U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

OFFICE OF THE GENERAL COUNSEL

Cheryl A. Falvey
General Counsel
Tel: 301-504-7628
E-Mail: cfalvey@cpsc.gov

February 9, 2009

Paul Vitrano
Motorcycle Industry Council
2 Jenner, Suite 150
Irvine, CA 92618

Dear Mr. Vitrano:

Your letter dated January 28, 2009, asking the Commission to issue a temporary final rule to exclude a class of materials under section 101(b) of the Consumer Product Safety Improvement Act (CPSIA) was referred to the Office of the General Counsel for response.

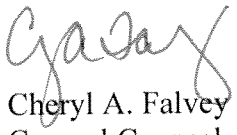
To the extent that you are asking for immediate action outside of the process established by section 101(b) of the CPSIA, the Commission lacks authority to act on your request. Section 101(a) establishes lead limits for children's products and directs when those limits come into effect. See CPSIA, Public Law 110-314, section 101(a) (August 14, 2008). The 600 ppm limit becomes effective on February 10, 2009. Section 101(b) delineates certain exclusions and exceptions from these limits, and it establishes the process and findings for these exclusions and exceptions. Section 101(b)(1) allows the Commission to exclude certain materials or products from the lead limits, but only after notice and a hearing and only if the Commission makes the findings specified in section 101(b)(1).

As you know, the Commission has begun rulemakings that propose exclusions and exceptions from the lead limits, as well as the process for one to seek exclusions under section 101(b)(1). The Commission must follow the process set forth in the statute. The Commission lacks the authority to issue a "temporary final rule" that does not comport with the procedure the CPSIA prescribes. The Commission's authority to issue temporary exclusions that, in effect, delay or stay the effective date of the lead limits is also restricted by section 101(e), as the Commission recognized in its denial of a request from NAM CPSC Coalition to delay the effective date of the section 101 lead limit. See http://www.cpsc.gov/library/foia/ballot/ballot09/nam.pdf .

Because the Commission lacks the authority to grant the "temporary final rule" you seek, we are not docketing your request as a petition. Your request will be considered as part of the ongoing rulemakings for exclusions or exceptions from the section 101 lead limits. The staff will assess your request accordingly. If any part of your request is appropriate for docketing as a petition

under the process the Commission proposed for considering requests for exclusions under section 101(b)(1), we will docket that portion of your request after the Commission finalizes its rules for this process.

Sincerely,



Cheryl A. Falvey
General Counsel