

Instructor Guide

Section 4.0 Instructional Plan - *ATV RiderCourse*

Purpose:

Section 4.0 is designed to provide the Instructor with an overview of the program structure including curriculum components, time management guidelines, range card and flip card use. This section also provides steps to effectively manage the range and suggests some guidelines to follow when preparing to teach.

Important topics or concepts covered:

1. Use of Time, Remedial Training, and the Building Block Process
2. Range Card and Flip Card Use
3. Lesson and Range Management Principles

Introduction

The *ATV RiderCourse* is a program to teach ATV riders the principles and behaviors of safer and more responsible ATV riding. The course consists of both discussion lessons and riding lessons. The discussion lessons provide discovery and discussion of the principles and practices of riding an ATV. The riding lessons provide hands-on practice of riding exercises under the supervision of a licensed Instructor.

A rider's knowledge and skills are evaluated throughout the *ATV RiderCourse*. Each lesson contains specific objectives and evaluation points. A rider works toward achieving the objective of a lesson by learning and practicing structured activities within the *ATV RiderCourse*. Riders are provided positive reinforcement not only to develop skills but to recognize and appreciate safe, responsible riding practices.

The following is a list of the curriculum components that make up the *ATV RiderCourse Instructor Guide*. These materials are designed to aid in the preparation and presentation of the *ATV RiderCourse*.

- *ATV RiderCourse Instructor Guide*
 - 9 Sections
 - Used for reference and course preparation
- Range Cards
 - 16 Lessons
 - Used to conduct the lessons
- Flip Cards
 - 11 Illustrations
 - Used to stimulate discussion
- *ATV RiderCourse Handbook*
 - Presented to each rider
 - Used to reinforce techniques presented during the course

Instructor Guide

Section 4.1 Course Overview

The Course Overview (page 1 of the Range Cards) summarizes the *ATV RiderCourse* and shows lesson number, time and title.

LESSON	TIME	CONTENT
1	15 min	Introduction to the <i>ATV RiderCourse</i>
2	10 min	Range Signals, Rules and Warm-up Exercises
3	10 min	Controls/Starting the Engine
4	15 min	Starting Out, Shifting Gears and Braking
5	15 min	Turning
Break:	10 min	
6	20 min	Riding Strategies
7	15 min	Riding Circles & Figure 8
8	10 min	Quicker Turns
9	15 min	Sharp Turns
Break:	10 min	
10	20 min	Quick Stops/Swerves
11	15 min	Quick Stops in a Turn
12	10 min	Riding Over Obstacles
Break:	10 min	
13	20 min	Safe and Responsible Riding Practices
14	15 min	U-Turns/Traversing Hills
15	15 min	Circuit or Trail Ride
16	5 min	Wrap-up & Review

Although lesson times are noted, these should be viewed as recommended or suggested times only. Because the lessons use a "building block" concept, every lesson builds upon the foundation developed in the prior lesson(s). Lessons should be taught in sequence with riders developing minimal skills within a lesson before moving to the next lesson. See Section 5.0 - Facilitating Learning for further explanation of this concept.

Some riders may not develop riding techniques as readily as others. These riders may require remedial activities. Remedial training means to assist a rider who has not developed a skill by providing special riding exercises or more supervised practice time. An Instructor should not allow a rider to continue in the *ATV RiderCourse* if, in the Instructor's opinion, that rider's safety or the safety of others will be compromised.

Instructor Guide

Student Performance Evaluation Form

A *Student Performance Evaluation Form* (SPEF) is to be completed for each class conducted. The form is used to record each student's progress throughout the course. A check box would be marked if, based on the Instructor's total experience, he/she feels additional practice is recommended for that exercise.

Upon completion of all lessons, the Instructor presents each student their SPEF card.

The following items are included on the SPEF (Figure 2.8D):

On a card for each student (front):

- ① Rider's Name
- ② Rider Number, if assigned during class
- ③ Check appropriate boxes where additional practice is recommended

On a card for each student (back):

- ④ Print the Student's Name
- ⑤ Enter Date of training
- ⑥ Instructor Signature
- ⑦ Instructor License Number

Figure 2.8D — Student Performance Evaluation Form

STUDENT PERFORMANCE EVALUATION FORM

Rider's Name 1 No. 2

Additional Practice Recommended for:

- 2. Range Signals, Rules and Warm-Up Exercises
- 3. Controls / Starting the Engine
- 4. Starting Out, Shifting Gears, and Braking
- 5. Turning
- 6. Riding Strategies
- 7. Riding Circles and Figure 8
- 8. Quicker Turns
- 9. Sharp Turns
- 10. Quick Stops / Swerve
- 11. Quick Stop in a Turn
- 12. Riding over Obstacles
- 13. Safe and Responsible Riding Practices
- 14. U-Turns / Traversing Hills
- 15. Circuit or Trail Ride



A Division of the Specialty Vehicle Institute of America

4

has completed the
ATV RiderCourse

5 _____, 20__

conducted by

6 _____ 7 _____

INSTRUCTOR LICENSE #

The ATV RiderCourse is only a brief introduction to ATV riding. You should practice ALL exercises to improve your skills. Exercises that need even more practice are checked on the reverse side.

IG 2 - 23

Sixth Edition March 2000
Page Revised 5/00



Division of the Specialty Vehicle Institute of America

has completed the
ATV RiderCourse™

20

conducted by

INSTRUCTOR

LICENSE #

The ATV RiderCourse is only a brief introduction to ATV riding. You should practice ALL exercises to improve your skills. Exercises that need even more practice are checked on the reverse side.

Rider's Name

No.

Additional practice recommended for:

- 2. Range Signals, Rides and Warm-Up Exercises
- 3. Controls / Starting the Engine
- 4. Starting Out, Shifting Gears, and Braking
- 5. Turning
- 6. Riding Strategies
- 7. Riding Circles and Figure 8
- 8. Quicker Turns
- 9. Sharp Turns
- 10. Quick Stops / Swerve
- 11. Quick Stops in a Turn
- 12. Riding over Obstacles
- 13. Safe and Responsible Riding Practices
- 14. U-Turns / Traversing Hills
- 15. Circuit or Trail Ride

BEFORE THE
UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION

JOINT COMMENTS
OF
AMERICAN HONDA MOTOR CO., INC.,
AMERICAN SUZUKI MOTOR CORPORATION,
BOMBARDIER RECREATIONAL PRODUCTS INC.,
KAWASAKI MOTORS CORP., U.S.A.,
POLARIS INDUSTRIES INC., and
YAMAHA MOTOR CORPORATION, U.S.A.

15 CFR Parts 1307, 1410, 1500 and 1515;)	
Standards for All Terrain Vehicles and)	
Ban of Three-Wheeled All Terrain Vehicles;)	
Notice of Proposed Rulemaking)	ATV NPR
)	
)	
71 Fed. Reg. 45,904 (August 10, 2006))	

December 22, 2006

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	EXECUTIVE SUMMARY	1
III.	BACKGROUND	5
IV.	RISK OF INJURY	5
V.	DISCUSSION	8
A.	All ATVs Distributed In The United States Should Comply With The ANSI/SVIA Standard And Provide Action Plan Safety Information And Program	8
B.	ATVs That Comply With The ANSI/SVIA Standard And Provide Action Plan Safety Information And Programs Do Not Present An Unreasonable Risk Of Injury	11
C.	CPSC Has Not Shown That Its Proposed Changes To The ANSI/SVIA Standard And Action Plan Provisions Are Necessary To, Or Would, Reduce Unreasonable Risks Of ATV-Related Injuries	17
1.	Proposed Different or Additional Requirements for Single Rider Adult ATVs.....	19
a.	Stop Lamp.....	19
b.	Spark Arrester Qualification.....	20
c.	ATV VIN Sequence.....	20
d.	Service Brake Performance Test	20
e.	Pitch Stability Test	22
f.	Optional Tilt Table Test Method	22
g.	General Warning Label	23
h.	Age Recommendation Label	23
i.	Passenger Warning Label	25
j.	Retailer Requirements	27
k.	Owner's Manual	28

1.	Safety Video.....	29
m.	Free Training.....	30
n.	Location of Certification Statement.....	31
o.	Compliance Testing	31
p.	Record Maintenance	32
q.	Age Acknowledgment Form	32
r.	Training Acknowledgment Form	34
2.	Requirements for Tandem ATVs.....	35
3.	Requirements for Youth ATVs.....	35
a.	Categories of Youth ATVs	35
b.	Automatic Transmission	36
c.	Lighting	37
d.	Maximum Speed Capability	38
e.	Age Acknowledgment Form	40
f.	Other Issues	41
D.	The NPR Fails To Include Important Elements Of The ANSI/SVIA Standard	41
1.	Standardized Basic Controls	41
a.	Service Brake Requirements.....	42
b.	Engine Stop Switch.....	42
c.	Manual Clutch Control	42
d.	Throttle Control	42
e.	PTO or Other Device	43
2.	Parking Mechanism	43
3.	Tire Marking.....	43

4.	Parking Brake Performance Test	43
5.	Omitted Exceptions.....	44
E.	CPSC’s Proposed Standard Should Be Revised To Include A “Transitional” Category Of ATVs Appropriate For 14 And 15 Year-Olds And Small Adults.....	44
F.	The Proposed Ban on New Three-Wheel ATVs Fails To Satisfy The Governing Statutory Criteria.....	49
1.	There is No Clear Evidence of Distribution of Three-Wheel Adult ATVs.....	49
2.	There is Contradictory Agency Evidence Whether Three-Wheel ATVs Present a Disproportionate Risk of Injury.....	51
3.	CPSC’s Presumption That No Feasible Standard Could be Developed for Three-Wheel Adult ATVs is Unsupported and Erroneous	53
G.	The Commission’s Additional Instructions To CPSC Staff Are Misguided; Focus Should Not Be On Making Youth Models Which Have Lower Injury Risk For Children Under 16 “Safer,” But On Getting Increased Numbers Of Children To Ride Viable Youth Or Transitional Models Instead Of Larger, Faster Adult ATVs	55
VI.	CONCLUSION	58
APPENDIX A - HISTORICAL AND LEGAL BACKGROUND		
A.	Consent Decrees.....	1
B.	ANSI/SVIA Voluntary Standard	3
C.	Termination Of Previous Rulemaking	5
D.	ATV Safety Action Plans.....	7
1.	Age Recommendations	8
2.	Dealer Sales Directives and Undercover Monitoring Programs.....	9
3.	ATV Labels and Hang Tags	10
4.	Owner’s Manuals	10
5.	Safety Alerts.....	10

6.	Safety Videos	10
7.	Advertising.....	11
8.	Training.....	11
9.	ATV Hotline	11
10.	Three-Wheel ATVs.....	12
11.	Voluntary Standards.....	12
E.	Denial Of Section 8 Petition	12
F.	Chairman’s Memorandum And 2005 ANPR.....	15
G.	State ATV Legislation	17

APPENDIX B - REVISION OF ANSI/SVIA-1-2001 STANDARD

1.	Scope.....	2
2.	Definitions	2
3.	Passenger Handholds	3
4.	Foot Environment	3
5.	Lighting Equipment	4
6.	Owner’s Manual/Operator’s Manual	4
7.	Labels.....	5
8.	Hang Tags.....	6
9.	Category Y and T ATV Speed Capability Requirements.....	7
10.	Certification Label	9
11.	Status of the ANSI Canvass.....	9

APPENDIX C - STATUTORY REQUIREMENTS

A.	Statutory Authority For CPSC Rulemaking	1
1.	CPSC.....	1
2.	FHSA	3

B. Statutory Authority For Banning Adult Three-Wheel ATVs4

APPENDIX D - SAFETY ISSUES PRESENTED BY NEW ENTRANTS

APPENDIX E - December 15, 2006 Analysis of CPSC 2005 Annual ATV Report by Heiden Associates

APPENDIX F - December 8, 2005 Comments on the CPSC ANPR on ATV Safety by Heiden Associates

APPENDIX G - Testimony of E. Leland before the Subcommittee on Consumer Affairs, Product Safety and Insurance of the Senate Committee on Commerce, Science and Transportation, June 6, 2006

APPENDIX H - ASE, Response to ATV Labeling and Categorization Provisions in U.S. CPSC Notice of Proposed Rule Making (Dec. 12, 2006)

APPENDIX I - ATV Safety Alert and New Purchaser ATV Rider Training Certificate

APPENDIX J - M. Levenson, All-Terrain Vehicles 2001 Injury and Exposure Studies (Jan. 2003)

APPENDIX K - ANSI/SVIA-1-2001 Four-Wheel All-Terrain Vehicles - Equipment, Configuration and Performance

APPENDIX L - ANSI/SVIA Standard Canvass Draft sent September 29, 2006

APPENDIX M - Marchica and Deppa Study

I. INTRODUCTION

The six major distributors of all terrain vehicles (“ATVs”) appreciate the opportunity to comment on the U.S. Consumer Product Safety Commission’s (“CPSC” or the “Commission”) notice of proposed rulemaking (“NPR”) to establish mandatory standards for ATVs and to ban the future distribution of three-wheeled ATVs. 71 Fed. Reg. 45,904 (Aug. 10, 2006).

Specifically, these joint comments are submitted on behalf of American Honda Motor Co., Inc., American Suzuki Motor Corporation, Bombardier Recreational Products Inc., Kawasaki Motors Corp., U.S.A., Polaris Industries Inc., and Yamaha Motor Corporation, U.S.A. (the “ATV Companies”).

II. EXECUTIVE SUMMARY

Over the past eighteen years, in cooperation with the Commission, the ATV Companies have taken unprecedented actions as private companies to promote the safe and responsible use of their products, including adoption of the ANSI/SVIA standard and implementation of the Action Plans, both of which CPSC has previously approved. The ATV Companies believe that their adherence to the ANSI/SVIA-1-2001 standard and implementation of the Action Plans have been effective in addressing the issue of ATV safety. The rate of ATV-related injuries is lower now than when the Consent Decrees expired in 1998, and in fact declined 9 percent from 2004 to 2005. The ATV-related fatality rate in 2004 stood at 1.1 per 10,000 four-wheel ATVs in use, as compared to 1.4 per 10,000 ATVs in 1999. The injury rate has been falling since 2001 and in 2005 was little more than half the level experienced in 1986 before the Consent Decrees were adopted. In fact, the 2005 injury rate approximates the injury rate at the time the original ATV ANPR was terminated in 1991, based on the determination that CPSC could not find that four-wheel ATVs presented an “unreasonable risk.” The recently released 2005 CPSC injury and

fatality report also shows that the total number of estimated ATV-related injuries to children under 16 declined 10 percent last year.

In addition, the ATV Companies, through SVIA, are moving to adopt revisions to the ANSI/SVIA standard which will incorporate key elements of the approved Action Plans. They are also continuing to support state enactment of comprehensive legislation regulating ATV use. Such state legislation represents the most promising approach to reducing ATV injuries and fatalities, which -- as shown by CPSC data -- result primarily from warned-against behaviors.

The ATV Companies are very concerned, however, that the established standards and safety programs and the progress already made are being undermined by an ever increasing number of ATVs from new entrants to the U.S. market who do not comply with the ANSI/SVIA standard or provide the important safety programs specified in the ATV Action Plans, including free hands-on training. It is also clear that many -- if not most -- new entrants to the U.S. ATV market will not comply with the provisions set forth in the ANSI/SVIA standard and specified in the Action Plans unless and until these provisions become mandatory.

The ATV Companies therefore urge CPSC to take regulatory action under Sections 7 and 9 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. §§ 2056, 2058, and Sections 2(s) and 3(e) of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. §§ 1261(s), 1262(e), to issue mandatory consumer product safety standards for all ATVs distributed in the United States that incorporate the provisions of the forthcoming revised ANSI/SVIA standard and require all ATV distributors to offer free hands-on training.

The NPR largely tracks the provisions of the ANSI/SVIA-1-2001 standard and the approved Action Plans. This reflects the Commission's determination in 1991 that ATVs that complied with these requirements do not present an unreasonable risk of injury. On the other

hand, CPSC has provided no meaningful basis or justification for the other elements of the NPR which differ from, or go beyond, the ANSI/SVIA standard (including the pending proposed revisions) and the remaining elements of the Action Plans. Under the law, and particularly given its prior determination, the Commission must show that these different or additional elements of the NPR address specifically identified and validated unreasonable risks of injury presented by ATVs that comply with the approved standard and are covered by approved Action Plans. It must also show that their adoption as mandatory requirements will result in measurable reductions of ATV-related injuries or fatalities. With respect to the different or additional requirements for adult and tandem ATVs, these findings must also be supported by substantial evidence on the record taken as a whole.

In fact, the best that the NPR can say about many of these different and additional proposed requirements is that they “may” reduce ATV-related injuries. The various speculative assumptions, staff opinions and inferences put forward in the NPR to support these proposed differential and additional requirements are simply “not the stuff of which substantial evidence is made.” Aqua Slide “N” Dive Corp. v. CPSC, 569 F.2d 831, 843 (5th Cir. 1978). Indeed, many of these different or additional requirements could have unintended adverse effects on ATV safety. The NPR thus presents no evidence, much less substantial evidence, that each of these different and additional requirements is reasonably necessary to reduce an unreasonable risk of ATV-related injury.

In addition, CPSC has failed to demonstrate that its proposed ban on new three-wheel ATVs satisfies the governing statutory requirements and criteria. CPSC’s purported evidence that three-wheel adult-size ATVs are being distributed, or are likely to be distributed, in the United States is unquestionably deficient. The “golf scooters” and hybrid vehicles mixing a

front wheel trail bike design with rear wheel ATV designs referenced in the NPR do not meet the governing definition of ATV. Moreover, the NPR itself acknowledges that all the hybrid vehicles and one of the two "golf scooters" were 49 cc models, which simply do not equate to adult-size ATVs. 71 Fed. Reg. at 45,914. CPSC has neither demonstrated nor confirmed that the presence of these vehicles on websites of manufacturers in Asia means that they are being, or will be, purchased by U.S. distributors in any meaningful number.

CPSC's proposed finding that three-wheel ATVs present a disproportionate risk as compared to four-wheel ATVs is based upon a Commission staff report on 1997 studies that is contradicted by a different CPSC staff report on more recent 2001 studies, which the NPR fails even to mention. The rulemaking record therefore contains conflicting evidence generated by CPSC itself as to the risk presented by three-wheel ATVs, and the NPR does not meet the substantial evidence requirement to support this finding.

Finally, contrary to CPSC's unsupported presumption, it would apparently be feasible to develop a standard for future three-wheel adult ATVs which would ensure that any such vehicles would have the same minimum lateral stability -- as measured using CPSC's Kst test methodology -- as currently marketed four-wheel ATVs.

In summary, CPSC should, therefore, withdraw its current proposals and issue a revised NPR limited to proposing the provisions of the revised ANSI/SVIA standard that will be forthcoming from the ANSI canvass process, as well as a requirement that distributors offer free hands-on training to purchasers and age-appropriate immediate family members, as a mandatory consumer product safety standard for all new ATVs distributed in the United States.

III. BACKGROUND

A summary of relevant background information regarding the ATV Consent Decrees, development and approval of the original voluntary standard for four-wheel ATVs, the ATV safety Action Plans, prior CPSC regulatory decisions concerning ATVs, and recent developments with respect to state ATV legislation is attached as Appendix A. A separate summary of revisions in the current ANSI/SVIA-1-2001 voluntary standard which are under consideration is attached as Appendix B. A summary of the statutory authorities which govern this proposed rulemaking is attached as Appendix C. A summary of safety issues raised by ATVs distributed by new entrants to the market is attached as Appendix D. All of the foregoing appendices are incorporated by reference in this section of these comments.

IV. RISK OF INJURY

CPSC recently released its 2005 annual update of ATV-related deaths and injuries. R. Ingle, 2005 Annual Report of ATV Deaths and Injuries (Nov. 2006) (the "2005 Annual Update"). The 2005 Annual Update estimates that there were 130,000 four-wheel ATV injuries in 2005, virtually unchanged from the 2004 estimate of 129,400. *Id.* at Table 6. Because of the continuing increase in the number of four-wheel ATVs in use, however, the report further indicates that the risk of injury fell from 187.9 per 10,000 ATVs in use in 2004 to 171.5 per 10,000 vehicles in use in 2005. *Id.* An analysis prepared by Dr. Edward Heiden of the data presented in the 2005 Annual Update points out that this represents a 9 percent decline in the injury rate since 2004. E. Heiden, Analysis of CPSC 2005 Annual ATV Report, at 2 (Dec. 15, 2006) (the "Heiden 2005 Analysis"). A copy of the Heiden 2005 Analysis is attached at Appendix E.

The Heiden 2005 Analysis points out that the risk of four-wheel ATV-related injury declined for the fourth consecutive year from 200.9 injuries per 10,000 four-wheel ATVs in 2001 to 171.5 per 10,000 ATVs in 2005 -- a decline which has essentially reached a *statistically significant decline in risk*. Id. This also represents the lowest level of ATV injury risk for any year since 1998 (when the Consent Decrees expired). Moreover, this rate is little more than half the pre-Consent Decree level of 319.2 in 1986 that caused the Commission to take action in 1987.

In addition, the CPSC Annual Update states that there were an estimated 40,300 four-wheel ATV injuries involving children under 16 in 2005. 2005 Annual Update at Table 5. The Heiden 2005 Analysis notes that this represents a 10 percent decrease from the 2004 estimate of 44,700 such injuries, and this decrease is statistically significant at the 93-percent confidence level. Heiden also points out that the estimated share of total ATV injuries that involve children under 16 has fallen to 30 percent in 2005, down from 33 percent in 2004 and 37 percent in 1998. Heiden 2005 Analysis at 2; 2005 Annual Update at Table 5.

As Dr. Edward Heiden notes in a separate report attached as Appendix F, the NEISS system from which the ATV injury estimates are drawn underwent a significant revision of its sample of reporting hospital emergency rooms in 1997. Appendix F at 3. This revision resulted in an unexplained larger increase in estimated injuries from 1997 to 1998 than in any year since for a number of consumer products, including ATVs. The estimated ATV injury rate in 1998, the first year that the full compliment of NEISS hospitals in the new reporting sample was available (and, coincidentally, the year the Final Consent Decrees expired), was 184.7 per 10,000 four-wheel ATVs in use, as compared to the 2005 injury rate of 171.5.

In other words, the injury rate which CPSC pledged to continue to track when it commended the ATV Companies' Action Plans and determined that further regulatory action was not warranted in 1998, is now even lower than it was at that time.

Indeed, CPSC's conclusion in terminating the initial ANPR in 1991 that then currently available evidence did not establish an unreasonable risk associated with four-wheel ATVs was based upon a 1989 injury rate of 217.8 per 10,000 four-wheel ATVs in use. The NPR offers no explanation as to how the lower 2005 injury rate of 171.5 -- which represents a statistically significant decline in risk -- can support the conclusion that there is now an unreasonable risk associated with such vehicles.

Dr. Heiden points out that there was also a significant change in the methodology for estimating ATV-related fatalities beginning in 1999 which led to greater reporting of such fatalities that occurred on public roads. Appendix F at 5. As the NPR itself acknowledges, it is therefore only appropriate to examine recent trends in ATV-related fatality rates using data collected with this current, more comprehensive statistical methodology. 71 Fed. Reg. at 45,907.

The Heiden 2005 Analysis notes that four-wheel ATV fatality risk has stayed relatively constant at between 1.0 and 1.2 per 10,000 vehicles in use for the most recent years (2000-2002) for which fatality reporting is fairly completed, as well as for the preliminary estimates for 2003 and 2004 where further late reports may occur. Heiden 2005 Analysis at 3. These levels are substantially below the level of 1.4 reported for 1999, the first year of implementation of CPSC's revised data collection methodology. An important conclusion of the Heiden analysis is that the CPSC data in the 2005 Annual Update show no real increase in ATV-related injury or fatality risk since 1998 and 1999, respectively, and that there is evidence that injury risk is in the process of declining. Id.

It is important to recognize that the great majority of ATV accidents involve behavior that is clearly and consistently warned against. Based on a review of hundreds of CPSC in-depth injury (“IDI”) reports of ATV-related fatalities during 1997-2002, Dr. Heiden found that nearly 92 percent involved at least one type of warned against behavior such as failure to wear a helmet, riding on a public road, drinking alcohol, passenger carrying on a single rider vehicle, and excessive speed or using drugs. Two or more warned against behaviors were reported in more than half of the fatalities reviewed. See Appendix F at 7.

V. DISCUSSION

A. All ATVs Distributed In The United States Should Comply With the ANSI/SVIA Standard And Provide Action Plan Safety Information And Programs.

The ATV Companies believe strongly that all ATVs distributed in the United States should comply with all applicable provisions of the ANSI/SVIA standard, including, when ultimately adopted, the revisions currently being considered in the canvass process. The original ANSI/SVIA standard was reviewed and approved by CPSC in 1989. 54 Fed. Reg. 1407 (Jan. 13, 1989). When the Commission terminated the first ATV ANPR in 1991, it determined that four-wheel ATVs which met the provisions of the ANSI/SVIA standard did not present any unreasonable risk of injury. 56 Fed. Reg. 47,166, 47,170-72 (Sept. 18, 1991). All ATVs sold by the ATV Companies have complied with the ANSI/SVIA standard since it became effective in 1990, and as subsequently revised in 2001. See Testimony of E. Leland before the Subcommittee on Consumer Affairs, Product Safety and Insurance of the Senate Committee on Commerce, Science and Transportation, June 6, 2006 (relevant excerpts attached as Appendix G).

The ATV Companies also believe that all ATV distributors should provide to purchasers (and in some cases immediate family members) the safety information and programs specified in the Action Plans that have been approved by CPSC and trace their lineage from the provisions of the Consent Decrees. All ATVs distributed by the ATV Companies have come with the specified safety information (*i.e.*, point of purchase materials, labels, hang tags and owner's manuals) and programs such as free hands-on training since 1988. The belief that these are important elements of ATV safety seems consistent with the fact that the estimated risk of injury fell from 305.9 in 1987 before the Consent Decree programs began to 188.1 in 1991 when those programs had been in place for three years and the ANSI/SVIA standard had become effective.

The ATV Companies have brought to CPSC's attention on numerous occasions over the last five years information indicating that new entrants were distributing in the United States in increasing numbers ATVs that neither meet the ANSI/SVIA standard nor come with the safety information and programs specified in the approved Action Plans. SVIA has also made efforts to contact new entrants it can identify and inform them of the availability of membership in the organization and access to its nationwide hands-on training and safety information program. It has now become clear that many of these new entrants will not voluntarily ensure that the ATVs they distribute meet the ANSI/SVIA standard and will not voluntarily offer the specified safety information and programs to purchasers of their products. See Appendix G at 16-17 (Leland testimony).

Given the inability of the Commission to ensure that there will be substantial compliance with the provisions of the ANSI/SVIA voluntary standard, both in the present and in the future, reliance on the standard under Section 9(b) of the CPSA would not appear to be an effective option. The ATV Companies therefore believe that the better course of action is for the

Commission to promulgate a mandatory rule requiring compliance with the forthcoming revised ANSI/SVIA standard for all ATVs distributed in the United States.

As noted above, proposed revisions to ANSI/SVIA-1-2001 have been developed and are undergoing consideration through the canvass process. Once the revised standard is adopted, it will include virtually all of the mechanical requirements for both single rider and tandem ATVs that the NPR contains, with the exception of variations to those requirements in the NPR that -- as discussed below -- are not supported by the required substantial evidence of unreasonable risk and corresponding safety benefit. Similarly, the revised voluntary standard will incorporate the key informational provisions of the Action Plans, as well as those in the NPR, (*i.e.*, labels, hang tags and owner's manuals) with the exception of a training requirement.

To the extent that mechanical and informational provisions in the NPR depart from the requirements of the revised ANSI/SVIA standard, the ATV Companies believe that those differences are not supported by the evidence on the record and, in some instances, particularly those related to ATVs intended for use by children, may inadvertently add to the risks of injury that the rule seeks to reduce. On the other hand, the revised voluntary standard will be a consensus document whose provisions reflect over 20 years of experience with ATVs on the part of the industry and the Commission, including substantial input from the Commission staff over the years, as well as the results of extensive testing and analysis. The ATV Companies therefore believe that the Commission should delay acting until the revised ANSI/SVIA standard is formally submitted to ANSI for final review and publication (which should occur within the next 120 days). At that time, the ATV Companies recommend that the Commission should either withdraw the existing NPR and reissue it incorporating the provisions of the revised ANSI/SVIA

standard in toto without change, or revise those provisions of the NPR that differ from the revised voluntary standard to make them consistent with it.

The ATV Companies have been offering free hands-on training to new ATV purchasers and age-appropriate members of their immediate family for almost 20 years and believe that such training is a key contributor to ATV safety. However, as explained more fully below, because of antitrust concerns and other factors, a requirement to offer such training has not been included in the revised ANSI/SVIA standard. Nonetheless, the ATV Companies support inclusion in any final rule of a requirement that all distributors of ATVs in the United States offer free hands-on training, using the curriculum of the ASI Rider Course or a substantially similar curriculum, to all ATV purchasers and age-appropriate immediate family members.

B. ATVs That Comply With The ANSI/SVIA Standard And Provide Action Plan Safety Information And Programs Do Not Present An Unreasonable Risk Of Injury.

As the NPR recognizes, ATVs have substantial utility for both recreational and non-recreational activities. 71 Fed. Reg. at 45,928. ATVs are uniquely useful for agricultural activities such as farm or ranch work, as well as industrial activities, including transportation to remote work sites. They are also widely used for recreational activities, such as camping, hunting and fishing and trail riding. Their utility in security functions, such as border patrolling and other national defense activities, has become more apparent in recent years. Moreover, there are no other products which can readily or effectively substitute for ATVs in all these various uses and functions. The growing utility and popularity of ATVs is confirmed by the fact that the estimated population of four-wheel ATVs in use has more than doubled since 1999 to 7.6 million vehicles in 2005.

In 1987, just before the Consent Decrees were adopted, CPSC estimated the risk of injury in 1986 was 319.2 per 10,000 four-wheel ATVs in use. In 1991, the third year that the Consent Decrees had been in place, and the year that the mechanical requirements of the ANSI/SVIA standard became effective for newly produced ATVs, the estimated risk of injury per 10,000 four-wheel ATVs in use fell to 188.1. In that same year, the Commission withdrew its advance notice of proposed rulemaking for ATVs, finding that “currently available evidence does not establish that there is an unreasonable risk of injury associated with new four-wheel ATVs that are now being sold.” 56 Fed. Reg. at 47,173.

The risk of injury was essentially the same (*i.e.*, 184.7 per 10,000 four-wheel ATVs in use) when the Consent Decrees expired in 1998. At that time, the major distributors committed in their Action Plans with CPSC to continue the Consent Decree programs regarding safety information and labeling, free hands-on training, age recommendations and dealer monitoring. In addition, the major distributors continued to distribute only vehicles which complied with the provisions and specifications of the ANSI/SVIA standard. CPSC commended the distributors for these commitments and took no regulatory action.

In 2005, after seven years’ experience with the major distributors continuing to comply with the ANSI/SVIA voluntary standard requirements and specifications, and implementing the provisions of their Action Plans, the risk of injury per 10,000 four-wheel ATVs had declined to 171.5, even though the estimated number of four-wheel ATVs in use more than doubled over that period of time to 7.6 million.

An analysis of the newly-released 2005 Annual Update indicates that the injury rate per 10,000 four-wheel ATVs in use fell 9 percent from 2004 to 171.5, which represents the lowest

risk level since the Consent Decrees expired in 1998.¹ In addition, the 2005 Annual Update shows that the number of estimated four-wheel ATV-related injuries to children under 16 fell 10 percent last year as compared to 2004, a decrease that is statistically significant at the 93-percent confidence level. In short, contrary to the implication created by the NPR, the actual data show that the ATV injury risk picture is improving, based primarily upon the continuing safety efforts and programs of the major distributors and CPSC, as well as the continuing adoption of state laws regulating ATV use by both adults and children.

Similarly, although the data are not as complete due to lags in reporting, an examination of the fatality estimates in the 2005 Annual Update for the six-year period from 1999 through 2004 indicates the overall ATV fatality risk has been fairly constant at between 1.0 and 1.2 per 10,000 four-wheel ATVs in use since 2000, which is well below the 1.4 estimate for 1999.²

Moreover, the risk estimate per 10,000 four-wheel ATVs of 171.5 in 2005 was lower than the risk estimate when CPSC terminated the initial ATV ANPR in 1991 (188.1), and when CPSC allowed the Consent Decrees to expire in 1998 without taking further regulatory action beyond the agreed Action Plans (184.7).

CPSC has provided no explanation, much less any justification, as to why this level of estimated injury risk, which is less than it was when the Commission decided against taking

¹ See Appendix E at 2. As a separate report from Dr. Edward Heiden points out, the NEISS system from which the ATV injury estimates are drawn underwent a significant revision of its sample of reporting hospital emergency rooms in 1997. See Appendix F at 3. This revision resulted in an unexplained larger increase in estimated injuries from 1997 to 1998 than in any year since for a number of consumer products, including ATVs. It is thus appropriate to focus on trends regarding the risk of ATV-related injury beginning in 1998, the first year that the full complement of NEISS hospitals in the reporting sample was available (and, coincidentally, the year the Consent Decrees expired).

² 2005 Annual Update at Table 4. There was a significant change in the methodology for estimating ATV-related fatalities beginning in 1999, which led to greater reporting of such fatalities that occurred on public roads. *Id.* at 3. As the NPR itself acknowledges, it is therefore only appropriate to examine recent trends in ATV-related fatality rates using data collected with this current, more comprehensive statistical methodology. See 71 Fed. Reg. at 45,907.

further regulatory action during the regime of the Consent Decrees and again at the time of their expiration, is now deemed to be unreasonable, with respect to ATVs that are still covered by essentially the same safety standards and programs that were mandated under the Consent Decrees.

Indeed, CPSC expressly concedes that the safety benefits from those elements of its proposals that differ from, or go beyond, the ANSI/SVIA standard and Action Plans are entirely speculative. For example, the NPR states only that the proposed requirements for automatic transmissions on all youth ATVs “could reduce injury risk” by reducing the number of tasks that inexperienced drivers must perform while driving an ATV. 71 Fed. Reg. at 45,918 (emphasis added). Similarly, the NPR states, with respect to its proposed additional warning statement on age recommendation labeling for adult ATVs: “although it is not known how effective these warnings are at reducing (sic) children from riding adult ATVs, if they reduce the number of children riding adult ATVs enough to reduce the number of ATV-related injuries to children . . . by even a small amount, the benefits of these warnings could exceed the costs.” *Id.* at 45,921 (emphasis added).

The NPR acknowledges that any significant reduction in ATV injuries will come from ensuring that key elements of the Action Plans (which includes compliance with the ANSI/SVIA standard) are extended to new entrants:

The proposed rule would ensure that key elements of the voluntary agreements are extended to all ATV manufacturers and distributors. Because manufacturers and distributors that account for about 90 percent of the market already conform to these requirements (and much of the remaining 10 percent conform to at least some of the requirements) the proposed standard may not significantly lower the number of injuries from their current levels

Although the number of these cannot be quantified, they provide consumers with information that may help them choose an appropriate ATV for the rider and may

reduce some unsafe riding behaviors Moreover, the vast majority of ATVs sold are already thought to be in compliance. Id. at 45,923 (emphasis added).

CPSC's proposed finding of unreasonable risk thus actually relates to ATVs that do not comply with the ANSI/SVIA standard and the Action Plans and is undeniably speculative as to ATVs which currently do comply, such as those distributed by the ATV Companies. CPSC concedes that it cannot demonstrate, much less quantify, any risk of injury from these vehicles, due solely to their failure to meet those different and additional requirements in the NPR:

Some of the additional requirements, such as requiring the age requirement form and training acknowledgement form or requirements that are somewhat different from current practice (such as clearer warning statements) may better inform consumers of ATV-related risks who may then be able to reduce or avoid these risks. Id. at 45,928 (emphasis added).

In evaluating the Section 8 petition for a ban on sale of adult-size ATVs for use by children under 16, the CPSC staff similarly concluded:

No data are available to show that a ban of ATVs for use by children under the age of 16 years would be more effective in preventing such use than the age recommendations in the Voluntary Action Plans. Section 8 Briefing Package at 31-32.

However, based on this conclusion, the staff recommended in that instance that the Commission deny the Section 8 petition to initiate rulemaking on a ban, and by a 2-1 vote CPSC ultimately followed that recommendation.

The NPR likewise fails to show by any available data -- much less by substantial evidence -- that the imposition of the different and additional requirements that go beyond the proposed revised ANSI/SVIA standard and Action Plans are reasonably necessary to reduce an unreasonable risk and will provide quantifiable safety benefits. Indeed, as shown below, these different and additional requirements will have no measurable positive safety benefit and, in some instances, may actually detract from ATV safety. Yet despite the fact that any safety

benefits are wholly speculative, and in direct contrast to its action on the Section 8 petition, CPSC is proposing to move forward with rulemaking to establish these differential and additional requirements.

Equally troubling is the fact that virtually all of these requirements are not accompanied in the NPR by any citation to evidence of their actual costs. This, of course, makes it virtually impossible to conduct the balancing test that a finding of unreasonable risk entails. While these comments do not address this shortcoming on a provision-by-provision basis, suffice it to say that almost none of the provisions discussed below are accompanied by any cost data or evidence and thus cannot be sustained.

Moreover, in discussing CPSC's unreasonable risk "finding," the NPR simply refers to the total number of reported ATV-related deaths since 1982, as well as to the reported number of deaths in 2003 and the number of estimated ATV injuries in 2004. 71 Fed. Reg. at 45,928. However, in light of CPSC's acknowledgement of the substantial and unique utility of ATVs in both recreational and work-related activities, the mere recitation of aggregate numbers of estimated ATV-related deaths and injuries in 2003 and 2004 cannot constitute the showing of unreasonable risk, particularly when analyses of the data show that these deaths and injuries are due largely to clearly warned-against behaviors and that the risk of injury on four-wheel ATVs has actually declined since expiration of the Consent Decrees in 1998.³

³ The proposed finding regarding unreasonable risk notes that the proposed mandatory requirements will cover the increasing number of new entrants who are not following current voluntary standards or other safety practices that the major manufacturers are voluntarily following. The proposed finding goes on to state that this will reduce the risk of injury in the future as more such new entrants may enter the market. 71 Fed. Reg. at 45,928. As noted above, the ATV Companies do not disagree with this unreasonable risk finding with respect to new entrants into the ATV market who do not comply with the ANSI/SVIA standard or offer safety information and programs as outlined in the approved Action Plans. However, as also explained above, the ATV Companies believe that the proposed unreasonable risk findings must be limited to new entrants and cannot extend to ATVs, such as theirs, which comply with the ANSI/SVIA standard, and are covered by the safety provisions specified in approved Action Plans.

As the Heiden 2005 Analysis points out, in a stark departure from past annual update reports, the narrative portion of the 2005 Annual Update puts primary analytic emphasis on trends in the annual totals of ATV injuries, rather than trends in injury risk calculated by comparing those injury totals to the commensurate (and in some years more than commensurate) rise in the population of ATVs in use. See Appendix E at 3. This apparent attempt to focus primarily on total numbers of injuries and fatalities, rather than the risk of injury or fatality, is inconsistent with CPSC's prior studies and analyses of ATV safety. In this respect, the 2005 Annual Update appears to echo the NPR, where the proposed findings regarding "Degree and Nature of the Risk of Injury" and "Unreasonable Risk" reference only total numbers of deaths and injuries and in fact ignore risk altogether. 71 Fed. Reg. at 45,928.

These proposed findings are both insufficient and misdirected. CPSC has authority to regulate not based on injuries or fatalities, but on unreasonable risk of injury or fatality. 15 U.S.C. §§ 2056(a), 2058(f)(3)(A); id. § 1261(s). It is thus clear that any attempt to move forward with the proposed regulation based on aggregate numbers of injuries and fatalities rather than injury and fatality risk must fail. Moreover, CPSC's own published data clearly show that not only has ATV risk not increased since previous Commission decisions that regulatory action was inappropriate, but it may also be in the process of further declining. See Appendix E at 3.

C. CPSC Has Not Shown That Its Proposed Changes To The ANSI/SVIA Standard And Action Plan Provisions Are Necessary To, Or Would, Reduce Unreasonable Risks Of ATV-Related Injuries.

The CPSC NPR includes a number of proposed provisions which are either contrary to, or go beyond, provisions in the ANSI/SVIA standard (including the proposed revisions), and specifications in approved Action Plans of the ATV Companies. The CPSC has not provided evidence to show that these deviations from the ANSI/SVIA standard and provisions of the

Action Plans are necessary to remedy deficiencies in the standard or Action Plans that present unreasonable risks of injury. The Commission has also failed to provide evidence to show that these proposed deviations would in fact serve to reduce ATV-related injuries.

Indeed, the NPR explicitly acknowledges that CPSC is relying on staff opinion and speculation, rather than actual data or evidence, to support these proposed additional requirements. The NPR can only hypothesize that the proposed additional age and training acknowledgment forms and label warning statements which go beyond the ATV Companies current practices “may better inform consumers of ATV-related risks who may then be able to reduce or avoid these risks.” 71 Fed. Reg. at 45,928.

With respect to each of the proposed different or additional requirements for single rider adult ATVs and for tandem ATVs, CPSC must show that each specific aspect of the vehicle or absent element of safety information that it has identified presents an unreasonable risk of injury, and further, that the specific proposed provision is reasonably necessary to prevent or reduce that risk of injury. 15 U.S.C. §§ 2056(a), 2058(f)(3)(A). In addition, these findings must be supported by “substantial evidence on the record taken as a whole.” Id. § 2060(c).

The “substantial evidence” requirement is just that -- a requirement that CPSC affirmatively support its findings by presenting established factual evidence in the record. In determining whether the evidence presented is substantial, both the facts which detract from the agency position as well as those which support it are to be considered. Aqua Slide “N” Dive, 569 F.2d at 838.

The Commission cannot support its proposed requirements by simply relying on rational assumptions or its own experience and staff expertise to conclude that the proposal will reduce injuries. Id. at 841. CPSC instead bears the affirmative burden of presenting factual evidence to

show that each particular proposed requirement will in fact reduce an unreasonable risk. Id. at 842. The Commission cannot rely on staff opinion or inference; it must put forward empirical proof that each proposed requirement will reduce the risk. Id. at 842, 843. While the CPSC staff may express its opinion as to the potential benefits of elements of the proposal, that opinion must be based on empirical data rather than merely casual observation and speculation to be viewed as actual evidence in the record. Id. at 843.

Similarly, with respect to each of the proposed different or additional requirements for youth ATVs, the Commission must find that each specific aspect of the vehicle or absent element of safety information that it has identified presents an unreasonable risk of injury, and that the specific proposed requirement is a feasible means of reducing that unreasonable risk. 15 U.S.C. § 1261(s); Forester v. CPSC, 559 F.2d 774, 789 n.21 (D.C. Cir. 1977).

1. Proposed Different or Additional Requirements for Single Rider Adult ATVs

a. Stop Lamp

Section 1410.5(l) of the proposed rule would require all ATVs to have at least one stop lamp or combination tail/stop lamp that is illuminated by actuation of any service brake control. The proposed revised ANSI/SVIA standard requires all adult ATVs to have a tail light, but makes provision of a stop lamp actuated by the service brake control optional.

CPSC has not presented any data demonstrating that the absence of a stop lamp presents an unreasonable risk of rear end collisions. Nor has the Commission pointed to any data confirming -- or even addressing -- the safety benefits of requiring a brake light on all ATVs that are used in an off-road environment. In addition, the SVIA TAP was concerned that in some circumstances the presence of a stop lamp might lead to inappropriate on-road use of some ATV models. This proposed requirement should not be included in any final mandatory rule.

b. Spark Arrester Qualification

Section 1410.5(m) of the proposed rules allows spark arrester qualification based on either the U.S. Department of Agriculture Forest Service Standard for Spark Arresters for Internal Combustion Engines, 5100-1 c (Sept. 1997) or, Surface Vehicle Recommended Practice, Spark Arrester Test Procedure for Medium Size Engines, SAE J350 (Jan. 1991). Like the current ANSI/SVIA standard, the proposed revisions in the canvass draft provide that all ATVs shall have a spark arrester of a type that is qualified according to the USDA Forest Service Standard. CPSC has provided no explanation or justification for allowing the use of spark arresters that are alternatively qualified under the SAE J350 standard.

c. ATV VIN Sequence

Section 1410.5(q) of the proposal would require that each ATV have a unique VIN number sequence, including the characters "A" and "T" in locations 4 and 5 of the number sequence, respectively. This proposed requirement is at odds with the VIN number sequencing systems currently used by several of the ATV Companies. This would necessitate the development of new VIN number sequences which would be costly, burdensome and create confusion because of their divergence from prior sequences for earlier years of similar models. It would also disrupt and impede VIN reporting to state agencies, which is based on the current systems of the ATV Companies. CPSC has not identified any risk of injury or safety benefit associated with this proposed provision. Accordingly, it should not be part of any final rule.

d. Service Brake Performance Test

Section 1410.7 of the proposal would require the service brake performance test to be conducted with the vehicle carrying its full load capacity of weight. The proposed ANSI/SVIA revised standard specifies that the service brake performance test be conducted with the full load

capacity or a maximum of 215 lbs. of load, whichever is lower. The ATV brake testing is conducted on a paved surface, a surface that an ATV operator is specifically warned to avoid in the on-product labeling and in the owner's manual. Testing on a high frictional surface with a maximum load above 215 lbs. on an ATV could be hazardous to the test operator. Also, a brake design that would give an appropriate test result for an ATV with a maximum load above 215 lbs. on a paved surface would be inappropriate for normal braking with a light load on an off-road surface. Finally, CPSC has presented no data or evidence to show that brake systems designed to comply with the brake performance test in the current ANSI/SVIA standard present an unreasonable risk of injury.

Section 1410.7(b)(2) of the proposed rule would require the front and rear brakes to be burnished by making 200 stops from the braking test speed before conducting the braking test itself. This proposed requirement is apparently drawn from the same specification in the current ANSI/SVIA standard. Based upon concerns that not all braking systems need 200 stops to reach their minimum effectiveness, and that excessive stops result in wasted preparation time, higher cost and unnecessary wear on the braking system, the proposed revisions to the ANSI/SVIA standard would allow each manufacturer to determine the appropriate burnishing procedure for their products, rather than specifying 200 stops. There is no data in the record to show that requiring 200 stops as part of the test procedure is necessary to address an unreasonable risk of injury from the service brakes.

Both of these proposed requirements should be eliminated from any final rule.

In addition, Section 1410.7(b)(5)(i), (ii) of the proposed rule would require that hand lever brake actuation force not be more than 133 N (30 lbf) and that foot pedal brake actuation force not be more than 222 N (50 lbf). The preamble incorrectly states that these proposed

requirements are consistent with the current ANSI/SVIA standard and are patterned after FMVSS 122. In fact, these actuation forces are specified in the ANSI/SVIA-1-2001 standard for youth model ATVs. The actuation forces for all ATVs other than youth models are not more than 245 N (55 lbf) and not more than 400 N (90 lbf), respectively, for hand lever and foot pedal actuation. These are the values required in FMVSS 122 for motorcycle brake systems, and the proposal should be revised to incorporate them for adult ATVs.

e. Pitch Stability Test

Section 1410.9(a) of the proposal provides that the pitch stability test shall be conducted with tire pressure inflated to the highest recommended pressure setting if more than one pressure is specified. The proposed ANSI/SVIA standard revision provides instead that the lowest recommended pressure setting shall be used.

Recommended ATV maximum to minimum tire pressure ranges are usually in the tenths of a pound-per-square inch range and are not measurable or significant. A slight increase in tire pressure does not significantly increase the tire circumference or raise the center of gravity height for the vehicle. CPSC has presented no data showing that the current ANSI/SVIA test method results in the vehicles presenting an unreasonable risk of injury or that its proposed change would actually reduce ATV-related injuries. This proposed requirement should not be part of any final rule.

f. Optional Tilt Table Test Method

Section 1410.9(b)(2) appears to require the use of a tilt table test method as an additional test for pitch stability. Although the preamble discusses this additional test method as “optional,” the proposed regulation seems to mandate it. The ATV distributors have employed the current test method since the original voluntary standard was published in 1990. No

evidence has been presented indicating that vehicles which use the current measurement method to meet the standard present an unreasonable risk of injury, or that use of the tilt table test method would reduce any such risk. In addition, to include an additional method would be redundant and lead to additional testing and expense for no purpose. This proposed requirement should be eliminated from any final rule.

g. General Warning Label

Section 1410.10(a) would require that the Consent Decree General Warning label, or a label with “substantially equivalent statements,” be used on all ATVs. The proposed revision to the ANSI/SVIA standard, in contrast, mandates use of the specific updated General Warning label that was developed by outside consulting expert Miller Engineering in 1996 and approved by the CPSC General Counsel. Indeed, the CPSC proposal would seem to preclude the use of the updated General Warning label because it does not include any statement similar to “Never attempt wheelies, jumps or other stunts,” which appears in the Consent Decree General Warning label. In fact, this statement was dropped from the updated General Warning label based on testing and analysis by the consulting expert and concerns about priority and cluttering.

By including the updated General Warning label as an attached figure to the ANSI/SVIA revised standard and specifying its use in all Type I ATVs, the ATV distributors who hold the copyright for this label are releasing it to the public domain. CPSC should revise its proposed regulation to require the use of the updated General Warning label rather than the original Consent Decree General Warning label.

h. Age Recommendation Label

Section 1410.10(b) would require all adult ATVs to bear an age recommendation warning label which includes the additional statement “Even youth with ATV experience have

immature judgment and should never drive an adult ATV.” The label would also be redirected to be addressed to the parent rather than to the potential child operator.

The NPR characterizes the current age recommendation label on adult ATVs as “vague about the nature of the hazard” but presents no data to support this criticism. It then goes on to speculate that the label “may not be as persuasive as [it] could be.” 71 Fed. Reg. at 45,911. However, CPSC has failed to verify empirically any deficiency in the current label that presents an unreasonable risk of injury.

Moreover, there is no indication that CPSC has tested the proposed additional language to develop the required evidence to show that it communicates more effectively to parents than the current label, and that they are more likely to heed it and keep their children from operating adult ATVs. See Aqua Slide “N” Dive, 559 F.2d at 841. The CPSC staff’s inference that the additional language will reduce injuries cannot support imposing this requirement. Id. at 842. In addition, this proposal would add substantial text to the current age recommendation label included in the proposed revisions to the ANSI/SVIA standard, and necessitate either a larger size label or much smaller type for the warning statement. Changing the size of the label would involve substantial expense because these labels are molded into the fender of the vehicle and changing label size would necessitate redesign of the fenders and entail significant expense.

Applied Safety and Ergonomics, Inc. in Ann Arbor, Michigan (“ASE”) conducted original research to assess the relative merits of the existing age recommendation warning label and the additional text and modified language contained in the NPR. See ASE, Response to ATV Labeling and Categorization Provisions in U.S. CPSC Notice of Proposed Rule Making, at 30-42, 57, 68-70 (Dec. 12, 2006) (the “ASE Report”). A copy of the ASE Report is attached as Appendix H. The data from this research reaffirm that the age recommendation warning label

specified in the 1988 Consent Decrees, currently in use, and proposed in the revised ANSI/SVIA standard is well understood. ASE found, based on numerous measures, that the NPR version of the label would not have any effect on the understanding of the concept that adults should not permit a child under 16 to operate an adult-size ATV with the label on it. Indeed, ASE's research found that the NPR's alternative framing may have *negative* effects on people's perceptions of and response to the label. The NPR's alternative text did not indicate the benefits presumably intended.

Based on these data, ASE has recommended that the label proposed for use in the revised ANSI/SVIA standard be used in any CPSC regulation. *Id.* at 78. CPSC should accordingly revise its proposal to include the current age recommendation label which is specified in the proposed revisions to the ANSI/SVIA standard.

i. Passenger Warning Label

Section 1410.10(c) would require all Type I ATVs to bear a passenger warning label which contains the additional statement "Passengers can affect ATV balance and steering." The preamble discussion acknowledges that the updated passenger warning label with an icon which was developed in 1996 by the outside expert Miller Engineering and is specified in the proposed revision to the ANSI/SVIA standard has been previously approved by CPSC. 71 Fed. Reg. at 45,911. See also ASE Report at 71-72 (citing Miller Engineering's report that the label tested very well and, in conjunction with General Warning label, "will improve the overall safety effectiveness potential of the [passenger warning label]") (citation omitted).

The NPR fails to put forth any testing or data showing that this previously approved label is inadequate or ineffective and presents an unreasonable risk of injury, or that adding the proposed statement to the passenger label would reduce the risk of ATV-related injury. Here

again, the Commission's proposal relies on nothing more than staff opinion and inference, which cannot and does not constitute the necessary substantial evidence to support this proposed change, particularly in light of the CPSC's own prior approval of this label.

Moreover, besides being untested, the NPR's proposed use of the phrase, "passengers can affect ATV balance and steering" is followed by, "The resulting loss of control" As ASE observes, this "incorrectly suggests that every effect on balance will result in loss of control." Id. at 72. In addition, the proposed addition of this statement to the label would create redundancy and cluttering issues. The warning that passengers can affect ATV balance and steering is already presented in the updated General Warning label on the left front fender of the vehicle in a location which is directed to the operator but also clearly visible to a passenger. Requiring the same statement on the passenger label is thus unnecessary and redundant.

Putting an additional statement on the passenger label also raises the issue of either increasing the size of the label or decreasing significantly the size of the lettering. As noted above, because the label is molded into the seat, or the vehicle body directly behind the seat, there would be significant cost involved if the size of the label had to be increased and these parts had to be redesigned. Conversely, reducing the type size would make it more difficult for a potential passenger to read the warnings.

For these reasons, ASE recommends that the current passenger warning label proposed for use in the revised ANSI/SVIA standard should also be used in any CPSC regulation. Id. CPSC should accordingly revise its proposal to require use of the approved passenger warning label included in the proposed revisions to the ANSI/SVIA standard.

j. Retailer Requirements

Section 1410.12 would require an ATV retailer to provide a prospective purchaser with a specified age acknowledgment form prior to the sales transaction, require the purchaser to sign the form, retain the signed original for five years and provide the purchaser and manufacturer with copies. The manufacturer must also retain a copy for five years.

The ATV Companies already require their dealers to use point-of-purchase forms that vehicle buyers must read and acknowledge prior to consummation of a sale. These forms include the recommended age for use of the purchased ATV and other safety information. (A copy of representative forms is attached as Appendix I.) The proposed age acknowledgment form required under the rule would be redundant of these existing forms and create additional and unnecessary paperwork for consumers and dealers.

Moreover, the proposed requirement that manufacturers receive and retain a copy of the age acknowledgment form for five (5) years creates significant and unworkable problems. In order to comply with this proposed federal rule, manufacturers would be forced to rely on retail dealers to supply the required forms. However, the commercial relationship between manufacturers and retail dealers is governed by state law, not federal law. A manufacturer's ability to enforce dealer compliance with the proposed age form requirement would thus be subject to varying state law requirements and restrictions. Many states, for example, impose a "good cause" or similar standard (often with specified multi-part criteria) that manufacturers must prove to a motor vehicle board, examiner, or court before terminating or taking other enforcement action against a retail dealer. See, e.g., Cal. Bus. & Prof. Code § 20020 ("no franchisor may terminate a franchise prior to the expiration of its term, except for good cause"); Va. Code Ann. § 46.2-1993.73 ("determine whether there is good cause for a proposed action");

Wis. Stat. Ann. § 135.03 (“No grantor . . . may terminate . . . without good cause. The burden of proving good cause is on the grantor.”); Tex. Occupations Code Ann. § 2301.453(g) (“After a hearing, the board shall determine whether the party seeking the termination . . . has established by a preponderance of the evidence that there is a good cause for the proposed termination.”). It is unclear that a retail dealer’s failure to provide copies of the age acknowledgment forms could be adequately or timely addressed under the applicable state law schemes. A retail dealer’s failure to comply with this requirement could also unfairly expose a manufacturer to potential product liability claims.

In contrast, CPSC would have authority pursuant to Section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1), to enforce compliance by retail dealers with the proposed form requirements, including the imposition of civil penalties and other sanctions under Section 20, 15 U.S.C. § 2069. CPSC has provided no justification for why retention of the proposed forms by retailers alone is not sufficient to achieve the stated objectives of the form. Imposing a duplicative requirement on manufacturers is unnecessary and, as shown, would create burdensome and potentially unworkable enforcement problems. Accordingly, to the extent that an age acknowledgment form requirement is included in the proposed new rule, the requirement should be directed solely to retailers.

k. Owner’s Manual

Section 1410.13 would require that the owner’s manual provided with the vehicle to the first purchaser have an introductory safety section with 27 specified messages taken originally from the Consent Decrees. In contrast, the proposed ANSI/SVIA standard revisions would allow manufacturers the freedom to use different wording for these safety messages, and to locate them in other sections of the manual.

Since the Consent Decrees expired in 1998, some ATV manufacturers have gone to great lengths and expense to revise and improve the effectiveness of their owner's manuals. The revisions have included approaches to providing safety information that would conflict with the NPR if implemented, and would therefore require additional expenditures and potentially compromise the efficacy of their manuals. In particular, there is substantial concern that putting all safety messages in one section may not be the best communication method. Indeed, a 2003 CPSC staff memorandum on proposed warning language in generator manuals noted that research suggests consumers often skip over safety sections, focus on information that describes how to use the product, and are more likely to read warnings in manuals if they are interspersed with the operating instructions. T. Smith, Proposed Warning Language to Accompany Generators, at 2 (Aug. 22, 2003). The provisions of the NPR also appear to be inconsistent with the October 2003 CPSC "Manufacturers' Guide to Developing Consumer Product Instructions," which suggests only limited, "universal" information should be put in a safety section. The same document refers to the development of ANSI Z535.6, which has recently been approved. In fact, CPSC has had representation on the Z535.6 subcommittee. Given these considerations, the ATV Companies believe the CPSC should revise these requirements to allow manufacturers discretion regarding the placement and precise wording of prescribed safety messages.

1. Safety Video

Section 1410.14 would require that the retailer provide a safety video to each purchaser and that the safety video contain ATV-related death and injury statistics, both for all riders and for children under 16, in rolling five-year averages. CPSC incorrectly states in the NPR that the current SVIA video provided by the ATV Companies to purchaser of new vehicles meets this proposed requirement. 71 Fed Reg. at 45,921. The ATV Companies now provide new

purchasers with these updated injury and fatality statistics in a printed Safety Alert at the time of sale. The cost of producing revised safety videos every year would be substantial. CPSC has presented no data or evidence to show that providing this information to purchasers in the Safety Alert rather than the video presents an unreasonable risk of injury. The CPSC staff opinion or inference that putting the information in the video may have safety benefits is not enough to sustain this proposed requirement.

m. Free Training

Section 1410.15 of the proposal would require a manufacturer to provide a free instructional training course with specified content to the purchaser and immediate family members who meet the age recommendation for the purchased ATV within a reasonable time from the date of purchase and a reasonable distance from the place of purchase.

The ATV Companies support the free training requirement of the proposed rule. As previously noted, the ATV Companies already provide free hands-on training to all new ATV purchasers and other family members who qualify (by age) to operate the vehicle. The ATV Companies also pay cash and other incentives to promote participation in the course. All persons that distribute ATVs for sale in the U.S. market should offer free hands-on training to purchasers of their vehicles. The ATV ANSI voluntary standard does not contain free hands-on training requirements, because the inclusion of such requirements would be both unprecedented in this kind of industry voluntary standard and raise potential antitrust issues due to the associated costs. A federally-enforceable rule mandating that ATV manufacturers and distributors offer the ASI or a substantially similar training program offers would not implicate the same concerns and would help to promote safe and responsible use of the products.

n. Location of Certification Statement

Section 1410.20(a) of the proposal specifies that the statement certifying compliance with requirements of the standard shall be at the location of the VIN number. For most models produced by the ATV Companies, the VIN number is stamped on a portion of the frame that cannot be easily read without kneeling down and looking underneath the vehicle with a flashlight. The proposed revisions to the ANSI/SVIA standard require that the certification label be placed in a location that allows viewing without removing any part of the ATV. Given that the purpose of the certification label or statement is to confirm to a prospective purchaser or others that the vehicle in fact does comply with the standard, it should be in the more obvious and easily viewable location. CPSC should adopt in any final rule the ANSI/SVIA provisions regarding location of the certification label.

o. Compliance Testing

Section 1410.21 of the proposal would require each manufacturer to perform testing sufficient to demonstrate on an objectively reasonable basis that "each ATV produced" meets the performance requirements of the standard. Although the preamble recognizes that testing of each individual ATV is not feasible, the proposed regulatory language could be read to require such testing.

Vehicle manufacturers conduct numerous quality control checks as a part of the manufacturing process. This includes compliance tests, performance and durability tests, as well as random sampling. No vehicle regulatory agency requires that every vehicle is tested for compliance with relevant standards. The NPR estimates the cost of conducting a complete test of an ATV for compliance with the ANSI/SVIA standard to be approximately \$1,320. 71 Fed.

Reg. at 45,924-25. The proposed standard should avoid even the suggestion that such testing is required for “each ATV produced.”

Accordingly, the proposed language should be revised to require that manufacturers “perform testing sufficient to demonstrate on an objectively reasonable basis that ATVs produced for sale in the United States meet the performance requirements of the standard.”

p. Record Maintenance

Section 1410.22 of the proposal requires each manufacturer to maintain records in English sufficient to demonstrate compliance of each ATV produced for sale with the standard, and that these records further be maintained at a location in the United States. Because, for example, some ATVs produced by the ATV Companies are made in Japan rather than the United States, records involving their design and production are written in Japanese and kept in Japan. Requiring that all such records be translated into English and brought to the United States regardless of whether it is ever necessary for CPSC to review them seems overly burdensome and would entail significant cost with no corresponding benefit.

The proposed regulatory language should be revised to require that the manufacturer maintain *or be able to timely produce* records in English in the United States sufficient to demonstrate on an objectively reasonable basis that ATVs for sale in the United States comply with the standard.

q. Age Acknowledgment Form

The ATV Companies currently require purchasers to sign an acknowledgement during the sales process for an adult-size ATV that the vehicle is not recommended for children under 16 and that allowing them to operate it may lead to severe injury or death. CPSC has presented no data or empirical evidence indicating that its proposed Age Acknowledgment Form would

be more effective in preventing purchasers from allowing children under 16 to ride adult-size ATVs than the current age recommendation acknowledgement the companies are using. The Commission has thus not shown that this proposed requirement will have any verifiable safety benefit in reducing injuries to children on adult-size ATVs. As noted above, the CPSC staff's opinion or assumption that the proposed form will do so cannot provide the required substantial evidence to support this proposal.

In addition, the proposed age acknowledgement form includes the statement: "Even children with ATV driving experience have immature judgment and should never drive an adult ATV." 71 Fed. Reg. at 45,944. There is no indication that CPSC has tested this language and the other statements on the proposed form to develop the required evidence that they communicate effectively to parents who are more likely to heed it and keep their children from operating adult ATVs. See Aqua Slide "N" Dive, 559 F.2d at 841. Here again, CPSC cannot simply rely on staff opinion or inference that the proposed form with the specified language will reduce injuries. Id. at 842.

Moreover, this proposed language is identical to the language in the NPR's proposed age recommendation warning label. As previously shown, ASE tested this modified language and found that the survey participants generally had a negative reaction to it. ASE Report at 77. Several participants stated that the language lacked credibility; some found it "to be offensive"; and others found that it was not useful in communicating the concept that children under 16 should not operate adult-size ATVs. Id. at 77-78. ASE also found no indication in the data that redirecting the label to the parent have any affect on understanding the concept that adults should not let a child under 16 operate the vehicle. Id.

Requiring use of this form, as proposed in the NPR, would add unnecessary paperwork for dealers and customers without any material benefit, and may have negative effects on people's perception of and response to the issue. CPSC should accordingly revise its proposal by deleting the requirement for the Age Acknowledgment Form for adult-size ATVs.

r. Training Acknowledgment Form

The ATV Companies currently use an ASI training certificate which is executed at the time of purchase, or other training information sheet, that serves to inform the purchaser about the availability of free hands-on training in the form of the ASI Rider Course. CPSC has presented no data or evidence to show that its proposed additional Training Acknowledgment Form would be more effective in informing new purchasers about the availability of training and persuading them to take the training course. CPSC thus has no basis to conclude that requiring the use of the proposed form, in addition to the current ASI training certificate or other training information sheet, will have any safety benefit.

As with the proposed Age Acknowledgement Form, CPSC cannot merely rely on staff opinion and inference that the proposed additional Training Acknowledgment Form will reduce injuries. See Aqua Slide "N" Dive, 559 F.2d at 841, 842. In addition, because there has apparently been no testing of the wording of this proposed form, CPSC has no basis to conclude that the statements in it, including in particular "ATVs don't handle as you might expect" would be understood and/or effective in communicating to new ATV purchaser the need for and benefit of training. In fact, the proposed language may well be confusing and instead have negative effects on people's perception of and response to the offer of training. In addition, the presence of a second training form could create confusion during the sales process and impede the efficient transmission of new purchaser information to ASI.

CPSC should accordingly revise its proposal by deleting the requirement for the Training Acknowledgment Form.

2. Requirements for Tandem ATVs

Issues concerning the CPSC's proposed requirements for tandem ATVs are addressed in the separate comments of the Tandem ATV Manufacturers.

3. Requirements for Youth ATVs

a. Categories of Youth ATVs

Section 1515.2(b) of the proposal would specify three categories of youth ATVs: Junior ATV (age 6 and older), Pre-teen ATV (age 9 and older) and Teen ATV (age 12 and older). CPSC presents no data or empirical evidence to support the creation of a new youth category beginning at age 9. The CPSC proposal also would not provide any "transitional" category of ATV for older youth riders age 14 and 15. In a departure from the current Action Plans that instead adopts the approach of the current ANSI/SVIA standard, the proposal would not specify engine size limits for youth model categories.

The proposed revisions to the ANSI/SVIA standard also do not specify engine size limits for youth model categories, focusing instead on limits on maximum speed capability. However, the SVIA TAP felt that larger teenagers (14 and 15 years old) may not physically fit ATVs in the current Y-12 category and also psychologically resist riding a "youth" model ATV that they may perceive as a "child-size" vehicle.

The SVIA TAP was aware of the CPSC data showing 86 percent of ATV fatalities and 89 percent of ATV injuries involving ATV operators under 16 were on adult-size ATVs. See R. Ingle, Analysis of ATV-Related Fatality Data for CPSC Petition CP 02-41/HP 02-1, at 9 (Dec. 2, 2003); M. Levenson, ATV Risk Estimates for Youths, at 12 (July 12, 2004). The goal of the

proposed revisions is to provide more viable, feasible and acceptable speed-limited ATV models for children under 16 so that they will choose to ride them rather than larger adult-size ATVs with no speed limitations.

In order to reduce the number of such children who are injured riding larger adult-size ATVs with unlimited speed capability, the proposed revisions to the ANSI/SVIA standard include a new Category T (“Transitional Model”) ATV intended to appeal to the larger teen and the parent. Unlike adult models, the Category T ATV has maximum speed restrictions and speed limiting requirements. Unlike a smaller “youth” model, the Category T vehicles will be sized for the 14 and 15 year-old rider and can be ridden by other family members, including small adults. The SVIA TAP also received recommendations from outside expert ASE that, along with introduction of Category T, the Y-12 category should be phased out in favor of a new Y-10 category to provide a better span of options between the Y-6 and the T categories. See ASE Report attached at Appendix H. This is different from CPSC’s proposed Pre-teen category, which would cover ages 9 to 11.

Given the lack of any data or empirical evidence supporting the CPSC proposal and the fact that the SVIA TAP proposal is supported by the extensive research and data presented in the ASE Report, CPSC should revise this section of the proposal to be consistent with the youth and transitional model categories reflected in the proposed revisions to the ANSI/SVIA standard.

b. Automatic Transmission

Section 1515.4(f) would require that all youth ATVs be equipped with fully automatic transmissions. This proposal seems to be based in large part on the CPSC staff’s assumption that most, if not, all youth ATVs currently are so equipped.

In fact, most or all of the youth models made by two of the largest ATV companies are not equipped with fully automatic transmissions. Some of these youth models have automatic clutches that eliminate the manual clutch but still require manual shifting by the operator. Such manual shifting allows greater control in educating new student operators.

CPSC has presented no data to support the contention that the current transmission shifting task on non-fully automatic transmission youth models presents an unreasonable risk of injury to younger riders. Indeed, CPSC's own "Age Determination Guidelines" state that 9 through 12 year-old children generally can operate a motorized vehicle that has gear shifting and does not exceed 10 miles per hour. Age Determination Guidelines Relating Children's Ages to Toy Characteristics and Play Behavior at 170 (Sept. 2002). The SVIA TAP noted that many youth model motorcycles, go-karts and other motorized vehicles with higher speeds use manual clutches and are successfully operated by youth riders. Finally, a changeover in these youth models to fully automatic transmissions would involve significant expense, both to the manufacturer and to the consumer, without any verified accompanying safety benefit. As noted previously, CPSC cannot rely on staff opinion or inference as a basis for imposing this requirement. This proposed requirement should not be included in any final rule.

c. Lighting

Section 1515.4(i) would require all youth ATVs to have at least one stop lamp. The proposal would also provide that youth ATVs may not be equipped with a projecting head lamp or forward facing day-time running lights.

The proposed revisions to the ANSI/SVIA standard would make the provision of a brake actuated stop lamp optional on youth (as well as adult) model ATVs. CPSC has presented no data that indicates a safety risk from the absence of a stop lamp on an ATV used in an off-road

environment or verifies any safety benefits from requiring stop lamps on youth ATVs. In addition, the electrical systems of some youth models are not adequate to accommodate such a stop lamp.

The proposed revisions to the ANSI/SVIA standard likewise make the provision of a head lamp or forward facing day-time running lights on a youth ATV optional. Head lamps and day-time running lights can be beneficial under certain riding conditions, such as heavy brush, dusty or shaded trails and similar low-light conditions during the day. Allowing head lamps is also appropriate to provide lighting on those occasions when a group of riders, including youth model riders, are inadvertently or unexpectedly riding after dark.

CPSC has presented no data or empirical evidence to show that either youth ATVs not equipped with a stop lamp or youth ATVs equipped with a projecting head lamp or forward facing day-time running lights present an unreasonable risk of injury. CPSC staff opinion or inference concerning rear-end accidents or encouraging night riding cannot serve to sustain these proposals in the absence of empirical proof. See Aqua Slide "N" Dive, 559 F.2d at 842. This proposed requirement should be eliminated from any final rule.

d. Maximum Speed Capability

Section 1515.6 proposes maximum speed capability requirements for youth models. The maximum speed for the Junior ATV for ages 6 and older would be 10 mph. The Pre-teen ATV for ages 9 and older would be delivered set at 10 mph, with a maximum unrestricted speed not to exceed 15 mph. The Teen ATV for ages 12 and older would be delivered set at 15 mph, with a maximum unrestricted speed not to exceed 30 mph.

The CPSC proposal would effectively reduce for the Junior ATV the 15 mph unrestricted maximum speed for the Y-6 model under the current ANSI/SVIA standard, but presents no

empirical evidence to show that 15 mph represents an unreasonable risk on such vehicles. The Pre-teen ATV maximum speed capability requirements would be consistent with the current ANSI/SVIA standard for Y-6 vehicles, but not with the proposed revisions, which include the new Y-10 category, which is to be delivered set at 15 mph, with a maximum unrestricted speed of 30 mph. The parameters for the Teen ATV essentially parallel those for Y-12 models in the current ANSI/SVIA standard. There is no provision in the CPSC proposal for a transitional (“T”) category, which in the proposed revisions to the ANSI/SVIA standard includes delivery set at 20 mph, with an interim adjustment available to 30 mph and a final unrestricted maximum speed of 38 mph.

As previously shown, the maximum speeds established in the ANSI/SVIA youth model categorization system are consistent with the range of speeds 14 and 15 year olds may encounter on other types of motorized products, as well as the literature on child development patterns. ASE Report at 13-27. Moreover, in assessing the relative merits of the NPR and ANSI/SVIA youth model categorization schemes, ASE found that maximum speeds lower than 30 mph (*i.e.*, 15 and 22 mph) made a prospective ATV significantly less attractive, and that maximum speeds higher than 30 mph (*i.e.*, 38 and 45 mph) made a prospective ATV significantly more attractive. The parents who participated in the original research did not appear to desire unlimited speed for children age 12 to 15. Rather, the data suggest that parents are looking for a maximum speed that would satisfy children as well as other family members. As observed by ASE:

Data from interview participants and focus groups indicated that parents simply wanted an ATV that would be fast enough so children would not be bored, children could keep up with other family riders, other adult operators of the ATV would be satisfied, etc. Adults in this study reported that the speeds offered under the SVIA system were superior to the NPR system in these respects, as well as in terms of their adjustability.

Id. at 79. Significantly, the maximum speed options of the ANSI/SVIA transitional model also made these units more attractive for economic reasons, since it is reasonable to assume from these data that 14 and 15 year olds would be more likely to be content with this model for a longer period and it would likewise appeal to adult users. See id. at 8, 46-47. For all of these reasons, ASE recommends adoption of the ANSI/SVIA categorization system with the slightly higher maximum speed capabilities and adjustable speed limiting mechanisms. Id. at 79.

e. Age Acknowledgment Form

The NPR would require a specific youth model Age Acknowledgment Form including the following statements: "Not all children develop at the same rate. Kids and teens have immature judgment, tend to take risks, disregard consequences and bow to peer pressure -- even if they have been riding ATVs for a long time." 71 Fed. Reg. at 45,960. This language is similar to the language in the NPR's proposed age recommendation warning label and age acknowledgment form for adult-size ATVs. As previously noted, that language tested negatively, with several participants indicating that it lacked credibility, was "offensive," and "pointless." ASE Report at 77-78.

CPSC has presented no data or empirical evidence to show that its proposed Age Acknowledgment Form for youth ATVs would measurably reduce ATV-related injuries. There is no indication that the form has been tested for effectiveness in order to confirm prospective safety benefits.

Requiring use of this form would add unnecessary paperwork for dealers and customers without any material benefit, and may have negative effects on people's perception of and response to the issue. CPSC should accordingly revise its proposal by deleting this requirement for a new Age Acknowledgment Form for youth models.

f. Other Issues

Section 1515.9 raises the same issues regarding tire inflation pressure and optional tilt table test method with respect to the pitch stability test that have been previously discussed regarding adult ATVs. See supra at 22. Section 1515.10 raises the same issues regarding the General Warning label and the Passenger Warning label that have been previously discussed. See supra at 23, 25-26.

Section 1515.13 similarly raises the same issues regarding the owner's manual and Section 1515.14 raises the same issue regarding the safety video that had been previously discussed regarding adult ATVs. See supra at 28-30. Section 1515.15 also raises the same issues regarding instructional training, Section 1515.16 the same issues regarding location of the certification statement, and Section 1515.17 the same issues regarding testing that have previously discussed. See supra at 30-32. Finally Section 1515.18 of the proposal raises the same issues regarding recordkeeping that have been previously noted regarding adult ATVs. See supra at 32.

D. **The NPR Fails To Include Important Elements Of The ANSI/SVIA Standard.**

1. **Standardized Basic Controls**

The standardization of basic controls on ATVs is important for primary operational safety. ATV operators need to be able to expect and rely upon standard location, color coding and directional operation of controls on each ATV model they operate. Basic controls include the throttle, transmission shifting, and the engine emergency stop. Lack of standardization reduces the benefit of both ATV experience and hands-on training and presents the potential for accidents and injuries due to lack of vehicle control.

The CPSC proposal fails to include standardized control requirements that are present in the current ANSI/SVIA standard and are also included in the proposed revised version of the standard. The ATV Companies understand that this omission may be due to concern that such standardization provisions could be viewed as design requirements and therefore beyond CPSC's standard setting authority under the CPSA with respect to adult ATVs. If so, this represents a serious deficiency in CPSC's proposed standard specifying requirements for adult ATVs, as compared to the ANSI/SVIA standard.

a. Service Brake Requirements

Section 1410.5(a) of the CPSC proposal omits requirements for the standardized location and operation of service brake controls, which are included in Section 4.1 of the proposed revisions to the ANSI/SVIA standard.

b. Engine Stop Switch

Section 1410.5(d) omits requirements for standardized location and color of the engine stop switch, which are included in Section 4.4 of the ANSI/SVIA proposed revisions.

c. Manual Clutch Control

Section 1410.5(e) of the CPSC proposal omits the requirement for standardized location of the manual clutch control for all ATVs equipped with a manual clutch, which is included in Section 4.5 of the proposed revisions to the ANSI/SVIA standard.

d. Throttle Control

Section 1410.5(f) omits the requirement for a standardized location of the throttle control that is included in Section 4.7 of the proposed revisions to the ANSI/SVIA standard.

e. PTO or Other Device

Section 1410.5(f) omits a provision that all ATVs that have a PTO or other device requiring fixed engine or vehicle speed, and a clutch control, may be equipped with an additional throttle that meets certain operational and automatic stopping requirements, as provided in Section 4.7.2 of the proposed revision to the ANSI/SVIA standard.

2. Parking Mechanism

Section 1410.5(b) of the CPSC proposal fails to mention, or allow for use of, a parking mechanism rather than a parking brake. Such a parking mechanism is particularly useful on models with automatic transmissions and is specifically mentioned and allowed as an alternative mechanism for holding the ATV stationary under prescribed conditions in Section 4.2 of the proposed revisions to the ANSI/SVIA standard.

3. Tire Marking

Section 1410.5(n) of the CPSC proposal fails to allow the use of the abbreviated term “NHS” rather than “Not For Highway Service” on ATV tires, as would be allowed under Section 4.19 of the proposed revisions to the ANSI/SVIA standard.

4. Parking Brake Performance Test

Section 1410.8(b)(3) of the CPSC proposal fails to specify application of the service brake to stop the ATV prior to the application of the parking brake or parking mechanism. This directive is specifically provided in Section 8.2 of the proposed revisions to the ANSI/SVIA standard, and is necessary because the test procedure includes placing the ATV on a 30 percent grade, and the vehicle will simply roll off the test surface if the service brake is not applied prior to the application of the parking brake or parking mechanism

5. Omitted Exceptions

Section 1410.5(g)(3) of the CPSC proposal omits an exception to the requirement for a neutral indicator for those models equipped with manual clutches. This exception is explicitly provided in Section 4.9 of the proposed revisions to the ANSI/SVIA standard. Application of the clutch to disengage the transmission allows the engine to be safely started in gear. A neutral indicator is thus not a safety-related requirement on such models.

Section 1410.5(g)(5) of the proposal omits allowing manual clutch operation to overcome the electric start interlock. Such an exception is explicitly provided in Section 4.11 of the proposed revisions to the ANSI/SVIA standard. Manual transmission models use the clutch to disengage the transmission. The application of the clutch allows the engine to be safely started in gear. In some instances, for example, if an engine would stall while the ATV is facing down hill, it would be very difficult for a rider to unload the drive train sufficiently to allow the transmission to be shifted into neutral to restart the engine.

E. CPSC's Proposed Standard Should Be Revised To Include A "Transitional" Category Of ATVs Appropriate For 14 And 15 Year-Olds And Small Adults.

A CPSC staff analysis of fatalities involving children under 16 on four-wheel ATVs during 1999 and 2000 showed that 93 percent of the fatalities occurred on adult-size ATVs, and 86 percent involved the child driving the adult-size ATV. R. Ingle, Analysis of ATV-Related Fatality Data for CPSC Petition CP 02-4/HP 02-1 (Dec. 2, 2003). A second CPSC staff report concluded, based upon a review of data from the 2001 injury and exposure surveys, that the risk of injury for children under 16 was higher on adult-size than on non-adult-size ATVs. M. Levenson, ATV Risk Estimates for Youths (July 12, 2004). The 2005 staff briefing package on the Section 8 petition found that for ATV-owning households the risk of injury to operators under 16 on adult-size ATVs as roughly twice the risk for child operators on youth models. J.

Elder & E. Leland, CP-02-4/HP-02-01: Petition Requesting Ban of All-Terrain Vehicles Sold for Use by Children Under 16 years Old at 2, 13 (Feb. 2005).

The ATV Companies share the goal of the Commission and many other interested parties and groups in reducing the number of children under 16 who operate adult-size ATVs. To promote this goal, the evidence collected by CPSC during the recent ATV public forums, coupled with the information and original research compiled and analyzed by ASE, indisputably show that the current Y-12 "one size fits all" approach is not working and that parents and children need a greater range of model choices and options.

The ATV Companies accordingly requested ASE to consider youth model ATV issues raised by the ANPR, including the possibility of a developing a category for a transitional ATV geared to older and larger children and/or small adults. Initial research by ASE in 2005 found that the concept of a transitional ATV is widely supported by groups experienced in promoting youth development and ATV safety. ASE Report (attached as Appendix H) at 7 (citation omitted). Moreover, in his comments to the NPR, Commission Moore observed that:

We must find the right mixture of size, weight, speed and other factors relative to the maximum size of the children who will be riding them, to make them attractive enough for youths (and their parents) to choose over their more dangerous adult counterparts.

Statement of Commissioner Thomas Moore, at 6 (July 12, 2006).

ASE found that a transitional category of ATV is also well founded from a human factors perspective. Id. The relevant human factors research shows that, from a variety of human performance and child development perspectives, many 14 and 15 year olds have characteristics (e.g., strength, reach, stature, agility, balance, cognitive skills, etc.) that are either basically the same as many young adults or more similar to young adults than to younger children. Id. The

research further indicates that many 14 and 15 year olds perform either basically the same as many older children/young adults or more similar to this group than to younger children. Id.

In addition, ASE has identified numerous factors that may contribute to the prevalence of 14 to 15 year olds riding adult-size ATVs under the current CPSC-sanctioned youth model regime. These factors include:

- The size of many 14 and 15 year olds is closer to that of older siblings and adults than to many children under 14.
- In addition to larger physical size at the time of ATV purchase, many children, especially boys, will be growing rapidly around ages 14 and 15.
- Age is not expected to be the definitive factor in assessing a 14 to 15 year old's readiness to engage in numerous other activities.
- The experience of 14 to 15 year olds operating other vehicles may provide converging evidence to some parents that their child is reasonably suited to something other than a Y-12 model.
- The current Y-12 category (originally mandated under the Consent Decrees and required under the voluntary Action Plans) may be socially unattractive to larger 14 and 15 year olds.
- The reduced power in current Y-12 ATVs may be considered too low for larger 14 and 15 year olds.
- Options for child operation of ATVs are very limited compared to options available for off-road motorcycles.
- An increasing number of offerings from "new entrant" manufacturers/sellers that do not follow the CPSC-sanctioned Y-12 category demonstrates a market interest in an expanded offering of youth ATV options.

ASE Report at 7-10.

Based on this initial information, ASE conducted additional analyses to help develop, in conjunction with the SVIA TAP, an effective youth ATV categorization system, including recommended speeds and age ranges for youth model ATVs for ages 6 through 16. As detailed in the ASE Report, ASE conducted extensive analyses of: (1) norms for speeds of products as

they relate to child age or development and (2) various aspects of child development relevant to development of a transitional category of ATV and its implications for the youth categorization system. Id. at 13-27.

ASE also conducted original research to assess the relative merits of the NPR and ANSI/SVIA youth model categorization schemes. As previously shown, the NPR eliminates engine displacement limits, essentially breaks the existing Y-6 category into two categories (Junior and Pre-teen), removes speed adjustments, and creates a lower speed limit for ATVs recommended for children aged 6-8. The NPR does not introduce a transitional model. In contrast to the NPR, the draft ANSI/SVIA revised standard introduces a new model intended to be attractive to 14 and 15 year olds as well as older children and many adults.

ASE found that parents preferred the ANSI/SVIA system to the NPR system. Indeed, when participants considered ATV purchases for use by their family, including a child age 12-15 as well as older children and adults, their initial preference was almost three (3) times more likely to be from the SVIA system than the NPR system. Participants likewise preferred the SVIA system when buying for households with a child age 12 to 15 and/or when considering buying for their own households. Equally important, youth participants in the survey were significantly more willing to consider selecting the SVIA transitional model than the NPR Teen model. These youth participants' expressed preferences for ATV speeds also support an expectation that the SVIA transitional model would be more attractive to them than the NPR Teen model. Id. at 30-64, 78-79. As summarized by ASE:

Collectively, these results indicate that the SVIA categorization system is superior to the proposed NPR categorization system with respect to [the] NPR's goal of increasing the likelihood of children under 16 operating age appropriate vehicles and reducing the likelihood of their operating adult size ATVs.

Id. at 79.

Finally, in addition to increasing the likelihood of moving children under 16 off of larger, heavier, and faster adult-size ATVs and on to smaller, lighter, speed-restricted models, ASE observed that the addition of the transitional category ATV in the revised ANSI/SVIA standard would allow for a system of warnings and instructions that would address intended use by children age 14 and older and adults. These materials would be (1) provided in various modes/media (*e.g.*, point-of-purchase, on-product, accompanying literature, etc.); and (2) targeted to various audiences (*e.g.*, parents, dealers, and youth). *Id.* at 10.

Based upon ASE's work, the SVIA TAP included a transitional category of ATVs for larger children 14 and 15 year olds and small adults in the proposed revisions to the ANSI/SVIA standard that are currently being canvassed.

In contrast, the NPR does not introduce a transitional model. The NPR instead eliminates engine displacement limits, essentially breaks the existing Y-6 category into two categories (Junior and Pre-teen), removes speed adjustments, and creates a lower speed limit for ATVs recommended for children ages 6-8. It fails, however, to introduce a new model intended to be attractive to 14 and 15 year olds as well as older children and many adults, with maximum speed limits and options for parents and guardians to use based on their assessments of the skills, abilities, and judgment of their children.

As previously shown, ASE found that parents and youth significantly preferred the ANSI/SVIA system to the NPR system. *Id.* at 30-64, 78-79. ASE's findings demonstrate that "the SVIA categorization system is superior to the proposed NPR categorization system with respect to [the] NPR's goal of increasing the likelihood of children under 16 operating age appropriate vehicles and reducing the likelihood of their operating adult size ATVs." *Id.* at 79.

Accordingly, the NPR should be revised to include a transitional category of ATVs appropriate for 14 and 15 year olds and small adults, as provided for in the revised ANSI/SVIA standard.

F. The Proposed Ban On New Three-Wheel ATVs Fails To Satisfy The Governing Statutory Criteria.

Each of the major ATV Companies has committed under its Action Plan not to sell or market three-wheel ATVs, even though no product or design defect in three-wheel ATVs has ever been found. As shown below, while the companies do not intend to manufacture or sell three-wheel ATVs, CPSC has not established any lawful basis to ban such future products under the CPSA or FHSA. The proposed ban would also be bad policy, since it would stifle potential product innovation based essentially on the mere fact that a motorized off-road vehicle has three wheels.

1. There is No Clear Evidence of Distribution of Three-Wheel Adult ATVs.

In order to issue the proposed ban on new three-wheel adult ATVs, CPSC must first demonstrate that they are being, or will be, distributed in the United States. 15 U.S.C. § 2057(1). The NPR references a memorandum from the CPSC Office of Compliance as the only evidence to satisfy this requirement. The memorandum first acknowledges that the ATV Companies, as well as two other U.S. distributors, have all agreed in their Action Plans not to offer three-wheel ATVs for sale in the United States and implicitly recognizes that none of these companies are, or will be distributing such vehicles. See T. Topka, Three-Wheeled All-Terrain Vehicles, at 1 (May 22, 2006). However, the memorandum goes on to assert that other manufacturers are offering three-wheel ATVs for sale within the United States. It contends that there are two types of such

vehicles being advertised, one as a “three-wheeled ATV” and the other as a “three-wheeled all-terrain golf scooter.” Id.

The memorandum describes the “three-wheeled ATV” model as “a cross between a ‘traditional’ ATV and a dirt bike.” Despite the fact that dirt bike tires typically are not low pressure (*i.e.*, less than 10 psi), the memorandum asserts that this vehicle meets the definition of ATV in the ANSI voluntary standard, except for having three-wheels instead of four. The memorandum goes on to state that three importers have been identified who sold this product in the past six months using the internet. However, the memorandum then states that the products being sold have a 49 cc engine displacement, which indicates that they are not adult model vehicles.

With respect to the “all-terrain three-wheeled golf scooter,” the memorandum identifies two styles of this model being sold on the internet and at golf supply stores. One style is said to resemble a traditional ATV, except that the third wheel is in the rear. The memorandum states that the staff has identified one importer of this product which is being marketed as “an all-terrain golf scooter” rather than an ATV. In addition, the memorandum notes that the vehicle being marketed has a 49 cc engine displacement, here again indicating that it is not an adult-size ATV.

The second style of this vehicle is electric powered, and is described as being marketed as an “all-terrain three-wheeled vehicle resembling a scooter.” The memorandum failed to provide photographs or other specifications for any of the vehicles identified, nor does it identify the purported importers of these products.

This vague and conclusory information provides little evidence that adult-size three-wheel ATVs are, or will be, distributed to any meaningful degree in the United States. Without

exception, the ban regulations that CPSC has previously issued under Section 8 addressed products which were being distributed in substantial numbers in the United States and causing substantial risk of injury. In this case, CPSC is proposing to ban a product which has not been distributed in the United States for almost 20 years pursuant to settlement of the original Department of Justice/CPSC Section 12 lawsuit against the distributors that was embodied in the final Consent Decrees and has been continued under commitments in their approved Action Plans. In essence, CPSC is now proposing to undo the settlement of this issue in order to address what can only be described as a hypothetical threat that new three-wheel ATVs will reappear in the U.S. market as anything other than individual curiosities.

2. There is Contradictory Agency Evidence Whether Three-Wheel ATVs Present a Disproportionate Risk of Injury.

The second legal requirement CPSC must meet to issue its proposed ban regulation under Section 8 of the CPSA is to demonstrate that new three-wheel adult ATVs would present an unreasonable risk of injury. 15 U.S.C. § 2057(1). The Commission is also required under Section 9 of the Act to show that the rule banning three-wheel adult ATVs is reasonably necessary to reduce an unreasonable risk of injury. *Id.* § 2058(f)(3)(A). Both of these findings must be supported by “substantial evidence on the record taken as a whole.” *Id.* § 2060(c). In determining whether the administrative record contains the required substantial evidence supporting the rule, both facts which detract from the agency position as well as those which support it are to be considered. *Aqua Slide “N” Dive*, 569 F.2d at 838.

In order to ban three-wheel child-size ATVs, CPSC must similarly demonstrate that three-wheel ATVs present a mechanical hazard to children because they present an unreasonable risk of personal injury during use. 15 U.S.C. § 1261(f)(1)(d), (s).

As previously noted, the ATV distributors denied the government's allegations in the Section 12 complaint that three-wheel ATVs presented an unreasonable risk and noted they would have contested this issue at trial. Instead, they agreed, for purposes of settlement, to stop distributing these products until such time as they were covered by a product safety standard acceptable to CPSC. Moreover, in approving the Consent Decrees, the federal district court noted that the government's prospects in the litigation were "uncertain" because there were "both factual and novel legal obstacles to overcome." United States v. American Honda Motor Co., Civ. No. 87-3525 (D.D.C. Apr. 28, 1988). Reopening the nearly 20-year-old settlement on this contested issue of whether three-wheel ATVs present an unreasonable risk of injury in the current circumstances represents a clear waste of Commission and industry resources.

The NPR seeks to make the required demonstration by pointing to a CPSC staff analysis which found that the risk of injury on a three-wheel ATV was three times the risk on a similar four-wheel ATV based upon 1997 injury and exposure surveys. G. Rodgers & P. Adler, Risk Factors for All-terrain Vehicle Injuries: A National Case-Control Study, American Journal of Epidemiology, Vol. 153, No. 11 (2001). However, a later CPSC staff analysis found no such disproportionate risk of injury with three-wheel ATVs as compared to similar four-wheel ATVs. M. Levenson, All-Terrain Vehicles 2001 Injury and Exposure Studies, at 20 (Jan. 2003) and Table 11. A copy of this report, which is based on more current data in the form of 2001 CPSC injury and exposure surveys, is attached at Appendix J. Curiously, the NPR failed to reference or even acknowledge this subsequent CPSC staff analysis, despite the fact that it is based on more recent data and reaches a contrary conclusion.

The rulemaking record therefore now contains two CPSC staff analyses. One of these reports purported to find disproportionate risk of injury from three-wheel ATVs as compared to

four-wheel ATVs. The other CPSC staff analysis, which is based on more recent data, did not find such disproportionate risk of injury from three-wheel ATVs. Neither of the reports differentiates between adult and child-size three-wheel ATVs for purposes of risk analysis. Thus, the agency's own evidence in the rulemaking record on this point is contradictory as to whether either adult or child-size three-wheel ATVs present a disproportionate and unreasonable risk of injury. In addition, this clearly does not constitute the "substantial evidence on the record taken as a whole" that is necessary to ban new three-wheel adult ATVs. CPSC therefore cannot move forward with its proposed bans of new three-wheel adult and child-size ATVs, and the proposals should be withdrawn.

3. CPSC's Presumption That No Feasible Standard Could be Developed for Three-Wheel Adult ATVs is Unsupported and Erroneous.

Finally, to issue its proposed ban regulation under Sections 8 and 9 of the CPSA, CPSC must further show that no feasible consumer product safety standard under the CPSA would adequately protect the public from the unreasonably risk of injury associated with new three-wheel adult ATVs. 15 U.S.C. §§ 2057(2), 2058(f)(3)(C). This finding must also be supported by substantial evidence on the record taken as a whole. *Id.* § 2060(c).

On this point, the NPR simply offers the conclusory statement that "it seems unlikely that any feasible standard could be developed for three-wheeled ATVs." 71 Fed. Reg. at 45,915. Based on what it terms the "inherent difference" in vehicle configuration of three wheels versus four, the Commission stated that it "does not believe that it is feasible to develop a performance standard for three-wheeled ATVs that would improve their stability performance to a level of a four-wheeled ATV." *Id.*

As CPSC noted in approving the original ANSI/SVIA standard for four-wheel ATVs, the ongoing agreements between the ATV Companies and the Commission ensure that current and

future four-wheel ATVs have a static lateral stability coefficient ("Kst"), as calculated by the method developed by CPSC, of 0.89 or greater. 54 Fed. Reg. at 1408. (In making these agreements, the ATV Companies explicitly denied that there were any accident data showing a connection between Kst values and risk of ATV-related injury. Id.)

It is possible to hypothesize a future three-wheel ATV with dimensions for length, track width, height, weight, and center of gravity location that would equate to a static lateral stability coefficient -- or Kst -- of 0.89. For example, a future concept three-wheel ATV with a length (wheelbase) of 40 inches, a track width of 40 inches, a weight of 300 lbs, an overall height (top of handlebars) of 36 inches, a seat height of 25 inches, and a center of gravity located 14 inches high and 18 inches forward of the rear axle would have a Kst of 0.89, the minimum allowed for four-wheel ATVs under the continuing agreements with the ATV Companies. It thus would appear feasible, at least preliminarily, to develop a standard for future three-wheel ATVs which would ensure minimum static lateral stability for any such vehicle that would be equivalent to the minimum static lateral stability allowed for current and future four-wheel ATVs.

The NPR presents no data or evidence to show that it would not be feasible to develop such a standard that would require future three-wheel ATVs to have a static lateral stability coefficient of 0.89 or greater. This would clearly involve new designs for such vehicles, and correspondingly new or different uses. It could also involve trade-offs in utility. However, the NPR simply expresses the unsupported opinion that it could not be done, without even acknowledging -- much less analyzing -- this apparent possibility.

CPSC has therefore failed to make the required finding, supported by substantial evidence in the record, that it is not possible to develop a feasible consumer product safety performance standard that would provide for the same lateral stability for new three-wheel adult

ATVs as for current four-wheel ATVs. CPSC should accordingly withdraw its proposed rule to ban new three-wheel adult sized ATVs.

G. The Commission's Additional Instructions To CPSC Staff Are Misguided; Focus Should Not Be On Making Youth Models Which Have Lower Injury Risk for Children Under 16 "Safer," But On Getting Increased Numbers Of Children To Ride Viable Youth Or Transitional Models Instead Of Larger, Faster Adult ATVs.

The NPR includes a listing of eight additional instructions to the CPSC staff with regard to issues relating to youth ATVs upon which it invites public comments. See 71 Fed. Reg. at 45,929. The issues and potential tasks raised for comment include the following:

- Analyzing in-depth investigations and other injury reports regarding children to determine what factors contributed to the incidents and whether changes could be made to the operational/handling characteristics of youth ATVs that would reduce injuries;
- Testing current youth models against one another to determine if some are more stable or less incident prone than others;
- Determining whether making certain youth models less rider interactive could reduce injuries;
- Exploring the feasibility of providing guidance to purchasers on the appropriate weight of youth model ATVs in relation to the weight of the rider;
- Researching whether the top speed of 30 miles an hour for youth model ATVs is excessive and whether reducing the speed would reduce injuries on those vehicles;
- Determining how ATV training for children in different age groups should be structured to maximize their ability to learn safety information and riding skills (should a separate ATV training course for children be developed?);
- Determining whether tandem youth ATVs are appropriate; and
- Analyzing CPSC data to determine the desirability of illumination of youth ATVs in both daytime and nighttime situations to reduce injuries.

These instructions to the CPSC staff are misguided and the issues raised are tangential to the main goal of getting more children under 16 not to ride adult-size ATVs. The key underlining fact is CPSC's finding, presented on the same page of the NPR, that the risk of

injury for children under 16 is *twice* as high when driving adult ATVs as compared to youth model ATVs. Id. The essential task therefore is not to try to improve the safety of youth model ATVs, but instead to persuade more children under 16 to ride youth model ATVs rather than larger, heavier and non-speed limited adult-size ATVs, where their risk of injury is twice as high.

This task has been the focus of the SVIA TAP, working with ASE, in the current effort to revise the ANSI/SVIA voluntary standard. After extensive research, data collection and analysis, ASE found that the SVIA TAP's proposed categorization system, which includes the new transitional model category, must be preferred over the system proposed in the NPR based upon greater consumer acceptance of non-adult size ATVs for youth, enhanced credibility of ATV safety messages, increased access to ATV training on age-appropriate ATVs, and, perhaps most importantly, overall likelihood of children under 16 operating age-appropriate vehicles rather than adult-size ATVs that are too large for them and have no speed limitations.

Given that youth model ATVs present only half the risk of injury for children under 16 as operating adult-size ATVs, the first two tasks identified in the NPR are simply illogical. Rather than trying to suggest changes in operational handling for youth ATVs to reduce injuries to children under 16, the CPSC staff should join in the SVIA's effort to develop feasible new youth and transitional models that children under 16 will ride in greater numbers, as opposed to adult-size models where their injury risk is concededly *doubled*.

The third and fifth tasks, *i.e.*, to explore making youth models less rider-active and consider reducing the maximum unrestricted speed, would, based upon the findings of the ASE report, have the perverse affect of making youth models less attractive to children under 16, thereby pushing even more of them on to adult-size models, again where their risk of injury is twice as high.

The fourth task, *i.e.*, exploring possible guidance regarding the appropriate weight of youth model ATVs in relation to the weight of the rider, is a factor which will be explored over the next four years during the period when new non-engine size limited youth models are developed. That research and development process is a more appropriate venue for this issue to be explored.

With respect to the sixth task, *i.e.*, considering developing a separate training program for children, the more important task is to allow more children to take the available and well-reviewed ASI ATV training course on age-appropriate models.

The eighth task, *i.e.*, trying to determine the desirability of illumination on youth ATVs based upon injury data, intrudes into an area left optional under the proposed revisions to the ANSI/SVIA standard, and seems both misdirected and premature. The SVIA TAP recognized that illumination on youth model ATVs could have potential benefits and risks, but finding no data pointing either way, left it optional with manufactures and purchasers whether to choose youth models which provide illumination. This will allow a period of research and development regarding illumination on youth model ATVs, as well as a period for feasibility factors and market preferences to evolve and become known.

Finally, the seventh instruction, *i.e.*, determining whether tandem youth ATVs are appropriate, is unnecessary. Neither the ATV Companies -- nor any new entrants of which they are aware -- are suggesting the appropriateness of such vehicles.

VI. CONCLUSION

For the foregoing reasons, CPSC should withdraw for its current proposals and issue a revised NPR limited to proposing the provisions of the revised ANSI/SVIA standard that will be forthcoming from the ANSI canvass process, as well as a requirement that distributors offer free hands-on training to purchasers and age-appropriate immediate family members, as a mandatory consumer product safety standard for all new ATVs distributed in the United States.

Respectfully submitted,

Michael A. Brown

Michael A. Brown
BROWN & GIDDING, P.C.
3201 New Mexico Avenue, N.W.
Suite 242
Washington, D.C. 20016

Counsel for American Honda Motor Co., Inc.

David P. Murray

David P. Murray
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006

*Counsel for Yamaha Motor Corporation,
U.S.A.*

Michael A. Wiegard

Michael A. Wiegard
ECKERT SEAMANS CHERIN & MELLOTT
1747 Pennsylvania Avenue, N.W.
Suite 1200
Washington, D.C. 20006-4604

Counsel for Kawasaki Motors Corp., U.S.A.

John B. Walsh

John B. Walsh
AMERICAN SUZUKI MOTOR
CORPORATION
3251 Imperial Highway
Brea, CA 92821

*Counsel for American Suzuki Motor
Corporation*

Yves St. Arnaud

Yves St. Arnaud
BOMBARDIER RECREATIONAL
PRODUCTS
1061 Parent Street
Saint-Bruno, Quebec J3V 6P1
Canada

*Counsel for Bombardier Recreational
Products Inc.*

Mary McConnell

Mary McConnell
POLARIS INDUSTRIES INC.
2100 Highway 55
Medina, MN 55340-9770

Counsel for Polaris Industries Inc.

Instructor Guide

Student Performance Evaluation Form

A *Student Performance Evaluation Form* (SPEF) is to be completed for each class conducted. The form is used to record each student's progress throughout the course. A check box would be marked if, based on the Instructor's total experience, he/she feels additional practice is recommended for that exercise.

Upon completion of all lessons, the Instructor presents each student their SPEF card.

The following items are included on the SPEF (Figure 2.8D):

On a card for each student (front):

- ① Rider's Name
- ② Rider Number, if assigned during class
- ③ Check appropriate boxes where additional practice is recommended

On a card for each student (back):

- ④ Print the Student's Name
- ⑤ Enter Date of training
- ⑥ Instructor Signature
- ⑦ Instructor License Number

Figure 2.8D — Student Performance Evaluation Form

STUDENT PERFORMANCE EVALUATION FORM

Rider's Name 1 No. 2

Additional Practice Recommended for:

- 2. Thru Signals, Rules and Warm-Up Exercises
- 3. Controls / Starting the Engine
- 4. Starting Out, Shifting Gears, and Braking
- 5. Turning
- 6. Riding Strategies
- 7. Riding Circles and Figure 8
- 8. Quicker Turns
- 9. Sharp Turns
- 10. Quick Stops / Swerve
- 11. Quick Stop in a Turn
- 12. Riding over Obstacles
- 13. Safe and Responsible Riding Practices
- 14. U-Turns / Traversing Hills
- 15. Circuit or Trail Ride



A Division of the Specialty Vehicle Institute of America

4

has completed the
ATV RiderCourse

5 _____, 20__

conducted by

6 _____ 7

INSTRUCTOR LICENSE #

The ATV RiderCourse is only a brief introduction to ATV riding. You should practice ALL exercises to improve your skills. Exercises that need even more practice are checked on the reverse side.

3



has completed the
ATV RiderCourse™

_____ 20 _____

conducted by

INSTRUCTOR _____ LICENSE # _____

The ATV RiderCourse is only a brief introduction to ATV riding. You should practice ALL exercises to improve your skills. Exercises that need even more practice are checked on the reverse side.

Rider's Name _____

No. _____

Additional practice recommended for:

- 2. Range Signals, Rules and Warm-Up Exercises
- 3. Controls / Starting the Engine
- 4. Starting Out, Shifting Gears, and Braking
- 5. Turning
- 6. Riding Strategies
- 7. Riding Circles and Figure 8
- 8. Quicker Turns
- 9. Sharp Turns
- 10. Quick Stops / Swerve
- 11. Quick Stops in a Turn
- 12. Riding over Obstacles
- 13. Safe and Responsible Riding Practices
- 14. U-Turns / Traversing Hills
- 15. Circuit or Trail Ride

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	EXECUTIVE SUMMARY	1
III.	BACKGROUND	5
IV.	RISK OF INJURY	5
V.	DISCUSSION	8
A.	All ATVs Distributed In The United States Should Comply With The ANSI/SVIA Standard And Provide Action Plan Safety Information And Program	8
B.	ATVs That Comply With The ANSI/SVIA Standard And Provide Action Plan Safety Information And Programs Do Not Present An Unreasonable Risk Of Injury	11
C.	CPSC Has Not Shown That Its Proposed Changes To The ANSI/SVIA Standard And Action Plan Provisions Are Necessary To, Or Would, Reduce Unreasonable Risks Of ATV-Related Injuries	17
1.	Proposed Different or Additional Requirements for Single Rider Adult ATVs.....	19
a.	Stop Lamp.....	19
b.	Spark Arrester Qualification.....	20
c.	ATV VIN Sequence.....	20
d.	Service Brake Performance Test	20
e.	Pitch Stability Test	22
f.	Optional Tilt Table Test Method	22
g.	General Warning Label	23
h.	Age Recommendation Label	23
i.	Passenger Warning Label	25
j.	Retailer Requirements	27
k.	Owner's Manual	28

l.	Safety Video.....	29
m.	Free Training.....	30
n.	Location of Certification Statement.....	31
o.	Compliance Testing	31
p.	Record Maintenance	32
q.	Age Acknowledgment Form	32
r.	Training Acknowledgment Form	34
2.	Requirements for Tandem ATVs.....	35
3.	Requirements for Youth ATVs.....	35
a.	Categories of Youth ATVs	35
b.	Automatic Transmission	36
c.	Lighting	37
d.	Maximum Speed Capability	38
e.	Age Acknowledgment Form	40
f.	Other Issues	41
D.	The NPR Fails To Include Important Elements Of The ANSI/SVIA Standard	41
1.	Standardized Basic Controls	41
a.	Service Brake Requirements.....	42
b.	Engine Stop Switch.....	42
c.	Manual Clutch Control	42
d.	Throttle Control	42
e.	PTO or Other Device	43
2.	Parking Mechanism	43
3.	Tire Marking.....	43

4.	Parking Brake Performance Test	43
5.	Omitted Exceptions.....	44
E.	CPSC’s Proposed Standard Should Be Revised To Include A “Transitional” Category Of ATVs Appropriate For 14 And 15 Year-Olds And Small Adults.....	44
F.	The Proposed Ban on New Three-Wheel ATVs Fails To Satisfy The Governing Statutory Criteria.....	49
1.	There is No Clear Evidence of Distribution of Three-Wheel Adult ATVs.....	49
2.	There is Contradictory Agency Evidence Whether Three-Wheel ATVs Present a Disproportionate Risk of Injury.....	51
3.	CPSC’s Presumption That No Feasible Standard Could be Developed for Three-Wheel Adult ATVs is Unsupported and Erroneous	53
G.	The Commission’s Additional Instructions To CPSC Staff Are Misguided; Focus Should Not Be On Making Youth Models Which Have Lower Injury Risk For Children Under 16 “Safer,” But On Getting Increased Numbers Of Children To Ride Viable Youth Or Transitional Models Instead Of Larger, Faster Adult ATVs	55
VI.	CONCLUSION	58
APPENDIX A - HISTORICAL AND LEGAL BACKGROUND		
A.	Consent Decrees.....	1
B.	ANSI/SVIA Voluntary Standard	3
C.	Termination Of Previous Rulemaking.....	5
D.	ATV Safety Action Plans.....	7
1.	Age Recommendations	8
2.	Dealer Sales Directives and Undercover Monitoring Programs.....	9
3.	ATV Labels and Hang Tags	10
4.	Owner’s Manuals	10
5.	Safety Alerts.....	10

6.	Safety Videos	10
7.	Advertising.....	11
8.	Training.....	11
9.	ATV Hotline	11
10.	Three-Wheel ATVs.....	12
11.	Voluntary Standards.....	12
E.	Denial Of Section 8 Petition	12
F.	Chairman’s Memorandum And 2005 ANPR.....	15
G.	State ATV Legislation	17

APPENDIX B - REVISION OF ANSI/SVIA-1-2001 STANDARD

1.	Scope.....	2
2.	Definitions	2
3.	Passenger Handholds	3
4.	Foot Environment	3
5.	Lighting Equipment.....	4
6.	Owner’s Manual/Operator’s Manual	4
7.	Labels.....	5
8.	Hang Tags.....	6
9.	Category Y and T ATV Speed Capability Requirements.....	7
10.	Certification Label	9
11.	Status of the ANSI Canvass.....	9

APPENDIX C - STATUTORY REQUIREMENTS

A.	Statutory Authority For CPSC Rulemaking	1
1.	CPSC.....	1
2.	FHSA	3

B.	Statutory Authority For Banning Adult Three-Wheel ATVs	4
APPENDIX D - SAFETY ISSUES PRESENTED BY NEW ENTRANTS		
APPENDIX E	- December 15, 2006 Analysis of CPSC 2005 Annual ATV Report by Heiden Associates	
APPENDIX F	- December 8, 2005 Comments on the CPSC ANPR on ATV Safety by Heiden Associates	
APPENDIX G	- Testimony of E. Leland before the Subcommittee on Consumer Affairs, Product Safety and Insurance of the Senate Committee on Commerce, Science and Transportation, June 6, 2006	
APPENDIX H	- ASE, <u>Response to ATV Labeling and Categorization Provisions in U.S. CPSC Notice of Proposed Rule Making (Dec. 12, 2006)</u>	
APPENDIX I	- ATV Safety Alert and New Purchaser ATV Rider Training Certificate	
APPENDIX J	- M. Levenson, All-Terrain Vehicles 2001 Injury and Exposure Studies (Jan. 2003)	
APPENDIX K	- ANSI/SVIA-1-2001 Four-Wheel All-Terrain Vehicles - Equipment, Configuration and Performance	
APPENDIX L	- ANSI/SVIA Standard Canvass Draft sent September 29, 2006	
APPENDIX M	- Marchica and Deppa Study	

I. INTRODUCTION

The six major distributors of all terrain vehicles (“ATVs”) appreciate the opportunity to comment on the U.S. Consumer Product Safety Commission’s (“CPSC” or the “Commission”) notice of proposed rulemaking (“NPR”) to establish mandatory standards for ATVs and to ban the future distribution of three-wheeled ATVs. 71 Fed. Reg. 45,904 (Aug. 10, 2006).

Specifically, these joint comments are submitted on behalf of American Honda Motor Co., Inc.; American Suzuki Motor Corporation; Bombardier Recreational Products Inc.; Kawasaki Motors Corp., U.S.A.; Polaris Industries Inc.; and Yamaha Motor Corporation, U.S.A. (the “ATV Companies”).

II. EXECUTIVE SUMMARY

Over the past eighteen years, in cooperation with the Commission, the ATV Companies have taken unprecedented actions as private companies to promote the safe and responsible use of their products, including adoption of the ANSI/SVIA standard and implementation of the Action Plans, both of which CPSC has previously approved. The ATV Companies believe that their adherence to the ANSI/SVIA-1-2001 standard and implementation of the Action Plans have been effective in addressing the issue of ATV safety. The rate of ATV-related injuries is lower now than when the Consent Decrees expired in 1998, and in fact declined 9 percent from 2004 to 2005. The ATV-related fatality rate in 2004 stood at 1.1 per 10,000 four-wheel ATVs in use, as compared to 1.4 per 10,000 ATVs in 1999. The injury rate has been falling since 2001 and in 2005 was little more than half the level experienced in 1986 before the Consent Decrees were adopted. In fact, the 2005 injury rate approximates the injury rate at the time the original ATV ANPR was terminated in 1991, based on the determination that CPSC could not find that four-wheel ATVs presented an “unreasonable risk.” The recently released 2005 CPSC injury and

fatality report also shows that the total number of estimated ATV-related injuries to children under 16 declined 10 percent last year.

In addition, the ATV Companies, through SVIA, are moving to adopt revisions to the ANSI/SVIA standard which will incorporate key elements of the approved Action Plans. They are also continuing to support state enactment of comprehensive legislation regulating ATV use. Such state legislation represents the most promising approach to reducing ATV injuries and fatalities, which -- as shown by CPSC data -- result primarily from warned-against behaviors.

The ATV Companies are very concerned, however, that the established standards and safety programs and the progress already made are being undermined by an ever increasing number of ATVs from new entrants to the U.S. market who do not comply with the ANSI/SVIA standard or provide the important safety programs specified in the ATV Action Plans, including free hands-on training. It is also clear that many -- if not most -- new entrants to the U.S. ATV market will not comply with the provisions set forth in the ANSI/SVIA standard and specified in the Action Plans unless and until these provisions become mandatory.

The ATV Companies therefore urge CPSC to take regulatory action under Sections 7 and 9 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. §§ 2056, 2058, and Sections 2(s) and 3(e) of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. §§ 1261(s), 1262(e), to issue mandatory consumer product safety standards for all ATVs distributed in the United States that incorporate the provisions of the forthcoming revised ANSI/SVIA standard and require all ATV distributors to offer free hands-on training.

The NPR largely tracks the provisions of the ANSI/SVIA-1-2001 standard and the approved Action Plans. This reflects the Commission's determination in 1991 that ATVs that complied with these requirements do not present an unreasonable risk of injury. On the other

hand, CPSC has provided no meaningful basis or justification for the other elements of the NPR which differ from, or go beyond, the ANSI/SVIA standard (including the pending proposed revisions) and the remaining elements of the Action Plans. Under the law, and particularly given its prior determination, the Commission must show that these different or additional elements of the NPR address specifically identified and validated unreasonable risks of injury presented by ATVs that comply with the approved standard and are covered by approved Action Plans. It must also show that their adoption as mandatory requirements will result in measurable reductions of ATV-related injuries or fatalities. With respect to the different or additional requirements for adult and tandem ATVs, these findings must also be supported by substantial evidence on the record taken as a whole.

In fact, the best that the NPR can say about many of these different and additional proposed requirements is that they “may” reduce ATV-related injuries. The various speculative assumptions, staff opinions and inferences put forward in the NPR to support these proposed differential and additional requirements are simply “not the stuff of which substantial evidence is made.” Aqua Slide “N” Dive Corp. v. CPSC, 569 F.2d 831, 843 (5th Cir. 1978). Indeed, many of these different or additional requirements could have unintended adverse effects on ATV safety. The NPR thus presents no evidence, much less substantial evidence, that each of these different and additional requirements is reasonably necessary to reduce an unreasonable risk of ATV-related injury.

In addition, CPSC has failed to demonstrate that its proposed ban on new three-wheel ATVs satisfies the governing statutory requirements and criteria. CPSC’s purported evidence that three-wheel adult-size ATVs are being distributed, or are likely to be distributed, in the United States is unquestionably deficient. The “golf scooters” and hybrid vehicles mixing a

front wheel trail bike design with rear wheel ATV designs referenced in the NPR do not meet the governing definition of ATV. Moreover, the NPR itself acknowledges that all the hybrid vehicles and one of the two "golf scooters" were 49 cc models, which simply do not equate to adult-size ATVs. 71 Fed. Reg. at 45,914. CPSC has neither demonstrated nor confirmed that the presence of these vehicles on websites of manufacturers in Asia means that they are being, or will be, purchased by U.S. distributors in any meaningful number.

CPSC's proposed finding that three-wheel ATVs present a disproportionate risk as compared to four-wheel ATVs is based upon a Commission staff report on 1997 studies that is contradicted by a different CPSC staff report on more recent 2001 studies, which the NPR fails even to mention. The rulemaking record therefore contains conflicting evidence generated by CPSC itself as to the risk presented by three-wheel ATVs, and the NPR does not meet the substantial evidence requirement to support this finding.

Finally, contrary to CPSC's unsupported presumption, it would apparently be feasible to develop a standard for future three-wheel adult ATVs which would ensure that any such vehicles would have the same minimum lateral stability -- as measured using CPSC's Kst test methodology -- as currently marketed four-wheel ATVs.

In summary, CPSC should, therefore, withdraw its current proposals and issue a revised NPR limited to proposing the provisions of the revised ANSI/SVIA standard that will be forthcoming from the ANSI canvass process, as well as a requirement that distributors offer free hands-on training to purchasers and age-appropriate immediate family members, as a mandatory consumer product safety standard for all new ATVs distributed in the United States.

III. BACKGROUND

A summary of relevant background information regarding the ATV Consent Decrees, development and approval of the original voluntary standard for four-wheel ATVs, the ATV safety Action Plans, prior CPSC regulatory decisions concerning ATVs, and recent developments with respect to state ATV legislation is attached as Appendix A. A separate summary of revisions in the current ANSI/SVIA-1-2001 voluntary standard which are under consideration is attached as Appendix B. A summary of the statutory authorities which govern this proposed rulemaking is attached as Appendix C. A summary of safety issues raised by ATVs distributed by new entrants to the market is attached as Appendix D. All of the foregoing appendices are incorporated by reference in this section of these comments.

IV. RISK OF INJURY

CPSC recently released its 2005 annual update of ATV-related deaths and injuries. R. Ingle, 2005 Annual Report of ATV Deaths and Injuries (Nov. 2006) (the "2005 Annual Update"). The 2005 Annual Update estimates that there were 130,000 four-wheel ATV injuries in 2005, virtually unchanged from the 2004 estimate of 129,400. *Id.* at Table 6. Because of the continuing increase in the number of four-wheel ATVs in use, however, the report further indicates that the risk of injury fell from 187.9 per 10,000 ATVs in use in 2004 to 171.5 per 10,000 vehicles in use in 2005. *Id.* An analysis prepared by Dr. Edward Heiden of the data presented in the 2005 Annual Update points out that this represents a 9 percent decline in the injury rate since 2004. E. Heiden, Analysis of CPSC 2005 Annual ATV Report, at 2 (Dec. 15, 2006) (the "Heiden 2005 Analysis"). A copy of the Heiden 2005 Analysis is attached at Appendix E.

The Heiden 2005 Analysis points out that the risk of four-wheel ATV-related injury declined for the fourth consecutive year from 200.9 injuries per 10,000 four-wheel ATVs in 2001 to 171.5 per 10,000 ATVs in 2005 -- a decline which has essentially reached a *statistically significant decline in risk*. Id. This also represents the lowest level of ATV injury risk for any year since 1998 (when the Consent Decrees expired). Moreover, this rate is little more than half the pre-Consent Decree level of 319.2 in 1986 that caused the Commission to take action in 1987.

In addition, the CPSC Annual Update states that there were an estimated 40,300 four-wheel ATV injuries involving children under 16 in 2005. 2005 Annual Update at Table 5. The Heiden 2005 Analysis notes that this represents a 10 percent decrease from the 2004 estimate of 44,700 such injuries, and this decrease is statistically significant at the 93-percent confidence level. Heiden also points out that the estimated share of total ATV injuries that involve children under 16 has fallen to 30 percent in 2005, down from 33 percent in 2004 and 37 percent in 1998. Heiden 2005 Analysis at 2; 2005 Annual Update at Table 5.

As Dr. Edward Heiden notes in a separate report attached as Appendix F, the NEISS system from which the ATV injury estimates are drawn underwent a significant revision of its sample of reporting hospital emergency rooms in 1997. Appendix F at 3. This revision resulted in an unexplained larger increase in estimated injuries from 1997 to 1998 than in any year since for a number of consumer products, including ATVs. The estimated ATV injury rate in 1998, the first year that the full compliment of NEISS hospitals in the new reporting sample was available (and, coincidentally, the year the Final Consent Decrees expired), was 184.7 per 10,000 four-wheel ATVs in use, as compared to the 2005 injury rate of 171.5.

In other words, the injury rate which CPSC pledged to continue to track when it commended the ATV Companies' Action Plans and determined that further regulatory action was not warranted in 1998, is now even lower than it was at that time.

Indeed, CPSC's conclusion in terminating the initial ANPR in 1991 that then currently available evidence did not establish an unreasonable risk associated with four-wheel ATVs was based upon a 1989 injury rate of 217.8 per 10,000 four-wheel ATVs in use. The NPR offers no explanation as to how the lower 2005 injury rate of 171.5 -- which represents a statistically significant decline in risk -- can support the conclusion that there is now an unreasonable risk associated with such vehicles.

Dr. Heiden points out that there was also a significant change in the methodology for estimating ATV-related fatalities beginning in 1999 which led to greater reporting of such fatalities that occurred on public roads. Appendix F at 5. As the NPR itself acknowledges, it is therefore only appropriate to examine recent trends in ATV-related fatality rates using data collected with this current, more comprehensive statistical methodology. 71 Fed. Reg. at 45,907.

The Heiden 2005 Analysis notes that four-wheel ATV fatality risk has stayed relatively constant at between 1.0 and 1.2 per 10,000 vehicles in use for the most recent years (2000-2002) for which fatality reporting is fairly completed, as well as for the preliminary estimates for 2003 and 2004 where further late reports may occur. Heiden 2005 Analysis at 3. These levels are substantially below the level of 1.4 reported for 1999, the first year of implementation of CPSC's revised data collection methodology. An important conclusion of the Heiden analysis is that the CPSC data in the 2005 Annual Update show no real increase in ATV-related injury or fatality risk since 1998 and 1999, respectively, and that there is evidence that injury risk is in the process of declining. Id.

It is important to recognize that the great majority of ATV accidents involve behavior that is clearly and consistently warned against. Based on a review of hundreds of CPSC in-depth injury ("IDI") reports of ATV-related fatalities during 1997-2002, Dr. Heiden found that nearly 92 percent involved at least one type of warned against behavior such as failure to wear a helmet, riding on a public road, drinking alcohol, passenger carrying on a single rider vehicle, and excessive speed or using drugs. Two or more warned against behaviors were reported in more than half of the fatalities reviewed. See Appendix F at 7.

V. DISCUSSION

A. All ATVs Distributed In The United States Should Comply With the ANSI/SVIA Standard And Provide Action Plan Safety Information And Programs.

The ATV Companies believe strongly that all ATVs distributed in the United States should comply with all applicable provisions of the ANSI/SVIA standard, including, when ultimately adopted, the revisions currently being considered in the canvass process. The original ANSI/SVIA standard was reviewed and approved by CPSC in 1989. 54 Fed. Reg. 1407 (Jan. 13, 1989). When the Commission terminated the first ATV ANPR in 1991, it determined that four-wheel ATVs which met the provisions of the ANSI/SVIA standard did not present any unreasonable risk of injury. 56 Fed. Reg. 47,166, 47,170-72 (Sept. 18, 1991). All ATVs sold by the ATV Companies have complied with the ANSI/SVIA standard since it became effective in 1990, and as subsequently revised in 2001. See Testimony of E. Leland before the Subcommittee on Consumer Affairs, Product Safety and Insurance of the Senate Committee on Commerce, Science and Transportation, June 6, 2006 (relevant excerpts attached as Appendix G).

The ATV Companies also believe that all ATV distributors should provide to purchasers (and in some cases immediate family members) the safety information and programs specified in the Action Plans that have been approved by CPSC and trace their lineage from the provisions of the Consent Decrees. All ATVs distributed by the ATV Companies have come with the specified safety information (*i.e.*, point of purchase materials, labels, hang tags and owner's manuals) and programs such as free hands-on training since 1988. The belief that these are important elements of ATV safety seems consistent with the fact that the estimated risk of injury fell from 305.9 in 1987 before the Consent Decree programs began to 188.1 in 1991 when those programs had been in place for three years and the ANSI/SVIA standard had become effective.

The ATV Companies have brought to CPSC's attention on numerous occasions over the last five years information indicating that new entrants were distributing in the United States in increasing numbers ATVs that neither meet the ANSI/SVIA standard nor come with the safety information and programs specified in the approved Action Plans. SVIA has also made efforts to contact new entrants it can identify and inform them of the availability of membership in the organization and access to its nationwide hands-on training and safety information program. It has now become clear that many of these new entrants will not voluntarily ensure that the ATVs they distribute meet the ANSI/SVIA standard and will not voluntarily offer the specified safety information and programs to purchasers of their products. See Appendix G at 16-17 (Leland testimony).

Given the inability of the Commission to ensure that there will be substantial compliance with the provisions of the ANSI/SVIA voluntary standard, both in the present and in the future, reliance on the standard under Section 9(b) of the CPSA would not appear to be an effective option. The ATV Companies therefore believe that the better course of action is for the

Commission to promulgate a mandatory rule requiring compliance with the forthcoming revised ANSI/SVIA standard for all ATVs distributed in the United States.

As noted above, proposed revisions to ANSI/SVIA-1-2001 have been developed and are undergoing consideration through the canvass process. Once the revised standard is adopted, it will include virtually all of the mechanical requirements for both single rider and tandem ATVs that the NPR contains, with the exception of variations to those requirements in the NPR that -- as discussed below -- are not supported by the required substantial evidence of unreasonable risk and corresponding safety benefit. Similarly, the revised voluntary standard will incorporate the key informational provisions of the Action Plans, as well as those in the NPR, (*i.e.*, labels, hang tags and owner's manuals) with the exception of a training requirement.

To the extent that mechanical and informational provisions in the NPR depart from the requirements of the revised ANSI/SVIA standard, the ATV Companies believe that those differences are not supported by the evidence on the record and, in some instances, particularly those related to ATVs intended for use by children, may inadvertently add to the risks of injury that the rule seeks to reduce. On the other hand, the revised voluntary standard will be a consensus document whose provisions reflect over 20 years of experience with ATVs on the part of the industry and the Commission, including substantial input from the Commission staff over the years, as well as the results of extensive testing and analysis. The ATV Companies therefore believe that the Commission should delay acting until the revised ANSI/SVIA standard is formally submitted to ANSI for final review and publication (which should occur within the next 120 days). At that time, the ATV Companies recommend that the Commission should either withdraw the existing NPR and reissue it incorporating the provisions of the revised ANSI/SVIA

standard in toto without change, or revise those provisions of the NPR that differ from the revised voluntary standard to make them consistent with it.

The ATV Companies have been offering free hands-on training to new ATV purchasers and age-appropriate members of their immediate family for almost 20 years and believe that such training is a key contributor to ATV safety. However, as explained more fully below, because of antitrust concerns and other factors, a requirement to offer such training has not been included in the revised ANSI/SVIA standard. Nonetheless, the ATV Companies support inclusion in any final rule of a requirement that all distributors of ATVs in the United States offer free hands-on training, using the curriculum of the ASI Rider Course or a substantially similar curriculum, to all ATV purchasers and age-appropriate immediate family members.

B. ATVs That Comply With The ANSI/SVIA Standard And Provide Action Plan Safety Information And Programs Do Not Present An Unreasonable Risk Of Injury.

As the NPR recognizes, ATVs have substantial utility for both recreational and non-recreational activities. 71 Fed. Reg. at 45,928. ATVs are uniquely useful for agricultural activities such as farm or ranch work, as well as industrial activities, including transportation to remote work sites. They are also widely used for recreational activities, such as camping, hunting and fishing and trail riding. Their utility in security functions, such as border patrolling and other national defense activities, has become more apparent in recent years. Moreover, there are no other products which can readily or effectively substitute for ATVs in all these various uses and functions. The growing utility and popularity of ATVs is confirmed by the fact that the estimated population of four-wheel ATVs in use has more than doubled since 1999 to 7.6 million vehicles in 2005.

In 1987, just before the Consent Decrees were adopted, CPSC estimated the risk of injury in 1986 was 319.2 per 10,000 four-wheel ATVs in use. In 1991, the third year that the Consent Decrees had been in place, and the year that the mechanical requirements of the ANSI/SVIA standard became effective for newly produced ATVs, the estimated risk of injury per 10,000 four-wheel ATVs in use fell to 188.1. In that same year, the Commission withdrew its advance notice of proposed rulemaking for ATVs, finding that "currently available evidence does not establish that there is an unreasonable risk of injury associated with new four-wheel ATVs that are now being sold." 56 Fed. Reg. at 47,173.

The risk of injury was essentially the same (*i.e.*, 184.7 per 10,000 four-wheel ATVs in use) when the Consent Decrees expired in 1998. At that time, the major distributors committed in their Action Plans with CPSC to continue the Consent Decree programs regarding safety information and labeling, free hands-on training, age recommendations and dealer monitoring. In addition, the major distributors continued to distribute only vehicles which complied with the provisions and specifications of the ANSI/SVIA standard. CPSC commended the distributors for these commitments and took no regulatory action.

In 2005, after seven years' experience with the major distributors continuing to comply with the ANSI/SVIA voluntary standard requirements and specifications, and implementing the provisions of their Action Plans, the risk of injury per 10,000 four-wheel ATVs had declined to 171.5, even though the estimated number of four-wheel ATVs in use more than doubled over that period of time to 7.6 million.

An analysis of the newly-released 2005 Annual Update indicates that the injury rate per 10,000 four-wheel ATVs in use fell 9 percent from 2004 to 171.5, which represents the lowest

risk level since the Consent Decrees expired in 1998.¹ In addition, the 2005 Annual Update shows that the number of estimated four-wheel ATV-related injuries to children under 16 fell 10 percent last year as compared to 2004, a decrease that is statistically significant at the 93-percent confidence level. In short, contrary to the implication created by the NPR, the actual data show that the ATV injury risk picture is improving, based primarily upon the continuing safety efforts and programs of the major distributors and CPSC, as well as the continuing adoption of state laws regulating ATV use by both adults and children.

Similarly, although the data are not as complete due to lags in reporting, an examination of the fatality estimates in the 2005 Annual Update for the six-year period from 1999 through 2004 indicates the overall ATV fatality risk has been fairly constant at between 1.0 and 1.2 per 10,000 four-wheel ATVs in use since 2000, which is well below the 1.4 estimate for 1999.²

Moreover, the risk estimate per 10,000 four-wheel ATVs of 171.5 in 2005 was lower than the risk estimate when CPSC terminated the initial ATV ANPR in 1991 (188.1), and when CPSC allowed the Consent Decrees to expire in 1998 without taking further regulatory action beyond the agreed Action Plans (184.7).

CPSC has provided no explanation, much less any justification, as to why this level of estimated injury risk, which is less than it was when the Commission decided against taking

¹ See Appendix E at 2. As a separate report from Dr. Edward Heiden points out, the NEISS system from which the ATV injury estimates are drawn underwent a significant revision of its sample of reporting hospital emergency rooms in 1997. See Appendix F at 3. This revision resulted in an unexplained larger increase in estimated injuries from 1997 to 1998 than in any year since for a number of consumer products, including ATVs. It is thus appropriate to focus on trends regarding the risk of ATV-related injury beginning in 1998, the first year that the full complement of NEISS hospitals in the reporting sample was available (and, coincidentally, the year the Consent Decrees expired).

² 2005 Annual Update at Table 4. There was a significant change in the methodology for estimating ATV-related fatalities beginning in 1999, which led to greater reporting of such fatalities that occurred on public roads. *Id.* at 3. As the NPR itself acknowledges, it is therefore only appropriate to examine recent trends in ATV-related fatality rates using data collected with this current, more comprehensive statistical methodology. See 71 Fed. Reg. at 45,907.

further regulatory action during the regime of the Consent Decrees and again at the time of their expiration, is now deemed to be unreasonable, with respect to ATVs that are still covered by essentially the same safety standards and programs that were mandated under the Consent Decrees.

Indeed, CPSC expressly concedes that the safety benefits from those elements of its proposals that differ from, or go beyond, the ANSI/SVIA standard and Action Plans are entirely speculative. For example, the NPR states only that the proposed requirements for automatic transmissions on all youth ATVs “could reduce injury risk” by reducing the number of tasks that inexperienced drivers must perform while driving an ATV. 71 Fed. Reg. at 45,918 (emphasis added). Similarly, the NPR states, with respect to its proposed additional warning statement on age recommendation labeling for adult ATVs: “although it is not known how effective these warnings are at reducing (sic) children from riding adult ATVs, if they reduce the number of children riding adult ATVs enough to reduce the number of ATV-related injuries to children . . . by even a small amount, the benefits of these warnings could exceed the costs.” Id. at 45,921 (emphasis added).

The NPR acknowledges that any significant reduction in ATV injuries will come from ensuring that key elements of the Action Plans (which includes compliance with the ANSI/SVIA standard) are extended to new entrants:

The proposed rule would ensure that key elements of the voluntary agreements are extended to all ATV manufacturers and distributors. Because manufacturers and distributors that account for about 90 percent of the market already conform to these requirements (and much of the remaining 10 percent conform to at least some of the requirements) the proposed standard may not significantly lower the number of injuries from their current levels

Although the number of these cannot be quantified, they provide consumers with information that may help them choose an appropriate ATV for the rider and may

reduce some unsafe riding behaviors Moreover, the vast majority of ATVs sold are already thought to be in compliance. Id. at 45,923 (emphasis added).

CPSC's proposed finding of unreasonable risk thus actually relates to ATVs that do not comply with the ANSI/SVIA standard and the Action Plans and is undeniably speculative as to ATVs which currently do comply, such as those distributed by the ATV Companies. CPSC concedes that it cannot demonstrate, much less quantify, any risk of injury from these vehicles, due solely to their failure to meet those different and additional requirements in the NPR:

Some of the additional requirements, such as requiring the age requirement form and training acknowledgement form or requirements that are somewhat different from current practice (such as clearer warning statements) may better inform consumers of ATV-related risks who may then be able to reduce or avoid these risks. Id. at 45,928 (emphasis added).

In evaluating the Section 8 petition for a ban on sale of adult-size ATVs for use by children under 16, the CPSC staff similarly concluded:

No data are available to show that a ban of ATVs for use by children under the age of 16 years would be more effective in preventing such use than the age recommendations in the Voluntary Action Plans. Section 8 Briefing Package at 31-32.

However, based on this conclusion, the staff recommended in that instance that the Commission deny the Section 8 petition to initiate rulemaking on a ban, and by a 2-1 vote CPSC ultimately followed that recommendation.

The NPR likewise fails to show by any available data -- much less by substantial evidence -- that the imposition of the different and additional requirements that go beyond the proposed revised ANSI/SVIA standard and Action Plans are reasonably necessary to reduce an unreasonable risk and will provide quantifiable safety benefits. Indeed, as shown below, these different and additional requirements will have no measurable positive safety benefit and, in some instances, may actually detract from ATV safety. Yet despite the fact that any safety

benefits are wholly speculative, and in direct contrast to its action on the Section 8 petition, CPSC is proposing to move forward with rulemaking to establish these differential and additional requirements.

Equally troubling is the fact that virtually all of these requirements are not accompanied in the NPR by any citation to evidence of their actual costs. This, of course, makes it virtually impossible to conduct the balancing test that a finding of unreasonable risk entails. While these comments do not address this shortcoming on a provision-by-provision basis, suffice it to say that almost none of the provisions discussed below are accompanied by any cost data or evidence and thus cannot be sustained.

Moreover, in discussing CPSC's unreasonable risk "finding," the NPR simply refers to the total number of reported ATV-related deaths since 1982, as well as to the reported number of deaths in 2003 and the number of estimated ATV injuries in 2004. 71 Fed. Reg. at 45,928. However, in light of CPSC's acknowledgement of the substantial and unique utility of ATVs in both recreational and work-related activities, the mere recitation of aggregate numbers of estimated ATV-related deaths and injuries in 2003 and 2004 cannot constitute the showing of unreasonable risk, particularly when analyses of the data show that these deaths and injuries are due largely to clearly warned-against behaviors and that the risk of injury on four-wheel ATVs has actually declined since expiration of the Consent Decrees in 1998.³

³ The proposed finding regarding unreasonable risk notes that the proposed mandatory requirements will cover the increasing number of new entrants who are not following current voluntary standards or other safety practices that the major manufacturers are voluntarily following. The proposed finding goes on to state that this will reduce the risk of injury in the future as more such new entrants may enter the market. 71 Fed. Reg. at 45,928. As noted above, the ATV Companies do not disagree with this unreasonable risk finding with respect to new entrants into the ATV market who do not comply with the ANSI/SVIA standard or offer safety information and programs as outlined in the approved Action Plans. However, as also explained above, the ATV Companies believe that the proposed unreasonable risk findings must be limited to new entrants and cannot extend to ATVs, such as theirs, which comply with the ANSI/SVIA standard, and are covered by the safety provisions specified in approved Action Plans.

As the Heiden 2005 Analysis points out, in a stark departure from past annual update reports, the narrative portion of the 2005 Annual Update puts primary analytic emphasis on trends in the annual totals of ATV injuries, rather than trends in injury risk calculated by comparing those injury totals to the commensurate (and in some years more than commensurate) rise in the population of ATVs in use. See Appendix E at 3. This apparent attempt to focus primarily on total numbers of injuries and fatalities, rather than the risk of injury or fatality, is inconsistent with CPSC's prior studies and analyses of ATV safety. In this respect, the 2005 Annual Update appears to echo the NPR, where the proposed findings regarding "Degree and Nature of the Risk of Injury" and "Unreasonable Risk" reference only total numbers of deaths and injuries and in fact ignore risk altogether. 71 Fed. Reg. at 45,928.

These proposed findings are both insufficient and misdirected. CPSC has authority to regulate not based on injuries or fatalities, but on unreasonable risk of injury or fatality. 15 U.S.C. §§ 2056(a), 2058(f)(3)(A); id. § 1261(s). It is thus clear that any attempt to move forward with the proposed regulation based on aggregate numbers of injuries and fatalities rather than injury and fatality risk must fail. Moreover, CPSC's own published data clearly show that not only has ATV risk not increased since previous Commission decisions that regulatory action was inappropriate, but it may also be in the process of further declining. See Appendix E at 3.

C. CPSC Has Not Shown That Its Proposed Changes To The ANSI/SVIA Standard And Action Plan Provisions Are Necessary To, Or Would, Reduce Unreasonable Risks Of ATV-Related Injuries.

The CPSC NPR includes a number of proposed provisions which are either contrary to, or go beyond, provisions in the ANSI/SVIA standard (including the proposed revisions), and specifications in approved Action Plans of the ATV Companies. The CPSC has not provided evidence to show that these deviations from the ANSI/SVIA standard and provisions of the

Action Plans are necessary to remedy deficiencies in the standard or Action Plans that present unreasonable risks of injury. The Commission has also failed to provide evidence to show that these proposed deviations would in fact serve to reduce ATV-related injuries.

Indeed, the NPR explicitly acknowledges that CPSC is relying on staff opinion and speculation, rather than actual data or evidence, to support these proposed additional requirements. The NPR can only hypothesize that the proposed additional age and training acknowledgment forms and label warning statements which go beyond the ATV Companies current practices “may better inform consumers of ATV-related risks who may then be able to reduce or avoid these risks.” 71 Fed. Reg. at 45,928.

With respect to each of the proposed different or additional requirements for single rider adult ATVs and for tandem ATVs, CPSC must show that each specific aspect of the vehicle or absent element of safety information that it has identified presents an unreasonable risk of injury, and further, that the specific proposed provision is reasonably necessary to prevent or reduce that risk of injury. 15 U.S.C. §§ 2056(a), 2058(f)(3)(A). In addition, these findings must be supported by “substantial evidence on the record taken as a whole.” Id. § 2060(c).

The “substantial evidence” requirement is just that -- a requirement that CPSC affirmatively support its findings by presenting established factual evidence in the record. In determining whether the evidence presented is substantial, both the facts which detract from the agency position as well as those which support it are to be considered. Aqua Slide ‘N’ Dive, 569 F.2d at 838.

The Commission cannot support its proposed requirements by simply relying on rational assumptions or its own experience and staff expertise to conclude that the proposal will reduce injuries. Id. at 841. CPSC instead bears the affirmative burden of presenting factual evidence to

show that each particular proposed requirement will in fact reduce an unreasonable risk. Id. at 842. The Commission cannot rely on staff opinion or inference; it must put forward empirical proof that each proposed requirement will reduce the risk. Id. at 842, 843. While the CPSC staff may express its opinion as to the potential benefits of elements of the proposal, that opinion must be based on empirical data rather than merely casual observation and speculation to be viewed as actual evidence in the record. Id. at 843.

Similarly, with respect to each of the proposed different or additional requirements for youth ATVs, the Commission must find that each specific aspect of the vehicle or absent element of safety information that it has identified presents an unreasonable risk of injury, and that the specific proposed requirement is a feasible means of reducing that unreasonable risk. 15 U.S.C. § 1261(s); Forester v. CPSC, 559 F.2d 774, 789 n.21 (D.C. Cir. 1977).

1. Proposed Different or Additional Requirements for Single Rider Adult ATVs

a. Stop Lamp

Section 1410.5(l) of the proposed rule would require all ATVs to have at least one stop lamp or combination tail/stop lamp that is illuminated by actuation of any service brake control. The proposed revised ANSI/SVIA standard requires all adult ATVs to have a tail light, but makes provision of a stop lamp actuated by the service brake control optional.

CPSC has not presented any data demonstrating that the absence of a stop lamp presents an unreasonable risk of rear end collisions. Nor has the Commission pointed to any data confirming -- or even addressing -- the safety benefits of requiring a brake light on all ATVs that are used in an off-road environment. In addition, the SVIA TAP was concerned that in some circumstances the presence of a stop lamp might lead to inappropriate on-road use of some ATV models. This proposed requirement should not be included in any final mandatory rule.

b. Spark Arrester Qualification

Section 1410.5(m) of the proposed rules allows spark arrester qualification based on either the U.S. Department of Agriculture Forest Service Standard for Spark Arresters for Internal Combustion Engines, 5100-1 c (Sept. 1997) or, Surface Vehicle Recommended Practice, Spark Arrester Test Procedure for Medium Size Engines, SAE J350 (Jan. 1991). Like the current ANSI/SVIA standard, the proposed revisions in the canvass draft provide that all ATVs shall have a spark arrester of a type that is qualified according to the USDA Forest Service Standard. CPSC has provided no explanation or justification for allowing the use of spark arresters that are alternatively qualified under the SAE J350 standard.

c. ATV VIN Sequence

Section 1410.5(q) of the proposal would require that each ATV have a unique VIN number sequence, including the characters "A" and "T" in locations 4 and 5 of the number sequence, respectively. This proposed requirement is at odds with the VIN number sequencing systems currently used by several of the ATV Companies. This would necessitate the development of new VIN number sequences which would be costly, burdensome and create confusion because of their divergence from prior sequences for earlier years of similar models. It would also disrupt and impede VIN reporting to state agencies, which is based on the current systems of the ATV Companies. CPSC has not identified any risk of injury or safety benefit associated with this proposed provision. Accordingly, it should not be part of any final rule.

d. Service Brake Performance Test

Section 1410.7 of the proposal would require the service brake performance test to be conducted with the vehicle carrying its full load capacity of weight. The proposed ANSI/SVIA revised standard specifies that the service brake performance test be conducted with the full load

capacity or a maximum of 215 lbs. of load, whichever is lower. The ATV brake testing is conducted on a paved surface, a surface that an ATV operator is specifically warned to avoid in the on-product labeling and in the owner's manual. Testing on a high frictional surface with a maximum load above 215 lbs. on an ATV could be hazardous to the test operator. Also, a brake design that would give an appropriate test result for an ATV with a maximum load above 215 lbs. on a paved surface would be inappropriate for normal braking with a light load on an off-road surface. Finally, CPSC has presented no data or evidence to show that brake systems designed to comply with the brake performance test in the current ANSI/SVIA standard present an unreasonable risk of injury.

Section 1410.7(b)(2) of the proposed rule would require the front and rear brakes to be burnished by making 200 stops from the braking test speed before conducting the braking test itself. This proposed requirement is apparently drawn from the same specification in the current ANSI/SVIA standard. Based upon concerns that not all braking systems need 200 stops to reach their minimum effectiveness, and that excessive stops result in wasted preparation time, higher cost and unnecessary wear on the braking system, the proposed revisions to the ANSI/SVIA standard would allow each manufacturer to determine the appropriate burnishing procedure for their products, rather than specifying 200 stops. There is no data in the record to show that requiring 200 stops as part of the test procedure is necessary to address an unreasonable risk of injury from the service brakes.

Both of these proposed requirements should be eliminated from any final rule.

In addition, Section 1410.7(b)(5)(i), (ii) of the proposed rule would require that hand lever brake actuation force not be more than 133 N (30 lbf) and that foot pedal brake actuation force not be more than 222 N (50 lbf). The preamble incorrectly states that these proposed

requirements are consistent with the current ANSI/SVIA standard and are patterned after FMVSS 122. In fact, these actuation forces are specified in the ANSI/SVIA-1-2001 standard for youth model ATVs. The actuation forces for all ATVs other than youth models are not more than 245 N (55 lbf) and not more than 400 N (90 lbf), respectively, for hand lever and foot pedal actuation. These are the values required in FMVSS 122 for motorcycle brake systems, and the proposal should be revised to incorporate them for adult ATVs.

e. Pitch Stability Test

Section 1410.9(a) of the proposal provides that the pitch stability test shall be conducted with tire pressure inflated to the highest recommended pressure setting if more than one pressure is specified. The proposed ANSI/SVIA standard revision provides instead that the lowest recommended pressure setting shall be used.

Recommended ATV maximum to minimum tire pressure ranges are usually in the tenths of a pound-per-square inch range and are not measurable or significant. A slight increase in tire pressure does not significantly increase the tire circumference or raise the center of gravity height for the vehicle. CPSC has presented no data showing that the current ANSI/SVIA test method results in the vehicles presenting an unreasonable risk of injury or that its proposed change would actually reduce ATV-related injuries. This proposed requirement should not be part of any final rule.

f. Optional Tilt Table Test Method

Section 1410.9(b)(2) appears to require the use of a tilt table test method as an additional test for pitch stability. Although the preamble discusses this additional test method as “optional,” the proposed regulation seems to mandate it. The ATV distributors have employed the current test method since the original voluntary standard was published in 1990. No

evidence has been presented indicating that vehicles which use the current measurement method to meet the standard present an unreasonable risk of injury, or that use of the tilt table test method would reduce any such risk. In addition, to include an additional method would be redundant and lead to additional testing and expense for no purpose. This proposed requirement should be eliminated from any final rule.

g. General Warning Label

Section 1410.10(a) would require that the Consent Decree General Warning label, or a label with “substantially equivalent statements,” be used on all ATVs. The proposed revision to the ANSI/SVIA standard, in contrast, mandates use of the specific updated General Warning label that was developed by outside consulting expert Miller Engineering in 1996 and approved by the CPSC General Counsel. Indeed, the CPSC proposal would seem to preclude the use of the updated General Warning label because it does not include any statement similar to “Never attempt wheelies, jumps or other stunts,” which appears in the Consent Decree General Warning label. In fact, this statement was dropped from the updated General Warning label based on testing and analysis by the consulting expert and concerns about priority and cluttering.

By including the updated General Warning label as an attached figure to the ANSI/SVIA revised standard and specifying its use in all Type I ATVs, the ATV distributors who hold the copyright for this label are releasing it to the public domain. CPSC should revise its proposed regulation to require the use of the updated General Warning label rather than the original Consent Decree General Warning label.

h. Age Recommendation Label

Section 1410.10(b) would require all adult ATVs to bear an age recommendation warning label which includes the additional statement “Even youth with ATV experience have

immature judgment and should never drive an adult ATV.” The label would also be redirected to be addressed to the parent rather than to the potential child operator.

The NPR characterizes the current age recommendation label on adult ATVs as “vague about the nature of the hazard” but presents no data to support this criticism. It then goes on to speculate that the label “may not be as persuasive as [it] could be.” 71 Fed. Reg. at 45,911. However, CPSC has failed to verify empirically any deficiency in the current label that presents an unreasonable risk of injury.

Moreover, there is no indication that CPSC has tested the proposed additional language to develop the required evidence to show that it communicates more effectively to parents than the current label, and that they are more likely to heed it and keep their children from operating adult ATVs. See Aqua Slide “N” Dive, 559 F.2d at 841. The CPSC staff’s inference that the additional language will reduce injuries cannot support imposing this requirement. Id. at 842. In addition, this proposal would add substantial text to the current age recommendation label included in the proposed revisions to the ANSI/SVIA standard, and necessitate either a larger size label or much smaller type for the warning statement. Changing the size of the label would involve substantial expense because these labels are molded into the fender of the vehicle and changing label size would necessitate redesign of the fenders and entail significant expense.

Applied Safety and Ergonomics, Inc. in Ann Arbor, Michigan (“ASE”) conducted original research to assess the relative merits of the existing age recommendation warning label and the additional text and modified language contained in the NPR. See ASE, Response to ATV Labeling and Categorization Provisions in U.S. CPSC Notice of Proposed Rule Making, at 30-42, 57, 68-70 (Dec. 12, 2006) (the “ASE Report”). A copy of the ASE Report is attached as Appendix H. The data from this research reaffirm that the age recommendation warning label

specified in the 1988 Consent Decrees, currently in use, and proposed in the revised ANSI/SVIA standard is well understood. ASE found, based on numerous measures, that the NPR version of the label would not have any effect on the understanding of the concept that adults should not permit a child under 16 to operate an adult-size ATV with the label on it. Indeed, ASE's research found that the NPR's alternative framing may have *negative* effects on people's perceptions of and response to the label. The NPR's alternative text did not indicate the benefits presumably intended.

Based on these data, ASE has recommended that the label proposed for use in the revised ANSI/SVIA standard be used in any CPSC regulation. *Id.* at 78. CPSC should accordingly revise its proposal to include the current age recommendation label which is specified in the proposed revisions to the ANSI/SVIA standard.

i. Passenger Warning Label

Section 1410.10(c) would require all Type I ATVs to bear a passenger warning label which contains the additional statement "Passengers can affect ATV balance and steering." The preamble discussion acknowledges that the updated passenger warning label with an icon which was developed in 1996 by the outside expert Miller Engineering and is specified in the proposed revision to the ANSI/SVIA standard has been previously approved by CPSC. 71 Fed. Reg. at 45,911. See also ASE Report at 71-72 (citing Miller Engineering's report that the label tested very well and, in conjunction with General Warning label, "will improve the overall safety effectiveness potential of the [passenger warning label]") (citation omitted).

The NPR fails to put forth any testing or data showing that this previously approved label is inadequate or ineffective and presents an unreasonable risk of injury, or that adding the proposed statement to the passenger label would reduce the risk of ATV-related injury. Here

again, the Commission's proposal relies on nothing more than staff opinion and inference, which cannot and does not constitute the necessary substantial evidence to support this proposed change, particularly in light of the CPSC's own prior approval of this label.

Moreover, besides being untested, the NPR's proposed use of the phrase, "passengers can affect ATV balance and steering" is followed by, "The resulting loss of control" As ASE observes, this "incorrectly suggests that every effect on balance will result in loss of control." Id. at 72. In addition, the proposed addition of this statement to the label would create redundancy and cluttering issues. The warning that passengers can affect ATV balance and steering is already presented in the updated General Warning label on the left front fender of the vehicle in a location which is directed to the operator but also clearly visible to a passenger. Requiring the same statement on the passenger label is thus unnecessary and redundant.

Putting an additional statement on the passenger label also raises the issue of either increasing the size of the label or decreasing significantly the size of the lettering. As noted above, because the label is molded into the seat, or the vehicle body directly behind the seat, there would be significant cost involved if the size of the label had to be increased and these parts had to be redesigned. Conversely, reducing the type size would make it more difficult for a potential passenger to read the warnings.

For these reasons, ASE recommends that the current passenger warning label proposed for use in the revised ANSI/SVIA standard should also be used in any CPSC regulation. Id. CPSC should accordingly revise its proposal to require use of the approved passenger warning label included in the proposed revisions to the ANSI/SVIA standard.

j. Retailer Requirements

Section 1410.12 would require an ATV retailer to provide a prospective purchaser with a specified age acknowledgment form prior to the sales transaction, require the purchaser to sign the form, retain the signed original for five years and provide the purchaser and manufacturer with copies. The manufacturer must also retain a copy for five years.

The ATV Companies already require their dealers to use point-of-purchase forms that vehicle buyers must read and acknowledge prior to consummation of a sale. These forms include the recommended age for use of the purchased ATV and other safety information. (A copy of representative forms is attached as Appendix I.) The proposed age acknowledgment form required under the rule would be redundant of these existing forms and create additional and unnecessary paperwork for consumers and dealers.

Moreover, the proposed requirement that manufacturers receive and retain a copy of the age acknowledgment form for five (5) years creates significant and unworkable problems. In order to comply with this proposed federal rule, manufacturers would be forced to rely on retail dealers to supply the required forms. However, the commercial relationship between manufacturers and retail dealers is governed by state law, not federal law. A manufacturer's ability to enforce dealer compliance with the proposed age form requirement would thus be subject to varying state law requirements and restrictions. Many states, for example, impose a "good cause" or similar standard (often with specified multi-part criteria) that manufacturers must prove to a motor vehicle board, examiner, or court before terminating or taking other enforcement action against a retail dealer. See, e.g., Cal. Bus. & Prof. Code § 20020 ("no franchisor may terminate a franchise prior to the expiration of its term, except for good cause"); Va. Code Ann. § 46.2-1993.73 ("determine whether there is good cause for a proposed action");

Wis. Stat. Ann. § 135.03 (“No grantor . . . may terminate . . . without good cause. The burden of proving good cause is on the grantor.”); Tex. Occupations Code Ann. § 2301.453(g) (“After a hearing, the board shall determine whether the party seeking the termination . . . has established by a preponderance of the evidence that there is a good cause for the proposed termination.”). It is unclear that a retail dealer’s failure to provide copies of the age acknowledgment forms could be adequately or timely addressed under the applicable state law schemes. A retail dealer’s failure to comply with this requirement could also unfairly expose a manufacturer to potential product liability claims.

In contrast, CPSC would have authority pursuant to Section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1), to enforce compliance by retail dealers with the proposed form requirements, including the imposition of civil penalties and other sanctions under Section 20, 15 U.S.C. § 2069. CPSC has provided no justification for why retention of the proposed forms by retailers alone is not sufficient to achieve the stated objectives of the form. Imposing a duplicative requirement on manufacturers is unnecessary and, as shown, would create burdensome and potentially unworkable enforcement problems. Accordingly, to the extent that an age acknowledgment form requirement is included in the proposed new rule, the requirement should be directed solely to retailers.

k. Owner’s Manual

Section 1410.13 would require that the owner’s manual provided with the vehicle to the first purchaser have an introductory safety section with 27 specified messages taken originally from the Consent Decrees. In contrast, the proposed ANSI/SVIA standard revisions would allow manufacturers the freedom to use different wording for these safety messages, and to locate them in other sections of the manual.

Since the Consent Decrees expired in 1998, some ATV manufacturers have gone to great lengths and expense to revise and improve the effectiveness of their owner's manuals. The revisions have included approaches to providing safety information that would conflict with the NPR if implemented, and would therefore require additional expenditures and potentially compromise the efficacy of their manuals. In particular, there is substantial concern that putting all safety messages in one section may not be the best communication method. Indeed, a 2003 CPSC staff memorandum on proposed warning language in generator manuals noted that research suggests consumers often skip over safety sections, focus on information that describes how to use the product, and are more likely to read warnings in manuals if they are interspersed with the operating instructions. T. Smith, Proposed Warning Language to Accompany Generators, at 2 (Aug. 22, 2003). The provisions of the NPR also appear to be inconsistent with the October 2003 CPSC "Manufacturers' Guide to Developing Consumer Product Instructions," which suggests only limited, "universal" information should be put in a safety section. The same document refers to the development of ANSI Z535.6, which has recently been approved. In fact, CPSC has had representation on the Z535.6 subcommittee. Given these considerations, the ATV Companies believe the CPSC should revise these requirements to allow manufacturers discretion regarding the placement and precise wording of prescribed safety messages.

1. Safety Video

Section 1410.14 would require that the retailer provide a safety video to each purchaser and that the safety video contain ATV-related death and injury statistics, both for all riders and for children under 16, in rolling five-year averages. CPSC incorrectly states in the NPR that the current SVIA video provided by the ATV Companies to purchaser of new vehicles meets this proposed requirement. 71 Fed Reg. at 45,921. The ATV Companies now provide new

purchasers with these updated injury and fatality statistics in a printed Safety Alert at the time of sale. The cost of producing revised safety videos every year would be substantial. CPSC has presented no data or evidence to show that providing this information to purchasers in the Safety Alert rather than the video presents an unreasonable risk of injury. The CPSC staff opinion or inference that putting the information in the video may have safety benefits is not enough to sustain this proposed requirement.

m. Free Training

Section 1410.15 of the proposal would require a manufacturer to provide a free instructional training course with specified content to the purchaser and immediate family members who meet the age recommendation for the purchased ATV within a reasonable time from the date of purchase and a reasonable distance from the place of purchase.

The ATV Companies support the free training requirement of the proposed rule. As previously noted, the ATV Companies already provide free hands-on training to all new ATV purchasers and other family members who qualify (by age) to operate the vehicle. The ATV Companies also pay cash and other incentives to promote participation in the course. All persons that distribute ATVs for sale in the U.S. market should offer free hands-on training to purchasers of their vehicles. The ATV ANSI voluntary standard does not contain free hands-on training requirements, because the inclusion of such requirements would be both unprecedented in this kind of industry voluntary standard and raise potential antitrust issues due to the associated costs. A federally-enforceable rule mandating that ATV manufacturers and distributors offer the ASI or a substantially similar training program offers would not implicate the same concerns and would help to promote safe and responsible use of the products.

n. Location of Certification Statement

Section 1410.20(a) of the proposal specifies that the statement certifying compliance with requirements of the standard shall be at the location of the VIN number. For most models produced by the ATV Companies, the VIN number is stamped on a portion of the frame that cannot be easily read without kneeling down and looking underneath the vehicle with a flashlight. The proposed revisions to the ANSI/SVIA standard require that the certification label be placed in a location that allows viewing without removing any part of the ATV. Given that the purpose of the certification label or statement is to confirm to a prospective purchaser or others that the vehicle in fact does comply with the standard, it should be in the more obvious and easily viewable location. CPSC should adopt in any final rule the ANSI/SVIA provisions regarding location of the certification label.

o. Compliance Testing

Section 1410.21 of the proposal would require each manufacturer to perform testing sufficient to demonstrate on an objectively reasonable basis that "each ATV produced" meets the performance requirements of the standard. Although the preamble recognizes that testing of each individual ATV is not feasible, the proposed regulatory language could be read to require such testing.

Vehicle manufacturers conduct numerous quality control checks as a part of the manufacturing process. This includes compliance tests, performance and durability tests, as well as random sampling. No vehicle regulatory agency requires that every vehicle is tested for compliance with relevant standards. The NPR estimates the cost of conducting a complete test of an ATV for compliance with the ANSI/SVIA standard to be approximately \$1,320. 71 Fed.

Reg. at 45,924-25. The proposed standard should avoid even the suggestion that such testing is required for “each ATV produced.”

Accordingly, the proposed language should be revised to require that manufacturers “perform testing sufficient to demonstrate on an objectively reasonable basis that ATVs produced for sale in the United States meet the performance requirements of the standard.”

p. Record Maintenance

Section 1410.22 of the proposal requires each manufacturer to maintain records in English sufficient to demonstrate compliance of each ATV produced for sale with the standard, and that these records further be maintained at a location in the United States. Because, for example, some ATVs produced by the ATV Companies are made in Japan rather than the United States, records involving their design and production are written in Japanese and kept in Japan. Requiring that all such records be translated into English and brought to the United States regardless of whether it is ever necessary for CPSC to review them seems overly burdensome and would entail significant cost with no corresponding benefit.

The proposed regulatory language should be revised to require that the manufacturer maintain *or be able to timely produce* records in English in the United States sufficient to demonstrate on an objectively reasonable basis that ATVs for sale in the United States comply with the standard.

q. Age Acknowledgment Form

The ATV Companies currently require purchasers to sign an acknowledgement during the sales process for an adult-size ATV that the vehicle is not recommended for children under 16 and that allowing them to operate it may lead to severe injury or death. CPSC has presented no data or empirical evidence indicating that its proposed Age Acknowledgment Form would

be more effective in preventing purchasers from allowing children under 16 to ride adult-size ATVs than the current age recommendation acknowledgement the companies are using. The Commission has thus not shown that this proposed requirement will have any verifiable safety benefit in reducing injuries to children on adult-size ATVs. As noted above, the CPSC staff's opinion or assumption that the proposed form will do so cannot provide the required substantial evidence to support this proposal.

In addition, the proposed age acknowledgement form includes the statement: "Even children with ATV driving experience have immature judgment and should never drive an adult ATV." 71 Fed. Reg. at 45,944. There is no indication that CPSC has tested this language and the other statements on the proposed form to develop the required evidence that they communicate effectively to parents who are more likely to heed it and keep their children from operating adult ATVs. See Aqua Slide "N" Dive, 559 F.2d at 841. Here again, CPSC cannot simply rely on staff opinion or inference that the proposed form with the specified language will reduce injuries. Id. at 842.

Moreover, this proposed language is identical to the language in the NPR's proposed age recommendation warning label. As previously shown, ASE tested this modified language and found that the survey participants generally had a negative reaction to it. ASE Report at 77. Several participants stated that the language lacked credibility; some found it "to be offensive"; and others found that it was not useful in communicating the concept that children under 16 should not operate adult-size ATVs. Id. at 77-78. ASE also found no indication in the data that redirecting the label to the parent have any affect on understanding the concept that adults should not let a child under 16 operate the vehicle. Id.

Requiring use of this form, as proposed in the NPR, would add unnecessary paperwork for dealers and customers without any material benefit, and may have negative effects on people's perception of and response to the issue. CPSC should accordingly revise its proposal by deleting the requirement for the Age Acknowledgment Form for adult-size ATVs.

r. Training Acknowledgment Form

The ATV Companies currently use an ASI training certificate which is executed at the time of purchase, or other training information sheet, that serves to inform the purchaser about the availability of free hands-on training in the form of the ASI Rider Course. CPSC has presented no data or evidence to show that its proposed additional Training Acknowledgment Form would be more effective in informing new purchasers about the availability of training and persuading them to take the training course. CPSC thus has no basis to conclude that requiring the use of the proposed form, in addition to the current ASI training certificate or other training information sheet, will have any safety benefit.

As with the proposed Age Acknowledgement Form, CPSC cannot merely rely on staff opinion and inference that the proposed additional Training Acknowledgment Form will reduce injuries. See Aqua Slide "N" Dive, 559 F.2d at 841, 842. In addition, because there has apparently been no testing of the wording of this proposed form, CPSC has no basis to conclude that the statements in it, including in particular "ATVs don't handle as you might expect" would be understood and/or effective in communicating to new ATV purchaser the need for and benefit of training. In fact, the proposed language may well be confusing and instead have negative effects on people's perception of and response to the offer of training. In addition, the presence of a second training form could create confusion during the sales process and impede the efficient transmission of new purchaser information to ASI.

CPSC should accordingly revise its proposal by deleting the requirement for the Training Acknowledgment Form.

2. Requirements for Tandem ATVs

Issues concerning the CPSC's proposed requirements for tandem ATVs are addressed in the separate comments of the Tandem ATV Manufacturers.

3. Requirements for Youth ATVs

a. Categories of Youth ATVs

Section 1515.2(b) of the proposal would specify three categories of youth ATVs: Junior ATV (age 6 and older), Pre-teen ATV (age 9 and older) and Teen ATV (age 12 and older). CPSC presents no data or empirical evidence to support the creation of a new youth category beginning at age 9. The CPSC proposal also would not provide any "transitional" category of ATV for older youth riders age 14 and 15. In a departure from the current Action Plans that instead adopts the approach of the current ANSI/SVIA standard, the proposal would not specify engine size limits for youth model categories.

The proposed revisions to the ANSI/SVIA standard also do not specify engine size limits for youth model categories, focusing instead on limits on maximum speed capability. However, the SVIA TAP felt that larger teenagers (14 and 15 years old) may not physically fit ATVs in the current Y-12 category and also psychologically resist riding a "youth" model ATV that they may perceive as a "child-size" vehicle.

The SVIA TAP was aware of the CPSC data showing 86 percent of ATV fatalities and 89 percent of ATV injuries involving ATV operators under 16 were on adult-size ATVs. See R. Ingle, Analysis of ATV-Related Fatality Data for CPSC Petition CP 02-41/HP 02-1, at 9 (Dec. 2, 2003); M. Levenson, ATV Risk Estimates for Youths, at 12 (July 12, 2004). The goal of the

proposed revisions is to provide more viable, feasible and acceptable speed-limited ATV models for children under 16 so that they will choose to ride them rather than larger adult-size ATVs with no speed limitations.

In order to reduce the number of such children who are injured riding larger adult-size ATVs with unlimited speed capability, the proposed revisions to the ANSI/SVIA standard include a new Category T (“Transitional Model”) ATV intended to appeal to the larger teen and the parent. Unlike adult models, the Category T ATV has maximum speed restrictions and speed limiting requirements. Unlike a smaller “youth” model, the Category T vehicles will be sized for the 14 and 15 year-old rider and can be ridden by other family members, including small adults. The SVIA TAP also received recommendations from outside expert ASE that, along with introduction of Category T, the Y-12 category should be phased out in favor of a new Y-10 category to provide a better span of options between the Y-6 and the T categories. See ASE Report attached at Appendix H. This is different from CPSC’s proposed Pre-teen category, which would cover ages 9 to 11.

Given the lack of any data or empirical evidence supporting the CPSC proposal and the fact that the SVIA TAP proposal is supported by the extensive research and data presented in the ASE Report, CPSC should revise this section of the proposal to be consistent with the youth and transitional model categories reflected in the proposed revisions to the ANSI/SVIA standard.

b. Automatic Transmission

Section 1515.4(f) would require that all youth ATVs be equipped with fully automatic transmissions. This proposal seems to be based in large part on the CPSC staff’s assumption that most, if not, all youth ATVs currently are so equipped.

In fact, most or all of the youth models made by two of the largest ATV companies are not equipped with fully automatic transmissions. Some of these youth models have automatic clutches that eliminate the manual clutch but still require manual shifting by the operator. Such manual shifting allows greater control in educating new student operators.

CPSC has presented no data to support the contention that the current transmission shifting task on non-fully automatic transmission youth models presents an unreasonable risk of injury to younger riders. Indeed, CPSC's own "Age Determination Guidelines" state that 9 through 12 year-old children generally can operate a motorized vehicle that has gear shifting and does not exceed 10 miles per hour. Age Determination Guidelines Relating Children's Ages to Toy Characteristics and Play Behavior at 170 (Sept. 2002). The SVIA TAP noted that many youth model motorcycles, go-karts and other motorized vehicles with higher speeds use manual clutches and are successfully operated by youth riders. Finally, a changeover in these youth models to fully automatic transmissions would involve significant expense, both to the manufacturer and to the consumer, without any verified accompanying safety benefit. As noted previously, CPSC cannot rely on staff opinion or inference as a basis for imposing this requirement. This proposed requirement should not be included in any final rule.

c. Lighting

Section 1515.4(i) would require all youth ATVs to have at least one stop lamp. The proposal would also provide that youth ATVs may not be equipped with a projecting head lamp or forward facing day-time running lights.

The proposed revisions to the ANSI/SVIA standard would make the provision of a brake actuated stop lamp optional on youth (as well as adult) model ATVs. CPSC has presented no data that indicates a safety risk from the absence of a stop lamp on an ATV used in an off-road

environment or verifies any safety benefits from requiring stop lamps on youth ATVs. In addition, the electrical systems of some youth models are not adequate to accommodate such a stop lamp.

The proposed revisions to the ANSI/SVIA standard likewise make the provision of a head lamp or forward facing day-time running lights on a youth ATV optional. Head lamps and day-time running lights can be beneficial under certain riding conditions, such as heavy brush, dusty or shaded trails and similar low-light conditions during the day. Allowing head lamps is also appropriate to provide lighting on those occasions when a group of riders, including youth model riders, are inadvertently or unexpectedly riding after dark.

CPSC has presented no data or empirical evidence to show that either youth ATVs not equipped with a stop lamp or youth ATVs equipped with a projecting head lamp or forward facing day-time running lights present an unreasonable risk of injury. CPSC staff opinion or inference concerning rear-end accidents or encouraging night riding cannot serve to sustain these proposals in the absence of empirical proof. See Aqua Slide "N" Dive, 559 F.2d at 842. This proposed requirement should be eliminated from any final rule.

d. Maximum Speed Capability

Section 1515.6 proposes maximum speed capability requirements for youth models. The maximum speed for the Junior ATV for ages 6 and older would be 10 mph. The Pre-teen ATV for ages 9 and older would be delivered set at 10 mph, with a maximum unrestricted speed not to exceed 15 mph. The Teen ATV for ages 12 and older would be delivered set at 15 mph, with a maximum unrestricted speed not to exceed 30 mph.

The CPSC proposal would effectively reduce for the Junior ATV the 15 mph unrestricted maximum speed for the Y-6 model under the current ANSI/SVIA standard, but presents no

empirical evidence to show that 15 mph represents an unreasonable risk on such vehicles. The Pre-teen ATV maximum speed capability requirements would be consistent with the current ANSI/SVIA standard for Y-6 vehicles, but not with the proposed revisions, which include the new Y-10 category, which is to be delivered set at 15 mph, with a maximum unrestricted speed of 30 mph. The parameters for the Teen ATV essentially parallel those for Y-12 models in the current ANSI/SVIA standard. There is no provision in the CPSC proposal for a transitional (“T”) category, which in the proposed revisions to the ANSI/SVIA standard includes delivery set at 20 mph, with an interim adjustment available to 30 mph and a final unrestricted maximum speed of 38 mph.

As previously shown, the maximum speeds established in the ANSI/SVIA youth model categorization system are consistent with the range of speeds 14 and 15 year olds may encounter on other types of motorized products, as well as the literature on child development patterns. ASE Report at 13-27. Moreover, in assessing the relative merits of the NPR and ANSI/SVIA youth model categorization schemes, ASE found that maximum speeds lower than 30 mph (*i.e.*, 15 and 22 mph) made a prospective ATV significantly less attractive, and that maximum speeds higher than 30 mph (*i.e.*, 38 and 45 mph) made a prospective ATV significantly more attractive. The parents who participated in the original research did not appear to desire unlimited speed for children age 12 to 15. Rather, the data suggest that parents are looking for a maximum speed that would satisfy children as well as other family members. As observed by ASE:

Data from interview participants and focus groups indicated that parents simply wanted an ATV that would be fast enough so children would not be bored, children could keep up with other family riders, other adult operators of the ATV would be satisfied, etc. Adults in this study reported that the speeds offered under the SVIA system were superior to the NPR system in these respects, as well as in terms of their adjustability.

Id. at 79. Significantly, the maximum speed options of the ANSI/SVIA transitional model also made these units more attractive for economic reasons, since it is reasonable to assume from these data that 14 and 15 year olds would be more likely to be content with this model for a longer period and it would likewise appeal to adult users. See id. at 8, 46-47. For all of these reasons, ASE recommends adoption of the ANSI/SVIA categorization system with the slightly higher maximum speed capabilities and adjustable speed limiting mechanisms. Id. at 79.

e. Age Acknowledgment Form

The NPR would require a specific youth model Age Acknowledgment Form including the following statements: "Not all children develop at the same rate. Kids and teens have immature judgment, tend to take risks, disregard consequences and bow to peer pressure -- even if they have been riding ATVs for a long time." 71 Fed. Reg. at 45,960. This language is similar to the language in the NPR's proposed age recommendation warning label and age acknowledgment form for adult-size ATVs. As previously noted, that language tested negatively, with several participants indicating that it lacked credibility, was "offensive," and "pointless." ASE Report at 77-78.

CPSC has presented no data or empirical evidence to show that its proposed Age Acknowledgment Form for youth ATVs would measurably reduce ATV-related injuries. There is no indication that the form has been tested for effectiveness in order to confirm prospective safety benefits.

Requiring use of this form would add unnecessary paperwork for dealers and customers without any material benefit, and may have negative effects on people's perception of and response to the issue. CPSC should accordingly revise its proposal by deleting this requirement for a new Age Acknowledgment Form for youth models.

f. Other Issues

Section 1515.9 raises the same issues regarding tire inflation pressure and optional tilt table test method with respect to the pitch stability test that have been previously discussed regarding adult ATVs. See supra at 22. Section 1515.10 raises the same issues regarding the General Warning label and the Passenger Warning label that have been previously discussed. See supra at 23, 25-26.

Section 1515.13 similarly raises the same issues regarding the owner's manual and Section 1515.14 raises the same issue regarding the safety video that had been previously discussed regarding adult ATVs. See supra at 28-30. Section 1515.15 also raises the same issues regarding instructional training, Section 1515.16 the same issues regarding location of the certification statement, and Section 1515.17 the same issues regarding testing that have previously discussed. See supra at 30-32. Finally Section 1515.18 of the proposal raises the same issues regarding recordkeeping that have been previously noted regarding adult ATVs. See supra at 32.

D. **The NPR Fails To Include Important Elements Of The ANSI/SVIA Standard.**

1. **Standardized Basic Controls**

The standardization of basic controls on ATVs is important for primary operational safety. ATV operators need to be able to expect and rely upon standard location, color coding and directional operation of controls on each ATV model they operate. Basic controls include the throttle, transmission shifting, and the engine emergency stop. Lack of standardization reduces the benefit of both ATV experience and hands-on training and presents the potential for accidents and injuries due to lack of vehicle control.

The CPSC proposal fails to include standardized control requirements that are present in the current ANSI/SVIA standard and are also included in the proposed revised version of the standard. The ATV Companies understand that this omission may be due to concern that such standardization provisions could be viewed as design requirements and therefore beyond CPSC's standard setting authority under the CPSA with respect to adult ATVs. If so, this represents a serious deficiency in CPSC's proposed standard specifying requirements for adult ATVs, as compared to the ANSI/SVIA standard.

a. Service Brake Requirements

Section 1410.5(a) of the CPSC proposal omits requirements for the standardized location and operation of service brake controls, which are included in Section 4.1 of the proposed revisions to the ANSI/SVIA standard.

b. Engine Stop Switch

Section 1410.5(d) omits requirements for standardized location and color of the engine stop switch, which are included in Section 4.4 of the ANSI/SVIA proposed revisions.

c. Manual Clutch Control

Section 1410.5(e) of the CPSC proposal omits the requirement for standardized location of the manual clutch control for all ATVs equipped with a manual clutch, which is included in Section 4.5 of the proposed revisions to the ANSI/SVIA standard.

d. Throttle Control

Section 1410.5(f) omits the requirement for a standardized location of the throttle control that is included in Section 4.7 of the proposed revisions to the ANSI/SVIA standard.

e. PTO or Other Device

Section 1410.5(f) omits a provision that all ATVs that have a PTO or other device requiring fixed engine or vehicle speed, and a clutch control, may be equipped with an additional throttle that meets certain operational and automatic stopping requirements, as provided in Section 4.7.2 of the proposed revision to the ANSI/SVIA standard.

2. Parking Mechanism

Section 1410.5(b) of the CPSC proposal fails to mention, or allow for use of, a parking mechanism rather than a parking brake. Such a parking mechanism is particularly useful on models with automatic transmissions and is specifically mentioned and allowed as an alternative mechanism for holding the ATV stationary under prescribed conditions in Section 4.2 of the proposed revisions to the ANSI/SVIA standard.

3. Tire Marking

Section 1410.5(n) of the CPSC proposal fails to allow the use of the abbreviated term “NHS” rather than “Not For Highway Service” on ATV tires, as would be allowed under Section 4.19 of the proposed revisions to the ANSI/SVIA standard.

4. Parking Brake Performance Test

Section 1410.8(b)(3) of the CPSC proposal fails to specify application of the service brake to stop the ATV prior to the application of the parking brake or parking mechanism. This directive is specifically provided in Section 8.2 of the proposed revisions to the ANSI/SVIA standard, and is necessary because the test procedure includes placing the ATV on a 30 percent grade, and the vehicle will simply roll off the test surface if the service brake is not applied prior to the application of the parking brake or parking mechanism

5. Omitted Exceptions

Section 1410.5(g)(3) of the CPSC proposal omits an exception to the requirement for a neutral indicator for those models equipped with manual clutches. This exception is explicitly provided in Section 4.9 of the proposed revisions to the ANSI/SVIA standard. Application of the clutch to disengage the transmission allows the engine to be safely started in gear. A neutral indicator is thus not a safety-related requirement on such models.

Section 1410.5(g)(5) of the proposal omits allowing manual clutch operation to overcome the electric start interlock. Such an exception is explicitly provided in Section 4.11 of the proposed revisions to the ANSI/SVIA standard. Manual transmission models use the clutch to disengage the transmission. The application of the clutch allows the engine to be safely started in gear. In some instances, for example, if an engine would stall while the ATV is facing down hill, it would be very difficult for a rider to unload the drive train sufficiently to allow the transmission to be shifted into neutral to restart the engine.

E. CPSC's Proposed Standard Should Be Revised To Include A "Transitional" Category Of ATVs Appropriate For 14 And 15 Year-Olds And Small Adults.

A CPSC staff analysis of fatalities involving children under 16 on four-wheel ATVs during 1999 and 2000 showed that 93 percent of the fatalities occurred on adult-size ATVs, and 86 percent involved the child driving the adult-size ATV. R. Ingle, Analysis of ATV-Related Fatality Data for CPSC Petition CP 02-4/HP 02-1 (Dec. 2, 2003). A second CPSC staff report concluded, based upon a review of data from the 2001 injury and exposure surveys, that the risk of injury for children under 16 was higher on adult-size than on non-adult-size ATVs. M. Levenson, ATV Risk Estimates for Youths (July 12, 2004). The 2005 staff briefing package on the Section 8 petition found that for ATV-owning households the risk of injury to operators under 16 on adult-size ATVs as roughly twice the risk for child operators on youth models. J.

Elder & E. Leland, CP-02-4/HP-02-01: Petition Requesting Ban of All-Terrain Vehicles Sold for Use by Children Under 16 years Old at 2, 13 (Feb. 2005).

The ATV Companies share the goal of the Commission and many other interested parties and groups in reducing the number of children under 16 who operate adult-size ATVs. To promote this goal, the evidence collected by CPSC during the recent ATV public forums, coupled with the information and original research compiled and analyzed by ASE, indisputably show that the current Y-12 "one size fits all" approach is not working and that parents and children need a greater range of model choices and options.

The ATV Companies accordingly requested ASE to consider youth model ATV issues raised by the ANPR, including the possibility of a developing a category for a transitional ATV geared to older and larger children and/or small adults. Initial research by ASE in 2005 found that the concept of a transitional ATV is widely supported by groups experienced in promoting youth development and ATV safety. ASE Report (attached as Appendix H) at 7 (citation omitted). Moreover, in his comments to the NPR, Commission Moore observed that:

We must find the right mixture of size, weight, speed and other factors relative to the maximum size of the children who will be riding them, to make them attractive enough for youths (and their parents) to choose over their more dangerous adult counterparts.

Statement of Commissioner Thomas Moore, at 6 (July 12, 2006).

ASE found that a transitional category of ATV is also well founded from a human factors perspective. Id. The relevant human factors research shows that, from a variety of human performance and child development perspectives, many 14 and 15 year olds have characteristics (e.g., strength, reach, stature, agility, balance, cognitive skills, etc.) that are either basically the same as many young adults or more similar to young adults than to younger children. Id. The

research further indicates that many 14 and 15 year olds perform either basically the same as many older children/young adults or more similar to this group than to younger children. Id.

In addition, ASE has identified numerous factors that may contribute to the prevalence of 14 to 15 year olds riding adult-size ATVs under the current CPSC-sanctioned youth model regime. These factors include:

- The size of many 14 and 15 year olds is closer to that of older siblings and adults than to many children under 14.
- In addition to larger physical size at the time of ATV purchase, many children, especially boys, will be growing rapidly around ages 14 and 15.
- Age is not expected to be the definitive factor in assessing a 14 to 15 year old's readiness to engage in numerous other activities.
- The experience of 14 to 15 year olds operating other vehicles may provide converging evidence to some parents that their child is reasonably suited to something other than a Y-12 model.
- The current Y-12 category (originally mandated under the Consent Decrees and required under the voluntary Action Plans) may be socially unattractive to larger 14 and 15 year olds.
- The reduced power in current Y-12 ATVs may be considered too low for larger 14 and 15 year olds.
- Options for child operation of ATVs are very limited compared to options available for off-road motorcycles.
- An increasing number of offerings from "new entrant" manufacturers/sellers that do not follow the CPSC-sanctioned Y-12 category demonstrates a market interest in an expanded offering of youth ATV options.

ASE Report at 7-10.

Based on this initial information, ASE conducted additional analyses to help develop, in conjunction with the SVIA TAP, an effective youth ATV categorization system, including recommended speeds and age ranges for youth model ATVs for ages 6 through 16. As detailed in the ASE Report, ASE conducted extensive analyses of: (1) norms for speeds of products as

they relate to child age or development and (2) various aspects of child development relevant to development of a transitional category of ATV and its implications for the youth categorization system. Id. at 13-27.

ASE also conducted original research to assess the relative merits of the NPR and ANSI/SVIA youth model categorization schemes. As previously shown, the NPR eliminates engine displacement limits, essentially breaks the existing Y-6 category into two categories (Junior and Pre-teen), removes speed adjustments, and creates a lower speed limit for ATVs recommended for children aged 6-8. The NPR does not introduce a transitional model. In contrast to the NPR, the draft ANSI/SVIA revised standard introduces a new model intended to be attractive to 14 and 15 year olds as well as older children and many adults.

ASE found that parents preferred the ANSI/SVIA system to the NPR system. Indeed, when participants considered ATV purchases for use by their family, including a child age 12-15 as well as older children and adults, their initial preference was almost three (3) times more likely to be from the SVIA system than the NPR system. Participants likewise preferred the SVIA system when buying for households with a child age 12 to 15 and/or when considering buying for their own households. Equally important, youth participants in the survey were significantly more willing to consider selecting the SVIA transitional model than the NPR Teen model. These youth participants' expressed preferences for ATV speeds also support an expectation that the SVIA transitional model would be more attractive to them than the NPR Teen model. Id. at 30-64, 78-79. As summarized by ASE:

Collectively, these results indicate that the SVIA categorization system is superior to the proposed NPR categorization system with respect to [the] NPR's goal of increasing the likelihood of children under 16 operating age appropriate vehicles and reducing the likelihood of their operating adult size ATVs.

Id. at 79.

Finally, in addition to increasing the likelihood of moving children under 16 off of larger, heavier, and faster adult-size ATVs and on to smaller, lighter, speed-restricted models, ASE observed that the addition of the transitional category ATV in the revised ANSI/SVIA standard would allow for a system of warnings and instructions that would address intended use by children age 14 and older and adults. These materials would be (1) provided in various modes/media (*e.g.*, point-of-purchase, on-product, accompanying literature, etc.); and (2) targeted to various audiences (*e.g.*, parents, dealers, and youth). *Id.* at 10.

Based upon ASE's work, the SVIA TAP included a transitional category of ATVs for larger children 14 and 15 year olds and small adults in the proposed revisions to the ANSI/SVIA standard that are currently being canvassed.

In contrast, the NPR does not introduce a transitional model. The NPR instead eliminates engine displacement limits, essentially breaks the existing Y-6 category into two categories (Junior and Pre-teen), removes speed adjustments, and creates a lower speed limit for ATVs recommended for children ages 6-8. It fails, however, to introduce a new model intended to be attractive to 14 and 15 year olds as well as older children and many adults, with maximum speed limits and options for parents and guardians to use based on their assessments of the skills, abilities, and judgment of their children.

As previously shown, ASE found that parents and youth significantly preferred the ANSI/SVIA system to the NPR system. *Id.* at 30-64, 78-79. ASE's findings demonstrate that "the SVIA categorization system is superior to the proposed NPR categorization system with respect to [the] NPR's goal of increasing the likelihood of children under 16 operating age appropriate vehicles and reducing the likelihood of their operating adult size ATVs." *Id.* at 79.

Accordingly, the NPR should be revised to include a transitional category of ATVs appropriate for 14 and 15 year olds and small adults, as provided for in the revised ANSI/SVIA standard.

F. The Proposed Ban On New Three-Wheel ATVs Fails To Satisfy The Governing Statutory Criteria.

Each of the major ATV Companies has committed under its Action Plan not to sell or market three-wheel ATVs, even though no product or design defect in three-wheel ATVs has ever been found. As shown below, while the companies do not intend to manufacture or sell three-wheel ATVs, CPSC has not established any lawful basis to ban such future products under the CPSA or FHSA. The proposed ban would also be bad policy, since it would stifle potential product innovation based essentially on the mere fact that a motorized off-road vehicle has three wheels.

1. There is No Clear Evidence of Distribution of Three-Wheel Adult ATVs.

In order to issue the proposed ban on new three-wheel adult ATVs, CPSC must first demonstrate that they are being, or will be, distributed in the United States. 15 U.S.C. § 2057(1). The NPR references a memorandum from the CPSC Office of Compliance as the only evidence to satisfy this requirement. The memorandum first acknowledges that the ATV Companies, as well as two other U.S. distributors, have all agreed in their Action Plans not to offer three-wheel ATVs for sale in the United States and implicitly recognizes that none of these companies are, or will be distributing such vehicles. See T. Topka, *Three-Wheeled All-Terrain Vehicles*, at 1 (May 22, 2006). However, the memorandum goes on to assert that other manufacturers are offering three-wheel ATVs for sale within the United States. It contends that there are two types of such

vehicles being advertised, one as a “three-wheeled ATV” and the other as a “three-wheeled all-terrain golf scooter.” Id.

The memorandum describes the “three-wheeled ATV” model as “a cross between a ‘traditional’ ATV and a dirt bike.” Despite the fact that dirt bike tires typically are not low pressure (*i.e.*, less than 10 psi), the memorandum asserts that this vehicle meets the definition of ATV in the ANSI voluntary standard, except for having three-wheels instead of four. The memorandum goes on to state that three importers have been identified who sold this product in the past six months using the internet. However, the memorandum then states that the products being sold have a 49 cc engine displacement, which indicates that they are not adult model vehicles.

With respect to the “all-terrain three-wheeled golf scooter,” the memorandum identifies two styles of this model being sold on the internet and at golf supply stores. One style is said to resemble a traditional ATV, except that the third wheel is in the rear. The memorandum states that the staff has identified one importer of this product which is being marketed as “an all-terrain golf scooter” rather than an ATV. In addition, the memorandum notes that the vehicle being marketed has a 49 cc engine displacement, here again indicating that it is not an adult-size ATV.

The second style of this vehicle is electric powered, and is described as being marketed as an “all-terrain three-wheeled vehicle resembling a scooter.” The memorandum failed to provide photographs or other specifications for any of the vehicles identified, nor does it identify the purported importers of these products.

This vague and conclusory information provides little evidence that adult-size three-wheel ATVs are, or will be, distributed to any meaningful degree in the United States. Without

exception, the ban regulations that CPSC has previously issued under Section 8 addressed products which were being distributed in substantial numbers in the United States and causing substantial risk of injury. In this case, CPSC is proposing to ban a product which has not been distributed in the United States for almost 20 years pursuant to settlement of the original Department of Justice/CPSC Section 12 lawsuit against the distributors that was embodied in the final Consent Decrees and has been continued under commitments in their approved Action Plans. In essence, CPSC is now proposing to undo the settlement of this issue in order to address what can only be described as a hypothetical threat that new three-wheel ATVs will reappear in the U.S. market as anything other than individual curiosities.

2. There is Contradictory Agency Evidence Whether Three-Wheel ATVs Present a Disproportionate Risk of Injury.

The second legal requirement CPSC must meet to issue its proposed ban regulation under Section 8 of the CPSA is to demonstrate that new three-wheel adult ATVs would present an unreasonable risk of injury. 15 U.S.C. § 2057(1). The Commission is also required under Section 9 of the Act to show that the rule banning three-wheel adult ATVs is reasonably necessary to reduce an unreasonable risk of injury. *Id.* § 2058(f)(3)(A). Both of these findings must be supported by “substantial evidence on the record taken as a whole.” *Id.* § 2060(c). In determining whether the administrative record contains the required substantial evidence supporting the rule, both facts which detract from the agency position as well as those which support it are to be considered. *Aqua Slide “N” Dive*, 569 F.2d at 838.

In order to ban three-wheel child-size ATVs, CPSC must similarly demonstrate that three-wheel ATVs present a mechanical hazard to children because they present an unreasonable risk of personal injury during use. 15 U.S.C. § 1261(f)(1)(d), (s).

As previously noted, the ATV distributors denied the government's allegations in the Section 12 complaint that three-wheel ATVs presented an unreasonable risk and noted they would have contested this issue at trial. Instead, they agreed, for purposes of settlement, to stop distributing these products until such time as they were covered by a product safety standard acceptable to CPSC. Moreover, in approving the Consent Decrees, the federal district court noted that the government's prospects in the litigation were "uncertain" because there were "both factual and novel legal obstacles to overcome." United States v. American Honda Motor Co., Civ. No. 87-3525 (D.D.C. Apr. 28, 1988). Reopening the nearly 20-year-old settlement on this contested issue of whether three-wheel ATVs present an unreasonable risk of injury in the current circumstances represents a clear waste of Commission and industry resources.

The NPR seeks to make the required demonstration by pointing to a CPSC staff analysis which found that the risk of injury on a three-wheel ATV was three times the risk on a similar four-wheel ATV based upon 1997 injury and exposure surveys. G. Rodgers & P. Adler, Risk Factors for All-terrain Vehicle Injuries: A National Case-Control Study, American Journal of Epidemiology, Vol. 153, No. 11 (2001). However, a later CPSC staff analysis found no such disproportionate risk of injury with three-wheel ATVs as compared to similar four-wheel ATVs. M. Levenson, All-Terrain Vehicles 2001 Injury and Exposure Studies, at 20 (Jan. 2003) and Table 11. A copy of this report, which is based on more current data in the form of 2001 CPSC injury and exposure surveys, is attached at Appendix J. Curiously, the NPR failed to reference or even acknowledge this subsequent CPSC staff analysis, despite the fact that it is based on more recent data and reaches a contrary conclusion.

The rulemaking record therefore now contains two CPSC staff analyses. One of these reports purported to find disproportionate risk of injury from three-wheel ATVs as compared to

four-wheel ATVs. The other CPSC staff analysis, which is based on more recent data, did not find such disproportionate risk of injury from three-wheel ATVs. Neither of the reports differentiates between adult and child-size three-wheel ATVs for purposes of risk analysis. Thus, the agency's own evidence in the rulemaking record on this point is contradictory as to whether either adult or child-size three-wheel ATVs present a disproportionate and unreasonable risk of injury. In addition, this clearly does not constitute the "substantial evidence on the record taken as a whole" that is necessary to ban new three-wheel adult ATVs. CPSC therefore cannot move forward with its proposed bans of new three-wheel adult and child-size ATVs, and the proposals should be withdrawn.

3. CPSC's Presumption That No Feasible Standard Could be Developed for Three-Wheel Adult ATVs is Unsupported and Erroneous.

Finally, to issue its proposed ban regulation under Sections 8 and 9 of the CPSA, CPSC must further show that no feasible consumer product safety standard under the CPSA would adequately protect the public from the unreasonably risk of injury associated with new three-wheel adult ATVs. 15 U.S.C. §§ 2057(2), 2058(f)(3)(C). This finding must also be supported by substantial evidence on the record taken as a whole. *Id.* § 2060(c).

On this point, the NPR simply offers the conclusory statement that "it seems unlikely that any feasible standard could be developed for three-wheeled ATVs." 71 Fed. Reg. at 45,915. Based on what it terms the "inherent difference" in vehicle configuration of three wheels versus four, the Commission stated that it "does not believe that it is feasible to develop a performance standard for three-wheeled ATVs that would improve their stability performance to a level of a four-wheeled ATV." *Id.*

As CPSC noted in approving the original ANSI/SVIA standard for four-wheel ATVs, the ongoing agreements between the ATV Companies and the Commission ensure that current and

future four-wheel ATVs have a static lateral stability coefficient ("Kst"), as calculated by the method developed by CPSC, of 0.89 or greater. 54 Fed. Reg. at 1408. (In making these agreements, the ATV Companies explicitly denied that there were any accident data showing a connection between Kst values and risk of ATV-related injury. Id.)

It is possible to hypothesize a future three-wheel ATV with dimensions for length, track width, height, weight, and center of gravity location that would equate to a static lateral stability coefficient -- or Kst -- of 0.89. For example, a future concept three-wheel ATV with a length (wheelbase) of 40 inches, a track width of 40 inches, a weight of 300 lbs, an overall height (top of handlebars) of 36 inches, a seat height of 25 inches, and a center of gravity located 14 inches high and 18 inches forward of the rear axle would have a Kst of 0.89, the minimum allowed for four-wheel ATVs under the continuing agreements with the ATV Companies. It thus would appear feasible, at least preliminarily, to develop a standard for future three-wheel ATVs which would ensure minimum static lateral stability for any such vehicle that would be equivalent to the minimum static lateral stability allowed for current and future four-wheel ATVs.

The NPR presents no data or evidence to show that it would not be feasible to develop such a standard that would require future three-wheel ATVs to have a static lateral stability coefficient of 0.89 or greater. This would clearly involve new designs for such vehicles, and correspondingly new or different uses. It could also involve trade-offs in utility. However, the NPR simply expresses the unsupported opinion that it could not be done, without even acknowledging -- much less analyzing -- this apparent possibility.

CPSC has therefore failed to make the required finding, supported by substantial evidence in the record, that it is not possible to develop a feasible consumer product safety performance standard that would provide for the same lateral stability for new three-wheel adult

ATVs as for current four-wheel ATVs. CPSC should accordingly withdraw its proposed rule to ban new three-wheel adult sized ATVs.

G. The Commission's Additional Instructions To CPSC Staff Are Misguided; Focus Should Not Be On Making Youth Models Which Have Lower Injury Risk for Children Under 16 "Safer," But On Getting Increased Numbers Of Children To Ride Viable Youth Or Transitional Models Instead Of Larger, Faster Adult ATVs.

The NPR includes a listing of eight additional instructions to the CPSC staff with regard to issues relating to youth ATVs upon which it invites public comments. See 71 Fed. Reg. at 45,929. The issues and potential tasks raised for comment include the following:

- Analyzing in-depth investigations and other injury reports regarding children to determine what factors contributed to the incidents and whether changes could be made to the operational/handling characteristics of youth ATVs that would reduce injuries;
- Testing current youth models against one another to determine if some are more stable or less incident prone than others;
- Determining whether making certain youth models less rider interactive could reduce injuries;
- Exploring the feasibility of providing guidance to purchasers on the appropriate weight of youth model ATVs in relation to the weight of the rider;
- Researching whether the top speed of 30 miles an hour for youth model ATVs is excessive and whether reducing the speed would reduce injuries on those vehicles;
- Determining how ATV training for children in different age groups should be structured to maximize their ability to learn safety information and riding skills (should a separate ATV training course for children be developed?);
- Determining whether tandem youth ATVs are appropriate; and
- Analyzing CPSC data to determine the desirability of illumination of youth ATVs in both daytime and nighttime situations to reduce injuries.

These instructions to the CPSC staff are misguided and the issues raised are tangential to the main goal of getting more children under 16 not to ride adult-size ATVs. The key underlining fact is CPSC's finding, presented on the same page of the NPR, that the risk of

injury for children under 16 is *twice* as high when driving adult ATVs as compared to youth model ATVs. *Id.* The essential task therefore is not to try to improve the safety of youth model ATVs, but instead to persuade more children under 16 to ride youth model ATVs rather than larger, heavier and non-speed limited adult-size ATVs, where their risk of injury is twice as high.

This task has been the focus of the SVIA TAP, working with ASE, in the current effort to revise the ANSI/SVIA voluntary standard. After extensive research, data collection and analysis, ASE found that the SVIA TAP's proposed categorization system, which includes the new transitional model category, must be preferred over the system proposed in the NPR based upon greater consumer acceptance of non-adult size ATVs for youth, enhanced credibility of ATV safety messages, increased access to ATV training on age-appropriate ATVs, and, perhaps most importantly, overall likelihood of children under 16 operating age-appropriate vehicles rather than adult-size ATVs that are too large for them and have no speed limitations.

Given that youth model ATVs present only half the risk of injury for children under 16 as operating adult-size ATVs, the first two tasks identified in the NPR are simply illogical. Rather than trying to suggest changes in operational handling for youth ATVs to reduce injuries to children under 16, the CPSC staff should join in the SVIA's effort to develop feasible new youth and transitional models that children under 16 will ride in greater numbers, as opposed to adult-size models where their injury risk is concededly *doubled*.

The third and fifth tasks, *i.e.*, to explore making youth models less rider-active and consider reducing the maximum unrestricted speed, would, based upon the findings of the ASE report, have the perverse affect of making youth models less attractive to children under 16, thereby pushing even more of them on to adult-size models, again where their risk of injury is twice as high.

The fourth task, *i.e.*, exploring possible guidance regarding the appropriate weight of youth model ATVs in relation to the weight of the rider, is a factor which will be explored over the next four years during the period when new non-engine size limited youth models are developed. That research and development process is a more appropriate venue for this issue to be explored.

With respect to the sixth task, *i.e.*, considering developing a separate training program for children, the more important task is to allow more children to take the available and well-reviewed ASI ATV training course on age-appropriate models.

The eighth task, *i.e.*, trying to determine the desirability of illumination on youth ATVs based upon injury data, intrudes into an area left optional under the proposed revisions to the ANSI/SVIA standard, and seems both misdirected and premature. The SVIA TAP recognized that illumination on youth model ATVs could have potential benefits and risks, but finding no data pointing either way, left it optional with manufactures and purchasers whether to choose youth models which provide illumination. This will allow a period of research and development regarding illumination on youth model ATVs, as well as a period for feasibility factors and market preferences to evolve and become known.

Finally, the seventh instruction, *i.e.*, determining whether tandem youth ATVs are appropriate, is unnecessary. Neither the ATV Companies -- nor any new entrants of which they are aware -- are suggesting the appropriateness of such vehicles.

VI. CONCLUSION

For the foregoing reasons, CPSC should withdraw for its current proposals and issue a revised NPR limited to proposing the provisions of the revised ANSI/SVIA standard that will be forthcoming from the ANSI canvass process, as well as a requirement that distributors offer free hands-on training to purchasers and age-appropriate immediate family members, as a mandatory consumer product safety standard for all new ATVs distributed in the United States.

Respectfully submitted,

Michael A. Brown

Michael A. Brown
BROWN & GIDDING, P.C.
3201 New Mexico Avenue, N.W.
Suite 242
Washington, D.C. 20016

Counsel for American Honda Motor Co., Inc.

David P. Murray

David P. Murray
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006

*Counsel for Yamaha Motor Corporation,
U.S.A.*

Michael A. Wiegard

Michael A. Wiegard
ECKERT SEAMANS CHERIN & MELLOTT
1747 Pennsylvania Avenue, N.W.
Suite 1200
Washington, D.C. 20006-4604

Counsel for Kawasaki Motors Corp., U.S.A.

John B. Walsh

John B. Walsh
AMERICAN SUZUKI MOTOR
CORPORATION
3251 Imperial Highway
Brea, CA 92821

*Counsel for American Suzuki Motor
Corporation*

Yves St. Arnaud

Yves St. Arnaud
BOMBARDIER RECREATIONAL
PRODUCTS
1061 Parent Street
Saint-Bruno, Quebec J3V 6P1
Canada

*Counsel for Bombardier Recreational
Products Inc.*

Mary McConnell

Mary McConnell
POLARIS INDUSTRIES INC.
2100 Highway 55
Medina, MN 55340-9770

Counsel for Polaris Industries Inc.