

**List of Subjects in 16 CFR Part 1224**

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, and Law enforcement.

For the reasons stated in the preamble, the Commission amends Title 16 of the Code of Federal Regulations by adding a new part to read as follows:

**PART 1224—SAFETY STANDARD FOR PORTABLE BED RAILS**

Sec.

1224.1 Scope, application, and effective date.

1224.2 Requirements for portable bed rails.

**Authority:** Sections 3 and 104 of Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008).

**§ 1224.1 Scope, application, and effective date.**

This part establishes a consumer product safety standard for portable bed rails manufactured or imported on or after August 29, 2012.

**§ 1224.2 Requirements for portable bed rails.**

(a) Each portable bed rail as defined in ASTM F2085–12, *Standard Consumer Safety Specification for Portable Bed Rails*, approved January 1, 2012, must comply with all applicable provisions of ASTM F2085–12. 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 of this ASTM standard from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA, phone: 610–832–9585; <http://www.astm.org/>. You may inspect copies 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, 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: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(b) [Reserved]

Dated: February 22, 2012.

**Todd A. Stevenson,**

*Secretary, U.S. Consumer Product Safety Commission.*

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**CONSUMER PRODUCT SAFETY COMMISSION****16 CFR Part 1420**

[CPSC Docket No. CPSC–2011–0047]

**Standard for All-Terrain Vehicles**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Consumer Product Safety Improvement Act of 2008 (“CPSIA”) required the Consumer Product Safety Commission (“Commission,” “CPSC,” or “we”) to publish, 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). We did so on November 14, 2008. 73 FR 67385. ANSI/SVIA later issued a 2010 edition of its standard. In accordance with the CPSIA, we are amending the Commission’s mandatory ATV standard to reference the 2010 edition of the ANSI/SVIA standard.<sup>1</sup>

**DATES:** The rule will become effective on April 30, 2012, and will apply to products manufactured or imported on or after that date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of April 30, 2012.

**FOR FURTHER INFORMATION CONTACT:** Justin Jirgl, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7814; [jjirgl@cpsc.gov](mailto:jjirgl@cpsc.gov).

**SUPPLEMENTARY INFORMATION:****A. Background**

The Consumer Product Safety Improvement Act of 2008 (“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/

<sup>1</sup>The Commission voted 3–0–1 to approve publication of this rule. Chairman Inez M. Tenenbaum and Commissioners Nancy A. Nord and Robert S. Adler voted for the rule. Commissioner Ann M. Northup abstained from voting. Commissioner Adler filed a statement concerning this action which may be viewed on the Commission’s Web site at <http://www.cpsc.gov/pr/statements.html> or obtained from the Commission’s Office of the Secretary.

SVIA 1–2007).” 15 U.S.C. 2089(a)(1), as added by section 232 of the CPSIA. Accordingly, on November 14, 2008, we published a final rule mandating ANSI/SVIA 1–2007 as a consumer product safety standard. 73 FR 67385. The final rule is codified at 16 CFR part 1420.

**B. The Amendment***1. Procedure*

Section 42(b) of the Consumer Product Safety Act (“CPSA”) provides that, if ANSI/SVIA 1–2007 is revised after we have published a **Federal Register** notice mandating the standard as a consumer product safety standard, ANSI must notify us of the revision, and we have 120 days after receiving that notification to issue a notice of proposed rulemaking to amend our 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, we have 180 days after publication of the proposed amendment to publish a final amendment to revise the ATV standard. *Id.*

*2. Changes From 2007 Edition*

On March 16, 2011, ANSI notified us that, in December 2010, ANSI approved a revised version of the ANSI/SVIA standard for four-wheel ATVs, ANSI/SVIA 1–2010. We reviewed the changes from the 2007 version. Many changes are minor revisions to the wording in the standard. We considered the substantive changes to be: (1) Elimination from the scope section of a provision calling for expiration of the definition and requirements for the Y–12+ youth ATV age category on July 28, 2011; (2) a change in how to calculate the speed for the braking test of youth ATVs; (3) a change in the force applied to passenger handholds during testing; (4) the addition of a requirement that youth ATVs shall not have a power take-off mechanism; (5) the addition of a requirement that youth ATVs shall not have a foldable, removable, or retractable structure in the ATV foot environment; (6) additional specificity concerning the location and method of operation of the brake control; (7) tightening the parking brake performance requirement, by requiring the transmission to be in “neutral” during testing, rather than in “neutral” or “park”; and (8) the requirement that tire pressure information be on the label, when the previous requirement could be interpreted to allow tire pressure information to be on the label,

or in the owner's manual, or on the tires.

### 3. Proposed Rule

In the **Federal Register** of July 25, 2011 (76 FR 44289), we proposed to amend our mandatory ATV standard to reference ANSI/SVIA 1–2010 instead of ANSI/SVIA 1–2007. In the preamble to the proposed rule, we discussed the changes that had been made to the ANSI/SVIA standard. *Id.* at 44290 through 44291. We concluded that none of the revisions in the ANSI/SVIA 1–2010 standard would diminish the safety of ATVs. *Id.* at 44291. We concluded that, although some changes could be considered more related than others to the safe performance of ATVs, all, in fact, could be related to the safe performance because the changes improve the standard's clarity and consistency and, in that way, advance the standard. We also stated that, given the relatively minor and editorial nature of most of the changes meant to improve the standard's clarity and consistency, it makes sense to revise the Commission's mandatory standard to incorporate all of the provisions of the ANSI/SVIA 1–2010 version to avoid there being two slightly different versions of the standard, the current mandatory standard and the revised voluntary standard. *Id.*

### C. Response to Comments on the Proposed Rule

The preamble to the proposed rule invited comments on the proposal to update the mandatory standard and also on numerous other issues related to ATVs that could be relevant to future ATV rulemaking. We received five comments. We describe and respond to the comments in this section of this document. A summary of each of the commenter's topics is presented, and each topic is followed by staff's response. For ease of reading, each topic will be prefaced with a numbered "Comment"; and each response will be prefaced by a corresponding numbered "Response." Each "Comment" is numbered to help distinguish between different topics. The number assigned to each comment is for organizational purposes only and does not signify the comment's value, or importance, or the order in which it was received. Comments on similar topics are grouped together.

#### 1. Comments Related to Incorporating ANSI/SVIA 1–2010

##### a. Clarification of the Standard

(*Comment 1*)—In the preamble to the proposed rule, we asked whether the proposed revisions to ANSI/SVIA 1–

2007 would enhance the clarity of the ANSI standard (76 FR at 44292). One commenter responded to this, delineating the specific sections of the ANSI standard that include clarifying language: these sections are 4.19.1(3)(b) (tire marking), 4.23.1 (general format for labels), 4.23.4.1 (general warning label for Type 1 (single-rider) ATVs, 4.23.5.1 (general warning label for Type II (tandem) ATVs, Figures 5 (tire pressure warning label) and 7 (combined tire pressure and overloading warning label), and 4.23.5.3 (passenger warning label for Type II (tandem) ATVs. The commenter noted that these clarifying changes were made in response to requests it received for interpretation of sections of the standard that were new with the ANSI/SVIA 1–2007 edition of the standard.

(*Response 1*)—We believe that these changes clarify the sections of the standard that were new with the 2007 edition of the ANSI/SVIA standard.

##### b. Youth Category Y–12+

(*Comment 2*)—In the preamble to the proposed rule, we asked about the effect of not eliminating from the scope of the standard the expiration of the definition and requirements for the Y–12+ ATV age category (76 FR at 44292). One comment noted that when ANSI/SVIA 1–2010 was adopted, the lead content limits in section 101 of the CPSIA were in effect, which resulted in limited sales of the Y–6+ and Y–10+ ATV model categories. The Y–12+ category then was maintained due to SVIA's concern that children, particularly those between ages 12–15, would have these as the only alternative to riding adult-size ATVs.

With the passage of Public Law 112–28 in August 2011, the lead ban on youth ATVs no longer is in effect. However, the commenter stated that it is important to maintain the Y–12+ category because few Y–10+ models are available (only two for SVIA members' dealers as of August 2011) and because, as of October 7, 2011, when it submitted its comment, the stay of enforcement on third party testing of youth ATVs was set to expire on November 27, 2011, possibly continuing to restrict the number of available Y–10+ models that could become available on the market. (We note that the stay of enforcement has expired and that there is one laboratory that is both accredited and CPSC-accepted to conduct third party testing for youth ATVs.)

The commenter also stated its opinion that maintaining the Y–12+ age category is not likely to result in children younger than 12 years old riding Y–12+ ATVs, given the labeling requirements

of the standard and the dealer monitoring requirements of the Action Plans. Furthermore, the commenter believes that these labeling and dealer monitoring requirements also would prevent the possibility that keeping the Y–12+ category would constitute an implicit approval for riding a Y–12+ ATV when a Y–6+ or Y–10+ size is not available. The commenter stated that it is not aware of any data or research regarding the safety of 6- to 9-year-old riders when operating a Y–12+ ATV, but said it "strongly recommends that parents strictly follow ATV age recommendations" and noted that Federal law requires that manufacturers and distributors adhere to age recommendations when offering ATVs for sale. Finally, the commenter noted that Y–10+ and Y–12+ category ATVs have the same maximum speed limitations and capabilities and that the Y–12+ ATVs can be larger in size and/or weight.

Another commenter expressed opposition to the introduction of the Y–12+ models, stating that "placing children on a vehicle that is larger, heavier, or faster than what is currently defined as an 'adult-sized' ATV would be a step backwards that would only serve to put our children at an even greater risk of death and injury." Further, the commenter "urge[d] CPSC not to take any action that would permit children to operate any ATV that is larger than 90 cc."

(*Response 2*)—We believe that elimination of the scope provision (which effectively keeps the Y–12+ category of youth ATV) would not be problematic. The Y–12+ category was not new with the 2007 or the 2010 editions of the ANSI/SVIA standard; it was, in fact, one of the youth ATV categories in the 1990 first edition of the ANSI/SVIA standard. Furthermore, Y–12+ ATVs are not necessarily larger or heavier than what is currently defined as an "adult-sized" ATV. They also are, by definition in the standard, not faster than an adult ATV. According to the definition in the 2010 edition of the standard, Y–12+ ATVs are required to have the same maximum speed and speed limitation requirements as the Y–10+ model. The Y–10+ and the Y–12+ ATV models are not faster than what is currently defined as an adult-size ATV because they both must have a maximum speed that is lower than that of an adult-size ATV.

It is important to note that the ANSI/SVIA standard (either 1990, 2001, 2007, or 2010 edition) never categorized youth and adult ATVs by cc engine size; the categories were defined and differentiated in the standard by the

maximum allowable speed and the presence of a speed limiter (which parents and caregivers could use to reduce the maximum allowable speed further).

Using 90cc engine size as a demarcation between youth and adult ATVs originated with the 1988 consent decrees between the CPSC and ATV distributors. (The consent decrees expired in 1998.) Under the consent decrees, only ATVs between 70 to 90 cc were to be marketed for riders 12 years of age and older, and ATVs less than 70 cc were to be marketed for use by riders under 12 years of age. ATVs 90 cc and above were to be marketed for use by riders 16 years of age and older, according to the consent decrees.

In 2006, we issued a proposed rule on “Standards for All-Terrain Vehicles and Ban of Three-Wheeled All Terrain Vehicles.” The proposed rule, which pre-dated the CPSIA’s enactment and has not been finalized, would, among other things, change the categorization of ATVs based on engine size (as established by the consent decrees) and instead, categorize youth ATVs based on maximum speed. 71 FR 45904, 45908 (August 10, 2006). We explained our rationale for this change in the preamble to the proposed rule. *Id.* It cannot be assumed that a larger engine displacement ATV is necessarily heavier than a smaller engine displacement ATV. We will address this issue further when we complete our 2006 rulemaking. However, we are not aware of any data to show that continuing to have this category included in the standard would reduce the safety of ATVs. Thus, we continue to believe that having the Y–12+ category included in the standard would not be problematic.

#### c. The Test for Type II ATV Passenger Handholds

(*Comment 3*)—The 2010 edition of the ANSI/SVIA standard includes a test for the passenger handholds on Type II (tandem) ATVs. Under the 2007 version of the standard, the test specifications could be interpreted to mean that the test could be applied in either a downward or an upward direction, or both. The 2010 version states that the force applied to the handhold must be upward. Before preparing the July 6, 2011 staff briefing package in support of the proposed rule, CPSC staff contacted the SVIA with staff’s concern that the revised language limits the test procedure. SVIA indicated that it was not opposed to changing the standard to add a downward testing component and that such a change would be considered

in the next revision of ANSI/SVIA 1–2010.

In response to the proposed rule, SVIA opined that the primary direction of force applied to ATV handholds is in the upward direction. SVIA stated it had received no comments during the ANSI balloting process that suggested that the force be applied in a downward direction, and it is unaware of any reports of an ATV handhold failing under downward force. SVIA stated that it “has committed to adding a downward testing component to the passenger handhold testing standard during the next revision of the ANSI/SVIA voluntary standard.”

(*Response 3*)—We are satisfied with SVIA’s commitment to adding a downward testing component to the passenger handhold test during the next revision of the ANSI/SVIA voluntary standard.

#### d. Effective Date

(*Comment 4*)—We proposed that the amendment mandating ANSI/SVIA 1–2010 would take effect 30 days after publication of a final rule and apply to ATVs manufactured or imported after that date. In a joint comment submitted by the seven major distributors of ATVs, they noted that the ANSI/SVIA standard requires that ATVs have a certification label indicating that they comply with the ANSI/SVIA standard. The commenters said they will need to change these certification labels to specify compliance with the 2010 rather than the 2007 ANSI/SVIA standard. They noted that some companies may still be producing 2012 model year (“MY”) ATVs at the time when a final rule would become effective. This would mean that some companies would have to change the certification label in the middle of 2012 MY production. The commenters stated that this could create errors in labeling particular ATVs and could create confusion in the marketplace. They requested that the rule become effective for 2013 MY ATVs. In the alternative, the commenters requested a 60-day effective date to allow ATV manufacturers time to obtain new certification labels.

(*Response 4*)—Keying an effective date to a model year rather than a date certain would be difficult to enforce and could create greater confusion. We understand that companies will need time to provide the correct certification labels. Because the differences between the 2007 and the 2010 ANSI/SVIA standards are primarily editorial, we are changing the effective date to specify that the rule will take effect 60 days after publication in the **Federal**

**Register**, and that it will apply to ATVs manufactured or imported on or after that date.

#### 2. Comments Responding to the Commission’s Request for Comments and Information and Comments Addressing Issues in Our 2006 Proposed Rule

The preamble to the proposed rule asked several questions that were beyond the scope of the immediate revisions to the mandatory standard, but relevant to future ATV rulemaking (76 FR at 44292). For example, one question asked whether there are any state laws prohibiting the use of a Y–12+ ATV by children younger than 12 and the effects of ATV-related injuries or deaths in those states that have new or updated minimum age requirements for ATV operation since the adoption of ANSI/SVIA–1–2007 (*id.*). Several commenters responded to those questions, addressing issues such as whether there should be restrictions on the sale, rental, or use of ATVs by individuals under a certain age, and other matters.

Other commenters addressed matters that pertained more directly to the proposed rule that we had published in the **Federal Register** on August 10, 2006 (71 FR 45904). For example, we received comments expressing support and opposition for roll over protection systems in ATVs.

We appreciate the commenters’ responsiveness to the questions presented in the preamble to the proposed rule, as well as their interest in other ATV issues. Because this rulemaking focuses on the adoption of the modified ANSI/SVIA 1–2010 standard pursuant to section 42(b) of the CPSA, we will not address those comments in this preamble. However, we will consider the information and opinions presented by the commenters and may address them in a separate proceeding. For example, for commenters who raised issues that are more appropriate to the proposed rule that we issued in 2006, we will consider those comments when developing methods for addressing ATV safety, and will respond to them when we finalize that rule.

#### D. Brief Description of the Final Rule

The final rule revises § 1420.3(a), “Requirements for four-wheel ATVs” to incorporate by reference the ANSI/SVIA 1–2010 standard instead of the ANSI/SVIA 1–2007 version.

#### E. Effective Date

As we stated in the preamble to the proposed rule (76 FR at 44291), the CPSIA provides a timetable for us 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 it does not set an effective date. We proposed that the amendment updating the ANSI/SVIA standard take effect 30 days after publication of a final rule because the differences between the 2007 version of the standard and the 2010 version are relatively minor and largely editorial and because the 2010 version of the ANSI/SVIA standard is already in effect as a voluntary standard.

As we noted in section C of this preamble, we received a comment from several ATV companies suggesting that the amended standard become effective for 2013 MY ATVs or 60 days after publication of a final rule, rather than the 30 days we proposed. To allow time for ATV companies to update their certification labels, the final rule provides a 60-day effective date, and it applies to ATVs that are manufactured or imported on or after that date.

#### F. Notice of Requirements

In accordance with section 14(a)(3)(B)(vi) of the CPSA, on August 27, 2010, we published a notice of requirements 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 notice of requirements provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing ATVs pursuant to 16 CFR part 1420, which, at that time, incorporated by reference ANSI/SVIA 1–2007. With this rule, we are changing that reference in 16 CFR part 1420 to ANSI/SVIA 1–2010. With regard to youth ATVs, only four revisions in the 2010 edition are related to youth ATVs and only one of those, the brake speed test requirements (section 7 of the standard), is related to testing. Because this change does not constitute a substantial change in the requirement that would affect the associated third-party conformance testing, and, by this final rule, the Commission recognizes the functional equivalence of the specific brake speed test between the two versions of the standard. A Notice of Requirements has been issued by the Commission for the prior version of the rule, the 2007 edition, and the Commission has accepted the accreditation of a third party conformity assessment body for purposes of testing youth ATVs. The current Notice of Requirements for third party testing of youth ATVs will remain

in effect until the Notice of Requirements final rule for ANSI/SVIA 1–2010 has been completed. The Commission is continuing to accept that accreditation so that the third party conformity assessment body can test to all aspects of the 2010 edition including the new brake speed test requirements in section 7. We are in the process of developing a notice of proposed rulemaking regarding accreditation of third party conformity assessment bodies. In that proposed rule, we will address the impact of accepting the revised ANSI/SVIA standard on the accreditation of third party conformity assessment bodies.

#### G. Regulatory Flexibility Act

As noted in the preamble to the proposed rule, in accordance with the Regulatory Flexibility Act (“RFA”), we examined the potential impact on small entities that could occur from amending our ATV standard to reference the 2010 version of the ANSI/SVIA standard. 76 FR at 44291–92. We concluded that amending the mandatory ATV standard to reference the 2010 edition of the ANSI/SVIA ATV standard would not have a significant impact on a substantial number of small businesses or other small entities because the differences between the 2007 and 2010 editions of the ANSI/SVIA standard are relatively minor modifications or updates that are not expected to have a significant impact on any manufacturers or importers of ATVs. We did not receive any comments on this conclusion, and we are not aware of any other information that would change this conclusion.

#### H. Paperwork Reduction Act

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

#### I. Environmental Considerations

Our regulations provide a categorical exemption for our rules from any requirement to prepare an environmental assessment or an environmental impact statement because they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This amendment falls within the categorical exemption.

#### List of Subjects in 16 CFR Part 1420

Administrative practice and procedure, Business and industry, Consumer protection, Imports, Incorporation by reference, Information, Infants and children, Labeling, Law enforcement, Recreation and recreation

areas, Reporting and recordkeeping requirements, Safety.

For the reasons stated in the preamble, the Commission amends 16 CFR part 1420 as follows:

#### PART 1420—REQUIREMENTS FOR ALL TERRAIN VEHICLES

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

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

##### § 1420.1 [Amended]

■ 2. In the second sentence of § 1420.1, remove the words, “April 13, 2009,” and in their place add “April 30, 2012.”

■ 3. Revise paragraph (a) of § 1420.3 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 (American National Standards Institute, Inc. ANSI/SVIA 1–2010), approved December 23, 2010. 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 the Specialty Vehicle Institute of America, 2 Jenner, Suite 150, Irvine, CA 92618–3806; telephone 949–727–3727 ext.3023; [www.svia.org](http://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, 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: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

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Dated: February 16, 2012.

**Todd A. Stevenson,**

Secretary, U.S. Consumer Product Safety Commission.

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