



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

STATEMENT OF THE HONORABLE THOMAS H. MOORE
ON THE PETITION FOR TEMPORARY FINAL RULE
TO EXCLUDE A CLASS OF MATERIALS UNDER SECTION 101(b) OF
THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008 (CPSIA)

April 16, 2009

I am aware of the speculation that has surrounded my vote on this issue. My staff has spent the time since the ballot came to the Commission working on what I believe is a good solution for the riders of youth motorized recreational vehicles, building and expanding upon the initial position taken by Acting Chairman Nord. The direction my colleague and I are giving to the staff today balances the Congressional desire to protect children from unnecessary contact with leaded components in these vehicles with the need to protect those same children from the potential for physical injury related to riding inappropriate adult-sized vehicles, or riding vehicles either in need of repair or less structurally sound than the ones currently on the market.

It is clear from the post-enactment statements of some Members of Congress who were Conferees on the CPSIA that they believe the Commission has the authority to make sensible allowances for these vehicles as long as child safety is not compromised. Given the extremely restrictive language of the law, the only avenue I can see is for the Commission to establish an enforcement plan that follows, to the greatest extent possible, the Act's intention for future production, while providing relief to the industry and the riding community for vehicles already manufactured and those manufactured during the stay. There are compelling safety arguments that justify a stay of enforcement.

It is ironic that I am defending vehicles that I consider to be dangerous for children under 12 to ride and which contain accessible parts with excess levels of lead. However, the alternatives appear to be more dangerous. American parents seem to be willing to accept the risk for their children riding these vehicles, so it is the agency's task, at this stage, to ensure that the vehicles are as safe as possible. One safety rule the agency has stressed is keeping children off of adult-sized ATVs.¹ To the extent that new children's ATVs cannot currently meet the lead limits in the CPSIA, there is the likelihood that parents seeking new vehicles will buy adult-sized ATVs for their children to use. We have also been notified by one ATV manufacturer that they are simply relabeling their Y-6+ and Y-10+ youth ATVs as Y-12+, removing the speed limiting device and continuing to sell them. Thus the vehicles that are more accurately sized for younger children will be less safe because of their ability to attain higher speeds.

¹ Most of my discussion is focused on the ATV industry as they present the greatest (lead and non-lead) safety challenges. However, the enforcement program will also apply to children's off-road motorcycles and snowmobiles.

The other part of the safety equation that helps balance an enforcement plan against the increased lead exposure it allows, is based on the assertions that certain vehicle components cannot be made with lead below a certain level without compromising the structural integrity (or another safety element) of the component. The enforcement plan of the Commission must require concrete data from the manufacturers on this point to justify their continued use of lead in excess of the applicable lead limit.

The industry has pointed to the European Union's RoHS and ELV Directives as a guide for what lead reductions or substitutions may be technologically infeasible for their youth vehicles. While we might not need to allow the high lead limits allowed in those Directives for all components, there is guidance to be taken in how the European system is administered. They set an expiration date for their exemptions. Prior to that expiration date it is up to industry to come in and make their case that it is still technologically infeasible to reduce lead to a level at which an exemption is no longer required. The evidence considered is strictly limited to technological feasibility, not on the higher cost of a viable substitute. The guiding principle for this agency's determinations has to be the safety of the children riding these vehicles.

I believe a stay of enforcement issued by the Commission should:

- relieve all makers, sellers, and distributors of youth motorized recreational vehicles made to date and through the expiration date of the stay from enforcement actions for failure to meet the lead limits of the CPSIA;

- allow those vehicles to be repaired, sold, traded, and otherwise used as they have been;

- allow the sale, distribution and installation of replacement parts that are comparable in lead levels to the old part being replaced until such time as those parts can be brought into compliance;

- expect industry to bring their vehicle components into compliance on a reasonable schedule, to the extent that is technologically feasible, and to provide us with the detailed information we need to make informed decisions about those components in the future.

The Commission simply cannot ignore the safety tradeoffs that could arise by not providing this relief but it must also work with industry to bring the non-complying components of these youth vehicles as close to the lead limits established by law as is currently technologically feasible, to the extent those parts cannot be made inaccessible. The Commission also needs to let the riding community know that they can continue to use the vehicles they own as they always have.

I believe the approach taken today by myself and Acting Chairman Nord of directing the staff to draft a Federal Register notice containing concrete elements of a stay is the reasonable approach that the Congress is looking for us to take. I anticipate that the Commission will vote to approve it in the near future.