

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Robert E. Feldman,
Executive Secretary.

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

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

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

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION:

A. Background

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

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

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

1. *The Consent Decrees*

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

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

2. *The Voluntary Standard*

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

3. *ATV Action Plans*

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

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

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

4. *Termination of Previous Rulemaking*

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

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

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

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

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

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

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

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

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

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

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

B. The Product

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

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

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

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

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

C. The Risk of Injury

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

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

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

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

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

D. Current Safety Efforts

1. ANSI Standard

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

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

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

2. ATV Action Plans

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Corrective Actions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Request for Information and Comments

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

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

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

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

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

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

1. Research suggesting a maximum safe speed for teens for any off-road vehicle;

2. Information about the adequacy of age/size guidelines for today's youth;

3. Technical reports of testing, evaluation and analysis of the dynamic stability, braking and handling characteristics of ATVs currently on the market;

4. Technical reports or standards that describe the minimum performance requirements for stability, braking and handling characteristics for ATVs;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: October 7, 2005.

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

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

BILLING CODE 6355-01-P

POSTAL SERVICE

39 CFR Part 111

Use of Ancillary Service Endorsement for Mailing Certain Types of Checks

AGENCY: Postal Service.

ACTION: Proposed rule; withdrawal.

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

DATES: Withdrawal effective October 14, 2005.

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

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

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

Neva R. Watson,
Attorney, Legislative.

[FR Doc. 05-20563 Filed 10-13-05; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

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

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

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

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

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

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

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

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

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

Instructions: All comments will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal or e-mail. The agency Web site and eRulemaking portal are "anonymous access" systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and