



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Record of Commission Action Commissioners Voting by Ballot*

Commissioners Voting: Acting Chairman Nancy A. Nord
 Commissioner Thomas H. Moore

ITEM:

Stay of Enforcement of Lead Content Limits for Certain Youth Motorized Recreational Vehicles
(Briefing Package dated April 28, 2009, OS No. 5437)

DECISION:

The Commission voted unanimously (2-0) to issue the *Federal Register (FR)* notice with changes. The *FR* notice announces a stay of enforcement of section 101(a) of the Consumer Product Safety Improvement Act of 2008, Public Law 110-314, with regard to the specified lead level as it pertains to certain component parts of youth all terrain vehicles, youth off-road motorcycles and youth snowmobiles and the vehicles that contain them.

Acting Chairman Nord and Commissioner Moore issued the attached statements with their votes.

For the Commission:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson".

Todd A. Stevenson
Secretary

* Ballot vote due May 1, 2009



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BETHESDA, MD 20814

STATEMENT OF ACTING CHAIRMAN NANCY NORD
ON THE STAY OF ENFORCEMENT FOR YOUTH RECREATIONAL OFF-HIGHWAY VEHICLES
May 1, 2009

In the case at hand, we must weigh the theoretical possibility of lead poisoning of a child from riding a youth ATV against the very real probability of death or severe injury from that child riding an adult ATV. This incongruent dilemma about child safety happens because the new law effectively makes youth ATV's unavailable in the U.S. We cannot allow the rigid exclusion provisions of the law to somehow put children at greater risk of injury or death. Since the law does not allow us to exclude these products, our only option is the stay of enforcement which will now go into effect for a limited period of time. During this "timeout", the ATV industry will have the opportunity to bring their products closer to the limits specified by Congress.

The Commission, again, is exercising enforcement discretion to address unintended consequences in the law, this time as it relates to the regulation of lead content in children's products. As both Commissioners have pointed out, enforcement discretion is not the preferred approach to solving this problem. Nevertheless this temporary approach is the only way, now, to work around the prescriptive exclusion provisions to protect the consumer in the meantime.

We have heard from Members of Congress that they did not mean for the law to impact youth ATV's in this way, that we should use stays of enforcement to address "anomalies" in the law and that, with respect to ATV's, we should regulate prospectively. During the time the stay is in effect, the Congress will have the opportunity to consider whether and how to give the Commission more flexibility to grant common sense exclusions and to take other regulatory approaches to better prioritize and appropriately address risks based on actual health and exposure data. As the ATV situation before us illustrates, Congress may wish to consider how the retroactive nature of the law is impacting consumers, as well as product sellers.

Both the Congress and the Agency should take time together to comprehensively address "anomalies" in the law so that consumers do not have to rely upon "timeouts" for their safety.



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

STATEMENT OF COMMISSIONER THOMAS H. MOORE
ON THE NOTICE OF STAY OF ENFORCEMENT PERTAINING TO YOUTH MOTORIZED
RECREATIONAL VEHICLES

May 1, 2009

The Commission voted today to stay enforcement of the lead limit in the Consumer Product Safety Improvement Act of 2008, as it applies to certain metal parts of youth motorized recreational vehicles, for a two-year period. In making this decision, the safety of the **riders** of youth all-terrain vehicles, youth off-road motorcycles and youth snowmobiles was the Commission's paramount concern. It is unlikely that many other products would pose the same safety versus safety tradeoff, in the context of the lead provisions, which these vehicles pose.

The manufacturers of these vehicles have argued, and presented evidence in support of their argument, that these vehicles need to have a certain amount of lead in them, at least for the time being, for safety reasons such as corrosion resistance and durability. The industry has also said that it is working to reduce the amount of lead in their vehicle components and to make certain of the leaded parts inaccessible to children. They indicate they need time to do testing to see how much of a reduction in lead can be made without introducing other safety problems. The Commission expects them to use the stay of enforcement to follow through on these initiatives.

It is the Commission's responsibility to weigh all of the safety implications of changes made to products under its jurisdiction. No one as yet knows what is possible with regard to changing or shielding all of the accessible lead-containing components of the various kinds of youth motorized recreational vehicles that are on the market. What we do know is that it will take some time to accomplish this and that in the interim the absence of youth vehicles from the marketplace would lead to some children driving adult vehicles. The Commission has seen all too frequently the tragedies that result from combining a child and a powerful adult motor vehicle—the all terrain vehicle. It is a deadly combination.

The Commission also does not want to create a scenario where a reduction in lead could result in vehicles that have structural weaknesses or brake components that fail during operation. Not only are these obvious safety hazards which would expose their riders to the risk of serious injury, but such a result would be counterproductive to the work our engineering staff has been doing on some of these vehicles to see what safety improvements can be made to them.

By staying enforcement for a period of time, we are not downplaying the hazard of children absorbing lead—a hazard that will have different implications for every child since each child will already have a different level of lead in his or her blood and each child will have

different lead exposures from a host of substances in his or her daily life. Nevertheless, our staff scientists do believe that the amount of lead absorbed, while not zero, would likely be small for most of the children riding these vehicles. We have to balance that risk to some children against the known causes of death and serious injury that every child would face who rides an adult vehicle or a vehicle that may be more prone to failure.

Striking the right safety balance in this situation will require the industry to do the testing that is necessary to find out how low the lead level in accessible parts can go without compromising the integrity of their vehicles. They also will have to tell us, with specificity, what parts have high lead levels, what that level is and what steps they plan to take to bring their vehicles into compliance with the new lead standard. The stay gives them deadlines by which they are to provide information to the Commission on these issues.

For the riders of youth recreational vehicles, the stay allows them to continue to ride their youth-sized models, to have them repaired and to acquire new or used ones while the industry works to reduce unnecessary and excessive amounts of lead from the components children can touch. The industry has a duty to make their vehicles as safe as possible in every respect and we expect them to take the opportunity granted them to do that.