



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

This document has been electronically
approved and signed.

DATE: February 14, 2018

BALLOT VOTE SHEET

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Patricia M. Hanz, General Counsel
Patricia H. Adkins, Executive Director

FROM: Patricia M. Pollitzer, Assistant General Counsel
Mary A. House, Attorney, OGC

SUBJECT: Final Rule to Amend 16 C.F.R. part 1420, Requirements for All-Terrain Vehicles

BALLOT VOTE DUE Wednesday, February 21, 2018

Staff is forwarding to the Commission a briefing package recommending that the Commission amend its standard for all-terrain vehicles (ATVs). Pursuant to section 42 of the Consumer Product Safety Act (CPSA), as amended by section 232 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), staff recommends that the Commission issue a final rule that would update 16 C.F.R. part 1420, Requirements for All-Terrain Vehicles (ATVs), to incorporate by reference the most recent version of the voluntary standard, ANSI/SVIA 1-2017, *American National Standard for Four Wheel All-Terrain Vehicles*. The Office of the General Counsel is providing for Commission consideration the attached draft final rule for publication in the *Federal Register*.

Please indicate your vote on the following options:

- I. Approve publication of the attached document in the *Federal Register*, as drafted.

(Signature)

(Date)

- II. Approve publication of the attached document in the *Federal Register*, with changes.
(Please specify.)

(Signature)

(Date)

- III. Do not approve publication of the attached document in the *Federal Register*.

(Signature)

(Date)

- IV. Take other action. (Please specify.)

(Signature)

(Date)

Attachment: Draft *Federal Register* Notice: Final Rule for Amendment to Standard for All-Terrain Vehicles

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Billing Code 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1420

[CPSC Docket No. 2017-0032]

Amendment to Standard for All-Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY The Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA), required the Consumer Product Safety Commission (CPSC or the Commission) to publish, as a mandatory consumer product safety standard, the *American National Standard for Four-Wheel All-Terrain Vehicles*, developed by the Specialty Vehicle Institute of America (ANSI/SVIA 1-2007). CPSC published that mandatory consumer product safety standard on November 14, 2008. ANSI/SVIA issued a 2017 edition of its standard in June 2017. In accordance with the CPSA, CPSC is issuing this final rule to amend the Commission's mandatory ATV standard to reference the 2017 edition of the ANSI/SVIA standard.

DATES: This rule will become effective on January 1, 2019. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Justin Jirgl, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301-504-7814; e-mail: jjirgl@cpsc.gov.

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SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

Section 42 of the Consumer Product Safety Act (CPSA), as amended by section 232 of the CPSIA, directed the Commission to “publish in the Federal Register as a mandatory consumer product safety standard the American National Standard for Four-Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements developed by the Specialty Vehicle Institute of America (American National Standard ANSI/SVIA 1-2007).” 15 U.S.C. 2089(a)(1). Accordingly, on November 14, 2008, CPSC published a final rule, codified at 16 CFR part 1420, mandating ANSI/SVIA 1-2007 as a consumer product safety standard. 73 FR 67385.

Section 42(b) of the CPSA provides that, if ANSI/SVIA 1-2007 is revised after the Commission has published a *Federal Register* notice mandating the standard as a consumer product safety standard, ANSI must notify the Commission of the revision, and the Commission has 120 days after it receives that notification to issue a notice of proposed rulemaking to amend the Commission’s mandatory ATV standard “to include any such revision that the Commission determines is reasonably related to the safe performance of [ATVs] and notify the Institute of any provision it has determined not to be so related.” 15 U.S.C. 2089(b)(1) and (2). Thereafter, the Commission has 180 days after publication of the proposed amendment to publish a final amendment to revise the ATV standard. *Id.* On February 29, 2012, the Commission revised part 1420, in accordance with the revision procedures set out in the CPSA, to reference the 2010 edition of the ANSI/SVIA standard. 77 FR 12197.

II. The Proposed and Final Rules

On June 14, 2017, ANSI notified the Commission that the ANSI/SVIA standard had been revised in 2017, and that the new standard, ANSI/SVIA 1-2017, was approved on June 8, 2017. On September 13, 2017, the Commission published a proposed rule (NPR), 82 FR 42962, to amend part 1420 to reference the 2017 edition of the ANSI/SVIA standard. In the NPR, the Commission described two material changes to ANSI/SVIA 1-2017, which compared to the 2010 edition of the standard, are reasonably related to the safe performance of ATVs: (A) requirements for stop lamps or combination tail-stop lamps on all adult and transition category ATVs, and on all youth ATVs equipped with a head lamp or conspicuity lamp; and (B) requirements for reflectors for all categories of ATVs. 82 FR at 42961. These revisions have not changed for the final rule.

A. Stop Lamps and Reflectors

ANSI/SVIA 1-2017 Section 4.17, Lighting & Reflective Equipment, requires that all categories of ATVs be equipped with reflectors, all adult and transition ATVs be equipped with stop lamps, and that all youth ATVs already equipped with a head lamp or conspicuity lamp also be equipped with stop lamps.

1. Stop Lamps

ANSI/SVIA 1-2017 requires stop lamps or combination tail-stop lamps on all adult and transition category ATVs, and on all youth ATVs equipped with a head lamp or conspicuity lamp. In May 2015, CPSC requested that SVIA consider adding requirements relating to stop lamps to increase the detectability of ATVs, based on a preliminary analysis of 2007 ATV fatality data involving two ATVs colliding. CPSC staff worked with SVIA to develop the stop lamp requirements contained in ANSI/SVIA 1-2017. The stop lamp requirements in

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ANSI/SVIA 1-2017 are intended to improve the optional provision for stop lamps in the 2010 edition of the voluntary standard, to reduce rear-end collisions related to non-detection of a vehicle braking.

2. Reflectors

ANSI/SVIA 1-2017 requires one amber reflector on each side of the ATV (mounted as far forward as practicable), one red reflector on each side of the ATV (mounted as far rearward as practicable), one red reflector on the rear of the vehicle, and one white reflector on the front of the ATV, if not equipped with a headlamp or conspicuity light. These requirements are for all categories of ATV. The NPR reviewed that reflector use may increase the detectability of ATVs, citing CPSC staff's review of 331 fatal ATV-related vehicular collision incidents that found that more than 30 percent of these incidents occurred at night and an additional 5 percent occurred in low light (*i.e.*, dusk). Moreover, CPSC's review of data demonstrate that fatalities occur when ATVs cross public roads between fields or trails. Although many factors contribute to incidents, increasing the visibility of ATVs at night will raise the likelihood that the driver of an oncoming vehicle will detect the ATV. Early detection of an ATV may allow the driver of an oncoming vehicle sufficient time to react and avoid a collision.

In May 2015, CPSC requested that SVIA consider adding requirements relating to reflectors, and worked with SVIA in developing the reflector requirements contained in ANSI/SVIA 1-2017. The ANSI/SVIA 1-2017 reflector requirements are intended to increase the visibility of an ATV at night and may reduce vehicular collisions related to non-detection of other vehicles.

The Commission now reviews the comments on the NPR, and finalizes the amendment to part 1420, updating the reference in part 1420 to ANSI/SVIA 1-1017, as described herein.

III. Response to Comments

The Commission received 32 comments on the NPR. However, 26 comments were about renewable energy and climate issues, and thus, were not related to the proposed amendment of the consumer product safety standard for ATVs. Of the remaining six comments relevant to the NPR, three agreed with the proposed rule, two opposed the proposed rule, and one commented on the proposed effective date.

Below the Commission summarizes and responds to the significant issues raised in the relevant comments.

A. Comment Regarding the Effective Date of the Final Rule

Comment: The SVIA objected to the proposed 60-day effective date specified in the NPR. SVIA noted that although the CPSIA requires the Commission to issue an NPR within 120 days of receiving notification of the revised ANSI/SVIA standard, the Commission issued the NPR within 90 days of notification, on September 13, 2017, instead of closer to the statutory deadline of October 12, 2017. SVIA added that although the Commission is required to publish a final rule by March 12, 2018, the Commission could issue the final rule earlier. SVIA contended that the Commission's ability to issue the final rule earlier than the statutory deadline presents an uncertainty in the effective date, which makes it difficult for ATV manufacturers to plan for compliance. SVIA requested that the effective date of the final rule apply to ATVs beginning with the 2019 model year, to accommodate changes to the design of certain ATVs.

Moreover, SVIA stated that modifications to meet the new standard require "changes to the electrical system and will require new engineering, designing, fabricating, and testing of reflectors and mounting brackets, all of which must be arranged significantly in advance of implementation." SVIA noted that to meet the proposed 60-day effective date, all of these

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changes must be done before ATVs are imported and would apply to 2018 model year ATVs, which have already been designed and are under production, and may be awaiting shipment. SVIA contended that a 60-day effective date would also impose a financial burden on manufacturers, contrary to CPSC's statement that the proposed rule would not pose a significant impact on small manufacturers.

Response: The Commission cannot set an effective date based on a model year for several reasons. First, effective dates for Commission rules are set by providing a calendar date based on the date of publication of a final rule. Second, manufacturers have varying schedules for manufacturing, importing, and distributing model years, making enforcement of a rule based on a model year more difficult. For enforcement purposes, and for clarity for consumers, the final rule provides an effective date that is a specific calendar date.

Note that when the Commission amended the mandatory standard for ATVs in 2012, the seven major distributors of ATVs requested that the amended mandatory standard be effective for 2013 model year ATVs, or alternatively, 60 days after publication of the final rule.¹ In the 2012 rulemaking, CPSC responded that tying the effective date to a particular model year was problematic because vehicle model years do not begin and end on the same date for each company. Based on this previous experience, the Commission proposed a 60-day effective date for the final rule, believing that the revisions required to meet the revised standard were not substantial, and that such a date would correspond with planning for the 2019 model year. 82 FR 42962.

SVIA's comment on the current rulemaking, however, provides sufficient rationale to demonstrate why the proposed 60-day effective date is not suitable for all ATV manufacturers.

¹ All-Terrain Vehicles: Final Rule Amending Consumer Product Safety Standard, dated February 8, 2012. Retrieved from: https://www.cpsc.gov/s3fs-public/pdfs/foia_atvfinal.pdf.

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Moreover, as explained above, the Commission's intention was to align the effective calendar date of the final rule with the introduction of model year 2019 ATVs to the U.S. market. SVIA's past comments indicate that planning for the 2019 model year has been under way since March 2017, and that model year 2019 vehicles will be released in the 2018 calendar year.

Based on SVIA's comments, the final rule establishes an effective date of January 1, 2019. A January 1, 2019 effective date will address staff's enforcement concerns, as well as provide manufacturers with sufficient time to make the changes SVIA states are needed so that all vehicles manufactured or imported after that date comply with the final rule.

B. Comments Regarding Data Presented in the NPR

Comment: Several commenters stated that the data presented in the NPR are insufficient to support the final rule. One commenter stated that the Commission failed to base the proposed requirement for rear-end lamps and reflectors on accurate or convincing statistics, noting: "Commission staff claims that this 13 incident-study provides proof that rear-end lamps would have prevented the pattern of rear-end collisions related to braking." Another commenter stated that the final rule should include additional evidence regarding the number of fatalities that result from rear-end collisions and the benefits that will accrue if manufacturers are required to install stop lamps on ATVs.

Focusing on the sufficiency of the data, one commenter argued that CPSC may exceed its authority to promulgate a rule because the majority of ATVs already have stop lamps, which does not support the conclusion that a stop lamp requirement is reasonably related to the safe performance of ATVs. Similarly, another commenter concluded that the proposed rule lacked "the factual or analytical basis" to support a rule, and therefore, was "arbitrary and capricious."

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Response: Under section 42(b) of the CPSA, 15 U.S.C. 2089(b)(2), once notified by ANSI of a change to the voluntary standard for ATVs, the Commission is required to amend the consumer product safety standard for all-terrain vehicles to include any such revision that the Commission determines is reasonably related to the safe performance of all-terrain vehicles, and must notify ANSI of any provision the Commission determines not to be so related. This rulemaking follows the procedure required by the statute for the Commission to use when ANSI revises its voluntary standard. The Commission is not establishing its own consumer product safety standard under the requirements of sections 7 and 9 of the CPSA.

Regarding the data presented in the NPR, staff's analysis of the 2007 study identified 13 rear-end collisions, and staff noted that eight of the 13 incidents "illustrate the hazard of rear-end collisions related to braking." Staff did not, and does not, represent that anecdotal incidents constitute "proof" of the effectiveness of stop lamps.

The information provided in the NPR explained CPSC staff's interactions with the voluntary standard organization, and provided context for why the Commission determined that the provisions in the voluntary standard are reasonably related to the safe performance of ATVs, which is the standard required by statute. Further, the National Highway Traffic Safety Administration (NHTSA) recognizes that conspicuity of a vehicle is related to the safety performance of vehicles in its Federal Motor Vehicle Safety Standards (FMVSS) for automobiles. Stop lamps and reflectors are specifically included in FMVSS 108 *Lamps, reflective devices, and associated equipment* and FMVSS 500 *Low-speed vehicles* as safety equipment. SVIA also recognizes conspicuity to be related to the safe performance of ATVs, and in the Annex of ANSI/SVIA 1-2017, specifically states that "conspicuity lights, tail lamps, and stop lamps can also be beneficial under certain riding conditions such as heavy brush, dusty

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or shaded trails, and similar low-light conditions” and that “reflex reflectors have been added for all categories of ATVs to aid in making ATVs more visible.”

Based on the information described in the NPR and reviewed above, the Commission has no basis to conclude that the conspicuity changes to the ANSI standard are not reasonably related to the safe performance of ATVs. In the NPR, the Commission determined that increasing the conspicuity of an ATV helps an ATV to be seen by other vehicles in various lighting conditions. Accordingly, the Commission determined that voluntary standard provisions that increase ATV conspicuity are reasonably related to the safe performance of ATVs. By statute, the Commission is required to include such provisions in the mandatory consumer product safety standard.

C. Comments Regarding the Scope of the Stop-Lamp Requirement

Comment: Two commenters stated that the final rule should clarify the scope of the proposed stop-lamp requirement and provide rationale if the requirement only applies to adult and transition category ATVs. One commenter stated that the requirement for stop-lamps should be for “all categories of ATVs.”

Response: ANSI/SVIA 1-2017 requires stop lamps on all adult and transition ATVs, and on all youth ATVs equipped with a head lamp or conspicuity lamp. A youth ATV without any front lights does not require a stop lamp. By design, youth ATVs do not have the same speed and equipment capabilities as adult and transition ATVs. For example, not all youth ATVs are equipped with lights, nor do they have electrical systems that are robust enough to support front or rear lights. Accordingly, revisions to the voluntary standard require reflectors on all categories of ATVs, but the revisions only require stop lamps on youth ATVs when it is technically feasible to do so. This approach in the voluntary standard is a practical technical solution for increasing conspicuity of youth ATVs.

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The final consumer product safety standard for ATVs (16 CFR part 1420) will require that ATVs comply with the applicable provisions of the 2017 revision of ANSI/SVIA, 1 *American National Standard for Four Wheel All-Terrain Vehicles*. Therefore, the mandatory standard for ATVs will require stop lamps on all adult and transition ATVs, and also require them on all youth ATVs equipped with a head lamp or conspicuity lamp.

D. Comment on the Burden Imposed by the Final Rule

Comment: One commenter stated that the Commission did not adequately consider the burden on industry if the final rule is implemented, stating that the NPR “disregards the fact that adopting these new standards will impose financial hardship on ATV manufacturers.” This commenter suggested that, in lieu of the final rule, “the Commission implement a mandatory licensing program that teaches ATV safety.”

Response: The commenter provided no information or data for CPSC to evaluate regarding the alleged hardship to industry. SVIA stated that manufacturer planning for 2019 model year ATVs is under way and that manufacturers intend to meet the requirements of ANSI/SVIA 1-2017 for the 2019 model year. Other than the effective date issue discussed above, the Commission did not receive any comments from any ATV manufacturer or SVIA to support the contention that implementation of the final rule will impose a financial hardship. As discussed above, the final rule sets January 1, 2019 as the effective date to address SVIA’s concern.

Regarding the suggestion that the Commission establish a licensing and instruction program, such action is outside the jurisdiction of the CPSC’s authority. The authority to implement any licensing requirements for ATV drivers rests with the states.

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IV. Description of the Final Rule

The final rule revises 16 CFR 1420.3(a), “Requirements for four-wheel ATVs” to incorporate by reference the ANSI/SVIA 1–2017 standard, instead of the ANSI/SVIA 1–2010 version. ANSI/SVIA 1–2017 contains requirements and test methods relating to ATVs, including vehicle equipment and configuration, vehicle speed capability, brake performance, pitch stability, electromagnetic compatibility, and sound level limits. Revisions incorporated into ANSI/SVIA 1-2017 are described in section II of this preamble.

V. Effective Date

Section 42(b) of the CPSA provides a timetable for the Commission to issue a notice of proposed rulemaking (within 120 days of receiving notification of a revised ANSI/SVIA standard) and to issue a final rule (within 180 days of publication of the proposed rule), but the statute does not set an effective date. The Commission proposed in the NPR that the final rule would take effect 60 days after publication of a final rule in the *Federal Register*, and it would apply to ATVs manufactured or imported on or after that date. However, based on the SVIA’s objection to a 60-day effective date, as discussed above in section III.A, the effective date for this final rule is January 1, 2019. Accordingly, all ATVs manufactured or imported on or after January 1, 2019, must comply with the final rule.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review a proposed rule for the rule’s potential economic impact on small entities, including small businesses. The NPR explained that the most significant changes to the voluntary standard involved requirements for brake-actuated stop lamps and reflectors, and that CPSC’s analysis demonstrated that the majority of ATVs already comply with these requirements. Consequently, the Commission anticipated that the cost of the changes required to bring ATVs that do not comply into

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compliance with the rule would be very low on a per-unit basis. The Commission certified that the rule would not have a significant impact on a substantial number of small entities. 82 FR at 42962.

As discussed in section III.A of this preamble, the Commission received a comment from the SVIA stating that the proposed 60-day effective date could change the financial impact of the rule. In response, the Commission will provide additional time to comply with the final rule, setting January 1, 2019 as the effective date. Affording a later effective date should provide manufacturers sufficient time to incorporate any necessary changes during the normal planning and design of new model year ATVs. Accordingly, based on staff's assessment using January 1, 2019 as the effective date, the Commission certifies that the final rule is unlikely to have a significant impact on a substantial number of small entities.

VII. Paperwork Reduction Act

The final rule does not impose any information collection requirements. Accordingly, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

VIII. Environmental Considerations

The Commission's regulations provide a categorical exemption for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement as they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c)(2). This final rule falls within the categorical exemption.

IX. Incorporation by Reference

Section 1420.3 of the final rule provides that ATVs must comply with ANSI/SVIA 1-2017. The OFR has regulations concerning incorporation by reference. 1 CFR part 51. These regulations require that, for a final rule, agencies must discuss in the preamble to the rule the way

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in which materials that the agency incorporates by reference are reasonably available to interested persons, and how interested parties can obtain the materials. Additionally, the preamble to the rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, the discussion in sections II, III, and IV of this preamble summarize the provisions of ANSI/SVIA 1-2017. ANSI/SVIA 1-2017 is copyrighted. Interested persons may purchase a copy of ANSI/SVIA 1-2017 from Specialty Vehicle Institute of America, 2 Jenner, Suite 150, Irvine, CA 92618-3806; telephone: 949-727-3727 ext.3023; www.svia.org. One may also inspect a copy at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: 301-504-7923.

X. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 42(a)(1) of the CPSA refers to rules issued under that section as "consumer product safety standards." Therefore, the preemption provision of section 26(a) of the CPSA applies to this final rule.

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XI. Notice of Requirements

The CPSA establishes certain requirements for product certification and testing. Certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third-party conformity assessment body. 15 U.S.C. 2063(a)(2). The Commission is required to publish a notice of requirements (NOR) for the accreditation of third-party conformity assessment bodies to assess conformity with a children's product safety rule to which a children's product is subject. *Id.* 2063(a)(3). On August 27, 2010, the Commission published an NOR for accreditation of third-party conformity assessment bodies for testing ATVs designed or intended primarily for children 12 years of age or younger. 75 FR 52616. The 2017 revision to the ATV standard does not substantially alter third party conformance testing requirements for ATVs designed or intended primarily for children 12 year of age or younger. Accordingly, the NOR for third-party testing of youth ATVs remains unchanged. The Commission considers the existing accreditations that the Commission has accepted for testing to the ATV standard to also cover testing to the revised 2017 ATV standard.

List of Subjects in 16 CFR Part 1420

Consumer protection, Imports, Incorporation by reference, Infants and children, Information, Labeling, Law enforcement, Recreation and recreation areas, Reporting and recordkeeping requirements, Safety.

For the reasons stated in the preamble, the Commission amends Title 16 of the Code of Federal Regulations, as follows:

PART 1420—REQUIREMENTS FOR ALL-TERRAIN VEHICLES

1. The authority citation for part 1420 continues to read as follows:

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Authority: The Consumer Product Safety Improvement Act of 2008, Pub. Law 110-314, § 232, 122 Stat. 3016 (August 14, 2008).

2. In the second sentence of § 1420.1, remove the words, “April 30, 2012,” and add in their place “January 1, 2019.”

3. Revise § 1420.3(a) to read as follows:

§ 1420.3 Requirements for four-wheel ATVs.

(a) Each ATV shall comply with all applicable provisions of the American National Standard for Four-Wheel All-Terrain Vehicles (ANSI/SVIA 1-2017), ANSI-approved on June 8, 2017. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from Specialty Vehicle Institute of America, 2 Jenner, Suite 150, Irvine, CA 92618-3806; telephone: 949-727-3727 ext.3023; www.svia.org. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD. 20814, telephone: [301-504-7923](tel:301-504-7923), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

Dated: _____

Alberta E. Mills,
Secretary, Consumer Product Safety Commission



STAFF BRIEFING PACKAGE

FINAL RULE TO AMEND
CONSUMER PRODUCT SAFETY STANDARD FOR
ALL-TERRAIN VEHICLES (ATVs)

February 14, 2018

For Further Information Contact:

Caroleene Paul
Project Manager
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301-987-2225



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
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This document has been electronically
approved and signed.

Memorandum

February 14, 2018

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Patricia M. Hanz, General Counsel
Patricia H. Adkins, Executive Director
DeWane Ray, Deputy Executive Director for Safety Operations

FROM: George A. Borlase, Ph.D., P.E., Assistant Executive Director
Office of Hazard Identification and Reduction

Joel Recht, Ph.D., Assistant Executive Director
Office of Hazard Identification and Reduction

Caroleene Paul, Project Manager
Directorate for Engineering Sciences

SUBJECT: All-Terrain Vehicles: Amendment of Consumer Product Safety Standard

I. INTRODUCTION

In September 2017, the U.S. Consumer Product Safety Commission (CPSC or Commission) voted to publish in the *Federal Register* a notice of proposed rulemaking (NPR) regarding a June 2017 revision to the American National Standards Institute/Specialty Vehicle Institute of America (ANSI/SVIA) 1-2010 voluntary standard for Four-Wheel All-Terrain Vehicles (ATVs). The proposed rule, published on September 13, 2017, would amend the current mandatory consumer product safety standard to incorporate the revisions of the voluntary standard.

This memorandum discusses: (1) the comments to the NPR and CPSC staff's responses; (2) the amendment's potential impact on small entities; (3) possible effective dates; (4) the options available to the Commission; and (5) CPSC staff's conclusions and recommendations.

II. BACKGROUND

In October 2008, the CPSC, as directed by Section 232(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), published a *Federal Register* notice mandating the *American National Standard for Four Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements*, developed by the ANSI/SVIA 1-2007, as a consumer product safety standard. The mandated standard, codified at 16 C.F.R. part 1420, became effective on April 13, 2009.

The CPSIA directs the CPSC to take certain actions when the voluntary ANSI/SVIA standard is revised through the applicable consensus standards development process. Specifically, when a revision is made to the ANSI/SVIA standard, ANSI must notify the Commission of the revision to the standard. Within 120 days of receiving the notice from ANSI, the Commission must issue an NPR to amend the consumer product safety standard, and include in the NPR any revision that the Commission determines is reasonably related to the safe performance of ATVs. Additionally, the Commission must notify ANSI of any provision that it determines is not related to the safe performance of ATVs.

Within 180 days after the date on which the NPR for the amended consumer product safety standard is published in the *Federal Register*, the Commission must promulgate an amendment to the mandatory standard for ATVs. The CPSIA states that Sections 7 and 9 of the Consumer Product Safety Act do not apply to promulgation of an amendment to the mandatory standard covered under the ANSI/SVIA revision procedures.

Since issuing the ATV standard in 2009, the Commission has revised the mandatory standard once in accordance with the revision procedures set out in the CPSIA. On February 29, 2012, the Commission published a final rule that amended the Commission's ATV standard to reference the 2010 edition of the ANSI/SVIA standard (77 *Fed. Reg.* 12,197).

On June 14, 2017, ANSI notified the Commission that the 2010 edition of the ANSI/SVIA standard had been revised, and on June 30, 2017, the new standard, ANSI/SVIA 1-2017, was published. CPSC staff sent a briefing package to the Commission on August 30, 2017, recommending that the Commission publish an NPR to amend the current mandatory safety standard.¹ The Commission voted for the amendment, and the NPR was published in the *Federal Register* on September 13, 2017. The comment period closed on November 27, 2017.²

III. SUMMARY OF COMMENTS RECEIVED AND STAFF'S RESPONSES

The Commission received 32 comments to the NPR. However, 26 comments concerned renewable energy and climate issues, and thus, were not related to the proposed amendment of the consumer product safety standard for ATVs. Of the remaining six comments relevant to the NPR, three agree with the proposed rule, two oppose the proposed rule, and one addresses the proposed effective date.

Below staff summarizes the issues raised in the relevant comments and staff's recommended responses.

¹ The briefing package is available at: https://www.cpsc.gov/s3fs-public/Proposed_Rule_Amendment_to_Standard_for_All_Terrain_Vehicles_August_302017.pdf?blT.swMNzipgJOELOQxyXjNLPs.bHXuh.

² 82 *Fed. Reg.* 42,960 (Sept. 13, 2017). A copy of the *Federal Register* notice is available at: <https://www.gpo.gov/fdsys/pkg/FR-2017-09-13/pdf/2017-19341.pdf>.

A. Comment Regarding the Effective Date of the Draft Final Rule

The SVIA objected to the proposed effective date in the NPR, asserting “that the rule would take effect 60 days after publication of a final rule in the *Federal Register*, and that it would apply to ATVs manufactured or imported on or after that date.” SVIA noted that although the CPSIA requires the Commission to issue an NPR within 120 days of receiving notification of the revised ANSI/SVIA standard, the Commission issued the NPR within 90 days of notification, on September 13, 2017, instead of closer to the statutory deadline of October 12, 2017. SVIA further stated that although the Commission is required to publish a final rule by March 12, 2018, the Commission could issue the final rule earlier than that date. SVIA contended that the Commission’s ability to issue the final rule on an earlier schedule than the deadline provided in the statute presents an uncertainty in the effective date, which makes it difficult for ATV manufacturers to plan for compliance.

SVIA also stated that modifications to meet the new standard require “changes to the electrical system and will require new engineering, designing, fabricating, and testing of reflectors and mounting brackets, all of which must be arranged significantly in advance of implementation.” SVIA pointed out that to meet the proposed 60-day effective date, all of these changes must be done before ATVs are imported. Such a requirement would apply to 2018 model year ATVs, which have already been designed and are under production, and may be awaiting shipment. Accordingly, SVIA asserted that a 60-day effective date would also impose a financial burden on manufacturers, contrary to CPSC’s statement that the proposed rule would not pose a significant impact on manufacturers.

To accommodate changes to the design of certain ATVs, SVIA requested that the effective date in the final rule specify that “the 2017 standard will apply to ATVs beginning with the 2019 model year.”

Response: The Commission cannot set an effective date based on a model year for several reasons. First, effective dates for Commission rules are set by providing a calendar date based on the date of publication of a final rule. Second, manufacturers have varying schedules for manufacturing, importing, and distributing model years, making interpretation and enforcement of a rule based on a model year complex. For enforcement purposes, and for clarity for consumers and the regulated community, staff recommends the effective date be linked to a specific calendar date.

The last time the Commission amended the mandatory standard for ATVs in 2012, the seven major distributors of ATVs requested that the amended mandatory standard be effective for 2013 model year ATVs, or alternatively, 60 days after publication of the final rule.³ In the 2012 rulemaking, CPSC staff responded that tying the effective date to a particular model year was problematic because vehicle model years do not begin and end on the same date for each company. Based on this previous experience, staff recommended that the Commission propose an effective date of 60 days after publication of the final rule for this 2017 revision, believing

³ All-Terrain Vehicles: Final Rule Amending Consumer Product Safety Standard, dated February 8, 2012. Retrieved from: https://www.cpsc.gov/s3fs-public/pdfs/foia_atvfinal.pdf.

that the revisions required to meet the standard were not substantial, and that such a date would correspond with planning for the 2019 model year. The Commission accepted the recommendation. 82 *Fed. Reg.* 42,962.

However, staff believes that SVIA's comment provides sufficient rationale to demonstrate why the proposed 60-day effective date is not suitable for this version of the standard for all ATV manufacturers. Moreover, as explained above, staff's intention was to align the effective calendar date of the final rule with the introduction of model year 2019 ATVs to the U.S. market. SVIA's past comments indicate that planning for the 2019 model year has been underway since March 2017, and that model year 2019 vehicles will be released in the 2018 calendar year. Therefore, based on SVIA's comments and decision not to suggest an alternative to a model year date, CPSC staff recommends an effective date of January 1, 2019. An effective date of January 1, 2019 will address staff's enforcement concerns, as well as provide manufacturers with sufficient time for planning so that all vehicles manufactured or imported after that date comply with the final rule.

B. Comments Regarding Data Presented in the NPR

Several commenters stated that the data presented in the NPR are insufficient to support the final rule. One commenter stated that the Commission "fails to base their standard on accurate or convincing statistics," which are based on a single 2007 study, to support the requirement for rear-end lamps and reflectors and that "Commission staff claims that this 13 incident-study provides proof that rear-end lamps would have prevented the pattern of rear-end collisions related to braking." Another commenter stated that the final rule should include additional evidence regarding the number of fatalities that result from rear-end collisions and the benefits that will accrue if manufacturers are required to install stop lamps on ATVs.

Focusing on the sufficiency of the data, one commenter argued that CPSC may exceed its authority to promulgate a rule because the majority of ATVs already have stop lamps, which does not support the conclusion that a stop lamp requirement is reasonably related to the safe performance of ATVs. Similarly, another commenter concluded that the proposed rule lacked "the factual or analytical basis" to support a rule and was therefore "arbitrary and capricious."

Response: Under section 42(b) of the CPSA, 15 U.S.C. § 2089(b)(2), once notified by ANSI of a change to the voluntary standard for ATVs, the Commission is required to amend the consumer product safety standard for all-terrain vehicles to include any such revision that the Commission determines is reasonably related to the safe performance of all-terrain vehicles, and notify ANSI of any provision the Commission determines not to be so related.

Regarding the data presented in the NPR, staff's analysis of the 2007 study identified 13 rear-end collisions, and noted that eight of the 13 incidents "illustrate the hazard of rear-end collisions related to braking." Staff did not, and does not, represent that anecdotal incidents constitute "proof" of the effectiveness of stop lamps.

The information provided in the NPR provides context for why the Commission determined that the provisions in the voluntary standard are reasonably related to the safe performance of ATVs,

which is the standard required by statute. Furthermore, the National Highway Traffic Safety Administration (NHTSA) recognizes that conspicuity of a vehicle is related to the safe performance of vehicles in its Federal Motor Vehicle Safety Standards (FMVSS) for automobiles. Stop lamps and reflectors are specifically included in FMVSS 108 *Lamps, reflective devices, and associated equipment* and FMVSS 500 *Low-speed vehicles* as safety equipment. SVIA also recognizes conspicuity to be related to the safe performance of ATVs, and in the Annex of ANSI/SVIA 1-2017, specifically states that “conspicuity lights, tail lamps, and stop lamps can also be beneficial under certain riding conditions such as heavy brush, dusty or shaded trails, and similar low-light conditions” and that “reflex reflectors have been added for all categories of ATVs to aid in making ATVs more visible.”

Based on the available information described in the NPR and reviewed above, staff has no reason to conclude that the conspicuity changes to the ANSI standard are not reasonably related to the safe performance of ATVs. In the NPR, based on staff’s recommendation, the Commission determined that increasing the conspicuity of an ATV helps an ATV to be seen by other vehicles in various lighting conditions. Accordingly, the Commission determined that voluntary standard provisions that increase ATV conspicuity are reasonably related to the safe performance of ATVs. By statute, the Commission is required to include such provisions in the mandatory consumer product safety standard. Staff’s assessment that the changes to the ANSI standard regarding conspicuity are reasonably related to the safe performance of ATVs has not changed, and thus, the recommendation to the Commission remains unchanged for the final rule.

C. Comments Regarding the Scope of the Stop-Lamp Requirement

Two commenters stated that the final rule should clarify the scope of the proposed stop-lamp requirement and provide rationale if the requirement only applies to adult and transition category ATVs. One commenter stated that the requirement for stop-lamps should be for “all categories of ATVs.”

Response:

ANSI/SVIA 1-2017 requires stop lamps on all adult and transition ATVs and on all youth ATVs equipped with a head lamp or conspicuity lamp. A youth ATV without any front lights does not require a stop lamp. By design, youth ATVs do not have the same speed and equipment capabilities as adult and transition ATVs. For example, not all youth ATVs are equipped with lights, nor do they have electrical systems that are robust enough to support front or rear lights. Accordingly, revisions to the voluntary standard require reflectors on all categories of ATVs, but the revisions only require stop lamps on youth ATVs where it is technically feasible to do so. This approach in the voluntary standard is a practical technical solution for increasing conspicuity of ATVs.

If the Commission approves staff’s recommendation, the final consumer product safety standard for ATVs (16 C.F.R. part 1420) will require that ATVs comply with the applicable provisions of the 2017 revision of ANSI/SVIA 1, *American National Standard for Four Wheel All-Terrain Vehicles*. Therefore, the mandatory standard for ATVs will require stop lamps on all adult and transition ATVs and on all youth ATVs equipped with a head lamp or conspicuity lamp.

D. Comment on the Burden Imposed by the Final Rule

One commenter stated that the Commission did not adequately consider the financial burden on industry if the final rule is implemented, stating that the NPR “disregards the fact that adopting these new standards will impose financial hardship on ATV manufacturers.” This commenter suggests that, in lieu of the final rule, “the Commission implement a mandatory licensing program that teaches ATV safety.”

Response: The commenter provided no information or data on the alleged financial hardship for staff to evaluate. SVIA stated that manufacturer planning for 2019 model year ATVs is underway and that manufacturers intend to meet the requirements of ANSI/SVIA 1-2017 for the 2019 model year. Other than the effective date issue discussed above, the Commission did not receive comment from any ATV manufacturer or SVIA to support the contention that implementation of the final rule will impose a financial hardship. In response to the comments received, staff recommends changing the effective date of the draft final rule to address SVIA’s concern.

Regarding the proposal that the “Commission implement a mandatory licensing program that teaches ATV safety,” such action is outside the jurisdiction of the CPSC. States have jurisdiction over ATV drivers licensing requirements.

IV. ECONOMIC IMPACT ON SMALL BUSINESSES OF AMENDING THE CURRENT MANDATORY PRODUCT SAFETY STANDARD

For the NPR, the Commission certified that the proposed rule would not have a significant impact on a substantial number of small entities. This certification was based on staff’s analysis, which indicates that most ATV models already meet the proposed requirements and the cost of modifying remaining ATV models would be low on a per-unit basis (see Tab A). The Commission received one comment from the SVIA, stating that the proposed 60-day effective date of the final rule could change the impact of the final rule. SVIA stated that a 60-day effective date could require manufacturers to make changes to their 2018 model year ATVs that were already in production or distribution. In response, staff recommends that the final rule’s effective date be changed to January 1, 2019. A later effective date should provide manufacturers sufficient time to incorporate any necessary changes during the normal planning and design of new model year ATVs. CPSC staff concludes that the draft final rule is unlikely to have a significant economic impact on a substantial number of small entities. CPSC staff has not received any other information that would cause staff to change its conclusion stated in the briefing package submitted to the Commission on August 30, 2017.

V. EFFECTIVE DATE

The Commission proposed that the final rule would be effective 60 days after publication. However, based on the SVIA’s objection to a 60-day effective date, as discussed above in section III.A, and staff’s desire to align a calendar date with compliance of the 2019 model year ATVs, CPSC staff recommends that the Commission change the effective date in the final rule to January 1, 2019. Choosing January 1, 2019 as the effective date for the final rule will address

staff's enforcement concerns, as well as provide manufacturers with sufficient time for planning so that all vehicles manufactured or imported after that date comply with the final rule. Moreover, providing a longer effective date should reduce any financial impact on manufacturers.

VI. NOTICE OF REQUIREMENTS FOR THIRD PARTY TESTING OF YOUTH ALL-TERRAIN VEHICLES

The CPSC establishes certain requirements for product certification and testing. Certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third party conformity assessment body. 15 U.S.C. 2063(a)(2). The Commission is required to publish a notice of requirements (NOR) for the accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule to which a children's product is subject. 15 U.S.C. 2063(a)(3). On August 27, 2010, the Commission published an NOR for accreditation of third party conformity assessment bodies for testing ATVs designed or intended primarily for children 12 years of age or younger. *75 Fed. Reg.* 52,616. When the ATV standard was revised in 2012, the Commission determined that revisions to the 2010 edition of the ANSI/SVIA standard would not substantially alter third party conformance testing requirements for ATVs designed or intended primarily for children 12 years of age or younger. The NOR for third party testing of youth ATVs remained the same. Similarly, the 2017 revision to the ATV standard does not substantially alter third party conformance testing requirements for ATVs designed or intended primarily for children 12 years of age or younger. Accordingly, the NOR for third party testing of youth ATVs remains unchanged. The Commission considers the existing accreditations that the Commission has accepted for testing to the ATV standard to also cover testing to the revised 2017 ATV standard.

VII. OPTIONS AVAILABLE TO THE COMMISSION

Three options are available to the Commission: (1) The Commission can determine that no provisions of the 2017 revision are reasonably related to the safe performance of ATVs, and thus, decide not to amend the current mandatory consumer product safety standard; (2) The Commission can determine that only some provisions of the 2017 revision are reasonably related to the safe performance of ATVs, and decide to amend the current mandatory product safety standard, in part, by incorporating only those provisions that the Commission believes "are reasonably related to the safe performance" of ATVs; or (3) The Commission can determine that all provisions of the 2017 revision are reasonably related to the safe performance of ATVs, and therefore, amend the current mandatory product safety standard, in whole, by replacing the reference in the current mandatory standard so that it references the ANSI/SVIA 1-2017 standard.

VIII. STAFF CONCLUSION AND RECOMMENDATION

CPSC staff concludes that the ANSI/SVIA 1-2017 standard improves the safety of ATVs with additional requirements to increase the conspicuity of ATVs. Staff recommends that the Commission determine that the provisions in ANSI/SVIA 1-2017 are reasonably related to the

safe performance of ATVs, and further recommends that the Commission issue the draft final rule to amend the mandatory ATV standard to reference ANSI/SVIA 1- 2017.

Additionally, CPSC staff recommends that the final rule be effective as of January 1, 2019, so that all ATVs manufactured or imported on or after this date must comply with ANSI/SVIA 1-2017. A January 1, 2019 effective date addresses staff's enforcement concerns, accommodates varying production schedules for the 2019 model year, and reduces any potential financial impact on manufacturers' compliance.

TAB A



**UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MD 20814**

DATE: December 5, 2017

TO : Caroleene Paul, Project Manager All-Terrain Vehicles

THROUGH : Gregory B. Rodgers, Ph.D., Associate Executive Director,
Directorate for Economic Analysis

Robert Franklin, Senior Staff Coordinator,
Directorate for Economic Analysis

FROM : Mark Bailey, Directorate for Economic Analysis

SUBJECT : ATV Final Rule Amending Standard for All-Terrain Vehicles to incorporate the
2017 revision to the voluntary standard: impact on small entities

I. INTRODUCTION

The Consumer Product Safety Improvement Act of 2008 (CPSIA) mandated that a voluntary standard for all-terrain vehicles (ATVs), American National Standards Institute/Specialty Vehicle Institute of America (ANSI/SVIA) 1–2010, be published as a mandatory consumer product safety standard. When the voluntary standard is revised, the Commission has 120 days to issue a notice of proposed rulemaking (NPR) to amend the standard to include any such revisions that the Commission determines are reasonably related to the safe performance of ATVs. In June 2017, the voluntary ATV standard was revised, and on September 13, the Commission published an NPR in the *Federal Register*, proposing to amend the Commission’s mandatory ATV standard to reference the revised standard.

For the NPR, staff of the Directorate for Economics advised that the Commission could certify that the rule would not have a significant economic impact on a substantial number of small businesses. This memorandum summarizes and responds to comments regarding the economic impact of the draft final rule.

II. BACKGROUND

When preparing the briefing package for the NPR, CPSC staff analyzed the potential impact the proposed rule could have on small entities. The analysis concluded that the proposed rule would not have a significant economic impact on a substantial number of small businesses or other entities. Staff determined that the design changes for ATVs were relatively minor modifications or updates that would not be very costly for manufacturers or importers of ATVs to implement. The changes in the revised standard include lighting requirements, allowing the use of non-pneumatic tires (NPTs), and editorial changes to language to clarify requirements. Staff found that most ATV models already comply with the lighting requirements in the revised standard and that the cost to manufacturers of modifying noncompliant ATV models to comply

with the standard would be very low on a per-unit basis. Staff found that allowing the use of NPTs would impose no cost on manufacturers or importers.

III. COMMENTS ON THE NPR

Two of the public comments submitted in response to the NPR raised issues related to the potential impact on small businesses. A comment from the SVIA objected to the effective date of the rule, which in the NPR proposed 60 days after the publication of a final rule in the *Federal Register*. SVIA suggested that it would take time to implement the changes in the revised standard. According to SVIA, the increased vehicle conspicuity and stop lamps requirements “will require changes to the electrical system and will require new engineering, designing, fabricating, and testing of reflectors and mounting brackets, all of which must be arranged significantly in advance of implementation.” SVIA also stated: “[t]his is more complex than what the CPSC claims is ‘obtain[ing] in bulk as sheets or rolls of tape’ without any testing or evaluation.” SVIA added: “ATVs, like other vehicles are designed in advance of production in order to meet myriad regulatory requirements.” According to SVIA, model year 2018 ATVs have already been designed, are currently being produced, and some are scheduled for shipment, or have already been shipped. SVIA asserted that requiring 2018 models to be redesigned by this date could have substantial economic impacts. Because of these impacts, SVIA urged that the rule should be effective beginning with the 2019 model year like the voluntary standard, ANSI/SVIA 1-2017.

CPSC staff acknowledged that ATV manufacturers will require some time to modify their ATV designs to incorporate any changes required by the conspicuity provisions. Therefore, CPSC staff recommends that the effective date of the draft final rule be January 1, 2019. As SVIA noted, 2019 model year vehicles will be released in calendar year 2018. Therefore, delaying the effective date until January 1, 2019, is reasonable, in staffs’ opinion, to allow manufacturers to redesign and implement any required changes to coincide with the introduction of their 2019 models. Any ATVs manufactured or imported before the effective date can be sold in the United States without having to be brought into compliance with the rule.

Another commenter stated that the Commission did not consider that the new standards “will impose financial hardship on ATV manufacturers.” The commenter provided no information or data for staff to evaluate on the alleged financial hardship to manufacturers. Instead, the commenter stated that it was not clear how many manufacturers had models that would not meet the requirements of the proposed rule. The commenter also stated that the Commission provided no evidence that incorporating reflectors and stop-lamps would be inexpensive.

In response, we note that the Commission considered the impact of the proposed rule as required by the Regulatory Flexibility Act. As discussed in the NPR, after reviewing ATV models on manufacturer and importers websites, staff concluded that approximately 95 percent of ATV models (224 of 236) would already meet the lighting and reflector requirements in the revised standard. Models that did not meet the requirements were mostly imported from large manufacturers outside the United States and did not have headlamps, conspicuity lights, or reflectors. As the NPR discussed, the cost of the components needed to modify the ATVs to

make them comply with the standard ranges from \$0.10 to \$5.00 on a per-vehicle basis, which equates to less than 1 percent of ATV annual revenue. We identified four firms that are likely to be small and have ATV models that currently do not comply with the conspicuity requirements. As discussed, the manufacturing costs to modify ATVs to comply with the standard are low on a per-unit basis. The revised effective date of January 1, 2019, should provide manufacturers sufficient time to modify their designs as they normally would be revising designs for the new model year. The Commission did not receive any other comments regarding the effective date of the final rule from any ATV manufacturer or SVIA.

IV. CONCLUSION

In summary, the Commission certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. This certification was based on the staff's analysis that most ATV models already meet the requirements of the proposed rule and the cost of modifying ATVs that do not would be low on a per-unit basis. SVIA submitted a comment stating that the effective date in the NPR could require manufacturers to make changes to their 2018 model year ATVs, which are already in production or distribution, adding that the rule should only be applied to ATVs from model year 2019 and later, as the revised voluntary standard does. Staff recommends that the effective date in the draft final rule be changed to January 1, 2019. Affording a later effective date should give all manufacturers time to plan for manufacturing and distributing 2019 models, and will allow manufacturers to incorporate any necessary changes during the normal planning and design of new model year ATVs. Although another commenter stated that the Commission did not consider the impact of the rule on manufacturers, this commenter did not provide any information regarding the impact on manufacturers, nor did they provide any other evidence that would cause staff to reconsider our analysis of the impact on small manufacturers or change our recommendation. If the Commission approves the draft final rule with the effective date staff recommends, the Commission could conclude that the draft final rule is unlikely to have a significant impact on a substantial number of small entities.