



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
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**STATEMENT OF COMMISSIONER ELLIOT F. KAYE
ON RE-EMPHASIZING SAFETY IN ATV ACTION PLANS**

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All-terrain vehicles, commonly known as ATVs, are among the most deadly consumer products within the U.S. Consumer Product Safety Commission's (CPSC's) jurisdiction. Based on the CPSC's most recent data, there have been approximately 15,000 ATV-related deaths between 1982 and 2016.¹ Tens of thousands of ATV riders – many of those young children – are estimated to make ATV-related visits to emergency departments each year.² Tragically, more than 3,200 of the reported ATV-related deaths since 1982 were children under 16 years of age, and more than 1,400 were children under 12 years of age.³ While the percentage of victims younger than the age of 16 appears to have generally declined over time, in 2016 alone, at least 53 children under the age of 16 died in ATV-related incidents.⁴

There has been unacceptably slow progress in advancing ATV safety since the first of these types of vehicles were introduced in the 1970s. With death and injury rates still alarmingly high, ATV manufacturers, dealers and importers can do more. And the CPSC can do more.

The agency published its first Advance Notice of Proposed Rulemaking (ANPR) on ATVs in 1985.⁵ In the late 1980s, after filing an imminent hazard lawsuit against five of the major manufacturers of ATVs, the CPSC obtained consent decrees requiring those manufacturers to undertake various safety measures, including enhancing warnings and safety education efforts, ceasing the sale of three-wheeled ATVs (which were known to be particularly

¹ U.S. Consumer Product Safety Commission, 2016 Annual Report of ATV-Related Deaths and Injuries (Dec. 2017), available at https://www.cpsc.gov/s3fs-public/atv_annual_report_2016_0.pdf?ntwycn8wu3itrxlnlc49kn_lxxdasq5e.

² *Id.* at 15-16.

³ *Id.* at 2.

⁴ *Id.* at 10-11.

⁵ See All-Terrain Vehicles; Advance Notice of Proposed Rulemaking; Request for Comments and Data, 50 Fed. Reg. 23,139 (May 31, 1985).

hazardous) and accelerating negotiations on a voluntary standard.⁶ That voluntary standard, developed by the Specialty Vehicle Institute of America (SVIA) as *The American National Standard for Four Wheel All-Terrain Vehicles—Equipment, Configuration, and Performance Requirements*, was first published in 1990, and has been subsequently revised several times. Unfortunately, however, in 1991, the Commission terminated the rulemaking proceeding it had started with the 1985 ANPR and did not revisit mandatory rulemaking until the mid-2000s.⁷ In 2006, the Commission voted to issue a Notice of Proposed Rulemaking (NPR) proposing additional mechanical and informational safety requirements for ATVs and a regulatory ban on three-wheeled ATVs.⁸ In that NPR, the Commission stated that the proposed requirements were “necessary to address an unreasonable risk of injury and death associated with ATVs.”⁹

In 2008, the Consumer Product Safety Improvement Act (CPSIA) effectively banned three-wheeled ATVs and required the CPSC to adopt the ANSI/SVIA standard and any subsequent revisions of that standard as a mandatory consumer product safety standard.¹⁰ Congress also required the CPSC to finalize its 2006 rulemaking proceeding, which would address, among other critical safety deficiencies, known hazard patterns associated with unnecessary ATV instability, access by children and passenger use.¹¹ Yet, ten years later, that rulemaking remains open in large part because the CPSC lacks the critical funding needed to fully advance the technical issues identified by CPSC staff.¹²

⁶ See Final Consent Decree, *United States v. Am. Honda Motor Co.*, No. 87-3525 GAG (D.D.C. Apr. 28, 1988).

⁷ See All-Terrain Vehicles; Termination of Rulemaking Proceeding, 56 Fed. Reg. 47,166 (Sept. 18, 1991) (terminating rulemaking, in part, because of the consent decrees, the development of the voluntary standard and a 50 percent decline in ATV-related injury rates between 1985 and 1989). Although this termination was challenged as being arbitrary and capricious, the D.C. Circuit ultimately upheld the Commission’s decision. See *Consumer Fed. of Am. v. CPSC*, 990 F.2d 1298 (D.C. Cir. 1993). In 2002, nine consumer groups petitioned the CPSC to ban the sale of adult-size ATVs for the use of children under the age of 16. See Petition Requesting Ban of All-Terrain Vehicles Sold for Use by Children Under 16 Years Old, 67 Fed. Reg. 64,353 (Oct. 18, 2002). The Commission voted to defer its decision to grant this petition and instead issued another ANPR in 2005. Standards for All Terrain Vehicles and Ban of Three-Wheeled All Terrain Vehicles; Notice of Proposed Rulemaking, 71 Fed. Reg. 45,904, 45,905 (Aug. 10, 2006). In 2006, the Commission voted to deny the petition and instead issued the Notice of Proposed Rulemaking (NPR) described *infra*. *Id.*

⁸ *Id.* at 45,904.

⁹ *Id.*

¹⁰ See Pub. L. No. 110-314 § 232 (2008), *codified at* 15 U.S.C. § 2089. The CPSIA prohibited the importation and distribution of three-wheeled ATVs until a mandatory consumer product safety standard was applicable to three-wheeled ATVs. See 15 U.S.C. § 2089(c). The CPSC finalized its rulemaking to make the ANSI/SVIA standard a mandatory consumer product safety standard in 2008. See Final Rule: Standard for All Terrain Vehicles, 73 Fed. Reg. 67,385 (Nov. 14, 2008).

¹¹ See Pub. L. No. 110-314 § 232 (2008), *codified at* 15 U.S.C. § 2089; *see also* Pub. L. No. 112-28 § 9 (2011) (setting one year deadline for issuance of final rule).

¹² See Standards for All Terrain Vehicles and Ban of Three-Wheeled All Terrain Vehicles; Notice of Proposed Rulemaking, 71 Fed. Reg. 45,904 (Aug. 10, 2006).

Absent real progress in improving the mandatory standard, one of the remaining tools the CPSC has at its disposal to require ATV manufacturers and distributors to prioritize safety is ATV Action Plans. Section 42 of the CPSIA made it unlawful for any manufacturer or distributor to import or distribute into commerce any new or unassembled ATV without complying with an ATV Action Plan filed and approved the Commission.¹³ Generally speaking, ATV Action Plans are letters of undertakings by a manufacturer or distributor to agree to promote ATV safety through actions such as rider training, dissemination of safety information, age recommendations and other policies governing the marketing, sales and monitoring of sales of ATVs.¹⁴

The concept of requiring manufacturers and distributors to have ATV Action Plans originates from the consent decrees reached in the imminent hazard litigation in the 1980s. Under the CPSIA, ATV Action Plans are defined as “substantially similar” to the ATV plans described in a 1998 *Federal Register* notice, which summarized the voluntary agreements the CPSC reached with eight major ATV manufacturers after the expiration of the original imminent hazard litigation consent decrees.¹⁵ In those 1998 ATV plans, the firms agreed to continue many of the actions the original consent decrees had required, including implementing safety education programs, offering free, incentivized hands-on training for purchasers, following the age recommendations and other safety-minded guidelines in advertising and promotional materials, participating in the voluntary standards process and implementing CPSC-approved point of sale information.¹⁶

Sadly, 20 years later, the Commission is now approving ATV Action Plans that are hollowed out when it comes to their original purpose – safety. These ATV Action Plans are outdated and do not reflect the current ATV market, let alone how technology has advanced since the Commission first approved those original 1988 consent decrees and the 1998 ATV plans. Too often, the Commission’s approval of ATV Action Plans has become nothing more than a “check the box” exercise.¹⁷ Although Congress contemplated that manufacturers and distributors would submit for Commission approval ATV Action Plans that are “substantially similar” to those agreed to in the 1990s, nothing in the CPSIA or its legislative history suggests that the Commission must mindlessly rubber-stamp identical plans almost 20 years later.¹⁸

¹³ Pub. L. No. 110-314 § 232(a) (2008), *codified at* 15 U.S.C. § 2089(a).

¹⁴ 15 U.S.C. § 2089(e)(2).

¹⁵ 15 U.S.C. § 2089(e)(2); All-Terrain Vehicles; Comment Request—Proposed Resolution, 63 Fed. Reg. 48,199 (Sept. 9, 1998).

¹⁶ *See* 63 Fed. Reg. at 48,199.

¹⁷ To be clear, it is the Commission – not the CPSC staff – that bears the responsibility for the current rote approval process and drift away from the meaningful safety purpose of these plans.

¹⁸ I also believe that the major manufacturers that were a party to the original 1998 ATV plans should revisit and update their plans. One of the apparent purposes of Section 42 was to level the playing field between those major

“Substantially similar” does not mean “identical,” frozen in time. For that reason, I could not approve many of the proposed ATV Action Plans that have been recently filed with Commission. After all these years, the ATV Action Plans coming before us now do not have truly “substantially similar” commitments to ATV safety. Here are my views on what a “substantially similar” ATV Action Plan under Section 42 of the CPSIA can and should look like at a minimum.

1. Informational and Educational Campaigns

In the 1998 ATV plans, manufacturers agreed to sponsor informational and educational (I&E) campaigns that would address specific areas of ATV safety, with a particular emphasis on age-appropriate riding, not carrying passengers and the use of protective gear.¹⁹ One manufacturer committed that it would spend approximately \$3.5 million over three years on these efforts; the other manufacturers committed to spend, together as a joint effort, approximately \$6 to \$7 million over three years.²⁰ These campaigns were to include paid print advertising in enthusiast, hunting, outdoor and farming print magazines, as well as parenting magazines.²¹ The companies also agreed to communicate ATV safety information through direct mail, safety posters, teaching aids and programs for school teachers, libraries and youth programs and websites.²²

Many of these I&E strategies are not as relevant or may not be as effective in 2018 as they were in 1998. From my perspective, in order to conclude that an ATV Action Plan includes an I&E campaign that is, in fact, “substantially similar” to the 1998 I&E campaigns, the Commission should require it, at a minimum, to have the following:

- *Higher Funding.* Many of the recently filed ATV Action Plans include funding commitments that are much lower than the amounts agreed to by manufacturers in 1998, despite inflation and the growth of the ATV industry. For major manufacturers and distributors, the Commission should consider inflation and growth when evaluating whether a commitment in 2018 is “substantially similar” to those made in 1998. If a smaller manufacturer or importer claims that it is financially unable to match the funding levels agreed to by the major manufacturers in 1998,

manufacturers, who had already signed on to the 1998 ATV plans, and smaller importers, who were not, at that time, subject to the same safety commitments. See H.R. Rep. No. 110-501, at 42 (2007); ATV Safety: Hearing Before the Subcomm. on Consumer Affairs, Insurance and Automotive Safety of the Senate Comm. on Commerce, 110th Congress (2007). For the reasons described in more detail below, I am of the view that the 1998 ATV plans no longer hold as much weight when it comes to advancing ATV safety as they did 20 years ago.

¹⁹ See 63 Fed. Reg. at 48,201.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

that firm should have an extremely high burden of proof to show that it is committing a truly commensurate amount of funding based on its – and any parent company's²³ – financial records and growth potential.²⁴

- *More Detail.* Many of the recently filed ATV Action Plans provide only generalized, vague descriptions of a planned I&E campaign and do not include any specific I&E content. This level of detail is not “substantially similar” to the level of detail provided in at least one of the 1998 ATV plans and the 1988 consent decrees, which included detailed media strategy plans and print advertisement mock-ups.²⁵ This information will better allow the Commission to ensure that a proposed I&E campaign will include the necessary safety content, creative development and media strategy potentially to be more effective and truly equivalent to the I&E campaigns agreed to in 1998.
- *Modernized Messaging.* Many types of I&E outreach included in the 1998 ATV plans, such as magazines and posters, are no longer the primary method of reaching consumers. Although most of the recently filed ATV Action Plans now include commitments to undertake some online distribution of I&E, such as web advertisements, all firms should commit to fully utilizing social media campaigns (including but not limited to sponsored YouTube, Twitter, Facebook and Instagram content), phone and tablet applications and other forms of interactive digital and online content to share ATV safety information.
- *Microtargeting of At-Risk Consumers.* Unlike other types of consumer product hazards, we know that ATV-related injuries and deaths are highly linked to specific demographics and geographical locations. Just five states (Texas, California, West Virginia, Pennsylvania and Kentucky) accounted for 25 percent of total reported ATV-related deaths in the United States from 1982 to 2013.²⁶ In the 1998 ATV plans, firms agreed to target consumers by placing I&E materials in specific types of print publications and distributing materials through certain youth- and outdoor-oriented

²³ It is critical that the Commission obtain and review not only the right financial information from the applicant company but also from any relevant parent or controlling entity, as those are the companies that ultimately are behind many sales and stand to profit from approval of the plans.

²⁴ If the Commission must, as some suggest, take into account the relative size of a firm when evaluating whether a financial commitment is “substantially similar” to the 1998 ATV plans, then it follows that “substantially similar” cannot mean “identical.” If the Commission can approve a smaller financial commitment based on relative size, then it can also require additional safety commitments based on market and technology changes.

²⁵ See, e.g., Honda ATV Plan (May 18, 1998), available at https://www.cpsc.gov/s3fs-public/pdfs/blk_media_AmericanHondaMotorCoINc.pdf; Final Consent Decree, Appendix L, *United States v. Am. Honda Motor Co.*, No. 87-3525 GAG (D.D.C. Apr. 28, 1998).

²⁶ 2016 Annual Report of ATV-Related Deaths and Injuries at 8.

clubs such as the 4-H Club and the Boys and Girls Club of America. Recent ATV Action Plans include identical methods of targeting consumers. However, after 20 years of advances in marketing and advertising, including the ability to microtarget user groups, firms undoubtedly have new tools at their disposal that would allow them to better reach the consumers most at risk of injury or death from ATVs. Firms' ATV Action Plans should better utilize targeted I&E campaigns on social media and online search sites, as well as location- and community-specific messaging based on incident data.

2. Training and Training Incentives

In 1998, manufacturers also committed to offer the SVIA training program, using CPSC-approved curriculum and procedures, free of charge to all new ATV purchasers and members of their immediate families.²⁷ In addition, most manufacturers agreed to offer first-time purchasers without prior operating experience an incentive of \$100 cash or equivalent value per ATV sold when such a purchaser or family member took the training.²⁸ Alternatively, one manufacturer instead elected to offer purchasers who enrolled in training the chance to enter a quarterly drawing for reimbursement of their ATV purchase price and an annual drawing for a new car.²⁹ Despite its inclusion in the 1998 *Federal Register* notice, CPSC staff contested that this incentive was "too small, and the chances of winning too remote, . . . to serve as a meaningful incentive."³⁰

The trainings and training incentives proposed in recent ATV Action Plans do not appear to have evolved much in 20 years, either in amount or substance. In my view, in order to conclude that an ATV Action Plan includes training that is, in fact, "substantially similar" to the training and training incentives agreed to in 1998, the Commission should require firms to commit, at a minimum, to the following:

- *Additional Training Dates and Locations.* In 1998, one manufacturer agreed to conduct its safety training program at the time of sale by a certified instructor at each dealership.³¹ The remainder of the manufacturers agreed to provide training through the SVIA run by a single organization, the ATV Safety Institute (ASI). Most of the recent ATV Action Plans provide for the same in-person training run through the ASI. However, it appears that the availability of ASI training is limited based on

²⁷ See 63 Fed. Reg. at 48,201.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 48,202.

³¹ See Honda ATV Plan (May 18, 1998), available at https://www.cpsc.gov/s3fs-public/pdfs/blk_media_AmericanHondaMotorCoINc.pdf.

both time and location, and some consumers may have a limited number of dates from which to choose and need to travel considerable distance to participate.³² Consumers will be far more likely to participate in safety training if it is offered more frequently, at or near the point of purchase, regardless of a purchaser's geographic location.

- *Better Monitoring and Evaluation.* At the time of the original consent decrees and the 1998 ATV plans, the CPSC had recently evaluated and approved the curriculum and procedures used in ASI training programs. With the passage of time, it appears that the substance of these programs remains largely unchanged. Most recent ATV Action Plans still simply refer back to the previously-approved SVIA training criteria. The CPSC should more actively participate in monitoring training programs for effectiveness and firms should commit, as part of their ATV Action Plans, to work to update and improve the SVIA training curriculum and procedures as needed based on the results of that monitoring.
- *Better Incentives.* As noted above, most of the 1998 ATV plans provided for a training incentive of \$100 cash or equivalent value per ATV sold. Recent ATV Action Plans provide for identical incentives, without taking into account any changes in the ATV market. Today's training incentives should account for ATV price increases and inflation. In addition, firms could provide additional monetary incentives to participate in ASI's online e-training courses, as well as incentives with proof of purchase of appropriate safety gear such as helmets, eye protection, boots or gloves.

3. Age-Appropriate Marketing and Sales and Dealer Compliance with the Age Recommendations

In 1998, manufacturers agreed to recommend, market and sell adult-size ATVs (defined as ATVs with engine sizes greater than 90cc) for the use of persons age 16 and older only and youth-size ATVs (defined as ATVs with engine sizes between 70cc and 90cc) for the use of persons age 12 and older only.³³ In addition, manufacturers agreed to use "best efforts" to obtain dealer compliance with the age recommendations, including, for all but one of the manufacturers, the undercover monitoring of a statistically significant sample of randomly selected dealers.³⁴ Most manufacturers also agreed to take some level of necessary corrective

³² For example, based on a search on ASI's website, a new ATV purchaser in the Washington, DC metro area seeking to attend an in-person safety course would need to travel over 50 miles to West Virginia for a course that is only available once a month.

³³ See 63 Fed. Reg. at 48,201.

³⁴ *Id.*

measures for dealers found to be non-complaint with the manufacturer's age recommendations and directives.³⁵

Again, these requirements are outdated. In 2018, in order to conclude that an ATV Action Plan's age recommendations are, in fact, "substantially similar" to the 1998 age recommendations, the Commission should require it, at a minimum, to include the following commitments:

- *Dealership Accountability.* The 1998 ATV plans required manufacturers to make "best efforts" to ensure dealership compliance with the age recommendations, but did not explicitly define "best efforts" beyond a commitment by most of the firms to randomly monitor dealerships. One manufacturer did not agree to random monitoring, arguing that representations from sales representatives regarding age recommendations were not the critical point in determining underage riding habits, and instead agreed to a more targeted compliance program using dealer complaints and past histories.³⁶ Therefore, there is not one clear definition of "best efforts" set forth in the 1998 ATV plans. Nevertheless, most of the recent ATV Action Plans provide for random dealer monitoring of a certain number of dealerships over a set period of time and bi-annual reporting of the results of this monitoring to the CPSC as "best efforts." Most also provide for some form of remedial action against the dealers found to be non-compliant, such as additional training, re-inspection and the possibility of termination for repeat offenders. While these are good first steps, it is hard to believe that this is truly a firm's *best* effort to ensure that its dealers comply with the age recommendations and other safety requirements. For example, there is no reason that all firms should not, at a bare minimum, require their dealers to provide and retain affirmative confirmation in writing from purchasers about age instructions and warnings and provide this information to the manufacturers to assure their compliance.³⁷ These requirements would not add significant cost or time for dealerships that are already in compliance with the age recommendations, and, in fact, may be more cost-effective than random or targeted undercover monitoring alone and allow manufacturers to better identify non-compliant dealers.

³⁵ *Id.*

³⁶ See Honda ATV Plan (May 18, 1998), available at https://www.cpsc.gov/s3fs-public/pdfs/blk_media_AmericanHondaMotorCoINc.pdf.

³⁷ In fact, this requirement was proposed in the CPSC's 2006 NPR because the Commission had received comments from parents that they were unaware of the hazard adult-size ATVs posed for children. 71 Fed. Reg. at 45,911.

- *Better Enforcement.* It is critical for the CPSC to have the resources to meaningfully monitor and enforce ATV Action Plans, particularly with respect to age-appropriate marketing and sales.

4. Voluntary Standards Participation and Design Changes

In both the 1998 ATV plans and the original 1988 consent decrees, manufacturers agreed to participate in efforts to develop – and later update and revise – the SVIA voluntary standard for ATVs.³⁸ In addition, manufacturers agreed in both instances to stop sale of three-wheeled ATVs.³⁹

At that time, these commitments were significant because the ANSI/SVIA voluntary standard was not yet mandatory and there was no law effectively banning three-wheeled ATVs. In 2018, however, these commitments have significantly less weight because Section 42 of the CPSIA required the Commission to undertake mandatory rulemaking and effectively banned three-wheeled ATVs. Therefore, for an ATV Action Plan to be “substantially similar” to a 1998 ATV plan, it should include, at a minimum, the following:

- *Stronger Commitment to Advance Voluntary and Mandatory Standards Work.* Most of the recent ATV Action Plans only require a manufacturer to “participate in efforts” to update and revise the voluntary standard. Again, this commitment means significantly less in 2018 than it did in 1998. Rather than just “participate in efforts” and “consider” CPSC suggestions, firms should more firmly commit to advance the specific ATV safety issues that remain outstanding in both the voluntary and mandatory standards process. These commitments should include but not be limited to work to develop an accurate and reliable test for lateral stability and evaluate roll-over protection devices,⁴⁰ as well as to better address passengers on ATVs and access by children. This work also should include dedicating resources to

³⁸ 63 Fed. Reg. at 48,201.

³⁹ *Id.*

⁴⁰ *See, e.g.*, 71 Fed. Reg. at 45,910:

Over the years, the Commission has analyzed the issue of ATV stability. Because ATVs are rider-active vehicles (that is, their performance is affected by the rider's movements), it is difficult to evaluate an ATV's actual stability. A satisfactory static test has been developed to measure an ATV's pitch stability (movement from front to back). At this point in time, the industry has not been able to develop a satisfactory test of lateral stability (movement from side to side). Thus, the ANSI/SVIA-1-2001 standard has a requirement for pitch stability, but not for lateral stability. The Commission's proposed standard likewise contains requirements only for pitch stability. However, the Commission encourages the industry to continue to pursue an accurate and reliable test for lateral stability.

evaluate the industry's warning labels and to enhance them as necessary as a result of any evaluations.

- *Address and Stop Sale of Hazardous ATV Designs and Features.* The 1998 ATV plans included an agreement to stop sales of a particularly hazardous model of ATV, namely, three-wheeled ATVs. Currently, however, these types of ATVs are long gone from the market. Therefore, to be “substantially similar” to the 1998 ATV plans, ATV Action Plans should include new commitments to identify and address, either through design or feature changes or stop sales, particularly hazardous models or features of ATVs.

5. Advertising Guidelines

In the 1998 ATV plans, manufacturers agreed that all future advertising would abide by the advertising guidelines agreed to in the 1988 consent decrees.⁴¹ These guidelines included detailed limitations in targeting advertising to children, requirements to comply with the age and adult supervision recommendations, requirements regarding the use of protective equipment and limitations in representations regarding stability and the level of skill necessary to undertake certain ATV activities or uses, such as racing.⁴² The guidelines also clearly specified that they covered all advertising and promotional materials, including but not limited to magazines, newspapers, sales brochures, television, video tapes and radio, with the exception of some limited types of dealer and promotional materials.⁴³ Finally, the guidelines required the inclusion of specific types of safety warnings and messaging (e.g., a certain number of warnings or safety tips or a recommendation to take training courses) depending upon the type of advertising (e.g., print, television or radio).⁴⁴

Again, however, the original advertising guidelines are more than 30 years old and extremely outdated. For the advertising guidelines in an ATV Action Plan to be “substantially similar” to those in the 1998 ATV plans and 1988 consent decrees, the Commission should require them, at a minimum, to include the following:

- *Address Digital, Online and Social Media Advertising.* Most recent ATV Action Plans simply include a commitment to follow the 1988 consent decree advertising guidelines. However, the 1988 advertising guidelines did not contemplate current media and technology platforms, including digital, online and social media

⁴¹ See 63 Fed. Reg. at 48,202.

⁴² Final Consent Decree, Appendix K, *United States v. Am. Honda Motor Co.*, No. 87-3525 GAG (D.D.C. Apr. 28, 1998).

⁴³ *Id.*

⁴⁴ *Id.*

advertising. Firms should develop and provide to the Commission updated advertising guidelines that explicitly address these new platforms in detail.

- *Enhanced Safety Messaging.* In addition, the advertising guidelines for print, television and radio should be expanded to address how these mediums have changed over 30 years. The 1988 guidelines contemplate platforms such as newspapers, magazines and broadcast television, but do not take into account that many consumers now consume these types of media digitally. Messaging content and strategy through digital media is drastically different than messaging content and strategy through more traditional forms of media. For example, the existing guidelines require print advertisements in magazines, newspapers and sales brochures to include, among other things, a disclaimer-type safety message, presumably because of space limitations. However, there are many other ways safety messaging can now be communicated and expanded in digital and social media, including through hyperlinks, pop-ups, click-through warnings and QR codes. Firms should utilize all of these technologies in order to thoroughly and effectively communicate safety messages in their advertising.

Conclusion

The dangers associated with ATVs have been known and tolerated for too long. ATV riders should be able to ride with the confidence that their vehicles are not unreasonably risky or dangerous. Consumers should be armed with the safety information and training to make fully informed choices.

It is time for the CPSC to use all of the safety tools Congress provided to address the unreasonable risks these products present, especially to children. Of course, the agency can only be as effective as Congress provides the resources for CPSC to act. Even with the absence of adequate funding to improve the safety of ATVs through mandatory standards, the agency has other tools it can and must use more effectively, including the process for approving ATV Action Plans. The ATV Action Plans the Commission recently has been asked to approve do not reflect how the ATV market and technology has advanced since these vehicles were first introduced. ATV Action Plans are not static documents; they must reflect best practices learned from the experiences and innovations of the last 30 years. Requiring the above commitments as part of ATV Action Plans would give the Commission more confidence that ATV manufacturers, distributors and importers are truly committed to advancing safety in the same way they were in the 1980s and 1990s when faced with imminent hazard litigation. We all still have a lot of work to do to make ATVs safer, particularly for our children.