



Ballot Vote Sheet

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Jessica L. Rich, General Counsel
Austin C. Schlick, Executive Director

FROM: Daniel R. Vice, Assistant General Counsel, Regulatory Affairs
Jane Rothstein, Attorney, Regulatory Affairs

SUBJECT: Notice of Availability and Request for Comment: Data Regarding Debris Penetration Hazards for Recreational Off-Highway Vehicles and Utility Task/Terrain Vehicles

BALLOT VOTE DUE: September 24, 2024

The Office of the General Counsel is providing for the Commission's consideration the attached draft Notice of Availability and Request for Comment (NOA) for data regarding debris penetration hazards for recreational off-highway vehicles and utility task/terrain vehicles. The draft NOA announces the availability of, and seeks comments on, details about incident data related to the Notice of Proposed Rulemaking, Safety Standard for Debris Penetration Hazards, 87 FR 43688 (July 21, 2022). Comments would be due 30 days after publication of the NOA in the *Federal Register*.

Please indicate your vote on the following options:

- I. Approve publication of the attached notice in the *Federal Register*, as drafted.

(Signature)

(Date)

- II. Approve publication of the attached notice in the *Federal Register*, with the specified changes.

(Signature)

(Date)

III. Do not approve publication of the attached notice in the *Federal Register*.

(Signature)

(Date)

IV. Take other action specified below.

(Signature)

(Date)

Attachment: Draft *Federal Register* notice entitled Notice of Availability and Request for Comment: Data Regarding Debris Penetration Hazards for Recreational Off-Highway Vehicles and Utility Task/Terrain Vehicles

Billing Code 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1421

[Docket No. CPSC-2021-0014]

**Notice of Availability and Request for Comment: Data Regarding Debris Penetration
Hazards for Recreational Off-Highway Vehicles and Utility Task/Terrain Vehicles**

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule; availability of supplemental information; request for comment.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) published a notice of proposed rulemaking (NPR) in July 2022 to address debris penetration hazards for recreational off-highway vehicles (ROVs) and utility task/terrain vehicles (UTVs). CPSC is announcing the availability of, and seeking comment on, details about incident data relevant to the rulemaking and associated with debris penetration hazards for ROVs and UTVs.

DATES: Submit comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit comments, identified by Docket No. CPSC-2021-0014, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC does not accept comments submitted by email, except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail/hand delivery/courier to: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330

East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit electronically: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: To read background documents or comments regarding this proposed rulemaking, go to: <https://www.regulations.gov>, insert Docket No. CPSC-2021-0014 in the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Han Lim, Project Manager, Office of Hazard Identification and Reduction, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987-2327; email: hlim@cpsc.gov.

SUPPLEMENTARY INFORMATION:

Section 7(a) of the Consumer Product Safety Act (CPSA) authorizes the Commission to promulgate a mandatory consumer product safety standard that sets forth performance or labeling requirements for a consumer product, if such requirements are reasonably necessary to prevent or reduce an unreasonable risk of injury. 15 U.S.C. 2056(a). Under this statutory

authority, in 2021, the Commission initiated a rulemaking to reduce the risk of injuries and deaths associated with penetration of ROVs and UTVs by debris such as fallen tree branches. Debris penetration through the floorboard or wheel well of an ROV or UTV can impale the occupants of the vehicles, and incidents associated with debris penetration have caused severe injuries and deaths. The Commission published an advance notice of proposed rulemaking (ANPR) on May 11, 2021 (86 FR 25817), and an NPR on July 21, 2022 (87 FR 43688).¹ On December 21, 2022, the Commission also published a notice of availability and request for comment on a report from SEA, Ltd. titled “Study of Debris Penetration of Recreational Off-Highway Vehicle (ROV) Proof-of-Concept (POC) Floorboard Guards” (87 FR 78037).²

The Commission is now making available incident reports underlying the data discussed in and related to the NPR, as described below.³ These reports have been redacted to protect personal information, confidential medical information, and other information protected from disclosure under section 6 of the CPSA. 15 U.S.C. 2055.

In particular, section 6(a) of the CPSA prohibits CPSC from disclosing trade secrets and commercial or financial information obtained from a person that is privileged or confidential, and it requires CPSC to offer such manufacturer or private labeler an opportunity to mark such information as confidential. 15 U.S.C. 2055(a). If the Commission determines that a report marked as confidential by a manufacturer or private labeler may be disclosed because it is not

¹ The NPR defines an “ROV” as “a motorized vehicle designed or intended for off-highway use with the following features: four or more wheels with tires designed for off-highway use, non-straddle-seating for one or more occupants, a steering wheel for steering controls, foot controls for throttle and braking, and a maximum vehicle speed greater than 30 miles per hour (mph).” 87 FR 43725. The NPR defines an “UTV” as “a motorized vehicle designed or intended for off-highway use with the following features: four or more wheels with tires designed for off-highway use, non-straddle seating for one or more occupants, a steering wheel for steering controls, foot controls for throttle and braking, and a maximum vehicle speed typically between 25 and 30 mph.” 87 FR 43725-26.

² The contractor report provided test data and evaluation of proof-of-concept floorboard guards that were not available in the July 2022 NPR.

³ The Commission voted **X-X on XX, 2024**, to publish this document.

confidential information as provided by section 6(a)(2), the Commission must notify the manufacturer or private labeler within a specified time frame before any disclosure. 15 U.S.C. 2055(a)(5). Section 6(b) of the CPSA also imposes limitations on CPSC's public disclosure of information that will permit the public to ascertain readily the identity of a manufacturer or private labeler but contains specific exceptions for disclosure of such information in the course of or concerning a rulemaking proceeding. 15 U.S.C. 2055(b)(4). Section 6(b)(5) of the CPSA contains additional limitations on public disclosure of information if the information was submitted to CPSC pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b). 15 U.S.C. 2055(b)(5). Section 6(b)(5)(C) also prohibits disclosure of information submitted pursuant to CPSA section 15(b) unless the firm submitting the information "agrees to its public disclosure." 15 U.S.C. 2055(b)(5)(C). Thus, prior to disclosure, CPSC offers such a manufacturer or private labeler an opportunity to mark such information as confidential, and it asks for the firm's agreement to release the documents.

CPSC notified the two submitters who provided incident information underlying the NPR to CPSC under section 15(b) and sought consent to release the incident information pursuant to section 6 of the CPSA. Both submitters consented to disclosure with redactions.

The NPR also contains information about incidents from two databases: the Consumer Product Safety Risk Management System (CPSRMS)⁴ and the National Electronic Injury

⁴ CPSRMS includes data primarily from three groups of sources: incident reports, death certificates, and in-depth follow-up investigation reports. A large portion of CPSRMS data consists of incident reports from consumer complaints, media reports, medical examiner or coroner reports, retailer or manufacturer reports (incident reports received from a retailer or manufacturer involving a product they sell or make), safety advocacy groups, law firms, and federal, state, or local authorities, among others. It also contains death certificates that CPSC purchases from all 50 states, based on selected external cause of death codes (ICD-10). The third major component of CPSRMS is the collection of in-depth follow-up investigation reports. Based on the incident reports, death certificates, or NEISS injury reports, CPSC field staff conduct in-depth investigations (on-site, via telephone, or online) of incidents, deaths, and injuries, which are then stored in CPSRMS.

Surveillance System (NEISS).⁵ For the rulemaking, staff searched these databases for debris penetration fatalities and incidents involving all-terrain vehicles (ATVs), ROVs, and UTVs, reported to have occurred between 2009 and 2021.⁶ None of the debris penetration incidents involved an ATV (other than an ROV or UTV incorrectly identified as an ATV). Given that ATVs do not have floorboards, the lack of debris penetration incidents involving ATVs was expected. Because of this, ATVs are not included within the scope of the proposed rule. For the timeframe from 2009 and 2021, staff's search revealed data pertaining to at least six fatalities and 22 injuries, with 107 total incidents reported to CPSC. The NPR includes information about the hazard patterns of incidents, such as severity of incidents, and the age and gender of the primary victim.

Relevant data from CPSRMS include incident reports from medical examiners, consumers, death certificates, manufacturers, and media reports. Some of the incident data relied on for the rulemaking were obtained from 53 in-depth investigations (IDIs) conducted by CPSC. Among these IDIs, five involved fatal incidents and 48 involved nonfatal incidents. In the NEISS data, staff identified only three cases with sufficient descriptive information to conclude that the injuries were specifically associated with debris penetration. Due to this small sample

⁵ NEISS is the source of the injury estimates; it is a statistically valid injury surveillance system. NEISS injury data are gathered from emergency departments of a representative sample of U.S. hospitals, with 24-hour emergency departments and at least six beds. The surveillance data gathered from the sample hospitals enable CPSC to make timely national estimates of the number of injuries associated with specific consumer products.

⁶ CPSC staff performed a search of both the CPSRMS and NEISS databases for the following product codes: 5044 (Utility vehicles), 3285 (All-terrain vehicles with 3 wheels), 3286 (All-terrain vehicles with 4 wheels), 3287 (All-terrain vehicles, number of wheels not specified) and 3296 (All-terrain vehicles with more than 4 wheels). While the scope of the hazard is limited to ROVs and UTVs, which product code 5044 encompasses, these vehicles are sometimes mischaracterized as ATVs in CPSRMS and NEISS. The keywords used to identify the debris penetration hazard in the incident narratives were: floor/debris/penetrat/pierc/punctur/impal/branch/limb/stick. The reported incidents from CPSRMS occurred between January 1, 2009 and December 31, 2021. The injury cases from NEISS occurred from January 1, 2009 to December 31, 2020. The data were extracted in January 2022.

size, CPSC was unable to report any estimate of injuries. Instead, these three injury cases from NEISS were counted with the other reported injuries from CPSRMS.

In addition, the Commission is considering five additional IDIs that were completed following publication of the NPR.⁷ Four out of five of these IDIs involved injuries that resulted from debris penetrating through the floorboards and causing impalement, laceration, bruising, or ligament injury.⁸ Three of those four incidents involved hospitalizations.

The Commission invites comments on the incident data and the NPR's analysis of these data. CPSC is making available for review and comment the incident reports relied upon and discussed in the NPR, to the extent allowed by applicable law, along with the associated IDIs and additional IDIs mentioned above. To obtain access to the data, submit a request to:

<https://forms.office.com/g/Yz4tNFdhDp>. You will then receive a website link to access the data at the email address you provide. If you do not receive a link within two business days, please contact Han Lim, email: hlim@cpsc.gov. Information on how to submit comments and contact information for CPSC's Office of the Secretary are in the **ADDRESSES** section of this notice.

Alberta E. Mills, Secretary
Consumer Product Safety Commission

⁷ The IDI numbers associated with these five incidents are 221013HCC1142, 220802HEP8213, 220822HCC1212, 230601HCC1530, and 180125CBB3360.

⁸ The IDI numbers associated with these four injuries are 221013HCC1142, 220802HEP8213, 220822HCC1212, and 230601HCC1530. IDI 180125CBB3360 involved a branch penetrating the floorboard, but no injury occurred.