

The **CPSC** received a number of requests from industry trade groups and individual companies petitioning for exclusions from the lead limit requirements

- Writing Instrument Manufacturers Association (WIMA)
- Jewelry Producers and Retailers
- Fashion Jewelry Trade Association (FJTA)
- Manufacturing Jewelers and Suppliers of America (MJSA)
- Footwear Distributors and Retailers of America (FDRA)
- National Retail Federation (NRF)
- United Dance Merchants of America (UDMA)
- Jim Boltz Cycle Barn Motorsports Group
- Bicycle Product Suppliers Association (BPSA)
- Motorcycle Industry Council (MIC)
- Specialty Vehicle Institute of America (SVIA)
- Polaris Industries
- American Suzuki Motor Corporation
- Arctic Cat, Inc.
- Kawasaki Motors Corp.
- American Honda Motor Co., Inc.
- Yamaha Motor Corporation

In every instance the response was uniform, denial of all requests, the rationale being that the law allows no flexibility whatsoever and **CPSC** is trying to interface with Congress to allow for some flexibility. Acting Chairman Nancy Nord's attached statement asserts that the denial of these requests does not mean that **CPSC** has concluded that the petitioners' products present a health risk to children because of exposure to lead. Until then there is a "stay" on implementation of these requirements, especially since the approach in the **CPSIA** is contrary to the approach taken in the rest of the world. As noted, the European Union has looked at these issues extensively and has granted exceptions. An additional factor is that the three-person Commission is short one member, so voting on any issue is problematical

Attached: Statement of CPSC Acting Chairman Nancy Nord



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

STATEMENT OF ACTING CHAIRMAN NANCY NORD
ON THE REQUEST FOR EXCLUSIONS FROM THE LEAD CONTENT LIMITS OF THE CONSUMER
PRODUCT SAFETY IMPROVEMENT ACT OF 2008
April 3, 2009

In considering exclusions, consumer safety must direct the outcome of our deliberations. Therefore, it is with extreme reluctance that I am voting today to deny the petition, filed by companies and associations representing the ATV and motorized bike industries, for an exclusion from the lead content limits found in Section 101 of the Consumer Product Safety Improvements Act (CPSIA). I do this because the clear language of the law requires this result, not because it advances consumer safety. To the contrary, application of the lead content mandates of the CPSIA to the products made by the petitioners may have the perverse effect of actually endangering children by forcing youth-sized vehicles off the market and resulting in children riding the far more dangerous adult-sized ATV's.

For this reason, in my capacity as chairman, I am directing compliance staff to stay enforcement of Section 101 and related provisions of the CPSIA to this category of products for twelve months and hope my colleague, Commissioner Moore, will join me in making this a unanimous decision by the Commission. During this time-out, it is my hope that Congress will consider how the law needs to be fine-tuned to address this serious child safety dilemma. This enforcement hiatus will also give industry the opportunity to examine what reasonable changes can be made in their products to bring them closer to the requirements Congress set out in the CPSIA. Staff will meet with industry to do more testing to determine how their products can meet the 300 ppm threshold Congress set and determine what is possible. I will expect periodic status reports on progress to this plan.

It is clear that the law does not give the Commission the flexibility to grant an exclusion for petitioners' products. Congress wrote Section 101(b) in such a way as to leave little discretionary power with the agency to grant common sense exclusions. This lack of flexibility was brought to the attention of Congressional staff working on the legislation during the conference process and it was confirmed this is what was intended. As our career staff has discussed on many occasions and as we now have been formally advised by staff, we do not have the statutory authority to grant the exclusion requested in this case.

Even though the career staff of the agency has concluded that we cannot grant the exclusion, they have NOT concluded that petitioners products present a health risk to children because of exposure to lead. To the contrary, staff states "a bigger safety concern than lead exposure is that the elimination of youth ATV sales will most likely increase the number of adult ATV's purchased to be used by younger children; therefore increasing their risk of injury and death."

The issues presented to us in the petition are much more complex than just ordering petitioners to "get the lead out" of their products by a certain date. Petitioners have presented persuasive evidence that lead serves

a purpose in the structural integrity of the metals used in the products and that suitable substitutes are not available. They point out the impracticality of using virgin materials for these products, including issues dealing with the recycling of metals. They point out that the approach in the CPSIA is contrary to the approach taken in the rest of the world, e.g. the European Union which has looked at these issues rather extensively and made allowances. These are all issues that the Commission should have the authority to consider but under the rigid language of the CPSIA, we cannot.

The effect of denying the petition is to make Section 101(e) of the CPSIA, which limits the Commission's authority to stay enforcement during rulemaking, no longer applicable. Therefore, during the pendency of a stay of enforcement, ATV's and motorized bikes appropriately sized for children twelve and younger can again be available and the Commission will not seek penalties for violation of Section 101 and related provisions of the CPSIA against those who sell them. I hope that the state attorneys general will follow the lead of the agency on this matter.

All stakeholders—industry, users, Congress, and the Commission—need to come together to fix the statutory problems that have become so apparent, in a common sense approach that does not unnecessarily burden those regulated, yet provides safety for American families.