

ATV Action Plans

October 16, 2008



This presentation has not been reviewed or approved by the Commission and may not reflect its views

ACTION PLANS— CPSA Requirement

- New CPSA §42(a)(2): “After the standard takes effect, it shall be unlawful for any manufacturer or distributor to import into or distribute in commerce in the United States any new assembled or unassembled all-terrain vehicle unless—

ACTION PLANS– CPSA Requirement (cont.)

(B): the ATV is subject to an ATV action plan filed with the Commission before the date of enactment of the Act, or subsequently filed with and approved by the Commission; and

(C): the manufacturer or distributor is in compliance with all provisions of the applicable ATV action plan.”

ACTION PLANS– 1988 Consent Decrees

- 1987– the CPSC filed an imminent hazard lawsuit against the five major ATV distributors in the U.S. market
- **1988** – the lawsuit was settled by comprehensive Consent Decrees that were effective for 10 years
 - United States v. American Honda Motor Co., et. al., Civ. No. 87-3525 (D.D.C. April 28, 1988)
 - <http://www.cpsc.gov/LIBRARY/FOIA/Foia99/pubcom/consent3.pdf>
 - <http://www.cpsc.gov/LIBRARY/FOIA/Foia99/pubcom/consent4.pdf>
 - <http://www.cpsc.gov/LIBRARY/FOIA/Foia99/pubcom/consent5.pdf>

ACTION PLANS–

1998 Expiration of the Consent Decrees

- 1998– as the Consent Decrees were expiring, the CPSC negotiated Voluntary Action Plans (a/k/a “Letters of Undertaking” or “LOU’s”) with the leading domestic ATV distributors
- The Voluntary Action Plans encompassed many of the provisions of the Consent Decrees + certain safety provisions that went beyond the requirements of the Consent Decrees

ACTION PLANS– The Law

- CPSA § 42(e)(2): “ATV ACTION PLAN . . . means a written plan or letter of undertaking that describes actions the **manufacturer or distributor** agrees to take to promote ATV safety . . . and that is **substantially similar** to the plans described under the heading ‘The Undertakings of the Companies in the Commission Notice’ published in the Federal Register on September 9, 1998 (63 FR 48199-48204).”

ACTION PLANS– Link to 1998 Plans

- Link to CPSC Website for 1998 Action Plans:

[http://www.cpsc.gov/library/foia/foia98/fedreg/
fedreg.html](http://www.cpsc.gov/library/foia/foia98/fedreg/fedreg.html)

ACTION PLANS – The Language

- Congress said “substantially similar,” not identical!

ACTION PLANS– No Longer Required

- Certain elements of the 1998 Action Plans will no longer be required in new Action Plans, because the elements are required by other provisions of CPSA Section 42
 - CPSA Section 42(c) prohibition on the importation and sale of new **three-wheeled ATVs**

ACTION PLANS– No Longer Required (cont.)

- **Owner's Manuals** are now required by the soon to be mandatory Section 4.21 of ANSI/SVIA-1-2007
 - detailed guidance can be found at Section H.2. and Appendices G & H of the 1988 ATV Consent Decrees
- **ATV Warning Labels** are required by Section 4.23 of ANSI/SVIA-1-2007 – includes general, age recommendation, passenger, tire pressure, and overloading labels
- **ATV Hang Tags** are required by Section 4.24 of ANSI/SVIA-1-2007 – includes age recommendations, vehicle category, training availability, and safety messages

ACTION PLANS– Modified Requirement

- **Age Recommendations (1998 Version)**
 - based on engine size

- **Age Recommendations (2008 Version)**
 - The company shall not recommend, market, or sell new adult-sized ATVs for the use of persons less than 16 years old
 - Use only maximum speed and speed limitations, rather than engine size, for determining the age-appropriateness of ATVs
 - Must follow this model, because these requirements are set out in the soon to be mandatory ANSI/SVIA-1-2007 (see Section 6)

ACTION PLANS– Requirements

■ Dealer Monitoring

- The company shall use its best efforts to obtain dealer compliance with the age recommendations, including through dealer monitoring programs consisting of on-site inspections conducted by independent investigators
 - In 1998, the companies agreed to annually perform random or targeted undercover inspections of ATV dealers
 - The company will take corrective action against non-complying dealers

ACTION PLANS– Requirements (cont.)

■ Training

- The company shall offer **free, hands-on** ATV training to first-time purchasers and members of their immediate families within a reasonable time from purchase
- In 1998, most of the companies offered the training through a nationwide ATV training program and offered first time purchasers an incentive valued at \$100 for taking the training course
- In 1998, one company offered training to purchasers at its dealerships
- See Section K and Appendix O of the 1988 ATV Consent Decrees for detailed guidance

ACTION PLANS– Requirements (cont.)

■ Safety Video

- The company shall provide each purchaser with an ATV safety video as described at Section H.3.b.(4)(b) and Appendix I of the 1988 ATV Consent Decrees

■ Safety Alerts

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

ACTION PLANS– Requirements (cont.)

■ Toll-free Telephone Hotline

- The company shall provide a toll-free, 24-hour hotline to respond to consumer inquiries as described at Section H.4 of the 1988 ATV Consent Decrees
- Must provide safety and training information, including age recommendations
- Can participate in a joint hotline that is funded by multiple ATV distributors

ACTION PLANS– Requirements (cont.)

■ Advertising

- ATV advertising and promotional materials shall include the substance of the safety messages that are described at Section J.1 and Appendix K to the 1988 ATV Consent Decrees and will depict ATVs in a manner consistent with safe and responsible use of the product
 - all riders shown in such advertisements shall wear helmets and full protective gear
- The company shall use best efforts to promote dealer compliance with the advertising requirements

ACTION PLANS– Requirements (cont.)

■ Information/Education Program

- The company shall implement an information/education campaign directed primarily at providing safety information and at deterring children under age sixteen from operating adult-sized ATVs
- An example of an acceptable program is described at Appendix N of the 1988 ATV Consent Decrees

ACTION PLANS– Requirements (cont.)

- **Notice of Termination of Action Plans**
 - The company shall give the CPSC at least 60 days advance notice of its intention to terminate or materially change any commitment under the Action Plan

ACTION PLANS– Deadline

- Deadline:
 - must be approved by the Commission by mid-April 2009
 - please submit proposed action plans early enough so that the Commission will have an opportunity to review, comment on, and potentially approve the action plan

ACTION PLANS–

Penalties for Non-compliance

- CPSA § 42(a)(3): “The failure to comply with any requirement of paragraph (2) shall be deemed to be a failure to comply with a consumer product safety standard under this Act and subject to all of the penalties and remedies available under this Act.”
 - Will be considered a “Prohibited Act” under CPSA § 19(a)(1) subject to all applicable penalties

Action Plan Resources

- 1988 ATV Consent Decrees
 - <http://www.cpsc.gov/LIBRARY/FOIA/Foia99/pubcom/consent3.pdf>
 - <http://www.cpsc.gov/LIBRARY/FOIA/Foia99/pubcom/consent4.pdf>
 - <http://www.cpsc.gov/LIBRARY/FOIA/Foia99/pubcom/consent5.pdf>

- 1998 ATV Action Plans
 - <http://www.cpsc.gov/library/foia/foia98/fedreg/fedreg.html>

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