

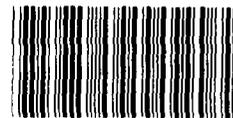
GAO

Report to the Chairman, Subcommittee on
Commerce, Consumer, and Monetary
Affairs, Committee on Government
Operations, House of Representatives

May 1987

**CONSUMER
PRODUCT SAFETY
COMMISSION**

**Concerns About
CPSC's All-Terrain
Vehicle Task Force
Report**



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Human Resources Division**B-226846**

May 20, 1987

The Honorable Doug Barnard, Jr.
Chairman, Subcommittee on Commerce,
Consumer, and Monetary Affairs
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

On April 3, 1985, the Commissioners of the Consumer Product Safety Commission (CPSC) directed the CPSC executive director to establish a task force to address the increasing number of injuries and deaths associated with all-terrain vehicles (ATVs). Your October 16, 1986, letter raised questions concerning the independence of the ATV task force, adequacy of recommendations in response to the task force's findings, and omission of some information in the briefing report that was submitted to the Commissioners.

Additionally, Congressman Larry E. Craig, Ranking Minority Member of your Subcommittee, raised some questions about the following: the operation of the task force, the role of Commissioners' assistants on the task force, the possibility of CPSC's publishing misleading statistics in comparing ATVs with other recreational vehicles, the provision to a former Commissioner of information not cleared for public release, and the use of consultants to review the task force work.

We agreed with your and Congressman Craig's offices that in this report we would respond to the above questions except for questions about (1) the adequacy of the task force findings, (2) the comparative analyses of injury rates for ATVs and other recreational vehicles, and (3) providing uncleared information to a former Commissioner. We briefed Congressman Craig's office on these other matters. In addition, although outside consultants were used to review the task force technical materials, we are not discussing these consultants further in this report because of the possibility that their work may be involved in litigation.

In summary, these are our findings:

- The ATV task force, like other CPSC hazard analysis teams, was not intended to operate independently. We found no evidence, however, that high-level CPSC officials tried to influence the task force's findings and recommendations.

- Task force members said that the briefing report includes all the major findings and recommendations, although some members stated that it overemphasized operator problems and underemphasized engineering problems.
- Enforcement options were intentionally omitted from the task force report. This was done because such information is exempted from release to the public, under the provisions of the Freedom of Information Act, since Commission actions could involve litigation.
- One Commissioner's assistant attended many of the task force meetings, but did not play a significant role.

Background

ATVs are small motorized vehicles with three or four large, balloon-like soft tires and are designed for off-road use on a variety of terrains. Intended to be ridden by a single person, ATVs have handlebars for steering control and a seat meant to be straddled by the operator; ATVs are mainly used for recreation. They are made primarily by four manufacturers—Honda, Kawasaki, Yamaha, and Suzuki. CPSC has estimated that, as of the end of 1985, there were about 2.1 million ATVs in use in the United States.

CPSC was established in 1972 as an independent regulatory commission headed by five Commissioners, appointed by the President, with responsibility to protect the public against the unreasonable risks of injuries and deaths associated with consumer products. One of the Commissioners serves as Chairperson.

According to information compiled by CPSC's National Electronic Injury Surveillance System, in 1985, hospital emergency rooms treated an estimated 85,900 ATV-related injuries—almost 10 times the number of injuries as in 1982. For the first 7 months of 1986, an estimated 53,900 ATV-related injuries were treated in hospital emergency rooms, about the same as the estimated number of injuries treated during the same 7-month period in 1985. By July 31, 1986, CPSC had received reports of 559 ATV-related deaths, which occurred between 1982 and 1986; 238 of these deaths were reported in 1985 alone.

Because of the concern over the number of deaths and the sharp increase in serious injuries related to ATVs, on April 3, 1985, the CPSC Commissioners approved an action plan to deal with the hazards associated with ATVs. To carry out the plan, CPSC established a special task force, consisting of 15 members who represented each of CPSC's seven directorates and all offices (except the Office of the Executive Director,

Office of the Secretary, Internal Audit, Media Relations, and Equal Employment and Minority Enterprise). Information provided by CPSC's budget office showed that for fiscal years 1985 and 1986, the review of ATVs cost CPSC almost \$2.3 million, of which \$0.3 million was for contracts.

Scope and Methodology

Our work focused on obtaining information relating to how the task force (1) operated and (2) summarized its work for the September 30, 1986, task force report. We interviewed all 15 members of the task force, except for 1 member who left the agency and was replaced; we did, however, interview her replacement. In addition, we interviewed the three Commissioners (there were two vacancies on the five-member Commission when we performed our work), the special assistant to one of the Commissioners, the executive director, and three associate executive directors. We also reviewed the supporting material and other files, maintained by the task force chairman. The files included the comments of various CPSC offices on drafts of the task force report. The review was done at CPSC headquarters in Bethesda, Maryland, between January and March 1987.

As agreed with the Chairman's office, we did not determine whether the task force's findings and recommendations were adequate and if they were in response to the supporting material produced by the task force. We did, however, discuss the findings and recommendations with all task force members. As agreed, we also did not determine whether there was undue pressure on CPSC's associate executive directors for Economic Analysis and Epidemiology because (1) their memorandums, which were in question, were released to the public on October 14, 1986, and (2) we had reviewed this matter, as discussed in an earlier report¹. We have discussed the following matters raised by the Ranking Minority Member with his office: (1) the talking about ATVs with, and providing of material to, a former CPSC Commissioner and (2) the use of outside consultants to review the task force work.

¹Consumer Product Safety Commission: Concerns About Staff Memorandum Relating to All-Terrain Vehicles (GAO/HRD-87-7, Nov., 7, 1986).

ATV Task Force Not Intended to Operate Independently

On April 3, 1985, the Commission unanimously issued instructions directing the executive director to establish the ATV task force. It was to consist of personnel from the directorates and offices necessary to carry out the assigned tasks. The head of the task force was to be appointed by the CPSC Chairperson with the approval of the other Commissioners.

The 15-member task force, in addition to its chairman from the Office of Program Management (now the Office of Program Management and Budget), was comprised of staff from Epidemiology, Engineering Sciences (2 members), Economic Analysis, Compliance and Administrative Litigation, Human Factors² (2 members), Health Sciences, Congressional Relations, Budget, Public Affairs, Administration, Field Operations, and Office of General Counsel.

Several of those we interviewed stated that the operation of the ATV task force was similar to that of other hazard analysis teams used by CPSC, except that the task force reported to the executive director rather than the director of the Office of Program Management and Budget, as other such teams did. The task force members were, however, not independent of the normal supervisory channels. Members regularly met with their immediate supervisors to discuss the work they were doing for the task force, just as they would have if they had been on a hazard analysis team. Although they received guidance from their supervisors on how to handle technical problems, the task force members said that they were not being influenced as to how to do the work or what their findings should be. The one exception involved disagreements between a task force member and his supervisor over changes in the member's technical materials.

How ATV Task Force Report Was Prepared

On September 30, 1986, the task force issued its report, which consisted of (1) a 3-page executive summary, (2) an 18-page briefing report, and (3) a series of attachments. The executive summary was prepared by the task force chairman. The briefing report was prepared primarily by the associate executive directors for Economic Analysis, Engineering Sciences, Epidemiology, and the task force chairman. It consisted of two major sections: (1) ATV injuries (interactions between the rider, ATV, and the environment) and (2) major findings, responses, and recommendations of the ATV task force. The attachments consisted primarily of technical materials prepared by various directorates and offices within CPSC

²Human Factors was a group within Engineering Sciences until August 1986 when it was transferred to Epidemiology.

such as Economic Analysis, Engineering Sciences, Epidemiology, and Health Sciences. The technical materials were drafted primarily by the task force members from those offices and reviewed and approved by the heads of those offices.

CPSC's executive director advised us that about August 1986, with the September 30, 1986, deadline approaching, he became concerned that the task force members would not be able to complete a briefing report of all the members' work and meet the deadline because members were still busy preparing their own individual technical materials. The executive director said that he, therefore, asked each technical associate executive director (Engineering Sciences, Epidemiology, Economic Analysis, and Health Sciences) to become more involved in the task force effort, even though each had had limited involvement until that time: that is, to (1) get more familiar with the technical materials for his own unit, ensuring their completeness and accuracy, thus making it easier for him to approve the materials, (2) ensure that any of his unit's work, used by other units, was used accurately, and (3) write a section of the first draft of the briefing report. The executive director assigned specific responsibility for drafting parts of the briefing report to the associate executive directors for Engineering Sciences, Epidemiology, and Economic Analysis.

The executive director's contention that the task force members were busy completing their technical materials so close to the deadline is supported by the fact that the final materials from each of the technical areas are dated between September 23 and September 27, 1986.

We attempted to determine the source of the September 30, 1986, deadline for completing the work on ATVs. Although we could find no written documentation, the task force chairman advised us that the task force members set the deadline and that this date took on increased importance as time went by because of congressional and media interest in CPSC's work on ATVs.

Task Force Members Disagree With Emphasis on Operator Problems

The major source of disagreement about the ATV task force report centered on the amount of emphasis placed on operator problems versus engineering problems in the briefing report. Six task force members and three other Commission officials told us that the briefing report placed too much emphasis on operator problems, such as riding without a helmet, alcohol consumption, riding with passengers, or risk-taking behavior. These members believed that more emphasis should have been

placed on the engineering problems of ATVs. All task force members, however, told us that the briefing report contained all major findings and recommendations.

Information Excluded From the Task Force Report

On October 7, 1986, after receiving the ATV task force's report, Commissioners Carol Dawson and Anne Graham wrote to the CPSC Chairperson, stating that they did not want to have a public briefing on ATVs until they were aware of all possible enforcement options available to the Commissioners. They said the briefing report did not include (1) an evidentiary critique from the Office of General Counsel, advising the Commissioners of the legal adequacy of data to support the staff conclusions and recommendations and (2) an analysis of the enforcement-related questions. The two Commissioners advised the Chairperson that they were deferring the ATV public briefing until they received, and had an opportunity to review, the additional information.

We were told by task force members and other CPSC officials that their Office of General Counsel could not write the evidentiary critique until they knew the ATV task force conclusions and recommendations for regulatory action. The task force report including this information was not issued until September 30, 1986. The critique was completed on October 15, 1986. Some of the task force members understood from the beginning that enforcement options would be presented in a separate, restricted package, and others realized this later. We were informed by CPSC's Office of General Counsel that enforcement packages, because they may contain options for litigation against individual companies, are exempted from release under the Freedom of Information Act (5 U.S.C. 552); Commission meetings on these are exempt from the Government in the Sunshine Act (5 U.S.C. 552b) in order to protect potential defendants and to allow the Office of General Counsel to provide written legal advice to the Commissioners.

The Office of General Counsel lawyer who drafted the October 15, 1986, evidentiary critique also had a major responsibility for drafting the enforcement options package. This was begun immediately after completing the evidentiary critique and was transmitted to the Commissioners on October 31, 1986.

We discussed the October 7, 1986, memorandum with Commissioners Dawson and Graham; they both advised us that they were aware that the information not included in the September 30, 1986, task force report would be transmitted separately. They said that the intent of

their memorandum was to advise the CPSC Chairperson that, until they were aware of all the possible options, they did not want to hold a public briefing on ATVs.

Special Assistants Did Not Play a Significant Role

According to available records and ATV task force members, none of the Commissioners' special assistants served on the task force. We were, however, advised by the task force members that the special assistant to one of the Commissioners attended some of the weekly task force meetings, especially when the task force was first established. The task force members agreed that the special assistant's attendance at the meetings was as an observer; he generally did not participate in the discussions, and he did not influence the task force's work in any way. The task force members generally were, however, uncertain as to the special assistant's purpose in attending the meetings. His purpose, he told us, was to ensure that the task force "concept" was working. None of the task force members said that they believed that the special assistant's presence at the meetings was inappropriate. In addition, CPSC's Office of General Counsel found no legal objection to his attending the meetings.

Formal agency comments were not obtained on this report. We discussed this report, however, with the CPSC Chairperson and one of the other Commissioners, as well as with an assistant to the remaining Commissioner, the executive director, and the acting general counsel. Their views have been considered in completing this report. Copies are being sent to the Ranking Minority Member of your Subcommittee, the CPSC Chairperson, the other CPSC Commissioners, and other interested parties. We will also make copies available to others on request.

Sincerely yours,

Edward A. Henmore

for

Richard L. Fogel
Assistant Comptroller General

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