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CFAnews

CONSUMER FEDERATION OF AMERICA

Anti-Consumer Bills Top Congressional Agenda

Observers who predicted the recent elections would prove harmful to consumers got quick validation as two anti-consumer measures long held at bay were put on the fast track at the start of the 2005 congressional session.

By mid-February, Congress had already cleared legislation making it more difficult to recover damages through class action lawsuits, and the Senate Judiciary Committee had rushed through legislation making it more difficult for debtors to make a fresh start in bankruptcy.

Other anti-consumer bills, including legislation to limit the ability of medical malpractice victims to recover damages, were expected to follow in the near future.

"The 109th Congress is off to a bad start for consumers," said CFA Legislative Director Travis Plunkett. "The Senate Majority Leader seems to be trying to outdo the House leadership in moving bills that will limit consumer rights and harm Americans who have been hit by a financial emergency."

Limits on Class Actions Signed Into Law

An unwillingness by Republican leaders to consider Democratic amendments had kept the class action bill from Senate passage in the previous Congress despite bipartisan support.

But with the Republican majority strengthened, and a number of Democrats lending their support, the bill sailed through the Senate on a 72-26 vote in early February. The House, which had passed similar legislation in the previous Congress, adopted the Senate bill on a 279-149 vote just a week later.

By adopting the Senate bill without amendment, the House eliminated the need for a conference, and sent the measure directly to the president, who signed it into law.

"While purporting to curtail class action abuses, S. 5 virtually wipes out state class actions, thereby removing what is sometimes consumers' only venue for redress of injury or fraud," said CFA Assistant General Counsel Rachel Weintraub.

"Congress should seek to hold negligent wrongdoers accountable for their actions, not offer the special interests more protections," Weintraub said. Instead, S. 5 "makes it more difficult for consumers to obtain redress, to hold bad actors accountable for the harms they cause, and to deter future misconduct."

The measure will force class action lawsuits seeking more than $5 million in damages into federal court if fewer than one-third of the plaintiffs are from the same state as the primary defendant.

In fact, many cases will likely not be heard at all, since a series of legal precedents has limited the ability of federal judges to consider large class actions that involve varying laws of different states.

"The jurisdictional changes mandated by S. 5 are designed solely to impede class actions, not to make them fairer or more efficient," Weintraub said.

Senate Panel Clears Bankruptcy Bill

Meanwhile, the Senate Judiciary Committee voted 12-5 in February to report out bankruptcy legislation designed to make it more difficult for debtors to file for bankruptcy under Chapter 7, which allows them to make a fresh start.

Like previous versions considered in the past, the bill would impose a rigid means test to qualify for Chapter 7, then force debtors to prove they are not abusing the system. The numerous opportunities for legal challenge by creditors would drive up the cost of the process, making it unaffordable for many debtors.

The bill would allow more debts to survive bankruptcy. For this reason, women's organizations have opposed the bill, because it would force women who are owed child support and alimony to compete for their ex-spouses' limited resources after bankruptcy with credit card companies and other lenders who will still be owed money.

Despite its purported aim to encourage Chapter 13 payment plans, numerous provisions in the bill would make Chapter 13 much more difficult and less attractive.

For example, for many debtors the bill would require five-year plans – up from the current three years. This would ensure an even higher failure rate than the current two thirds who can't complete plans because of unexpected income or job loss.

"This bill would tilt the bankruptcy laws in favor of creditors whose aggressive and reckless lending practices in the last decade have fueled the rise in bankruptcies," Plunkett said. "The losers will be the many American families who declare bankruptcy to get a financial fresh start after suffering a genuine financial misfortune, such as the loss of a job, high medical bills, or divorce."

Committee Democrats offered a small number of amendments during the markup, opting to defer most of their amendments until the bill comes to the Senate floor. That was expected to occur at the end of February and first week in March.

Dems Plan Amendment Strategy

Among the amendments expected to be offered at that time are measures: to ensure that members of the military and people forced into bankruptcy by high medical bills are better protected; to prevent creditors offering loans at extremely abusive rates from stopping those loans from being wiped away in bankruptcy; and to require credit card companies to offer consumers a personalized 'price tag' on the cost of paying off their bills at the minimum payment rate.

In addition, Sen. Charles Schumer (D-NY) is expected to once again offer his amendment preventing protesters, including anti-abortion protesters, from using bankruptcy to escape court-ordered fines or judgments.

In the last several Congresses, that amendment has almost single-handedly stymied passage of the bankruptcy legislation. The Senate has refused to pass the bill without the amendment included,

(Continued on Page 2)

Administration Won't Challenge Court Decision on Media Rules

Consumers scored a significant gain in the ongoing battle over the Federal Communications Commission's relaxation of media ownership rules, when the administration announced in late January that it will not challenge an appeals court decision overturning the rules.

"Without the Justice Department's intervention, media giants seeking further concentration will no longer have the wind at their back," said CFA Research Director Mark Cooper.

The controversial rules determine the number of newspapers, radio stations and television stations a single company can own.

Last June, the U.S. Court of Appeals for the Third Circuit in Philadelphia overturned the Commission's 2003 order that weakened the nation's media concentration protections.

The court found the FCC had not "sufficiently justified its particular chosen numerical limits for local television ownership, local radio ownership, and cross-ownership of media within local markets."

This ruling was hailed by a broad coalition of consumer, labor, religious, artistic and civil rights organizations, including CFA, as well as by a bipartisan group of lawmakers who opposed the changes.

The Justice Department announced in January that it would not push for Supreme Court consideration of the decision.

Several media conglomerates seeking to expand their holdings within local mar-kets – including Tribune Co. and Gannett Co. – have petitioned the Supreme Court to review the appeals court ruling. However, many experts doubt their efforts will gain traction without the Administration's backing.

In a January statement, the two Commissioners who had opposed the rule changes, Michael J. Copps and Jonathan S. Adelstein, called on the FCC to redesign its media policy by gathering more complete and independent research on media concentration and engaging the public through a series of hearings.

Copps stated: "I think there are companies out there who want to game the process by having the commission write quick rules, one by one and under the radar scope, and accomplish piecemeal what they couldn't get whole. The American people are not served by a stealth airwaves grab."

Departing FCC Chairman Michael K. Powell had pushed a rule to allow a company's holdings to reach 45 percent of the public, but Congress stepped in last year to impose a 39 percent cap. With Mr. Powell scheduled to leave in March, consumer advocates are hopeful that his successor will not pursue a similarly aggressive deregulation agenda.

"Public outcry has forced the Administration to backpedal on this issue," Cooper said. "Now the FCC has a new opportunity to prove its commitment to advancing localism, competition and diversity in the media marketplace.

SEC Offers Conflicting Guidance On Broker-Adviser Distinction

The Securities and Exchange Commission issued its long-awaited proposal to clarify the distinction between brokers and investment advisers in January, but in doing so sent conflicting messages on the key issue of how much advice brokers can offer outside the protections of the Investment Advisers Act.

"We had hoped that the Commission would finally bring clarity to the functional distinction between brokers and investment advisers," said CFA Director of Investor Protection Barbara Roper. "Unfortunately, clarity is the last thing this document provides."

Brokers are exempt from regulation under the Investment Advisers Act, but only to the extent that they limit themselves to giving advice that is "solely incidental to" their brokerage activities and do not receive special compensation for that advice.

In the 65 years since the act was adopted, the SEC has never clarified what constitutes advice by a broker that is solely incidental to brokerage activities.

Because of the commission's failure to define and enforce a functional distinction between brokers and advisers, brokers have been permitted over the past two decades to remake themselves in the image of advisers without being regulated as advisers.

Adoption of Pro-Investor Proposals Urged

Arguing that this blurring of the lines between brokers and advisers has misled investors, CFA and other investor advocates have long urged the commission to clarify its policies in this area.

In December, the commission agreed to provide that clarification.

The proposal released by the commission in January as part of its reproposed rule on fee-based brokerage accounts offers a number of promising concrete proposals.

For example, it classifies all discretionary accounts as advisory accounts, regardless of the form of compensation. Currently, only fee-based discretionary accounts are considered advisory accounts.

In addition, it proposes to classify financial planning as an advisory service, and it seeks comment on whether brokers who are not regulated as advisers should be precluded from holding themselves out to the public as financial advisers, financial consultants, and the like.

"These proposals are right on the money, and we urge the Commission to approve them without delay," Roper said.

Underlying Analysis Needs Total Rewrite

On the other hand, the staff presents an interpretation of "solely incidental to" in the release that essentially "interprets that standard out of existence," Roper said. "Not only is it in conflict with the clear meaning of the statutory language and the legislative history, but it doesn't support the proposals the Commission has put forward in the same document."

CFA, Fund Democracy, Consumers Union, and Consumer Action sent that message in a comment letter to the Commission in February. In addition, CFA submitted a comment letter showing how the release distorts the legislative history in order to justify its false interpretation of solely incidental.

"The Commission needs to send the staff back to the drawing board to develop a more accurate interpretation," Roper said. "That interpretation must be consistent with congressional intent to exempt from advisers act regulation only those typical brokerage services – such as recommending securities to buy or sell – that are adequately regulated under the sales-oriented broker-dealer regulatory regime.

"Unless it does so, the Commission will have failed to provide the functional distinction it promised, and which common sense and the public interest demand," she said.

On the **Web**
http://www.consumerfed.org/group_letter_bdrule_reproposal.pdf
http://www.consumerfed.org/legislative_history_bdrule_reproposal.pdf

Tips Offered To Reduce Electricity Bills

With electricity rates around the country rising, CFA has published ten tips consumers can follow to reduce their electricity bills without sacrificing their comfort.

CFA's "10 Simple Ways to Cut Home Energy Costs" is designed to help consumers identify the smartest, most economical choices available in three areas: simple maintenance anyone can do; sealing unwanted air leaks; and smart purchases that save money.

"Our goal is to provide simple, easy tips that require little or no investment but can, at a minimum, offset the increases customers are seeing on their electricity bills and possible lower energy bills even further," said CFA Project Manager Mel Hall-Crawford.

Two of the steps alone – installing a programmable thermostat and putting compact florescent light bulbs in the five most frequently used light fixtures – can save approximately $160 per year after the initial investment.

Other tips include:

- checking furnace or heat pump filters monthly and replacing them regularly;
- getting heating and cooling systems checked annually to make sure they are operating efficiently and safely;
- installing storm windows in the winter;
- caulking and weather-stripping leaky windows, baseboards, and doors;
- caulking and weather-proofing all exterior openings for plumbing and electrical service and looking for other openings that need to be sealed;
- making sure all attic vents and ducts are properly sealed; and
- checking the attic and all accessible exterior walls in the basement or unfinished rooms to make sure they are well insulated.

The brochure also emphasizes the importance of looking for products that have earned the ENERGY STAR, since these products meet strict energy efficiency criteria set by the Environmental Protection Agency and Department of Energy.

These steps to reduce electricity usage not only save consumers money, they also help the environment, Hall-Crawford noted.

"There are few opportunities where consumers can both save money and do the right thing," she said. "The biggest challenge most consumers have is knowing what actions they can take that really pay off."

On the **Web**
www.buyenergyefficient.org

Anti-Consumer Bills, *Continued from Page 1*

and the House has refused to pass the bill with it.

What is less clear this year is whether the Republican gains in the Senate will be enough to prevent the amendment from stopping the bill this year.

Bill To Delay Stock Option Rule Introduced

In the House, meanwhile, opponents of an accounting rule forcing public companies to show their stock options cost as a compensation expense on financial statements once again introduced legislation to gut the rule.

Like the bill that passed the House in the last Congress, this year's bill would limit reporting to those stock options granted to the five highest ranking executives and would use a formula for computing the cost that grossly understates the value of the options.

It would also require the Securities and Exchange Commission to study the valuation methodology for three years and, in the meantime, prevent any new accounting rule on the issue from taking effect.

"This bill would simultaneously undermine honest and transparent financial reporting and the independence of the Financial Accounting Standards Board," said CFA Director of Investor Protection Barbara Roper.

"It is a testament to some members' short memories that this bill could get a serious hearing so soon after Congress and the SEC were forced to clean up the massive accounting frauds of the Enron era," she added.

Proponents of the measure are operating under a pressing deadline, with the rule due to take effect in June.

Their prospects for moving legislation under that time frame are seriously weakened because of the staunch opposition of Senate Banking Committee Chairman Richard Shelby (R-AL).

In an effort to buy more time, therefore, they have simultaneously pressed SEC Chairman William Donaldson to act on his own to delay the rule. So far, Chairman Donaldson has consistently expressed his refusal to interfere with FASB.

CFA, Consumers Union, Consumer Action, and U.S. Public Interest Research Group wrote to Chairman Donaldson in February praising him for his stand and urging him to continue to ignore the special interest groups seeking to overturn the rule.

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Consumer Federation of America
1424 16th Street, N.W., Washington, D.C. 20036
(202) 387-6121 • www.consumerfed.org

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Contingent Fees Drive Up Consumers' Insurance Costs

In the wake of New York Attorney General Elliot Spitzer's investigation of contingency fees in the sale of insurance to corporations, CFA released a study in January showing widespread use of similar fees in the sale home and auto insurance to consumers.

"Our study found the same potential for conflicts-of-interest in payments made by insurers to the sellers of personal lines of insurance that Attorney General Spitzer has uncovered in commercial insurance," said CFA Director of Insurance J. Robert Hunter.

CFA found extensive use of two types of contingent fees paid primarily to insurance agents: steering commissions and profit-based commissions.

Steering commissions are special payments by insurers to sellers of insurance to direct more business to the insurer. Profit-based commissions are paid to agents that sell policies that experience low levels of claims.

Both types of commissions are paid in addition to the regular commissions that insurers build into the price of all their policies. Regular commissions are not contingent on meeting special sales or profitability targets.

"Both types of contingent payments in wide use entice agents to do the wrong thing," Hunter said. "Most insurance agents are honest, abut if the compensation system provides an incentive for bad behavior, it is likely to occur."

Steering commissions are potentially harmful to consumers because agents earn more if consumers pay more, which can lead to higher rates, Hunter explained.

Profit-based commissions are more lucrative for agents if consumers have lower losses. That can tempt agents to delay the filing of claims or to discourage consumers from filing claims in the first place, he added.

The study found that a number of the largest home and automobile insurers in the country paid relatively high contingency commissions as a percentage of the total amount of insurance premium sold.

Among the 20 largest sellers of personal lines of insurance, the five companies that paid the most in contingency commissions were Federal Insurance (2.31 percent of premium), Travelers C&S (2.18 percent), Zurich American (1.94 percent), Allstate Insurance (1.74 percent), and Hartford Fire (1.67 percent).

On the other hand, some of the 20 largest sellers paid no contingent commissions. These firms included Farmers Insurance Exchange, GEICO, State Farm Mutual Auto, State Farm Fire and Casualty, and USAA.

These firms are all direct writers of insurance that do not hire agents or brokers, except for State Farm, which uses "captive" agents that serve only State Farm.

The study also found that contingency commissions are much more common in the sales of some lines of insurance than others. Specifically, they are used most frequently in the sales of credit insurance (5.66 percent of premiums sold) and in companies that specialize in writing both of the major personal lines – home insurance and auto insurance (1.10 percent).

A copy of the report and a news release including tips for consumers are both available on the CFA website.

On the **Web**
www.consumerfed.org/contingent_commissions_study.PDF
www.consumerfed.org/contingent_commissions_release.PDF

Administration Weakens Listeria Prevention Policy

Efforts to reduce the number of food poisoning cases caused by the deadly Listeria Monocytogenes pathogen in "ready-to-eat" meat and poultry products were seriously compromised in the first term of the Bush presidency, according to a CFA report released in December.

"Not 'Ready-to-Eat:' How the Meat and Poultry Industry Weakened Efforts to Reduce Listeria Food-Poisoning," documents how the U.S. Department of Agriculture first delayed regulations to control Listeria contamination in ready-to-eat products, then revised them to reflect industry positions, and simultaneously abandoned its pledge to cut in half the number of Listeria food-poisoning cases by 2005.

"The Bush Administration placed industry's interest in limiting federal oversight of their operations ahead of protecting public health," said CFA's Director of Food Policy Carol Tucker Foreman.

While the number of Listeria food-poisoning cases each year is not large, Listeria results in the highest rate of hospitalization of any foodborne pathogen and has the second-highest fatality rate.

Specifically, the Centers for Disease Control and Prevention (CDC) estimates that Listeria causes close to 2,500 cases of food-poisoning annually. Over 90 percent of the victims are hospitalized, and 20 percent die.

A major Listeria food-poisoning outbreak in the late 1990s, and consumer criticism of the Clinton Administration's slow response to it, led that administration to announced initiatives to address the problem, including:

- conducting a joint risk assessment by USDA and the Food and Drug Administration (FDA);
- establishing food safety standards for ready-to-eat products; and
- setting a public health goal of cutting the rate of Listeria food-poisoning cases in half by 2005.

Early signs were promising in the Bush Administration, which decided to publish without substantive changes a rule proposal developed in the previous administration.

Among other things, that rule would have established pathogen-reduction performance standards for all ready-to-eat products and, under some circumstances, required final-product testing for Listeria to ensure that the standards were being met.

Despite another major outbreak in October 2002, however, it took the administration more than two years to issue an "interim" final rule on Listeria and ready-to-eat products.

In that interim final rule, every aspect of the original USDA proposal that was opposed by industry was reversed, and in every instance where industry and consumer groups disagreed, the agency came down in favor of industry, according to the report.

Among the most significant short-comings: it abandoned the requirement for a pathogen-reduction performance standard, abandoned the requirement that plants include Listeria controls in their overall systems of preventive controls for pathogen reduction, and it failed to require any warning label on ready-to-eat meat and poultry products.

Even this severely weakened rule has yet to be finalized.

The report attributes the change in policy to unusually close ties between the administration and the food industry, which resulted in appointment of a number of food industry alumni to key food safety positions at USDA.

Meanwhile, distressing signs have emerged that a steady decline in the rate of Listeriosis has ended, with the rate of cases having increased by 22 percent in 2003.

"The increase coincided with the implementation of the Bush Administration's rule and regulation," Tucker Foreman said, "and it is all the more distressing because it comes after four straight years of decline in Listeria poisoning."

On the **Web**
www.consumerfed.org/CFA_Not_Ready_to_Eat.PDF

Consumers Warned Against Refund Loans

American taxpayers spent $1.4 billion in 2003 (the most recent year for which data is available) on what is almost always an unnecessary product – tax refund anticipation loans, according to a report released in January by CFA and the National Consumer Law Center (NCLC).

"Taxpayers can save themselves over a billion dollars by just saying 'no' to quick tax refund loans," said NCLC staff attorney Chi Chi Wu.

Refund anticipation loans (RALs) are extremely high-cost bank loans offered by tax preparers and secured by the taxpayer's expected refund.

The loans, also marketed as "quick tax refunds," cost from $30 to $115 in loan fees for a loan that typically last just one to two weeks. Some tax preparers also charge a separate "administrative" or "application" fee ranging from $28 to $59.

The effective annual interest rate (APR) for a RAL can range from about 40 percent to over 700 percent. If administrative fees are charged, the rates can exceed 1,700 percent APR.

According to the CFA-NCLC report, the loans drained over $1 billion in loan fees, plus $389 million in other fees, from the wallets of more than 12 million American taxpayers in 2003.

Worse, IRS data confirms that RALs are used primarily by the low- and moderate-income taxpayers who can least afford them. Just under 80 percent of RALs in 2003 went to taxpayers with adjusted gross incomes of $35,000 or less.

Nearly 57 percent of all RAL borrowers are recipients of the Earned Income Tax Credit, which provides benefits to low-income working families, although these families make up only 17 percent of taxpayers.

"Taxpayers who want quick refunds can get them in two weeks or less by using electronic filing and having refunds directly deposited into their bank accounts," said CFA Director of Consumer Protection Jean Ann Fox. "That's a quick refund, and it's also free."

The groups also released a survey conducted for NCLC by Opinion Research Corporation International which found a startling 70 percent of those who had received RALs in the past did not realize that they had received a loan.

"These results are very disturbing," Fox said. "The vast majority of consumers who get RALs still do not understand what they're actually getting or the risks they run."

Because a RAL is a loan, she noted, it has to be paid back whether or not the IRS sends the expected refund. If the borrower fails to repay the loan in full, because the refund is denied or is less than expected, the borrower could be subject to debt collection and could receive a black mark on their credit report.

The survey also found consumers are interested in saving money while getting tax refunds quickly. When informed about the availability of quick refunds for electronic filers who use direct deposit, 79 percent of previous RAL users said they would rather use this free method of getting a quick refund.

On the **Web**
www.consumerfed.org/2005_RAL_Report.PDF
www.consumerfed.org/initiatives/refund_anticipation/content/RALBrochure.pdf

Report Outlines Pro-Consumer Energy Policy

The natural gas market is in turmoil, and aggressive policies are needed to balance supply and demand, according to a CFA report released in December.

Signs of turmoil can be found in the sudden rise in the average wellhead price of natural gas, which has been about twice as high in the past two years as it was throughout the 1990s.

As a result, the Department of Energy has estimated that the average winter heating bill for natural gas households will top $1,000 this year for the first time in U.S. history. Low income households were expected to face total natural gas bills of almost 10 percent of their income.

Furthermore, natural gas prices also have a strong effect on electricity prices and, in varying degrees, on prices of other commercial services and industrial goods.

"The pervasive and varied use of natural gas in the economy, the difficulty of delivering it to consumers, and the suddenness of the price increase have combined to spark an intense debate over public policies to ensure adequate supplies," said CFA Research Director and report author Mark Cooper.

The report seeks to lay the foundation for that debate by sorting through the competing empirical analyses of the current situation and suggesting a comprehensive framework to asses the policy options being discussed.

Looming Supply Shortfall Must Be Filled

Estimating likely demand and sources of supply over the next several decades, the report reveals a substantial potential shortfall that must be filled if severe economic impacts are to be avoided.

Specifically, the total cumulative "deficit" in North America over a couple of decades could be as large as 350 to 400 trillion cubic feet of natural gas beyond that produced by business-as-usual approaches, according to the report.

That is the equivalent of all the natural gas produced in the United States in the past 15 years.

The report identifies seven broad categories of potential sources that can be used to fill the gap. "This suggests the problem is not one of absolute scarcity, but choosing the right policies to meet the need," Cooper said.

"The objective of public policy should be to ensure a reliable supply of natural gas that is delivered in an efficient and equitable manner at affordable prices," he said.

Analyzing the various policy options according to economic, environmental, and security criteria, the report ranks the broad policy areas according to which should be considered first.

As a first step, the report recommends, markets must be freed of manipulation.

"Ensuring market transparency and promoting greater storage could lower prices and reduce volatility, but, above all, they would establish a prerequisite necessary for other policies – confidence that there is a 'hard' problem in the imbalance of supply and demand," Cooper said.

Policies To Reduce Demand Favored

Next in priority are policies to reduce demand, according to the report. It estimates that increasing energy efficiency and fuel switching could fill just under a third of the projected deficit.

"These approaches are superior to supply-side alternatives based on a whole range of economic, environmental, and security considerations, but they are insufficient to provide the entire solution," Cooper said.

The study also favors supply-side alternatives that rely on domestic resources, but not the traditional domestic natural gas base. That is because the domestic natural gas resource base is declining and has proven unreliable.

In particular, the study looks to coal gasification as a source that is "commercially proven, but in its infancy" as well as to natural gas sources in Alaska to fill the gap.

According to the study, these polices would fill about half the projected shortfall in natural gas supplies. "This would go a long way toward alleviating the pressure on the domestic base, but tough supply-side choices would remain," Cooper said.

One option being considered is import of liquefied natural gas (LNG).

"Unfortunately, LNG is likely to depend on foreign sources that are controlled by members of the OPEC cartel or suppliers with market power," Cooper said. "It also does not have environmental or security advantages.

"LNG will expand its role because of the cost of domestic resources, but because it offers little unique improvement, it does not deserve special policy attention," he added.

The report ranks drilling in sensitive areas at the bottom of suggested policy approaches, since it poses large environmental costs and offers no assurance that it would restrain price increase.

"This report provides the outlines of where policy makers should focus, and not the details of those policies, because we believe that a broad consensus on the direction of policy is the critical first step in responding to the turmoil in the natural gas market," Cooper concluded.

Further studies are planned to look at specific policies in more detail.

On the **Web**
www.consumerfed.org/naturalgaspolicy.pdf

CPSC Staff Won't Back Ban On ATV Sales For Children's Use

The staff of the Consumer Product Safety Commission (CPSC) has recommended that the agency deny a petition – filed in 2002 by CFA and eight other national medical, conservation, and consumer groups – seeking a federal regulation barring the sale of adult-sized ATVs for use by children.

This action came just one week after the commission reported that ATV-related deaths and injuries had broken records for the second consecutive year, and that children continue to suffer a disproportionate share of serious injuries and fatalities. The staff made its recommendation despite concluding that a national standard barring the sale of adult-size ATVs for use by children would have "substantial benefits" and that "getting children to drive youth models rather than more powerful adult models could reduce the injury risk by half."

The Commission has three main options in response to the staff recommendation. It could deny the petition, grant the petition and initiate the rulemaking process, or defer a decision until a later date.

"The recommendation of CPSC staff to deny our petition is profoundly disappointing, does not serve the public interest, and fails to take into account numerous benefits of the existence of a federal ATV safety law," said CFA Assistant General Counsel Rachel Weintraub. "While the rulemaking process is far from over, we are deeply concerned about the CPSC's failure to propose or implement any type of solution to address a rising tide of death and injuries on ATVs."

The staff recommendation glosses over most benefits of a national safety standard, Weintraub noted. For example, it does not even consider that a single life could be saved. Instead, it focuses almost exclusively on monetary and other costs associated with a national standard.

The staff report nonetheless validates several points raised by CFA and others in recent years. Most significantly, it highlights how dealer compliance with age recommendations dropped significantly after the ATV industry assumed a voluntary approach to safety in 1998. It also acknowledges the research and day-to-day experience of medical professionals concluding that children under age 16 do not have the range of physical and mental skills necessary to safely operate ATVs.

"In light of this compelling evidence that a safety standard would save lives and prevent injuries, we urge the Commission to ignore the staff recommendation and proceed with a rulemaking," Weintraub said.

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CONSUMER FEDERATION OF AMERICA
1424 16th Street, N.W. • Washington, D.C. 20036
(202) 387-6121 • www.consumerfed.org