



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

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August 5, 2003

Mr. Al Lakosky
Ms. Michelle Robillard
SnowGlow® Inc.
312 2nd Ave. North
Virginia, MN 55792

Dear Mr. Lakosky and Ms. Robillard:

This letter concerns your letter of February 8, 2002, in which you asked the Consumer Product Safety Commission to prescribe mandatory performance standards for auxiliary hazard lighting systems on snowmobiles. Your request was docketed as petition number CP 02-2 pursuant to the Consumer Product Safety Act (CPSA).¹ As discussed in detail below, under applicable regulations the Commission has voted 3-0 to deny the petition because, based on available information, it cannot find preliminarily that:

- Snowmobiles without auxiliary hazard lighting systems present an unreasonable risk of injury²
- A mandatory performance standard is reasonably necessary to eliminate or reduce the risk in question³
- Failure to begin rulemaking would unreasonably expose consumers to the risk of injury in question⁴

In reaching its decision, the Commission considered your letter of February 8, 2002, the materials submitted with it and the supplementary materials subsequently provided by you, the extensive materials prepared by the Commission staff and presented in the staff briefing package

¹ 15 U.S.C. 2051-2084.

² 16 CFR 1051.9(a)(1).

³ 16 CFR 1051.9(a)(2).

⁴ 16 CFR 1051.9(a)(3).

Briefing Package, Petition CP 02-2: Petition to Require Performance Standards for Auxiliary Hazard Lighting Systems on Snowmobiles, June 2003, (the Staff Briefing Package), June 2003; the four comments received on the petition; and other information. As required by applicable regulations, the Commission also considered the relative priority of the risk of injury associated with snowmobiles without auxiliary hazard lighting systems and Commission resources available for rulemaking activities with respect to that risk of injury.⁵

1. Do snowmobiles without auxiliary hazard lighting systems present an unreasonable risk of injury (16 CFR 1051.9(a)(1)).

a. Deaths and Injuries

The CPSC staff estimates that in 2001 approximately 1.65 million snowmobiles were in use. These were used on average 57 hours or 960 miles per year over an average expected product life of nine years. Eighty or ninety percent of snowmobile riding takes place on the more than 150,000 miles of signed and maintained snowmobile trails in the U.S. developed by snowmobile clubs and associations, usually in cooperation with state and local governments.

The CPSC staff's analysis of 2001 data from the National Electronic Injury Surveillance System (NEISS) showed approximately six percent of injuries associated with snowmobiles involved collisions with another snowmobile, a pedestrian, or an unknown vehicle. These are the only scenarios that could possibly include those that might be prevented by auxiliary hazard lighting, *i.e.*, those involving a moving snowmobile running into a stopped and shut-down snowmobile or a person near such a snowmobile.

The staff's review of 460 reports of non-fatal incidents involving such scenarios that occurred between January 1, 1992 and December 31, 2001 showed three incidents during that period that were potentially addressable by auxiliary hazard lighting. Of the 1,420 snowmobile-related deaths reported to the CPSC during the same period, staff identified approximately ten percent that were associated with snowmobiles involved in collisions with another snowmobile, a pedestrian, or an unknown vehicle, again the only incidents that could possibly be avoided by auxiliary hazard lighting. However, of those, staff identified only four as potentially preventable by auxiliary hazard lighting and eleven that may have been prevented, although definitive information on such factors as lighting conditions were lacking for the eleven incidents.

b. "Unreasonable Risk"

What constitutes an "unreasonable risk" of injury for purposes of the CPSA and other statutes under the purview of the Commission has been addressed by several federal circuit courts of appeal. One such court provided the following guidance on what was involved:

[A] balancing test like that familiar in tort law: The regulation may issue if the severity of the injury that may result from the product, factored by the likelihood

⁵ 16 CFR 1051.9(b).

of the injury, offsets the harm the regulation itself imposes upon manufacturers and consumers.

Aqua Slide 'N' Dive v. Consumer Product Safety Commission, 569 F.2d 831 (5th Cir. 1978) at 839 (quoting from Forester v. Consumer Product Safety Commission, 559 F.2d 774, 789 (D.C. Cir. 1977)).

The degree of information required to support a finding of unreasonable risk has also been addressed by the federal judiciary. The Aqua Slide 'N' Dive court stated:

The Commission does not have to conduct an elaborate cost-benefit analysis. [citation omitted.] It does however, have to shoulder the burden of examining the relevant factors and producing substantial evidence to support its conclusion that they weigh in favor of the standard.⁶

Aqua Slide 'N' Dive at 840.

The analysis by CPSC staff demonstrates that auxiliary hazard lighting would have to prevent three to three and one half deaths and 90 to 160 injuries per year for the cost of a mandatory standard to equal its benefits. However, review of reported deaths associated with snowmobiles over a ten year period showed only four during that period that were likely to have been prevented by auxiliary hazard lighting. Another eleven might have been prevented, yielding only about 1.5 deaths per year that would be potentially preventable by a mandatory performance standard for snowmobile auxiliary hazard lighting.

Snowmobile injury data are less clear given lack of detail in the descriptions of the incidents. However, there is no indication that a significant number of snowmobile injuries would be prevented by auxiliary hazard lighting. Thus, the potentially achievable benefits of promulgating a mandatory performance standard for auxiliary hazard lighting are unlikely to equal the costs of such an action.

The Forester court noted that the Commission does have to show that there is a "real" risk. Forester at 788-9. In D.D. Bean & Sons v. CPSC, 574 F.2d 643 (1st Cir. 1978) the court complained that the record identified only two injuries arguably caused by delayed match ignition, and only one injury (with no information on cause or severity) arguably attributable to afterglow. *Id.* at 650. The court stated "[a] single injury, so inadequately described in terms of cause and degree, is not substantial evidence of an 'unreasonable risk of injury.'" *Id.*

Here, given the very few incidents that appear to be preventable by auxiliary hazard lighting and the unfavorable cost/benefit analysis, the Commission has concluded that available

⁶ Both Aqua Slide 'N' Dive and Forester were decided before statutory amendments required the Commission to determine that (1) there is a reasonable relationship between a regulation's benefits and its costs and (2) the rule imposes the least burdensome requirement necessary to address the risk of injury. 15 U.S.C. 2058(f)(3)(E) and (F). Thus, the analysis to support a rule such as you seek would have to meet a higher standard today than when those cases were decided in the 1970s.

information does not permit a preliminary finding that snowmobiles without auxiliary hazard lighting systems present an unreasonable risk of injury.

2. Whether a rule is reasonably necessary to eliminate or reduce the risk of injury (16 CFR 1051.9(a)(2)).

Because the benefits of a mandatory auxiliary hazard lighting performance standard are unlikely to equal its costs, the Commission has concluded that a rule such as that you requested is not reasonably necessary.

3. Whether failure of the Commission to initiate the rulemaking proceeding requested would unreasonably expose the petitioner or other consumers to the risk of injury which the petitioner alleges is presented by the product (16 CFR 1051.9(a)(3)).

Based on the very few incidents that appear to be preventable by auxiliary hazard lighting and the unfavorable cost/benefit analysis, the Commission has concluded that it is not appropriate to commence rulemaking on the subject at this time.

Conclusion

Based on the foregoing analysis and the information before it, the Commission has denied the petition. In making that decision, the Commission also considered the relative priority of the risk associated with snowmobiles not equipped with auxiliary hazard lighting systems and the Commission's resources available for rulemaking activities with respect to that risk of injury.⁷

In closing, the Commissioners have asked me to convey their thanks to you for bringing this aspect of snowmobile safety to the attention of the CPSC.

Sincerely,



Todd A. Stevenson

⁷ 16 CFR 1051.9(b).