

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Stay of Enforcement of Testing and Certification Pertaining to Youth All-Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Stay of enforcement.

SUMMARY: The Consumer Product Safety Commission (“CPSC,” “Commission,” or “we”) is announcing its decision to stay enforcement of the testing of youth all-terrain vehicles (“ATVs”) by third party conformity assessment bodies, subject to conditions, until November 27, 2011.

DATES: This stay of enforcement is effective on **[insert date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Elizabeth Leland, Project Manager, Directorate for Economic Analysis, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail eleland@cpsc.gov.

SUPPLEMENTARY INFORMATION

I. Background

Section 14(a)(3)(B)(vi) of the Consumer Product Safety Act (“CPSA”), as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (“CPSIA”), Public Law 110–314, directs the CPSC to establish and publish a notice of requirements for accreditation of third party conformity assessment bodies to assess children’s products for conformity with “other children’s product safety rules.” Section

14(f)(1) of the CPSA defines “children’s product safety rule” as “a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance.” Under section 14(a)(3)(A) of the CPSA, 15 U.S.C. 2063(a)(3)(A), each manufacturer (including an importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the establishment and Federal Register publication of a notice of the requirements for accreditation tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance with the applicable regulations based on that testing. Pursuant to section 14(a)(3)(F) of the CPSA, the Commission may extend the 90-day period by not more than 60 days if the Commission determines that an insufficient number of third party conformity assessment bodies have been accredited to permit certification for a children’s product safety rule. Irrespective of certification, the product in question must comply with applicable CPSC requirements (*see, e.g.*, section 14(h) of the CPSA, as added by section 102(b) of the CPSIA).

In the Federal Register of August 27, 2010 (75 FR 52616), we published a notice of requirements that provided the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing of ATVs designed or intended primarily for children 12 years of age or younger. The notice of requirements stated that, for youth ATVs manufactured after November 26, 2010, the manufacturer “must issue a certificate of compliance with 16 CFR part 1420 based on” testing performed by a third party conformity assessment body (75 FR at 52618). The notice also asked for comments to be received by September 27, 2010.

In response to the notice of requirements, the Specialty Vehicle Institute of America (“SVIA”) filed a comment that included a request that the Commission extend by 60 days the date by which manufacturers must begin testing and certification of youth ATVs. Among the reasons given for the extension, were the complexity of 16 CFR part 1420 and the fact that that no third party conformity assessment bodies have been accredited by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation-Mutual Recognition Arrangement (ILAC-MRA), a prerequisite for such conformity assessment bodies to be accepted by the CPSC.

On November 17, 2010, the SVIA filed a “Petition for Extension and Stay of Enforcement for Third Party Testing for Certain All-Terrain Vehicles.” The petition requested a 60-day extension of the date by which manufacturers must begin testing and certification of youth ATVs, stating that no third party conformity assessment bodies have been accredited by the CPSC to test for conformity with 16 CFR part 1420. The SVIA concluded that it is unlikely that a sufficient number of accredited third party conformity assessment bodies will exist by the end of the requested 60-day extension. As a result, the SVIA also requested that the Commission consider additional forms of relief, such as a further stay of enforcement of these requirements for one year (to November 27, 2011).

In response, in the Federal Register of December 9, 2010 (75 FR 76708), the Consumer Product Safety Commission announced that we would extend the date of testing and certification of youth ATVs until January 25, 2011. We acknowledged that we were “not aware of any third party conformity assessment bodies that have the requisite accreditation by an ILAC–MRA signatory to test for conformity to 16 CFR part

1420” and so we were granting the request for a 60-day extension (75 FR at 76709).

However, with respect to the SVIA’s request for a one-year stay of enforcement, we decided to seek public comment and asked very specific questions:

(1) What efforts have been made by ATV manufacturers or others to obtain tests of youth ATVs by third party conformity assessment bodies and to encourage third party conformity assessment bodies to become accredited to do so?

(2) What is the status of the efforts of third party conformity assessment bodies to become accredited to test youth ATVs, and how long will it take to obtain such accreditation?

(3) What barriers currently exist to gaining accreditation that is specifically related to youth ATVs?

(4) How are ATV manufacturers currently demonstrating compliance with the ANSI/SVIA-1-2007 standard? What ATV manufacturers are currently doing in-house testing of their ATVs for conformance to the standard? What steps, if any, have these manufacturers taken to have their existing in-house testing facilities become accredited third party conformity assessment bodies?

(5) What third party testing facilities are capable of testing youth ATVs to the ANSI/SVIA-2007-1 standard?

II. Comments

We received more than 400 comments. Most comments were form letters that requested a stay of enforcement until November 27, 2011, because “the industry states that it will be unlikely enough labs will be online by the new January 25, 2011 deadline.”

Most form letters were submitted by consumers, some of whom are members of the

American Motorcyclist Association (“AMA”) and the All Terrain Vehicle Association (“ATVA”); the remaining form letters were submitted by rider associations, dealers, raceways, and other private sector businesses.

Of the remaining comments, some requested that the stay be extended. Other comments addressed issues related to lead content issues, which are not addressed in this proceeding or addressed various topics, such as the family activity nature of ATV riding, government regulation, the CPSIA, or the role of parents to decide what is best for their child.

Only one comment expressed specific opposition to an extension of the January 25, 2011, date. No affiliation was provided. The commenter stated that it opposes any further extension of the date for compliance with the requirements for ATV manufacturers to use accredited third party laboratories because any further extension would remove the incentive to come into compliance.

Only one comment, from the SVIA, responded specifically to the five questions posed in the December 1, 2010 FR notice. The SVIA stated that it contacted 27 conformity assessment bodies worldwide. The SVIA states that “it appears unlikely that there will be a sufficient number of accredited third party conformity assessment bodies prepared to conduct conformity testing of youth ATVs by January 26, 2011 or anytime soon thereafter.” Furthermore, the SVIA indicated that there is no information regarding “how long conformity assessment testing will take to complete” once a third party testing body is accredited and ready to conduct such testing. Therefore, the SVIA requested that the Commission grant a further stay of enforcement until November 27, 2011 and noted

that, without a further stay of enforcement, youth ATVs will “cease to become available, or at least will be substantially less available.”

III. The Conditional Stay

We recognize that there are still no accredited third party testing bodies for youth ATVs at this time. However, we believe that it is important to establish accountability in meeting the CPSIA third party testing requirement until there are accredited third party conformity assessment bodies that can perform tests to 16 CFR part 1420, *Requirements for All Terrain Vehicles*. Accordingly, CPSC staff will begin to conduct compliance testing of youth ATVs. If there is evidence of noncompliance with the requirements of the mandatory standard by the manufacturers that have action plans approved by the Commission, we will take appropriate enforcement actions. In addition, we will stay enforcement of the testing and certification requirements of 16 CFR part 1420 until November 27, 2011, upon the following conditions:

(1) An ATV company that manufactures or distributes a youth model ATV and has an approved action plan must submit a General Certificate of Conformity (“GCC”) to the Commission demonstrating compliance with 16 CFR part 1420. Currently, in addition to complying with the certification label requirement of the ANSI/SVIA-1-2007 mandatory standard and the certification label requirement of section 42(a)(2)(B) of the CPSA, ATV companies that manufacture or distribute a youth model ATV are required to issue GCCs for youth ATVs containing all of the information required by section 14(g) of the CPSA. On **[insert date 30 days after date of publication in the FEDERAL REGISTER]**, ATV companies that manufacture or distribute youth model ATVs must also submit their GCCs for ATVs manufactured on or after **[insert date 30 days after**

date of publication in the FEDERAL REGISTER] to Mary Toro, Director, Regulatory Enforcement, Office of Compliance & Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail mtoro@cpsc.gov, with subject line: “Youth ATV - GCC.”

(2) An ATV company that manufactures or distributes a youth model ATV and has an approved action plan must submit any test reports supporting the company’s GCCs to the Commission, if requested.

(3) An ATV company that manufactures or distributes a youth model ATV and has an approved action plan must provide a quarterly report, beginning on April 1, 2011, and again on July 1, 2011, and October 1, 2011, with responses to the following questions:

- What efforts has your company made to obtain tests of youth ATVs by third party conformity assessment bodies and to encourage third party conformity assessment bodies to become accredited to do so?
- What efforts have been made by the third party conformity assessment bodies that your company has contacted to become accredited to test youth ATVs? If these bodies are not yet accredited, how long will it take to obtain such accreditation?
- What barriers are preventing your company from obtaining third party certification?

The quarterly report should be submitted to Mary Toro, Director, Regulatory Enforcement, Office of Compliance & Field Operations, U.S. Consumer Product Safety

Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail
mtoro@cpsc.gov, with subject line: "Youth ATV – Quarterly Report."

Dated: January 25, 2011



Todd A. Stevenson, Secretary
Consumer Product Safety Commission