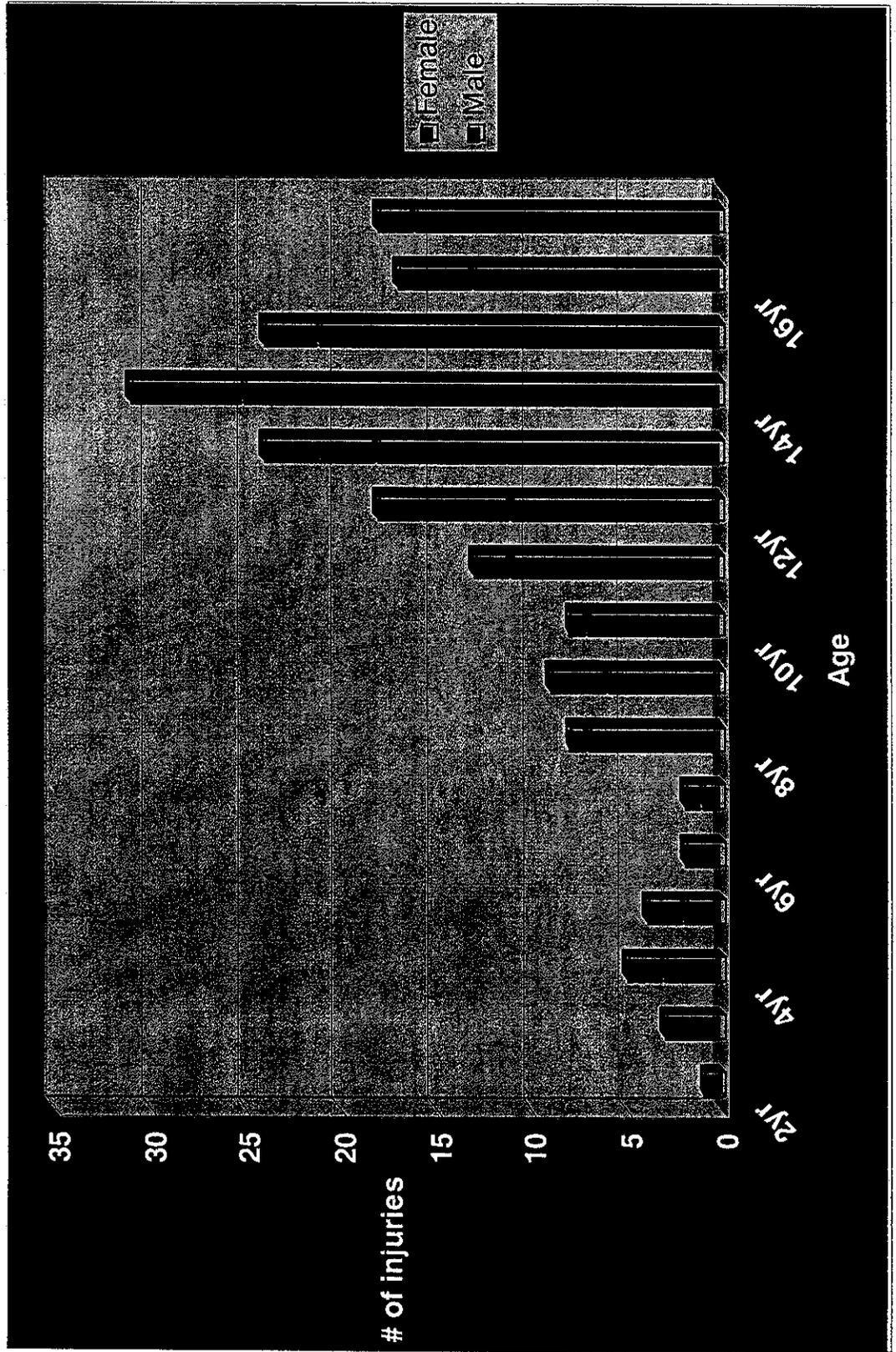


# Figure 7 . Age and Gender of Injured



## **Results Continued—Helmet Use and Vehicle Type**

- Of those injured only 13% had documented helmet use. 39% had no helmet use. Unfortunately documentation concerning helmet use was lacking in 48% of the cases (Table 1).
- Though no longer in production 3-wheeled ATVs were involved in 19% of the injuries (Table 1).

**Table 1. Characteristics of ATV-related injuries**

Gender	Number (%)
Male	11 (6)
2 to 7 yrs	
8 to 12 yrs	42 (22)
13 to 17 yrs	93 (50)
Female	6 (3)
2 to 7 yrs	
8 to 12 yrs	14 (8)
13 to 17 yrs	21 (11)
Helmet Use	
Yes	24 (13%)
No	73 (39%)
Unknown	90 (48%)
Vehicle Type	
3-Wheeler	35 (19%)
4-Wheeler	146 (78%)
Unknown	6 (3%)

## **Results Continued**

- Rollovers were involved in a large portion of injuries. However, collision with other objects (trees, fences, pools) and vehicles (cars, trucks, other ATVs) were frequent as well (Table 2).
- While drivers of the ATV were most commonly injured, 20% of the injuries were seen in passengers or bystanders (Table 2).

**Table 2 . Mechanism, Position, and Transportation**

Mechanism of Injury	Number (%)
Rollover	82 (44)
Collision with fixed object	39 (21)
Thrown	34 (18)
Collision with vehicle	23 (12)
Other	9 (5)
Position of Injured	
Driver	143 (76)
Passenger	31 (17)
Bystander	6 (3)
Unknown	7 (4)
Transportation to Hospital	
Private Vehicle	160 (85)
Ambulance	20 (11)
Helicopter	7 (4)

## **Results Continued—Injuries**

- The upper extremities were the most frequently injured, especially the wrist. Head/face and lower extremity injuries were common as well (Table 3).
- Contusions, fractures and lacerations were encountered frequently (Table 3).

# Table 3. Injuries

Body Part Injured	Number (%)
Upper Extremity	65 (35)
Head/Face	58 (31)
Lower Extremity	52 (28)
Chest	6 (3)
Abdomen	6 (3)
Injury Type	
Contusion	80 (43)
Fracture	43 (23)
Laceration	37 (20)
Sprain/Strain	21 (11)
Burn	6 (3)
Injury Severity Score	
Range 1 to 50	
Mean 3.12 ( $\pm$ 4.46)	

## **Results Continued—Injury Severity**

- **Injury Severity Scores ranged from 1 to 50.  
No difference in ISS was seen for helmet use, gender, or age >12yrs.**
- **Emergency Physicians saw 78% of the patients without need for consultation.**
- **14.4% required Trauma Surgery consultation.**
- **10% required ED Orthopedic Surgery consultation**

## **Results Continued—Disposition**

- A large portion of patients were able to be discharged from the ED after evaluation.
- 20% were admitted with 6 requiring ICU.
- The average LOS was just under 3 days.
- Of those admitted, 54% required surgery within 24 hours. Overall 11% required surgery.
- One child died in the ED.

# Injury Control Measures

- Renew CPSC/ATV distributors safety decree
- Recommended helmet use with face shield
- Adult supervision for those <18
- Mandatory youth ATV safety training program
- Promote state legislation for registration and regulation of ATV use. Currently IL does not:
  - Require ATV registration
  - Require licensure to operate an ATV
  - Have minimum age limit to operate an ATV
  - Require safety education
  - Have specific vehicle equipment requirements

## **Study Limitations**

- **Unknown total number of ATVs in use in regional population**
  - no registration required
- **Other hospitals in region**
  - additional patients treated at these facilities
- **No institutional transfer cases included**
- **Retrospective design**

# Conclusions

- Incidence of ATV-related injuries is increasing in West-Central Illinois and nationally
- Majority of injuries limited, involve older males, and can be managed without hospitalization
- Contusions and fractures represent the most common type of injuries
- Extremities followed by head/face are the most injured body sites
- Education programs may be best targeted in Peoria, Tazewell, Woodford and Marshall counties

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Stevenson, Todd A.

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From: Staron, Ann [astaron@WILLKIE.COM]  
Sent: Monday, March 17, 2003 3:29 PM  
To: Stevenson, Todd A.  
Subject: Comments to Petition CP-02-4/HP-02-1



175602v1.pdf

Attached are joint comments of the seven major ATV distributors - American Honda Motor Co., Inc., American Suzuki Motor Corporation, Arctic Cat Inc., Bombardier Motor Corporation of America, Kawasaki Motors Corp., U.S.A., Polaris Industries Inc., and Yamaha Motor Corporation, U.S.A. Five copies of these joint comments with exhibits will be hand delivered this afternoon.

<<175602v1.pdf>>

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## I. INTRODUCTION

The seven major distributors of all terrain vehicles (“ATVs”)<sup>1</sup> appreciate the opportunity to comment on the U.S. Consumer Product Safety Commission’s (“CPSC” or the “Commission”) Federal Register notice docketing a petition from the Consumer Federation of America and a number of other organizations (the “Petition”) requesting a ban on the sale of adult-size ATVs for use by children under 16 years old. 67 Fed. Reg. 64,353 (Oct. 18, 2002). Ordinarily, a product is banned based on its characteristics or function. In contrast, as docketed, the Petition does not seek a ban on the sale of new adult-size ATVs generally. Instead, the Petition asks that sale of these vehicles be banned only when it is known by the retail dealer at the time of sale that the particular vehicle is intended for use by a child under 16.

The requested ban, therefore, would have limited application. It would not apply to used sales, which are quickly approaching half of all ATV purchases. Nor would it regulate the actual *use* of adult-size ATVs in the hands of consumers. Whether a particular adult-size ATV is subject to the requested ban, moreover, could not be determined during manufacture or distribution, but only at the time of sale, based on the communication between customer and a dealer salesperson. Even then, operation of the requested ban would be dependent upon the salesperson eliciting from the customer, or the customer volunteering, whether the vehicle is being purchased with the intention that it will be used by a child under 16. Because adult-size ATVs are not inexpensive, they are typically purchased by adults, including parents. If the customer were to indicate to the dealer that the vehicle would be ridden by multiple members of

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<sup>1</sup> The seven major ATV distributors are American Honda Motor Co., Inc., American Suzuki Motor Corporation, Arctic Cat Inc., Bombardier Motor Corporation of America, Kawasaki Motors Corp., U.S.A., Polaris Industries Inc., and Yamaha Motor Corporation, U.S.A. (the “ATV Companies”).

the household, including adults, the sale would not be banned. Similarly, if a customer is simply not candid with the salesperson that a child under 16 will be riding the vehicle, the dealership would correctly view sale of the new adult-size as permissible under the requested ban.

The ATV Companies share the interests of the Commission and the Petitioners in ATV safety. In cooperation with CPSC, the ATV Companies have made unprecedented efforts to promote safe and responsible ATV use and to deter both the sale of adult-size ATVs for use by children under 16 and the use by children of these vehicles. As discussed below, the record shows that these efforts have been effective in reducing the use of adult-size ATVs by children under 16. And the ATV Companies remain open to considering reasonable new approaches to enhance ATV safety, including continued promotion of state laws that—unlike the requested ban—can be enforced to prohibit the *use* of adult-size ATVs by children under 16. Although the Petition, on its face, would seem consistent with these objectives, its limited application would have little if any practical effect on ATV safety. The requested ban is simply not the panacea Petitioners suggest. As was the case when CPSC previously considered the issue in 1991, the Commission cannot make the requisite statutory findings or meet the relevant regulatory criteria for moving forward with consideration of such a ban. *See CFA v. CPSC*, 883 F.2d 1073, 1079 (D.C. Cir. 1989). The Petition, therefore, should be denied.

## II. DISCUSSION

### A. The ATV Companies Have Continued To Make Substantial Efforts To Promote Children's Safety Since Expiration Of The Federal Consent Decrees.

Petitioners assert that the ATV Companies have been “self-regulated” since the expiration of the Federal Consent Decrees (“consent decrees”) in April 1998. The apparent implication is that this “self-regulation” has led to reduced efforts by the ATV Companies to promote children's safety. Nothing could be further from the truth. The ATV Companies not

only maintained all of the key elements of the consent decrees relating to child safety, but also implemented additional programs designed to deter the use of adult-size ATVs by children. The Commission officially commended the ATV Companies for these safety efforts, 63 Fed. Reg. 67,861 (Dec. 9, 1998), and has requested and received regular reports from the ATV Companies about the programs.

1. **Continuation Of Consent Decree Programs**

Upon expiration of the consent decrees, each ATV Company committed, in writing and on a voluntary basis, to continue all of the principal consent decree programs, including the ones relating to children's safety. *Id.* These programs are summarized below.

a. **Age Recommendations**

Consistent with the requirements of the consent decrees, each ATV Company has committed not to recommend, market, or sell adult-size ATVs (*i.e.*, with engine sizes greater than 90 ccs) to or for use by persons under 16. Each company has also committed to recommend, market, and sell only youth model ATVs (*i.e.*, with engine sizes 70 to 90 ccs) for use by children aged twelve or older with adult supervision. These ATVs are equipped with speed limiters and other features specifically designed for children at least 12 years of age.

b. **Dealer Sales Directives And Undercover Monitoring Programs**

The ATV Companies have also maintained age recommendation directives that prohibit their dealers from recommending or knowingly selling an adult-size ATV for use by a child under age 16. Random investigations of dealers are conducted each year throughout the United States to monitor for compliance with the age recommendation directives. "Secret shoppers" attempt to purchase adult-size ATVs for use by children under 16, and report any violations of the age recommendation directives by dealers. These investigations are conducted both by

CPSC and the ATV Companies. Dealers found to be in violation of the age recommendation directives are subject to disciplinary measures, including additional training, follow-up inspections, and potential termination of their franchise agreements.

The dealer monitoring programs were initiated in 1990 and have continued uninterrupted to date. The results of these efforts are reported annually to the Commission. Average industry compliance rates early in the program ranged from 72-86 percent. *See CFA v. CPSC*, 990 F.2d 1298, 1302 (D.C. Cir. 1993). Average compliance rates since expiration of the consent decrees (*i.e.*, for the period 1998 to 2001) have ranged from 82-90 percent during initial investigations, and virtually all dealers who failed initial investigations were found to be in compliance upon follow-up inspections.

**c. ATV Labels And Hang Tags**

Each ATV Company has continued to use substantially the same warning labels on all new vehicles. These include general warning labels (*see* Exhibit 1), as well as labels specifically warning against the use of ATVs by children under the recommended ages (*see* Exhibits 2 and 3). Separate labels are also used to warn against operation of the vehicles with a passenger. *See* Exhibit 4.

In addition, a "hang tag" containing the age recommendations and other safety information is supplied for each new ATV. *See* Exhibit 5 (representative hang tags). These hang tags are displayed on each vehicle at the point-of-purchase, and the consumer must physically remove them after the purchase.

**d. Owner's Manuals**

The ATV Companies have continued to include in their ATV owner's manuals all of the substantive safety information required under the consent decrees. This includes multiple

warnings against the use of vehicles by underage operators *See, e.g.*, Exhibits 6 and 7 (excerpts from representative owner's manuals).

**e. Safety Alerts**

The ATV Companies continue to provide each ATV purchaser with a "safety alert" at the point-of-purchase. The safety alert reiterates the principal warnings about safe and proper ATV use, including the age recommendations. *See* Exhibit 8 (representative safety alert). Information concerning the estimated number of fatalities and injuries associated with ATVs is also provided, and is regularly updated by the ATV Companies.

**f. Safety Videos**

Every new ATV comes with a safety video for purchasers to review at home. *See* Exhibit 9. Shortly after expiration of the consent decrees, the ATV Companies produced an updated version of the safety video that contained all of the substantive safety messages from the earlier consent decree version. The age recommendations are given prominent treatment in the video, providing consumers with further exposure to this information.

**g. Advertising**

Consistent with the guidelines established under the consent decrees, each ATV Company's advertisements and promotional materials include the age recommendations and other safety messages. The ATV Companies have also continued to promote dealer compliance with these guidelines, including conditioning cooperative (*e.*, distributor-subsidized) advertising on such compliance.

**h. Training**

The ATV Companies have also maintained their respective training programs post consent decree. Most of the ATV Companies offer free, nationwide hands-on training under the direction of the ATV Safety Institute ("ASI"). Monetary incentives are offered to promote the

training program. Children aged 12 to 15 are encouraged to participate in the course, and are only trained on youth-size models (*i.e.*, engine sizes between 70 and 90 ccs). The training curriculum includes an emphasis on the age recommendations for ATVs.

Polaris offers point-of-purchase training through its dealership network. The Polaris training program similarly emphasizes the age recommendations for ATVs.

**i. ATV Hotline**

The Specialty Vehicle Institute of America ("SVIA") continues to maintain a toll-free, twenty-four hour ATV safety hotline for its member companies. The ATV hotline provides safety and training information, including the age recommendations for ATVs. The ATV hotline is promoted in the member companies' promotional brochures and print advertisements.

**2. Post-Consent Decree Information And Education Efforts**

In addition to maintaining all of the programs described above, the ATV Companies have developed and implemented other information and education efforts since the consent decrees expired. These efforts have focused specifically on deterring children from operating adult-size ATVs.<sup>2</sup>

**a. "ATV Rally"**

The ATV Companies developed an interactive CD-ROM adventure, entitled "ATV Rally." See Exhibit 10 (Cindy Skrzycki, *Kids Get Crash Course in Dirt Biking*, Wash. Post, Jan. 7, 2000). The CD-ROM was designed to replicate trail riding on a variety of courses. Before "qualifying" for the ride, a player is required to complete a series of preliminary steps that include selection of the proper size ATV for the player's age, proper safety equipment and riding

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<sup>2</sup> American Honda did not participate in these efforts, but developed its own program, which is described below at A.2.e.

gear (e.g., helmet, goggles, gloves), and review of the “golden rules” for safe ATV operation (i.e., the principal safety warnings and instructions for the vehicle). “ATV Rally” has been distributed with all new ATVs beginning in model year 2001. In addition, approximately 22,000 copies of the CD-ROM have been distributed to public schools, and approximately 5,300 copies have been sent to public libraries around the country. Copies of the CDROM are also available from the ATV Companies and through SVIA. Over 1.7 million copies have been distributed to date.

**b. Classroom Safety Materials**

The ATV Companies also retained Lifetime Learning, a division of Weekly Reader Corp., to develop educational safety materials for classroom use. The materials provided comprehensive information about the age recommendations, the risks to children of operating adult-size ATVs, and “role-playing” exercises to teach children how to refuse invitations to operate adult-size ATVs or to ride as passengers. Color take-home brochures for parents were also given to the children.

The Lifetime Learning materials were distributed to approximately 22,000 suburban and rural public schools in December 1999. The response to the program from school teachers and administrators was uniformly positive, and the safety materials reached an estimated audience of over 5.1 million people.

**c. National Focus Group Effort**

The ATV Companies sponsored a series of focus group meetings around the country with parents and children who own and operate ATVs. This effort provided important insights into the reasons some parents allow children to operate adult-size ATVs, despite repeated warnings from the ATV Companies, CPSC, and others against it.

The ATV Companies shared this information with CPSC, and also used the information to craft new safety messages designed to deter the use of adult-size ATVs by children. These safety messages were then incorporated into a wide range of media, including the ATV safety video, the telephone scripts and direct mail pieces used by ASI to enroll new ATV purchasers in the hands-on training program, and various point-of-purchase materials.

**d. National Print Ad Campaign**

The safety messages developed through the focus group research were also used by the ATV Companies to develop two full color, halfpage print ads that were placed in ATV enthusiast and women's magazines during the Spring of 2000. See Exhibits 11 and 12. One ad was targeted to fathers and male guardians, and appeared in consecutive issues of *Buckmasters*, *ATV 4 Wheel Action*, *Dirt Wheels*, *ATV Sport*, and *ATV Magazine*. The other ad was targeted to mothers and female guardians, and appeared in consecutive issues of *Good Housekeeping* and *Redbook*. Total exposures based on the combined circulation of these publications exceeded 24 million.

**e. American Honda Program**

In September 1998, American Honda began a safety awareness campaign entitled "Stupid Hurts." The campaign was designed to raise awareness of the safe and proper operation of ATVs among parents and responsible adults, in an effort to reduce children's injuries. The messages stressed parental supervision and having children operate only appropriately sized ATVs properly.

The theme message, "Stupid Hurts," is meant to communicate to children that dangerous or risky behavior is not a challenge, but a negative thing. The rationale is that children do not want to do something that will lead to consequences that makes them look "stupid" to their peers.

The campaign involved fullpage advertisements in national ATV enthusiast magazines, outdoor activity magazines, farming magazines, and family-oriented magazines. There was also a set of public service videos provided free of charge to television stations around the country.

Additionally, Honda ATV dealers were provided with posters replicating the magazine advertisements, display cards for sales counters, a mobile with the same messages to be hung from the ceiling, and stickers in the shape of bandages with the "Stupid Hurts" message to be used as reminders. There was also a toll-free 800 number to request a safety kit, which contained a safety brochure, a letter outlining the important safety messages for parents, and some of the safety stickers. A video containing the essential safety messages was given to each purchaser of an ATV. The campaign is continuing in Honda's marketing and advertising.

3. **The ATV Companies' Efforts To Promote Children's Safety Are Unprecedented.**

The continuing efforts of the ATV Companies to promote children's safety have been undertaken in close cooperation with CPSC and are virtually unprecedented. No other private industry has implemented such far-reaching, pervasive approaches to deter children from using products intended for adults. Any suggestion by Petitioners or others that "self-regulation" by the ATV Companies has led to reduced safety efforts in this area is demonstrably wrong. Purchasers and users of ATVs continue to be given multiple warnings, in a wide range of complementary ways, that children under 16 should not operate adult-size ATVs.

B. **Recent Data Confirms The Efficacy Of The ATV Industry's Safety Efforts.**

In consultation with CPSC staff, the ATV Companies conducted an ATV exposure study in 2001 ("2001 ATV Exposure Study"), to determine both the number of ATVs in use and the amount of time that consumers actually use them. The exposure study was conducted in consultation with CPSC staff, who were simultaneously conducting an indepth study of ATV-

related injuries. The two studies were designed in conjunction with one another, as well as with ATV exposure and injury studies previously conducted in 1997.

In January 2003, CPSC staff completed an analysis of ATV-related risk for the years 1997 and 2001 based upon these exposure and injury studies. The CPSC risk analysis report, *All-Terrain Vehicle 2001 Injury and Exposure Studies* (Jan. 2003) ("*ATV 2001 Study*"), provides a basis for comparing ATV-related risks in 1997 and 2001, and confirms that the ATV industry's safety efforts have been effective in deterring children under the age of 16 from operating adult size ATVs.

As an initial matter, the *ATV 2001 Study* makes clear that a large and perhaps predominant portion of the increase in the estimated number of ATV-related injuries since 1997 is due to increased exposure in the form of higher numbers of ATVs, ATV riders, and ATV riding hours. These recent data refute the Petitioners' assertion that overall risk of injury per 10,000 ATVs in use is approaching pre-consent decree levels. A new operability rate analysis developed from the 2001 ATV Exposure Study shows that the average life of a 4-wheel ATV is now 19 years or more. Using updated population estimates from this analysis, injury risk was 197.7 injuries per 10,000 4-wheel ATVs in 2001. This was 27 percent below the 1988 injury risk of 271.7 injuries per 10,000 ATVs and 35 percent below the 1987 risk of 303.5 injuries per 10,000 ATVs.<sup>3</sup>

The *ATV 2001 Study* also indicates that, from 1997 to 2001, the number of ATVs in use increased almost 40 percent, the number of ATV drivers grew by almost 36 percent, and the number of ATV driving hours increased 50 percent. *ATV 2001 Study* at 9, Table 1. Despite

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<sup>3</sup> This operability rate analysis based on the 2001 ATV Exposure Study data has been previously provided to CPSC.

these substantial increases in the number of ATVs, ATV drivers, and the level of ATV use since 1997, the percentage of total ATV injuries which involve children under 16 decreased from 39 percent in 1997 to 30 percent in 2001. *Id.* at 11, Table 2.<sup>4</sup>

In addition, the percentage of ATV drivers who are under 16 has decreased from 21 percent of all drivers in 1997 to 17 percent of all drivers in 2001. *Id.* at 14, Table 5. The proportion of total driving hours involving drivers under 16 also fell from 22 percent in 1997 to 17 percent in 2001. *Id.* Most importantly, the proportion of injuries to drivers under 16 declined from 34 percent in 1997 to 26 percent in 2001. *Id.*

The Petition also erroneously asserts that children under the age of 16 suffer the highest number of injuries of any age group except those between 16 and 24. In fact, the *ATV 2001 Study* shows that persons under the age of 16 have a lower estimated number of injuries than the two age groups between 16 and 24 and between 25 and 44. *Id.* at 31, App. 2 at Table A1. More importantly, the *ATV 2001 Study* shows that the children between 12 and 15 had a lower increase in risk from 1997 to 2001 than did the 18 to 24, 25 to 44, and 45 to 64 age groups. *Id.* In short, the assertions made in the Petition are based on data ranging from 4 to 17 years old and are not supported by the current data and analysis contained in the *ATV 2001 Study*.

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<sup>4</sup> The Petition also incorrectly asserts that 14 percent of all ATV riders were children under the age of 16 in 1997. Petition at 6. In fact, the *ATV 2001 Study* indicates that 36 percent of ATV riders in 1997 were under the age of 16. *ATV 2001 Study* at 11, Table 2. The proportion of riders under 16 dropped to 31 percent in 2001. *Id.* Contrary to the Petitioners' claims, children under 16 did not suffer a disproportionate percentage of ATV injuries in 2001. They represented approximately 31 percent of riders and 30 percent of total injuries. Moreover, the risk in terms of injuries per thousand riders was slightly lower in 2001 for riders under 16 (4.6 per thousand) than for riders 16 and over (4.8 per thousand). *Id.*

**C. Regulatory Requirements Applicable To The Petition**

The regulations governing petitions for rulemaking under the Consumer Product Safety Act (“CPSA”) or other statutes administered by CPSC specify that the Commission must consider the following factors in deciding whether to grant or deny a petition:

- Whether the product involved presents an unreasonable risk of injury.
- Whether a rule is reasonably necessary to eliminate or reduce the risk of injury.
- 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.
- 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.

16 C.F.R. § 1051.9(a).

Based on these regulatory criteria, the Petition must demonstrate that: (1) the prospect of sale of adult-size ATVs for use by children under 16— despite the current industry and CPSC minimum age directives and dealer monitoring programs— presents “an unreasonable risk of injury”; and (2) the requested ban regulation “is reasonably necessary to eliminate or reduce the risk.” The Petition must further show that denial of the requested relief would “unreasonably expose . . . consumers to the [alleged] risk of injury.” *Id.*

CPSC regulations also provide that, in considering the specified factors, the Commission must consider whether the safety risk alleged in the Petition warrants the commitment of CPSC resources necessary to conduct a rulemaking:

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, 16C.F.R. 1009.8, sets forth the criteria upon which Commission priorities are based.

*Id.* § 1051.9(b).

The CPSC priority policy, in turn, lists seven general criteria the Commission is to apply in establishing and revising its priorities. *Id.* § 1009.8(c). Several of the criteria have particular relevance to the present Petition. One key criterion is causality of injuries. The policy specifies that consideration must be given to the amenability of a product hazard to injury reduction through standard setting, information and education, or other Commission action. This consideration involves an analysis of the extent to which the product and other factors such as consumer behavior are causally related to the injury pattern. The policy directs that priority shall be assigned to products according to the extent of product causality involvement and the extent of injuries that can reasonably be expected to be reduced or eliminated through Commission action. *Id.* § 1009.8(c)(2). Correspondingly, to the extent that consumer behavior is causally related to the injury pattern, it would have lower priority.

In addition, the policy specifies that consideration must be given on a preliminary basis to the prospective costs of Commission action to consumers and producers, and to the benefits expected to accrue to society from the resulting reduction of injuries. The cost consideration includes effects on utility or convenience of the product. The benefit estimates are to be based on explicitly stated expectations as to the effectiveness of regulatory options derived from the analysis of causality of injuries. *Id.* § 1009.8(c)(4).

The Commission is also to consider its own costs based on its responsibility to ensure that its resources are utilized efficiently. The policy provides that, assuming other factors to be equal, a higher priority will be assigned to those products which can be addressed using fewer Commission resources. *Id.*

Consideration is furthermore to be given to the degree of consumer awareness both of the hazard and of its consequences. Priority is then to be given to unforeseeable risks arising from the ordinary use of a product. *Id.* § 1009.8(c)(5). Conversely, to the extent that consumer awareness of the hazard is high and the risk foreseeable, it is of lesser priority.

Based on these criteria, the Commission's consideration of the present Petition must include an analysis of the extent to which consumer behavior (both parents and children) is causally related to the injury pattern, and set forth explicit expectations as to the effectiveness of a possible ban on the sale of adult-size ATVs for use by children under 16 in light of the causality of injury. The Commission must further consider the extent to which consumers are aware of the hazard presented by riding adult-size ATVs for children under 16 and the possible consequences of such activity. Finally, the Commission must consider the cost in lost utility and Commission resources if it were to move forward with the requested relief.

**D. Statutory Prerequisites To Proposal And Subsequent Issuance Of A Ban Regulation**

Although the Petition requested a ban only under Section 8 of the CPSA, 15 U.S.C. § 2057, CPSC docketed the Petition under both the CPSA and the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. § 1261(q)(1)(A).<sup>5</sup> In order to issue a ban regulation under Section 8 of the CPSA, the Commission must make a number of findings in accordance with Section 9 of the

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<sup>5</sup> The CPSA authorizes CPSC to issue a rule declaring a product distributed in commerce to be a banned hazardous product if it finds that the product presents an unreasonable risk of injury and no feasible consumer product safety standard would adequately protect the public from the unreasonable risk. 15 U.S.C. § 2057.

The FHSA provides that CPSC may by regulation determine an article intended for use by children to be a banned hazardous substance if in normal use or when subjected to reasonably foreseeable abuse, its design or manufacture presents an unreasonable risk of personal injury. *Id.* §§ 1261(f)(1)(D), 1261(q)(1)(A), 1261(s).

Act, 15 U.S.C. § 2058. The FHSA sets forth similar requirements for issuing a ban regulation under that statute. 15 U.S.C. § 1262.

In order to propose a ban regulation under either Act, the Commission must prepare a preliminary regulatory analysis that: (1) describes the potential benefits and potential costs of the proposed rule, including any benefits or costs that cannot be quantified in monetary terms; and (2) identifies the persons and entities likely to receive the benefits and bear the costs. *Id.*

§§ 2058(c)(1), 1262(h)(1).

The CPSA, moreover, imposes a much more extensive set of requisite findings to support a ban. In particular, the CPSA requires that:

Prior to promulgating a consumer product safety rule, the Commission shall consider, and shall make appropriate findings *for inclusion in such rule with respect to* –

- (A) the degree and nature of the risk of injury the rule is designed to eliminate or reduce;
- (B) the approximate number of consumer products, or types or classes thereof, subject to such rule;
- (C) *the need of the public for the consumer products* subject to such rule, and the probable effect of such rule upon the *utility, cost, or availability of such products to meet such need*; and
- (D) any means of achieving the objective of the order while *minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices* consistent with the public health and safety.

*Id.* § 2058(f)(1) (emphasis added).

In addition, both the CPSA and FHSA require the Commission to prepare a final regulatory analysis including:

- (A) a *description of the potential benefits and potential costs* of the regulation, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs.
- (B) a description of any *alternatives* to the final regulation which were considered by the Commission, together with a *summary description of their*

*potential benefits and costs* and a brief explanation of the reasons why these alternatives were not chosen.

*Id.* §§ 1262(i)(1), 2058(f)(3) (emphasis added).

Finally, the CPSA specifies additional findings which must be made in conjunction with issuance of a ban regulation:

The Commission shall not promulgate a consumer product safety rule unless it finds (and *includes such finding in the rule*) –

- (A) that the rule (including its effective date) is *reasonably necessary to eliminate or reduce an unreasonable risk of injury* associated with such product;
- (B) that the promulgation of the rule *is in the public interest*;
- (C) in the case of a rule declaring the product a banned hazardous product, that *no feasible consumer product safety standard* under [the CPSA] would adequately protect the public from the unreasonable risk of injury associated with such product;
- (D) in the case of a rule which relates to a risk of injury with respect to which persons who would be subject to such rule have adopted and implemented a voluntary consumer product safety standard, that –
  - (i) compliance with such voluntary consumer product safety standard is not likely to result in the elimination or adequate reduction of such risk of injury; or
  - (ii) it is unlikely that there will be substantial compliance with such voluntary consumer product safety standard;
- (E) that *the benefits expected from the rule bear a reasonable relationship to its costs*; and
- (F) that the rule *imposes the least burdensome requirement which prevents or adequately reduces the risk of injury* for which the rule is being promulgated.

*Id.* § 2058(f)(3) (emphasis added).

The FHSA requires the Commission to make a similar, but slightly more limited set of findings in order to issue a ban regulation:

- (2) The Commission shall not promulgate a regulation under section 1261(q)(1) of this title classifying an article or substance as a banned hazardous

substance or a regulation under subsection (e) of this section unless it finds (and includes such finding in the regulation)–

(A) in the case of a regulation which relates to a risk of injury with respect to which persons who would be subject to such regulation have adopted and implemented a voluntary standard, that–

(i) compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of such risk of injury; or

(ii) it is unlikely that there will be substantial compliance with such voluntary standard;

(B) that the *benefits expected from the regulation bear a reasonable relationship to its costs*; and

(C) that the regulation *imposes the least burdensome requirement which prevents or adequately reduces the risk of injury* for which the regulation is being promulgated.

*Id.* § 1262(i)(2) (emphasis added).

In order to proceed with consideration of the ban requested by the Petition, therefore, CPSC would need to prepare a preliminary regulatory analysis containing a description of the potential benefits and costs of such a regulation. This means that CPSC would need to determine and state its expectations regarding the effectiveness of such a ban in terms of a reduction in ATV-related injuries of children under 16. In addition, the Commission would need to determine the potential costs of such a ban, both in terms of lost utility of the products and CPSC resources which would be required to conduct such a rulemaking and to implement a final ban regulation. The analysis would also need to describe any reasonable alternatives to the ban regulation and their potential benefits and costs.

In order to issue a final ban regulation under the CPSA, moreover, the Commission would need to prepare a final regulatory analysis describing the potential benefits and costs and explaining why alternatives to the ban regulation were not chosen. The agency would also need

to find that the ban is reasonably necessary to eliminate or reduce an unreasonable risk of injury. CPSC would then have to make the following findings under either the CPSA or the FHSA and include them with the final rule:

- No feasible consumer product safety standard would adequately protect the public from the unreasonable risk of injury.
- The benefits expected from the ban bear a reasonable relationship to its costs.
- The ban imposes the least burdensome requirement which prevents or adequately reduces the risk of injury.

Finally, the required findings would have to be supported by substantial evidence on the record taken as a whole. *Id.* §§ 2060(c), 1262(e)(3)(C). Both the facts which detract from the Commission position and those which support it would be considered in determining whether the required findings are supported by substantial evidence. *See Aqua Slide N'Dive v. CPSC*, 569 F.2d 831, 837-38 (5<sup>th</sup> Cir. 1978).

**E. The Benefits of Any Possible Ban Would Have To Be Quantified.**

CPSC may not propose a ban regulation unless the Commission completes a preliminary regulatory analysis which contains a description of the potential benefits and potential costs of the proposed rule, and an identification of those likely to receive the benefits and bear the costs. 15 U.S.C. §§ 2058(c)(1), 1262(h)(1). This analysis, in turn, requires that CPSC determine that the requested ban would actually increase ATV safety: "Implicit in this analysis is an understanding that the regulation is a feasible method of reducing the risk." *Aqua Slide*, 569 F.2d at 839. The legislative history of the CPSA emphasizes that no regulation would be expected to impose added costs or inconvenience to the consumer unless there is reasonable assurance that the frequency or severity of injuries will be reduced. *See* H.R. Rep. No. 92-1153, at 33 (1972). CPSC could not make the required finding that the requested ban is reasonably necessary to reduce or prevent an unreasonable risk of injury "[w]ithout reliable evidence of the

likely number of injuries that would be addressed . . .” *Southland Mower Co. v. CPSC*, 619 F.2d 499, 510 (5<sup>th</sup> Cir. 1980).

The Commission may not proceed with consideration of a ban regulation based merely on a theory or presumption that it would improve ATV safety beyond the results achieved through the industry’s dealer monitoring programs. CPSC must produce evidence (in fact, substantial evidence) that the requested ban would actually reduce ATV-related injuries to children under 16. *See Aqua Slide*, 569 F.2d at 835. The Commission may not simply assume that a federal ban regulation would have incremental safety benefits; it must produce substantial evidence quantifying and confirming those benefits. *Id.* at 841-42; *Southland Mower*, 619 F.2d at 510. Indeed, in *Aqua Slide*, the court rejected a CPSC requirement for warning signs because “the evidence that the signs would reduce the risk rests more on inference than it does on proof.” *Aqua Slide*, 569 F.2d at 842.

In terminating its ATV rulemaking in 1991, the Commission concluded that it lacked evidence of any potential incremental benefit of a ban on the sale of adult-size ATVs for children under 16 beyond the benefits achieved through the existing warnings and dealer monitoring programs, which provided for termination of the franchises of dealers who did not comply with their age recommendation obligations. 56 Fed. Reg. 47,166, 47,172 (Sept. 18, 1991). Similarly, the Petition presents no specific information or data to demonstrate— or even suggest — that the requested ban regulation would be more effective in preventing sales of adultsize ATVs for use by children under 16 than the current dealer monitoring programs with the continuing potential for franchise termination. The Commission thus continues to lack any evidence that the requested ban would result in verifiable safety benefits.

**F. The Risk Of ATV-Related Injury For Children Under 16 Is Lower On A Per Participant Basis Than The Risk Of Injury Involved With Numerous Other Recreational Activities And Products.**

In weighing the potential benefits of the requested ban, the Commission must also consider the extent to which children who do not operate adult-size ATVs as a result of the ban might engage instead in other activities that pose a risk of injury or death. *See CFA*, 883 F.2d at 1076. The Petition fails to address how ATV-related risks compare to other types of products and activities involving children. In fact, a wide range of recreational products and activities involve a greater risk of injury or death to children under 16

For example, on the basis of number of injuries to the general population per 100,000 participants, ATV riding is safer than football, basketball, wrestling, bicycling, soccer, baseball, snow skiing/snowboarding, skateboarding, softball, ice hockey, boxing, cheerleading, and roller skating. *See Exhibit 13*. Using total participation days as the relevant exposure measure, ATVs are safer than each of the products and activities listed above, as well as racquetball/squash, in line skating, water skiing, volleyball, and snowmobiles. *See Exhibit 14*. For the specific sub-group of children 7 to 15, the comparative risks are generally higher for all of these products and activities, whether measured based on the total number of participants or on the total participation days. *See Exhibit 15*.

ATVs are also safer than motor vehicles from a number of different injury comparisons. Based on injuries per 100,000 participants, ATVs are more than *twice* as safe as the general category of motor vehicles (1,161 injuries for motor vehicles versus 488 for ATVs), and fifty-three percent safer than passenger cars (747 injuries for passenger cars). *See Exhibit 16*. For the specific sub-group of children under 16, the risks associated with ATVs are again significantly lower than the risks associated with riding in a motor vehicle (528 for motor vehicles versus 459 for ATVs). *See Exhibit 17*.

Moreover, the risk of fatality associated with ATV use (2.4 fatalities per 100,000 participants) is comparable to the risk of fatality associated with such common recreational activities as bicycling (2.4) and swimming (2.2). *See* Exhibit 18. When measured on the basis of fatalities per million days of participation, ATV riding (0.4 fatalities per million participation days) is safer than swimming (0.5) and comparable to bicycling (0.4). *See* Exhibit 19.

ATV riding is also considerably safer than riding in a motor vehicle. ATVs are associated with 9.8 fatalities per 100,000 vehicles, compared to motorcycles (65.9), passenger cars (16.0), and light trucks (15.0). *See* Exhibit 20. The risk of fatality to children under 16, in particular, is almost twice as high when they are riding in a motor vehicle (4.5 per 100,000 participants) as it is when they are riding on an ATV (2.3). *See* Exhibit 21.

The Commission and the ATV Companies have worked diligently to deter children under 16 from using adult-size ATVs. Although the risks associated with such warned-against behavior are still present, they are not disproportionate to the risks associated with many recreational and other activities in which children commonly- and appropriately – participate. Furthermore, to the extent that the requested ban caused children to shift from riding ATVs to other recreational activities which have similar or greater risk of injury, it would not appear to produce an overall safety benefit. The comparative risk data discussed above provide a more objective context for some of the claims made in the Petition, and further underscore the difficulty the Commission would have in satisfying the rigorous statutory standards for the requested ban.

**G. The Requested Ban Would Have Minimal, If Any, Effect On Children's Safety.**

The Petition seeks a federal ban on the sale of adult-size ATVs for use by children under 16. On its face, this relief is consistent with the longstanding efforts of the Commission and the

ATV Companies to prevent such sales. In practical effect, however, the requested ban would likely do little to improve children's safety.

In docketing the Petition, the Commission noted that it "has no authority to regulate the use of consumer products. It cannot prohibit a child from riding an ATV." Letter from S. Lemberg, CPSC Associate General Counsel, to R. Weintraub, CFA of 9/25/02. As the Commission further explained, "[a]n ATV cannot become a banned product the moment that a child climbs on it." *Id.* The Commission only has authority to ban the retail sale of adult-size ATVs when, *at the time of sale*, the unit is intended for use by a child under the age of 16. *Id.* (citing 56 Fed. Reg. at 47,172) (emphasis added).

The potential benefit of the requested ban, therefore, is limited to the incremental benefit that it might provide over and above the plethora of existing programs designed to deter the retail sale of adult-size ATVs for use by children under 16. There is no information—much less substantial evidence—from which the Commission could conclude that such a ban would result in any incremental benefit to children's safety.

The 2001 ATV Exposure Study found that the "overwhelming majority (99%)" of ATVs currently in use were manufactured by the ATV Companies. *ATV 2001 Study* at 24. As previously shown, the ATV Companies have made extensive efforts to warn the public against the use of adult-size ATVs by children. These efforts have included several nationwide public safety campaigns, involving television and radio advertisements, and the distribution of thousands of brochures, posters, CD-ROMs, and classroom materials to public schools and libraries around the country. There is no evidence that the public is generally uninformed of the risks associated with the use of adult-size ATVs by children.

Moreover, upon entering a retail dealership, all prospective ATV purchasers are given numerous warnings against the use of adult-size ATVs by children. These include on-product labels, hang tags, safety videos, an "ATV safety alert," and other materials. There is no evidence that any actual ATV purchasers are uninformed of the risks associated with the use of adult-size ATVs by children.

The ATV Companies also prohibit their dealers from knowingly selling an adult-size ATV for use by a child under 16. These directives preclude the very sales transaction that the requested ban would address, and are enforced through regular dealer monitoring conducted by the Commission and the ATV Companies. A failure to comply with the directives can result, and has resulted, in termination of the dealership agreement. In light of these potential consequences, more than eight out of ten dealers monitored over the past five years were found to be in compliance with the age recommendation directives. Dealers reported to be in violation of the directives were required to participate in additional training and enforcement programs, and were subject to termination of their dealership agreement upon a second violation. Virtually all dealers who failed initial investigations were found to be in compliance during subsequent inspections.

The ban requested by Petitioners would permit the Commission, as opposed to the ATV Companies, to sanction dealers who knowingly sell an adult-size ATV for use by a child under 16. The high compliance rates achieved through the existing dealer monitoring programs show that such sales would occur infrequently, if at all. Even assuming the Commission found an occasional violation through its own nationwide monitoring effort, moreover, the maximum penalty would be a \$7,000 fine. 15 U.S.C. § 2069(a)(1); 64 Fed. Reg. 51,963 (Sept. 27, 1999). It is illogical to assume that a dealer who is willing to violate the existing age recommendation

directives -- at the risk of losing its dealership agreement-- would pay any more heed to a government ban involving such a far lesser sanction.

In addition, the requested ban would not apply to sales of used ATVs in the private market. The 2001 ATV Exposure Study found that forty-four percent (44%) of ATVs were purchased used. *ATV 2001 Study* at 24. Eighty-three percent (83%) of these units were purchased from a previous owner, not an authorized dealer. The Commission has no jurisdiction over these private sales, and the requested ban would have no effect on them.

Nor would the ban apply to the *use* of adult-size ATVs by children under 16. The Commission loses jurisdiction over the product once it is sold. As previously noted, the agency has no authority to regulate consumer behavior and cannot prevent a parent or guardian from permitting the use of an adult-size ATV by a child under 16. Even assuming the requested ban prevented some incremental number of sales of such units for use by children, it would have no effect on the ability of children to ride other adult-size ATVs that were either purchased for an adult in the retail or private markets or borrowed from family members or friends.

In 1991, the Commission recognized that these practical considerations would effectively negate any incremental benefits from a similar requested ban. 56 Fed. Reg. at 47,172. There is no information suggesting-- let alone substantial evidence demonstrating-- that any of these factors have changed over the past decade. Although facially appealing, the ban requested by Petitioners would have little, if any, practical effect on children's safety for the exact same reasons.

**H. CPSC Would Have To Quantify The Costs Of The Requested Ban In Terms Of Lost Utility.**

The *ATV 2001 Study* shows that there has been a dramatic increase in the overall utility associated with ATVs since the expiration of the consent decrees. More people are purchasing

and using these vehicles, as indicated by the continuing increases in ATV sales in recent years. In addition, the estimated useful life of these vehicles has lengthened considerably as owners maintain and keep them in service for longer periods. These factors contributed to an increase in the population of ATVs in use of at least 40% from 1997 to 2001.<sup>6</sup> *ATV 2001 Study* at 2. The *ATV 2001 Study* confirms further that the number of ATV drivers increased 35% from 1997 to 2001, while the number of ATV driving hours grew by 50% over the same period. *ATV 2001 Study* at 9, Table 1. The same pattern is reflected for ATV riders and riding hours. In other words, the *ATV 2001 Study* shows that there was substantially more ATV use in 2001 than in 1997, based upon more ATVs, ATV drivers, and ATV riders, and, on average, substantially greater numbers of hours of use for each driver and rider.

In addition, the 2001 ATV Exposure Survey also shows that 71 percent of drivers in ATV-owning households used ATVs for one or more non-recreational purposes. Of those who used ATVs for non-recreational purposes such as farming/ranching, other occupational use, or yard work/chores, about half drove ATVs for such purposes more than 50 percent of the total driving time. Half of the drivers in ATV-owning households used ATVs for yard work and chores; more than 40 percent used them for farming or ranching; and 11 percent used them for other business or occupational purposes. These percentages are nearly identical to the 1997 survey estimates, showing a consistent and continuing high level of ATV use for non recreational, work-related purposes.

The 2001 ATV Exposure Survey also found that approximately 73 percent of ATV-owning households own a single vehicle. The 2001 ATV Exposure Survey also showed that

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<sup>6</sup> The increase in ATV population is even greater than estimated in the *ATV 2001 Study* if the updated useful life figure of 19 years is used in the calculation.

there were an average of 2.6 ATV riders per owning household. This indicates that in approximately three-fourths of ATV-owning households, there is a single vehicle which is ridden by multiple persons. While this may mean that a single adult-size ATV is shared by a husband and wife, or a parent and child 16 or older, it may also include situations where a single adult size vehicle is ridden by both a parent and a child under 16. This suggests that there may be situations in which a parent purchases a new adult-size ATV primarily for his or her own use, but also for use by a child under 16.

As previously noted, CPSC has no authority to regulate the use of consumer products or to prohibit directly their use by children. The requested ban would accordingly operate to prohibit the sale of an ATV which, at the time of sale, the retail dealer knows is intended to be used by a child under 16. The 2001 ATV Exposure Survey data strongly suggest, however, that in many instances a parent may seek to purchase a new adult-size ATV from a dealership primarily for his or her personal use, even though the unit may on occasion also be used by a child under 16. To the extent the requested ban applied to bar the sale of an ATV in such cases, adult users would lose the benefits of owning and operating the vehicles.

As noted above, in order to proceed with a requested ban regulation, CPSC would have to prepare a preliminary analysis of the potential costs of such a ban. The primary component of these costs would be potential lost utility to consumers. This, in turn, means that the Commission would need to develop specific evidence showing the degree to which a ban regulation would operate to preclude ATV ownership and use by both adults and children in households with children under 16. CPSC would also need to develop specific evidence on the product utility that would be lost, both in terms of recreational ATV use, such as camping, hunting and trail riding, and non-recreational ATV use for work-related purposes, such as

farming, ranching and yard work. The Petition itself has presented the Commission with no information upon which to describe or quantify the scope of this potential lost utility, which would likely be substantial.

Finally, the consideration of costs must also include an assessment of the Commission's own resources which would be needed both to complete the ban rulemaking and to implement and enforce the ban after final promulgation. Enforcement of the ban would be a novel undertaking by the agency, and would require ongoing supervision of dealer communications with potential customers throughout the country. *See CFA*, 990 F.2d at 1304.

Because CPSC has no basis upon which to confirm and quantify the expected safety benefits and potential costs of a possible ban regulation, the Commission is in no position to make the required finding that the expected benefits from such a ban bear a reasonable relationship to its potential costs.

**I. CPSC Would Have No Basis To Show That The Requested Ban Would Represent The Least Burdensome Requirement For Reducing ATV-Related Risk Of Injury.**

The requested ban regulation could not be adopted under either the CPSA or the FHSA unless CPSC finds, based upon substantial evidence, that the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury. 15U.S.C. §§ 2058(f)(3)(F), 1262(i)(2)(C). *See also CFA*, 990 F.2d at 1306. The critical impediment to this required finding is the continuing absence of any evidence that the requested ban would prevent or reduce the risk of injury to any greater degree than the ATV Companies' existing warnings, sales directives, and dealer monitoring programs. These combined programs, which constitute voluntary commitments by the distributors subject to confirmatory monitoring by CPSC, represent a less burdensome alternative than the requested ban.

The requested ban also represents a fairly crude instrument for addressing the underlying issue of the warned-against use of adult-size ATVs by children under 16. As noted above, the ATV Companies continue to warn strongly against such use in labels, point of purchase materials, advertisements, inschool programs, and training courses and materials. The requested ban would not reach the private resale market which accounts for approximately 44% of the ATVs in use, nor would it prevent the use of borrowed adult-size ATVs by children under 16. In addition, the requested ban would not apply in situations where a parent, subsequent to purchasing an adult-size ATV for his or her own use, decides to allow a child under 16 to use it as well. (Indeed, the court in *Aqua Slide* noted that an important predicate to Commission action is that consumers be unaware of either the severity, frequency, or ways of avoiding the risk. 569 F.2d at 839. The court went on to suggest that if a consumer (in this case the parent) has accurate information, and still chooses to incur the risk, their judgment may well be reasonable.).

In fact, as discussed more fully below, it is the states— not CPSC — which have authority to regulate the use of ATVs and to set age limits which prohibit use of adult-size vehicles by children under 16. The promotion of such state ATV legislation represents another less burdensome alternative than the requested ban. CPSC, therefore, could not make the required finding that the requested ban imposes the leastburdensome requirement which prevents or adequately reduces the risk of injury.

**J. The States Can Exercise Their Police Powers To Prohibit The Use Of Adult-Size ATVs By Children.**

Unlike the Commission, the states can regulate the use of adult-size ATVs within their borders. This includes the authority to set minimum age requirements for drivers of ATVs. The Commission and the ATV Companies have promoted model state legislation that prohibits the sale of adult-size ATVs for use by children under 16, which is the very sales restriction proposed

by Petitioners, and prohibits the *use* of adult-size ATVs by children under 16. *See* Exhibit 22 (CPSC model state legislation) and Exhibit 23 (SVIA model state legislation).

A number of states have enacted ATV legislation, including minimum age, training, and adult supervision requirements. *See, e.g.*, Cal. Veh. Code §§ 38500 - 38506; Conn. Gen. Stat. §§ 23-26a - 23-26f; Iowa Code Ann. §§ 321G.20, 321G.24; Mass. Gen. Laws Ann. ch. 90B, § 26; Mass. Regs. Code tit. 304, § 12.29(12); N.J. Stat. Ann. § 39:3C-16; Ohio Rev. Code Ann. § 4519.44; R.I. Dept of Env'tl Mgmt., Div. of Law Enforcement R. & Regs. part V, § 8; Vt. Stat. Ann. tit. 23, §§ 3506, 3515; Va. Code Ann. § 46.2-915.1. These state laws are critically important in promoting safe ATV use, particularly among children. The Commission has taken exhaustive steps at the federal level to ensure full disclosure of ATV safety risks and, in partnership with the ATV Companies, to deter the sale of adult-size ATVs for use by children. The authority to regulate the use of such vehicles by children, however, resides exclusively with the states. While the federal ban requested by the Petitioners would be limited to individual sales transactions at retail dealerships, state laws can regulate the actual use of the vehicles after they leave the showroom and are in the hands of consumers. Further meaningful reductions in the use of adult-size ATVs by children, therefore, will necessarily be dependent upon actions by the states to enact and enforce appropriate laws governing such behavior.

There is no question that effective enforcement of state age restrictions on product usage can significantly reduce the number of injuries and fatalities involving children. For example, in 1996, Florida enacted a law prohibiting the use of personal watercraft by children under twelve. Fla. Stat. Ann. § 327.395. The percentage of personal watercraft-related accidents involving children in Florida declined over 50% after enactment of the statute, from 24 in 1996 to the low teens (13 to 15) in 1997 through 2000, even while the number of personal watercraft in use

continued to increase each year.<sup>7</sup> This experience demonstrates the important role that state legislation can play in effectively promoting children's safety. No federal action by the Commission can substitute for these state police powers.

The ATV Companies urge the Commission to make renewed efforts, in partnership with the ATV industry and others, to encourage and support the enactment of state laws prohibiting the use of adult-size ATVs by children under 16. The Commission's efforts in this area are much more likely to have a beneficial effect in reducing ATV-related accidents involving children than the federal ban requested by the Petitioners.

### **III. CONCLUSION**

In cooperation with the Commission, the ATV Companies have taken unprecedented steps as private companies to promote the safe and responsible use of their products. The ATV Companies will continue to use their best efforts to deter the sale of adult-size ATVs by children under 16, and are always willing to consider new and effective ways to advance this important objective. At the same time, the Commission should consider the extent to which further reductions in ATV-related accidents involving children may be beyond the scope of reasonable actions that the Commission can take under federal law or that the ATV Companies can take as private companies. Although the ban requested by Petitioners is an additional potential federal remedy, it would only apply to individual retail sales transactions, would be difficult and costly to enforce, and would ultimately have little, if any, practical effect on the behavior of dealers or

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<sup>7</sup> Personal watercraft-related accidents are reported to and compiled by the Florida State Boating Law Administrator. Although Florida and some other states compile data on personal watercraft-related accidents, no comparable state-level data is compiled for ATV-related accidents. The NEISS database used by CPSC compiles accident data on a national basis, which unfortunately does not permit a similar analysis of ATV accident reductions in states that have enacted ATV age restriction legislation.

consumers. The requested ban is not a panacea for children's safety, and should not be portrayed as one. The most effective way to achieve further meaningful reductions in children's injuries is plainly through the enforcement of current state age restriction laws and the enactment of additional similar state laws.

It has been publicly reported that the Commission is considering holding public hearings concerning ATV safety. If the Commission holds such hearings the ATV Companies request the opportunity to respond and comment on any information presented during the hearings. In addition, the ATV Companies would be happy to respond to any comments or questions that the Commission may have about this joint submission.

Respectfully submitted,

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March 7, 2003

2003 MAR 14 A 11:31

ATV  
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Consumer Product Safety Commission  
Attention: Office of the Secretary  
Washington, D. C. 20207

Re: ATV Restrictions

Gentlemen:

We strongly support immediate restrictions on the use of ATV's and motorcycles by children under the age of 16 years of age or anyone not properly licensed to drive such a vehicle.

We have a cabin in Summit County, Utah, and in the past couple of years we have been inundated with motorcycles and ATV's being driven by very young children – some so small it is questionable they can reach the handles or pedals. These young children speed up and down a very narrow, winding, dirt, county road. They do so all day long. They drive down the center of the road, sometimes two or more vehicles side by side. They speed and do "wheelies", and weave back and forth in a dangerous zig zag pattern. They cause terrible dust and noise for hours and hours. And, in almost all cases, there are two or three children on the same ATV.

Many of these uncontrolled youngsters go into the mountains and do unspeakable damage to the forest. Some of the property owners have erected fences to protect the land, but these young people make another road somewhere else, and continue to damage the land.

These youngsters are turned loose on these machines to do whatever they want, wherever they want, and their parents are nowhere in sight. They damage the land, mountains and streams, cause terrible dust and noise, and ruin the peaceful enjoyment of our property.

It is our belief that no one under the age of 16 should be driving these huge machines on roads and in the mountains. It is also our belief that no one should be driving these types of machines until they have a valid driver's license and have successfully completed a training course on ATV's and a thorough education on respecting property owners' rights and people's health.

We have called the county sheriff to help stop this problem, but to no avail. The sheriff doesn't have sufficient deputies to come up to our summer cabin area and stop the

violators. And, when we try to stop these youngsters they tell us in no uncertain terms that they can do whatever they want and we can't stop them.

Law enforcement should be required to enforce the law pertaining to these vehicles. The vehicles should be licensed and the drivers should be 16 years of age and licensed to drive. The penalties should be harsh for those who violate the law!

We urge you to enact rules or laws to immediately restrict the use of ATV's and motorcycles in summer cabin areas, and on private property, and on dangerous county roads! And, it would also be great if you could keep them out of the mountains, forests, and streams.

Thank you for accepting our comments on this issue.



Ray and Clara Fritz  
5643 Cora Way  
Taylorsville, Utah 84118-2317



# Lincoln-Lancaster County SAFE KIDS Coalition

ATV  
wmt

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3140 N Street • Lincoln, NE 68510 • Phone - 441-8046 • Fax - 441-8323

- BryanLGH Medical Center
- Lancaster County Sheriff's Office
- Lincoln Council on Alcoholism and Drugs
- Lincoln Fire and Rescue
- Lincoln-Lancaster County Health Department
- Lincoln Parks and Recreation
- Lincoln Police Department
- Lincoln Public Schools Nurses
- Madonna Rehabilitation Hospital
- Mothers Against Drunk Driving
- Nebraska Health and Human Services System
- Nebraska Safety Council, Inc.
- St. Elizabeth's Regional Medical Center
- SouthPointe Pavilions
- State Farm Insurance

March 11, 2003

Todd Stevenson  
 Secretary  
 U.S. Consumer Product Safety Commission  
 4330 East-West Highway  
 Bethesda, MD 20207

RE: Petition to Ban All-Terrain Vehicles for Use by Children Under Age 16:  
 CP-02-4/HP-02-1

Dear Mr. Stevenson:

On behalf of the Lincoln-Lancaster County, Nebraska SAFE KIDS Coalition, I am writing to support a petition, submitted to the U.S. Consumer Product Safety Commission (CPSC) by the Consumer Federation of America (CFA) and other parties, which requests a ban of adult all-terrain vehicles (ATVs) for use by children under the age of 16. As ATVs pose an unreasonable risk of death and injury to children, the Lincoln-Lancaster County SAFE KIDS Coalition supports most of the provisions of this petition.

Lancaster County has more rural residents than any of the other 91 counties. The largest percentage of these residents live within a 10-mile radius of Lincoln on small acreages. The number of ATVs in Lancaster County is astonishing, and the numbers are increasing with the development of more acreage communities. Many families have two or three ATVs so all members can participate in family rides. Unfortunately, many rural parents become slack in supervising their children while on an ATV, increasing the risk of dangerous driving behavior and injury.

The Lincoln-Lancaster County SAFE KIDS Coalition believes that ATVs should not be operated by children ages 15 and under. ATVs are inherently difficult for adults to operate and beyond the developmental capability of children to control. This concept, coupled with the increased number of associated injuries and fatalities, show that there are inherent dangers to children driving adult ATVs. In fact, many of the conclusions found in the CPSC's most recent research (*Consumer Product Safety Commission, Annual Report: 2001 All-terrain Vehicle [ATV]-related Deaths and Injuries*, August 2002) clearly demonstrate that there is presently a substantial risk of death and injury. Death and injury that was to be addressed by consent decrees, action plans and consumer education and labeling. Significantly, between 1982 and 2001, 1,714 children under age 16 - including 799 under the age of 12 - were killed in ATV incidents. Furthermore, between 1993 and 2001, the number

of ATV-related injuries by children under age 16 increased 94 percent to 34, 800. The CPSC data also revealed that while only 14 percent of all ATV riders were children under the age of 16, these children disproportionately suffered approximately 37 percent of all injuries and 38 percent of total fatalities between 1985 and 2001.

In our view, banning ATVs for children would not require removal of the products from the marketplace, but simply preclude ATV manufacturers and retailers from marketing their products to children. Additionally, ATV salespeople would be required to warn potential purchasers about the dangers of the product and ask parents if the ATV was being bought for a child under age 16. These measures, if properly enforced, would pass on vital safety information to parents as well as help to prevent child ATV-related incidents from occurring in the first place by preventing the sale of the vehicle if it is known or reasonably believed that the product will be used by children under 16. Additionally, the Lincoln-Lancaster County SAFE KIDS Coalition supports increased educational efforts, labeling, and instructions - targeted at current owners of ATVs to remind them of the potential dangers of these devices.

If you would like any additional information on the Lincoln-Lancaster County SAFE KIDS Coalition or our affiliation with the National SAFE KIDS Campaign, please don't hesitate to contact me at (402) 441-8046 or [bbaker@ci.lincoln.ne.us](mailto:bbaker@ci.lincoln.ne.us).

Sincerely,



Brian Baker

Co-Coordinator, Lincoln-Lancaster County SAFE KIDS Coalition

Injury Prevention Program Coordinator, Lincoln-Lancaster County Health Department

Lenoir County

# SAFE KIDS

A Member of the  
National SAFE KIDS Campaign  
Network



Serving Lenoir, Greene, and Jones Counties

Handwritten initials and number: "JN" and "174"

March 11, 2003

Todd Stevenson  
Secretary  
U.S. Consumer Product Safety Commission  
4330 East-West Highway  
Bethesda, MD 20207

**RE: Petition to Ban All-Terrain Vehicles for Use by Children Under Age 16:  
CP-02-4/HP-02-1**

Dear Mr. Stevenson:

On behalf of SAFE KIDS- Lenoir Co. (NC), I am writing to support a petition, submitted to the U.S. Consumer Product Safety Commission (CPSC) by the Consumer Federation of America (CFA) and other parties, which requests a ban of adult all-terrain vehicles (ATVs) for use by children under the age of 16. As ATVs pose an unreasonable risk of death and injury to children, Lenoir County SAFE KIDS supports most of the provisions of this petition.

Lenoir County SAFE KIDS Coalition is a local Coalition and member of the National SAFE KIDS Campaign. The Coalition benefits greatly from active participation and collaboration from all area law enforcement agencies and first responders, as well as health care officials: State Highway Patrol, Department of Public Safety (police and fire), sheriff's office and EMS, Lenoir Memorial Hospital and Lenoir, Greene and Jones County health departments. Because we are considered a rural, agricultural area, the use of ATV's is quite prevalent. The misuse of these vehicles is enormous. We have found that the way of thinking is "bigger is better" and unfortunately, parents are promoting the use of large vehicles that far exceed the child's handling capability. Injuries tend to be severe with the younger children and we are struggling to educate parents and caregivers about the dangers of ATV's when there is no legislative enforcement to support our efforts.

Lenoir County SAFE KIDS believes that ATVs should not be operated by children ages 15 and under. ATVs are inherently difficult for adults to operate and beyond the developmental capability of children to control. This concept, coupled with the increased number of associated injuries and fatalities, show that there are inherent dangers to children driving adult ATVs. In fact, many of the conclusions found in the CPSC's most recent research (*Consumer Product Safety Commission, Annual Report: 2001 All-terrain Vehicle [ATV]-related Deaths and Injuries, August 2002*) clearly demonstrate that there is presently a substantial risk of death and injury. Death and injury that was to be addressed by consent decrees, action plans and consumer education and labeling. Significantly, between 1982 and 2001, 1,714 children under age 16 - including 799 under the age of 12 - were killed in ATV incidents. Furthermore, between 1993 and 2001, the number of ATV-related injuries by children under age 16 increased 94 percent to 34,800. The CPSC data also revealed that while only 14 percent of all ATV riders were children under the age of 16, these children disproportionately suffered approximately 37 percent of all injuries and 38 percent of total fatalities between 1985 and 2001

In our view, banning ATVs for children would not require removal of the products from the marketplace, but simply preclude ATV manufacturers and retailers from marketing their products to children. Additionally, ATV salespeople would be required to warn potential purchasers about the dangers of the product and ask parents if the ATV was being

Lenoir Memorial Hospital - Lead Organization for the Lenoir Co. Safe Kids Coalition

bought for a child under age 16. These measures, if properly enforced, would pass on vital safety information to parents as well as help to prevent child ATV-related incidents from occurring in the first place by preventing the sale of the vehicle if it is known or reasonably believed that the product will be used by children under 16. Additionally, Lenoir County SAFE KIDS supports increased educational efforts, labeling, and instructions – targeted at current owners of ATVs to remind them of the potential dangers of these devices.

If you would like any addition information on Lenoir County SAFE KIDS or our affiliation with the National SAFE KIDS Campaign, please don't hesitate to contact me at 252-522-7471 or [bjohnsey@lenoir.org](mailto:bjohnsey@lenoir.org).

Sincerely,

  
Betty Z. Johnsey, M.A.Ed.  
Injury Prevention Educator



**Insurance Commissioner Jim Long, Chair**  
North Carolina Department of Insurance  
Office of State Fire Marshal  
PO Box 26387, Raleigh NC 27611-0387

North Carolina Hospital Association, Founding Sponsor

March 12, 2003

Mr. Todd Stevenson, Secretary  
U.S. Consumer Product Safety Commission  
4330 East-West Highway  
Bethesda, MD 20207

Dear Mr. Stevenson:

As Chairman of the North Carolina SAFE KIDS Coalition, I am writing to inform you of my support of a petition recently submitted to your organization by the Consumer Federation of America and others. This petition calls for the ban of use of adult all-terrain vehicles (ATVs) by children under the age of 16.

NC SAFE KIDS has long believed that ATVs should be restricted to operators age 16 or older. Most adults, even with years of experience driving motor vehicles, find operating ATVs a comprehensive task. Yet we allow our children, whom we do not deem fit to be licensed drivers until age 16, to operate these machines on a regular basis. Children lack the developmental and emotional experience to competently operate a moving vehicle. This together with the increased number of injuries and fatalities sustained by children on ATVs clearly shows kids and ATVs are a dangerous combination.

Unfortunately, the figures tell a truth all their own: Between 1982 and 2001, 1,714 children under age 16 were killed in ATV incidents. In an eight-year period between 1993 and 2001, the number of ATV-related injuries in this age group increased 94 percent to 34,800. NC SAFE KIDS believes that precluding ATV manufacturers and retailers from marketing their products to children would reduce these numbers of injuries and deaths. Requiring ATV salespeople to ask potential buyers about the ages of intended operators and warning them of the dangers ATVs pose to children would go even further towards bringing these statistics down.

The petition also asks that the CPSC require manufacturers to refund consumers the cost for adult-size ATVs bought for use by children under age 16. While NC SAFE KIDS does not support this request due to the impracticality of removing so many products from the marketplace, we will instead continue to support increased educational efforts targeted at current owners of ATVs, reminding them of the serious and potential dangers of these devices.

I would be pleased to discuss this matter further and answer any questions that the U.S. Consumer Product Safety Commission might have relating to our position. Thank you for your consideration.

Sincerely,

Jim Long  
North Carolina Commissioner of Insurance and  
Chair, North Carolina SAFE KIDS

cc: Deb Stout, Director, NC SAFE KIDS  
Kelly Ransdell, Injury Prevention Specialist, OSFM/NCSK

Call free: 888/347-3737 ■ 919/733-3901 ■ Fax: 919/733-9171

