the ANPR and the Commission's responses are discussed at section H.

B. Statutory Authority

This proceeding is conducted pursuant to the Consumer Product Safety Act ("CPSA") and the Federal Hazardous Substances Act ("FHSA"). All Terrain Vehicles are "consumer products" which can be regulated by the Commission under the authority of the CPSA. See 15 U.S.C. 2052(a). However, the FHSA provides the Commission with regulatory authority over articles intended for use by children. See 15 U.S.C. 1261(f)(1)(D). See also 15 U.S.C. 2079(d) (requiring, that the Commission regulate under the FHSA if the risk of injury at issue can be eliminated or sufficiently reduced by action under the FHSA unless the Commission finds by rule that it is in the public interest to regulate under the CPSA). Thus, the Commission is proposing standards for adult 4-wheel ATVs and a ban of adult three-wheeled ATVs under the CPSA, and is proposing a standard for youth ATVs, which includes a ban of three-wheeled ATVs, under the FHSA.

1. The CPSA

Section 7 of the CPSA authorizes the Commission to issue consumer product safety standards that consist of performance requirements and/or requirements for warnings or instructions. Id. 2056(a). The requirements of the standard must be "reasonably necessary to prevent or reduce an unreasonable risk of injury associated with such product." Id.

Section 8 of the CPSA authorizes the Commission to issue a rule declaring a consumer product a "banned hazardous product" when the Commission finds that: the product is being, or will be, distributed in commerce; the product presents an unreasonable risk of injury; and no feasible consumer product safety standard would adequately protect the public from the risk of injury. Id. 2057.

Section 9 of the CPSA specifies the procedure the Commission must follow to issue a consumer product safety standard or a ban under section 8. In accordance with section 9, the Commission commenced this rulemaking by issuing an ANPR identifying the product and the risk of injury, summarizing regulatory alternatives, and inviting comments or suggested standards from the public. Id. 2058(a). 70 FR 60031 (2005). The Commission considered the comments submitted in response to the ANPR, and has decided to issue these proposed rules and a preliminary regulatory analysis in accordance with section 9(c)

DRAFT 5/30/06

of the CPSA. Next, the Commission will consider the comments received in response to the proposed rules and decide whether to issue final rules and a final regulatory analysis. 15 U.S.C. 2058(c) - (f).

According to section 9(f)(1) of the CPSA, before promulgating a consumer product safety rule, the Commission must consider, and make appropriate findings to be included in the rule, concerning the following issues: (1) the degree and nature of the risk of injury that the rule is designed to eliminate or reduce; (2) the approximate number of consumer products subject to the rule; (3) the need of the public for the products subject to the rule and the probable effect the rule will have on utility, cost or availability of such products; and (4) means to achieve the objective of the rule while minimizing adverse effects on competition, manufacturing and commercial practices. *Id.* 2058(f)(1).

According to section 9(f)(3) of the CPSA, to issue a final rule, the Commission must find that the rule is "reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product" and that issuing the rule is in the public interest. *Id.* 2058(f)(3)(A)&(B). In addition, if a voluntary standard addressing the risk of injury has been adopted and implemented, the Commission must find that (1) the

voluntary standard is not likely to eliminate or adequately reduce the risk of injury, or that (2) substantial compliance with the voluntary standard is unlikely. Id. 2058(f)(3(D)). The Commission also must find that expected benefits of the rule bear a reasonable relationship to its costs and that the rule imposes the least burdensome requirements that would adequately reduce the risk of injury. Id. 2058(f)(3)(E)&(F).

Other provisions of the CPSA also authorize this rulemaking. Section 27(e) provides the Commission with authority to issue a rule requiring consumer product manufacturers to provide the Commission with such performance and technical data related to performance and safety as may be required to carry out the CPSA, and to give such performance and technical data to prospective and first purchasers. Id. 2076(e). This provision bolsters the Commission's authority under section 7 to require provision of safety-related information such as hangtags, instructional/owners manuals, safety videos, and training.

Section 14 of the CPSA authorizes the Commission to issue a rule requiring certification that a product meets a consumer product safety standard. Id. 2063(c). Section 14 also authorizes the Commission to prescribe, by rule, reasonable

testing programs for consumer products subject to a consumer product safety rule. Id. 2063(b).

Finally, section 16 of the CPSA authorizes the Commission to issue rules requiring establishment and maintenance of records needed to implement the CPSA or to determine compliance with rules or orders issued under the CPSA. Id. 2065(b).

2. The FHSA

The FHSA requires proceedings and findings similar to those required by the CPSA. Section 2(f)(1)(D) of the FHSA defines "hazardous substance" to include any toy or other article intended for use by children that the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if its design or manufacture presents an unreasonable risk of personal injury or illness during normal use or when subjected to reasonably foreseeable damage or abuse. 15 U.S.C. 1261(s).

Under section 2(q)(1)(A) of the FHSA, an article intended for use by children, which is a hazardous substance (as defined in the FHSA) accessible by a child, is banned. 15 U.S.C. 1261(q)(1)(A). Under this authority, the Commission can issue a rule stating that if a particular article intended for use by children does not meet requirements that the Commission

specifies by rule, the item is banned. See Forester v. Consumer Product Safety Commission, 559 F.2d 774, 782 (D.C. Cir. 1977).

Section 3(f) through 3(i) of the FHSA, 15 U.S.C. 1262(f)-(i), describes the procedures to promulgate a regulation determining that an article intended for children presents an electrical, mechanical, or thermal hazard. The procedures are the same as those required for a CPSA rule discussed above. 15 U.S.C. 1262(f) through (i).

Before the Commission can issue this type of final rule under the FHSA, it must make many of the same findings necessary for a final CPSA rule: (1) if an applicable voluntary standard has been adopted and implemented, that compliance with the voluntary standard is not likely to adequately reduce the risk of injury, or compliance with the voluntary standard is not likely to be substantial; (2) that benefits expected from the regulation bear a reasonable relationship to its costs; and (3) that the regulation imposes the least burdensome alternative that would adequately reduce the risk of injury. *Id.* 1261(i)(2).

Section 10 of the FHSA authorizes the Commission to issue regulations "for the efficient enforcement of" the FHSA. *Id.* 1269(a). This provision gives the Commission authority to issue

the requirements for certification, testing and recordkeeping in the youth ATV standard.

C. The Product

1. What's Covered by the Proposed Rules

An ATV is a motorized vehicle with three or four broad, low pressure tires (less than 10 pounds per square inch) a seat designed to be straddled by the operator, handlebars for steering, and it is designed for off-road use. Most ATVs are designed for use by only one person. However, some companies have developed ATVs intended for use by the operator and one passenger. These ATVs are referred to in this notice as tandem ATVs. The proposed rules the Commission is issuing cover three-wheeled ATVs, four-wheeled adult ATVs intended for single riders, four-wheeled adult tandem ATVs, and ATVs intended for children under 16 years of age (referred to here as youth ATVs).

2. Market and Sales Information

The market for ATVs has increased greatly since they were first introduced over thirty years ago. The SVIA, an ATV trade association, estimated that in 2005, there were 6.9 million ATVs in use. The market is made of seven major distributors of ATVs (the companies that have entered into voluntary LOUs with the Commission and are represented by SVIA) and new entrants that import ATVs to the U.S. Sales by both groups have increased

DRAFT 5/30/06

over the past decade. U.S. retail sales of ATVs by the seven major distributors have increased from an estimated 293,000 ATVs sold in the U.S. in 1995 to an estimated 921,000 ATVs sold in the U.S. in 2005. [4]¹

3. Imports

Imports for the new entrants have increased markedly in recent years. In the late 1990's, imports comprised a small portion of the ATV market, near zero. In 2001, imports were estimated to account for about 5 percent of total U.S. sales. By 2004, imports had increased to 10 percent of the total U.S. market. [4]

In 2006, Commission staff has identified over 80 importers of ATVs. Most of these firms import other products in addition to ATVs, such as powered scooters, dirt bikes, go-carts and snow mobiles. A recent trade report estimated that 100 to 150 Chinese manufacturers and an estimated 22 Taiwanese firms exported ATVs worldwide in 2005. The trade report does not indicate what share of these firms' output is exported to the U.S., but based on another trade analysis, Commission staff estimates that approximately 80,000 ATVs were exported from China to the U.S. in 2004 and approximately 14,000 ATVs were

¹ Numbers in brackets refer to documents listed at the end of this notice. They are available from the Commission's Office of the Secretary (see "Addresses" section above) or from the Commission's web site (<https://www.cpsc.gov/library/foia/foia.html>)

exported from Taiwan in that year. There also appear to be imports from other countries in Europe and Southeast Asia (notably South Korea and Vietnam), but the staff does not have information on the extent of such imports. [4]

Staff has observed that imported ATVs may lack some or all of the labeling specified in the LOUs. On such ATVs, labels may be unclear, translated incorrectly, or in a language other than English. Staff has also found that owner's manuals for imported ATVs may not provide information that could be understood by U.S. consumers (e.g., information that conflicts with labeling, measurements in unfamiliar measuring systems). [8]

4. Marketing

The major distributors have traditionally marketed ATVs through franchises, either as free-standing locations or in conjunction with other related retail operations (such as motorcycle retailers). [4]

Imported ATVs are sold in a variety of ways. They may be sold through distributors, including some of the major distributors. Foreign firms also market through U.S. importer/wholesalers who, in turn, may market the products to retailers (including such mass marketers as Pep Boys, Fleet and Farm, Wal-Mart, Sam's Club, and BJ's). Some importer/suppliers also have dealer networks. [4]

Imported ATVs also are offered for sale directly to consumers through import brokers who transship imported units to retailers (or consumers), often without taking physical control of the products. Websites offering ATVs for sale are ubiquitous. A recent CPSC surveillance effort reported that there were literally hundreds of websites offering ATVs for sale, but the staff does not know the extent of actual purchases through the Internet. [4]

5. Consumer Prices

The staff's 2004 market study observed that the major distributors' suggested retail price for ATVs ranged from about \$2,000 to \$8,000; the median suggested retail price was \$5,150. As a subgroup, the price ranges for youth ATVs from these manufacturers was \$1,800 to \$2,500. The median suggested retail price for youth ATVs was about \$2,300. [4]

A recent staff Internet search of new ATVs with brand names other than those of the North American distributors, offered for sale by business entities, found youth ATV models ranging from about \$320 to \$950 each, with an average price of about \$630. Larger ATVs ranged from about \$600 to \$2,400, with an average of \$1,340. The cited prices included the cost of shipping to points within the lower 48 states from the dealers' US warehouses. Thus, it appears that ATVs from importers/new

entrants may have a significant price advantage over the major distributors' products. [4]

D. Risk of Injury

As noted in the 2005 ANPR, the most recent annual report of ATV deaths and injuries that the Commission has issued is the 2004 Annual Report (which was issued in September 2005). According to that report, the Commission had reports of 6,494 ATV-related deaths that have occurred since 1982. Of these, 2,019 (31 percent of the total) were to children under 16 years of age and 845 (13 percent of the total) were to children under 12 years of age. According to the 2004 Annual Report, 569 ATV-related deaths were reported to the Commission for 2003. Deaths reported to the Commission represent a minimum count of ATV-related deaths. To account for ATV-related deaths that are not reported to the Commission, the staff calculates an estimated number of ATV deaths. The most recent estimate of ATV-related deaths for 2003 is 740. [3]

CPSC collects information on hospital emergency room treated injuries. The estimated number of ATV-related injuries treated in hospital emergency rooms in 2004 was 136,100. This is an increase of about eight percent over the 2003 estimate. The estimated number of injuries to children under 16 in 2004

was 44,700 (about 33 percent of the total estimated injuries for 2004). [3]

The staff also estimates the risk of injury and the risk of death per 10,000 ATVs in use. According to the 2004 Annual Report, the estimated risk of injury for four-wheel ATVs for 2004 was 187.9 injuries per 10,000 four-wheel ATVs in use. A recent high in the estimated risk of injury occurred at 200.9 in 2001. The estimated risk of death for four-wheel ATVs in 2003 was 1.1 deaths per 10,000 four-wheel ATVs in use. In 1999, the earliest comparable year due to changes in data collection, the estimated risk of death was 1.4 deaths per 10,000 four-wheel ATVs in use. [3]

Based on injury and exposure studies conducted in 1997 and, most recently, in 2001, the estimated number of ATV-related injuries treated in hospital emergency rooms rose from 52,800 to 110,100 (a 109 percent increase). Injuries to children under 16 rose 60 percent. During these years, the estimated number of ATV drivers rose from 12 to 16.3 million (a 36 percent increase); the estimated number of driving hours rose from 1,580 to 2,360 million (a 50 percent increase); and the estimated number of ATVs rose from 4 to 5.6 million (a 40 percent increase). The chief finding of the 2001 Report was that increases in the estimated numbers of drivers, driving hours and

vehicles did not account for all of the increase in the estimated number of ATV injuries. [3]

E. Children and ATVs

During its involvement with ATVs, the Commission has been particularly concerned with reducing the ATV-related deaths and injuries suffered by children. The Consent Decrees established age guidelines, which the major distributors continue through their Letters of Undertaking. In the Consent Decrees, the major distributors agreed to represent and to make their best efforts to see that their dealers also abided by age recommendations in their dealings with purchasers. These age recommendations were based on the ATV's engine size (measured as cubic centimeter ("cc") displacement). They established that an ATV with an engine that is larger than 90 cc should be used only by those 16 years of age and older, and that an ATV with an engine size between 70 and 90 cc should be used only by those 12 years of age and older. Thus, ATVs with engine sizes larger than 90 cc have been considered adult ATVs.

Yet, in spite of these efforts through the Consent Decrees and LOUs, recent Commission staff studies have shown that many children ride adult ATVs, and that injury rates are climbing. The Commission's injury and exposure studies indicate that injuries to children under age 16 rose 60 percent from 1997 to

2001. Although the number of children riding ATVs also rose during this period, that increase does not fully account for the rise in incidents. [6]

The age delineations in the Consent Decrees made no mention of speed limits. However, the ANSI/SVIA-1-2001 voluntary standard does categorize youth ATVs by reference to speed limits. The voluntary standard requires that Y-6 ATVs (intended for ages 6-11) have devices to limit their speed to not more than 10 mph and allow upward adjustment to a maximum unrestricted speed of 15 mph. Y-12 ATVs (intended for ages 12-16) have similar requirements to limit speed to not more than 15 mph and allow upward adjustment to a maximum unrestricted speed of 30 mph.

The Commission is proposing to change the categorization of ATVs based on engine size that the Consent Decrees established. Instead the Commission proposes three categories of youth ATVs based on maximum speed of the ATV. The 90cc policy is design restrictive; engine size does not necessarily restrict ATV size, nor does it necessarily regulate maximum unrestricted speed; staff cannot make assumptions (e.g., speed, power, weight, or size) about all ATVs of a certain engine size based solely on the engine displacement values; and the current voluntary

standard for ATVs categorizes youth ATVs by speed limiting characteristics, not engine size. [6]

The Commission's ESHF staff considered several sources to determine appropriate categories of ATVs. Based on developmental characteristics, children are typically grouped as: age 5 through 7 or 8; age 8 or 9 through 11 or 12; age 12 through 15; and age 16 and up. Children, of course, do not all develop at the same rate, but these groupings are appropriate for most.

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 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." Since ATVs require significant balance and control, it seems most appropriate to have an age division around the late pre-teen/early teenage years. Based on youth attributes described in the *Age Determination Guidelines*, reasonable youth ATV categories would be Y-6 ("slow-moving," no gear shifting), Y-9 (speeds 5-15 mph, gear shifting acceptable) and Y-13 (since the *Age Determination Guidelines* stop at age 12, no

specifications can be made based on them). Additionally, the *Age Determination Guidelines* mention that 9- to 12-year-olds are generally "aware of traffic laws, but they are very likely to engage in high-risk behaviors like riding in traffic and stunt riding." [6]

In addition to cognitive development, appropriate age groupings should account for children's physical size. Analysis of children's physical growth suggests groupings with breaks roughly at around ages 8 to 9 and 11 to 13, acknowledging that growth will be rapid between ages 11 and 16 for both males and females. [6]

Groupings set out in the *Age Determination Guidelines* can be used to delineate three categories for youth ATVs based on maximum speed of the ATV. For the youngest category, the *Age Determination Guidelines* indicate that the ATV should be "slow-moving." One method of defining "slow moving" could be slow enough to allow parents to walk or jog with the ATV to facilitate supervision. Under this premise, it would be reasonable to set the maximum speed for the slowest youth ATV between the jogging speed and running speed. Research indicates that is about 9 to 10 mph. Based on the *Age Determination Guidelines*, the next category should be roughly 10 to 15 mph. The *Age Determination Guidelines* do not extend past 12 years of

age, but it is reasonable to assume that the third category could be faster than 10 mph and that older, more experienced teens may be able to handle speeds higher than 10 to 15 mph. The Commission's ESHF staff has found no scientific research to support either raising or lowering the current 30 mph speed limit for teens. Thus, 30 mph is a reasonable top speed for the third category of youth ATVs. [6]

Proposed ATV models and intended ages		
ATV Model	Age (years)	Speed Range
Junior	6+	10 mph or less
Pre-teen	9+	10*-15 mph
Teen	12+	15*-30 mph
Adult	16+	Not restricted
* with speed limiter		

Although the weight of the ATV can play a role in the suitability of an ATV for a youth, the Commission does not have sufficient information to set an appropriate weight for youth ATVs. [6]

Frame size also plays a role in the appropriateness of an ATV for a child. Several commenters have expressed frustration with the current ATVs available for children because the smaller frames of these ATVs will not fit some 13 to 15 year olds. Establishing categories based on speed limit rather than engine

size may encourage manufacturers to offer ATVs with larger frames (and larger engines), but with limited maximum speeds that would be appropriate for children. [6]

The availability of such youth ATVs may shift a number of young riders to youth ATVs rather than larger adult models. This would increase safety. Commission analysis indicates that the injury rate for ATV riders under the age of 16 who are driving adult ATVs is about twice the expected injury rate of those who are driving age-appropriate ATVs. Moreover, these categories may enable more children to receive formal ATV training. The largest and best established formal training programs will not train children under age 16 unless they are riding an appropriate youth model. [8].

The proposed rule also requires that youth ATVs must have automatic transmissions. Based on the *Age Determination Guidelines*, ESHF staff believes that manual transmission ATVs are inappropriate for children under 9 years of age. Due to the high cognitive load required to operate complex motorized vehicles, HF staff believes it best to allow all children below 16 years of age to master driving skills before learning to coordinate gear shifting with the many other skills involved when riding. [6]

F. Training

In the 1980s, Commission staff worked with the major ATV distributors to develop the predecessor to the current ATV training course that is offered through the ATV Safety Institute ("ASI"), the non-profit training division of the SVIA. Training is important because operating an ATV seems deceptively easy; steering controls are similar to a bicycle, and the throttle is generally simply lever-operated with the thumb. ATVs are, however, high-speed motorized vehicles that require repeated practice to drive proficiently. Operating an ATV is somewhat comparable to operating other complex motorized vehicles. ATVs have top speeds approaching that of automobiles on highways, yet have as little protection from oncoming objects 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 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. [12]

Formal, hands-on training teaches drivers how the ATV responds in situations that are typically encountered. ATV training may act as a surrogate for experience because it

exposes new ATV drivers to situations they will encounter when riding off-road and teaches them the proper driving behavior to navigate those situations. [12]

All of the major distributors offer training through the ASI. In spite of the offers of free training and other incentives, relatively few ATV riders take formal safety training. According to a 2004 study by SVIA, only about 7 percent of new purchasers actually took training. The newer entrants to the market do not offer any training with their ATVs. These manufacturers account for about 10 percent of domestic ATV sales, but their share of the market has been increasing. [4&12]

The Commission is proposing to require that manufacturers provide purchasers with a certificate for free training for the purchaser and any member of his/her immediate family who meets the age recommendations for the ATV. The benefits of training to new ATV purchasers could be substantial. As stated above, training may act as a surrogate for experience. The greatest risk of injury occurs with inexperienced riders. Staff's analysis of ATV incident data has found a strong inverse relationship between driving experience and the risk of hospital emergency department-treated injury. The analysis indicates that risk in the first year of riding was about 65 percent

higher than the risk in the second year, and about twice the risk of the third year. [8]

The proposed rules outline the basic content that a free training course must have. This curriculum is based on CPSC safety messages and the "ATV Rider's Course Outline" from the Consent Decrees. In addition to instruction about the basic maneuvers that are necessary to operate an ATV safely, the course must include instruction about the risks of ATV-related deaths and injuries, the importance of safety equipment, and the importance of avoiding the warned against behaviors that are stated in the general warning label (such as children not riding ATVs, not driving on paved roads, etc.). [12]

In many ways, training is essentially an extension of the warning labels and owners instruction manuals. The training course provides the rider with a fuller understanding of the risks involved in riding an ATV and of the actions he/she can take to avoid or reduce these risks.

G. Description of Proposed Standards

1. General

The proposed standards draw from the ANSI/SVIA 1-2001 standard for four-wheel ATVs (for single rider ATVs), the draft voluntary standard for tandem ATVs, the Consent Decrees, and the LOUs. The Commission has pulled together elements from all of

these sources to construct proposed standards with the goal of reducing ATV-related deaths and injuries. Both the adult and youth standards require that ATVs meet requirements for the mechanical operation of the ATV, informational/point of sale requirements, and certification and recordkeeping requirements.

2. Requirements for Adult Single Rider ATVs

a. Definitions

All terrain vehicle or ATV is defined as "a three- or four-wheeled motorized vehicle that travels on low pressure tires, has a seat designed to be straddled by the operator (and a passenger if provision is made for carrying a passenger), has handlebars for steering, and is intended for off-road use on non-paved surfaces." The definition of ATV states that for purposes of this part, an ATV is one that is intended for an operator 16 years of age or older. The term "manufacturer" is defined to include an importer for purposes of the ATV standards. Many of the definitions in the proposed standard are derived from the ANSI/SVIA-1-2001 standard.

b. Equipment and Configuration Requirements

General. Section 1410.5 proposes requirements for various aspects of the mechanical operation of adult single-rider ATVs. Many of these requirements are substantially the same as requirements of the ANSI/SVIA-1-2001 voluntary standard.

DRAFT 5/30/06

However, the CPSA requires that consumer product safety standards be stated as performance rather than design standards. Thus, some requirements that were stated in the ANSI standard in terms of design have been modified to establish performance requirements.

The provisions of this section ensure that there will be uniformity in the basic operation of ATVs from one make or model to another. Proposed configuration requirements for vehicle controls, indicators, and gearing ensure the standardized instrumentation and safety features of current ATVs. It is important that the location and method of operation of safety related controls, such as brake controls and engine stop switch, be standardized to reduce operator confusion. The specified requirements are consistent with current ATV practice which is based on the National Highway Traffic Safety Administration requirements for motorcycle control location and operation requirements (49 CFR 571.123). [5]

Operator Foot Environment. Proposed performance requirements for operator foot environment ensure adequate vehicle configuration that reduces inadvertent contact between the operator's feet and the ground or the ATV's rear wheels. Operator foot contact with the ground or the ATV's rear wheels has been identified as a hazard pattern among ATV-related

injuries. Differing zones are defined for ATVs equipped with footpegs (designed to support the operator's foot with a relatively narrow bar), and footboards (designed to support the operator's foot with a platform-type structure). [5]

Lighting. Proposed lighting requirements mandate headlamps, tail lamps, and stop lamps on all adult ATVs. The lighting equipment must conform to applicable referenced standards. This provision was adopted from the ANSI/SVIA-1-2001 standard.

Nighttime riding can be expected with adult ATVs and requirements for industry standard headlamps will ensure minimum illumination for night-time or safer operation of the vehicle.

[5&7]

VIN or PIN. The proposed standard requires that each ATV have assigned a unique vehicle identification number ("VIN") in accordance with 49 CFR Part 565 or a product identification number ("PIN") in accordance with *Recreation Off-Road Vehicle Product Identification Numbering System*, SAE International Consortium Standard, ICS-1000, issued 2004-9. If the ATV has a VIN number, the characters in location 4 and 5 of the number must be "A" and "T", respectively to identify the vehicle as an ATV and an off-road vehicle. Having a VIN or PIN on every ATV can be helpful if an ATV is the subject of a corrective action.

The VIN or PIN should also permit tracing the ATV back to its retailer to determine compliance with applicable requirements.

Maximum speed capability and brake requirements. Procedures are outlined for the measurement of a loaded vehicle's maximum speed. The maximum speed is used to determine the brake test speed and conformance to the youth ATV speed restrictions requirements. [5]

The proposed standard establishes performance tests for service brakes and parking brakes. Reliable brake performance is critical to the safety of an ATV operator. The requirements specify a braking deceleration of 5.88m/s^2 (0.6g) or greater for service brakes and brake holding power up to a 30 percent grade for parking brakes. [5]

These proposed requirements establish minimum brake performance to ensure that brake systems are adequate for stopping the vehicle and holding the vehicle on an incline. The specified requirements are consistent with current ANSI/SVIA-1-2001 voluntary standard requirements which are patterned after those in the Federal Motor Vehicle Safety Standard No. 122 *Motorcycle Brake Systems* (49 CFR 571.122). [5]

The proposed requirements deviate from the current ANSI/SVIA-1-2001 requirements in terms of the vehicle test weight used to perform service brake tests. The current

voluntary standard specifies the test weight as the unloaded vehicle weight plus 91 kg (200 lb) if the vehicle load capacity is specified as 91 kg (200 lb) or more. The proposed requirements specify the test weight as the unloaded vehicle weight plus the vehicle load capacity. This will ensure that larger vehicles with larger load capacities do not have a less stringent brake requirement (by using a comparatively lower test weight during brake tests). [5]

Stability requirements. The standard proposes the same pitch stability requirements as the ANSI/SVIA-1-2001 voluntary standard. The pitch stability for single-rider ATVs is based on the longitudinal tilt angle of a vehicle *without* an operator. A vehicle's longitudinal tilt angle can be calculated by measuring the vehicle's front and rear weights and balancing angle (angle at which vehicle is balanced on its rear wheels) or it can be measured on a tilt table. The ANSI/SVIA-1-2001 voluntary standard requires calculation of a vehicle's longitudinal pitch angle which must be 45 degrees or higher to meet the pitch stability requirement. The proposed requirements adopt this test procedure and minimum tilt angle for single-rider ATVs, and add a tilt table option to address larger ATVs whose weights could make it unsafe to follow the voluntary standard procedures for measuring and calculating the pitch stability. [5]

The proposed pitch stability requirements deviate from ANSI/SVIA-1-2001 in terms of the test conditions of the vehicle. The current voluntary standard specifies that the vehicle tires be inflated to the ATV manufacturer's lowest recommended pressure. The proposed requirements specify that the tires be inflated to the ATV manufacturer's highest recommended pressure. This will ensure that the vehicle configuration with the highest expected center of gravity will be tested. [5]

Over the years, the Commission has analyzed the issue of ATV stability. Because ATVs are rider-active vehicles (that is, their performance is affected by the rider's movements), it is difficult to evaluate an ATV's actual stability. A satisfactory static test has been developed to measure an ATV's pitch stability (movement from front to back). At this point in time, the industry has not been able to develop a satisfactory test of lateral stability (movement from side to side). Thus, the ANSI/SVIA-1-2001 standard has a requirement for pitch stability, but not for lateral stability. The Commission's proposed standard likewise contains requirements only for pitch stability. However, the Commission encourages the industry to continue to pursue an accurate and reliable test for lateral stability. [5]

c. Information/Point of Sale Requirements

The proposed standard mandates by rule many similar information/point of sale requirements as were specified in the Consent Decrees and subsequently continued in the LOUs. This subpart of the proposed standard contains requirements for labeling, hangtags, age acknowledgment forms, instructional/owner's manuals, a safety video, and instructional training.

Warning labels. The Consent Decrees specified four labels to appear on all ATVs: (1) a general warning label, (2) an age recommendation label, (3) a passenger warning label, and (4) a tire pressure and overloading warning label. Most ATVs include these or substantially equivalent labels as well as other discretionary warning labels. However, imported ATVs may not have all of these warning labels, the labels may be unclear or they may not be in English.

The proposed rule requires labels that are similar to those required by the Consent Decrees, but allows more flexibility. The warning labels have evolved since the Consent Decrees, and the major distributors currently use their own copyrighted labels that present substantially the same warnings. In the case of the general warning label and the passenger label, the distributors sought Commission approval for new labels that included pictograms and somewhat different wording than had been

specified in the Consent Decrees. The proposed rule requires the warning labels to be in English. [10]

Like the Consent Decrees, the proposed rule requires a general warning label, an age recommendation warning label, a passenger warning label and a tire pressure/overloading label (or labels). All of the warning labels must display the safety alert symbol in accordance with section 4.1 of ANSI Z535.4-2002, *American National Standard for Product Safety Signs and Labels*, and the word "WARNING" in capital letters. The format for all of the labels must be consistent with the ANSI Z535.4-2002 standard. The proposed rule requires the same location for the single-rider ATVs as was required by the Consent Decrees.

The proposed rule specifies statements for these warning labels and requires that the warning labels provide these, or substantially equivalent, statements. This should enable provision of the vital safety information but allow some flexibility to manufacturers who are using labels that are consistent with, but not identical to, the Consent Decree labels. [10]

General warning label. The proposed rule requires a general warning label that contains the same statements, or substantially equivalent ones, as the general warning label required by the Consent Decrees. This label warns that ATVs can

be hazardous to operate and that severe injury or death can result if the operator does not follow instructions to: read the owners manual and all labels; never operate the ATV without proper instruction; never carry a passenger; never operate the ATV on paved surfaces or on public roads; always wear a helmet and protective clothing; never consume alcohol or drugs before or while operating ATVs; never operate the ATV at excessive speeds; and never attempt wheelies, jumps or other stunts. The proposed rule states that the warning statements may be arranged on the label to group the prohibited actions together and the required actions together. This is how many of the current general warning labels are arranged. The location is to be the same as specified in the Consent Decrees.

Age recommendation warning labels. The content of the age recommendation warning labels differs from the Consent Decree labels. The Commission's Human Factors staff concluded that the Consent Decree age labels for adult ATVs are vague about the nature of the hazard they are warning against and may not be as persuasive as they could be. The primary reasons for the age recommendations are children's lack of experience and, particularly, their immature judgment. If the reasons for the age recommendations are not explicitly described in the label, parents may rationalize why their children are exceptions to the

recommendations. Thus, the proposed rule requires the following, or substantially similar statement: "Even youth with ATV experience have immature judgment and should never drive an adult ATV." The proposed age recommendation label also differs from the Consent Decree label by directing the message to the supervising parents rather than to the child, who is likely to ignore it. Thus, the proposed rule requires the following, or substantially equivalent, statement: "Letting children under the age of 16 operate this ATV increases their risk of severe injury or death. NEVER let children under age 16 operate this ATV."

[10]

Passenger warning label. The proposed rule specifies different wording for the passenger warning label than the Consent Decrees required. The major distributors are currently using a passenger label that differs from the Consent Decrees. As with the general warning label, they asked for and received approval from the Commission for a different passenger label. Both the current label and the Consent Decree label identify that the hazard caused by a passenger is that the ATV may go out of control, but the labels do not state how the presence of a passenger can lead to loss of control. To address this, the proposed standard requires the following, or substantially similar, statement: "Passengers can affect ATV balance and

DRAFT 5/30/06

steering. The resulting loss of control can cause SEVERE INJURY or DEATH." The proposed standard also requires the statement (or a substantially similar one): "NEVER ride on this ATV as a passenger." The proposed language inserts the phrase "on this ATV" because, with the development of tandem ATVs, some ATVs are intended to carry passengers. [10]

Tire pressure and overloading label(s). Like the Consent Decrees, the proposed standard allows the option of having the tire pressure warning and the overloading warning in separate warning labels or combined into one label. The proposed content of the label(s) is the same as specified in the Consent Decrees.

Label durability. The proposed rule requires that all of the warning labels must meet the durability requirements of Underwriters Laboratories Standard UL 969, fourth edition, October 3, 1995. This should ensure that the labels will remain on the ATVs and legible for operators to see.

Discretionary warning labels. The proposed standard allows manufacturers to display additional warning labels on ATVs so long as they are consistent with ANSI Z535.4-2002, *American National Standard for Product Safety Signs and Labels* ANSI Z535.4 (2002) and are affixed to the ATV in an appropriate location that does not detract from the required warning labels. [10]

Hangtags. Like the Consent Decrees, the proposed standard requires that certain hangtags be present on the ATV at the point of sale. The hangtags must provide the contents of the general warning label, a statement that the hangtag is not to be removed before sale, and a statement directing the purchaser to check with the ATV dealer about state or local laws concerning ATVs. The hangtags must be conspicuous and must be at least 4 by 6 inches.

Age acknowledgement form. The proposed rule requires that before the sales transaction, the ATV retailer must provide the purchaser with an age acknowledgement form, the content of which is specified in the proposed rule. The form tells the purchaser that the ATV he/she is considering is for adults and that children have immature judgment and should never drive an adult ATV. The form states the number of children who have died and who have been injured on adult ATVs in each year since 2001 and informs the purchaser that youth ATVs are available. The retailer must require the purchaser to sign the acknowledgement form before the sales transaction; must provide the purchaser and manufacturer with a copy of the form; and must maintain the original for at least five years. The signed forms must be available for Commission inspection upon request.

The purpose of the age acknowledgment form is to ensure that everyone who purchases an adult ATV is aware that it is not intended to be ridden by anyone under 16 and that children can be severely injured or die when riding an adult ATV. The Commission has received comments from parents indicating that they were unaware of the hazard adult ATVs pose for children until their child became injured or killed while riding one. Even with the current warning labels on ATVs stating this hazard and with the LOU provisions that voluntarily continue the major distributors' agreement to follow the age guidelines of the Consent Decrees, apparently some consumers purchase adult ATVs without knowing that a child should not ride them. Requiring purchasers to sign a form which states the age recommendations will inform the purchaser of the risks to children riding adult ATVs and could influence them to prohibit children under 16 from riding one. [8&11]

Instructional/owners manuals. Like the Consent Decrees, the proposed rule requires that ATVs be provided with an instructional/owners manual. The proposed rule continues many of the Consent Decrees' requirements for the manuals. They must be written to convey information about the safe operation and maintenance of the ATV, be written plainly in language that is comprehensible to a 7th grader, and be consistent with other

required safety messages. The basic content of the manual is specified much as it was in the Consent Decrees. The proposed rule adds a requirement that the manuals be in English.

An introductory safety section must contain certain specified safety messages. This section concludes with CPSC's website and phone number, and the manufacturer must provide a contact number for the purchaser to obtain further ATV safety information. The manufacturer also must provide a phone number or email address for the owner to report any safety issues (this could be the same phone number). The section of the manual that describes proper operating procedures must include narrative text identifying potential hazards, possible consequences, and describing how to avoid or reduce the risk of those hazards. This text must also include relevant warning statements required by the standard. The manufacturer must retain a copy of the manual for each model for 5 years and make it available for CPSC inspection upon request.

Safety Video. The proposed rule requires the retailer to provide the purchaser with a safety video before the sales transaction is completed. The requirements for the safety video are substantially the same as those set out in the Consent Decrees. The video is to include the contents of the hang tag, the concept of knowing one's limitations when operating an ATV,

the importance of gradually progressing from basic to more complex maneuvers, and the importance of remaining alert while operating the ATV. The video must be made available to the purchaser in at least one commonly used format, such as VHS or DVD. The manufacturer must retain a copy of the video for 5 years and make it available for CPSC inspection upon request.

The Commission believes that providing the safety video is an extension of the safety messages specified in the warning labels and the instructional/owners manual. The video provides safety information through a readily accessible medium. It can impart more detailed safety information than a warning label can. A purchaser might be more inclined to watch a safety video shortly after purchasing an ATV than he/she would be to read the entire owner's manual with all of its safety information.

Instructional Training. The proposed rule requires ATV manufacturers to provide to purchasers a training course (at no cost) for the purchaser and each member of the purchaser's immediate family who meets the minimum age recommendation for the ATV that is being purchased. At the time of sale, the retailer must deliver to the purchaser a certificate which is valid for attendance at a training course that meets the requirements in the proposed rule. The retailer also must have the purchaser sign a form indicating that ATVs are complex

vehicles to drive and that he/she is aware that free training is available. The retailer must retain the original of the training disclosure form and provide the purchaser and the manufacturer each with a copy.

As discussed above, the Commission believes that training can play an important role in reducing ATV-related deaths and injuries. The curriculum specified in the proposed rule is similar to training that is currently offered by SVIA. It includes instruction on the maneuvers necessary for operation of the ATV and information about behaviors to avoid in order to reduce the rider's risk of injury. The course must include classroom, field and trail activities. The course content must include information on ATV-related deaths and injuries; the role of safety equipment; rider responsibilities and safety messages; identifying displays and controls on the ATV itself; recognizing one's limitations while driving; evaluating a variety of situations to predict a proper course of action, including terrain obstacles and behavior of other riders; demonstrating successful learning of riding skills, including starting, stopping, and negotiating turns of all types; stopping in a turn; emergency braking; negotiating full-track and partial-track obstacles; driving up hills; and combining skills together in a non-predictable manner. No course duration is specified,

but it must be sufficient to cover all of the topics outlined in the proposed rule and to allow for students to individually master the riding skills covered in the course and to allow for written and riding skills tests. [12]

Recordkeeping, testing and certification. The proposed rule requires manufacturers to provide near the VIN or PIN number a statement certifying that the ATV meets the requirements of the standard. The manufacturer must perform, or cause to be performed, tests sufficient to demonstrate on an objectively reasonable basis that each ATV produced by the manufacturer meets the mechanical operation requirements of the proposed rule (sections 1410.5 through 1410.9). (This requirement is not intended to mandate testing of every ATV of a particular model.)

The proposed rule requires ATV manufacturers (including importers) to keep records sufficient to show that each ATV the manufacturer produces meets the requirements of the proposed standard. The records must be in English and must be kept at a U.S. location for five years after the manufacturer ceases production of that model. Retailers must keep records of the age recommendations acknowledgment form and the training acknowledgment form for five years after the purchase.

3. Requirements for Tandem ATVs

a. Background

Tandem ATVs are a relatively recent development. The Consent Decrees did not contemplate ATVs designed for more than one rider. The ANSI/SVIA-1-2001 standard does not cover tandem ATVs. However, in 2002 the International 2-Up ATV Manufacturers Association (I2AMA) began working on a voluntary standard for tandems, which subsequently became a draft ANSI voluntary standard, ANSI/I2AMA-1-XXXX, *Draft American National Standard for Four Wheel, Two Person, All-Terrain Vehicles Equipment, Configuration, Performance, Safety Information and Training Requirements*. Recently, I2AMA agreed to suspend its development of a tandem standard and will instead work with SVIA to include tandem ATVs in the existing ANSI/SVIA standard. [5]

The Commission covers tandem ATVs in its proposed standard for adult ATVs. Most of the requirements for single rider ATVs also apply to tandems. A few provisions in the equipment and configuration requirements and the information requirements are different in order to make them appropriate for tandems. The certification, testing and recordkeeping requirements specified above also apply to tandem ATVs.

b. Equipment and Configuration Requirements

Most of the proposed equipment and configuration requirements for single rider ATVs also apply to tandem ATVs.

The proposed standard for tandems states requirements for the passenger environment, and modifies the single rider requirements for the operator and passenger foot environment to suit tandem ATVs. The proposed tandem standard also adds requirements for passenger handholds. Two headlights and two tail lights are required for tandem ATVs that are wider than 1500 mm. These proposed requirements are based on the draft voluntary standard for tandem ATVs and additional information provided by letter from the SVIA of May 19, 2006. [5]

The proposed pitch stability requirements are different for tandem ATVs than for single rider ATVs. The pitch stability for single rider ATVs is based on the longitudinal tilt angle of a vehicle *without* an operator. However, the pitch stability for tandem ATVs is based on the tilt angle of a vehicle *with* an operator and passenger (simulated loads). The proposed requirements for tandem ATVs adopt the tilt table method and minimum tilt angle specified in the ANSI draft standard for tandem ATVs. A tandem ATV with simulated operator and passenger weights must reach a minimum of 36 degrees in the longitudinal direction on a tilt table before lift-off of both uppermost tires occur. Lift-off of a tire occurs when a strip of 20-gauge steel can be pulled from underneath the tire with a force of 9 N (2 lbf) or less. [5]

c. Information Requirements

Most of the information requirements discussed above for single rider ATVs also apply to tandem ATVs. However, there are a few differences. The general warning label proposed for tandem ATVs omits the warning about carrying a passenger. The passenger warning label is completely different from the passenger warning label of single rider ATVs. It states "Never carry more than 1 passenger," and states the following recommended hazard avoidance behaviors: "Never carry a passenger too small to firmly plant his/her feet on the footrests and to securely grab the handles; never allow a passenger to sit in a location other than the passenger seat; and never carry a passenger who is not securely grasping the grip handles at all times." [10]

The location required for the passenger warning label for tandem ATVs is also different from the location required for the single rider ATV. Because the general warning label required by the proposed standard no longer has any warnings about passengers, the passenger warning label should have greater visibility. Therefore, the proposed rule requires it to be affixed to the front fender of the tandem adjacent to the general warning label, so that it can be easily read by the

operator when seated on the ATV in the proper operating position. [10]

The hangtag must provide the contents of the general warning label required for tandems rather than the one required for single rider ATVs. The instructional/owners manual also must have a different statement about passengers. It must state the following (or substantially equivalent): "NEVER CARRY MORE THAN ONE PASSENGER. This ATV has been designed specifically to carry one passenger." [10]

4. Requirements for Youth ATVs

a. General

As discussed in section E above, the Commission is proposing three categories of youth ATVs based on maximum speed. Many of the proposed requirements for youth ATVs are similar to those for adult ATVs and the ANSI/SVIA-1-2001 voluntary standard. Because the FHSA, which provides authority for the proposed youth standard, allows design standards, some of the provisions of the proposed youth standard are phrased more closely to the ANSI/SVIA-1-2001 standard than the comparable adult standard provisions.

A youth ATV is defined as an ATV that is intended for use by an operator less than 16 years of age. A Junior ATV is a youth ATV intended for use by an operator at least 6 years old.

A Pre-teen ATV is a youth ATV intended for use by an operator at least 9 years old. And a Teen ATV is a youth ATV intended for use by an operator at least 12 years old.

b. Equipment and Configuration Requirements

With the exception of lighting, maximum speed capability, and the requirement for automatic transmission, the proposed equipment and configuration requirements for youth ATVs are essentially the same as those for adult single rider ATVs, which are expressed as performance requirements.

Lighting. The proposed youth standard requires all youth ATVs to have at least one stop lamp, and it prohibits any headlamp or forward-facing day-time running lights. The ANSI/SVIA-1-2001 standard prohibits both headlamps and tail lamps and is silent about running lights. [7]

The Commission believes that youth ATVs should have stop lamps to alert a follower to the deceleration of a lead vehicle. The Commission believes it is also appropriate to allow (but not require) tail lamps for youth ATVs. Both of these types of lights could increase the ability of other ATVs to see a youth ATV, but they would not improve the ability of the youth ATV rider to operate the ATV at night. It is the concern that children may be encouraged to ride ATVs at night that is the basis for the proposed rule's prohibition of headlamps and

daytime running lights. Although the purpose of daytime running lights is to make the vehicle more conspicuous to other drivers rather than to illuminate the driver's path, the Commission is concerned that parents and children may have difficulty distinguishing between a daytime running light and a headlamp. This may encourage a child to ride at night. Thus, the proposed standard for youth ATVs allows daytime running lights only if they are not forward facing. This should increase the conspicuity of the ATV without providing forward illumination that could encourage night riding. [7]

Maximum speed capability. As discussed above, the proposed rule establishes maximum speeds for three categories of youth ATVs. Junior ATVs, which are intended for children age 6 and older, must have a maximum speed capability of 10 mph. Pre-teen ATVs, which are intended for children age 9 and older, must have a maximum speed capability of 15 mph. And Teen ATVs, intended for children age 12 and older, must have a maximum speed of 30 mph. In addition to placing limits on the maximum speed capability of the ATV, the proposed youth standard also requires speed limiting devices for Pre-teen and Teen ATVs. The maximum speed allowed for a Pre-teen ATV with a speed limiting device is 10 mph and the maximum restricted speed allowed for a Teen ATV is 15 mph. The youth ATVs requiring speed limiting

devices must be delivered to the purchaser with the speed limiting device adjusted to limit the maximum speed to the lowest setting specified for each category of youth ATV. The proposed rule requires the simultaneous use of two different tools for the speed limiting devices to be adjusted or removed. This requirement is to make the devices more difficult to remove and thus discourage children from removing them without the participation of an adult. [5&6]

Although the proposed rule creates three categories of youth ATVs instead of the current two categories, the proposal retains the current maximum unrestricted speed of 30 mph for youth ATVs. The combination of defining youth ATVs only by their maximum speed capability (rather than engine size) while retaining the maximum speed currently in place should allow manufacturers to develop ATVs with larger frames and somewhat more powerful engines while still maintaining the safety of the current speed limitations. Consequently, provided a manufacturer committed to the speed limitations of this proposed youth ATV standard, the Commission would not oppose a modification to a LOU to delete the engine size limitation.

Automatic transmission. As discussed above, the proposed rule requires that all youth ATVs have automatic transmissions.

The operation of an ATV is complex for a child even without the added activity of changing gears. [6]

c. Information Requirements

The requirements for labels, hangtags, instructional/owners manuals, safety video, and training in the proposed youth ATV standard are essentially the same as those in the proposed adult standard. However, there are some differences in wording where appropriate.

Labels. As with the warning labels for adult ATVs, the format for all required warning labels for youth ATVs must be consistent with the ANSI Z535.4-2002 standard. The required location for all of the youth warning labels is the same as required for adult single rider ATVs. The contents of the general warning label, the passenger warning label, and the tire pressure and overloading label(s) are the same as required for adult single rider ATVs. The contents of the age recommendation labels differ slightly for each category of youth ATV. The age recommendation label for the Junior ATV must display the safety alert symbol and the word "WARNING" in capital letters. It must also contain a circle with a slash through it and within the circle the words "UNDER 6." The proposed rule requires that below the circle must be the following, or substantially equivalent, statements: "Operation of this ATV by children under

the age of 6 increases the risk of severe injury or death.

Adult supervision required for children under 16. Never let children under 6 operate this ATV." The age recommendation labels for the Pre-teen and Teen ATVS are similar, but the ages 9 and 12, respectively, are inserted instead of the age 6.

[10]

Hangtags. The proposed rule requirements for hangtags are similar to those in the proposed adult single rider standard. However, in addition to the statements required there, the youth ATV hangtag must also state: "Even though a child is of the recommended age to operate a particular size ATV, not all children have the strength, skills, or judgment needed to operate an ATV safely, and parents should, therefore, supervise their child's operation of the ATV at all times." [10]

Age acknowledgment. The proposed youth ATV standard also requires the retailer to get the purchaser's signature on an age acknowledgment form before the sales transaction. However, the required acknowledgment form is different from the adult standard. The form states the age categories and corresponding speed range. It advises the purchaser to buy an ATV that fits his/her child or teen, to use the speed limiter while the child is developing skills on the ATV, and to always supervise his/her child or teen. [6]

Instructional/owners manuals. The proposed youth standard's requirements for owners manuals are essentially the same as the requirements for adult single rider ATVs. However, statements concerning children's use of ATVs have been modified or added. The manual must contain an introductory notice to parents emphasizing that ATVs are not toys and that it is important for children to understand the manual's instructions and warnings. The introductory section must contain the following statement: "Children differ in skills, physical abilities, and judgment. Some children may not be able to operate an ATV safely. Parents should supervise their children's use of the ATV at all times." [10]

Safety video and training. Requirements concerning the safety video and training are the same in the proposed youth standard as in the proposed adult ATV standard.

5. Ban of Three-Wheeled ATVs

The Consent Decrees prohibited the ATV distributors who signed the Consent Decrees from distributing or selling three-wheeled ATVs. In the LOUs, the major distributors agreed to continue to refrain from selling three-wheeled ATVs. None of them currently sell them (although three-wheeled ATVs that pre-date the Consent Decrees are still in use and could continue to be used if a ban is finally adopted). However, newer entrants

to the ATV market have not made such agreements with the Commission.

The Commission's Office of Compliance has found that three-wheeled vehicles are being advertised and marketed as ATVs for sale in the United States. Compliance staff has identified three importers who have sold a recreational vehicle that is essentially a cross between a traditional ATV and a dirt bike, and would meet the proposed rule's definition of an ATV. All three importers use the Internet as the retail location for this product. They refer to it as a three-wheeled ATV. The price ranges from \$350.00 to \$380.00, plus shipping. All three importers are selling this product with a 49cc engine displacement. [14]

In addition, two styles of an all terrain three-wheeled golf scooter are being sold on the Internet and at golf supply stores. Both of these styles would meet the proposed rule's definition of an ATV.

The presence of these three-wheeled vehicles on the market indicates that the current LOU provisions, which continue the stop sale provision in the Consent Decrees, are not sufficient to keep new three-wheeled ATVs from entering the market. As discussed earlier, the newer entrant importers have been increasing their proportion of the market for ATVs sold in the

U.S. This could mean increasing availability of these types of three-wheeled ATVs. [4]

Analysis of Commission data indicates that the risk of injury associated with three-wheeled ATVs is substantially higher than with four-wheeled ATVs. A recent risk analysis, based on injuries reported through the CPSC's National Electronic Injury Surveillance System ("NEISS") and a parallel survey of the general population of ATV drivers, found that the risk of a hospital emergency department treated injury on a three-wheeled ATV was about 3.1 (95% confidence interval, 1.5 times to 6.4 times) times the risk on a similar four-wheeled ATV. As explained in the Preliminary Regulatory Analysis, the staff estimates the expected difference in non-fatal injury costs between three- and four-wheeled ATVs to be about \$3,045 per ATV annually. This means that over the expected 9 year life of an ATV, the present value of the injury cost difference would be about \$23,700. Even a lower bound estimate for the injury cost differential comes to a difference of \$6,839 over the life of the product. The injury cost difference would be offset somewhat by the lower retail costs of a three-wheeled ATV compared to a four-wheeled ATV. Accounting for this, the total costs associated with three-wheeled ATVs (including both the injury costs and the costs of purchasing the ATV) might amount

to about \$23,400 (\$23,700 in injury costs less \$300 in retail costs) more than the costs of a similar four-wheeled ATV (over its useful product life). At the lower bound level, the difference would amount to about \$6,530. [8]

Although the Commission cannot quantitatively estimate the utility of a three-wheeled ATV, available evidence suggests that the utility differential between a three-wheeled ATV and a four-wheeled ATV, for most people, is minimal. In the 1980's, before the Consent Decrees, four-wheeled ATVs were steadily increasing their market share, so that by 1986, 80% of ATVs sold were four-wheeled models. Moreover, after the manufacturers agreed to stop selling three-wheeled ATVs pursuant to the Consent Decrees, the market price of used three-wheeled ATVs declined relative to four-wheeled models. This indicates that most consumers did not value three-wheeled ATVs significantly more than four-wheeled ATVs. [8]

At this point, it seems unlikely that any feasible standard could be developed for three-wheeled ATVs. As the Engineering staff notes, three-wheeled ATVs are less stable than four-wheeled ATVs and require far more active rider input to steer properly. Although many technical factors make a four-wheeled ATV more dynamically stable than a three-wheeled ATV, one of the largest factors is the fourth wheel. Given the inherent

difference in vehicle configuration, the Commission does not believe that it is feasible to develop a performance standard for three-wheeled ATVs that would improve their stability performance to the level of a four-wheeled ATV. [5]

H. Response to Comments on the ANPR

As discussed above, the Commission published an ANPR in the *Federal Register* on October 14, 2005, 70 FR 60031. The Commission received 165 comments; one of those comments was a form letter, copies of which were submitted by about 1,500 consumers. Among those who sent comments to the Commission were ATV Safety Institute instructors; a state senator; ATV riders; parents and relatives of riders; parents, relatives, and friends of fatality and injury victims; consumers; medical professionals; consumer organizations; ATV industry associations; employees of the ATV industry; the Centers for Disease Control and Prevention; and students at a U.S. university.

The issues that were raised most frequently concerned the importance of training and safety education; state and local laws and enforcement; the use of protective gear; age/size guidelines, the proper fit of a child on an ATV, and a transitional vehicle; the need to provide ATV purchasers with ATV-related death and injury statistics; ATV design; and

parental rights and responsibilities. Other comments provided ATV-related injury and fatality statistics for specific states, regions, and hospitals. Some comments stated a position on the petition that was submitted in 2002 by the CFA and eight other groups. Another issue raised in a handful of comments was the non-recreational use of ATVs and the marketing of ATVs for that purpose.

Each of these issues, with the Commission's response, is summarized below. Many of the issues raised in the comments are discussed in more detail in the staff's input memoranda listed at the end of this notice.

Training

Comment. Many comments expressed the importance of training for safe ATV driving. Some comments spoke about training in general being important, while a few others suggested that training should be mandated, that training should be required before purchase of an ATV, or that training should be free of charge to all ATV riders.

Response. CPSC agrees that formal hands-on training teaches drivers how the ATV responds in situations that are typically encountered. CPSC believes that ATV training is important because, as mentioned in the memo "ATV Training" from the Division of Human Factors, operating an ATV seems

deceptively easy; steering controls are similar to a bicycle's, and the throttle is generally lever-operated with the thumb. ATVs, however, are high-speed motorized vehicles that require repeated practice to drive proficiently. In addition, riding an ATV is "rider-active," that is, the rider must actively shift his or her body to maintain proper control of the vehicle. It takes repeated practice to become a proficient driver. Formal training may act as a surrogate for experience because it exposes new ATV drivers to situations they will encounter while riding off-road and teaches them the proper driving behavior to navigate those situations.

As discussed above, to address the issue of training, CPSC is proposing that retailers of ATVs provide to every purchaser of an ATV a training certificate that would offer free hands-on training to members of the purchaser's immediate family. The course would include classroom, field, and trail activities, and a means for the student to demonstrate skills.

State and Local Laws and Enforcement

Comment. Many comments reflected on the role of states and localities in addressing the risks associated with ATVs. Some commenters expressed the need to enact state legislation, while others expressed the need for the states to clarify and enforce the laws that already are in place. Some commenters called for

ATV licensing, just as automobile drivers have driver's licenses. Others suggested fines for riding on public roads, as well as sales taxes or city taxes on ATVs. Some commenters felt that more laws are not the answer because they still will not cause irresponsible drivers to drive safely. One commenter suggested that state laws should set minimum age limits for ATV riders and require licensing, registration, training, safety equipment, and prohibit passengers, while another commenter suggested that Congressional action should be taken to provide financial incentives for states to adopt safer ATV laws. Other commenters asked that CPSC join the ATV companies and other interested parties in actively supporting enactment of comprehensive ATV safety legislation in states where it is under consideration. A state senator from Minnesota expressed opposition to any federal regulation that "removes the state as the primary regulatory mechanism" for ATVs. Other commenters wrote about having graduated licensing of ATV drivers as some states have for automobiles.

Response. CPSC believes that states and localities have a critical role to play in any strategy to address the risk of injury and death associated with ATVs. Legislative activity, or interest in such activity, has been on the increase in the states. As noted in the staff's briefing memorandum, the staff

suggests that the Commission establish an online state data resource bank for use by those who might want to pursue legislation or other ATV safety-related actions.

Helmets and the Use of Protective Gear

Comment. Some commenters noted that the use of helmets and protective gear is important in reducing deaths and injuries. One commenter cited CPSC staff research that suggests that between 42 and 64 percent of fatalities and hospitalized injuries involving the head "could have been averted by helmet use in cases where a helmet was not being worn." Others mentioned that ATV riders and parents of riders need to know the importance of helmet use, while another commenter suggested that the helmet should be "required to be thrown in as part of the package."

Response. CPSC has always emphasized the importance of using helmets and other protective safety gear. As noted in the briefing package, CPSC staff encourages retailers to co-merchandise ATV safety gear, particularly helmets, alongside ATVs. The importance of wearing helmets and safety gear is one of the messages in the proposed rule; the message would be required on the general warning label and in the owner's manual. Wearing suitable equipment also is included as an element in the required training course.

Age/Size Guidelines, Proper Fit, and Transitional Vehicle

Comment. Many commenters addressed the current age/size guidelines and the importance of finding a "right fit" for a child who rides an ATV; they also supported or opposed a transitional vehicle. Commenters noted the difficulty of children being able to get training when they were on an adult ATV; others said that the current CPSC guidelines matching engine size to age are too narrow in focus. One commenter suggested focusing less on the age of the rider and more on size, weight, and experience. Another commenter pointed out that the market now has some mid-sized ATVs and that they are safer for a child to ride than the smaller 90cc ATVs, while another suggested that children ages 12 to 15 years old should be able to ride up to a 250cc 4-stroke ATV. Other commenters pointed out that the age restriction actually leads to a safety problem because riding an undersized ATV is as much a safety concern as riding an oversized ATV. A few commenters mentioned that being able to adjust the throttle limits was a particularly useful feature as children grow physically and learn to ride.

With respect to a transitional vehicle, many commenters expressed opposition and stated that any proposal to put a child on an ATV larger than 90cc should be rejected, that this would be a step backward, and it would put children at an even greater

risk of death and injury. Commenters who were in opposition to a transitional vehicle seemed to equate a transitional vehicle as one that was heavier, larger and faster.

Response. As discussed in section E of this notice and in the briefing memo, CPSC believes that speed, not engine size, is a more appropriate criterion for determining which ATVs should be recommended for children and youth under the age of 16. The proposed rule eliminates engine size as a category marker for distinguishing youth ATVs. In addition, all youth model ATVs will be required to have an automatic transmission, so that children can focus on mastering driving skills before learning to coordinate gear shifting with the many other skills involved in operating an ATV.

CPSC believes that limiting maximum speed is the most critical safety factor for youth ATV models. By eliminating the engine size restriction, manufacturers will be able to produce a variety of ATV models that meet speed restrictions but are more appropriately sized to account for the wide variation in physical dimensions of young people. By having the option of riding better-fitting ATVs that are not performance limited by undersized engines, CPSC believes that more youth will ride age-appropriate and speed-restricted ATVs rather than gravitating toward adult ATV models.

Disclosure of Death and Injury Data

Comment. Several comments expressed the belief that information about the risk of injury and death associated with riding ATVs, especially with regard to children riding adult ATVs, has not been available to prospective purchasers and that such information should be provided at the point of sale. One of these comments includes the 1,500 individuals who submitted the letters that are entered as comment 57.

Response. The proposed rule would require that ATV dealers provide purchasers of adult ATVs with a written statement that 1) clearly states that adult ATVs are not intended for use by children under the age of 16, and 2) gives consumers specific information about the possible injury consequences of allowing children to ride adult ATVs. The disclosure statement would be provided to purchasers prior to completion of the sale. Consumers would be required to sign the statement to acknowledge that they had been informed about the CPSC age guidelines for youth models and the risks associated with children riding adult ATVs. Similar disclosure forms would be provided to purchasers of youth ATVs; those forms would indicate the age of the child for which the youth model was designed.

ATV Design

Comment. Comments on ATV design ranged from the belief that deaths and injuries are operator error and not the result of the machine's design to some specific suggested design changes. One commenter said that manufacturers should not be required to significantly modify their designs for the sake of adding safety equipment, while a few others stated that ATVs should have a roll bar and safety belt. Other suggested design changes included: tags (license plates) on machines so they can be identified; make the ATVs two inches wider; provide a seat actuator which would turn the engine off if a passenger was on a single-person ATV; provide daytime running lights and headlights on ATVs. One commenter suggested that CPSC should determine the appropriate testing that needs to be done in order to assess dynamic stability, rollover propensity, and braking, suspension, and handling systems.

Response. CPSC staff notes in Tab G of the briefing package from the Directorate for Engineering Sciences that there are technical issues that would benefit from further testing and study. This work, however, will require time and the coordinated application of CPSC and private sector resources. CPSC believes that the most effective way to carry this out is through close, ongoing interaction with voluntary standards committees that are addressing ATVs in that regard.

With respect to lighting equipment, the proposed rule for adult ATVs would require at least one headlamp projecting a white light to the front of the ATV, at least one tail lamp projecting a red light to the rear and at least one stop lamp or combination tail/stop lamp. Daytime running lights would be allowed on adult ATVs.

All youth ATVs would be required to have at least one stop light. As discussed in section G.4.b above and in the briefing package, CPSC believes that riding ATVs at night is a significant risk factor for children and should be discouraged. Because headlamps or any forward-facing light on youth ATVs may encourage nighttime and unsupervised riding in challenging conditions, CPSC believes that these lights should not be allowed. Under the proposed rule, forward-facing daytime running lights for conspicuity would be prohibited on a youth ATV; but daytime running lights would be allowed on other parts of youth ATVs. A brake light would be required on youth ATVs.

Parental Rights and Responsibilities

Comment. Many comments focused on parental rights and responsibilities. For the most part, these comments expressed the belief that parents have the right and the responsibility to make decisions for their children and are the best judges of their children's abilities and skill levels. Other comments

stated that some parents have neglected supervising their children and that the rights of many should not be taken away because of the actions of a few.

Response. CPSC agrees that parents must play a critical role in supervising their children's use of ATVs. This includes decisions about the size of ATV their child /children should use and their child's riding behavior. As mentioned above, the proposed rule requires that information be provided to help parents in their decision-making. The mandatory labels for youth ATVs provide a notice to parents that children should ride only age-appropriate ATVs, while the hangtags and the owner's manual are required to include messages about the importance of supervision.

Injury and Fatality Statistics

Comment. Some comments included death and/or injury statistics for specific regions of the country, specific hospital emergency rooms, and specific states; some of the information was contained in articles that had been published in professional journals. A few commenters talked about the comparative risk of ATV riding and the risk associated with other activities. One commenter stated that overall ATV injury risk, as measured per vehicle in use (for all ages or for children) has been stable since the expiration of the Consent

DRAFT 5/30/06

Decreases in 1998 and that ATV-related fatality risk (for all ages or for children) has declined or remained stable since 1999.

Response. With respect to the comment that overall ATV injury risk has been stable since the expiration of the Consent Decrees, the Directorate for Epidemiology notes that the *2004 Annual Report of ATV Deaths and Injuries* compared the 2004 injury risk to the 2001 injury risk and concluded that there was no statistically significant trend in injury risk, positive or negative, from 2001 to 2004. However, the report noted that the statistical testing of differences in injury risk prior to 2001 is not possible due to the unavailability of measures of variation for risk estimates during those years.

With respect to fatality risk, CPSC staff notes that, because data collection was incomplete for the years 2002 - 2004 at the time of the most recent report, no conclusions could be made about fatality risk for those years. The commenter's assertion that fatality risk has declined or remained stable does not appear to be the result of a statistical test, since no measures of variation are provided in the commenter's report. CPSC staff has not performed statistical testing on risk of death for similar reasons.

As noted in section D of this notice and in the briefing memo, there were an estimated 136,100 emergency room-treated

DRAFT 5/30/06

injuries for all ages in 2004. This was an increase of 10,600 from 2003. In 2003, there were an estimated 740 deaths associated with ATVs. Twenty-six percent of the reported deaths in 2001 were of children under 16 years old.

Ban the Sale of Adult-Size ATVs for the Use of Children Under 16 Years Old

Comment. Several comments were submitted that specifically expressed a position on the CFA petition to ban the sale of adult sized vehicles for use by children under 16 years old. This included the 1,500 form letters submitted as comment 57, which expressed the opinion (without mentioning the petition) that the sale or rental of adult-sized ATVs to anyone under 16 should be prohibited. A few letters expressed opposition to the petition.

Response. The petition to ban the sale of adult ATVs for the use of children under 16 years old was the focus of the staff's 2005 briefing package. The staff comments on the petition are contained in that document.

Non-Recreational Use of ATVs, ATV Marketing

Comment. A few commenters mentioned the non-recreational aspect of ATVs, the perceived need to limit their marketing to farm or utility use alone, and that the advertised recreational use of ATVs is not a practical or safe form of activity. Some of

these commenters expressed concern about the injuries and deaths associated with the use of ATVs in farm or utility work.

Response. CPSC believes the issue of how ATVs are marketed as recreational or utility vehicles is better addressed by the Federal Trade Commission.

I. Preliminary Regulatory Analysis

The Commission is issuing a proposed rule under sections 7, 8 and 9 of the CPSA and section 2(q)(1)(A) of the FHSA. Both the CPSA and FHSA require that the Commission prepare a preliminary regulatory analysis for these proposed rules and that it be published with the final rule. 15 U.S.C. 2058(c) and id. 1262(h). The following discussion is extracted from the staff's memo, "*All Terrain Vehicle Mandatory Standard: Preliminary Regulatory Analysis.*"

1. Introduction

The main provisions of the ATV proposed rules include 1) mechanical requirements for ATVs, 2) a ban on the sale of new three-wheel ATVs, 3) speed limitations on ATVs intended for children under 16 years of age, 4) requirements for warnings and recommendations to be provided to purchasers of new ATVs through hang tags, labels, videos, and owner's manuals, 5) requirements for a disclosure statement to be provided to purchasers warning

against the use of adult ATVs by children, 6) a requirement that all purchasers of new ATVs be offered free safety training, and 7) requirements that purchasers of new ATVs be provided with a means for reporting safety related complaints to the manufacturer and the CPSC.

Many of the provisions of the proposed rules are based on an existing voluntary standard (ANSI-SVIA-1-2001), provisions of the 1988 Consent Decrees, and the current LOUs with a number of manufacturers that may account for as much as 90 percent of the U.S. market for ATVs. Consequently, the Commission believes that most ATVs are already in substantial conformance with most of the provisions of the proposed rule. Some of the smaller manufacturers, and some of the recent entrants into the market may also be in conformance with some (or most) of the provisions of the proposed rule. Promulgating a mandatory rule will ensure that manufacturers that are already conforming continue to do so, and that any manufacturer that does not now conform can be brought into conformance.

Below is a preliminary regulatory analysis of the proposed rule, including a description of the potential costs and potential benefits. Each element of the proposed rule is discussed separately. For some elements, the benefits and costs cannot be quantified in monetary terms. Where this is the case,

the potential costs and benefits are described and discussed conceptually.

2. Products Covered

An ATV is a motorized vehicle with 3 or 4 low-pressure tires (less than 10 pounds per square inch) that is intended for off-road use. The seat is designed to be straddled by the operator. Handlebars are used for steering control. Most ATVs are intended to carry only one person: the operator. More recently, some tandem ATVs have been introduced that are designed to carry a passenger in addition to the operator. ATVs can be used for purposes of recreation, sport or utility.

If promulgated in final, the proposed rule will apply to all ATVs sold in the United States on or after the effective date of the rule (180 days after publication of a final rule). It will not apply to ATVs that were sold prior to the effective date.

3. ATV Manufacturers, Numbers in Use, and Sales

The ATV market has grown substantially since Honda introduced the first ATV in 1969. The Specialty Vehicle Institute of America (SVIA) estimated that in 2005, there were 6.9 million ATVs in use. While most ATVs are used for recreational activities, ATVs can also be used for non-recreational activities, such as farm or ranch work or for

transportation to remote work sites that are not accessible on paved roads.

The number of new ATVs sold annually has increased substantially in the last decade. In 1995, an estimated 293,000 ATVs were sold in the US, almost all by 7 North American distributors (Honda, Kawasaki, Yamaha, Suzuki, Polaris, Bombardier, and Arctic Cat). In 2005, an estimated 921,000 ATVs were sold in the US. An estimated 10 percent (or 92,000) were imported. The share of imports is expected to continue to increase in the future.

With the substantial increase in ATV sales has come a substantial increase in the number of manufacturers supplying ATVs to the US market. In 1995, virtually all the ATVs were supplied by 7 domestic distributors; by 2006, the staff had identified at least 87 firms supplying ATVs to the U.S. market.

Generally, the largest manufacturers sell their ATVs through franchised dealers. Importers will typically import ATVs from a foreign manufacturer and then market them to various retailers. Some importers may sell directly to consumers. Some imported ATVs are sold directly to consumers through import brokers who never actually have physical possession of the ATV. ATVs are also offered for sale through the internet.

Most ATV retailers sell products in addition to ATVs. For example, many ATV dealers also sell motorcycles, scooters, personal water craft, and sometimes farm equipment. Some ATVs are sold by other types of retailers, such as aftermarket automotive parts and accessories dealers.

The median retail price of an ATV from the domestic manufacturers is about \$5,150 (range \$2,000 to \$8,000). The median price for youth ATVs is about \$2,300 (range \$1,800 to \$2,500). The retail prices of imports can be substantially lower.

4. Benefits and Costs of the Proposed Rule

Mechanical Requirements. The proposed rule incorporates a number of mechanical requirements from the current voluntary standard for ATVs (ANSI/SVIA-1-2001). The specific requirements and rationales are described and discussed in more detail above. They include, among other things, requirements for service and parking brakes, mechanical suspension, pitch stability, handlebars, and the operator foot environment. There are also some additional design requirements for youth models covering items such as the location of brake and throttle controls.

The proposed rule differs from ANSI/SVIA-1-2001 with regard to some lighting requirements. The proposed standard would require stop lamps on all ATVs, including youth models (i.e.,

those intended for children under the age of 16). ANSI/SVIA-1-2001 allows, but does not require stop lamps on adult and youth ATVs. Stop lamps can reduce the risk of a collision by visibly signaling to a following ATV that an ATV ahead of it is decelerating. CPSC believes that while most adult ATVs are already equipped with stop lamps, most youth ATVs do not currently have stop lamps.

The proposed rule would require that youth ATVs be equipped with automatic transmissions so that the operator does not have to either engage a clutch or select the proper gear in order for the engine to maintain its optimum speed. This is a change from the voluntary standard, which does not specify the type of transmission on youth ATVs.

Each provision of the mechanical requirements should reduce injury risks associated with ATVs. For example, the pitch stability requirement is intended to reduce the propensity of ATVs to tip rearward, which could injure the rider if he or she was thrown from the vehicle or the vehicle flipped and landed on the rider. The service and parking brake performance requirements are intended to ensure that brakes are at least adequate for stopping the vehicle and preventing the vehicle from rolling when it is left unattended. The requirement for automatic transmissions on youth ATVs could reduce injury risk

by reducing the number of tasks that inexperienced drivers must perform while driving an ATV.

Mandating these mechanical requirements would help ensure compliance with these minimum mechanical safety requirements and enhance the CPSC's ability to enforce the mechanical safety requirements at a time when many new manufacturers are entering the market. Conformance to ANSI/SVIA-1-2001 is voluntary.

Mandating these mechanical requirements would have a small initial impact on injury risk. The ATV manufacturers that have negotiated LOUs with the CPSC are already in conformance with the requirements of the voluntary mechanical standard, from which the requirements in the proposed rule were adapted. Some of the smaller manufacturers are also believed to be in conformance with the voluntary standard. In total, the firms that are already in substantial conformance probably account for more than 90 percent of ATVs now sold. However, mandating these requirements would ensure that those firms that do not now meet these minimum safety requirements will begin to do so. Moreover, as new firms enter the market, the presence of a mandatory standard that can be more easily enforced would make it more likely that new entrants comply with the mechanical safety requirements. Mandating these requirements should also help ensure that the risk of ATV-related injury due to ATVs that do

not meet the mechanical safety standards does not increase in the future.

Since many manufacturers already conform with the voluntary standard, the additional cost that will be incurred by manufacturers to meet the mechanical requirements of the proposal will be low. The cost to some may be limited to the cost of adding stop lamps to their youth ATVs. The cost of adding stop lamps to ATVs could amount to several dollars or more, especially on youth ATVs. Most adult ATVs are thought to already have stop lamps.

Additionally, some manufacturers will have to modify the transmissions on some youth ATV models so that they are fully automatic. Based on staff observations, most current youth ATV models are already equipped with automatic transmissions, especially those intended for children under the age of 12 years. The staff has identified some ATVs intended for children between 12 and 15 years of age that are equipped with automatic clutches, but not automatic transmissions. These ATVs would not meet the requirements of the proposed rule.

The fact that many youth ATVs are already equipped with automatic transmissions indicates that many consumers are willing to pay the additional cost of automatic transmissions for the additional safety, convenience, or driving ease that is

provided by automatic transmissions. However, the Commission has not been able to quantify the difference in cost between automatic transmissions and manual transmissions or between automatic transmissions and automatic clutches/manual transmissions.

The mechanical requirements are not expected to cause a substantial loss of utility for the rider. In fact, to the extent that the requirements prevent accidents, reduce downtime, make the ride more comfortable (e.g., the suspension requirements), and increase the functionality of the vehicles, most of the requirements could have a positive impact on rider utility.

The proposed rule would require manufacturers (including importers) to perform, or cause to be performed, testing sufficient to ensure, on an objectively reasonable basis, that each ATV conforms to the requirements in the proposed rule. The specified tests will require some time and equipment. If the tests are conducted at a facility where the required equipment is available and set up time for each test is kept to a minimum, it is possible that all of the tests could be conducted in one day (8 hours) or less. It is reasonable to assume that the person supervising the tests will be a senior mechanical engineer and that at least one other mechanical engineer will be

involved in conducting the tests. If the total labor costs were \$90 per hour, then the cost of conducting the tests would be about \$720 per model (8 hours x \$90).²

In addition to the labor cost, some accounting for the cost of equipment required for testing should also be made. Assuming that ATV manufacturers have the equipment easily available, it is probably reasonable to assume that the cost of the equipment used in the testing is perhaps about \$500. This could be thought of as the rental value of the equipment for a day of testing.

The testing must be documented and maintained for 5 years after the production of that model ceases. The information required for this documentation would be collected during the performance of the tests. However, this information might be reformatted and assembled into the final record after the testing is completed. Moreover, in the case of foreign manufacturers, this documentation will have to be provided to the U.S. based importer and it is the importer that will be required to maintain the records. This could add perhaps another \$100 to the cost of the testing and record keeping.

These estimates suggest that the full testing and recordkeeping costs of the proposed rule could be about \$1,320

² According to the U.S. Department of Labor, Bureau of Labor Statistics, the average wage for a Level 13 Mechanical Engineer was \$52.45 in July 2003. In this discussion \$90 is used to allow for the assistance of a less experienced engineer and inflation.

per model. Previously, CPSC staff had identified 131 different ATV models for the model year 2001 and 235 different ATV models for the year 2003. Given the significant increase in sales of ATVs in recent years, it is not unreasonable to believe that there might be 500 different ATV models today. Therefore, the full testing and recordkeeping costs could be \$660,000 per year, assuming models are changed annually.

Several ATV manufacturers conform to ANSI/SVIA-1-2001 and, therefore, should already be performing the testing called for in the proposed rule. The proposed rule will not impose additional testing burdens on these manufacturers. The staff estimates that these manufacturers account for at least 150 ATV models. Therefore, the testing and recordkeeping cost that could be attributed to the proposed rule that would not be incurred in the absence of the proposed rule, could be less than \$462,000 annually ($\$660,000 - 150 \times \$1,320$).

Ban on the Sale of New 3-Wheel ATVs. As part of the 1988 Consent Decrees, ATV manufacturers agreed not to sell any new 3-wheel ATVs, which had been shown to be less stable and more risky than their 4-wheel counterparts. As a result, until recently, no new 3-wheel ATVs have been marketed in the United States since the late 1980s. However, the CPSC Office of Compliance has found evidence on the internet that 3-wheel

vehicles that could be considered to be ATVs have recently been offered for sale to the public. Therefore, the proposed rule would formalize a ban on the sale of new 3-wheel ATVs. While formalizing the ban will not reduce ATV-related injuries significantly from their present levels, it will ensure that 3-wheel ATVs are not reintroduced into the U.S. market.

The justification for a ban on the sale of 3-wheel ATVs is based on the substantially higher expected injury costs associated with the ownership and use of 3-wheelers, relative to 4-wheelers, and the likelihood that these higher costs outweigh any additional utility that they may provide to their owners. We begin with a discussion of the costs associated with the ownership and use of 3-wheel and 4-wheel ATVs.

The real costs of ATVs include the expected injury costs associated with their use as well as their purchase price. A recent risk analysis, based on injuries reported through the CPSC National Electronic Injury Surveillance System (NEISS) and a parallel survey of the general population of ATV drivers, found that the risk of a hospital emergency department treated injury on a 3-wheel ATV was about 3.1 (95% confidence interval (CI), 1.5, 6.4) times the risk on a similar 4-wheel ATV.³

³ Gregory B. Rodgers and Prowpit Adler, "Risk Factors for All-Terrain Vehicle Injuries: A National Case-Control Study," American Journal of Epidemiology, Vol. 153, No. 11 (2001). Hereafter Cited "Rodgers and Adler (2001)."

These relative risk estimates can be used to estimate the expected difference in annual injury costs between 3-wheel and 4-wheel ATVs. In 2001, the societal cost of non-fatal ATV-related injuries was about \$1,876 per ATV in use. In 2001, 3-wheel ATVs made up about 14 percent of the ATVs in use. If we let $Cost_3$ and $Cost_4$ represent the expected annual non-fatal injury cost per 3-wheel and 4-wheel ATV in use respectively, then the expected annual injury cost per ATV can be expressed as

$$0.14(Cost_3) + 0.86(Cost_4) = \$1,876.$$

Since the risk of a non-fatal injury on 3-wheel ATVs is approximately 3.1 times that of a 4-wheel ATV, $Cost_3$ can be expressed in terms of $Cost_4$ (i.e., $Cost_3 = 3.1 * Cost_4$). Solving these equations yields $Cost_3 = \$4,494$ and $Cost_4 = \$1,450$. Therefore the expected difference in non-fatal injury costs between 3-wheel and 4-wheel ATVs is about \$3,045 per vehicle annually.⁴ If the expected life of an ATV is 9 years, the present value of this injury cost difference (at a 3 percent discount

⁴An analysis of fatal injury risks also suggested a higher relative risk on 3-wheel ATVs. However, because information regarding a key driver characteristic was missing, the difference in fatal injury risks was less amenable to quantification and, therefore, not included in the above analysis. It suggests however, that the cost differential between 3-wheel and 4-wheel ATVs estimated above could be low (see Gregory B. Rodgers, "Revisiting All-Terrain Vehicle Risks: Response to Critique," *Journal of Regulatory Economics*, Vol. 10 (September 1996)

rate) over the expected life of the product will come to about \$23,700.⁵

A lower bound estimate for the injury cost differential might be based on the lower 95 percent confidence bounds of the relative risk factors for 3-wheel ATVs described above, or 1.5 instead of 3.1. Based on these relative risk estimates, the non-fatal injury cost differential on a 3-wheel ATV would be about \$877 per year. Assuming a 9 year useful life and a 3 percent discount rate, this comes to a difference of \$6,830 over the life of an ATV.⁶

The injury cost differential would be offset somewhat by the lower retail costs of 3-wheel ATVs. Based on information from the late-1980s, when 3-wheel ATVs were still being produced, 3-wheeled ATVs cost about \$190 less than a similar 4-wheel model. This cost differential would probably amount to about \$300 in 2004 dollars.

Thus, the total costs associated with 3-wheeled ATVs (including both the injury costs and the costs of purchasing the ATV) might amount to about \$23,400 (\$23,700 in injury costs less \$300 in retail costs) more than the costs of a similar 4-wheel

⁵ This is a low estimate of the average life of an ATV. One analysis suggests that the expected life of an ATV could be 19 years (Statement of Ed Heiden of Heiden Associates at the Consumer Product Safety Commission West Virginia Public Field Hearing, Morgantown, West Virginia, 5 June 2003).

⁶ Even if a higher discount rate were used, the cost differences would be substantial. For example, if a 7 percent discount were used with the lower estimates of the relative risks, the expected cost difference over the life of an ATV would be \$5,713.

ATV (over its useful product life). At the lower bound level, the difference would amount to about \$6,530.

A ban of 3-wheel ATVs would therefore be beneficial (on average) if the average extra valuation (i.e., use value or utility) that individuals put on a 3-wheel ATV over a 4-wheel ATV is less than \$23,700 (or about \$6,530 at the lower bound) over the useful life of the product. Consequently, if the utility from a 4-wheel ATV is not substantially different from the utility from a 3-wheel ATV, the ban would be justified.

We cannot estimate the utility that individuals get from ATVs, and so we cannot say that the ban would be justified for all individuals. However, available evidence suggests that for most individuals, the utility differential is minimal. First, 4-wheel ATVs were growing in market share throughout the 1980s, even though their retail prices were marginally higher than similar 3-wheel ATVs. By 1986, for example, two years before the consent decrees became effective, about 80 percent of ATVs sold in the US had four wheels. Second, after the ATV manufacturers agreed to stop producing and selling 3-wheel ATVs as part of the consent decrees, the market price of used 3-wheel ATVs actually declined relative to the price of 4-wheel models.⁷

⁷ Gregory B. Rodgers, "All-Terrain Vehicles: Market Reaction to Risk Information," Economic Inquiry, Vol. 31, No. 1 (January 1993).

There was no evidence of a strong market reaction to the 3-wheel ATV stop-sale, such as bidding up the price of the increasingly scarce 3-wheelers that would suggest many consumers valued 3-wheel ATVs significantly more than they valued 4-wheel models.

Speed Limitations on ATVs Intended for Youths. The proposed rule would limit the maximum speeds of ATVs intended for children under the age of 16 years. *Teen ATVs* (i.e., those intended for riders between 12 and 15 years of age) would have a maximum unrestricted speed of 30 mph and a speed limiting device that can limit the maximum restricted speed to 15 mph. *Pre-Teen ATVs* (i.e., those intended for children between 9 and 11 years of age) would have a maximum unrestricted speed of 15 mph and a speed limiting device that can limit the maximum restricted speed to 10 mph. *Junior ATVs* (i.e., those intended for children between 6 and 8 years of age) would have a maximum speed of 10 mph. No ATVs would be recommended for children under the age of 6 years. All references to engine size, such as those in the LOUs, would be eliminated.

Based on an analysis by the CPSC Division of Human Factors (ESHF), speed - not engine size - is a more appropriate control variable for determining which ATVs should be recommended for children under age 16 years. In fact, limiting engine size could be counterproductive. There is some evidence

that limiting the power of youth models by controlling engine size can, in some circumstances, make ATV riding less safe. As one example, underpowered children's models have a greater potential for stalling when going uphill.

It is also likely that engine size restrictions discourage some people from purchasing appropriate ATVs for young riders. If the ATV engine lacks sufficient power for things such as acceleration or hill climbing, some young riders may resist riding these ATVs and instead ride adult ATVs. Additionally, the frame size of the current ATVs with less than 90 cc engines might not comfortably fit "large" children. Some adolescents between the ages of 12 and 14 are larger than some adults; these adolescents may resist using an ATV with a frame designed to fit a much smaller person. According to ESHF, "fitting the [ATV] frame anthropometrically to the user is one of the most important factors for youth ATVs. If the frame is too small, the youth will be discouraged from riding the ATV both physically and socially." This may explain, at least in part, the fact that relatively few children actually ride the youth models. Based on the 2001 exposure survey, only about 20 percent of children under age 16 years of age who drove ATVs drove youth models.

Based on these considerations, eliminating the engine size limitations from youth models may enhance safety. It might lead to some ATV manufacturers introducing a wider variety of youth models, including models with larger frames and more powerful engines. With larger frames and more power, it is possible that more young riders will be willing to accept ATVs with the recommended speed restrictions. It is also likely that more parents would be willing to purchase youth models with larger frames that could be used by children for a longer period of time without replacement. Moreover, increased acceptance of ATVs with the age-recommended speed restrictions could reduce the number of ATV-related injuries.⁸

Increasing the number of youth ATVs with larger frames could also increase safety by increasing the proportion of young ATV drivers that receive formal ATV safety training. Most formal ATV safety training programs, such as that run by the ATV Safety Institute, will not train children under the age of 16 unless they are riding an appropriate youth model. Therefore, children who do not have ATVs with less than 90cc engines cannot receive formal training. If simplifying the age recommendations for ATVs leads manufacturers to introduce more ATVs with the recommended

⁸ It should be noted that manufacturers are not now prohibited from producing youth ATVs on larger frames. However, increasing the options available to manufacturers in designing youth ATVs should increase the probability that manufacturers might manufacture youth ATVs in a wider range of sizes.

speed restrictions for young riders and, as a result, more children begin riding youth ATVs, it will be possible for more young riders to receive formal safety training. As discussed more fully below, formal training can act as a surrogate for experience and thereby reduce the risk of injury.

The speed limitations for ATVs intended for youths should not impose substantial additional costs on manufacturers because they are similar to those already in the voluntary standard (ANSI/SVIA-1-2001). Moreover, the speed limitations in the proposed standard are less restrictive than the requirements for youth ATVs specified in the LOUs, since they do not include the engine size limitations. Consequently, the Commission believes that this provision of the proposed standard increases the potential for safety in the form of reduced injuries and deaths, without imposing additional costs and burdens on manufacturers.⁹

Warnings and Safety Information to be Provided to Consumers. According to ESHF, hazard communications "are crucial for products with hazards that cannot be eliminated through design." The proposed rule requires ATV manufacturers, distributors, or dealers to provide several safety warnings to consumers. These will consist of labels or hang tags that, among

⁹ ANSI/SVIA-1-2001 does not have an age category that corresponds to "Junior ATV" in the draft proposed rules. CPSC staff believe that the "Junior ATV" market will be a very small segment of the ATV market.

other things, advise consumers of the age recommendations for ATVs, warn that it is unsafe to allow children to operate ATVs intended for adults or older children, and warn that it is unsafe to carry passengers on an ATV (with the exception of specially designed tandem ATVs). This information will also be required to be contained in the owner's manuals and in a video to be provided to each consumer.

The ATV manufacturers with the greatest share of the market are already conforming to this requirement, which is included in the LOUs negotiated with the major ATV manufacturers. Therefore, this provision will not impose any new costs on these manufacturers. For the manufacturers that are not now in conformance, the cost to bring themselves into conformance will be low on a per unit basis. The cost of designing, printing, and attaching a label or hang tag or adding pages in an owner's manual is low. Even for manufacturers with a very low sales volume, the cost of adding the required warnings will be probably no more than a few dollars per vehicle.

The major manufacturers are already providing the safety video and so the proposed standard will have no impact on their costs. For manufacturers that are not currently providing a safety video to their consumers the costs could be higher. The cost of duplicating a video or DVD is no more than a few

dollars. However, the cost of producing the safety video could be several thousand dollars. For a manufacturer or distributor with a low sales volume, this could be a more significant cost. The cost or impact could be lower if a third party video could be licensed or shared by many small manufacturers or distributors.

Manufacturers would also be required to keep a copy of the owner's manuals and the safety video for each model on file for at least 5 years. It is likely that many manufacturers would do this even in the absence of a mandatory rule. The storage costs of these items probably would not exceed \$10 per model. The cost could be lower since the same safety video would likely be used for all ATV models produced or imported by a manufacturer and could be used for several years. Owner's manuals also might cover more than one model.

The benefit of this provision is that it will ensure that all consumers receive some basic safety and hazard information regarding such things as the risk of children riding ATVs not appropriate for their age and carrying passengers on ATVs not designed for carrying passengers. Although this benefit cannot be quantified, the following example sheds some light on the potential impact. The risk of injury for riders under the age of 16 driving adult ATVs is about twice the risk of injury of those

who are driving age-appropriate ATVs.¹⁰ In 2001, the societal cost of ATV related injuries and fatalities involving children under the age of 16 was about \$3.6 billion. Therefore, although it is not known how effective these warnings are at reducing children from riding adult ATVs, if they reduced the number of children riding adult ATVs enough to reduce the number of ATV-related injuries to children (either by parents not allowing a child to drive an adult ATV or by purchasing an appropriate ATV for young riders) by even a small amount, the benefits of these warnings could exceed the costs. For example, if they reduced the injuries by only one-half of one percent, this would still amount to a benefit of \$25 over the life of an ATV.¹¹

Disclosure Statement to Consumers About the Risks to Children Riding Adult ATVs. The proposed rule would require that ATV retailers provide purchasers of adult ATVs a written statement that 1) clearly states adult ATVs are not intended for the use of children under the age of 16 and 2) provides the consumer with specific information on the possible injury consequences of allowing children to ride adult ATVs. A similar disclosure statement would be provided purchasers of youth ATVs

¹⁰ According to information provided by the CPSC Directorate for Epidemiology and included in the 2005 CPSC Briefing Package on ATVs (regarding Petition No. CP-02-4/HP-02-1, Request to Ban All-Terrain Vehicles Sold for Use by Children Under 16 Years Old), risk of injury to children under 16 driving adult ATVs was 18.6 per thousand drivers compared to 9.6 per thousand drivers for children driving youth ATVs.

¹¹ One-half of one percent of \$3.6 billion divided by the 5.6 million ATVs of all types in use in 2001 is \$3.21. Over the expected 9-year life of an ATV this comes to about \$25 discounted at 3 percent per year.

advising them to monitor their child's ATV driving to ensure that the child is capable of and does drive the ATV safely. This requirement is a direct response to the high risk of injury to children riding adult ATVs, and the comments of many parents (including some whose children died on adult ATVs) that they had never been warned of the risks. This disclosure would be provided to the purchaser and signed before the purchaser completes or signs other documents related to the sale, such as sales contracts or financing agreements. Consumers will be required to sign the statement to acknowledge that they were warned. Dealers would be required to keep the signed disclosure statement on file for at least 5 years after the purchase so that compliance with the requirement for the disclosure statement can be monitored. Dealers would also be required to send a copy of the signed disclosure statement to the manufacturer, who would also be required to keep the statement on file for at least 5 years after the purchase.

The benefits of the disclosure statement are twofold. First, it will help consumers make a more informed choice when they purchase a new ATV. Second, as suggested by the ESHF analysis, signing the document may discourage some purchasers from allowing children to ride their adult ATVs.¹² As shown in

¹² Smith (2006).

the above discussion of "Warnings," the injury costs associated with children riding adult ATVs are significantly higher than the injury costs associated with children riding age-appropriate ATVs. Even if the disclosure statement could reduce the number of injuries by one-half of one percent, it could still produce a benefit of \$25 over the life of an ATV.

The cost of this disclosure statement is estimated to be approximately \$0.95 per ATV sold.¹³ Generally, when ATVs are sold there is already some amount of paperwork generated, including purchase contracts and financing agreements. Therefore, the marginal cost of an additional form is minimal. Moreover, under the LOUs manufacturers already require their dealers to inform consumers of the age recommendations for ATVs and to monitor dealer compliance with these recommendations. It is possible that the enforcement mechanism provided by this disclosure statement would be no more costly than the current methods of monitoring compliance with the LOUs.

Provision of Training for ATV Purchasers. The training requirement of the proposed rule would require manufacturers or distributors of ATVs to provide a training certificate to each

¹³ This estimate is based on it taking approximately 2 minutes to complete the form and distribute the copies to the purchaser, the manufacturer, and the retailer's files and that the time is valued at \$21.32/hour, which is the average wage of motor vehicle sales workers in July 2004, as reported by the U.S. Department of Labor, Bureau of Labor Statistics, adjusted for inflation. Other costs, such as the cost of the blank forms and postage, may add another \$0.24 to the cost.

purchaser of a new ATV that entitles the purchaser and any qualified member of his or her immediate family to attend an authorized training course, "free" of charge. Of course, the training will not be free in terms of the trainee's time. The trainee would have to devote a day to the training process, and may have to transport an ATV to the training site. In the case of children, parents would likely need to become involved by providing transportation to the training site. Hence, the provision of the "free" certificate entitling the holder to training can be thought of as a subsidy to encourage new purchasers to take the training.

The cost of the training to be provided will depend upon a number of factors, such as the length of the course, the number of trainers, the number of enrollees, and others. However, if the training is similar to that currently provided by the ATV Safety Institute (ASI), the value of the training certificate entitling the holder to a training course might be \$75 to \$125. This is what ASI currently charges children and adults respectively for the course, as indicated at their website (www.atvsafety.org). Thus, the value of the training subsidy, under this requirement of the proposed standard, might be \$75 to \$125 per trainee.

The requirement that manufacturers offer free training is essentially a requirement that they subsidize ATV safety training. The purpose of a subsidy is to lower the cost of a product to a person to induce them to purchase more of the product. It can be an appropriate policy when it is believed that consumers will not purchase the socially optimal quantity of the good without some intervention. A consumer might not purchase the optimum quantity of a good for a variety of reasons, such as some of the societal benefit of purchasing the good (or undertaking an activity) might go to people other than the direct consumer or if the consumer underestimates the value of the good to himself or herself.

In the case of ATV safety training, it is likely that many consumers underestimate the benefits of training. According to ESHF, ATVs can appear "deceptively easy" to operate but in fact require "repeated practice to drive safely." Even at low speeds ATV drivers need to have "situational awareness necessary to negotiate hazards on unpaved terrain" and make "quick judgments" with regard to steering, speed, braking, weight shifting and terrain suitability. Consumers who underestimate the difficulty of riding ATVs may conclude that the cost of the training, including the costs in terms of time and travel, will exceed the benefits. It is likely that more consumers will be induced to

take training if the manufacturers emphasize the importance of training to consumers and offer them free training.

The benefits of training to new ATV drivers could be substantial. ESHF indicates that training may act as a surrogate for experience because it exposes new ATV drivers to situations they will encounter riding off-road and teaches them the proper driving behavior to navigate those situations. The Directorate for Epidemiology estimates, based on the results of the 2001 ATV injury and exposure surveys, that formal training may reduce the risk of injury by about half.¹⁴ The application of this result, in combination with the HF finding that training may function as a surrogate for driving experience, allows us to quantify the possible benefits of training.

A recent ATV risk analysis found a strong inverse relationship between driving experience and the risk of hospital emergency department (ED) treated injury.¹⁵ Based on this analysis, risk in the first year of riding was about 65 percent higher than the risk in the second year, and about twice the risk of the third year. Assuming that formal training reduces risk by half in the first year of ATV use (i.e., acts as a surrogate for experience), the risk of ED injury for a male

¹⁴ Robin L. Ingle, "Explanation of Trained ATV Rider Risk Statement," CPSC Memorandum to Elizabeth Leland, U.S. Consumer Product Safety Commission, Washington, DC (2006).

¹⁵ Rodgers and Adler (2001).

driver under the age of 36 on a 325 cc four-wheel ATV, would decline by about 0.0083. According to the CPSC's Injury Cost Model, the average societal cost of an ATV-related ED injury amounted to about \$60,250 in 2004 dollars. Consequently, the expected benefits of training would amount to about \$500 ($0.0083 * \$60,250$) per new rider taking the training. The risks for female drivers are less than for males. Using the same approach, the ED risk reduction for new female riders (under age 36, and on a 325 cc, four-wheel ATV) in the first year would be about 0.0029. The expected benefit of training an inexperienced female driver would therefore be about \$175 ($0.0029 * \$60,250$). Given that about 63 percent of drivers were male in 2001, the average risk reduction for male and female drivers would amount to about 0.0063; the expected benefits would average about \$380 (i.e., $0.63(\$500) + 0.37(\$175)$).

In addition to preventing non-fatal ED injuries, training would also likely reduce ATV-related injuries initially treated outside of hospital EDs and ATV-related deaths (see the appendix). While the risk model formally applies to ED injuries, it does not seem unreasonable to assume that the impact of training on non-ED injuries and deaths would be similar. Consequently, if the relationships in the risk model apply proportionally to non-ED injuries and deaths, the expected

non-fatal injury reduction benefits for a typical new driver (weighted by the proportion of male and female drivers) would amount to about \$220 and the expected benefits associated with the reduction in deaths would amount to about \$170 per trainee.¹⁶

Based on this analysis, the expected benefits of training new riders could therefore amount to about \$770 (\$380 + \$220 + \$170) per rider. Factoring in reasonable estimates of the costs of the training to the consumers, the benefit of training for new riders should exceed the costs. For example, if the course fee is \$125 and a trainee must give up 10 hours to take the course (including transportation to and from the training site) then the cost of training to a consumer who valued his or her time at \$17 per hour would be about \$295.¹⁷ Consequently, the net benefits of training to this consumer would be about \$475.

A major assumption in this cost-benefit comparison is that riders taking advantage of the training program would be inexperienced drivers who would take the training early in the

¹⁶ These calculations were based on information provided in the appendix. According to the appendix, there were about 1.49 non-ED injuries for every ED injury in 2001. If the reduction in risk associated with preventing non-ED injuries were proportional to the reduction in the ED injury risk, the reduction would amount to 0.0093 ($0.0063 * 1.49$). And, since the costs of the non-ED injuries averaged about \$23,700, the expected benefits from preventing these injuries would be about \$220 ($0.0093 * \$23,700$) per trainee. Similarly, there were about 0.0054 deaths for every ED-injury. Consequently, if the reduction in the fatality risk were proportional to the reduction in the ED injury risk, the reduction would amount to about 0.000034 ($0.0063 * 0.0054$). Assuming a value of statistical life of \$5 million, the expected benefits of reductions in the fatality risk would amount to about \$170 per trainee.

¹⁷ The SVIA sponsored training for new riders is approximately one-half day in length. Assuming that a trainee must give up 10 hours to take the training allows for travel to and from the site. The "value of time" estimate is based on the average net compensation for 2004 as reported by the Social Security Administration (\$34,197.63 for the year, which is about \$17 per hour).

first year of ATV riding. The expected benefits would be lower if the training were taken later. For example, if the analysis just completed had assumed the training were taken in the second year of ownership (rather than the first), the estimated gross benefits would have been about \$470. Note, however, that while net benefits would have been lower (about \$175), they are still positive. Hence even if some riders take the training after the first year of riding, the benefits of the training are still likely to exceed the costs. This suggests that the results of the cost-benefit comparison may not be very sensitive to the timing of the training.

ATV manufacturers that account for about 90 percent of all U.S. ATV sales already offer free training to their consumers.¹⁸ Therefore, the primary impact of this requirement will be to extend the free training offer to people who purchase ATVs from manufacturers or importers that do not now offer free training. These manufacturers account for about 10 percent of total domestic ATV sales.

In spite of the offers of free training and other incentives, few ATV riders take formal safety training. Based on

¹⁸ In addition to offering free training, some ATV manufacturers offer additional incentives to encourage first-time buyers to take ATV safety training. For example, in addition to providing free training, some manufacturers give first-time purchasers an additional \$100 if they complete the training. Some manufacturers also offer the free training to other members of the purchaser's family.

the 2004 Rider Training Summary provided by the SVIA, about 35 percent of first-time ATV purchasers who were offered this training by member firms took advantage of it. Since first-time purchasers accounted for about 20 percent of new ATV purchases, this suggests that only about 7 percent of all purchasers of new ATVs actually took the training. Assuming that this pattern will hold for the manufacturers or importers that are not now offering free training, one can expect that perhaps 7 percent of their consumers will take the training. Approximately 950,000 ATVs are sold annually. Because manufacturers that do not already offer free training account for about 10 percent of the market, this provision would likely increase the number of riders trained annually by 6,000 to 7,000 ($.07 \times 92,000$). If the benefits of the training are \$770 per trainee and the cost of the training is \$295, this could result in a net benefit of about \$3.3 million annually ($(\$770 - \$295) \times 7,000$).

There would be some recordkeeping costs imposed on retailers and manufacturers by the proposed rule. The retailers would be required to prepare a training certificate that entitles each qualified member of the purchaser's immediate family and obtain the purchaser's signature on a form that acknowledges the receipt of the free training certificate. The

signed original of this form must be kept by the retailer and copies provided to both the purchaser and the manufacturer.

The cost of preparing and filing the training certificates and acknowledgement forms is estimated to be about \$1.38 per ATV sold. This is based on it taking approximately 1 minute to complete the training certificate and the acknowledgement form. An additional minute might be required to distribute the copies of the forms to the purchaser, the manufacturer, and the retailer's files. Time is valued at \$21.32.¹⁹ The cost of the blank forms, postage, and other supplies, accounts for the remaining \$0.31.

Means for Reporting Safety Complaints and Concerns.

The proposed rule will require that each manufacturer provide consumers with a means of relaying safety or hazard related information concerning an ATV to the manufacturer or importer. Manufacturers must make available for this purpose a domestic telephone number and mailing address, and a website or email address. This contact information must be contained in the owners' manuals which will also be required to provide consumers with the instructions for reporting safety or hazard information to the CPSC.

¹⁹ This is the average hourly wage of motor vehicle sales workers reported by the Bureau of Labor Statistics in July 2004 (inflated to 2006 dollars)

This provision could provide manufacturers with an early alert if there is a potential hazard or defect with one of their products. This could allow manufacturers to take preemptive actions to minimize the risk of injury due to the problem. However, this benefit cannot be quantified because we cannot predict how frequently such a problem will occur or how reliably it will be reported to the manufacturer by consumers.

However, the cost of providing a means to report safety related problems is low. Virtually all manufacturers or distributors that sell ATVs in the U.S already have domestic telephone numbers, addresses, and internet sites. The additional cost of inserting this information in an owner's manual is very low. In fact, many manufacturers and distributors already do this.

Discussion. CPSC has been monitoring ATV-related injuries and promoting ATV safety since the early 1980s. Over that time, it has negotiated several voluntary agreements with major ATV manufacturers that have improved the safety of ATVs, encouraged formal safety training for ATV riders, and promoted safe ATV riding practices. However, as the ATV market has grown, new manufacturers and importers have entered the market that are not party to any voluntary agreements with the CPSC with regard to ATV safety. As the number of new participants increases, it

becomes increasingly difficult to maintain voluntary agreements with all manufacturers and importers. In the absence of either mandatory requirements or voluntary agreements, CPSC has no effective mechanism for enforcing safety standards and practices. Moreover, if the market share of manufacturers and importers that are not party to any agreement with the CPSC increases, manufacturers that are parties to agreements may resist renewing the voluntary agreements.

The proposed rule would ensure that key elements of the voluntary agreements are extended to all ATV manufacturers and distributors. Because manufacturers and distributors that account for about 90 percent of the market already conform to these requirements (and much of the remaining 10 percent conform to at least some of the requirements) the proposed standard may not significantly lower the number of injuries from their current levels. However, it will establish some minimum enforceable standards that all firms that sell ATVs in the U.S. will be expected to meet.

Where the benefits and costs of the individual provisions can be quantified, this analysis has shown that the benefits are expected to exceed the costs (i.e., a ban on 3-wheel ATVs and training inexperienced ATV riders). For other provisions, the costs of complying with the standard will be low on a per unit

basis (i.e., providing warning labels and safety information at the point of sale, a safety video, and means for reporting safety hazards or concerns to the manufacturer). Although the benefits of these cannot be quantified, they provide consumers with information that may help them choose an appropriate ATV for the rider and may reduce some unsafe riding behaviors. The costs of complying with each element of the requirements of the mechanical standard have not been quantified. However, each of the requirements would provide some safety benefits. Moreover, the vast majority of ATVs sold are already thought to be in compliance.

5. Alternatives to the Proposed Rule

The Commission could consider alternatives to the proposed rule including continuing to pursue voluntary actions rather than a mandatory rule. Other alternatives include adopting some parts of the proposed rule, but not others. Additionally, the staff considered other requirements for headlamps and training.

Not Adopting a Mandatory Rule and Continuing to Pursue Voluntary Actions. CPSC has been successful in gaining the cooperation of the largest ATV manufacturers and some of the smaller ones in working voluntarily to reduce the number of ATV-related injuries. However, entry into the ATV market is relatively easy. The number of manufacturers and importers has

increased substantially in even the last few years: from about 7 manufacturers and importers in 1995, to more than 87 today. As the number of manufacturers increases it will be increasingly difficult to negotiate voluntary agreements with every one. To the extent that some new entrants do not conform to the agreements, there could be some economic pressure on others to limit their cooperation in the future.

It should also be noted that promulgating a mandatory rule does not rule out future CPSC efforts, either voluntary or mandatory, to further improve ATV safety.

Promulgating Portions of the Proposed Rule. Each of the major provisions of the proposed rule (e.g., mechanical requirements, ban of 3-wheel ATVs, and so on) could be considered independently. If the Commission believes that the benefits of any of the individual provisions do not bear a reasonable relationship to the costs, or for some other reason should not be mandated, it could exclude those provisions from a proposed rule.

Allowing Headlamps on Youth ATVs. The justification for the prohibition of headlamps on youth ATVs is to discourage children from riding after dark. Riding after dark is believed to be a significant risk factor for children. Also it can be difficult to supervise children riding ATVs in low light

conditions. The Commission believes that allowing headlamps on youth ATVs would encourage children riding after dark.

There is a counter argument that if some children ride after dark or in low light conditions anyway (or if they do not return from a trip begun during daylight before dark) then allowing headlamps on youth ATVs could reduce the risk of injury by better illuminating the rider's path. It is also possible that the prohibition could cause some young teens to ride adult ATVs if they were involved in some ATV-related activities with parents or older siblings after dark. This could increase the injury risk since, as described earlier, the risk of injury for a child riding an adult ATV is twice that of riding a youth ATV.

The Commission does not have the data to provide statistical support to either argument. However, in the judgment of ESHF, the decrease in injuries resulting from discouraging after-dark riding by children by prohibiting headlamps on youth ATVs probably outweighs the increase in risk to those children who might still occasionally ride after dark.

Not Mandating Stop Lamps. As an alternative to mandating stop lamps, the CPSC considered following ANSI/SVIA-1-2001 by allowing, but not requiring, stop lamps on all ATVs. Currently, CPSC staff believes that most adult ATVs have stop lamps, but most youth ATVs do not. If stop lamps were not mandated, the

practice of installing stop lamps on adult ATVs, but not youth models, is likely to continue. This is probably due in part to the lower added cost of installing stop lamps on adult ATVs, where some of the steps can be combined with the installation of tail lamps that are already required.

The benefit of stop lamps is that they can alert a driver when the driver of a leading vehicle has applied his or her brakes, which can increase the chance of the trailing driver reacting appropriately, either by applying his or her own brakes or taking evasive maneuvers and avoiding a rear-end collision. It can be anticipated that there are situations where ATVs would be traveling in a row on a trail and a driver may stop unexpectedly. While the staff has not been able to quantify the benefits, in some cases, the activation of a stop lamp may help to avoid a collision.

The cost of including stop lamps on ATVs is the cost of the materials (e.g., bulbs, switches, wiring, and lenses) and labor to install the stop lamps during the manufacturing process, and the cost of redesigning the body of the ATV to accommodate the stop light housing. This cost has not been quantified. Although the cost is not expected to be very expensive in absolute terms, the cost could amount to several dollars or more per ATV,

especially in the case of youth ATVs that are not currently equipped with any wiring for lighting.

More Stringent Training Requirements. The CPSC considered including more stringent training requirements in the proposal, including requiring that at least 8 hours of training, along with specific requirements for written and riding tests, be provided, and that the student-teacher ratio not exceed 4:1. The minimum time requirements would be intended to ensure that there would be sufficient time to cover all topics that should be covered in a safety course and to give each student enough time to practice each skill until they had reached a satisfactory level of proficiency. The written and riding tests would provide a mechanism for the instructor to give the student specific feedback concerning his or her performance. A student-teacher ratio of 4:1 would ensure that each student gets individual attention.

However, there are drawbacks to mandating the more stringent requirements outlined above. The training program of the ATV Safety Institute, which is the leading ATV safety training provider, is approximately one-half day in length, there are no written or driving tests, and a 4:1 student-teacher ratio is encouraged but not required. Therefore, mandating the more stringent requirements could increase the cost of the

training from its present level. Mandating a minimum length for the training and mandating a lower student-teacher ratio could possibly reduce the availability of training. Moreover, some new ATV purchasers who are willing to set aside the time to participate in a one-half day training program might not be willing to set aside a full day for the program, which for some trainees could include an overnight stay if the training site was a substantial distance from their home.

J. Paperwork Reduction Act

The proposed standards will require manufacturers (including importers) to perform testing and require manufacturers and retailers to keep records. For this reason, the rules proposed below contain "collection of information requirements" as that term is used in the Paperwork Reduction Act, 44 U.S.C. 3501-3520. Therefore, the proposed rule is being submitted to the Office of Management and Budget ("OMB") in accordance with 44 U.S.C. 3507(d) and implementing regulations codified at 5 CFR 1320.11. The estimated costs of these requirements are discussed below.

1. Testing and Recordkeeping Costs

Manufacturers. The proposed rule would require manufacturers (including importers) to perform, or cause to be performed, testing sufficient to ensure that each ATV conforms

to the requirements in the proposed rule. The requirements in the proposed rule are based on ANSI/SVIA-1-2001.

As discussed in section H above, the specified tests will require some time and equipment. They are estimated to take one day (8 hours) or less and would be conducted by at least one other mechanical engineer. If the total labor costs were \$90 per hour, then the cost of conducting the tests would be about \$720 per model (8 hours x \$90). As discussed in the Preliminary Regulatory Analysis above, staff estimates the cost of the equipment used in the testing to be about \$500. Documentation of the tests could add perhaps another \$100 to the cost of the testing and record keeping.

These estimates suggest that the full testing and recordkeeping costs of the proposed rule could be about \$1,320 per model. Based on staff's identification of 131 different ATV models for the 2001 and 235 different ATV models for the year 2003 and the significant increase in sales of ATVs in recent years, there might be 500 different ATV models today. Therefore, the full testing and recordkeeping costs could be \$660,000 per year, assuming models are changed annually.

Because several ATV manufacturers conform to ANSI/SVIA-1-2001 and should already be performing the testing called for in the proposed rule, the proposed rule will not impose additional

testing burdens on these manufacturers. The staff estimates that these manufacturers account for at least 150 ATV models.

Therefore, the testing and recordkeeping cost that could be attributed to the proposed rule that would not be incurred in the absence of the rules, could be less than \$462,000 annually (\$660,000 - 150 x \$1,320).

Retailers. Retailers would be required to provide certificates for free training as discussed above. Additionally, each retailer would be required to maintain a record of the age acknowledgment statement and the training acknowledgment statement. The retailer will be required to write in the vehicle identification number on the training certificates that will be provided to the purchaser. The purchaser will be required to sign the original of each form and the retailer will have to maintain the originals in his or her files for 5 years after the date of the purchase. A copy of the age disclosure statement and training availability statement must also be sent to the manufacturer (or importer). The forms must be made available to CPSC representatives upon request.

These records are not complex and simply provide some basic information to the consumer (i.e., the minimum age one should be to ride the particular ATV and contact information for free ATV safety training). No information needs to be collected by the

retailer, other than the consumer's signature. No particular skill will be required to generate or maintain these records. However, retailers that sell ATVs over the internet, or in other settings where a representative of the retailer does not meet personally with the consumer, may have to develop new procedures for obtaining the consumers' signatures. These might include not shipping the ATV until the consumer has returned the signed originals to the retailer.

The cost of preparing and filing these records is estimated to come to about \$2.33 per ATV sold. This estimate assumes that an average of 3 forms and training certificates will be required for each ATV: the age acknowledgement form, the availability of training acknowledgement form; and an average of 1 training certificate. It is further assumed that each form takes an average of one minute to complete. An additional minute will be required for the retailer to send copies of the forms to the manufacturer and the manufacturer will require an additional minute to properly file the copies. The time is valued at \$21.32 per hour.²⁰ The cost of the blank forms themselves, postage, envelopes, and other supplies might add another \$0.55 to the cost.

²⁰ This is the average hourly wage of motor vehicle sales workers reported by the Bureau of Labor Statistics in July 2004 (inflated to 2006 dollars).

If 950,000 ATVs are sold annually, the total recordkeeping cost on retailers will be about \$2.2 million annually. The number of ATV retailers is estimated to be about 5,000. Therefore, the recordkeeping costs will average about \$440 per retailer annually. Training certificates are already provided with about 90 percent of the ATVs sold. Therefore, about \$0.3 million of this cost is already being incurred.

J. Initial Regulatory Flexibility Analysis

1. Introduction

The Regulatory Flexibility Act ("RFA") generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses. Section 603 of the RFA calls for agencies to prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. Accordingly, the staff prepared an initial regulatory flexibility analysis which is summarized below.

2. Reporting, Recordkeeping and Other Compliance Requirements

It is difficult to estimate accurately the number of small entities that could be impacted for two reasons. One reason is that as noted below, the number of firms participating in the

market has increased significantly over the last 10 years.

Secondly, it is relatively easy for a firm to enter and exit the market. It is certain, however, that the ATV market has grown significantly in recent years.

Manufacturers (and Importers). The proposed rule imposes some requirements on manufacturers (which includes importers) of ATVs. The number of firms that manufacture or import ATVs is increasing. From the time ATVs were first introduced in the early 1970s until about 2000, virtually all ATVs were manufactured and distributed by a few large firms. Since 2000, the number of smaller importers has increased significantly. The staff now believes that there are at least 87 manufacturers or importers that supply ATVs to the U.S. market. However, seven large manufacturers still account for about 90 percent of the U.S. ATV market. Thus, small manufacturers or importers have a combined market share of perhaps 10 percent of the market.²¹

Many of the new entrants are small importers that import ATVs from manufacturers based in Korea, Taiwan, and China. Virtually all manufacturers and importers of ATVs, including the small ones, are believed to manufacture and import products other than ATVs. These other products often include other

²¹ According to the U.S. Small Business Administration size standards, an ATV manufacturer (NAICS code 336999) with fewer than 500 employees would be considered small and an ATV wholesaler (NAICS code 423110) with fewer than 100 employees would be considered small.

motorized vehicles, such as motorcycles, motor scooters, go-carts, and mini bikes. In fact, of the ATV import operations that CPSC staff inspected in 2005, none sold ATVs exclusively and most received a majority of their revenue from other products.

Conducting the tests to ensure that ATVs comply with the proposed mechanical standards will require professional engineering services. ATV manufacturers probably have qualified engineers on staff or can obtain the services of qualified engineers to conduct the tests. The documentation of the tests would likely be completed by the engineer conducting the tests.

As discussed in sections H and I above, estimates suggest that the full testing and recordkeeping costs of the proposed rule could be about \$1,320 per model. Staff estimates that there might be 500 different ATV models today. Therefore, the full testing and recordkeeping costs could be \$660,000 per year, assuming models are changed annually.

As discussed above, the proposed rule will not impose additional testing burdens on the manufacturers who already conform to ANSI/SVIA-1-2001. The staff estimates that these manufacturers account for at least 150 ATV models. Therefore, the testing and recordkeeping cost that could be attributed to the proposed rule that would not be incurred in the absence of

the rule, could be less than \$462,000 annually (\$660,000 - 150 x \$1,320). The annual cost of the testing per small manufacturer could be \$5,000 to \$6,000 assuming an average of 4 to 5 models require testing each year.

Importers that do not manufacture ATVs can probably work with the foreign manufacturers to ensure that the ATVs meet the mechanical requirements and the documentation is prepared and transferred to the importer. Where the compliance testing is conducted by persons not fluent in English, an importer may have to employ the services of a qualified translator who can translate the records accurately into English.

The requirement that all ATVs be equipped with a stop lamp would impose some cost burden on ATV manufacturers. Although many adult ATVs are already equipped with stop lights, most youth ATVs are not. Many small manufacturers and importers supply youth ATVs to the U.S. market. The cost of including stop lamps on ATVs includes the cost of the materials (e.g., bulbs, wiring, switches, lenses, and housing), the cost of the labor to install the materials, and the cost of modifying the bodies of ATVs to accommodate stop lamps. Stop lamps are standard on many different vehicles and, as noted, are included on most adult ATVs. However, CPSC has not developed firm estimates of the added cost to equip youth ATVs with stop lamps.

The requirement that youth ATVs be equipped with automatic transmissions could impose some cost on manufacturers whose youth models are not already so equipped. However, most youth ATV models, including those from small importers, already appear to be equipped with automatic transmissions. The models identified by the staff that did not have automatic transmissions were some ATVs intended for children 12 years of age or older that were equipped with automatic clutches. An automatic clutch, which still requires the driver to manually select the appropriate gear, would not meet this requirement for youth ATVs.²²

The cost of providing the required warning labels, hangtags, and additional pages in owner's manuals is low. Many, if not most, manufacturers already comply, at least to some degree, with this requirement. However, some foreign manufacturers may require the services of a qualified translator to ensure that the labels and manuals are written in clear and understandable English. Other special skills probably will not be required since the required safety content of the warning labels, hangtags, and manuals is specified in the rule.

²²The three youth ATV models equipped with automatic clutches were produced by three of the large ATV manufacturers.

The proposed rule requires that manufacturers provide purchasers with a video that provides safety information concerning ATVs. The major manufacturers already provide the safety videos that conform to this requirement. The cost of duplicating a video or DVD is no more than a few dollars. However, the cost of producing the safety video could be several thousand dollars. The impact on small importers could be reduced if a third party video could be licensed or shared by many small manufacturers or importers.

Manufacturers would also be required to keep a copy of the owner's manuals and the safety video for each model on file for at least 5 years. It is likely that many manufacturers would do this even in the absence of a mandatory rule. The storage costs of these items probably would not exceed \$10 per model. The cost could be lower since the same safety video would likely be used for all ATV models produced or imported by a manufacturer and could be used for several years. Owner's manuals also might cover more than one model.

The proposed rule requires manufacturers to offer "free" ATV safety training to each purchaser of a new ATV and to each member of the purchaser's family who meets the age qualification to drive the ATV. The manufacturer or importer must make arrangements with a training provider to provide this training.

The training providers must offer their services reasonably close to where the purchaser lives and within a reasonable time of the purchase. There are groups, such as the ATV Safety Institute (sponsored by the Specialty Vehicles Institute of America (or "SVIA")) that offer ATV safety training that should comply with this requirement. Based on the listed prices for the SVIA training, the cost is between \$75 and \$125 per person. Based on the experience with the manufacturers that have signed LOUs with the CPSC, it is expected that about 30 to 40 percent of ATV purchasers with little riding experience will take advantage of the offer of free safety training. However, since most ATV purchasers are already experienced drivers, it is expected that less than 10 percent of all purchasers of new ATVs will take advantage of the free training offer.

The proposed rule would formalize a ban on the sale of new 3-wheel ATVs. CPSC reached voluntary agreements with ATV manufacturers to stop supplying 3-wheel ATVs to the U.S. market in 1988. The staff is not aware of any *major* manufacturers that are currently supplying 3-wheel ATVs to the U.S. market. However, the Office of Compliance has found evidence that some 3-wheeled vehicles that meet the definition of an ATV are being offered for sale to U.S. consumers on the internet.

The formal ban in the proposed rule is intended to ensure no manufacturer or importer introduces a new 3-wheel ATV in the future. The ban should not impact the current operations of any manufacturer or importer.

Retailers. ATV retailers would have some responsibilities under the proposed rule, but none that would be expected to have a substantial impact. The CPSC staff have not determined the total number of ATV retail operations, but they certainly number in the thousands, a substantial number of which could be small businesses. Many ATV retailers are franchise operations of the larger ATV manufacturers or distributors. Other ATV retailers purchase their inventory from ATV importers and wholesalers. ATV retailers usually sell products in addition to ATVs, including motorcycles, scooters, and farm equipment. Some ATVs are offered for sale over the internet.

Each retailer will be required to prepare a "training certificate" that entitles each qualified member of the purchaser's immediate family to free ATV safety training. Additionally, the retailer will be required to prepare and maintain records of disclosure statements concerning age recommendations and availability of training. The retailer will provide copies of both forms to the purchaser and the manufacturers. The retailer and manufacturers would have to

maintain the originals in their files for 5 years after the date of the purchase. The forms must be made available to CPSC representatives upon request.

As discussed in sections H and I above, the cost of preparing and filing these records is estimated to come to about \$2.33 per ATV sold. The cost of the blank forms themselves, postage, envelopes, and other supplies might add another \$0.55 to the cost. If 950,000 ATVs are sold annually, the total recordkeeping cost on retailers will be about \$2.2 million annually. The number of ATV retailers is estimated to be about 5,000. Therefore, the recordkeeping costs will average about \$440 per retailer annually.

The retailer will also be responsible for ensuring the warning labels and hang tags specified in the proposed rule remain on the vehicle at least until the purchaser has possession of it. In addition, the retailer would be responsible for ensuring that the safety video and owner's manual provided by the manufacturer or importer are transferred to the purchaser.

3. Other Federal Rules

The CPSC has not identified any Federal rule that either overlaps or conflicts with the proposed rule. Some states require training of ATV operators under some circumstances or

require riders to wear certain protective gear. At least one state (North Carolina) has specified maximum engine sizes for ATVs intended for children under the age of 16 years.

4. Alternatives to the Proposed Rule

The proposed rule would essentially mandate provisions of a voluntary mechanical standard and certain provisions of agreements that CPSC has negotiated with the major ATV distributors. Manufacturers and distributors with an estimated combined market share of about 90 percent of the ATVs sold already comply with most of the provisions of the proposed rule. Because the rules are intended to ensure that all ATVs, distributors, and retailers meet these minimum requirements, CPSC has not identified any alternatives that would reduce the burden on small businesses and accomplish the goals of the proposed rule.

The option of continuing to rely on voluntary activity was considered by the staff. However, the rapid increase in the number of firms supplying ATVs to the market and the relative ease of entry and exit into the market make it impractical to negotiate individual agreements with each manufacturer and importer.

5. Summary and Conclusions

Many of the 87 or more companies that manufacture or import ATVs into the U.S. and an unknown number of the retailers are small entities. The proposed rule would impose some requirements on these firms. However, the requirements are needed to ensure that all ATVs meet some minimum safety requirements, that all ATV consumers receive some important safety information, and that all buyers be offered the training that is needed to safely operate ATVs. Some small entities are already meeting many of the provisions of the proposed rule.

L. Environmental Considerations

Usually, CPSC rules establishing performance requirements are considered to "have little or no potential for affecting the human environment," and environmental assessments are not usually prepared for these rules (see 16 CFR 1021.5 (c)(1)). Moreover, most of the ATV industry is already thought to be in conformance with most of the provisions of the proposed standard. Therefore, it is unlikely that substantial changes will be made in production practices nor will a substantial number of products require modification or disposal.

M. Executive Order 12988 (Preemption)

As required by Executive Order 12988 (February 5, 1996), the CPSC states the preemptive effect of the ATV regulations proposed today as follows:

The regulations for youth ATVs are proposed under authority of the Federal Hazardous Substances Act (FHSA). 15 U.S.C. 1261-1278. Section 18 of the FHSA provides that, generally, if the Commission issues a rule under, or for the enforcement of, section 2(q) of the FHSA to protect against a risk of injury associated with, among other things, any toy or other article intended for use by children, "no State or political subdivision of a State may establish or continue in effect a requirement applicable to such [article] and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations." 15 U.S.C. 1261n(b)(1)(B). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) provides a higher degree of protection from the risk of injury or illness than the FHSA standard and (2) does not unduly burden interstate commerce. In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical requirement that provides a higher degree of protection than the FHSA requirement for the hazardous substance for the Federal, State or local government's own use. 15 U.S.C. 1261n(b)(2).

The proposed rule for adult ATVs is issued under authority

DRAFT 5/30/06

of the Consumer Product Safety Act (CPSA). 15 U.S.C. 2051-2084. Section 26 of the CPSA sets out a preemption provision similar to that of the FHSA, specifically "whenever a consumer product safety standard under the Act [CPSA] is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard." 15 U.S.C. 2075(a). As with the FHSA preemption provisions, an exception for products for the state or political subdivision's own use and a petitioning procedure for an exemption from the otherwise applicable federal standard are provided.

Thus, with the exceptions noted above, the ATV requirements proposed in today's Federal Register would preempt non-identical state or local requirements for ATVs designed to protect against the same risk of injury.

N. Effective Date

The Commission proposes that these rules would become effective 180 days from publication of a final rule in the Federal Register and would apply to all terrain vehicles manufactured or imported on or after that date. The CPSA requires that consumer product safety rules take effect not later than 180 days from their promulgation unless the Commission finds there is good cause for a later date. 15 U.S.C. 2058(g)(1). Many of the requirements proposed in these rules are substantially the same as provisions of the ANSI/SVIA voluntary standard, which the major ATV manufacturers currently comply with, or of the LOU agreements, which the major ATV manufacturers have with the Commission. Therefore, the Commission believes that a 180-day effective date is appropriate.

O. Proposed Findings

The CPSA and FHSA require the Commission to make certain findings when issuing a consumer product safety standard or a rule under the FHSA. The CPSA requires that the Commission consider and make findings about the degree and nature of the risk of injury; the number of consumer products subject to the rule; the need of the public for the rule and the probable effect on utility, cost and availability of the product; and other means to achieve the objective of the rule while

minimizing the impact on competition, manufacturing and commercial practices. The CPSA also requires that the rule must be reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product and issuing the rule must be in the public interest. For a rule declaring a product a banned hazardous product, the CPSA requires that the Commission must find that no feasible consumer product safety standard would adequately protect the public from the unreasonable risk. 15 U.S.C. 2058(f)(3).

In addition, the Commission must find that: (1) if an applicable voluntary standard has been adopted and implemented, that compliance with the voluntary standard is not likely to adequately reduce the risk of injury, or compliance with the voluntary standard is not likely to be substantial; (2) that benefits expected from the regulation bear a reasonable relationship to its costs; and (3) that the regulation imposes the least burdensome requirement that would prevent or adequately reduce the risk of injury. Id.

The FHSA requires essentially similar findings concerning unreasonable risk, voluntary standards and potential costs and benefits. Under the FHSA, the Commission must find that some aspect of the design or manufacture of the article it seeks to regulate presents an unreasonable risk of injury or illness.

Id. 1261(s). The Commission must also make the findings concerning voluntary standards, relationship of costs to benefits, and least burdensome alternative as required by the CPSA. The findings must also be stated in the rules. These findings are discussed below.

Degree and nature of the risk of injury. According to the Commission's 2004 Annual Report on ATVs, the Commission has reports of 6,494 ATV-related deaths that have occurred since 1982. For 2003 alone, an estimated 740 ATV-related deaths were reported to the Commission. The estimated number of ATV-related injuries treated in hospital emergency rooms in 2004 was 136,100, which is an increase of about 8 percent over the 2003 estimate. These incidents occur when the operator of an ATV loses control of the vehicle, collides with another object, or otherwise becomes injured or dies while riding an ATV. Many incidents are related to behavior of the operator (such as riding on paved roads, carrying a passenger, driving at excessive speeds).

Number of consumer products subject to the rule. The market has increased substantially since ATVs were first introduced over thirty years ago. In 2005, an estimated 6.9 million ATVs were in use.

The need of the public for ATVs and the effects of the rule on their utility, cost and availability. The need of the public for ATVs is both for recreation and for work, particularly on farms and ranches in rural areas. The proposed rule will have minimal effect on the utility, cost and availability of ATVs. The mechanical provisions of the proposed rule are substantially similar to requirements of the voluntary standard with which the major ATV manufacturers comply. Costs should be small because the information provisions of the proposed rule are also currently being followed by the major ATV manufacturers. With the exception of the ban of three-wheeled ATVs, the proposed rule should not affect the availability of ATVs. In fact, a greater variety of youth ATVs may become more available.

Other means to achieve the objective of the rule while minimizing the impact on competition and manufacturing. Because most ATV manufacturers are currently complying with the ANSI/SVIA voluntary standard and are providing the information materials the proposed rule requires, the Commission does not believe that the proposed rule will have much effect on competition and manufacturing. It is likely, however, that newer entrants may need to take action to bring their ATVs into compliance with the proposed rule. This could have the effect of increasing the price for the newer entrants' imported ATVs.

In the future, this could reduce the number of new entrants coming into the ATV market.

Unreasonable risk. As discussed above, the Commission has reports of 6,494 ATV-related deaths that have occurred since 1982 and for 2003 alone, an estimated 740 ATV-related deaths were reported to the Commission. The estimated number of ATV-related injuries treated in hospital emergency rooms in 2004 was 136,100. The proposed rules will establish mechanical standards for ATVs and requirements for the provision of safety information about operating ATVs. Included in this will be a requirement for manufacturers to provide free training. Many ATV manufacturers are currently in compliance with many of the proposed requirements. However, some of the additional requirements (such as requiring the age acknowledgment form and training acknowledgment form) or requirements that are somewhat different from current practice (such as clearer warning statements) may better inform consumers of ATV-related risks who may then be better able to reduce or avoid these risks. Moreover, the mandatory requirements will cover the increasing number of new entrants into the ATV market who are not following current voluntary standards or other safety practices that the major manufacturers are voluntarily following. This will reduce

the risk of injury in the future as more such new entrants may enter the market.

Public interest. These rules are in the public interest because they may reduce ATV-related deaths and injuries in the future. Their mandatory nature will mean that all ATV manufacturers will have to comply with the mechanical and information requirements of the rules. The increasing number of new entrants will make it difficult to maintain voluntary agreements with manufacturers. By issuing mandatory requirements, the Commission will have the authority to enforce these requirements rather than relying on voluntary compliance.

Ban of three-wheeled ATVs. Three-wheeled ATVs are less stable and more difficult to steer than four-wheeled ATVs. The risk of sustaining a hospital emergency room-treated injury while operating a three-wheeled ATV is about 3 times the risk on a similar four-wheeled ATV. While there are many technical factors that make a four-wheeled ATV more dynamically stable than a three-wheeled ATV, one of the largest factors is the fourth wheel. Given the inherent difference in vehicle configuration, the Commission does not believe it is feasible to develop a performance standard for three-wheeled ATVs that would improve that vehicle's stability performance to that of a four-wheeled vehicle.

Voluntary standards. The current voluntary standard, ANSI/SVIA-1-2001, specifies requirements for the mechanical operation of single rider ATVs (both for adult and youth ATVs). Manufacturers are working to incorporate requirements for tandem ATVs into the voluntary standard. The major manufacturers appear to comply with most provisions of the voluntary standard. However, the voluntary standard does not contain information requirements for such things as warning labels, owners manuals and training. Thus, compliance with the voluntary standard alone would not be sufficient to adequately reduce or eliminate the risk of injury. Many ATV incidents occur because of the way the ATV is used. The Commission cannot issue requirements for how a product should be used (e.g., requiring helmets, prohibiting children from riding adult ATVs). To affect these behaviors the Commission must act through requirements directing manufacturers and retailers to take actions that inform consumers of the risks associated with ATVs and advise consumers how they could reduce these risks.

The major manufacturers have agreed to take many of the informational actions proposed in the rules through the LOUs they have entered into with the Commission. The LOUs are completely voluntary. A company could decide to change any of the actions it has agreed to at any time.

Although the major manufacturers appear to be complying with the voluntary standard and abiding by their LOUs, a growing portion of the ATV market may not be following the voluntary standard (and is not bound by the LOUs). These new entrants now comprise approximately 10 percent of the market. Given recent trends and the lower price of the new entrants' products, their share of the market is likely to increase.

Thus, the Commission finds that compliance with the ANSI/SVIA-1-2001 voluntary standard is not likely to eliminate or adequately reduce the risk of injury associated with ATVs, and it is unlikely that there will be compliance with the voluntary standard.

Relationship of benefits to costs. Because most manufacturers are currently taking most of the actions that the proposed rules would require, costs from the proposed rules are likely to be small. The initial potential reduction of ATV-related deaths and injuries may also be small. However, mandating the mechanical and information requirements will mean that new entrants to the market, a group that has recently been increasing, will have to comply with the requirements as well. The proposed rule would impose some testing and recordkeeping costs. The staff estimates these to be about \$462,000 annually. For many of the provisions, it is difficult to quantify

benefits: However, for the training requirement alone, the Commission estimates the proposed provision could result in a net benefit of about \$3.3 million annually. Given that in 2004 an estimated 136,000 ATV-related injuries were treated in hospital emergency rooms, and that an estimated 6,494 ATV-related deaths have occurred since 1982, if the proposed rule affects even a small number of potential deaths and injuries, the benefits would bear a reasonable relationship to the costs.

As for youth ATVs, the Commission proposes to establish categories of youth ATVs based on maximum speed rather than engine size. This should not impose additional costs on manufacturers because these delineations are similar to those already in the ANSI/SVIA-1-2001 voluntary standard. However, this change could lead to a greater variety of youth ATVs which could result in more children riding youth ATVs rather than larger, riskier adult models. Such a movement of children to youth ATVs could reduce ATV-related deaths and injuries because the risk of injury for riders under the age of 16 driving adult ATVs is about twice the risk of injury of those who are driving age-appropriate ATVs. Additionally, the proposed change could result in more children receiving formal training, and this too could reduce deaths and injuries.

Least burdensome requirement. As discussed above, the proposed rule is likely to impose only a small burden on most current ATV manufacturers and retailers. The Commission is essentially mandating the current practice that many manufacturers are following. Nevertheless, the proposed rule is likely to reduce the risk of injury associated with ATVs because it will enable the Commission to directly enforce the provisions of the rule and will bring new entrants under federal regulation.

O. Conclusion

For the reasons stated in this preamble, the Commission preliminarily concludes that all terrain vehicles intended for adults present an unreasonable risk of injury which can be reduced through the requirements of this proposed rule. With regard to ATVs intended for children under the age of 16, the Commission preliminarily concludes that ATVs that do not meet the requirements specified for youth ATVs are hazardous substances under section 2(f)(1)(D) of the FHSA. The Commission also preliminarily concludes that three-wheeled ATVs present an unreasonable risk of injury and there is no feasible consumer product safety standard that would adequately protect the public from the risk of injury.

List of Subjects in 16 CFR Part 1633

Consumer protection, Imports, Infants and children,
Labeling, Law enforcement, Records.

For the reasons stated in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

1. Add part 1307 to read as follows:

[three-wheel ban text will appear here in FR
publication]

2. Add part 1410 to read as follows:

[adult ATV standard text will appear here in FR
publication]

3. Add part 1515 to read as follows:

[youth ATV standard text will appear here in FR
publication]

4. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261-1278.

5. Section 1500.18 is amended to add a new paragraph (a) (20) to read as follows:

§ 1500.18(a) (20) All terrain vehicles.

(20) (i) Any three-wheeled youth all terrain vehicle, as defined in section 1515.2(a) that is manufactured or imported on or after [180 days after issuance of final rule] and

(ii) Any youth all terrain vehicle, as defined in section 1515.2(a), that is manufactured or imported on or after [180 days after issuance of final rule] and that does not meet the requirements of Part 1515.

(iii) (A) *Findings*. In order for the Commission to issue a rule under section 2(q)(1) of the FHSA classifying a substance or article as a banned hazardous substance, the Commission must make certain findings and include these findings in the regulation. 15 U.S.C. 1262(i)(2). These findings are discussed in paragraph (a)(20)(iii)(B) through (D) of this section.

(B) *Voluntary standards*. The current voluntary standard, ANSI/SVIA-1-2001, specifies requirements for the mechanical operation of single rider ATVs (both for adult and youth ATVs). The major manufacturers appear to comply with most provisions of the voluntary standard. However, the voluntary standard does not contain information requirements for such things as warning labels, owners manuals and training. Thus, compliance with the voluntary standard alone would not be adequate to eliminate the risk of injury. Many ATV incidents occur because of the way the ATV is used, and the Commission cannot issue requirements for

how a product should be used (e.g., requiring helmets, prohibiting children from riding adult ATVs). To affect these behaviors the Commission must act through requirements directing manufacturers and retailers to take actions that inform consumers of the risks associated with ATVs and advise consumers how they could reduce these risks.

Although the major manufacturers have agreed to take many of the informational actions proposed in the rules through agreements with the Commission, these are completely voluntary. A company could decide to change any of the actions it has agreed to at any time. Moreover, new market entrants, a growing portion of the ATV market, may not be following the voluntary standard (and they do not have individual agreements with the Commission). These new entrants now comprise approximately 10 percent of the market and their share of the market is likely to increase. Thus, the Commission finds that compliance with the ANSI/SVIA-1-2001 voluntary standard is not likely to eliminate or adequately reduce the risk of injury associated with youth ATVs, and it is unlikely that there will be compliance with the voluntary standard.

Relationship of benefits to costs. Because most manufacturers are currently taking most of the actions that the proposed rules would require, costs from the proposed rules are

likely to be small. The initial potential reduction of ATV-related deaths and injuries may also be small. However, mandating the mechanical and information requirements will mean that new entrants to the market will have to comply with the requirements as well. The proposed rule would impose some testing and recordkeeping costs. The staff estimates these to be about \$462,000 annually. The Commission proposes to establish categories of youth ATVs based on maximum speed rather than engine size. This should not impose additional costs on manufacturers because these delineations are similar to those already in the ANSI/SVIA-1-2001 voluntary standard. However, this change could lead to a greater variety of youth ATVs which could result in more children riding youth ATVs rather than larger, riskier adult models. Such a shift of children to youth ATVs could reduce ATV-related deaths and injuries because the risk of injury for riders under the age of 16 driving adult ATVs is about twice the risk of injury of those who are driving age-appropriate ATVs. Additionally, the proposed change could result in more children receiving formal training, and this too could reduce deaths and injuries.

Least burdensome requirement. The proposed rule is likely to impose only a small burden on ATV manufacturers and retailers. The Commission is essentially mandating the current

DRAFT 5/30/06

practice that many manufacturers are following. Nevertheless, the proposed rule is likely to reduce the risk of injury associated with ATVs because it will enable the Commission to directly enforce the provisions of the rule and will bring new entrants under federal regulation.

List of Relevant Documents

1. Briefing memorandum from Elizabeth Leland, Project Manager, Directorate for Economic Analysis, to the Commission, "All-Terrain Vehicles: CPSC Staff Proposals for Consideration" May __, 2006.

2. Memorandum from Elizabeth W. Leland, Economic Analysis, CPSC, to Jacqueline Elder, Assistant Executive Director for Hazard Identification and Reduction, "October 14, 2005, All-Terrain Vehicle (ATV) Advance Notice of Proposed Rulemaking (ANPR): CPSC Staff Response to Comments," May 23, 2006.

3. Report from Robin L. Ingle, Directorate for Epidemiology, Division of Hazard Analysis, CPSC, "2004 Annual Report of ATV Deaths and Injuries," September 2005.

4. Memorandum from Terrance R. Karels, Directorate for Economic Analysis, CPSC, to Elizabeth W. Leland, EC, Project Manager, ATVs, "Current Market Conditions --- ATVs", May 23, 2006.

5. Memorandum from Caroleene Paul, Division of Mechanical Engineering, Directorate for Engineering Sciences, CPSC, to Elizabeth Leland, Project Manager, ATV Safety Review Team, "Draft Proposed Requirements for All-Terrain Vehicles (ATVs)," May 23, 2006.

6. Memorandum from Hope E. Johnson, Engineering Psychologist, Division of Human Factors, Directorate for Engineering Sciences, CPSC, to Elizabeth Leland, Project Manager ATV Team, "ATV Age Guidelines," May 23, 2006.

7. Memorandum from Sarah B. Brown, Engineering Psychologist, Division of Human Factors, Directorate for Engineering Sciences, CPSC, to Elizabeth Leland, Project Manager, ATV Project, "ATV Lighting," May 22, 2006.

8. Report from Robert Franklin, Directorate for Economic Analysis, CPSC, "All Terrain Vehicle Mandatory Standard: Preliminary Regulatory Analysis", May 2006,

9. Report from Robert Franklin, Directorate for Economic Analysis, CPSC, "All Terrain Vehicles: Initial Regulatory Flexibility Analysis," May 2006.

10. Memorandum from Timothy P. Smith, Engineering Psychologist, Division of Human Factors, Directorate for Engineering Sciences, CPSC, "Minimum requirements for ATV hang tags, product labels, and manual warnings," May 23, 2006.

11. Memorandum from Timothy P. Smith, Engineering Psychologist, Division of Human Factors, Directorate for Engineering Sciences, CPSC, "Recommended disclosure statement for adult-ATV purchasers," May 23, 2006.

12. Memorandum from Hope E. Johnson, Engineering Psychologist, Division of Human Factors, Directorate for Engineering Sciences, "ATV Training," May 17, 2006.

13. Memorandum from Robin L. Ingle, Health Statistician, Hazard Analysis Division, Directorate for Epidemiology, CPSC, "Explanation of Trained ATV Rider Risk Statement," April 11, 2006.

14. Memorandum from Tanya Topka, Compliance Officer, Recalls and Compliance Division, CPSC Office of Compliance, "Three-Wheeled All-Terrain Vehicles," May 22, 2006.

(Draft of 5/30/06)

PART 1307 – BAN OF THREE-WHEELED ALL TERRAIN VEHICLES

Sec.

- 1307.1 Scope and application.
- 1307.2 Purpose.
- 1307.3 Definitions.
- 1307.4 Banned hazardous products
- 1307.5 Findings.
- 1307.6 Effective Date.

AUTHORITY: 15 U.S.C. 2057 and 2058.

§ 1307.1 Scope and application.

In this part 1307 the Consumer Product Safety Commission declares that three-wheeled all terrain vehicles, as defined in § 1307.3, are banned hazardous products under sections 8 and 9 of the Consumer Product Safety Act (15 U.S.C. 2057 and 2058).

§ 1307.2 Purpose.

The purpose of this rule is to prohibit the sale of three-wheeled all terrain vehicles. These products present an unreasonable risk of injury as a three-wheeled ATV is inherently less stable than an ATV with four wheels resulting in 3 times the risk of injury compared to a four-wheeled ATV.

§ 1307.3 Definitions.

(DRAFT OF 5/30/06)

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1307.

(b) *Three-wheeled all terrain vehicle, or three-wheeled ATV*, means a motorized vehicle that travels on three low pressure tires, has a seat designed to be straddled by the operator, has handlebars for steering, and is intended for off-road use on non-paved surfaces.

§ 1307.4 Banned hazardous products.

Any three-wheeled ATV, as defined in § 1307.3(b), that is manufactured or imported on or after [180 days from issuance of final rule] is a banned hazardous product.

§ 1307.5 Findings.

(a) *The degree and nature of the risk of injury.* The Commission finds that the risk of injury which this regulation is designed to eliminate or reduce is that of severe injury or death occurring when the operator of a three-wheeled ATV loses control of the vehicle, collides with another object, or otherwise becomes injured or dies while riding a three-wheeled ATV. Three-wheeled ATVs are less stable and more risky than four-wheeled ATVs. The risk of sustaining a hospital emergency room treated injury

(DRAFT OF 5/30/06)

while operating a three-wheeled ATV is about 3 times the risk on a similar four-wheeled ATV.

(b) *Products subject to the ban.* Three-wheeled ATVs are motorized vehicles that travel on three low pressure tires, have a seat designed to be straddled by the operator, have handlebars for steering, and are intended for off-road use on non-paved surfaces.

(c) *The need of the public for three-wheeled ATVs and the effects of the rule on their utility, cost and availability.* The Commission finds that the public's need for three-wheeled ATVs (given the continued availability of four-wheeled ATVs) is small and that the effect of this rule on the cost, utility, and availability of three-wheeled ATVs will also be small. The major manufacturers of ATVs have not sold three-wheeled ATVs in the United States since 1988. Although a few new entrants to the market have started to offer three-wheeled ATVs, and some models that were manufactured before 1988 are still in use, three-wheeled ATVs are not widely available at this time. Even before 1988, the market for three-wheeled ATVs compared to four-wheeled ATVs was declining. In 1986, about 80 percent of ATVs sold in the United States had four wheels. For most individuals, the utility difference between a three-

(DRAFT OF 5/30/06)

wheeled ATV and a four-wheeled ATV is minimal. Four-wheeled ATVs will continue to be available. Except for the fact that three-wheeled ATVs are considerably less stable than four-wheeled ATVs, they are functionally equivalent. One can use a four-wheeled ATV in essentially the same manner as a three-wheeled ATV.

(d) *Alternatives.* The Commission has considered other means of obtaining the objective of this ban, but has found none that would adequately reduce the risk of injury. While there are many technical factors that make a four-wheeled ATV more dynamically stable than a three-wheeled ATV, one of the largest factors is the fourth wheel. Given the inherent difference in vehicle configuration, the Commission does not believe it is feasible to develop a performance standard for three-wheeled ATVs that would improve that vehicle's stability performance to that of a four-wheeled vehicle.

§ 1307.6 Effective date.

This rule becomes effective [180 days from issuance of final rule] and applies to all three-wheeled ATVs manufactured or imported on or after that date.