



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

**BALLOT VOTE SHEET**

**DATE:** January 24, 2011

**TO:** The Commission  
 Todd A. Stevenson, Secretary

**THROUGH:** Cheryl A. Falvey, General Counsel *CAF*  
 Kenneth R. Hinson, Executive Director *KRH*

**FROM:** Philip L. Chao, Assistant General Counsel *PLC*  
 Jan S. Carlson, General Attorney *JSC*

**SUBJECT:** Stay Notice

**JAN 31 2011**

**Ballot Vote Due:** \_\_\_\_\_

The Office of the General Counsel is providing a staff briefing memorandum regarding the current stay of enforcement of testing and certification requirements for lead content and a draft *Federal Register* notice that would extend the stay on testing and certifications related to total lead content in children's products (except for metal components of children's metal jewelry), and certain related products, until September 14, 2011.

Please indicate your vote on the following options.

- I. Approve publication of the draft notice in the *Federal Register*.

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Date)

II. Approve publication of the draft notice in the *Federal Register* with changes. (Please specify.)

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\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

III. Do not approve publication of the draft notice in the *Federal Register*.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

IV. Take other action. (Please specify.)

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\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Attachment: Draft *Federal Register* notice titled, "Consumer Product Safety Act: Notice of Commission Action on the Stay of Enforcement of Testing and Certification Requirements"

[Billing code CPSC-6355-01-P]

**CONSUMER PRODUCT SAFETY COMMISSION**

**Consumer Product Safety Act: Notice of Commission Action on the Stay of Enforcement of Testing and Certification Requirements**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Revision of terms of stay of enforcement.

**SUMMARY:** The Consumer Product Safety Commission (“CPSC” or “Commission” or “we”) is announcing its decision to revise the terms of its stay of enforcement of certain testing and certification provisions of section 14 of the Consumer Product Safety Act (“CPSA”) as amended by section 102 of the Consumer Safety Improvement Act of 2008 (“CPSIA”). Through this notice, the Commission announces an extension of the stay of enforcement pertaining to total lead content in children’s products (except for metal components of children’s metal jewelry), and certain related products, until September 14, 2011.

**DATES:** The stay of enforcement pertaining to total lead content in children’s products (except for metal components of children’s metal jewelry), and certain related products, is extended until September 14, 2011, upon which date the stay will expire.

**FOR FURTHER INFORMATION CONTACT:** Robert “Jay” Howell, Acting Assistant Executive Director for the Office of Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; email [rhowell@cpsc.gov](mailto:rhowell@cpsc.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Section 14 of the CPSA requires that every manufacturer of a product (and the private labeler, if the product bears a private label) that is subject to a consumer product safety rule, ban, standard, or regulation enforced by the Commission certify, based on testing, that its product complies with the applicable safety rule, ban, standard, or regulation. For nonchildren’s products, the certification must be based on a test of each product or a reasonable testing program. For children’s products, the certification must be based on testing conducted by a CPSC-accepted third party conformity assessment body (laboratory).

On February 9, 2009, the Commission published a notice in the Federal Register, staying enforcement of many of the testing and certification requirements, including the requirements related to total lead in children’s products (other than the lead content of metal components of children’s metal jewelry). 74 FR 6396, 6397. The Commission committed to the stay for one year, explaining that the stay was necessary to “give us the time needed to develop sound rules and requirements as well as implement outreach efforts to explain these [new] requirements of the CPSIA and their applicability.” 74 FR at 6398. With regard to lead content in metal components of children’s metal jewelry, the Commission stated that

certifications based on third party testing would be required for such products manufactured after March 23, 2009. 74 FR at 6397.

On December 28, 2009, the Commission published a notice in the Federal Register, revising the terms of the stay. 74 FR 68588. In that notice, the Commission lifted the stay for some CPSC regulations and extended the stay for other CPSC regulations. Relevant for present purposes, the Commission stated that it “plans to keep the stay in effect for total lead content in metal children’s products and in nonmetal children’s products ... (section 101 of the CPSIA) until February 10, 2011.” 74 FR at 68591. The December 28, 2009, notice did not affect certifications and testing of lead content in metal components of children’s metal jewelry; the stay pertaining to those products had expired on March 23, 2009. 74 FR at 68589.

The Commission also published two notices concerning discrete stays of enforcement related to lead content. On May 12, 2009, the Commission published a notice staying enforcement with regard to the lead content in certain parts and youth motorized vehicles that contain those parts. 74 FR 22154. The notice announced that the stay would remain in effect until May 1, 2011. Id. Specifically, the Commission stayed enforcement of the specified lead level as it pertains to certain parts of youth all-terrain vehicles, youth off-road motorcycles, and youth snowmobiles (“Youth Motorized Recreational Vehicles” or “Vehicles”), specifically battery terminals containing up to 100 percent lead, and components made with metal alloys, including steel containing up to 0.35 percent lead, aluminum with up to 0.4 percent lead, and copper with up to 4.0 percent lead, and the vehicles that contain them. Id.

On June 30, 2009, the Commission published a notice staying enforcement with regard to the lead content in certain parts of bicycles, jogger strollers, and bicycle trailers (“Bicycles and Related Products”) designed or intended primarily for children 12 years of age or younger. 74 FR 31254. In brief, the stay applied to components made with metal alloys, including steel containing up to 0.35 percent lead, aluminum with up to 0.4 percent lead, and copper with up to 4.0 percent lead. 74 FR at 31257. The Commission stated the stay would remain in effect until July 1, 2011. 74 FR at 31254.

## **II. Extension of Stay of Enforcement**

We have received several requests for an extension of the stay of enforcement related to lead testing and certifications. After considering these requests and other matters, the Commission has decided to extend the existing stay of enforcement on testing and certifications of the total lead content in children’s products (except for metal components of children’s metal jewelry) until September 14, 2011, at which time the stay will expire. This action by the Commission encompasses the stays described above, pertaining to lead content in Youth Motorized Recreational Vehicles and Bicycles and Related Products; those stays are hereby extended until September 14, 2011.

The Commission notes that there remains in effect a stay of enforcement on testing and certification for children’s products subject to those children’s product safety rules for which a notice of requirements for accreditation of third party conformity assessment bodies (laboratories) has not published yet, including testing of children’s toys and child care articles for banned phthalates, and testing of children’s toys for compliance with the mandatory toy safety standard ASTM F-963 (which includes caps and toy guns). The

Commission's current action does not affect that stay of enforcement; accordingly, and as described in the December 28, 2009, notice (74 FR 98591-68592), such stay will continue until the respective notices of requirements for laboratory accreditation are published.

Dated: \_\_\_\_\_

**Todd A. Stevenson,**

Secretary, Consumer Product Safety Commission.



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

**Memorandum**

Date: January 24, 2011

TO : The Commission  
Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel *CAF*  
Kenneth R. Hinson, Executive Director *KRH*

FROM : Robert J. Howell, Acting Assistant Executive Director *RJH*  
Office of Compliance and Field Operations  
Howard N. Tarnoff, Lead Trial Attorney and Special Assistant to the Acting *HT*  
Assistant Executive Director, Office of Compliance and Field Operations

SUBJECT : Stay of Enforcement of Testing and Certification Requirements for Lead  
Content

**I. Introduction**

The Requirements

Sections 14(a)(1), (a)(2), and (a)(3) of the Consumer Product Safety Act ("CPSA"), as amended by section 102(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), establish testing and certification requirements for most consumer products, including children's products, regulated by or under Consumer Product Safety Commission ("CPSC" or "Commission") statutes. Section 14(a)(1) of the CPSA requires every manufacturer of a product (and the private labeler of such product if such product bears a private label) subject to a consumer product safety rule under the CPSA or a similar rule, ban, standard, or regulation under any other law enforced by the Commission and which is imported for consumption or warehousing or distributed in commerce, to issue a certificate that certifies, based on a test of each product or upon a reasonable testing program, the product complies with all rules, bans, standards, or regulations applicable to the product under the CPSA or any other law enforced by the Commission. The certificate must specify each such rule, ban, standard, or regulation applicable to the product.

Section 14(a)(2) of the CPSA states that, before importing for consumption or warehousing or distributing in commerce any children's product that is subject to a children's product safety rule, the manufacturer (and the private labeler if the children's product bears a private label) must submit sufficient samples of the children's product, or samples that are identical in all material respects to the product, to a CPSC-recognized third party conformity assessment body accredited under section 14(a)(3) of the CPSA ("recognized third party test laboratory") for testing of the children's product for compliance with the applicable children's

*RH 1/24/2011*

product safety rule. Based on the testing conducted by the recognized third party laboratory, the manufacturer (or private labeler) must issue a certificate that certifies that the children's product complies with the children's product safety rule.

#### Stay of Enforcement with Respect to Certain Testing and Certification Requirements

On February 9, 2009, the Commission announced a stay of enforcement with respect to certain testing and certification requirements in sections 14(a)(1), (a)(2), and (a)(3) of the CPSA. The Commission determined that the stay would remain in effect until February 10, 2010, at which time the Commission would vote to terminate the stay. The stay did not alter or postpone the requirement that all products must meet applicable consumer product safety rules as defined in the CPSA or similar rules, bans, standards, or regulations under any other statute enforced by the Commission.

On December 28, 2009, the Commission announced changes to the stay. These changes included when the stay would lift as to certain testing and certification requirements and how the testing and certification requirements would be implemented or otherwise become effective for specific products subject to the testing and certification requirements of the CPSIA. In addition, due to factors such as pending rulemaking proceedings or the absence of notices of requirements, the Commission decided to continue the stay of enforcement for certain products.<sup>1</sup>

The Commission announced plans to keep the stay in effect until February 10, 2011, for total lead content in metal children's products (other than metal components of children's metal jewelry) and in non-metal children's products tested pursuant to CPSC-CH-E1001-08, Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products or CPSC-CH-E1002-08, Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children's Products, (section 101 of the CPSIA).

For lead content, the Commission determined that testing of children's products for lead content by a recognized third party testing laboratory and certification based upon that testing should begin on products manufactured after February 10, 2011, to (1) allow component testing to form the basis for certifications for lead content, and (2) permit staff to complete an interpretative rule on the meaning of the term "children's product."

CPSC's Office of the Secretary (CPSC-OS) has received several letters requesting an extension of the current stay of enforcement. These letters cite various reasons for an extension, including the need to finalize the revision of the current 300 parts per million (ppm) lead in substrate materials limit, the need to finalize the "Testing and Labeling Pertaining to Product

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<sup>1</sup> The Commission has lifted the stay and/or issued notices of requirements for the following products: clacker balls, electronically operated toys, bicycles, carpets and rugs, vinyl plastic film, wearing apparel, children's mattresses, bath seats, baby walkers, children's sleepwear, and children's ATVs (though children's ATVs are subject to a separate stay due to insufficient laboratory capacity). The Commission has not issued notices of requirements for the following products and they are, therefore, stayed until 90 days after such issuance: children's toys subject to ASTM's F-963 toy safety standard, phthalates, and caps and toy guns.

Certification and Conditions” and “Requirements for Testing Component Parts of Consumer Products” rules, and the need to provide time for the Commission, Congress, and the various stakeholders to work together to develop additional revisions, policies, and interpretations to provide for a more cost-effective solution for all stakeholders.

This memorandum presents discussion of the significant factors that may be relevant to the Commission’s deliberation of the matter of the current stay of enforcement with respect to certain testing and certification requirements for lead content.

## II. Discussion

### Pending Changes to the Lead Content Limit: Technological Feasibility

Section 101(a) of the CPSIA provides that, as of August 11, 2011, children’s products may not contain more than 100 ppm of lead, unless the Commission determines that such a limit is not technologically feasible. The Commission may make such a determination only after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children’s products. If the Commission determines that the 100 ppm lead content limit is not technologically feasible for a product or product category, section 101(a)(2)(D) of the CPSIA requires the Commission, by regulation, to establish the lowest amount below 300 ppm that it determines is technologically feasible.

On July 27, 2010, the Commission published a notice in the *Federal Register* (75 FR 43942) requesting comments and information regarding the technological feasibility for manufacturers to meet the 100 ppm lead content limits. CPSC staff received comments from consumer groups, manufacturers, retailers, associations, and laboratories regarding the technological feasibility of meeting the 100 ppm lead content limit. Some comments identified concerns about the feasibility of some classes of materials meeting the 100 ppm lead content limit, including metal components and some glass, plastic, and ceramic components. Other comments contended that for all materials, there is significant variability among test results, even for identical products, due to variations in testing methodology and procedures, and that inter- and intra-laboratory variability must be addressed.

The NAM CPSC Coalition request for a continuation of the current stay cites these issues, and the question of whether a new lead limit would be applied in a retroactive manner, as a “further complication” justifying the need for a continuation of the stay to ensure all stakeholders have the “fullest possible opportunity to learn about and incorporate these new rules, once they are finalized.”

Staff agrees that stakeholders need certainty with regard to the limit before they should be required to test and certify their products. Allowing the current stay of enforcement to expire may result in the need for those certifying products as compliant with the lead content limit to test upon the expiration of the stay and then again, when the lower lead content limit is established. A continuation of the current stay of enforcement would avoid this possibility.

### Stays on Youth Bicycles, Jogger Strollers, Bicycle Trailers and Youth ATVs

On May 12, 2009, the Commission published a notice in the Federal Register announcing its decision to stay enforcement of section 101(a) of the CPSIA with regard to certain parts and youth motorized vehicles that contain those parts. Specifically, the Commission stayed enforcement of the specified lead level as it pertains to certain parts of youth all-terrain vehicles, youth off-road motorcycles and youth snowmobiles, specifically battery terminals containing up to 100 percent lead, and components made with metal alloys, including steel containing up to 0.35 percent lead, aluminum with up to 0.4 percent lead, and copper with up to 4.0 percent lead, and the vehicles that contain them.

On June 30, 2009, the Commission published a notice announcing its decision to stay enforcement of section 101(a) of the CPSIA with regard to certain parts of bicycles, jogger strollers, and bicycle trailers designed or intended primarily for children 12 years of age or younger. The Commission stayed enforcement of the specified lead level as it pertains to certain parts of these products, specifically components made with metal alloys, including steel containing up to 0.35 percent lead, aluminum with up to 0.4 percent lead, and copper with up to 4.0 percent lead.

The stay related to youth all-terrain vehicles, youth off-road motorcycles, and youth snowmobiles will remain in effect until May 1, 2011; and the stay related to bicycles, jogger strollers, and bicycle trailers designed or intended primarily for children 12 years of age or younger will remain in effect until July 1, 2011, unless prior to those dates the Commission, based upon evidence submitted to it, decides to continue either stay for an additional period of time for all or some of the products.

Given the need to consider whether it is feasible to lower the lead limit for metals used in these products, the staff believes it makes sense to extend the stay for these products pending such determination to avoid the possibility of duplicative testing. The Commission could consider the matter of these stays when considering the current stay of enforcement, thus foregoing the need to consider these matters separately.

#### Requirements for Testing Component Parts of Consumer Products

On December 28, 2009, the Commission issued an interim enforcement policy, "Interim Enforcement Policy on Component Testing and Certification of Children's Products and Other Consumer Products to the August 14, 2009 Lead Limits," regarding component testing and certification of children's products and other consumer products to the 90 parts per million (ppm) lead in paint limit and to the 300 ppm lead limit for children's products established in section 101 of the CPSIA. This interim enforcement policy permits, as part of a domestic manufacturer's or importer's certification of a children's product as being in compliance with the 300 ppm lead content limit or 90 ppm lead in paint limit, the domestic manufacturer or importer to rely on a test report showing passing test results for one or more components used on the product, based on testing either of them has commissioned from a CPSC recognized third party test laboratory. The domestic manufacturer or importer may also rely on a certificate from another person certifying that a component complies with the applicable lead limit, provided the

component certificate is based on testing of a representative sample of the component(s) by a recognized third party test laboratory.

On May 20, 2010, the Commission published a notice of proposed rulemaking, “Conditions and Requirements for Testing Component Parts of Consumer Products,” 16 CFR Part 1109. This proposed rule sets forth the conditions and requirements under which the Commission will require or accept the results of testing of component parts of consumer products, instead of the entire consumer product, to meet, in whole or in part, the testing requirements of sections 14(a), 14(b), and 14(d) of the CPSA. Currently, CPSC staff is reviewing and drafting responses to numerous comments received on this proposed rule. Based on the comments and further staff analyses, staff will recommend clarifications and updates to the proposed rule, and a draft final rule will be submitted to the Commission for consideration in fiscal year 2011.

It should be noted that there are no provisions within the CPSIA requiring the suppliers of unregulated components that may be used in children’s products to have these components tested and to supply certificates to others in the supply chain. The “Requirements for Testing Component Parts of Consumer Products” proposed rule establishes the conditions under which a party certifying a product under section 14 of the CPSA may rely on tests of component parts of the product, including materials used to produce it, as all or part of the basis for a valid certificate that the product complies with all applicable requirements enforced by the Commission. The proposed rule also sets out the conditions under which such tests of component parts can be conducted by persons other than the manufacturer, such as the manufacturer or supplier of the component parts.

The proposed conditions could result in advantages for component part suppliers and manufacturers (including importers), provided that those supplying component parts choose to perform the required testing. If manufacturers could issue either general conformity or children’s product certificates based at least in part on testing performed by or arranged by component part suppliers, the manufacturers’ testing burden would be reduced. Suppliers who choose to perform or arrange the required testing could reduce the total amount of testing required by section 14(a) of the CPSA, because the same component part might be used in a number of different products. For example, a firm might supply plastic for making dolls to more than one manufacturer. If the manufacturers could not rely on test results from the supplier, each manufacturer would have to obtain their own CPSC-recognized third party conformity assessment body test results. Likewise, if a manufacturer used the same plastic in five different dolls, the manufacturer who could rely on testing performed by the supplier would not have to test the plastic for each of the five dolls; instead, the manufacturer could apply the testing results to all five dolls.

However, there are benefits available to manufacturers even if the suppliers of component parts choose not to perform the required testing and certify their component parts. Testing only the relevant component parts rather than the finished product can allow manufacturers to avoid the sometimes difficult process of preparing a finished product for testing. It also can reduce the number of finished products that may have to be destroyed in destructive testing. Allowing similar component parts to be combined to make one sample for

testing by the manufacturer also can reduce the number of tests required without reducing any requirements for compliance to the applicable rules or children's product safety rules.

In order for many small batch manufacturers to realize benefits from the proposed component part testing rule, the retail marketplace must choose to perform the required testing and certify component parts and materials. Uncertainty regarding what conditions may be included in the final “Conditions and Requirements for Testing Component Parts of Consumer Products” rule may be causing many in the retail marketplace to wait before deciding to provide this service. Staff discussions with representatives of three major retailers of craft and hobby materials revealed that all three were aware of the allowance for component testing and for the issuance of General Conformity Certifications (GCCs) based on third party testing of a component part, such as buttons, zippers, or ribbon material. The demand for GCCs was characterized as low to moderate. Of the three stores, only one provides a service to wholesalers where they will make the GCC available to them for a component piece or a component piece used in a children’s product. All three stores voiced the same concerns regarding the proprietary nature of the information on the certificate, the inappropriate application of the certificate on a finished product, and making an additional “promise” on a product that they are not required to make.

A continuation of the current stay of enforcement would provide time for completion of the rule-making process, thus clarifying the conditions and requirements for component part testing, and would provide additional time for the certified component parts market to develop.

#### Testing and Labeling Pertaining to Product Certification and Conditions

On May 20, 2010, the Commission issued a proposed rule, “Testing and Labeling Pertaining to Product Certification and Conditions,” that would establish requirements for a reasonable testing program and for compliance and continuing testing for children’s products. The proposed rule also addressed labeling of consumer products to show that the product complies with certification requirements under a reasonable testing program for non-children’s products or under compliance and continuing testing for children’s products. Currently, CPSC staff is reviewing and drafting responses to numerous comments received on this proposed rule. Based on the comments and further staff analyses, staff will recommend clarifications and updates to the proposed rule, and a draft final rule will be submitted to the Commission for consideration in fiscal year 2011.

Although finalizing the rule for section 14(d)(2) of the CPSA will provide additional guidance on complying with the certification requirements of section 14(a) of the CPSA, compliance with the section 14(a) requirements does not depend on it. Since the 1970s, the Commission has issued several rules containing certification requirements that contained specific guidance for reasonable and representative testing for certain consumer products under section 14 of the CPSA (e.g., bike helmets, cigarette lighters, and automatic garage door openers) and under section 4 of the Flammable Fabrics Act (“FFA”) (e.g., children’s sleepwear and

mattresses).<sup>2</sup> Manufacturers of children's products can seek guidance for what the Commission considers reasonable and representative testing in these rules.

In addition, since February 9, 2009, the Commission has issued several statements of policy, guidance documents, proposed rules, and final rules pertaining to testing and certification, some of which were particular to lead content. These include: "Statement of Commission Enforcement Policy on Section 101 Lead Limits" (February 6, 2009); "Children's Products Containing Lead: Interpretative Rule on Inaccessible Component Parts" (August 7, 2009); "Statement of Policy: Testing and Certification of Lead Content in Children's Products" (October 2009); and "Interim Enforcement Policy on Component Testing and Certification of Children's Products and Other Consumer Products to the August 14, 2009 Lead Limits" (December 28, 2009). Within these guidance documents and rules, the proposed rule for section 14(d)(2) of the CPSA, and the Commission's long-standing certification rules referenced above, manufacturers of children's products have numerous resources for meeting the Commission's expectations for compliance with section 14(a) of the CPSA, without the finalization of the proposed rule for section 14(d)(2) of the CPSA.

Since September 2008, the Commission has issued many notices of requirements under section 14(a)(3) of the CPSA that made effective the mandatory certification requirements of section 14(a)(2) of the CPSA. Since that time, millions of children's products have been certified under section 14(a)(2) of the CPSA, all without the benefit of a final rule for section 14(d)(2). The proposed third party testing requirements of Sections 14(a) and 14(d) of the CPSIA have been communicated to the business community. Since August 2008, CPSC staff has met with various industry associations and provided training seminars and webinars on the new requirements of the CPSIA to help industry prepare for the changes brought about by the CPSIA.

Several industry groups have expressed concern that controversy over various provisions in the current proposed rule have left companies uncertain as to what procedures to implement in advance of the lifting of the stay. They believe additional time is needed for industry to understand how the testing and labeling requirements apply to their products and for their various supply chains to absorb and incorporate those new rules before the expiration of the current stay of enforcement.

While a Commission decision to extend the current stay of enforcement will give industry an opportunity to test and certify finished products and components according to the final rule and provide the Commission time to clarify any confusion regarding the new rule, it is not necessary for the testing rule to be complete to lift the stay as to the initial test for lead compliance. As a practical matter, the only way to ensure compliance with the lead limit is, at the bare minimum, an initial test of the product for lead content. Moreover, the relief requested by the stakeholders – time to adjust their continuing testing programs prior to lifting of the stay – can be provided by lifting the stay with an assurance that they will not be required to comply with the testing rule until that rule becomes effective. The Commission staff anticipates that the effective date of that

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<sup>2</sup> Although most of the rules allow for first party certification, the mattress standard requires third party certification, which is akin to the certification required under section 14(a)(2) of the CPSA.

rule will be long enough after the rule is finalized to give manufacturers time to make any necessary changes to their processes, controls, or record keeping procedures. No enforcement action can be taken regarding the testing rule until after the effective date of the rule. No manufacturer faces liability for compliance with a rule not yet in effect, and there is no need to continue a stay to provide relief from a rule that is not yet final and to which manufacturers are not yet subject.

### **III. Options Available to the Commission**

In order to address the concerns outlined above, the Commission could consider the following options:

1. Do nothing and permit the stay of enforcement to expire;
2. Extend the stay for total lead content in metal children's products (other than metal components of children's metal jewelry) and in non-metal children's products tested pursuant to CPSC-CH-E1001-08, Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products or CPSC-CH-E1002-08, Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children's Products, (section 101 of the CPSIA), including those items covered under the May 12, 2009, stay of enforcement for certain parts and youth motorized vehicles that contain those parts and the June 30, 2009, stay of enforcement for certain parts of bicycles, jogger strollers, and bicycle trailers designed or intended primarily for children 12 years of age or younger until September 14, 2011;
3. Extend the stay for total lead content in metal children's products (other than metal components of children's metal jewelry) and in non-metal children's products tested pursuant to CPSC-CH-E1001-08, Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products or CPSC-CH-E1002-08, Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children's Products, (section 101 of the CPSIA) until September 14, 2011; or
4. Grant the specific relief requested by one of the various stakeholders that have requested relief.

### **IV. CPSC Staff Recommendation**

Staff recommends that the Commission extend the stay to allow time for the Commission to determine whether it is technologically feasible to lower the amount of lead in children's products to 100 ppm. Lifting the stay prior to that determination seems unfair given the uncertainty as to the limit and the possibility of multiple, duplicative tests of the same product. Furthermore, including bicycles, youth ATVs and other products covered under those specific stays in an extended stay for lead content, allows the Commission to complete the determination on the metals parts of those products prior to lifting those stays as well. An extension of the stay would have the added benefit of allowing the component testing rule to be completed and the market for certified component parts to develop, if possible.

The Commission staff recommends that the stay be extended until September 14, 2011, as that will provide the Commission the time it needs to complete its determination on technological feasibility, and to revisit the issue of bicycles, youth ATVs and other products subject to those specific stays in light of such determination. In addition, the “Testing and Labeling Pertaining to Product Certification and Conditions” final rule, the Notice of Requirements for third party testing of toys for compliance to ASTM F 963, and the Notice of Requirements for third party testing of certain toys and childcare articles for compliance to the limits on certain phthalates should be completed before then.

Should the Commission decide to let the stay lift, staff recommends that the Commission explicitly state that no products made prior to the effective date of the final testing rule proposed pursuant to section 14(d) of the CPSIA will be deemed out of compliance for failing to comply with testing requirements not yet in effect and that any additional testing and labeling requirements imposed by such rule will be prospective in nature and will not apply to products manufactured prior to the effective date, including, but not be limited to, products in warehouses or on store shelves. If the Commission allows the stay to lift, CPSC staff recommends further that the Commission clearly indicate that it has not yet issued notices of requirements for children’s toys and child care articles with banned phthalates, toys subject to the mandatory toy safety standard, caps and toy guns, and certain durable infant products for which the Commission has not yet finalized CPSIA required rules. Therefore, no certificates will be required for products subject to those rules until the notice of requirements for each individual product has issued.