

# ATV Compliance

February 20, 2011



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# Discussion Topics

- ATV Background
- Mandatory ATV Requirements
- Enforcement
  - Domestic
  - Ports
- Penalties
- Reporting Obligation
- Recall Process
- Ban on 3-wheel ATVs
- Points of Contact/Useful Links

# Statutory Definition of “ATV”

- Includes any motorized, off-highway vehicle designed to travel on 3 or 4 wheels, with seat designed to be straddled by the operator, low pressure tires, and having handlebars for steering
- An exception exists for prototype vehicles imported for research or testing
  - Racing ATVs are not covered by this exception
  - Sale of prototype vehicles is a violation
- Does not include recreational off-highway vehicles, including: ROVs, dirt bikes, go-carts, sand rails, dune buggies and golf carts

# 1988 Consent Decrees

- **1988** – CPSC/DOJ imminent hazard lawsuit against the five major ATV distributors in the U.S. market at that time was settled by comprehensive Consent Decrees that were effective for 10 years
- United States v. American Honda Motor Co., et al., Civ. No. 87-3525 (D.D.C. April 28, 1988)
  - <http://www.cpsc.gov/LIBRARY/FOIA/Foia99/pubcom/consent3.pdf>
  - <http://www.cpsc.gov/LIBRARY/FOIA/Foia99/pubcom/consent4.pdf>
  - <http://www.cpsc.gov/LIBRARY/FOIA/Foia99/pubcom/consent5.pdf>

# VOLUNTARY ACTION PLANS

- **1998**– as the Consent Decrees were expiring, the CPSC negotiated Voluntary Action Plans (a/k/a “Letters of Undertaking” or “LOUs”) with the five Consent Decree distributors + Arctic Cat and later Bombardier (1999) and Cannondale (2001)

# Overview of ATV Requirements

- Mandatory ATV Action Plans
- Mandatory standard for 4-wheel ATVs (ANSI/SVIA 1-2007)
- Certification and testing requirements
- Lead limits for youth ATVs
- Ban of 3-wheel ATVs

# Congressional Mandate Via CPSIA

- New CPSA §42(a)(2)(B): As of **April 13, 2009**, it is unlawful to import into or distribute in the United States a new ATV unless . . . the ATV is subject to an ATV action plan . . . and bears a label certifying such compliance . . . .
  - Bans the importation of 3-wheel ATVs;
  - ATVs must comply with all aspects of ANSI/SVIA 1-2007 standard and bear a label certifying such compliance; and
  - Prototype and testing exception; No exception for race-style ATVs
- Now all ATV companies are subject to the same requirements

# Action Plans

- Companies with LOUs filed with the CPSC prior to August 14, 2008, are grandfathered in
  - Other companies must get Commission approval of their Action Plans
  - Action Plans must be approved by the Commission prior to importing or distributing ATVs into U.S. commerce
  - Language in new Action Plans must be “substantially similar” to the 1998 Voluntary Action Plans/LOUs
  - Firms must adhere to all terms contained in their Action Plans
  - Firms with Action Plans are responsible for educating their dealers and overseeing their actions

# Modified Requirement

- **Age Recommendations**

- The company shall not recommend, market, or sell new adult-sized ATVs for the use of persons less than 16 years old
- *Use only maximum speed and speed limitations, rather than engine size*, for determining the age-appropriateness of ATVs
- Must follow this model, because these requirements are set out in the mandatory ANSI/SVIA-1-2007 Standard for ATVs
- Firm should use size, maximum speed, and the presence of a speed limiter when determining if an ATV should be classified as an adult or youth ATV
- Unreasonable and inappropriate age recommendations will be considered violations

# Dealer Monitoring

- Company shall use its “best efforts” to obtain dealer compliance with the action plan requirements, especially the age recommendation and advertising requirements
- On-site inspections of each dealer at least twice a year, with a minimum of 50 per year
  - Must be conducted by independent, undercover investigators
  - The firm must take corrective action against non-complying dealers, including: education of non-compliant dealers, fines, and/or termination of the dealer’s contract
- New language was distributed to all firms with Action Plans approved since August 2008, requiring firms to provide the results of undercover monitoring to CPSC on February 1 and August 1 of each year
- CPSC also does its own nationwide undercover monitoring of dealers

# Dealer/Retailer Responsibility

- Dealers/Retailers must:
  - Adhere to recommended age guidelines provided by firm with CPSC-approved Action Plan
  - Display all hang tags, safety literature, and other provided materials
  - Ask about intended operators at the point-of-purchase
  - Inform customers about the importance and opportunity for free training and the availability of monetary incentive
  - Train all sales staff to follow appropriate guidelines
  - Report all potential safety-related issues to firm with Action Plan that covers the ATVs and CPSC
  - Advertising by dealers should reflect ATVs being operated according to applicable safety guidelines and age recommendations
- Online retailers/dealers are not exempt from these requirements

# Training

- The firm shall offer **free, hands-on** ATV training to first-time purchasers and age appropriate members of their immediate families within a reasonable time from purchase + an incentive valued at \$100 for taking the training course
- Hands-on training offered by the ATV Safety Institute (ASI) is one type of training that has been acceptable to the Commission
- Failure to provide an offer for free training within a reasonable time from the time of purchase is a violation of the Action Plan and will need to be addressed by the firm
- Firms must ensure that their retailers/dealers are providing information on offering free, hands-on training to all purchasers

# Safety Video

- The firm shall provide **each** purchaser with an ATV Safety Video as described at Section H.3.b.(4)(b) and Paragraphs II.A. and II.C. of Appendix I of the 1988 ATV Consent Decrees
  - Safety rules
  - Riders should know their limitations
  - Importance of practicing
  - Importance of keeping alert
- If the safety video lacks the appropriate information or is not provided to customers at the point of purchase, it is a violation of the terms of the firm's Action Plan, even if the violations occur at the dealer/retailer level

# Safety Alerts

- The firm shall provide to dealers for dissemination to each purchaser a “Safety Alert” containing the same substantive safety information as the Safety Alert described at Section H.3.b.(4)(c) and Appendix J of the 1988 ATV Consent Decrees
  - Death and injury statistics for ATVs
  - Safety rules
  - Age recommendations
  - Information about the ATV training course

# Toll-free Telephone Hotline

- The firm shall provide a toll-free, 24-hour hotline to respond to consumer inquiries, as described at Section H.4 of the 1988 ATV Consent Decrees
  - Must provide safety and training information, including age recommendations
- Can participate in a joint hotline that is funded by multiple ATV firms with CPSC-approved Action Plans
- Failure to provide a toll-free telephone hotline for consumer inquiries is a violation of the Action Plan

# Advertising

- ATV advertising and promotional materials shall depict ATVs in a manner consistent with the safe and responsible use of the product:
  - All riders shown in such advertisements must wear helmets and full protective gear and operate ATVs in an off-road environment
  - Must conform with Section J.1, and Appendix K of the 1988 ATV Consent Decrees
- All types of media are covered by this requirement, including: print, Internet, television, and radio
  - Dealer/Retailer advertisements are also subject
- The firm shall use its best efforts to promote dealer compliance with advertising requirements and take appropriate actions when violations are found

# Information & Education Program

- The company shall implement an information and education campaign directed primarily at providing safety information and deterring children under age 16 from operating adult-sized ATVs
- An example of an acceptable program is described at Appendix N of the 1988 ATV Consent Decree
- Link to an Information and Education program entered into by five ATV distributors in 1998:

<http://www.cpsc.gov/library/foia/foia98/fedreg/campaign.pdf>

# CPSC Inspectional Authority

- Companies must provide information to CPSC about their Action Plan compliance, upon reasonable request by the CPSC or its staff
- Have pertinent information available for CPSC staff upon request such as:
  - Importation documentation;
  - GCCs for each model of ATV;
  - Complete list of all dealers/retailers; and
  - Test reports for each model to support GCCs

# Penalties for Non-compliance

- CPSA § 42(a)(3): Failure to have an Action Plan and/or to comply with its requirements is considered a “Prohibited Act” under CPSA § 19(a)(1) and may result in substantial civil and criminal penalties
- ATVs that are not covered by an Action Plan will be stopped at U.S. ports and will not be allowed to enter U.S. commerce—product disposition is at the expense of the importer
- Repeat violations will cause the firm’s Action Plan status to be called into question and possibly terminated
- Any person who knowingly violates the ATV requirements is subject to a civil penalty of up to \$100,000 for each ATV, up to a maximum of \$15 million

# Mandatory ATV Standard

- Since April 13, 2009, it is unlawful for any person to manufacture, distribute, or import a new assembled or unassembled ATV unless it meets the mandatory ANSI/SVIA1-2007 Standard (and also meets requirements for Action Plans)
  - Applies to ATV parts imported and assembled in the United States
- The standard is incorporated by reference in 16 C.F.R. Part 1420:  
<http://www.cpsc.gov/BUSINFO/frnotices/fr09/atvfinal.pdf>
- It is copyrighted and can be obtained from the Specialty Vehicle Institute of America ([www.svia.org](http://www.svia.org))

# Certification Requirements for ATVs

- The ANSI/SVIA 1-2007 Standard requires each ATV to be equipped with a label on which the *manufacturer* or *firm with a CPSC-approved Action Plan* certifies compliance with the standard
- The Consumer Product Safety Act (CPSA) section 42(a) also requires a label certifying compliance for all new assembled or unassembled ATVs (effective April 13, 2009)
- CPSA section 14(a) requires the *importer* of each ATV to certify that it meets all applicable standards by means of a General Conformity Certificate

# General Conformity Certificate

- A General Conformity Certificate (GCC) is required for all ATVs starting February 10, 2010
- Youth ATVs are considered to be children's products; as such, they need to be tested by a third party lab
- As a condition of the stay of enforcement on third party certification of youth ATVs, all firms with CPSC-approved Action Plans who import or distribute youth ATVs in U.S. commerce must submit a GCC for each model
  - Youth ATVs are defined as ATVs which are primarily intended for operators age 12 and under
- The following is a link where information is provided on the specific items which need to be present in the GCC:  
<http://www.cpsc.gov/about/cpsia/faq/elecfaq.pdf>
- There is currently a *proposed rule* regarding recordkeeping requirements; follow the *Federal Register* for updates

# Third Party Certification of Youth ATVs

- Youth ATVs are defined as ATVs that are designed or intended primarily for children age 12 or younger
- Laboratory accreditation requirements were published in the August 27, 2010 *Federal Register*:

<http://www.regulations.gov/#!documentDetail;D=CPSC-2010-0090-0001>

- Federal Register Notice published on February 1, 2011, states that enforcement of third party certification requirements for youth ATVs is conditionally stayed until November 27, 2011:

<http://www.regulations.gov/#!documentDetail;D=CPSC-2010-0115-0417>

# Conditions of 3<sup>rd</sup> Party Testing Stay

- Conditions of the stay are that all firms with CPSC-approved Action Plans must submit:
  - GCCs for each *youth* ATV model to CPSC indicating compliance with the ANSI/SVIA1-2007 Standard for each model;
  - Test reports indicating compliance with the ANSI/SVIA1-2007 Standard, if requested by CPSC; and
  - Quarterly reports with responses to questions posed in the February 1, 2011 FR Notice due April 1, 2011, July 1, 2011, and October 1, 2011

# Lead Requirements

- In addition to third party certification requirements, youth ATVs are also subject to limits on lead content and lead paint
- As of August 14, 2009, the applicable lead limits are as follows:
  - 90 ppm for lead in paint or other surface coating; and
  - 300 ppm for lead in any other accessible component except electronic parts

# Stay of Enforcement for Certain Components Containing Lead

- Federal Register Notice published on February 8, 2011, issued an additional stay of enforcement of the lead limits for some, but not all, components of youth ATVs:
  - Battery terminals; and
  - Components made with metal alloys, including steel containing up to 3500 ppm lead, aluminum with up to 4000 ppm lead and copper with up to 40,000 ppm lead
- The stay is effective until December 31, 2011:

<http://www.cpsc.gov/businfo/frnotices/fr11/stayleadrev.pdf>

# Failure to Certify Imported ATVs

- Section 17(a)(2) of the Consumer Product Safety Act (CPSA) states that a product offered for importation “*shall be refused admission*” if it is not accompanied by a certificate or tracking label required under section 14 or if it is accompanied by a false certificate
- Section 42(a)(2) of the CPSA also makes it unlawful to import an ATV unless it bears a label identifying the CPSC-approved ATV Action Plan to which it is subject
- Imported ATVs found to be non-compliant will be detained at the ports or conditionally released at the expense of the manufacturer/importer until such time that compliance is verified by CPSC staff or the ATVs are reexported or destroyed by the manufacturer/importer

# Refusal of Admission

- Under section 17(e), as amended, products refused admission *must be destroyed* unless the Secretary of Treasury permits export
- All expenses of destruction (including salaries, travel, per diem, etc) shall be paid by the owner or consignee
- If expenses of destruction are not paid, they become a lien against future imports by the same owner or consignee

# Violations of ATV Requirements

- It is unlawful for any person to:
  - Sell, offer for sale, *manufacture for sale*, distribute in commerce or *import* an ATV that does not comply with all applicable safety standards and bans;
  - *Fail to timely report* a noncompliance or defect that could present a substantial product hazard;
  - *Fail to furnish* a certificate of conformity or tracking label required by section 14 of the CPSA;
  - *Issue a false certificate* if the issuer in exercise of due care has reason to know it is false or misleading in any material respect;
  - *Fail to comply* with an approved ATV Action Plan; and
  - *Fail to timely provide* required information to CPSC, upon request

# Ban of 3-Wheel ATVs

- After September 13, 2008, no new 3-wheel ATVs may be imported into the United States or distributed in U.S. commerce
  - Covers parts imported and assembled in the United States
- A 3-wheel ATV is considered to be any vehicle that meets the statutory definition of an ATV with 3 wheels
- Violation of the ban may result in a civil penalty of up to \$100,000 per unit up to a maximum of \$15 million
- Any imported 3-wheel ATV may be destroyed at the expense of the importer

# ATV Reporting Requirements

- Every manufacturer, importer, distributor, and retailer of an ATV must immediately report to the Commission if it learns that the ATV:
  - fails to comply with any applicable standard or ban; or
  - may contain a defect which could create a substantial product hazard
- Reporting obligations under Section 15 of the CPSA:
  - recalls,
  - dealer non-compliance,
  - firm non-compliance

# Section 15 Reporting Requirements

- [www.cpsc.gov/businfo/corrective.html](http://www.cpsc.gov/businfo/corrective.html)
- Contains information on recall process, FT program and reporting obligations
- Online report form on [www.cpsc.gov](http://www.cpsc.gov)
- Fast Track Program

# Section 37 Reporting Requirements

- If a model is the subject of 3 or more civil actions in U.S. civil or federal Court for death or grievous bodily injury, which result in either a final settlement involving the manufacturer or a court judgment in favor of the plaintiff, the manufacturer of such product shall report to the Commission each such civil action within 30 days after the final settlement or court judgment in the third of such civil actions, and, within 30 days after any subsequent settlement or judgment in that 24-month period, any other such action.

# Useful Links

- [www.cpsc.gov](http://www.cpsc.gov)
- [www.cpsc.gov/about/cpsia/sect232.html](http://www.cpsc.gov/about/cpsia/sect232.html)
- [www.cpsc.gov/businfo/corrective.html](http://www.cpsc.gov/businfo/corrective.html)
- [www.cpsc.gov/cgi-bin/sect15.aspx](http://www.cpsc.gov/cgi-bin/sect15.aspx)
- [www.atvsafety.gov](http://www.atvsafety.gov)
- [www.regulations.gov](http://www.regulations.gov)
- [www.recalls.gov](http://www.recalls.gov)
- [www.ansi.org](http://www.ansi.org)
- [www.svia.org](http://www.svia.org)
- Emissions – Contact EPA directly at: [www.epa.gov](http://www.epa.gov)
- Spark Arrestor – Contact the U.S. Forest Service at: [www.fs.fed.us](http://www.fs.fed.us)

# Contact Information

- Regulatory – Justin Jirgl
  - Tel: 301-504-7814
  - Email: [jjirgl@cpsc.gov](mailto:jjirgl@cpsc.gov)
- Defects – Tanya Topka
  - Tel: 301-504-7594
  - Email: [ttopka@cpsc.gov](mailto:ttopka@cpsc.gov)
- Action Plan – Howard Tarnoff
  - Tel: 301-504-7589
  - Email: [htarnoff@cpsc.gov](mailto:htarnoff@cpsc.gov)