



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Chairman Inez M. Tenenbaum
 Commissioner Nancy A. Nord
 Commissioner Anne M. Northup
 Commissioner Robert S. Adler

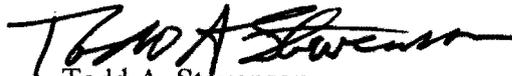
ITEM:

All-Terrain Vehicles: Final Rule Amending Consumer Product Safety Standard
(Briefing package dated February 8, 2012, OS No. 4790)

DECISION:

The Commission voted (3-0-1) to approve publication in the *Federal Register* ("FR") of the draft final rule, without changes, to amend the mandatory consumer product safety standard for all-terrain vehicles. The amendments to the Commission's standard will incorporate changes made to the mandatory standard by a 2010 revision of the ANSI/SVIA standard (ANSI/SVIA 1-2010) the *American National Standard for Four-Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements*, developed by the Specialty Vehicle Institute of America. Chairman Tenenbaum and Commissioners Nord and Adler voted to approve publication of the final rule. Commissioner Northup abstained from voting. Commissioner Adler issued the attached statement regarding this matter.

For the Commission:


Todd A. Stevenson
Secretary

* Ballot vote due February 14, 2012
Attachment: Statement of Commissioner Adler



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

**STATEMENT OF COMMISSIONER ROBERT S. ADLER
REGARDING THE FINAL RULE AMENDING THE
MANDATORY ALL-TERRAIN VEHICLE STANDARD**

February 14, 2012

Today, I joined my fellow Commissioners in unanimously¹ approving a final rule that accepted the ANSI/SVIA 1-2010 standard for all-terrain vehicles (ATVs) and thereby amended the mandatory ATV standard so that it would match the voluntary standard adopted by the industry in December 2010. In the Consumer Product Safety Improvement Act of 2008 (CPSIA), Congress required the CPSC to adopt the industry's voluntary standard (ANSI/SVIA 1-2007) as a mandatory standard. Congress further required the CPSC to amend that mandatory standard with any subsequent update to the industry's voluntary standard as long as the Commission determined that the revision was reasonably related to the safe performance of ATVs.² Commission staff has recommended that the CPSC adopt the industry's latest rule not because it represents a giant leap forward in safety but because "the ANSI/SVIA 1-2010 standard *does not diminish the safety* of the ATV vehicle."³ To state the obvious, this is a low threshold for federal safety standards.

ATVs remain the most dangerous discretionary use product for children within CPSC's jurisdiction. In the past three decades, at least 2,775 children under the age of sixteen have died⁴ in ATV-related accidents and at least 807,000 were treated in emergency rooms for injuries⁵ resulting from ATVs. Sadly, these numbers continue to grow. We have already seen far too many death and injury reports in 2012 involving children as young as four. I hope, now that we have completed this mainly ministerial rulemaking

¹ The vote was 3-0-1, with Commissioner Northup abstaining.

² Section 42(b) of CPSIA.

³ CPSC Staff Memorandum, "All-Terrain Vehicles" Amendment of Consumer Product Safety Standard," page 4 (Feb. 8, 2012)(emphasis added), *available at*: <http://www.cpsc.gov/library/foia/foia12/brief/atvfinal.pdf>.

⁴ 2010 Annual Report of ATV-Related Deaths and Injuries, Consumer Product Safety Commission, Dec. 2011, *available at* <http://www.cpsc.gov/library/foia/foia12/os/atv2010.pdf>. Reported fatalities cover 1982-2010, although data collection from 2007 to present is ongoing. As a result, the number of deaths and injuries reported from this time period is expected to increase.

⁵ National Statistics, ATV-Related Deaths and Injuries for Children Under 16, 1982-2010, Consumer Product Safety Commission, *available at*: <http://www.atvsafety.gov/stats.html>. Injury estimates cover 1985-2010.

and turn to the completion of our 2006 rulemaking,⁶ we can place greater emphasis on finding ways to address these tragic ATV deaths and injuries.

In the Commission's Notice of Proposed Rulemaking (NPR) regarding ANSI/SVIA 1-2010, we solicited comments and information on a variety of issues, "some of which are beyond the scope of the immediate revisions to the mandatory standard and will be relevant to future ATV rulemaking."⁷ In my statement regarding that NPR, in addition to requesting stakeholders thoughts on issues such as the need for continued production of Y-12+ models of ATVs, I noted three specific areas of interest: children on adult ATVs, speed, and lateral stability.⁸ I was pleased to see that there were comments regarding all three topics and look forward to CPSC staff's response.⁹

Need for Continued Production of the Y-12+ Model: As a policy and safety matter, I neither endorse nor condone children operating ATVs. I believe that most ATVs pose an unnecessary and avoidable risk of injury or death to children. In particular, adult ATVs are fast, heavy and powerful – and children do not have the strength or dexterity to operate an adult ATV safely. Accordingly, the mandatory standard requires both hangtags and permanently affixed labels for adult ATVs that state "NEVER operate this ATV if you are under 16." Some states have also banned the use of adult ATVs by children – a move I heartily endorse.

Nevertheless, children do ride ATVs, and these products should be as safe and age appropriate as possible. Currently, the ATV industry produces a Y-6+ model, a Y-10+ model, and a Y-12+ model. ANSI/SVIA 1-2007 called for the Y-12+ category to be phased out. ANSI/SVIA 1-2010 calls for this phase-out to be halted and allows for the continued production of the Y-12+ model.

The need for the Y-12+ model of ATV had been supported by the Specialty Vehicle Institute of America (SVIA) prior to the passage of P.L. 112-28 because of SVIA's concerns that despite CPSC initiated stays of enforcement,¹⁰ CPSIA's lead limits when

⁶ Notice of Proposed Rulemaking: "Standards for All-Terrain Vehicles and Ban of Three-Wheeled All-Terrain Vehicles," 71 Fed. Reg. 49504 (Aug. 10, 2006). While certain provisions of the proposed rule were mooted by the passage of the Consumer Product Safety Improvement Act of 2008 (CPSIA), such as a statutory ban on three-wheeled ATVs, other issues were left unaddressed. Section 42(d)(1) of CPSIA mandated that the Commission complete the rulemaking but set no deadline for doing so. However, P.L. 112-28 (2011), set a deadline of August 12, 2012 for completion of the 2006 proposed rule.

⁷ 76 Fed. Reg. 44289, 44292 (July 25, 2011).

⁸ Statement of Commissioner Robert S. Adler Regarding the Adoption of the ANSI/SVIA 1-2010 Revision to the Mandatory All-Terrain Vehicle Standard (Aug. 4, 2011), *available at*: <http://www.cpsc.gov/pr/adler08042011.pdf>.

⁹ CPSC Staff Memorandum, "All-Terrain Vehicles" Amendment of Consumer Product Safety Standard," page 11 (Feb. 8, 2012), *available at*: <http://www.cpsc.gov/library/foia/foia12/brief/atvfinal.pdf>.

¹⁰ Notice of Stay of Enforcement Pertaining to Youth Motorized Recreational Vehicles, 74 Fed. Reg. 22154 (May 12, 2009) and Notice of Stay of Enforcement of Testing and Certification Pertaining to Youth All-Terrain Vehicles 76 Fed. Reg. 5565 (Feb. 1, 2011).

applied to the Y-6+ and Y-10+ models would effectively ban children's ATVs.¹¹ Regardless of the accuracy of such a concern, P.L. 112-28 eliminated it by exempting youth model ATVs from the lead limits of CPSIA. It appears that one result of the pre-P.L. 112-28 requirement for youth model ATVs to meet low lead content levels was that few youth models were produced.¹² This seems a predictable byproduct of valid manufacturing concerns. It is this current decreased availability of youth models that convinced me, for the moment, that not phasing out the model is a worthwhile experiment.

In addition to fewer Y-6+ and Y-10+ ATVs being produced between 2008-2011, SVIA has another rationale for the continued need for Y-12+ category ATVs: "there is a continuing risk that that (sic) many children age 12 to 15 will have no alternative but to ride adult size ATVs if the Y-12+ category is not maintained in the mandatory standard."¹³

This statement by SVIA is almost inscrutable when compared with its position on whether the existence of Y-12+ will lead to underage driving of the Y-12+ category vehicle. SVIA expresses a concern that without Y-12+ category ATVs young adolescents will have to ride adult ATVs. This position posits that adolescents will have no alternative but to ride their parents' vehicles if Y-12+ models are not available.

Later in the same comment, however, the industry argues that the existence of Y-12+ category is *unlikely* to result in children younger than 12 riding the Y-12+ ATVs, because:

Y-12+ model ATVs all bear a label clearly warning both riders and the parents or legal guardian that operation of the vehicle by children under the age of 12 increases the risk of severe injury or death, that adult supervision is required for children under age 16, and that children under age 12 should never be permitted to operate the ATV.¹⁴

What is particularly baffling is that SVIA fails to explain why a label will absolutely prevent an 11 year old from riding a Y-12+ category ATV, but an almost identical label will be unable to prevent a 13 year old from riding an adult ATV (thus necessitating the need for the Y-12+ model). It seems unlikely there is a demonstrable behavioral difference between the 11 year old and the 12 year old.

¹¹ See e.g. SVIA Comment, page 2, available at: <http://www.cpsc.gov/library/foia/foia12/pubcom/atvcomm.pdf>.

¹² *Id.* at page 4.

¹³ *Id.* at page 3. This statement is made without caveat or further explanation. It is hard to imagine the alcohol or motor vehicle industry making the same case for underage drinking or driving without at the very least noting that such an eventuality is extraordinarily unfortunate and all possible steps should be taken to prevent it.

¹⁴ *Id.* at page 4 (emphasis added).

The sad reality is that far too many children die when operating adult sized ATVs. Even the industry's model legislation takes the stance that no one should operate an ATV in violation of an age recommendation label. Some states have begun to make this idea the law. Perhaps the time has come for the industry also to look beyond labels to address this issue.

Children on Adult ATVs: My concerns regarding the number of child deaths and injuries on adult ATVs also led me to ask about ways that the industry, the agency, and other stakeholders might address these issues. At the time, I wrote:

“What technology is out there that can address these problems? Is there child resistant recognition technology that could prevent children from operating adult sized ATVs, much like the child-resistant pill bottles under the Poison Prevention Packaging Act that the Commission enforces?”¹⁵

I was pleased to see this issued addressed head on by a group of manufacturers in response to the proposed rule. After all, regardless of the good intentions of lawmakers, regulators, and safety advocates, there is a good chance it will be an engineer working for an existing manufacturer who will devise the safety technology to address this ongoing concern.

The joint comments¹⁶ of Honda, Suzuki, Arctic Cat, Bombardier, Kawasaki, Polaris, and Yamaha focused mainly on ideas regarding how to protect riders of ATVs. The joint comments addressed rollover protection systems (ROPS), maximum speeds, and child-proof ignition safety locks for adult ATVs.

With respect to the child-proofing issue, I note that as a long time safety advocate and someone with more than 40 years in the field of consumer protection I am as aware as anyone of the limitations of technology when it comes to behavior. Sometimes individuals will defeat safety measures that are installed for their own protection. In other instances, early attempts at safety measures will fail because the technology has not yet been perfected. In other words, when it comes to safety measures, silver bullets are rare, especially on the first shot.

That said, the seven ATV manufacturers' dismissive attitude toward *any* attempt at child-proofing adult sized ATVs, despite what are clear and severe risks, is disappointing to say the least. Their comment seeks to discredit the entire notion of such technology as

¹⁵ Statement of Commissioner Robert S. Adler Regarding the Adoption of the ANSI/SVIA 1-2010 Revision to the Mandatory All-Terrain Vehicle Standard (Aug. 4, 2011), *available at*: <http://www.cpsc.gov/pr/adler08042011.pdf>.

¹⁶ Joint Comments of American Honda Motor Co., Inc., American Suzuki Motor Corporation, Arctic Cat Inc., Bombardier Recreational Products Inc., Kawasaki Motors Corp., U.S.A., Polaris Industries Inc., and Yamaha Motor Corporation, U.S.A., *available at*: <http://www.cpsc.gov/library/foia/foia12/pubcom/atvcomm.pdf>. (Hereinafter: “Joint Comment.”)

“facially appealing” but essentially doomed to failure. As far as I can tell, they base this claim on the drawbacks of a \$500 prototype ignition system developed by a group of four college students.¹⁷

Further, like their trade association, SVIA, the seven ATV manufacturers fall back on the notion that it is apparently impossible to keep children off adult sized ATVs, citing “[r]esearch [that] shows that many adult ATV users consider ATV riding to be a recreational family activity and are therefore willing to grant their children access to adult-sized ATVs.”¹⁸ Accordingly, because “[s]ome adults may choose to bypass the countermeasure”¹⁹ these manufacturers conclude that since “countermeasures [may be] largely ineffective or – worse – [they could] create unintended consequences for consumers.”²⁰

Perhaps of most concern is that the reference to unintended consequences by these seven manufacturers takes the wrong lesson from one of the greatest success stories in the history of the Consumer Product Safety Commission. The comment cites the now antiquated example of FDA’s introduction of childproof caps for painkillers that were too difficult for *both* children *and* adults to open which, unfortunately, led to adults leaving the caps off their painkillers resulting in the death and injury count increasing.²¹ Yet, the story did not end there. As everyone knows, today childproof caps are essentially ubiquitous on prescription medicines in the United States and there are very few pediatric poisonings. In fact, since the CPSC fixed the childproof cap to make it hard for children to open but not too difficult for adults to open, pediatric poisoning deaths have decreased by an incredible 84 percent.²²

Therefore, the lesson to take from the childproof medicine caps example is not that because first attempts at safety measures are susceptible to countermeasures they should be abandoned to leave society to suffer. Rather, sometimes a second and third attempt is necessary. I remain confident that the CPSC, working with industry, consumer groups, and all interested stakeholders can find ways to counter the countermeasures and through a combination of technology, education, and potentially state or federal legislation make a child’s death on an adult ATV as rare as a child dying from taking their parents’ medicine by mistake.

¹⁷ “Virginia Tech students develop child-proof ignition safety lock for adult-sized ATVs” (April 20, 2011), *available at*: <http://www.eng.vt.edu/news/virginia-tech-students-develop-child-proof-ignition-safety-lock-adult-sized-atvs>.

¹⁸ Joint Comment at page 11.

¹⁹ *Id.*

²⁰ *Id.* at page 16.

²¹ *Id.* at page 12-13. *See also* CPSC’s Poison Prevention Packaging: A Guide For Healthcare Professionals (revised 2005), *a available at*: <http://www.cpsc.gov/cpsc/pub/pubs/384.pdf>.

²² Pediatric Poisoning Fatalities from 1972-2008, CPSC (Dec. 2011), *a available at*: <http://www.cpsc.gov/library/foia/foia12/os/pppa2011.pdf>.

Speed: With respect to the speed of ATVs, I noted in August that some adult ATVs can reach speeds of more than 70 miles per hour and wondered if there should be an upper limit on the speed of an adult ATV. If so, I asked, how should such a limit be determined? While speed governors for youth ATVs are a topic of ANSI/SVIA 1-2010, there is no current speed maximum set for adult ATVs. Accordingly, I would like to note my surprise that the seven manufacturers that chose to comment jointly appear to take the position that *no* maximum speed should *ever* be set for an adult ATV. The joint comment states that “there is no data that maximum speed capability, in and of itself, is a significant causal factor in ATV accidents,”²³ and I have no reason to doubt this absence of data. Yet, I simply pose the question – does the lack of a known direct link mean that there is no speed too fast for an ATV to be able to travel?

Lateral stability: As noted previously, the rulemaking package before the Commission currently is a limited one, but an issue that arises repeatedly when I speak with engineers about ATVs is lateral stability. I look forward to the CPSC staff’s response (as well as the ATV industry’s response) to the comments we received encouraging the introduction of a lateral stability test to the rule²⁴ as well as a renewed focus on the under/oversteering characteristics of these vehicles.²⁵

Passengers: The current mandatory standard is rather clear – there should be no passengers on Type I ATVs – and requires labels to this effect. Our non-industry commenters are in agreement as well that there should be no passengers on Type I ATVs.²⁶ Yet, the issue remains. We still receive far too many death and injury reports that include the phrase “passenger on an ATV.” This needs to be addressed. I am confident that on this, and all other ATV safety related issues, any parties that are willing to work towards solutions will find a ready and willing partner in the Consumer Product Safety Commission.

²³ Joint Comment at page 6-7.

²⁴ Consumer Federation of America and Consumers Union Comment, *available at*: <http://www.cpsc.gov/library/foia/foia12/pubcom/atvcomm.pdf>. (Hereinafter “Consumer Federation Comment.”)

²⁵ Arkansas ATV Research Group Comment, *available at*:

<http://www.cpsc.gov/library/foia/foia12/pubcom/atvcomm.pdf>.

²⁶ Consumer Federation Comment and Concerned Families for ATV Safety Comment both *available at*: <http://www.cpsc.gov/library/foia/foia12/pubcom/atvcomm.pdf>.