

CONSUMER PRODUCT SAFETY COMMISSION

Consumer Product Safety Act: Notice of Commission Action on the Stay of Enforcement of Testing and Certification Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Revision of terms of stay of enforcement.

SUMMARY: The Consumer Product Safety Commission (“CPSC” or “Commission” or “we”) is announcing its decision to revise the terms of its stay of enforcement of certain testing and certification provisions of section 14 of the Consumer Product Safety Act (“CPSA”) as amended by section 102 of the Consumer Safety Improvement Act of 2008 (“CPSIA”). Through this notice, the Commission announces an extension of the stay of enforcement pertaining to total lead content in children's products (except for metal components of children's metal jewelry), and certain related products, until December 31, 2011.¹

DATES: The stay of enforcement pertaining to total lead content in children's products (except for metal components of children's metal jewelry), and certain related products, is extended until December 31, 2011, upon which date the stay will expire.

FOR FURTHER INFORMATION CONTACT: Robert “Jay” Howell, Acting Assistant

¹ The Commission voted 4-1 to approve publication of this notice. Chairman Inez M. Tenenbaum, Commissioner Thomas H. Moore, Commissioner Nancy Nord, and Commissioner Anne M. Northup voted for publication of the notice with changes. Commissioner Robert S. Adler voted against publication of the notice. Chairman Tenenbaum, Commissioner Northup, and Commissioner Adler filed statements concerning this vote. The statements may be viewed on the Commission’s Web site at <http://www.cpsc.gov/pr/statements.html>.

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SUPPLEMENTARY INFORMATION:

I. Background

Section 14 of the CPSA requires that every manufacturer of a product (and the private labeler, if the product bears a private label) that is subject to a consumer product safety rule, ban, standard, or regulation enforced by the Commission certify, based on testing, that its product complies with the applicable safety rule, ban, standard, or regulation. For nonchildren's products, the certification must be based on a test of each product or a reasonable testing program. For children's products, the certification must be based on testing conducted by a CPSC-accepted third party conformity assessment body (laboratory).

On February 9, 2009, the Commission published a notice in the Federal Register, staying enforcement of many of the testing and certification requirements, including the requirements related to total lead in children's products (other than the lead content of metal components of children's metal jewelry). 74 FR 6396, 6397. The Commission committed to the stay for one year, explaining that the stay was necessary to “give us the time needed to develop sound rules and requirements as well as implement outreach efforts to explain these [new] requirements of the CPSIA and their applicability.” 74 FR at 6398. With regard to lead content in metal components of children's metal jewelry, the Commission stated that certifications based on third party testing would be required for such products manufactured after March 23, 2009. 74 FR at 6397.

On December 28, 2009, the Commission published a notice in the Federal Register, revising the terms of the stay. 74 FR 68588. In that notice, the Commission lifted the stay for some CPSC regulations and extended the stay for other CPSC regulations. Relevant for present purposes, the Commission stated that it “plans to keep the stay in effect for total lead content in metal children’s products and in nonmetal children’s products ... (section 101 of the CPSIA) until February 10, 2011.” 74 FR at 68591. The December 28, 2009, notice did not affect certifications and testing of lead content in metal components of children’s metal jewelry; the stay pertaining to those products had expired on March 23, 2009. 74 FR at 68589.

The Commission also published two notices concerning discrete stays of enforcement related to lead content. On May 12, 2009, the Commission published a notice staying enforcement with regard to the lead content in certain parts and youth motorized vehicles that contain those parts. 74 FR 22154. The notice announced that the stay would remain in effect until May 1, 2011. *Id.* Specifically, the Commission stayed 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. *Id.*


On June 30, 2009, the Commission published a notice staying enforcement with regard to the lead content in certain parts of bicycles, jogger strollers, and bicycle trailers (“Bicycles and Related Products”) designed or intended primarily for children 12 years of age or younger. 74 FR 31254. In brief, the stay applied to 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. 74 FR at 31257. The Commission stated the stay would remain in effect until July 1, 2011. 74 FR at 31254.

II. Extension of Stay of Enforcement

We have received several requests for an extension of the stay of enforcement related to lead testing and certifications. After considering these requests and other matters, the Commission has decided to extend the existing stay of enforcement on testing and certifications of the total lead content in children’s products (except for metal components of children's metal jewelry) until December 31, 2011, at which time the stay will expire. This action by the Commission encompasses the stays described above, pertaining to lead content in Youth Motorized Recreational Vehicles and Bicycles and Related Products; those stays are hereby extended until December 31, 2011.

The Commission notes that there remains in effect a stay of enforcement on testing and certification for children’s products subject to those children’s product safety rules for which a notice of requirements for accreditation of third party conformity assessment bodies (laboratories) has not published yet, including testing of children’s toys and child care articles for banned phthalates, and testing of children’s toys for compliance with the mandatory toy safety standard ASTM F-963 (which includes caps

and toy guns). The Commission's current action does not affect that stay of enforcement; accordingly, and as described in the December 28, 2009, notice (74 FR 98591-68592), such stay will continue until the respective notices of requirements for laboratory accreditation are published.

Dated: February 2, 2011 

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.