

OS#5283



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

VOTE SHEET

Date: FEB 2 2005

TO : The Commission
Todd A. Stevenson, Secretary

FROM : Page C. Faulk, General Counsel *Page C. Faulk*
Lowell F. Martin, Assistant General Counsel *L. F. Martin*

SUBJECT : Petition CP 02-4/HP 02-1; Petition requesting ban of ATVs sold for the use of children under 16 years of age

Attached is a briefing package from the staff concerning a petition from Consumer Federation of America and other groups asking the Commission to issue a rule banning adult-size four wheel all-terrain vehicles ("ATVs") sold for the use of children under 16 years of age. The staff recommends that the Commission deny the petition.

Please indicate your vote on the following options.

- I. Grant the petition and direct the staff to develop an advance notice of proposed rulemaking.

Signature Date

- II. Deny the petition and direct the staff to prepare a letter to the petitioner.

Signature Date

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III. Defer decision on the petition.

Signature

Date

IV. Take other action (please specify):

Signature

Date

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

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

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Executive Summary

In August 2002, the Consumer Federation of America (CFA) and eight other groups petitioned the U.S. Consumer Product Safety Commission (CPSC) to take four actions to address hazards presented by all-terrain vehicles (ATVs). In September 2002, the CPSC Office of the General Counsel (OGC) docketed the portion of the request that asked for a rule banning the sale of adult-size four-wheel ATVs sold for the use of children under the age of 16.

In 2001, the most recent year for which CPSC staff has both injury and exposure data, there were an estimated 2.8 million ATV drivers under the age of 16 years, and another 4.4 million children rode ATVs as passengers. Children under the age of 16 sustained about 31 percent, or 34,300, of the estimated 110,100 injuries that occurred to riders in 2001. A 2001 injury study showed that 63 percent of children who were injured in an ATV-related incident were driving the ATV; the remaining 37 percent were passengers. Additionally, 89 percent of the child drivers who were injured were driving adult-size ATVs. Based on injury and exposure estimates from surveys conducted in 2001, the risk of injury to drivers under age 16 on adult-size ATVs was roughly twice the risk for child drivers on youth ATVs.

Children under age 16 also account for a large proportion of ATV-related deaths. For the period between January 1, 1982, and December 31, 2003, children under age 16 accounted for 1,846 of the 5,791 deaths reported to the CPSC, or 32 percent of the total. Based on a staff analysis of ATV-related child fatalities in 1999 and 2000, 76 percent of the victims were driving the ATV when they were killed. Additionally, of the fatalities where engine size and driver age are known, 86 percent occurred while a driver under the age of 16 was driving an adult-size ATV.

The risk of injury for children on adult-size ATVs is high, and the benefits of getting children off adult-size ATVs could be substantial. However, for such benefits to be realized, a federal sales ban would need to change riding behavior, i.e., how adult-size ATVs are used after they are purchased, as well as reduce the number of adult-size ATVs that are sold for the use of children.

The likely impact of a federal sales ban on both of the above measures of effectiveness is uncertain. In large part, this is because a sales ban would primarily address how ATVs are sold, rather than how they are 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.

Additionally, the impact of a sales ban in the new product market would likely be limited because, under current ATV Voluntary Action Plans agreed to by industry and CPSC, major distributors already require that their dealers not sell adult-size ATVs for the use of children. Also, consumers are informed in a number of ways at the point of

sale that adult-size ATVs are not intended for the use of children. No data are available to show that a ban of ATVs for use by children under the age of 16 years would be more effective in preventing such use than the age recommendations in the Voluntary Action Plans.

Furthermore, a federal sales ban would have little effect on sales of used ATVs in the secondary market; it would be very difficult to enforce such a ban against individuals who sell ATVs to each other. Based on 2001 data, this market currently accounts for about 37 percent of total ATV sales.

Consequently, while the impact of a sales ban is uncertain, there would be a number of factors that would tend to limit its effectiveness. Thus, the CPSC staff recommends that the Commission deny the petition.

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UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Memorandum

FEB 2 2005

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: John Gibson Mullan, Acting General Counsel *dlm*
Patricia Semple, Executive Director *PS*

FROM : Jacqueline Elder, Assistant Executive Director for Hazard Identification and Reduction
Elizabeth W. Leland, Economic Analysis, Project Manager, 301-504-7706 *ELW*

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

1. INTRODUCTION

The staff of the U.S. Consumer Product Safety Commission (CPSC) prepared this briefing package for use by the Commission in consideration of CP-02-4/HP-02-1: *Petition Requesting Ban of All-Terrain Vehicles Sold for Use by Children Under 16 Years Old*. This package provides background material about all-terrain vehicles (ATVs), discusses the addressability and feasibility of the petition, and provides information about the options available to the Commission for addressing the petition.

2. BACKGROUND

A. Petition CP-02-4/HP-02-1

On August 19, 2002, the Consumer Federation of America (CFA) and eight other groups ¹ asked the Commission to take four actions to address hazards presented by ATVs.² In a letter dated September 25, 2002, the CPSC Office of the General Counsel (OGC) explained its decision to docket only the portion of the request that asked for a rule banning the sale of adult-size four-wheel ATVs sold for the use of children.³ A copy of the CFA request and the response from the CPSC OGC can be found at Tab A.

¹ The other groups are: the American Academy of Pediatrics, the American College of Emergency Physicians, Bluewater Network, The Center for Injury Research and Policy, The Danny Foundation for Crib and Child Product Safety, Kids in Danger, The National Association of Orthopaedic Nurses, and U.S. PIRG (Public Interest Research Group).

² "In the Matter of the Petition of Consumer Federation of America, To Ban All-Terrain Vehicles for Use By Children under 16 years old and To Provide Refunds for Consumers", submittal from Rachel M. Weintraub, Attorney for Petitioner, Consumer Federation of America, August 19, 2002.

³ September 25, 2002, Letter from Stephen Lemberg, Assistant General Counsel, CPSC, to Rachel M. Weintraub, Esq., Consumer Federation of America. This letter provides information as to why the other requests by the petitioner were not docketed as a petition. The request was docketed as a petition under the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261(q)(1)(A), and under Section 8 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2057.

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In their submittal, the petitioners asked the Commission to find that “new and used adult-size four-wheel ATVs as used by and /or sold for children under 16 years old present an unreasonable risk of injury.”⁴ They also assert that “no consumer product safety standard would adequately protect children from the unreasonable risk of injury.”⁵ The petitioners state that “ATVs are inherently difficult to operate for adults and beyond the developmental capability of children to control” and that “children do not have the physical or mental abilities to make the complex, split-second decisions” needed to operate an ATV.⁶

B. Past CPSC Action

In 1985, the Commission issued an Advance Notice of Proposed Rulemaking (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; the consent decrees were to be effective for 10 years.⁷ Under the consent decrees, the distributors agreed to take several actions ranging from stopping the distribution of three-wheel ATVs and developing a performance standard for four-wheel 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 specifically agreed to:

- “represent affirmatively” that ATVs with engine sizes between 70 and 90 cc should be used by those age 12 and older and that ATVs with engine sizes larger than 90 cc should be used only by those age 16 years and older, and
- “use their best efforts to reasonably assure” that ATVs would “not be purchased by or for the use of anyone who did not meet those age restrictions.”

In addition, one of the labels required by the consent decrees on adult-size ATVs stated: “Operating this ATV if you are under the age of 16 increases your chance of SEVERE INJURY or DEATH. NEVER operate this ATV if you are under age 16.”

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 field staff also began its own monitoring of dealers.

In 1991, the Commission withdrew its ATV ANPR, thus ending the rulemaking proceeding begun in 1985.⁸ The Commission stated that a product standard that would reduce injuries and deaths from ATVs was not feasible at the time and that a ban of ATVs was not appropriate due to the extensive use of ATVs for non-recreational purposes, their significant recreational value,

⁴ Consumer Federation of America, *op. cit.*, p. 9.

⁵ *Idem.*

⁶ *Ibid.*, p. 6.

⁷ There were five ATV distributors when the consent decrees were enacted: American Honda Motor Company, Inc.; American Suzuki Motor Corporation; Polaris Industries, L.P.; Yamaha Motor Corporation, USA; and Kawasaki Motors Corporation.

⁸ 56 FR 47166 (September 18, 1991).

and the lack of any close substitutes. The Commission noted that it "has no statutory authority to prohibit children from riding ATV's that have already been purchased," but it would have the authority to ban future sales of ATVs "where it is intended at the time each ATV is sold that it will be used by persons under age 16." The Commission declined to pursue that course of action in part because it could not show that a ban of ATVs for use by children would be more effective in preventing such use "than the age recommendations in the consent decrees and the distributors' monitoring agreements."⁹

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 Court upheld the Commission's action.¹⁰

In 1998 the consent decrees expired, and the Commission entered into Voluntary Action Plans¹¹ with individual ATV distributors who had been subject to the consent decrees and with three other ATV distributors (Cannondale Corporation, Arctic Cat Inc., Bombardier Recreational Products, Inc.) who had entered the market after the consent decrees had been established. (Cannondale no longer makes ATVs.) The Voluntary Action Plans 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 the actions of dealers in providing information on the age recommendations.

3. DISCUSSION

A. Product Design

At Tab B, the CPSC Directorate for Engineering Sciences (ES) describes the current voluntary standard for ATVs, ANSI/SVIA 1-2001, *The American National Standard for Four Wheel All-Terrain Vehicles – Equipment, Configuration, and Performance Requirements*. It was first published in 1990, after being developed to fulfill one of the requirements of the 1988 consent decrees.

The standard defines an ATV as a vehicle that travels on four low-pressure tires, with a seat that is straddled by the operator and handlebars that provide steering control; it is intended for use by a single operator. ATVs are categorized in the standard by type of intended use. The four categories are: G for general recreational and utility use; S for recreational use by experienced operators; U for use as a utility vehicle, and Y for operators under the age of 16. The Y (youth) category is further broken down by the standard into the Y-6 ATV and Y-12 ATV. Although the standard does not use engine size to define any category of ATV, the consent decrees differentiated between adult and youth ATVs by engine sizes greater than 90 cc (adult-size ATV) and engine sizes 90 cc or less (youth-size ATV). Over time, the Y-6 ATVs have become

⁹ 56 FR 47167 (September 18, 1991).

¹⁰ Consumer Federation of America v. Consumer Product Safety Commission 990 F.2d 1298 (D.C. Cir.1993).

¹¹ U.S. Consumer Product Safety Commission, "All-Terrain Vehicles: Commission Resolution", *Federal Register* 63 (236), December 9, 1998, p. 67861.

characterized as having engine sizes less than or equal to 70 cc and are described as being intended for children at least six years old, while the Y-12 ATVs have become characterized as having engines less than or equal to 90 cc and are described as being intended for children at least 12 years old.

The voluntary standard includes four requirements that are specific to youth ATVs. These are: a means to restrict or limit the speed; a limit to the maximum unrestricted speed that the ATV can achieve (15 miles per hour for Y-6 ATVs and 30 miles per hour for Y-12 ATVs); brake stopping distance; and no headlamp or tail lamp.

There is no required maximum unrestricted speed for adult ATVs, nor is there any requirement for providing a means to limit the speed of adult ATVs. There *are* requirements for adult ATVs for brake stopping distance.

B. The ATV Market

Tab C from the CPSC Directorate for Economic Analysis (EC) provides information about the market for ATVs. There are about 30 domestic and foreign manufacturers selling ATVs in the United States; six of these firms account for nearly 90 percent of all new ATV sales. During the last five years, there have been many new entrants into the market – primarily foreign manufacturers who sell their product to U.S. firms for distribution and sale throughout the United States. When these companies first entered the market, they sold youth ATVs only; they now are beginning to market and sell adult-size ATVs.

ATVs generally are sold through manufacturers' networks of dealers. About 5000 dealers are affiliated with the major ATV distributors. For other ATV manufacturers and distributors, the dealer network includes lawn and garden shops, boat and marine product dealers, motor sports equipment dealers, and farm implement dealers. ATVs now are also sold on various Web sites; these models generally are youth models or adult models with smaller engines.

Sales of ATVs have increased dramatically in recent years. Between 1996 and 2002, for example, annual sales increased by roughly 145 percent to about 800,000 units. Annual rates of increase of sales may be slowing, but sales during 2000 – 2002 still were at record levels compared to the mid-1980s when sales of ATVs were roughly one-half million units annually. As noted in Tab C, the five states with the largest unit sales volume in 2002 were California, Texas, New York, Pennsylvania, and Minnesota.

There has also been a substantial increase in the sales of youth ATVs in the last five years, especially after the introduction of youth models by new entrants into the market. Although the 1988 consent decrees did not prohibit the sale of youth ATVs, none were produced between the late 1980s and the early 1990s.¹² In the mid-1990s, interest in youth ATVs as a niche market began to develop. Sales have continued to increase, and in 2002, an estimated 80,000 youth ATVs (or about 10 to 12 percent of all ATVs) were sold.

¹² Gregory B. Rodgers, "All-Terrain Vehicle Injury Risks and the Effects of Regulation", *Accident Analysis & Prevention*, Pergamon Press, Ltd., Vol. 25, No.3, 1993, p. 336.

The engine sizes of ATVs currently for sale range from 50 cc to over 700 cc. The suggested retail prices for year 2004 models from the major manufacturers ranged, during the 2004 model year, from approximately \$2,000 to nearly \$8,000, with the median price being about \$5,150. The manufacturers' suggested retail prices for year 2004 youth models ranged from about \$1,800 to \$2,500, with a median price of about \$2,300.

C. ATV Use

The most recent information available about the characteristics of ATV users is from a 2001 ATV exposure survey sponsored by the ATV industry in consultation with CPSC staff. Tab D from the CPSC Directorate for Epidemiology provides details of the survey, with a focus on the under-16 age group. The full results of the survey are available on the CPSC Web site at www.cpsc.gov/LIBRARY/FOIA/FOIA03/os/atvex2001.pdf.

According to the survey, there were 22.9 million ATV riders of all ages in 2001; 16.3 million were drivers and 6.6 million were passengers (see Table 1). This represents an increase from 1997 when the last ATV exposure survey was conducted. In 1997 there were 18.1 million riders of all ages, of whom 12.0 million were drivers and 6.1 million were passengers. (For more details from the 1997 and 2001 exposure surveys, see Tab D.)

In 2001, about 7.2 million of these riders were children; about 2.8 million (39 percent) were drivers and about 4.4 million (61 percent) were passengers (see Table 1). This compares with 6.6 million child riders in 1997, of whom 2.5 million (38 percent) were drivers and 4.1 million (62 percent) were passengers. Using information about ATV-owning households (a subset of the survey population), about 75 percent of the 2.8 million child drivers in 2001 operated adult-size ATVs.

Table 1
Number of ATV Riders (millions), 2001

Rider Type	Rider Age		Total
	Under 16 Years Old	16 Years and Older	
<i>Drivers</i>	2.8	13.5	16.3
<i>Passengers</i>	4.4	2.2	6.6
Total	7.2	15.7	22.9

Source: Tab D: "ATV Risk Estimates for Youth," Table 3 (p. 6), Table 4 (p. 7), and Table 5 (p. 9) and calculations based on data in those tables.

In 2001, there were 5.6 million ATVs in use (see Table 2 on the next page), an increase from the 4.1 million in use in 1997. In both 1997 and 2001, youth models, i.e., models with engine sizes less than or equal to 90 cc, accounted for 7 percent of all ATVs in use. About 2.5 million, or about 45 percent, of the 5.6 million ATVs owned by American households were purchased used, with about 80 percent of those having been purchased from the previous owner.

Table 2
ATVs in Use, 2001

Engine Size (cc)	Number in Use (Millions)	Percent of Total
< 90	0.4	7
91 – 199	0.5	9
200 – 299	1.9	34
300 – 399	1.7	30
≥ 400	1.1	20
Total	5.6	100

Source: Mark S. Levenson, Ph.D., "All-Terrain Vehicle 2001 Injury and Exposure Studies", U.S. Consumer Product Safety Commission, January, 2003, Tables 1 (p. 9) and 10 (p. 19) and calculations based on the data in those tables.

D. ATV-Related Injuries

There were an estimated 110,100 ATV-related injuries to ATV riders in 2001, the year for which CPSC has comparative exposure data. See Table 3 below. Injuries have been increasing annually since 1996, with the largest annual increases occurring since 1998. The 2001 level of injuries was the largest since 1986.¹³

Table 3
ATV Injuries, 2001

Number of Emergency Room Treated Injuries	110, 100
Percent of Injuries Accounted for by:	
Riders < 16 Years Old	31
Riders ≥ 16 Years Old	69

Source: Number of Emergency Room Treated Injuries: Robin L. Ingle, "2003 Annual Report of ATV Deaths and Injuries," Tab E, Table 5 (p. 9); Percent of Injuries Data (rider type, rider age): Mark S. Levenson, Ph.D., "ATV Risk Estimates for Youths", Tab D, Table 1 (p. 4).

Children under 16 years old accounted for 31 percent of the injuries in 2003. In recent years, the estimated number of injuries to children under 16 years old as a percentage of all injuries represents the lowest percentage since at least 1985, when riders under 16 accounted for 40 percent of all ATV-related injuries treated in hospital emergency rooms (see Tab E, p. 9).

There are several possible scenarios in which children can be involved in ATV-related incidents. Injuries can occur to children who are driving ATVs, and injuries can occur to children who are passengers, whether they are riding on an ATV that is driven by an adult or by another youth. Injuries also can occur to youth bystanders, other non-ATV-riders, including riders of other types of vehicles. Finally, injuries can occur to adults who are passengers on an ATV driven by a youth or to adult non-riders who are injured by a youth-driven ATV.

¹³ A graphical representation of injury trends since 1986 is shown in Mark S. Levenson, Ph.D., *All-Terrain Vehicle 2001 Injury and Exposure Studies*, January 2003, p.5, Fig.1.

As shown in Table 4, in 2001, 21,500 youth drivers and 12,900 youth passengers (including non-riders) were injured while riding an ATV. The injuries to youth drivers were 19 percent of all ATV injuries and injuries to youth passengers were 12 percent of all ATV injuries.

Table 4
ATV-Related Injuries, by Type of Rider, 2001

ATV User Group	Injuries	Percent of Total Injuries
Drivers 16 Years and Older	69,200	63
Drivers Under 16 Years	21,500	19
Drivers Under 16, Adult-size ATVs	19,100	17
Drivers Under 16, Youth ATVs	2,400	2
Passengers 16 Years and Older*	6,600	6
Passengers Under 16 Years*	12,900	12
On ATV with Youth Driver	6,300	6
On ATV with Adult Driver	6,600	6
Total ATV-Related Injuries*	110,100	100

* Includes non-riders. Injuries to non-riders are 2 percent of total ATV-related injuries to persons of all ages and 4 percent of the injuries to children/youth under 16. Numbers do not add due to rounding. Injury estimates include only injuries involving a hospital emergency room visit.

Source: "ATV Risk Estimates for Youths," Mark S. Levenson, Ph.D., Tab D, Table 1, and Mark S. Levenson, special calculation based on data gathered for 2001 exposure survey (driver and ATV size data).

E. Risk of Injury

In 2001, the aggregate risk of injury for riders (defined as drivers and passengers) under 16 years old on three- and four-wheel ATVs (4.8 injuries per thousand riders) was the same as the risk of injury for adults (4.8 injuries per thousand riders). However, for *drivers* under the age of 16, the injury risk was much higher: 7.6 injuries per thousand drivers, compared to 5.1 injuries per thousand drivers age 16 years and older. See Table 5 on the next page.

Based on data from ATV-owning households only (the above risk data is for ATV riders who lived in ATV-owning and non-ATV-owning households), the risk of injury for children under 16 driving adult ATVs in 2001 was 18.6 injuries per thousand drivers. This is much higher than the risk of 9.6 injuries per thousand for children who drove youth models.

While annual rider-based risk estimates *over time* are not available, Tab E, p.11, provides product-based annual risk estimates (i.e., injuries per 10,000 four-wheel ATVs in use) since 1985.

Table 5
Rate of ATV-Related Injury, by Type of Rider, 2001
(Injuries per Thousand Riders, Drivers)

ATV User Group	Injury Rate
Riders Under 16 Years Old	4.8
Riders 16 Years and Older	4.8
Total	4.8
Drivers Under 16 Years Old	7.6
Drivers 16 Years and Older	5.1
Total	5.6

Source: Mark S. Levenson, Ph.D., Special calculation based on data gathered for 2001 exposure survey.

F. ATV-Related Deaths of Children Under 16 Years of Age

Tab E from the CPSC Directorate for Epidemiology (EP) provides information about the number of deaths associated with the use of ATVs. As noted there, CPSC had reports (as of December 31, 2003) of 5,791 deaths between January 1, 1982, and December 31, 2003 involving ATVs. Children under age 16 accounted for 1,846 (32 percent) of these deaths, and 778 deaths (13 percent of the total) were of children under 12 years old.¹⁴

In Tab F, the Directorate for Epidemiology provides the results of an analysis of incidents involving fatalities of children on ATVs that occurred in 1999 and 2000. Characteristics of the victims involved in the incidents were examined, as well as the circumstances surrounding those incidents. While not a statistical sample, this grouping of incidents provides a picture of the characteristics of children who died.

Some findings from the analysis are as follows:

- Thirty-nine percent of the victims were under 12 years old, and 81 percent were male.
- Seventy-six percent of the victims were driving the ATV at the time of the incident, and the remaining 24 percent of the victims were passengers.
- Ninety percent of drivers were under 16 years old.
- At least forty-five percent of the incidents involved multiple riders, with eight percent involving three or more riders.
- In 40 percent of the incidents, overturning was the “precipitating event.” Other major precipitating events included: hitting a stationary object (22 percent); collision with another vehicle (19 percent); and falling, jumping, or being thrown off the ATV (15 percent).
- For incidents where driver age and engine size were known, 86 percent occurred while a child under 16 was driving an adult-size ATV.
- Twenty-five percent of fatalities occurred on paved public or private roads.

¹⁴ These data are provided in Tab E. Reporting was incomplete for 2000 – 2003, and the percentages given here should be interpreted with caution because the rate at which deaths are reported may not be consistent across all age groups.

- In three of the 184 incidents, drug or alcohol use was reported.
- Seventy-two percent of the child fatalities involved children who were not wearing a helmet.

G. Voluntary Action Plans: Age Guideline Monitoring

In 1998, when the ATV consent decrees expired, the major ATV distributors entered into Voluntary Action Plans with CPSC. According to the plans, the distributors agreed to abide by most of the requirements of the consent decrees. All of the major distributors continue to require dealers to have buyers of new adult ATVs sign a statement at the time of sale indicating that they have been told about and understand the age recommendations.

Tab N (Restricted) from the CPSC Office of Compliance provides information on the results of undercover monitoring of ATV dealers by manufacturers and by CPSC staff. A violation of age recommendations occurs when a salesperson suggests or recommends an adult-size ATV for a child under age 16. This can include various scenarios in which it is implied that a sales person is recommending an adult-size ATV for a child, such as a sales person suggesting that the parent come back at another time and state that the ATV is for their own use or a sales person directly suggesting that an adult-size ATV be purchased for a child.

CPSC staff has conducted undercover inspections of ATV dealerships since 1989. During the period covered by the consent decrees, roughly 90 percent of dealers were in compliance with the age recommendations. Compliance with the recommendations appears to have declined in recent years; in 1998, compliance was 85 percent, and in the years 2002 and 2003, 60 percent. However, for 2004, the compliance rate was 70 percent.

The declining rate of dealer compliance with the age recommendations from 1998 to 2004 may be related to the reduced stringency of the ATV Voluntary Action Plans, relative to the legally binding consent decrees. However, available data on driver usage patterns shows no parallel decrease in the proportion of children who drove youth models. In fact, the proportion of children driving youth models appears to have increased. As indicated in Tab G, the CPSC's 1997 ATV exposure survey indicated that only about 4 percent of children drove youth models, while the 2001 survey indicated that 25 percent of children drove youth models.

H. Other Current Federal Government Regulatory Actions

On January 7, 2003, the U.S. Environmental Protection Agency (EPA) published new regulations for recreational vehicles, including snowmobiles, off-highway motorcycles, and ATVs. These regulations consist of emission standards that will apply to new ATVs produced in 2006 or after. The standards will be met by producing *only* four-stroke engine vehicles, which already are common in most adult-size ATVs. Youth ATVs commonly have two-stroke engines. Although youth ATVs are included in the regulations, manufacturers have the option to meet slightly less stringent standards for youth models than for adult ATVs. More information about these regulations can be found at www.epa.gov/otaq/recveh.htm.

4. EVALUATION OF THE PETITION

The petitioners have requested that CPSC ban the sale of adult-size ATVs for the use of children under 16 years old. To issue such a ban, the Commission would need to find that ATVs sold for the use of children under the age of 16 years present an unreasonable risk of injury and that the regulatory action would adequately reduce the risk of injury. Weighing the costs and benefits of regulatory action is a part of making such a finding.

A. Benefits

As described by EC at Tab G, the potential benefits of getting children off adult-size ATVs are substantial. Getting children to drive youth models rather than the more powerful adult models could reduce the injury risk by half. Such a risk reduction could potentially reduce injury costs by about \$413 per child driver annually and could reduce fatality costs by about \$112 per child driver annually.¹⁵

However, for these potential benefits to be realized, a federal sales ban would need to be effective. It would need to reduce the number of adult-size ATVs that are sold for the use of children, and it would need to affect riding behavior: how adult ATVs are used after they are purchased and taken home. The impact of a federal sales ban on both of these measures of effectiveness is uncertain.

With regard to the number of adult-size ATVs sold for the use of children, it should be noted that the impact of a sales ban would, practically speaking, be limited to the new product market. It would have little effect on the sales of ATVs between private individuals in the secondary market (estimated at 37 percent of the annual sales in 2001 of all ATVs). Even if the Commission extended the ban to include sales between individuals, it would be difficult, if not impossible, to enforce it. Additionally, the impact of the sales ban in the new product market would be limited by the existing age agreements under the existing Voluntary Action Plans between distributors and the CPSC. (The impact of a sales ban would be the additional reduction in the sales of adult ATVs for the use of children, over and above the reduction in sales associated with the arrangements under the action plans.)

A federal sales ban might reduce dealer non-compliance with the age recommendations, if it were aggressively enforced by the CPSC. However, the effectiveness of a federal sales ban in preventing the sale of adult-size ATVs to children would depend largely upon parents heeding the ban to a greater extent than they heed the current warnings required by the action plans. According to the petitioners, a federal sales ban would “send a powerful message to parents about how dangerous large ATVs are for children.”¹⁶ However, as noted in Tab J from the CPSC Division of Human Factors, there is little research to indicate that consumers would view a federal government warning as being more credible than other warnings. Although a federal sales ban might raise the awareness of some parents, and although there are some parents who

¹⁵ Note that this analysis assumes that the most likely alternative to driving an adult-size ATV is to drive an appropriate youth model. If, however, the alternative was to ride a different recreational vehicle such as an off-road motorcycle or a bicycle, the expected risk reduction would be the difference between the risk on an adult-size ATV and in the alternative activity.

¹⁶ Consumer Federation of America, Bluewater Network, and Natural Trails and Waters Coalition, “ATV Safety Crisis: America’s Children At Risk”, August 2003, p. 3.

might put more faith in a warning message if that message was clearly associated with a federal government agency, there also are many parents (as evidenced by comments sent to the Commission in response to the *Federal Register* notice and by testimony at the Commission's June 6, 2003, Public Meeting in West Virginia) who believe that they are the persons who can best make decisions about their children's safety and well-being. See Section 5, Issue 13, of this memorandum.

There are also other factors that enter into consumer ATV purchase decisions that could limit the effectiveness of a sales ban in preventing the sale of adult-size ATVs for the use of children. For example, some purchasers buy ATVs for use by multiple family members. (For example, based on the 2001 exposure survey, there were about 1.55 drivers per ATV in ATV-owning households.) These buyers may resist buying children's models if some of the household drivers are adults. Additionally, since ATVs are relatively expensive consumer products, some parents may not want to purchase a youth model for a 14-year-old when they think it may be physically small for the youth or may be outgrown within two years. Similarly, some children (especially older children) may not want their parents to buy a children's model for their use, due to the possible peer stigma of having a "child's" model, even if the parent is inclined to do so. While the impact of these types of actions cannot be quantified, it is likely that they could affect the purchase decisions of some parents and would tend to reduce the likelihood that parents would purchase youth models.

Additionally, it should be noted that the effectiveness of a sales ban would be limited by the fact that it would not affect how ATVs are used after they are purchased and taken home. While the Commission could ban the sale of adult-size ATVs for the use of children, and therefore affect how ATVs are sold in the new product market, it cannot control the behavior of consumers or prevent parents from allowing their children to ride adult ATVs. Such enforcement of riding behavior would probably require actions at the state and local levels of government.

B. Costs

When an adult goes to purchase an ATV for a child under the age of 16, they have the option of purchasing an adult-size ATV or a youth ATV. The Directorate for Economic Analysis (EC) staff evaluated the costs of the sales ban under the assumption that parents would purchase a youth ATV for their child rather than an adult-size ATV. Children would still be able to ride ATVs, but ones that met the age guidelines.

As described in Tab G from EC, there are two primary monetary costs associated with a ban on sales of adult-size ATVs for the use of children: the added costs of purchasing and using youth models that would not otherwise be purchased and used and the costs of enforcing a sales ban to make sure dealers comply with the requirements. There is also a non-monetary cost involved: the potential loss in utility for consumers who no longer would be able to purchase and use the products they prefer.

If a ban were to be successful in getting a child off an adult-size ATV and onto a youth model, parents would have to buy a youth model that they would not otherwise have purchased. As a result, the household will likely incur additional ATV usage costs (i.e., the costs of purchasing and maintaining the youth ATV and reselling it when it was no longer needed).

These usage costs could be substantial because a youth model, which sells for \$1,800 to \$2,500, might be used for only a couple of years, until the child outgrows it and needs another larger youth ATV or until the child turns 16 and needs an adult-size model. In contrast, an adult-size model might be used for a number of years.

Also, the purchase of youth models would entail additional transaction costs: the additional costs in time and effort that would be needed to conduct the transaction of buying and selling the youth models and purchasing a replacement ATV when a small youth model would need to be replaced with a larger youth model or when the child turned 16. These costs cannot be quantified in any detail, but they would require advertising the sale of the youth ATV, scheduling appointments for prospective buyers to examine the ATV, waiting for customers, negotiating the final resale price, searching for a replacement ATV, and negotiating its purchase price. These transaction costs may be similar in type to those associated with buying and selling used automobiles.

Although these costs are monetary, there is not enough information to be able to quantify the extent to which households, in response to a federal sales ban, will choose to purchase a youth ATV instead of or in addition to an adult-size ATV. Additionally, there are no data to determine how long a family would be using a youth ATV or how many would be purchased over time. Thus, it is not possible to quantify on an aggregate level the monetary costs associated with purchasing and using a youth ATV instead of or in addition to an adult-size ATV. However, these types of considerations may help explain why many parents apparently disregard existing warnings.¹⁷

The second type of monetary cost that would be associated with a sales ban on adult-size ATVs for the use of children would be the costs associated with federal enforcement of the ban. The dollar amount of these costs would depend upon the degree of effectiveness that CPSC would find acceptable and the number of dealers that would need to be monitored to ensure that degree of compliance. *If* the enforcement costs of the sales ban were limited to the costs of increasing the number of undercover monitoring visits (with no substantial litigation costs), then additional costs to the agency could be as much as \$350,000 per year.

In addition to the above costs, some parents and children would face non-monetary costs in the form of forgone benefits if they were not able to purchase and use the ATV models they preferred. Based on testimony presented at the ATV public hearings and comments made in response to the *Federal Register* notice, there are parents who expressed their belief that the youth models are too small physically for their children to drive comfortably or safely; some older children (i.e., 15-year-olds) expressed the same views.¹⁸ The CPSC Human Factors analysis presented at Tab I provides information to indicate that parents of some children have a valid concern about the size of some children and a good ATV "fit" for them. Thus, for these

¹⁷ It is possible that some parents, as a result of a sales ban, might decide not to buy an ATV for the use of their child. If this were the case, the societal benefits would reflect the difference between ATV injury risk and the risk of the child's substitute activity (e.g., riding off-road motorcycles or riding bicycles); the costs would reflect the reduced utility (i.e., use value or enjoyment) of the child that would be associated with not being able to ride any ATV, even an ATV of appropriate size.

¹⁸ See, for example, comments 11, 25, 36, 73, and 187 in response to the *Federal Register* notice about the West Virginia hearing. These comments are listed in Tab M.

parents and children, there would be forgone benefits if they had to purchase a youth ATV for their child when in fact the parents and children believed that the adult-size ATV was a better fit.

Furthermore, youth models might not be used by as many family members as an adult-size model would. If the family can only afford one ATV, buying a youth model might preclude ATV use by adults in the family. Those members of the family who could not ride the youth ATV would face non-monetary costs in the form of forgone benefits. Alternatively, however, if the household decided to purchase both a youth model and an adult-size model (perhaps because the ATV was to be used by multiple household members), the costs of using the youth model would not be offset by what they would have paid to use the alternative adult-size model since they would be paying to use both.

Additionally, many ATVs are used in non-recreational activities, such as farming and ranching, garden and lawn work, and occupational or commercial tasks. Children participate in these non-recreational activities, especially in rural and farming communities. A federal sales ban could reduce the ability of children to assist in these tasks, resulting in a cost to the family.

5. FEDERAL REGISTER (FR) NOTICES, PUBLIC HEARINGS, AND COMMENTS FROM THE PUBLIC

The Commission published an *FR* notice on October 18, 2002, soliciting written comments about the petition from interested persons.¹⁹ The comment period was extended to March 16, 2003, at the request of seven ATV manufacturers and distributors who wanted to review the results of the 2001 ATV exposure survey that was being released in January 2003.²⁰

The Commission received 79 comments in response to the *FR* notice. Tab K is a listing of the comments, by date and by submitter; copies of all comments are available from the CPSC Office of the Secretary. Sixty-one comments expressed support for the petition, with one of the 61 having 1,500 signatures attached to it. Twenty-one of the supporting comments consisted of a single form letter, with local injury and death information attached. Six of the comments in support of the petition were submitted by four of the groups who submitted the petition. Fourteen comments expressed opposition. The remaining four comments did not explicitly state a position.

In addition, the CPSC held a public hearing at West Virginia University in Morgantown, West Virginia, on June 5, 2003, to hear oral presentations concerning ATVs and to provide an opportunity for the interested public to share their opinions about ATVs, ATV safety, and the petition to ban the sale of adult-size ATVs for the use of children. The Chairman of the Commission also conducted two public hearings about ATVs; the first was held on July 8, 2003, in Anchorage, Alaska, and the other was held on November 6, 2003, in Albuquerque, New Mexico.

¹⁹ Consumer Product Safety Commission, "Petition Requesting Ban of All-Terrain Vehicles Sold for Use by Children Under 16", *Federal Register*, Vol. 67, Number 202, p.64353 – 64354, October 18, 2002.

²⁰ Consumer Product Safety Commission, "Petition Requesting Ban of All-Terrain Vehicles Sold for Use by Children Under 16; Extension of Comment Period," *Federal Register*, Vol. 67, Number 248, p. 78776, December 26, 2002.

At the Commission's public hearing in West Virginia, 35 people presented oral testimony, and 239 written comments were submitted. (One of the 239 comments was a statement, signed by approximately 2,940 individuals, against CPSC action to grant the petition.) Most of the written comments (approximately 200) rejected the idea of CPSC taking any action against ATVs. (However, of these, approximately 60 were form letters, primarily from consumers, who mistakenly believed that the Commission was going to stop the production and use of all ATVs. It should also be noted that because the focus of the hearing was broader than the petition, some comments addressed issues unrelated to age and ATV use.) Fewer than ten comments supported the Commission taking action, with some comments supporting actions different than that requested by the petitioners, such as requirements for mandatory ATV driver's education. About 25 comments provided information without expressing an opinion about the petition, although in many of these letters, a position could be inferred. Tab L is a listing of those who presented testimony at the West Virginia hearing, and Tab M is a listing of the written comments submitted in response to the West Virginia hearing, by date of submittal and with the submitter's name or organization. Copies of the testimony and the comments are available from the CPSC Office of the Secretary.

The issues raised in the comments (those received in response to the *FR* Notice and those received in response to the public hearing) concerned: increases in ATV injuries to children; comparative injury severity associated with three- and four-wheel ATVs; the risk of riding ATVs compared to other activities; developmental characteristics of children and their effect on ability to drive an ATV; ATV size, youth anthropometrics, and the age-size guidelines; effectiveness of the current Voluntary Action Plans; the changing ATV market; ATV design; the economic implications of, and necessary regulatory findings for, a ban; ability to verify the safety benefits of a ban and consideration of the potential loss of utility; effectiveness of a sales ban; the role of states and localities in ATV safety; parental rights and responsibilities/social benefits; and environmental considerations.

Each of the 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 attached to 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 Tabs K and M. For example, comment 11, cited in the footnote as being from Tab K, is listed in Tab K as CA 03-1-11 and comment 15, cited in the footnote as being from Tab K, is listed in Tab K as CA 03-1-15, i.e., the last two digits refer to the number of the comment as cited in the footnote. A similar numbering procedure is used for the listing of the comments in Tab M.

Issue 1. Increases in ATV-Related Injuries to Children

A number of comments expressed concern about the increase in ATV-related injuries to children during the years since the consent decrees expired and argued that these data justify action by CPSC. While some of these comments relied upon previously published CPSC data, others provided information from hospitals, states, and localities. Other comments argued that

the increase in injuries could be explained by the increased use of ATVs in recent years, while others argued that more statistical information is needed before any action should be taken.²¹

CPSC Staff Response:

As noted in Tab E, available data indicate that ATV-related injuries treated in hospital emergency departments increased by over 100 percent in recent years, from 52,800 in 1997 to 110,100 in 2001. Based on the evaluation of the results of the two exposure surveys conducted in 1997 and 2001, roughly half of this increase may be related to increased use of ATVs, i.e., about half of the increase may be related to an increase in exposure. For example, between 1997 and 2001, the number of ATV drivers increased by about 36 percent, and the average driving time per driver increased by about 10 percent. While it is more difficult to explain the cause of the remaining increase in injuries, it may be related to such factors as increases in the engine sizes of the ATVs in use and an increase in the proportion of inexperienced ATV drivers. Both of these factors increased between 1997 and 2001, and both have been shown to increase the injury risk.

For children under the age of 16, ATV injuries treated in hospital emergency departments increased by 67 percent during the 1997 to 2001 time frame, while child ATV usage increased by about 30 percent. Again, roughly half of the increase in injury risk can be explained by increased riding exposure.

Issue 2. Injury Risk: Three- and Four-Wheel ATVs

Some comments noted that the risk of injury associated with four-wheel ATV incidents currently is the same, or nearly the same, as it was for three-wheel ATVs when they were withdrawn from the market in 1988.²² The commenters expressed the belief that this similarity in risks justifies the Commission granting the petition.

CPSC Staff Response:

The CPSC Directorate for Epidemiology staff, in Tab D, provides a long-term comparison of ATV risks. Specifically, the number of injuries, the number of ATVs, and the number of injuries per thousand ATVs are compared for the years 1985, 1989, 1997, and 2001. The years 1985 and 1989 represent the years before and at the beginning of the consent decrees and the years 1997 and 2001 represent the years at the end and after the consent decrees.

The number of injuries in 2001 (110,100) is close to that in 1985 (105,700). However, because there were substantially more ATVs in use in 2001 than in 1985, the risk was substantially lower. In 2001, when there were 5.6 million ATVs in use, there were about 20 injuries per thousand ATVs. In contrast, in 1985, when there were 1.9 million ATVs in use, there were 54 injuries per thousand ATVs. The ATVs in use in 1985 primarily were three-wheel

²¹ For example, see comments 3, 4, 5, 6, 7, 8, 9, 10, 15, 19, 22, 23, 24, 26, 27, 28, 28a, 29, 30, 31, 32, 33, 34, 35, 38, 39, 40, 41, 42, 43, 44, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 70, 71, 73, 74, 75, 76, 77, 78 listed in Tab K. Also, see the testimony of Rachel Weintraub; Edward J. Heiden; Jim Helmkamp, Ph.D.; Dick Lepley; Doug Morris; Jonathan Groner, M.D.; and Rebeccah Brown, M.D., listed in Tab L. See comments 2, 5, 15, 16, 17, 28, 30, 43, 52, 73, 115, 125, 128, 136, 146, 170, 171, 172, 186, 188, 196, 197, 198, 202, 215, 219, 220, 226, and 229 listed in Tab M.

²² For example, see comments 4, 8, 24, 29, 35, and 48 listed in Tab K. See the testimony of Rachel Weintraub; Edward J. Heiden; Rebeccah Brown, M.D.; and Scott Kovarovics, listed in Tab L. See comment 60 listed in Tab M.

ATVs, while nearly 86 percent of the ATVs in use in 2001 were four-wheel ATVs. These data suggest that the risk associated with four-wheel ATVs in 2001 was substantially lower than the risk associated with three-wheel ATVs in the mid-1980s prior to the stop-sale of three-wheel ATVs.

Issue 3. Risk of Riding ATVs Compared to Other Activities

Many comments provided data to show that the risk of injury on an ATV is not as great as the risk associated with other recreational activities, with driving, or with other consumer products.²³ Some of these comments expressed the belief that the sale of ATVs for the use of children should not be banned unless the other more risky activities were banned.

CPSC Staff Response:

As shown in Tab J, the Directorate for Epidemiology staff compared the proportion of estimated ATV injuries that resulted in hospitalizations with the proportion of injuries resulting in hospitalization for many other activities. Based on their analysis, the hospitalization rate was highest for snowmobiling (12.3 percent). Riding ATVs had the next highest hospitalization rate (12.1 percent). The activity with the next highest hospitalization rate was paintball games, with a hospitalization rate about half of that for ATV riding. Fifteen other activities had lower hospitalization rates.

EP staff also estimated the risk of injury and risk of hospitalization per thousand participants associated with ATV riding and many other activities. While ATV riding had the highest estimated *risk of hospitalization* (nearly twice as great as the risk associated with each of the other activities), the estimated *risk of injury* per thousand participants was lower than that for football, basketball, wrestling, soccer, baseball, skateboarding, softball, snowboarding, bicycle riding, cheerleading, scooter riding, boxing, and roller skating. This suggests that the risk of *serious injury* (in the form of hospitalizations) may be greater for ATV riders than for participants in other activities. (The participation data used for the alternative sports listed above are not available for dirt bike riding, so comparative risk data for ATVs and dirt bikes could not be developed.)

Issue 4. Youth Developmental Characteristics

Some comments expressed the view that children under the age of 12 years do not have the body size, strength, motor skills, or coordination necessary for the safe operation of an ATV. Further, some expressed the view that children under 16 do not have the necessary perceptual abilities or judgment to drive an ATV.²⁴

²³ See, for example, comments 1, 29, 36, 38 (Attachment), 58, and 71 listed in Tab K. See the testimony of Edward J. Heiden listed in Tab L. See, for example, comments 2, 11, 24, 25, 30, 39, 42, 43, 47, 56, 59, 62, 66, 69, 79, 80, 92, 94, 97, 106, 110, 115, 136, 140, 142, 146, 159, 168, 173, 174, 190, 193, 196, 200, 204, 205, 209, 212, 224, 233, and 236 listed in Tab M.

²⁴ See, for example, comments 2, 3, 4, 6, 8, 9, 10, 16, 22, 23, 24, 26, 28, 28a, 30, 32, 35, 38, 39, 49, 50, 54, 55, 56, 57, 59, 60, 62, 63, 64, 66, 69, 73, 74, 75, 76, 77, and 78 listed in Tab K. Also, see the testimony of Rachel Weintraub; West Virginia Senator Michael Oliverio II (D-13th District); Jeff DeVol; Rebecca Brown, Ph.D.; and Bill Dart listed in Tab L. See, for example, comments 12 and 23 listed in Tab M.

CPSC Staff Response:

An analysis of the developmental characteristics of children and youth is located at Tab H from the Division of Human Factors. As noted there, younger children - those under the age of 6 years - lack the physical and mental skills needed to safely control a moving vehicle with multiple speeds and controls. By age 6, some children will be able to learn basic skills needed to ride ATVs with simple controls at low speed, but will be too young to grasp gear shifting and will have difficulty remembering safety rules, especially when quick recall is needed. By age 12 or 13, many children will be able to drive an ATV reasonably safely at speeds over 10 miles per hour, but not at speeds as fast as many adult-size ATVs can reach. Older adolescents who have been riding ATVs will start to master many skills, but may still have difficulty if they need to make quick decisions or judgments. These older adolescents will also have the highest tendency to push the limits of themselves and their ATVs. In summary, research on children's developmental skills suggests that most children under 16 years old are lacking skills that would allow them to safely ride ATVs in all situations.

Issue 5. ATV Size, Youth Anthropometrics, and Age-Size Guidelines

Numerous comments expressed a concern that the age-size guidelines are not adequate for all children and that some children are too large physically to fit on the youth models.²⁵ The American Motorcyclist Association (AMA) and its sister organization, the All-Terrain Vehicle Association (ATVA), noted that the consent decree guidelines are not appropriate in every situation, with most concerns involving teenage riders who have physically outgrown youth model ATVs. According to the AMA/ATVA, "the problem is so common that AMA/ATVA members have petitioned our competition rulemaking body to depart from the consent decree guidelines for certain age groups."²⁶

One comment noted that some state programs allow children to participate in safety training courses on non-youth model ATVs, and at least one ATV association suggests on its Web site that parents determine what size of ATV is best for their child rather than consulting the dealer at time of purchase.²⁷ The Specialty Vehicle Institute of America (SVIA) indicated that it has heard from a number of parents who want their child to receive the ATV Safety Institute (ASI) training using an ATV which is acceptable under state law but which does not meet the age-size guidelines enforced by SVIA-member companies and which is incorporated in the ASI training program. "Parents and children who are trying in good faith to comply with their state law training requirements have expressed frustration when participation in ASI training is denied due to age/ATV size criteria they feel is unrealistic."²⁸ SVIA encouraged the CPSC to consider more flexible approaches to the age-size guidelines so that requests for family-oriented training could be accommodated.

²⁵ See, for example, comments 1, 7, 11, 17, 18, 27, 37 listed in Tab K. See also the testimony of Jeff deVol, Dick Lepley, Doug Morris, Michael Babusci, and Scott Kovarovics listed in Tab L. See comments 11, 21, 25, 30, 31, 33, 34, 35, 36, 44, 51, 73, 82, 125, 128, 139, 175, 182, 185, 186, 196, 204, 213, 216, 218, and 220 listed in Tab M.

²⁶ See comment 27 listed in Tab K.

²⁷ See information on the Michigan ATV Association Web site: <http://www.michiganatv.com/atv.php>.

²⁸ See comment 213 listed in Tab M.

CPSC Staff Response:

Staff agrees that there is a subset of children who do not “fit” currently available youth ATVs. Some children, for example, are too tall or heavy for the youth models that are marketed in the U.S. today; although adult models with engines less than 90 cc were once available, they no longer are today. A child who is too tall may not be able to steer properly because his or her knees interfere with the handlebars, or a child who is tall and heavy may increase the ATV’s propensity to tip by raising the system’s center of gravity. For a more detailed discussion of this issue, see Tabs I and O (Restricted) from the Division of Human Factors.

Issue 6. Effectiveness of the Current Voluntary Action Plans

Because of the increase in ATV-related injuries and deaths, many commenters believe that the Voluntary Action Plans between CPSC and the ATV distributors have not been effective.²⁹ Fourteen comments, with a total of 1,500 signatures, referred to the November 2003 segment of *Good Morning America* in which 9 of 10 dealers sampled were reported to be willing to sell adult-size ATVs for use by children.³⁰ A few comments noted that the Voluntary Action Plans do not apply to new entrants into the market and that many of the companies now importing and selling ATVs are not included in the Voluntary Action Plans.

On the other hand, one comment noted that industry has not reduced its efforts to meet its commitment to the voluntary actions, while another comment indicated that the industry approach is appropriate and is as effective as parents make it.³¹ Another comment indicated that the strong public relations campaigns of the past have had a “good result”.³² According to one comment from industry, the dealer monitoring program started in 1990 and has continued uninterrupted to date, and the ATV companies have not only maintained all key elements relating to child safety, but they have also implemented additional programs.³³

CPSC Staff Response:

As noted earlier in this memorandum and at Tab N (Restricted), industry and CPSC staff conduct undercover monitoring of ATV dealers. CPSC staff selects the dealerships to monitor by the numbers of reported deaths in each state and Office of Compliance information about ATV usage. Between 2000 and 2003, staff monitored about 12 percent of the approximately 5,000 U.S. dealerships.

During 2002 and 2003, the rate of compliance with the age recommendations was 60 percent; for 2004, it was 70 percent. Industry monitoring, which is generally based on a random selection process, shows a 71 percent compliance rate. The 90 percent violation rate found by *Good Morning America* (GMA) appears inconsistent with both CPSC staff and manufacturer results; CPSC staff does not know the methodology GMA used to conduct its survey. Over 700 dealers have been monitored by CPSC staff or the manufacturers for the past three years.

²⁹ See, for example, comments 5, 8, 10, 15, 22, 24, 29, 31, 33, 34, 37, 39, 41, 42, 43, 45, 48, 49, 54, 62, 67, and 69 listed in Tab K. See the testimony of Rachel Weintraub, Sam Leeson, Dick Lepley, Scott Kovarovics, and Lt. C. W. Schollar listed in Tab L. See comments 194 and 196 listed in Tab M.

³⁰ See comments 5, 15, 19, 31, 33, 34, 40, 41, 42, 44, 48, 53, 61, and 66 listed in Tab K.

³¹ See comments 47 and 71 listed in Tab K.

³² See comment 125 listed in Tab M.

³³ See comment 71 listed in Tab K.

In past years most importers sold only youth ATVs, and therefore did not need to warn against the use of adult ATVs by children; many now are beginning to sell adult ATVs as well. Although not all new entrants into the market participate in the Voluntary Action Plans, CPSC staff makes an effort to identify all new entrants into the market. In particular, CPSC Compliance staff contacts all new ATV distributors that enter the ATV market to ensure that they are aware of the age guidelines, and to request that they voluntarily comply with the guidelines. In addition, CPSC staff includes new importers (with dealerships) in its undercover monitoring.

In 2003, one major new importer was visited 12 times by CPSC staff and was found to be in violation only one time. CPSC staff believes that many of the new importers follow the age guidelines and the youth requirements for age specifications. Internet Web sites for some of the importers as well as for companies that sell directly over the Internet demonstrate that they are aware of and publish information regarding the age guidelines, but whether, how, and to what extent these guidelines are implemented by the Internet distributors who do not have physical dealerships is not known.

As noted previously, consumers are supposed to be informed at the time of purchase about the age guidelines. In addition, if the ATV is purchased from a manufacturer that is a member of the Specialty Vehicle Institute of America (SVIA), then, within 48 hours, the consumer receives a call from SVIA and is encouraged to enroll in free rider training. Training is available at nearly 1,000 locations in the U.S., and mileage expenses are paid by ATV manufacturers if the teaching site is more than 50 miles away. Children under 16 years of age can take the SVIA course only if they are on an appropriate-age vehicle; special teaching arrangements are made for children under age 16 years, and parents are encouraged to attend. For children 12 years old and younger, parents must attend the entire course with the child. The new purchaser's name remains on the contact list for training and is removed only when the buyer completes or refuses to take the course.

Companies that distribute ATVs through Internet Web sites appear to provide some safety information online, including information about age and size guidelines. Until recently, most of these Web sites sold only youth ATVs, so that asking the age of the intended user was a moot point. However, these sites now are beginning to sell adult ATVs; the purchaser must be 18 years of age, but in general, these sites do not inquire about the age of the intended user.

Despite the age recommendations and dealer monitoring, most children who die or are injured on ATVs generally are driving adult-size ATVs. There are several reasons why children may be driving adult-size ATVs, aside from the general preferences of children or parents to use the more powerful ATVs. Comments to the Commission, testimony presented at the CPSC public meetings, and information on Web sites indicate that there is concern about the age-size guidelines and their practical use because some youths are physically too large for the ATVs with engine sizes less than or equal to 90 cc. Some Web sites and organizations currently recommend that parents use criteria other than age to determine the appropriate size ATV for their child. In addition, some families with several ATV operators may be able to afford only one ATV – and very often an adult-size ATV is purchased so that the adults in the family can

ride it and the children can “grow into” it. Tab H from the CPSC Division of Human Factors provides the CPSC staff’s detailed analysis of the age recommendations.

Issue 7. Changes in the ATV Market: Bigger and Faster

Several comments suggested that there is a correlation between the introduction in the 1990s of bigger and faster ATVs in the market and an increasing number of injuries to children, while one comment disputed the belief that ATV-related incidents are caused by larger displacement machines.³⁴

CPSC Staff Response:

A number of ATV studies since the 1980s has shown that risk increases with engine size. Comparison of the 1997 and 2001 exposure surveys suggests that the average engine size of ATVs has been increasing in recent years. The staff believes that the increase in the proportion of ATVs with large engines is one factor that helps explain the rising injury rate in recent years, not only for drivers under the age of 16, but also for drivers of all ages.

Issue 8. ATV Design and the Voluntary Standard

Several comments state that an ATV’s high center of gravity, short wheel base, solid rear axle, short turning radius, and high-powered engine make ATVs difficult to operate for children under 16 years of age.³⁵ Three comments (two were from the same individual) stated that the voluntary standard does not address ATV design flaws.³⁶

CPSC Staff Response:

An ATV has a high center of gravity, a short wheel base, and a solid rear axle. In addition, ATVs have low pressure tires whose interaction with the soil and the pavement affects the vehicle dynamics. The amount of flex in a tire and the conditions of the driving surface at the area where the tire contacts the driving surface affect the directional control and stability of the vehicle.

Accelerating and braking an ATV cause weight transfer (either forward and backward or side to side) and create forces that ultimately can result in vehicle tipover or loss of control. Vehicle handling is a function of vehicle speed, acceleration or braking forces, steering response, weight transfer, suspension response, and probably most importantly, operator input.

To operate an ATV safely, a skilled and alert driver must automatically adjust to changes in the vehicle dynamics by slowing down, speeding up, adjusting the steering angle, and/or shifting his/her weight to change the system’s center of gravity. However, the skills required to operate an ATV are not obvious, and an inexperienced driver may not be aware of all the factors, let alone adjust to them in order to operate the vehicle safely. Children under 16 are likely to be

³⁴ For example, see comments 22, 23, 28, 28a, 48, 74 listed in Tab K. See testimony of Edward J. Heiden listed in Tab L. See, for example, comments 19, 46, 170, 193, 198, and 220 listed in Tab M.

³⁵ For example, see comments 2, 4, 9, 14, 32, 22, 30, 24, 36, 47, 48, and 63 listed in Tab K. See the testimony of Sam Leeson, Jim Brenner, Doug Morris, Michael Babusci, Jack Bergstein, M.D., and Scott Kovarovics listed in Tab L. See, for example, comments 6, 14, 17, 23, 30, 41, 46, 51, 76, 106, 175, 210, 225, and 236 listed in Tab M.

³⁶ See, for example, comments 24 and 64 listed in Tab K. See also comment 23 listed in Tab M; this comment is from the same party that submitted comment 36 in Tab K.

lacking in the reasoning and judgment skills required to accurately predict ATV behavior. Therefore, larger, high-powered machines may be more difficult for them to operate.

With respect to the comments concerning the voluntary standard, CPSC staff has identified some aspects of the ATV standard that could be improved, including the repeatability of braking tests and the adoption of cautionary warnings. These items, however, are not directly relevant to the petition. CPSC staff believes that efforts to improve the voluntary standard should continue, but staff also recognizes that a voluntary standard will not eliminate the hazard of children under 16 years of age using adult-size ATVs.

Issue 9. Elimination of Adult ATVs from the Marketplace

Many comments noted that banning the sales of adult-size ATVs for use by children under the age of 16 would not remove adult-size ATVs from the marketplace. Adult-size ATVs still would be sold, but a federal sales ban would forbid ATV manufacturers and distributors from *marketing and selling* their product for use by children. Proper enforcement of the ban, according to those who submitted the comments, would enable vital safety information to be provided to parents and would help prevent the occurrence of child ATV incidents.³⁷

CPSC Staff Response:

Staff agrees that a ban on the sale of adult ATVs for the use of children under 16 would not necessitate the removal of adult-size ATVs from the marketplace. As suggested by the petitioners, a sales ban might send a message to some parents about the risks of ATV use by children. However, the impact of such a message is not clear. Warnings about the risks to children from riding adult-size ATVs are already provided through the Voluntary Action Plans, and, as noted in Tab I, there is little research to indicate that parents would take the message of a federal sales ban more seriously than they already take the warnings placed on the ATV and the safety information already provided by the Voluntary Action Plans.

Issue 10. Verification of Safety Benefits and Potential Loss of Utility

One comment doubted that the Commission would find enough information to show that the requested ban would result in verifiable safety benefits or that the requested ban would prevent or reduce the risk of injury to any greater degree than the existing safety warnings provided by the Voluntary Action Plans. The comment further notes that the Commission must explore the potential loss of utility to consumers of such a ban.³⁸ Other comments noted the economic impact associated with a ban,³⁹ while another noted that a decrease in ATV-related injuries and deaths would lower health-care costs for society.⁴⁰

CPSC Staff Response:

The staff agrees that it would be difficult to estimate the safety benefits that would be associated with the proposed sales ban. Factors that make such a calculation difficult include

³⁷ For example, see comments 6, 9, 10, 22, 30, 32, 39, 43, 50, 54, 55, 56, 57, 59, 60, 62, 63, 66, 73, 74, 76, 77, and 78 listed in Tab K.

³⁸ See comment 71 listed in Tab K.

³⁹ See comment 38 listed in Tab K. Also see, for example, comments 2, 18, 20, 37, 41, 60, 71, 115, 139, 175, 180, 184, 188, 196, and 202 in Tab M.

⁴⁰ See comment 4 listed in Tab K.

the following: 1) distributors already are prohibited from selling adult-size ATVs for the use of children; 2) consumers already are warned in a number of ways that children should not drive adult-size ATVs; 3) the sales ban has no direct impact on the use of ATVs once they are sold; and 4) the sales ban would have little impact on the secondary market for used ATVs. The staff also agrees that a ban would require an evaluation of the potential loss of utility to consumers in both recreational and chore-oriented applications. A discussion of some of the aspects of potential loss of utility can be found in Tab G.

Issue 11. Role of States and Localities

A number of comments reflected on the role of states and localities in addressing the risks associated with the use of adult-size ATVs by children.⁴¹ Some comments expressed the view that the primary role in ATV safety should be taken by the states because, unlike the Commission, states have the authority to regulate the use of ATVs and to enforce those regulations. On the other hand, a number of comments expressed the view that CPSC should ban the use of adult-size ATVs by children because states have not done enough to regulate or enforce ATV safety. One comment requested that CPSC neither advocate for nor against the states enacting legislation regarding ATVs. One comment provided model legislation developed by the American Academy of Pediatrics, while another referred to the model legislation that CPSC staff developed in the late 1980s.

CPSC Staff Response:

Staff believes that states and localities have a critical role to play in any strategy to address the risks of adult-size ATV use by children under 16. Even if CPSC were to ban the sale of adult-size ATVs for the use of children, it could not control how ATVs are used after they are sold. Consequently, while it is possible that a sales ban would have some impact on the use of ATVs by children, the relationship between the suggested ban and children's use of adult-size ATVs is tenuous. Regulation and enforcement at the state and local level would probably be necessary to control the riding behavior of children.

Although states have enacted training, licensing, and minimum age requirements for operating automobiles, most states have no comparable requirements for operating ATVs. (One comment provided information to the effect that in the winter of 2002/spring of 2003, 24 states had no minimum age limit for operating an ATV; 42 states had no licensing requirements; and 35 had no special training requirements for operating ATVs.⁴²)

There was some legislative activity in several states during late 2003 and early 2004. The governor of West Virginia signed into law West Virginia's first ATV regulations on March 10, 2004, requiring children to wear helmets and to attend a safety course. A bill was proposed early in 2004 in the Georgia legislature that includes regulations requiring riders under 16 to

⁴¹ See, for example, comments 2, 4, 8, 23, 24, 35, 36, 42, 48, 64, 69, 70, 71, and 72 listed in Tab K. See testimony of Rachel Weintraub, West Virginia Senator Michael Oliverio, II (D-13th District), Edward J. Heiden, Roger F. Haggie, Leff Moore, Buck Warfield, Ann Carr, M.D., and Susan Halbert listed in Tab L. See, for example, comments 3, 4, 7, 12, 19, 23, 31, 38, 43, 50, 51, 62, 65, 66, 73, 216, and 225 listed in Tab M.

⁴² CPSC staff does not know if this information is accurate for that particular time frame. An up-to-date listing can be found at the Internet Web site for the Specialty Vehicle Institute of America, (SVIA), <http://www.atvsafety.org>.

wear helmets and fines for riding an ATV on a public right-of-way. Although a bill was proposed in New Mexico, it was not passed before the legislature adjourned.

However, while some states have recently attempted to address ATV safety issues, some state laws allow for driver actions that do not correspond to the recommendations of manufacturers. For example, some states allow an ATV driver to have one passenger, which is contrary to manufacturer recommendations.

Issue 12. Effectiveness of a Sales Ban

Several comments focused on the possible limited impact of the suggested sales ban.⁴³ One noted that a sales ban would not apply to sales of used ATVs. Additionally, it would not regulate the actual use of adult-size ATVs by consumers after the ATV had been purchased. Several comments noted that the impact of a sales ban may also be limited because ATVs are expensive and, as a result, some households may purchase only one ATV for use by all household members (children as well as adults).

CPSC Staff Response:

CPSC staff generally agrees with these comments. The potential benefits of getting children off adult-size ATVs might be substantial; however, the effectiveness of a sales ban in achieving this goal may be limited. In large part, this is because the sales ban would address how ATVs are sold, rather than how they are used after they are purchased by consumers. The CPSC does not have the ability to regulate how consumers use products once they are in consumers' hands.

The suggested sales ban would have little effect on sales of used ATVs between individuals, a market that now accounts for about 37 percent of all ATV sales (as compared to about 42 percent in 1997). The impact also would be limited by the fact that dealers already are prohibited from selling adult ATVs for the use of children and by the fact that purchasers are already informed in a number of ways at the point-of-sale that adult ATVs are not intended for the use of children.

There may also be other considerations that might reduce the likelihood that parents will purchase youth models for their children. Many purchasers buy ATVs for use by multiple family members and may be reluctant to purchase a youth model if some of the household drivers are adults. Additionally, some parents may not want to spend the money to purchase a youth model for a child when they think it may be too small physically for their child or may be outgrown within a couple of years.

Consequently, while the impact of a sales ban is uncertain, there would be a number of factors that would tend to limit its effectiveness.

⁴³ See, for example, comments 2, 7, 51, and 71 listed in Tab K. See the testimony of Rachel Weintraub, Roger Haggie, Jeff DeVol, and Susan Halbert listed in Tab L. See, for example, comments 21, 22, 34, 45, and 201 listed in Tab M.

Issue 13. Parental Rights and Responsibilities/Social Benefits

More comments focused on parental rights and responsibilities than on any other issue.⁴⁴ A few comments concluded that the suggested sales ban is necessary because parents have abdicated their responsibility to keep children under the age of 16 from riding adult-size ATVs. Other comments expressed the belief that parents have the right and responsibility to make decisions for their children and are the best judge of their child's abilities and skill level. Some comments stated, however, that even though parents should make the decision about what size ATV their child should ride, they should also be held legally accountable for any incidents that occur. In general, parental discretion and the rights of individuals to make decisions for themselves and their family were overwhelmingly supported in the comments that addressed this issue. The federal government, according to the comments, should not eliminate parental discretion through a ban on sales.

Many comments described the social benefits that families shared when the parents were able to exercise their parental right to encourage their children to ride ATVs (adult-size and youth-size).⁴⁵ These benefits include spending time together as a family and allowing parents and grandparents to teach their children responsible riding skills and behavior as well as respect for self, others, and the land. In addition, some parents believe that riding together as a family keeps their children away from alternative harmful activities, such as gangs and drugs. Other comments described the joys of quality time spent riding with friends in ATV clubs.

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 what ATVs children should use and how children should use them.

Issue 14. Environmental Considerations

Several comments were submitted about the environment.⁴⁶ One comment noted that the damage done to the environment should also be considered when deciding on a course of action and that ATVs should be restricted to the ATV owner's property or to public land designated for such use. Some comments questioned whether the motive of the petition was to protect the environment, rather than to protect children's safety.

CPSC Staff Response:

CPSC's jurisdictional authority does not extend to environmental issues. However, although the actual impact of a ban on sales of adult-size ATVs for the use of children is unclear, it seems unlikely that any Commission decision would have a substantial impact on the environment, since the Commission does not have authority to regulate the use of ATVs.

⁴⁴ See, for example, comments 2, 7, 51, and 71 listed in Tab K. See the testimony of Deborah L. Napier, Esq., Sam Leeson, Jeff DeVol, Dick Lepley, and Doug Morris listed in Tab L. Between 125 and 140 of the comments received in response to the FR notice about the West Virginia hearing (Tab M) mentioned this issue.

⁴⁵ For example, see comments 26, 27, 29, 31, 41, 50, 52, 53, 59, 62, 63, 66, 70, 73, 74, 81, 106, 112, 115, 119, 128, 134, 140, 141, 157, 172, 175, 183, 196, 197, 198, 199, 203, 212, 216, 222, 223, and 225 listed in Tab M.

⁴⁶ See, for example, comments 13, 16, 44, 46, and 72 listed in Tab K. See testimony of Bill Dart listed in Tab L. See, for example, comments 1, 3, 4, 5, 22, 29, 30, 32, 61, 63, 94, 128, 182, 196, 198, 199, and 234 listed in Tab M.

6. OPTIONS AVAILABLE TO THE COMMISSION

Three options are available to the Commission for responding to the petition: grant, deny, or defer. Each of these options is discussed below.

A. Grant the Petition

If the Commission determines that the available information indicates that the use of four-wheel adult-size ATVs by children under 16 years old may present an unreasonable risk of injury or death to those children and that a federal sales ban may be reasonably necessary to eliminate or adequately reduce that risk, it may grant the petition and direct the staff to develop a draft advance notice of proposed rulemaking (ANPR) under the authority of the Consumer Product Safety Act (CPSA) and the Federal Hazardous Substances Act (FHSA). Publication of an ANPR in the *Federal Register* would initiate a rulemaking proceeding for a federal sales ban on four-wheel adult-size ATVs sold for the use of children.

B. Deny the Petition

If the Commission concludes that the available information does not support a finding that four-wheel adult-size ATVs sold for the use of children under the age of 16 may present an unreasonable risk of injury or death, or that a federal sales ban would not eliminate or adequately address the risk, the Commission may deny the petition.

C. Defer a Decision on the Petition

If the Commission determines that there is insufficient information to make a decision on the petition and that the staff could obtain such information, the Commission could defer its decision and direct the staff to obtain the additional information.

7. STAFF CONCLUSIONS AND RECOMMENDATION

The risk of injury for children on adult-size four-wheel ATVs is high and the injury reduction benefits of getting children off adult-size ATVs are potentially substantial. However, the effectiveness of a sales ban in achieving this goal is uncertain. In large part, this is because the sales ban would address how ATVs are sold, rather than how they are used after they are purchased by consumers. The CPSC does not have the ability to regulate or enforce how consumers use products once the products have been purchased and are in consumers' hands. Since parents would still be able to purchase the adult-size ATVs for use by their children under the ban (as long as they do not tell the dealer about the intended use), the ban's effectiveness would depend upon consumers taking the sales ban more seriously than the current warnings.

Also, the impact of a ban on the sale of adult-size ATVs for children under the age of 16 is unclear since, under the existing ATV Voluntary Action Plans, contractual agreements between distributors and dealers already prohibit dealers from selling adult-size ATVs for the use of children. In addition, purchasers are already informed in a number of ways at the point-of-sale that adult ATVs are not intended for the use of children. While a federal sales ban might send a message to some parents about the importance of following the age recommendations, there is little research to indicate that people would give more weight to a federal ban than to the warnings and information they already receive at dealerships and through other organizations. No data are available to show that a ban of ATVs for use by children under the age of 16 years

would be more effective in preventing such use than the age recommendations in the Voluntary Action Plans.

The potential impact of a federal sales ban also would be limited by other considerations that might reduce the likelihood that parents will purchase youth models for their children. Many purchasers buy ATVs for use by multiple family members, and they may be reluctant to purchase a youth model if some of the household drivers are adults. Also, some parents may not want to spend the money to purchase a youth model for a child when they think it may be too small physically for their child or it may be outgrown within a few years.

Consequently, while the impact of a sales ban is uncertain, there would be a number of factors that would tend to limit its effectiveness. Thus, the CPSC staff recommends that the Commission deny the petition.

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**In the United States of America
Before the Consumer Product Safety Commission**

**In the Matter of the Petition of
Consumer Federation of America,
To Ban All-Terrain Vehicles for Use
By Children under 16 years old and
To Provide Refunds for Consumers**

No. CP 02-4/HP 02-1

Pursuant to the Administrative Procedures Act, 5 U.S.C. section 553 (e) and regulations of the Consumer Product Safety Commission (CPSC), 16 C.F.R. section 1051, Consumer Federation of America hereby petitions CPSC to determine, under section 8 of the Consumer Product Safety Act (CPSA), 15 U.S.C. section 2057, that adult-size four-wheel All-Terrain Vehicles (ATVs) which may be used by and/or sold for children under age sixteen, whether new or commercially resold, and all three-wheel ATVs in use and/or available for resale present an unreasonable risk of injury, that no feasible consumer product safety standard would adequately protect children from the unreasonable risk of injury associated with ATVs, and, therefore, that all three-wheel ATVs and adult-size four-wheel ATVs as used by children under age sixteen are a banned hazardous product. Consumer Federation of America also petitions CPSC to exercise its authority under section 15 of the CPSA, 15 U.S.C. section 2064 to require manufacturers to offer a refund for all three-wheel ATVs and for four-wheel ATVs intended for adults purchased for use by children under sixteen.

I.

Interest of Petitioners

This petition is brought by nine organizations on behalf of their members and all children and their families affected by all-terrain vehicles (ATVs).

Consumer Federation of America (CFA) is the nation's largest consumer advocacy organization representing over 300 state, local, and national consumer organizations and over 50 million consumers. CFA has a long-standing history of working on ATVs dating back to the consent decree in 1987. CFA brings this petition on behalf of its members and all consumers who ride ATVs.

The American Academy of Pediatrics (AAP) is a non-profit professional organization of 57,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists. The AAP is dedicated to the health, safety, and well-being of infants, children, adolescents, and young adults.

The American College of Emergency Physicians (ACEP) is a non-profit, voluntary professional and educational society of nearly 23,000 emergency physicians practicing in the United States and other countries. Founded in 1968, ACEP is the nation's oldest and largest association of emergency physicians. ACEP fosters the highest quality of emergency medical care through the education of emergency physicians, other health care professionals, and the

public; the promotion of research; the development and promotion of public health and safety initiatives; and the provision of leadership in the development of health care policy.

Bluewater Network is a national organization aggressively confronting the root causes of climate change and fighting environmental damage from the shipping, oil, and motorized recreation industries. Bluewater Network has a long history of working at the local, state and national levels to address safety problems associated with a wide range of off-road vehicles.

The Center for Injury Research and Policy (CIRP) at Columbus Children's Hospital, Columbus, Ohio, works at the local, state, national, and international levels to reduce death and disability due to injuries through research, education, advocacy, and advances in clinical care. CIRP aims to improve the scientific understanding of the epidemiology, prevention, treatment, and biomechanics of injuries. CIRP focuses on injury research as the cornerstone for successful injury control, because scientific evidence will best direct educational efforts, identify opportunities for safer product design and environmental modification, allow evaluation of clinical care, and provide the rationale for responsible public policy. CIRP educates health and other professionals, policy makers, and the public regarding injury research and prevention. CIRP provides leadership in the development, implementation, and scientific evaluation of public policy regarding control of injuries.

The Danny Foundation for Crib & Child Product Safety is a national non-profit organization with sixteen years of recognized leadership in the field of childhood injury prevention. The Foundation was founded in 1986 to help prevent unintentional injuries, conduct research and to provide leadership in setting regulatory standards for safe childhood products. Its primary mission is to educate the public about crib dangers and to eliminate the millions of unsafe cribs currently in use or in storage. The organization's mission was broadened in 2000 to include educating the public about other childhood products such as play yards, bath seats, strollers, bunk beds and high chairs.

Kids in Danger is a non-profit organization dedicated to protecting children by improving product safety. Kids in Danger educates the public, advocates for children and promotes the development of safer children's products.

National Association of Orthopaedic Nurses is composed of 8,000 nurses throughout the United States, whose goals are to improve the delivery of care for those with orthopaedic and musculoskeletal diseases and to improve the science of health care for those who experience injury.

U.S. PIRG is the national lobbying office for the State Public Interest Research Groups. State PIRGs are non-profit, non-partisan public interest advocacy groups. The state PIRGs have been active on ATV safety issues since the 1980s. U.S. PIRG has released a series of reports and surveys documenting the failure of the consent decree in preventing sale or use of adult-size ATVs by children, litigated against the CPSC on ATV matters and previously petitioned the commission to re-open the consent decree docket.

II.

The Product

All-terrain vehicles, commonly known by the acronym "ATV" or "ATVs," have been on the market for approximately 30 years. ATVs are three- or four-wheel machines specifically designed for off-road travel. Three-wheel machines have not been manufactured since 1988, but many remain in use. ATVs are equipped with wide, knobby or paddle-like tires and special suspension systems capable of handling extremely rough terrain and cushioning jumps. Adult-size ATVs are

defined by CPSC and industry as having an engine size greater than 90 ccs. Although the earliest three-wheel machines had little more power than a large riding lawnmower, CPSC has found that the number of ATVs with large engines increased three-fold between 1989 and 1997.¹

These machines are generally marketed under four broad categories, including general use, sport, utility, and youth.² ATVs in the sport category are designed especially for recreation and racing. Machines in the sport/utility and utility classes are also recreational vehicles, but they have cargo racks and can be fitted with attachments, including trailers. By the mid-1980s, a handful of major manufacturers were selling as many as 600,000 three- and four-wheel ATVs annually in the United States.³

This petition addresses adult-size four-wheel ATVs which may be used by and/or sold for children under 16 including both new and used ATVs as well as all three-wheel ATVs in use and/or available for resale.

III.

Hazards Presented by All-Terrain Vehicles

ATVs pose an unreasonable risk of injury and death to children. According to the most recent CPSC data, between 1982 and 2001 there were reports of 4,541 ATV-related deaths.⁴ Children under sixteen years of age made up 38% of the total deaths or 1,714 victims.⁵ In year 2001 alone, 111,700 people were injured seriously enough to require emergency room treatment for ATV-related injuries and 34,800 of those injured were under age sixteen.⁶

A. Previous Consideration by the Consumer Product Safety Commission

Faced with increasing rates of injury and death to children in ATV-related incidents, CPSC took a two-tiered approach: initiating rulemaking and filing a lawsuit against ATV manufacturers. In 1985, the Commission initiated ATV rulemaking when it issued an Advanced Notice of Proposed Rulemaking to address the risk of injuries associated with ATVs. In May 1991, despite increasing numbers of children injured and killed in ATV incidents, CPSC voted to terminate its rulemaking.

In 1987, when in the midst of rulemaking and faced with increasing rates of ATV-related deaths and injuries, the Commission filed suit in the U.S. District Court for the District of Columbia against five major ATV manufacturers. The CPSC asked a federal court to declare ATVs to be "imminently dangerous consumer products."⁷ The lawsuit sought to require that manufacturers: 1) end production of three-wheel ATVs; 2) repurchase all three-wheel ATVs from dealer stocks; 3) offer financial incentives to encourage owners of three-wheel ATVs to return them; and 4) provide safety education.

¹ U.S. Consumer Product Safety Commission, *All-Terrain Vehicle Exposure, Injury, Death and Risk Studies*, April 1998, p. 3.

² ANS/ SVIA - 1- 2001, *American National Standard for Four Wheel All-Terrain Vehicles- Equipment, Configuration, and Performance Requirements*, section 3- Definitions, February 15, 200, p. 2.

³ Ford G, Mazis M, *Informing Buyers of Risks: Analysis of Marketing and Regulation of All Terrain Vehicles*, *Journal of Consumer Affairs*, 1996; 30(1).

⁴ U.S. Consumer Product Safety Commission, *2001 Annual Report: All-Terrain Vehicle (ATV)-Related Deaths and Injuries*, August 2002. The deaths reported to the Commission represent a minimum count of ATV-related deaths.

⁵ *Id.*

⁶ *Id.* at 6.

⁷ *United States of America v. U.S. v. Polaris Industries, L.P.*, 1987 WL 33507, 1 (D.D.C., 1987).

The lawsuit was settled on the day it was filed by a consent decree that proved ineffective in protecting children from being killed and injured on ATVs. The industry opposed the decree while at the same time reducing production of three-wheel ATVs and increasing the number of four-wheel machines made. The court approved a negotiated consent decree between the CPSC and industry that included the following major elements: 1) Manufacturers would cease production of any new three-wheel ATVs – an action they had largely taken by the time the decree was approved; 2) Manufacturers would recommend that ATVs with engine sizes greater than 70cc be sold only for children 12 and older and that "adult-size" ATVs, with engines greater than 90 cc, be sold only for individuals 16 and older; 3) ATVs would be labeled to warn purchasers that children should not ride adult-size ATVs; 4) Manufacturers would use their best efforts to ensure that dealers complied with the age recommendations and communicated them to prospective purchasers; and 5) Manufacturers would launch a public awareness campaign designed to alert consumers to the hazards associated with ATVs.⁸

The final decree did not include some of the most important elements of the original CPSC lawsuit, including the requirement that manufacturers offer financial incentives to encourage owners of three-wheel ATVs to return them to dealers. This guaranteed that the dangerous "three-wheelers" would remain in use nationwide.

The decree covered a ten-year period. As it neared expiration, the CPSC initiated a series of comprehensive usage, injury and risk studies designed to determine whether or not the decree should be extended. The major findings of the usage and injury studies include:

- 95 percent of injured riders under sixteen rode adult-size machines.⁹
- Children under sixteen accounted for nearly half of all injured ATV riders during the study period.¹⁰
- Children under sixteen were injured more frequently on four-wheel ATVs than the total population of ATV riders. Overall, 73 percent of the ATVs involved in all incidents were 4-wheel machines. However, four-wheel ATVs were ridden in 87 percent of incidents involving children twelve to fifteen years old.¹¹

Other research using CPSC data concludes that drivers injured in ATV incidents required hospitalization four times more frequently (nearly 16 percent compared to 4 percent) than the average for users of all other consumer products.¹²

These findings and others demonstrate that the consent decree was ineffective in many respects. While it successfully barred the production of new three-wheel ATVs, almost every injured child rode adult-size ATVs, children under sixteen continued to suffer a disproportionate share of all ATV-related injuries and injuries caused by ATVs continued to be much more severe when compared with other products.

When the consent decree expired in 1998, the Commission and the major manufacturers entered into voluntary, company-specific agreements, known generally as ATV Action Plans, which embody many of the decree's main tenets (outlined above). These agreements continue to recommend that children under sixteen not ride adult-size ATVs, require warning labels, describe

⁸ United States of America v. U.S. v. Polaris Industries, L.P., 1987 WL 33507 (D.D.C., 1987); United States of America v. American Honda Motor Co. Inc., et al., 143 F.R.D. 1 (1992).

⁹ U. S. Consumer Product Safety Commission, *All-Terrain Vehicle Exposure, Injury, Death and Risk Studies*, April 1998, p. 3.

¹⁰ *Id.*

¹¹ *Id.* at 46.

¹² Rodgers GB, Prowpit A. *Risk Factors for All-Terrain Vehicle Injuries: A National Case-Control Study.* *American Journal of Epidemiology*, 2001; 153(11): 1112-1118.

in great detail information that will be included in owner's manuals and reiterate that the industry will make formal training available to purchasers of new ATVs.¹³

The Action Plans have proven inadequate to curb the rising rates of death and injuries to children from ATV incidents. Unlike the consent decrees before them, they are not enforceable by the Commission: the companies can pull out at any time provided they give the Commission 60 days notice; the provision that companies recommend against the sale of adult-size ATVs for use by children under sixteen is implemented at the discretion of the manufacturers; and manufacturers instruct their dealers to implement this policy and then sample some segment of dealers annually to gauge compliance.

The Action Plans are limited to covering only the specific companies (Honda, Polaris, Suzuki, Yamaha, Kawasaki, and Arctic Cat) that executed them with the Commission. They do not apply to other entities that manufacture, sell or import ATVs in the United States. Since the plans were adopted, there has been an increase in the number of companies selling ATVs in this country. Most of these firms or individuals import ATVs from Taiwan, Hong Kong, Korea, Italy and other countries around the world and sell them under a range of names, including Monsoon, Predator, Monster Joe, and Xtreme Machine. These companies are not covered by the Action Plans. Therefore, they are free to sell vehicles of any size to any individual, they do not have to offer training, and they are completely exempt from even the minimal oversight that the major ATV makers exercise over their dealer networks.

Events since 1998 have demonstrated that this approach has been ineffective and that the Commission must re-examine this product and its previous decision in light of additional deaths and injuries and new information identified in this petition.

B. More Children are Killed and Injured on Four-Wheel ATVs Each Year

Death and injury rates to children riding ATVs have been increasing since 1993. Between 1993 and 2001, the Commission estimates that the number of injuries caused by ATV-incidents that required emergency room treatment nearly doubled to 111,700.¹⁴ During this same time period, the number of injuries caused by four-wheel ATVs increased by 211% to 99,600.¹⁵ The number of deaths caused by incidents involving *four-wheel ATVs exclusively increased from 7% in 1985 to about 86% in 2001.*¹⁶

The Commission concluded that there was a "statistically significant" increase in the number of injuries "for the years 1997-98, 1998-99, 1999-2000, and 2000-2001."¹⁷ According to the Commission, the risk of injury for riders of *four-wheel ATVs only increased from 164.7 injuries per 10,000 ATVs in 1993 to 261.8 injuries per 10,000 in 2001.*¹⁸ This injury rate is nearly as high as when three-wheel ATVs were banned in 1988 (275.8 injuries per 10,000).¹⁹

Nearly 15 years after the industry agreed to improve safety, ATV-related incidents, especially those involving children continue to rise.

¹³ U.S. Consumer Product Safety Commission, *All-Terrain Vehicles: Commission Resolution*, Federal Register 63 (236), December 9, 1998, page 67861.

¹⁴ U.S. Consumer Product Safety Commission, *Annual Report: 2001 All-terrain Vehicle (ATV)-related Deaths and Injuries*, August 2002; Helmkamp JC. Injuries and deaths and the use of all-terrain vehicles. *New England Journal of Medicine*. 2000; 343(23):1733-1734.

¹⁵ U.S. Consumer Product Safety Commission, *Annual Report: 2001 All-terrain Vehicle (ATV)-related Deaths and Injuries*, August 2002, at 8.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 1, and U.S. CPSC 2000 Annual Report: *All-terrain Vehicle (ATV)-related Deaths and Injuries* at 7.

¹⁸ U.S. Consumer Product Safety Commission *Annual Report: 2001 All-terrain Vehicle (ATV)-related Deaths and Injuries*, August 2002, at 8.

¹⁹ *Id.*

- The Commission estimates that 14 percent of all ATV riders are children under the age of sixteen.²⁰ However, these children disproportionately suffered approximately 37 percent of all injuries and 38 percent of total fatalities between 1985 and 2001.²¹
- Between 1982 and 2001, 1,714 children under the age of sixteen – or 38 percent of the total number of fatalities – were killed by ATVs.²² Of those, 799 children were under age 12.²³
- The estimated number of children injured in ATV-related incidents increased 94 percent between 1993 and 2001 to 34,800.²⁴
- Children under sixteen suffer the highest number of injuries of any age group except those between sixteen and twenty-four.

Furthermore, the risk of injury and death for children under sixteen is significantly greater than for older riders. According to the Commission, “for riders under sixteen years of age, there is a 1 in 3 chance of having an ATV-related injury during the lifespan of the ATV.”²⁵ Research concludes that ATV operators under the age of sixteen are 4.5 times more likely than older operators to receive injuries requiring emergency room treatment.²⁶

C. Inherent Hazards to Children Driving ATVs

The Commission, as well as experts in child health, have concluded, over the years, that ATVs are inherently difficult to operate for adults and beyond the development capability of children to control.

Driving an ATV requires the rider to make instantaneous decisions and adjustments. According to CPSC, drivers of ATVs must make complex split-second decisions:

If the ATV hits a bump, the driver has to determine almost instantaneously, the throttle setting, steering angle, and position of his/her body on the ATV. Such information can only be processed so fast and if the occurrence of the circumstances exceeds the ability of the driver to react appropriately, an incident will likely occur.²⁷

Children do not have the physical or mental abilities to make these complex, split-second decisions.

Medical researchers also challenge the safety records of four-wheel ATVs. One set of doctors conclude that “[D]ata are available stating both types lack appropriate lateral stability . . .

²⁰ U.S. Consumer Product Safety Commission, *All-Terrain Vehicle Exposure, Injury, Death and Risk Studies*, April 1998.

²¹ U.S. Consumer Product Safety Commission *Annual Report: 2001 All-terrain Vehicle (ATV)-related Deaths and Injuries*, August 2002, at 1, 4.

²² *Id.* at 4.

²³ *Id.*

²⁴ *Id.* at 6.

²⁵ U.S. Consumer Product Safety Commission, *Safety Commission Reissues Warning: Young People Under the Age of 16 Should Not Ride Adult-Size ATVs*, Safety Alert, March 1992.

²⁶ U.S. Consumer Product Safety Commission, *All-Terrain Vehicle Exposure, Injury, Death and Risk Studies*, April 1998, p. 73.

²⁷ U.S. Consumer Product Safety Commission, *Briefing Package on All-Terrain Vehicles*, March 1991, p. 19.

our data reveal that these vehicles [four-wheel ATVs] may be extraordinarily difficult to control even with smaller engines and age-specific engine recommendations."²⁸

A 1998 study of neurological injuries associated with ATVs reached a similar conclusion. "Although manufacturers have touted the four-wheel vehicles as being safer than the three-wheel variety, the relative increase in safety is negligible Injuries sustained in accidents involving four-wheel ATVs are just as severe as those incurred with three-wheel ATVs."²⁹ This study further questioned whether the safety had actually improved under the consent decree based on the fact that four-wheel ATVs were involved in 74 percent of fatal ATV accidents. By 2000, four-wheel ATVs were involved in more than 90 percent of fatalities. The authors conclude their analysis as follows: "To use a familiar phrase, ATVs are unsafe at any speed for children and adolescents."³⁰

A recent review of adolescent deaths resulting from ATV crashes in West Virginia suggests that, "young, immature ATV drivers exacerbate the inherent danger associated with ATVs through poor judgment and risk taking. Children often do not possess the physical size, strength, coordination and maturity to properly operate an ATV, particularly adult-size ATVs."³¹

The American Academy of Pediatrics (AAP), which represents 57,000 primary care pediatricians, pediatric specialists and surgeons, issued its first formal policy concerning use of ATVs by children in 1987. In June 2000, the AAP updated and strengthened its recommendation that children younger than sixteen not be allowed to operate ATVs regardless of size. In making this recommendation, the Academy concludes: "[O]ff-road vehicles are particularly dangerous to children younger than 16 years who may have immature judgment and motor skills An automobile driver's license, and preferably some additional certification in ATV use, should be required to operate an ATV. The safe use of ATVs requires the same or greater skill, judgment and experience as needed to operate an automobile."³²

The American Academy of Orthopaedic Surgeons (AAOS), the world's largest medical association for musculoskeletal specialists, has also issued a formal Position Statement on ATVs. The Association states "[I]n light of statistics that show an inordinate number of injuries and deaths resulting from the use of ATVs, the American Academy of Orthopaedic Surgeons considers ATVs to be a significant public health risk."³³ The Academy highlights the multitude of factors that make ATVs particularly unsafe for children: "Children under age 12 generally possess neither the body size or strength, nor the motor skills or coordination necessary for the safe handling of an ATV. Children under age 16 generally have not developed the perceptual abilities or judgment required for the safe use of highly powerful vehicles."³⁴

Doctors at Children's Hospital Medical Center in Cincinnati, who studied ATV-related injuries to children for nearly a decade, state:

It is unfathomable that it is illegal for children to drive automobiles until they are 16 years of age, pass a driver's training class, and obtain a valid driver's license, yet we permit

²⁸ Lynch JM, Gardner MJ, Worsley J, *The Continuing Problem of All-Terrain Vehicle Injuries in Children*, *Journal of Pediatric Surgery*, 1998, 33(2): 331.

²⁹ Russell A, Boop FA, Cherny WB, Ligon BL, *Neurological injuries associated with all-terrain vehicles and recommendations for protective measures for the pediatric population*, *Pediatric Emergency Care*. 1998; 14(1): 31-35.

³⁰ *Id.* at 35.

³¹ Helmkamp JC. Adolescent all-terrain vehicle deaths in West Virginia, 1990-1998, *West Virginia Medical Journal*, 2000(96):361-363.

³² American Academy of Pediatrics, *All-Terrain Vehicle Injury Prevention: Two-, Three-, and Four-Wheeled Unlicensed Motor Vehicles*, *Pediatrics*, 2000; 105(6): 1352-1354.

³³ American Academy of Orthopedic Surgeons, *Position Statement; All-Terrain Vehicles*, 1999.

³⁴ *Id.*

even younger children to ride ATVs without helmets, safety gear, formal training, parental supervision, or licenses. ATVs are in fact more dangerous than automobiles since the rider's body is fully exposed and not protected by the car's frame and body.³⁵

D. ATVs Are More Dangerous Than in the 1980s

ATV engine sizes, speed and power are being increased by the industry every year. Many ATVs can travel as fast as 75 miles per hour,³⁶ as compared to 50 miles per hour when the Commission looked at this issue in the 1980s.

The Commission found that the number of ATVs with large engines increased three-fold between 1989 and 1997.³⁷ One article in an enthusiast magazine explains that only a few years ago Suzuki's largest ATV had a 300 cc engine.³⁸ However, it continues: "But that was before the displacement wars when Polaris and others were just beginning to explore displacement bigger than 400 cc finally culminating this year in the 650-700 cc twins."³⁹ The Spring 2002 edition of *ATV Test Guide* describes the industry's approach to speed: "[T]he resurgence of the sport segment following the end of government restrictions has caused a few manufacturers to take off the gloves and go back to what we really enjoy: enthusiastic machines."⁴⁰ (emphasis added)

IV.

No Feasible Standard Exists to Address the Risks to Children Associated with ATVs

A. ANSI Voluntary Standard, ATV/SVI 1-2001

Under section 8 of the Consumer Product Safety Act, CPSC may ban a product when "no feasible consumer product safety standard under the [Consumer Product Safety Act] would adequately protect the public from the unreasonable risk of injury associated with such product."⁴¹ CPSC has not promulgated a mandatory standard for ATVs, however there is a voluntary standard, which even if made mandatory, would be inadequate.

The American National Standards Institute, Inc (ANSI) voluntary standard was approved for Four Wheel All-Terrain Vehicles on February 15, 2001. The voluntary standard fails to include any sections concerning the limitation of access to adult size ATVs by children. The standard includes a section dedicated to youth-size ATVs, which requires that youth-size ATVs contain an adjustable speed limiter, which can be removed, and a requirement that the maximum unrestricted speed capability be limited.⁴² This standard is inadequate, however, since the majority of children injured or killed in ATV-related incidents occurs on adult-size ATVs. The

³⁵ Brown R, Koepplinger M, Mehlmann C, Gintelman M, Garcia V, *All-Terrain Vehicle and Bicycle Crashes in Children: Epidemiology and Comparison of Injury Severity*, *Journal of Pediatric Surgery* 2002; 37(3): 375-380.

³⁶ The CSN National Children's Center for Rural and Agricultural Health and Safety, Fact Sheet: Youth ATV Injuries, October 2001.

³⁷ U.S. Consumer Product Safety Commission, *All-Terrain Vehicle Exposure, Injury, Death and Risk Studies*, April 1998.

³⁸ *ATV Test Guide*, "Suzuki Eiger 400 4x4 Automatic: Another Lofly Peak Conquered," Spring 2002. p. 52.

³⁹ *Id.* at 52.

⁴⁰ *ATV Test Guide*, "Kawasaki Lakota Sport: Instant Sport! Just Drop Racks," Spring 2002, p. 74.

⁴¹ Consumer Product Safety Act, section 8(2), 15 U.S.C. 2057.

⁴² ANSI SVLA - 1-2001, *American National Standard for Four Wheel All-Terrain Vehicles- Equipment, Configuration, and Performance Requirements*, February 15, 2001.

voluntary standard does not include any sections concerning warning labels about potential injury or ATV rider training. Therefore, concerns over the adequacy of this standard continue.

Even if this standard were made mandatory and even if changes were made to the standard to address the above and any other concerns, we do not believe that the risk of death and injury to children would be eliminated or substantially reduced.

V. Refunds

Consumer Federation of America requests that CPSC, under section 15 of the Consumer Product Safety Act, 15 U.S.C. section 2064, promulgate a rule requiring refunds to the purchasers of all three-wheel ATVs, whether purchased for adults or children, and all adult-size four-wheel ATVs purchased for use by children under sixteen.

Consumer Federation of America requests that the final rule:

- require the manufacturers and distributors of ATVs to notify purchasers of ATVs of the availability of the refund for all three-wheel vehicles and all adult-size four-wheel vehicles purchased for use by children under sixteen;
- prescribe the procedure for the return of three-wheel ATVs and adult-size four-wheel ATVs used by children under the age of sixteen for purposes of receiving the refund;
- prescribe the procedure for determining a reasonable amount of money to be refunded by the manufacturer; and
- apply to owners of three-wheel ATVs regardless of when the vehicle was purchased; and apply to owners of adult-size four wheel ATVs purchased for use by children under sixteen until such time as these products are banned by the Commission (as requested above in this petition).

By providing refunds to owners of such ATVs, CPSC can reduce the substantial product hazard posed by these machines by effectively removing them from consumer use. No other remedy will ensure that consumers who presently own these vehicles will be adequately protected. Unfortunately, the history of three-wheel ATVs has shown that a ban without a refund to consumers is insufficient to effectively reduce the hazard of death and injury.

VI.

Action Requested

For the reasons enumerated above, the Petitioners request that the Consumer Product Safety Commission ban the use of adult-size ATVs for use by children under sixteen years old under section 8 of the Consumer Product Safety Act (CPSA), 15 U.S.C. section 2057, finding that new and used four-wheel adult size ATVs as used by and/or sold for children under sixteen and three-wheel ATVs in use and/or available through commercial resale present an unreasonable risk of injury, that no feasible consumer product safety standard would adequately protect children from the unreasonable risk of injury associated with all three-wheel ATVs and four-wheel adult-size all-terrain vehicles, and, therefore, that all three-wheel ATVs and adult-size four-wheel ATVs used by children under age sixteen are a banned hazardous product. The Petitioners also request that the Consumer Product Safety Commission exercise its authority under section 15 of the CPSA, 15 U.S.C. section 2064, to require manufacturers to offer a refund for all three-wheel ATVs and for adult-size four-wheel ATVs purchased for use by children under sixteen.

Specifically, the Petitioners request that CPSC issue a rule that states:

Under the authority of section 8 of the Consumer Product Safety Act the Commission has determined that all three-wheel ATVs and adult-size four-wheel ATVs used by children under sixteen present an unreasonable risk of injury and therefore are banned under section 8 of the Act. Under the authority of section 15 of the Consumer Product Safety Act, the Commission will require manufacturers to offer a refund for all three-wheel ATVs, whether purchased for adults or children, and for adult-size four-wheel ATVs purchased for use by children under sixteen.

Respectfully submitted,

**Rachel M. Weintraub
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(202) 387-6121
direct dial: (202) 939-1012**

dated: August 19, 2002



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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September 25, 2002

Rachel M. Weintraub, Esq.
Consumer Federation of America
1424 16th Street, N.W.
Washington, D.C. 20036

Dear Ms. Weintraub:

Your submission on behalf of Consumer Federation of America ("CFA"), the American Academy of Pediatrics, the American College of Emergency Physicians, Bluewater Network, the Center for Injury Research and Policy, the Danny Foundation for Crib and Child Product Safety, Kids in Danger, National Association of Orthopaedic Nurses, and U.S. PIRG requesting that the U.S. Consumer Product Safety Commission ("Commission") take certain action concerning all-terrain vehicles ("ATVs") has been forwarded to the Office of the General Counsel pursuant to the Commission's petition regulations for a determination of whether your request should be docketed as a petition for rulemaking. 16 C.F. R. Part 1051. You requested that the Commission begin a proceeding under section 8 of the Consumer Product Safety Act ("CPSA") to ban adult size four-wheel ATVs "which may be used by and /or sold for children under age sixteen" and "all three wheel ATVs in use or available for resale." You also requested that the Commission use its authority under section 15 of the CPSA to require manufacturers to offer refunds for all three-wheel ATVs and adult size four-wheel ATVs "purchased for use by children under sixteen." As explained below, to the extent your submission requests a rule banning adult-size four-wheel ATVs sold for the use of children under 16, we will docket that request as a petition. Your other requests for action do not meet the Commission's requirements for petitions as set forth in 16 C.F.R. Part 1051. (A copy of these regulations is enclosed.)¹

¹ We note that your submission repeats three of the four requests that CFA and U.S. PIRG submitted to the Commission in 1990. At that time, we declined to docket your requests as a petition because the Commission had published an advance notice of proposed rulemaking ("ANPR") that encompassed the actions you requested and because requiring refunds under section 15 cannot be done through rulemaking (see letter enclosed). Because the Commission has withdrawn the ANPR, we are considering your requests anew.

The Commission has the authority to issue standards for consumer products and, in some cases, ban the sale of certain consumer products. However, the Commission has no authority to regulate the use of consumer products. It cannot prohibit a child from riding an ATV. To the extent that your submission asks the Commission to ban the use of ATVs by children under 16, we cannot docket that request as a petition. An ATV cannot become a banned product the moment that a child climbs on it. However, the Commission would have the authority to ban the sale of adult-size ATVs where, at the time the ATV is sold, it is intended to be used by a person under the age of 16. See 56 FR 47166, 47172 (1991). That portion of your request is being docketed under the CPSA and the Federal Hazardous Substances Act ("FHSA"). You requested action under section 8 of the CPSA. However, we believe that the FHSA may also provide authority for such a proceeding. The FHSA was the authority for a limited ban on lawn darts sold for the use of children. See *R.B. Jarts, Inc. v. Richardson*, 438 F.2d 846 (2d Cir. 1971). Because you requested a rulemaking under the CPSA, and because many previous discussions about a ban on the sale of ATVs intended for the use of children under 16 years old have referred to the CPSA as the authority for such a ban, we will docket your request under both statutes.

As for your request that the Commission require manufacturers to provide refunds, the Commission may only docket as petitions requests for action that it is authorized to take through the issuance, amendment, or revocation of rules. 16 C.F.R. § 1051.2(a). Although the Commission does have the authority under section 15 of the CPSA to order recalls, 15 U.S.C. § 2064(c), it does not do so through rulemaking. Therefore, your request that the Commission require manufacturers to offer a refund for all three-wheel ATVs and for adult-size four-wheel ATVs purchased for use of children under 16 cannot be docketed as a petition. However, we are forwarding your request for recall to the Office of Compliance for any appropriate action.

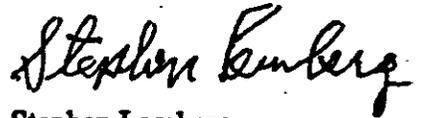
You also request that the Commission ban all three-wheel ATVs. We cannot docket this request for two reasons. First, for the Commission to ban a consumer product under section 8 of the CPSA it must find that the product is being, or will be, distributed in interstate commerce. 15 U.S.C. § 2057(1). As you know, three-wheel ATVs are no longer being manufactured. They are still being used by consumers, but, as discussed above, the Commission cannot regulate use of a product. We believe that for the Commission to consider a proceeding under section 8 it must have evidence that the product is being or will be sold in interstate commerce (not simply from one purchaser to another) more than occasionally. Your submission does not present any such evidence.

Second, the Commission's petition regulations require that a petition "set forth facts which establish the claim that the issuance ... of the rule is necessary." 16 C.F.R. § 1051.5(a)(4). You ask the Commission to ban all three-wheel ATVs, not just those purchased for the use of children under 16. However, your submission does not set forth facts specifically concerning three-wheel ATVs. The bulk of your submission discusses the hazards of children riding ATVs, primarily adult-size four-wheel ATVs. We note your submission seems to suggest that the evidence may indicate that four-wheel ATVs may be as hazardous as three-wheel ATVs.

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As explained above, we are docketing your request for a rule banning the purchase of adult-size four-wheel ATVs for the use of children under sixteen years of age as a petition. The Commission staff will be preparing information on the petition to forward to the Commission. However, we are not docketing your other requests for the reasons discussed above. If you have information concerning three-wheel ATVs that indicates they are sold in interstate commerce and that a ban is necessary you may provide the Commission with that information.

Sincerely,

A handwritten signature in cursive script that reads "Stephen Lemberg". The signature is written in black ink and is positioned above the printed name and title.

Stephen Lemberg
Assistant General Counsel

Enclosure

**PART 1051—PROCEDURE FOR
PETITIONING FOR RULEMAKING**

Sec.

- 1051.1 Scope.
- 1051.2 General.
- 1051.3 Place of filing.
- 1051.4 Time of filing.
- 1051.5 Requirements and recommendations for petitions.
- 1051.6 Documents not considered petitions.
- 1051.7 Statement in support of or in opposition to petitions; Duty of petitioners to remain apprised of developments regarding petitions.
- 1051.8 Public hearings on petitions.
- 1051.9 Factors the Commission considers in granting or denying petitions.
- 1051.10 Granting petitions.
- 1051.11 Denial of petitions.

Annotation: 5 U.S.C. 553(e), 5 U.S.C. 553(e).

Source: 48 FR 57173, Dec. 23, 1983, unless otherwise noted.

§ 1051.1 Scope.

(a) This part establishes procedures for the submission and disposition of petitions for the issuance, amendment or revocation of rules under the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) or other statutes administered by the Consumer Product Safety Commission.

(b) Persons filing petitions for rulemaking shall follow as closely as possible the requirements and are encouraged to follow as closely as possible the recommendations for filing petitions under section 1051.5.

(c) Petitions regarding products regulated under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) are governed by existing Commission procedures at 16 CFR 1500.82, 16 CFR 1500.201, and 21 CFR 2.65. Petitions regarding the exemption of products regulated under the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471 *et seq.*) are governed by existing Commission procedures at 16 CFR 1702. In addition, however, persons filing such petitions shall follow the requirements and are encouraged to follow the recommendations for filing petitions as set forth in § 1051.5.

§ 1051.2 General.

(a) Any person may file with the Commission a petition requesting the Commission to begin a proceeding to issue, amend or revoke a regulation under any of the statutes it administers.

(b) A petition which addresses a risk of injury associated with a product which could be eliminated or reduced to a sufficient extent by action taken under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be considered by the Commission under those Acts. However, if the Commission finds by rule, in accordance with section 30(d) of the CPSA, as amended by Pub. L. 94-284, that it is in the public interest to regulate such risk of injury under the CPSA, it may do so. Upon determination by the Office of the General Counsel that a petition should be considered under one of these acts rather than the CPSA, the Office of the Secretary shall docket and process the petition under the appropriate act and inform the petitioner of this determination. Such docketing, however, shall not preclude the Commission from proceeding to regulate the product under the CPSA after making the necessary findings.

§ 1051.3 Place of filing.

A petition should be mailed to: Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Persons wishing to file a petition in person may do so in the Office of the Secretary, at either, 5401 Westbard Avenue, (third floor) Bethesda, Maryland or 1111 18th Street, NW, (eighth floor), Washington, D.C.

§ 1051.4 Time of filing.

For purposes of computing time periods under this part, a petition shall be considered filed when time-date stamped by the Office of the Secretary. A document is time-date stamped when it is received in the Office of the Secretary.

§ 1051.5 Requirements and recommendations for petitions.

(a) **Requirements.** To be considered a petition under this part, any request to issue, amend or revoke a rule shall meet the requirements of this paragraph (a). A petition shall:

(1) Be written in the English language;

(2) Contain the name and address of the petitioner;

(3) Indicate the product (or products) regulated under the Consumer Product Safety Act or other statute the Commission administers for which a rule is sought or for which there is an existing rule sought to be modified or revoked. (If the petition regards a procedural or other rule not involving a specific product, the type of rule involved must be indicated.)

(4) Set forth facts which establish the claim that the issuance, amendment, or revocation of the rule is necessary (for example, such facts may include personal experience; medical, engineering or injury data; or a research study); and

(5) Contain an explicit request to initiate Commission rulemaking, and set forth a brief description of the substance of the proposed rule or amendment or revocation thereof which it is claimed should be issued by the Commission. (A general request for regulatory action which does not reasonably specify the type of action requested shall not be sufficient for purposes of this subsection.)

(b) **Recommendations.** The Commission encourages the submission of as much information as possible related to the petition. Thus, to assist the Commission in its evaluation of a petition, to the extent the information is known and available to the petitioner, the petitioner is encouraged to supply the following information or any other information relating to the petition. The petition will be considered by the Commission even if the petitioner is unable to supply the information recommended in this paragraph (b). However, as applicable, and to the extent possible, the petitioner is encouraged to:

(1) Describe the specific risk(s) of injury to which the petition is addressed, including the degree (severi-

ty) and the nature of the risk(s) of injury associated with the product and possible reasons for the existence of the risk of injury (for example, product defect, poor design, faulty workmanship, or intentional or unintentional misuse);

(2) State why a consumer product safety standard would not be feasible if the petition requests the issuance of a rule declaring the product to be a banned hazardous product; and

(3) Supply or reference any known documentation, engineering studies, technical studies, reports of injuries, medical findings, legal analyses, economic analyses and environmental impact analyses relating to the petition.

(c) **Procedural recommendations.** The following are procedural recommendations to help the Commission in its consideration of petitions. The Commission requests, but does not require, that a petition filed under this part:

(1) Be typewritten.

(2) Include the word "petition" in a heading preceding the text.

(3) Specify what section of the statute administered by the Commission authorizes the requested rulemaking.

(4) Include the telephone number of the petitioner and

(5) Be accompanied by at least five (5) copies of the petition.

§ 1051.5 Documents not considered petitions.

(a) A document filed with the Commission which addresses a topic or involves a product outside the jurisdiction of the Commission will not be considered to be a petition. After consultation with the Office of the General Counsel, the Office of the Secretary, if appropriate, will forward to the appropriate agency documents which address products or topics within the jurisdiction of other agencies. The Office of the Secretary shall notify the sender of the document that it has been forwarded to the appropriate agency.

(b) Any other documents filed with the Office of the Secretary that are determined by the Office of the General Counsel not to be petitions shall

be evaluated for possible staff action. The Office of the General Counsel shall notify the writer of the manner in which the Commission staff is treating the document. If the writer has indicated an intention to petition the Commission, the Office of the General Counsel shall inform the writer of the procedure to be followed for petitioning.

§ 1051.7 Statement in support of or in opposition to petitions; Duty of petitioners to remain apprised of developments regarding petitions.

(a) Any person may file a statement with the Office of the Secretary in support of or in opposition to a petition prior to Commission action on the petition. Persons submitting statements in opposition to a petition are encouraged to provide copies of such statements to the petitioner.

(b) It is the duty of the petitioner, or any person submitting a statement in support of or in opposition to a petition, to keep himself or herself apprised of developments regarding the petition. Information regarding the status of petitions is available from the Office of the Secretary of the Commission.

(c) The Office of the Secretary shall send to the petitioner a copy of the staff briefing package on his or her petition at the same time the package is transmitted to the Commissioners for decision.

§ 1051.8 Public hearings on petitions.

(a) The Commission may hold a public hearing or may conduct such investigation or proceeding, including a public meeting, as it deems appropriate to determine whether a petition should be granted.

(b) If the Commission decides that a public hearing on a petition, or any portion thereof, would contribute to its determination of whether to grant or deny the petition, it shall publish in the *FEDERAL REGISTER* a notice of a hearing on the petition and invite interested persons to submit their views through an oral or written presentation or both. The hearings shall be informal, nonadversary, legislative-type proceedings in accordance with 16 CFR Part 1052.

§ 1051.9 Factors the Commission considers in granting or denying petitions.

(a) The major factors the Commission considers in deciding whether to grant or deny a petition regarding a product include the following items:

(1) Whether the product involved presents an unreasonable risk of injury.

(2) Whether a rule is reasonably necessary to eliminate or reduce the risk of injury.

(3) Whether failure of the Commission to initiate the rulemaking proceeding requested would unreasonably expose the petitioner or other consumers to the risk of injury which the petitioner alleges is presented by the product.

(4) Whether, in the case of a petition to declare a consumer product a "banned hazardous product" under section 8 of the CPSA, the product is being or will be distributed in commerce and whether a feasible consumer product safety standard would adequately protect the public from the unreasonable risk of injury associated with such product.

(b) In considering these factors, the Commission will treat as an important component of each one the relative priority of the risk of injury associated with the product about which the petition has been filed and the Commission's resources available for rulemaking activities with respect to that risk of injury. The CPSC Policy on Establishing Priorities for Commission Action, 16 CFR 1009.8, sets forth the criteria upon which Commission priorities are based.

§ 1051.10 Granting petitions.

(a) The Commission shall either grant or deny a petition within a reasonable time after it is filed, taking into account the resources available for processing the petition. The Commission may also grant a petition in part or deny it in part. If the Commission grants a petition, it shall begin proceedings to issue, amend or revoke the rule under the appropriate provisions of the statutes under its administration. Beginning a proceeding means taking the first step in the rulemaking process (issuance of an advance notice

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of proposed rulemaking or a notice of proposed rulemaking, whichever is applicable).

(b) Granting a petition and beginning a proceeding does not necessarily mean that the Commission will issue, amend or revoke the rule as requested in the petition. The Commission must make a final decision as to the issuance, amendment, or revocation of a rule on the basis of all available relevant information developed in the course of the rulemaking proceeding. Should later information indicate that the action is unwarranted or not necessary, the Commission may terminate the proceeding.

§ 1051.11 Denial of petitions.

(a) If the Commission denies a petition it shall promptly notify the petitioner in writing of its reasons for such denial as required by the Administrative Procedure Act, 5 U.S.C. 555(e).

(b) If the Commission denies a petition, the petitioner (or another party) can refile the petition if the party can demonstrate that new or changed circumstances or additional information justify reconsideration by the Commission.

(c) A Commission denial of a petition shall not preclude the Commission from continuing to consider matters raised in the petition.