



# TECHNICAL NOTICE

May 12, 2009 TN 09-015  
Contact: Kathy Van Kleeck  
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## CONSUMER PRODUCT SAFETY COMMISSION

### Notice of Stay of Enforcement Pertaining to Youth Motorized Recreational Vehicles

CPSC has published a notice of Stay of Enforcement of the lead content limits imposed by Section 101(a) of the CPSIA [see MIC TN 08-033] for youth ATVs, youth OHMs and youth snowmobiles.

**This stay of enforcement does not lift the ban on youth ATVs, youth OHMs and youth snowmobiles as the stay does not obligate other federal and state agencies to recognize the stay. A legislative solution from Congress is still required to exempt these youth products from the lead content limits.**

Effective today, CPSC will not enforce lead content limits in certain component parts and youth vehicles containing those parts that have been manufactured any time prior to April 30, 2011. The stay applies for the life of those vehicles. The stay also applies to metal replacement parts provided that the lead content is less than or equal to the lead content of the original parts. Specifically, the stay exempts battery terminals containing up to 100% lead and component parts made with metal alloys including steel containing up to 0.35% lead, aluminum with up to 0.4% lead, copper with up to 4.0% lead and the vehicles that contain them.

In addition to the prescribed lead content limits, CPSC will also not prosecute any violation of laws relating to certification of compliance, reporting of noncompliances, or the sale, offering for sale, importation or exportation. However, the stay will not apply to stockpiled vehicles, which are vehicles whose production in the six-month period ending on April 30, 2011 exceeds by more than 15% the production of that model or its predecessor during the six-month period ending on April 30, 2010. Stockpiling shall be determined on a model-by-model basis.

Manufacturers or distributors, when appropriate, covered by this stay are required to file a report with CPSC no later than July 11, 2009 identifying each model they produced between March 1, 2008 and March 1, 2009 and indicating the production volume by calendar month and shall list each component part accessible to children, the material specification for each part and a measurement of the lead content of representative samples of each part in parts per million (ppm). By November 1, 2009, manufacturers or distributors covered by the stay shall present a comprehensive plan to CPSC describing how and when they intend to reduce lead exposure from each part indicated in their filed report whose measured lead content exceeds 300 ppm. The plan shall include steps intended to limit lead exposure in future production and an estimated schedule for such reductions. If vehicles have been modified after January 27, 2009 to reduce lead content or to make certain parts inaccessible, the manufacturer or distributor shall outline those changes in general terms and the dates such changes were made. The stay also outlines a process for manufacturers or distributors to seek an extension provided they need additional time to complete their plan prior to the expiration of the stay.

The stay will remain in effect until May 1, 2011 unless CPSC, based on evidence submitted to it, decides to continue the stay for an additional period of time with regard to all or some of the vehicles.

A letter to members from MIC President Tim Buche on the stay is reprinted here for your information.

This Notice was published in the May 12, 2009 *Federal Register*, Vol. 74, No. 90, pages 22154-22158, and is reprinted here for your information.



Dear Members:

The CPSC's "Stay of Enforcement" announced yesterday is a temporary stop-gap measure with conditions largely unrelated to safety. It does not and cannot end the ban on these vehicles.

- Due to the highly restrictive language of the CPSIA and the fact that the CPSC is not the only agency responsible for enforcing the law, this stay of enforcement is simply inadequate in legal terms and leaves the industry vulnerable to lawsuits and actions by federal and state agencies.
- For example, because the CPSIA has now branded these products as 'banned hazardous substances' due to their minimal lead content, they cannot be imported into the United States. U.S. Customs and Border Protection is responsible for enforcing this ban, and CPSC's stay cannot and does not bind this separate federal agency to follow it.
- Nor would the proposed stay prevent state Attorneys General from taking enforcement action against our member companies and their dealers.
- It is clear that the only way to obtain adequate and permanent relief for riders and the powersports industry from the CPSIA's lead content requirements is for Congress to take action.
- The CPSIA must be amended to grant an exemption for youth ATVs, motorcycles and other off-highway vehicles, which present no lead-related health risk to children.
- We must intensify our legislative efforts to support categorical exemptions provided by legislation introduced by Rep. Denny Rehberg (H.R.1587) and Senator Jon Tester (S.608).
- We need to continue to get our riders, friends, parents and enthusiasts involved now.

Please visit "[Stop the Ban Now <http://www.StopTheBanNow.com>](http://www.StopTheBanNow.com)" website for the latest CPSIA news, current updates, links to resources and several options for contacting Congress to urge support for these two bills which would exempt the powersports industry from the lead ban. Please pass on this information to your friends, colleagues, employees, customers and interested others. Feel free to use any of these resources.

Help get the word out by using the following link [http://www.mic.org/stbn\\_banners.cfm](http://www.mic.org/stbn_banners.cfm) to access web banners to use on your sites (it will go to the main page which includes most recent CPSIA updates and a link to an automatic email and letter generator with specific messages from parents, riders and enthusiasts, parents of racers and dealers). We need everyone to help get this issue resolved.

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## CPSIA Member Update – Page 2

Take a look at the links at the bottom of this message; Honda, Helmet House and Leo Vince have done a great job getting the word out about the lead ban. Keep up the good work.

**Keep updated on efforts to *Stop the Ban* on Twitter, follow username: paulvittrano.**

Best regards,

Tim Buche

President MIC

[View Honda Screen Shot <http://www.mic.org/images/stbn/HondaScreen.jpg>](http://www.mic.org/images/stbn/HondaScreen.jpg)

[View Helmet House Screen Shot <http://www.mic.org/images/stbn/HelmetHouseScreen.jpg>](http://www.mic.org/images/stbn/HelmetHouseScreen.jpg)

[View Leo Vince Screen Shot <http://www.mic.org/images/stbn/LeoVinceScreen.jpg>](http://www.mic.org/images/stbn/LeoVinceScreen.jpg)

**CONSUMER PRODUCT SAFETY  
COMMISSION****Notice of Stay of Enforcement  
Pertaining to Youth Motorized  
Recreational Vehicles**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Stay of enforcement.

**SUMMARY:** This notice announces the decision of the Consumer Product Safety Commission (“CPSC” or “Commission”) to stay enforcement of section 101(a) of the Consumer Product Safety Improvement Act of 2008 (“CPSIA”), Public Law 110–314 with regard to certain parts and youth motorized vehicles that contain those parts. Specifically, the Commission is staying 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.

This stay will remain in effect until May 1, 2011, unless prior to that time the Commission, based upon evidence submitted to it, decides to continue the stay for an additional period of time with regard to all or some of the vehicles.

**DATES:** This stay of enforcement is effective on May 12, 2009.

**FOR FURTHER INFORMATION CONTACT:** John “Gib” Mullan, Assistant Executive Director for Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail [jmullan@cpsc.gov](mailto:jmullan@cpsc.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

On August 14, 2008, Congress enacted the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), Public Law 110-314, 122 Stat. 3016. Section 101(a) of the CPSIA phases in declining limits on allowable lead content in children's products (defined as a consumer product designed or intended primarily for children 12 years of age or younger), starting on February 10, 2009 with 600 ppm and decreasing to 300 ppm on August 14, 2009. On August 15, 2011, the lead limit will be 100 ppm unless the Commission determines that a limit of 100 ppm is not technologically feasible for a product or a product category. The law does contain certain exclusions from the lead limits. One is for component parts that contain more than the allowable lead content but where the component is not accessible to a child through normal and reasonably foreseeable use and abuse. The Commission can also determine, for certain electronic devices, that it is not technologically feasible for them to comply immediately with the lead limits and shall establish a schedule by which such devices shall be in full compliance unless the Commission determines that full compliance will not be technologically feasible for such devices within a schedule set by the Commission. The Commission may also, under section 101(b)(1) exclude a specific product or material that exceeds the lead limits if the Commission determines on the basis of the best available, objective, peer-reviewed, scientific evidence that lead in such product or material will neither: (1) Result in the absorption of any lead into the human body, taking into account normal and reasonably foreseeable use and abuse of such product by a child, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product; nor (2) have any other adverse impact on public health or safety.

On March 11, 2009, the Commission issued a final rule on procedures and requirements for seeking, inter alia, an exclusion under section 101(b)(1) of the CPSIA for materials and products that exceed the lead content limits. 74 FR 10475. The final rule set forth: (1) That a request for exclusion must be accompanied by evidence that will meet the statutory test for the exclusion outlined above; and (2) that the EXHR staff would evaluate the evidence and provide a scientific recommendation to the Commission as to whether the party

submitting the request had met this statutory test.

The Specialty Vehicle Institute of America (SVIA), Polaris Industries, Inc., American Suzuki Motor Corporation, Arctic Cat Inc., Bombardier Recreational Products Inc., Kawasaki Motors Corp., USA, American Honda Motor Co., Inc., Yamaha Motor Corporation, USA, and the Motorcycle Industry Council filed a petition to exclude a class of materials under section 101(b)(1) of the CPSIA. The petition was submitted prior to March 11, 2009, the date of the issuance of the final rule on procedures or requirements for seeking an exclusion under section 101(b)(1) of the CPSIA. The Commission has decided to treat this petition as a request for exclusion under these procedures. The petitioners sought exclusion for certain parts of their youth motorized recreational vehicles including 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 percent lead. Specified components include: Tire valve stems, fittings and connectors made with copper (and brass) alloys; brake and clutch levers and other brake components, throttle controls, engine housings, and carburetors made with aluminum alloys; and fasteners, frames and structural or engine components made with steel alloys.

The petitioners submitted an exposure study, extrapolated from the "best-available existing data" based on an analysis of the lead in metal jewelry (for an aluminum and a brass alloy) and a faucet (for a brass alloy). This study concluded "estimated lead intakes from motorized recreational vehicle components are well below background intakes of lead from food and water, and \* \* \* such intake will not result in a measurable impact on blood lead levels in children \* \* \*."

The petitioners also asserted that steel, aluminum, and copper alloys containing lead are necessary for the functional purpose of the equipment and replacement-part components, including, but not limited to, lead batteries, fittings and connectors, engine housing, chassis parts, frames, drive lines, spoke nipples, tire valve stems, cables and hoses, brake levers and other brake system component clutch levers, and throttle controls. For support, they point to the European Union's End-of-Life Vehicles (ELV) Directive exemptions for lead in steel, aluminum and copper alloys and lead batteries (January 2008) and the Restriction of Certain Hazardous Substances in

Electrical and Electronic Equipment (RoHS) Directive (EU Directive 2002/95/EC, January 27, 2003), which are based on the contribution of lead to the machinability, strength and corrosion resistance, and the availability (or lack thereof) of substitute materials that do not contain lead.

The Commission denied the petitioners' request for exclusion under section 101(b)(1) of the CPSIA. However, for the reasons discussed below, the Commission has decided to issue a temporary stay of enforcement.

**II. Discussion**

The petitioners provided no data on the lead content of the actual components in the vehicles for which they are seeking exclusion (other than that some battery terminals could be up to 100 percent lead). There was no attempt to differentiate among the types of vehicles or the various manufacturers in the petition, which makes it impossible for the Commission to know the actual state of affairs with regard to these vehicles. The petition was filed before the Commission issued its final rule on procedures and requirements, and therefore, before the petitioners knew how the Commission would interpret the language in section 101(b)(1). Thus they presented information that the lead exposure from their components would neither result in any measurable increase in blood lead level (a conclusion that the Commission has since determined is not dispositive of the absorption analysis in section 101(b)(1), although certainly important to scientists considering the risk of lead exposure), nor have any adverse impact on public health and safety. As noted above, the exposure study was not based on actual measurements or analysis of youth motorized recreational vehicle component parts and the materials may or may not be sufficiently similar to serve as a reasonable basis for the evaluation. Children riding these vehicles will interact with the metal brake and clutch levers and the throttle controls and may also interact with the tire valve stem and with certain of the other component parts. The study submitted by the petitioners did conclude that some lead would be ingested by a child who touched component parts containing lead in the amount the report determined to be comparable to a child handling the brake levers and the valve stem of a vehicle. The Commission has determined that some portion of ingested lead will be absorbed into the body, however small the absorbed amount. Because the petitioners' study

indicated that children's use of youth motorized recreational vehicles could result in intake of lead, and therefore absorption, the petition does not meet the statutory requirement for exclusion set out in section 101(b)(1)(A).

Petitioners also analogize their situation to the technological feasibility criterion in the electronics device exclusion for their reliance on the ELV and RoHS exemptions for batteries and certain metal alloys. However, no such criterion is specified in section 101(b). The ELV and the RoHS Directives are focused on reducing hazardous waste in landfills and encouraging recycling of these hazardous waste products and thus have quite different purposes than the lead provisions of the CPSIA, which focus on protecting children from unnecessary exposure to lead through contact with it in children's products. Nevertheless, the Commission recognizes that unless it takes some action with regard to the information provided by the petitioners, the riders of these vehicles—children 12 and younger—would likely face a more serious and immediate risk of injury or death. For the reasons discussed in more detail below, the Commission is today announcing a time-limited stay of enforcement with regard to certain parts and the vehicles that contain these parts.

The petitioners allege, and the Commission believes it could bear out that if any period of time passes in which youth motorized recreational vehicles are not available for sale (or existing ones are not able to be serviced) that some parents would allow their children to instead ride adult models or over-sized and over-powered versions of the youth models. Our work on ATVs has shown that the vast majority of the deaths of children from driving ATVs occur on adult-sized models. Part of the Commission's work in its ongoing ATV rulemaking is to encourage the development of accurately sized and powered vehicles for children so they will not ride an adult model. Some manufacturers have told the Commission that they have instructed their dealers to remove youth motorized recreational vehicles from their showrooms and to not sell them. The Commission has received reports of dealers refusing to do routine maintenance on previously sold youth vehicles. Finally, one manufacturer has written to the Commission informing it that they are relabeling their Y-6+ and their Y-10+ youth vehicles to Y-12+ and they are advising their dealers they can remove the speed limiting devices from these vehicles. Due to the long lead time in designing and manufacturing

these motor vehicles, it would likely be model year 2011 or 2012 before a complying youth ATV could be on the market (ignoring for a moment the other issues concerning the feasibility of making a completely complying vehicle). This safety dilemma applies equally to vehicles that have already been made and are in inventory with dealers or have already been sold and are in the hands of resellers or consumers. If parents of youth riders are unable to buy youth-sized vehicles (whether new or used) they may very well choose to allow their children to ride adult or over-powered, wrongly-sized versions of youth ATVs. Because used ATVs need periodic maintenance and repair, an inability to obtain certain replacement parts could lead to these vehicles becoming inoperable. If no youth-sized substitutes are available, this would similarly lead to parents consenting to their children crossing over to adult-sized machines before they are physically and mentally capable of safely operating them. While it might be possible to change out some of the non-complying components on existing vehicles, for many of the components that is simply not an option. Thus replacement parts that have the same amount of lead content (or less) as the original part are included in our enforcement stay.

The other safety-related allegation made by the petitioners is that a certain amount of lead is needed in some component parts of their vehicles for "functionality, durability and other reasons that are safety critical to the components." See Statement of David Murray, Counsel for Yamaha, at the March 11, 2009, public meeting on ATVs and other youth motorized recreational vehicles.

The petitioners again point to the ELV Directive for their support of this contention. However, the ELV report's exemption for steel for machining purposes containing up to 0.35% lead by weight seems to rest more on the easier machining properties of leaded steel than on safety considerations. The ELV report deals with leaded steels versus unleaded steels, rather than an analysis of how much lead is actually needed for any particular application. Galvanized steel does, according to the report, have advantages in corrosion resistance, which could have safety implications. The exemption for aluminum for machining purposes with a lead content up to 0.4% by weight was granted due to its higher resistance to corrosion and to the extent it is used in brake and clutch systems and perhaps certain other applications, such an exemption would appear to be safety

related. The granting of the exemption for copper alloy containing up to 4% lead by weight, like steel for machining purposes, appears to be chiefly because the lead makes the copper more easily machinable. The ELV report noted that the presence of lead did not significantly affect the strength or corrosion resistance of the copper alloy. The petitioners do state that the enhanced machinability of copper alloys "permits the creation of deep grooves in threaded parts such as valve stems that are needed to ensure secure cap and air valve fitment for safety reasons." See Petition for Temporary Final Rule to Exclude a Class of Materials Under Section 101(b) of the Consumer Product Safety Improvement Act, dated January 27, 2009, at 13. For the last ELV review, the copper industry was asked to indicate the applications in which the unavoidable use of lead had safety implications, but their response had not been received at the time the report was written. Thus the report's conclusion on copper alloys was that they were not able to carry out an in-depth evaluation based on the information that was made available to them and that the exemption should continue until a full assessment is carried out. The exemption for lead in batteries noted that the substitution of lead in lead-acid batteries is "not possible" and that avoiding the use of lead would require an alternative battery system. The report's conclusion was that lead-free alternatives to lead-acid batteries would reduce the functionality and reliability of vehicles and that the use of lead in this function is unavoidable at this time. It did note, however, that research was being actively pursued to develop a substitute for lead in this application.

Another argument advanced by the petitioners and also supported by the ELV report is that for certain alloys no acceptable substitutes exist or if they exist, they do not exist in sufficient quantities to satisfy the global requirements. The ELV report found, for example, that there was as yet no technically feasible way to remove lead from aluminum.

The Commission staff had very little time to assess these issues independently. Therefore, the ELV report's analysis, which was strictly limited to the technological feasibility of a substitute for lead and not on the higher cost of a viable substitute, is instructive. To the extent that these alloys are required for safety reasons related to functionality, greater durability, or corrosion resistance, removing the lead from those alloys could result in a vehicle that is more

prone to structural breakage, premature brake failure, or other defects that could present a risk of death or serious injury. For example, failure of a less durable brake lever may result in an inability to stop or control a vehicle and result in death or serious injury to the child operating the vehicle. In contrast, Congress has eliminated the risk analysis associated with the absorption of lead. Yet, while we acknowledge that there are adverse health effects associated with lead poisoning or elevated blood lead levels, we also must acknowledge that, based on our experience with these vehicles and current available information, the risk of death or serious injury associated with broken or defective vehicle parts is both more likely and more significant than any risks associated with possible absorption of lead. In such circumstances, enforcement discretion is the only means for the Commission to protect riders of youth ATVs.

The petitioners did not address what level of lead is necessary for their various components to meet acceptable functionality, durability and corrosion criteria. The industry, at the March 2009 public meeting indicated that in terms of the uncontrollable variability of the lead content in the metal alloys they buy, the 600 ppm limit was "probably not an issue." It would, however, be a problem when the lead limit drops to 300 ppm in August of this year. The statement was also made at that meeting that they were seeking exclusions for these metal alloys "at or below" the levels established by the European Union. But how much below the EU level they can go toward the statutory limit without compromising safety is something they do not appear to know at this time. A spokeswoman for the industry stated at the public meeting that it should not take several years for the industry to test the metal alloys, but it will take some time because certain considerations such as the aging of the materials will have to be taken into account. She also asserted that all of the members of their coalition were willing to move to low lead alloys if they can be shown to be appropriate for real-world applications under real-world stresses.

The petitioners appear to be in various stages of attempting to comply with the lead limits. They stated at the March public meeting that their clients have been working diligently to remove, substitute or shield from accessibility, non-complying, lead-containing components in their vehicles. They appear to have removed lead from the vinyl components of their vehicles, such as the handlebar grips and the seats.

One of the largest makers of youth ATVs stated that their battery is in a recessed compartment and that they could put a cover over it and screw it in place. Under the Commission's accessibility proposals, that should qualify to make the engine components inaccessible and remove the 100 percent lead terminals as a matter of concern for their vehicles. Another spokesman at the meeting assured our staff that the industry members represented there were all exploring the issue of encasing their batteries. It was also noted that small motorcycles do not have batteries. A snowmobile manufacturer indicated at that same meeting that they had sent retrofit kits to all of their dealers to switch out a substitute "for those few components" that did not meet the lead limits. They additionally put a latch on the hood to make the engine inaccessible to children. They may, therefore, not need relief for their future production. A spokesman for the petitioners indicated they thought they could make other parts, such as the valve stem and some cable systems inaccessible. Thus even some of the parts that contain metal alloys that the petitioners were seeking exclusion for could, with time, be made compliant.

In the interim final rule on electronic devices where the Commission referenced the exemptions in the RoHs Directive, the Commission stated that it "expects that manufacturers will continue to assess the technological feasibility of making electronic devices that have accessible component parts which contain lead above the lead content limits inaccessible, and make such component parts inaccessible whenever possible." Similarly, the stay of enforcement is issued with the expectation that manufacturers will not simply rely on the continued stay of enforcement for a particular metal alloy, but will explore other ways in which to comply with the lead limits. A periodic review is required in RoHS and ELV, a process the industry appears to embrace. As long as manufacturers are alleging that it is technologically infeasible for certain components to comply with the CPSIA either through being made inaccessible or otherwise, they must be required to periodically justify, with specificity as to the components and alloys from which the components are made, the continued need for enforcement abeyance.

In carrying out its responsibilities to protect the public, it is the Commission's role to take a broader view of any product and evaluate a safety versus safety tradeoff presented by a product's design when one appears. The Commission currently lacks the

information it needs to make a vehicle by vehicle assessment of this industry's state of compliance with the lead limits. The industry needs more time to gather this information, taking into account their on-going work in this area, and the Commission needs time to review that information. Even a time-limited stay that has as its goals moving these vehicles toward compliance in a fashion that does not drive children to a riskier alternative and systematically reducing the lead content of these vehicles to the lowest level possible from a safety standpoint is not our preferred way to handle these types of issues. However, given the alternatives available to us and the information received thus far, we feel that this procedure is not inconsistent with the overall intent of the CPSIA, which is to protect consumers, particularly our children, from serious risk of harm, when the result of forcing compliance with the provisions within the original time constraints could result in a more immediate and potentially more serious hazard than a limited stay of enforcement.

To afford the manufacturers an appropriate amount of time to continue the testing they are already doing and to conduct any research and development necessary to bring component parts into compliance with the CPSIA and to identify any parts that are either technologically infeasible to bring into compliance during the stay period or identify those where such compliance, while technologically feasible, would expose children to other and greater safety risks, the stay will remain in effect until May 1, 2011.

### III. The Stay

The United States Consumer Product Safety Commission hereby stays enforcement of section 101(a) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") and related provisions with respect to certain parts of motorized recreational vehicles designed or intended primarily for children 12 years of age or younger, namely youth all-terrain vehicles, youth off-road motorcycles and youth snowmobiles, until May 1, 2011, upon the following conditions:

A. The stay shall apply to youth all-terrain vehicles, youth off-road motorcycles and youth snowmobiles ("Youth Motorized Recreational Vehicles" or "Vehicles") that were manufactured before February 10, 2009, and to Youth Motorized Recreational Vehicles made on or after that date through April 30, 2011. The stay with regard to Youth Motorized Recreational Vehicles made during this time period

shall remain in effect for the life of those Vehicles.

B. The stay shall apply only to the following types of original equipment parts for Youth Motorized Recreational Vehicles: 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.

C. The stay shall also apply to any metal part sold separately as a replacement for one of the parts described above, provided that the lead content in the replacement part is less than or equal to the lead content in the part originally installed on the Vehicles.

D. Each manufacturer (which can include a distributor where appropriate) who is covered by the stay shall file with the Secretary of the Commission, not later than 60 days after the publication of this stay in the Federal Register, a report identifying each model of Youth Motorized Recreational Vehicles it has produced between March 1, 2008 and March 1, 2009. For each such model, the manufacturer shall give the production volume by calendar month and shall list each component part that is made of metal and that is accessible to children, the material specification for each part, and a measurement of the lead content of representative samples of each part in parts per million (ppm). The lead content measurement may be by x-ray fluorescence or the method posted on the Commission Web site to test for lead in metal for certification purposes.

E. No later than November 1, 2009, each manufacturer covered by the stay shall present a comprehensive plan to the Commission describing how and when it intends to reduce the lead exposure from each part described in paragraph D above whose measured lead content exceeds 300 parts per million. The plan shall set forth the steps the manufacturer intends to take to limit children's lead exposure in future production and an estimated schedule for achieving such reductions. The manufacturer should include a discussion of any adverse safety impacts that could result from accelerating the estimated schedule. If some Vehicles have been modified after January 27, 2009, to reduce the lead content of certain parts or to make certain parts inaccessible, the manufacturer should outline those changes in general terms and the dates such changes were made.

F. Manufacturers who have timely submitted both the report in paragraph D and the plan in paragraph E above, who need additional time to complete their plan prior to the expiration of the

stay may seek an extension of the stay. They shall, no later than December 1, 2010, file a request with the Secretary of the Commission for an extension containing all of the information described in paragraph D above, including an update of the production volume by month for each previously listed model and for any new youth model introduced after the date of the prior report, lead content measurements taken within 90 days of the report submission for each part to be subject to the stay extension and a revised timetable for the reduction of lead exposure from those parts. The report shall detail the manufacturer's progress in reducing children's exposure to lead from each part containing more than 300 ppm, specifying what actions have been taken with regard to each affected part. The report will also explain why any parts that remain above 300 ppm have not able to be made inaccessible, substituted with another material, or made with a complying level of lead.

G. Any report submitted under paragraph F shall also identify the Youth Motorized Recreational Vehicles by model that the manufacturer intends to produce on or after May 1, 2011. The manufacturer shall provide a listing of each component part that is expected to be used in the production Vehicles if its lead content is expected to exceed 100 ppm and will be accessible to children. For each such part the manufacturer shall explain why it is not feasible to make the part inaccessible or why it is not technologically feasible to reduce the lead content to 100 ppm or lower.

H. While the stay is in effect for particular Vehicles, the Office of Compliance shall not prosecute any person for any violation of laws administered by the Commission based on the lead content of any part of, or replacement part for, those Vehicles to which the stay applies, including provisions relating to certification of compliance, reporting of noncompliances, or the sale, offering for sale, importation or exportation.

I. While the stay is in effect for particular Vehicles, the Commission will not refuse admission into the United States of such Vehicles based on the lead content of any part of such Vehicles to which the stay applies or any replacement part for such Vehicles as described in paragraph C.

J. This stay does not apply to Vehicles that are stockpiled by the manufacturer. Stockpiling shall be determined on a model-by-model basis. Vehicles shall be deemed to be stockpiled if their production in the six-month period ending on April 30, 2011 exceeds by more than fifteen percent the

production of that model or its predecessor during the six-month period ending on April 30, 2010. The production of new models must not exceed by more than fifteen percent the production of similar models by the same manufacturer.

K. The Commission hereby delegates to the Assistant Executive Director, Office of Compliance and Field Operations, authority to implement the stay of enforcement as specified here and the authority to modify provisions in individual cases where necessary due to unique or unforeseen circumstances.

The stay in no way limits the Commission's ability to take action with regard to Youth Motorized Recreational Vehicles for other safety-related issues including, but not limited to, failure to comply with the ban on lead-containing paint or with the American National Standard for Four Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements developed by the Specialty Vehicle Institute of America effective on April 13, 2009 and the requirement to comply in all respects with an action plan on file with the Commission as set forth in the CPSIA.

Dated: May 1, 2009.

**Todd A. Stevenson,**  
*Secretary, Consumer Product Safety Commission.*

[FR Doc. E9-10981 Filed 5-11-09; 8:45 am]

**BILLING CODE 6355-01-P**