



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

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 approved and signed.

BALLOT VOTE SHEET

DATE: January 20, 2011

TO: The Commission
 Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel
 Kenneth R. Hinson, Executive Director

SUBJECT: Extension of the Date by Which Youth All-Terrain Vehicles Must Be Tested and Certified

BALLOT VOTE Due: _____ January 27, 2011

On December 1, 2010, the Consumer Product Safety Commission (“Commission”) voted by ballot to extend by 60 days (*i.e.*, until January 25, 2011) the date by which manufacturers and importers of youth all-terrain vehicles (“ATVs”) must meet the third party testing requirements specified by the Consumer Product Safety Improvement Act of 2008 (“CPSIA”). A *Federal Register* (“FR”) notice that provided additional background information about the 60-day extension was published on December 9, 2010 (75 FR 76708). In that notice, the Commission sought public comment on: (1) a request from the Specialty Vehicle Institute of America (“SVIA”) for a one-year stay of enforcement or other relief from the third party testing requirements, and (2) five questions related to the third party testing requirements.

The attached memorandum from the Office of Hazard Identification and Reduction summarizes the comments that were submitted in response to the FR notice and discusses an apparent inability of ATV companies to meet the third party testing requirement by January 25, 2011. The memorandum also summarizes the options available to the Commission, should it determine that the companies will not be able to meet the third party testing requirements by the specified date. The staff recommends that the Commission implement a conditional stay of enforcement until November 27, 2011. The memorandum describes the recommended conditions. A draft FR notice is also attached granting a conditional stay of enforcement until November 27, 2011.

Please indicate your vote on the following options.

- I. Approve the publication of the draft notice in the *Federal Register*.

 (Signature)

 (Date)

II. Approve the publication of the draft notice in the *Federal Register* with changes. (Please specify).

(Signature) (Date)

III. Do not approve the publication of the draft notice in the *Federal Register*.

(Signature) (Date)

IV. Take other action (Please specify).

(Signature) (Date)

Attachments:

Extension of the Date by Which Youth All-Terrain Vehicles Must Be Tested and Certified, memorandum from Robert J. Howell, Assistant Executive Director, Office of Hazard Identification and Reduction, and Elizabeth W. Leland, Project Manager, All-Terrain Vehicles, Directorate for Economic Analysis, to the Commission, January 2011.

Draft *Federal Register* Notice of Stay of Enforcement of Testing and Certification Pertaining to Youth All-Terrain Vehicles



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Memorandum

Date: January 20, 2011

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel
Kenneth R. Hinson, Executive Director

FROM : Robert J. Howell
Assistant Executive Director
Office of Hazard Identification and Reduction

Elizabeth W. Leland
Project Manager, All-Terrain Vehicles
Directorate for Economic Analysis

SUBJECT : Extension of the Date by Which Youth All-Terrain Vehicles Must Be Tested
and Certified

1. Introduction

On December 1, 2010, the U.S. Consumer Product Safety Commission ("Commission" or "CPSC") voted by ballot to extend by 60 days (*i.e.*, until January 25, 2011) the date by which manufacturers and importers of youth all-terrain vehicles ("ATVs") must meet the third party testing requirements specified by the Consumer Product Safety Improvement Act of 2008 ("CPSIA"). A Federal Register ("FR") notice that provided additional background information about the 60-day extension was published on December 9, 2010. In that notice, the Commission sought public comment on: (1) a request from the Specialty Vehicle Institute of America ("SVIA") for a one-year stay of enforcement or other relief from the third party testing requirement, and (2) five Commission questions related to the third party testing requirements.

This memorandum summarizes the comments that were submitted in response to the FR notice and discusses an apparent inability of ATV companies to meet the third party testing requirement by January 25, 2011. CPSC staff also provides in this memorandum a summary of options available to the Commission, should it determine that the companies will not be able to meet the third party testing requirements by the specified date. Finally, staff provides its recommendation regarding these options.

2. Summary of Comments Received in Response to the December 1, 2010, FR Notice

The number of comments submitted in response to the December 1, 2010, FR notice is 424, and the website address where they can be viewed is:

<http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;so=DESC;sb=posted Date;po=0;D=CPSC-2010-0115>.

Of the 424 comments, six are duplicates, one has no text attached, and three are photographs. Of the remaining 414 comments, 348 are in the nature of a form letter endorsed by the American Motorcyclist Association (“AMA”) and the All-Terrain Vehicle Association (“ATVA”). The form letter requests 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.” Furthermore, “by extending the deadline, the CPSC provides more time for all youth model ATV manufacturers, including those in the U.S., to conform to new safety regulations.” (November 27, 2011 is the date requested by the SVIA in a letter to the Commission dated November 17, 2010, and in its December 30, 2010, comment to the subject FR notice.) Most of the form letters appear to be from consumers, some of whom are members of the AMA and/or the ATVA. Of the approximately 25 letters where an affiliation other than AMA or ATVA was provided, the organizations represented include: rider associations, dealers, raceways, and other private sector businesses. However, of those form letters that were submitted with stated affiliations, only one indicated that the writer was submitting the comment on behalf of the affiliated organization.

Of the remaining 66 comments, 24 requested that the stay be extended. One of these comments was written on behalf of a rider association. The reasons mentioned for requesting a stay are the lack of testing bodies, the potential unavailability of youth ATVs, and the potential economic impact on business.

Another 18 comments addressed topics such as the family activity nature of ATV riding, government regulation, the CPSIA, and the role of parents to decide what is best for their child. These comments did not reference third party testing. Another 24 comments addressed the lead content issue, which is not the topic under consideration.

Only one comment expressed specific opposition to an extension of the January 25, 2011, date. No affiliation was provided. The comment, which is number CPSC-2010-0115-0410 on the above website, says 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 comment is number CPSC-2010-0115-0416 on the above website. In order to respond to the questions, the SVIA contacted 27 conformity assessment bodies worldwide. In its comment, the SVIA made the following points:

- ATVs designed and intended primarily for children 12 years of age and younger are not being manufactured or distributed by “a number” of ATV manufacturers. The SVIA attributes this to an inability of companies to comply with the lead content restrictions of the CPSIA.
- Companies that now comply with the lead content restrictions have contacted various domestic and foreign laboratories, and they reportedly have not found any facilities accredited for conformity testing with respect to the ANSI/SVIA 1-2007 standard.

- A major barrier to a testing body gaining accreditation for third party testing is the lack of an appropriate protocol. According to the SVIA's comments, such a protocol would help ensure that different conformity assessment bodies can obtain comparable and repeatable results when testing a given youth model ATV for conformance with the ANSI/SVIA 1-2007 standard. However, the SVIA noted that one company that is not an ATV manufacturer has conducted pilot validation tests in the United States of two youth model ATVs according to the ANSI/SVIA 1-2007 standard; this was done as part of the process of developing a draft test procedure manual.
- Currently, SVIA member companies are demonstrating compliance with the mandatory standard and issuing the required certificates of conformity and labels by conducting in-house testing, using a "reasonable testing program."
- One member company has judged the process of becoming a "firewalled" laboratory as too cumbersome and burdensome for the small volume of youth ATV products they produce; while other companies reportedly indicated to the SVIA that they are not seeking to have their in-house testing facilities accredited as third party conformity assessment bodies.
- Several companies in China and the United States do have the equipment and facilities to do conformity assessment testing; but many testing companies reportedly have no experience in conducting the testing. Roughly one-third of the laboratories contacted by the SVIA indicated that they do not have the equipment or facilities to conduct such testing.

Based on this information, the SVIA concludes: "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 indicates 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 requests that a further stay of enforcement until November 27, 2011, be implemented by the Commission and notes that without a further stay of enforcement, youth ATVs will "cease to become available, or at least will be substantially less available."

3. Discussion

This section discusses the status of the availability of accredited third party testing bodies, barriers to accreditation, firewalled labs, and the risk of unavailability of youth ATVs.

A. The Status of the Availability of Testing Bodies Accredited to Conduct Third Party Testing

The SVIA indicated that six of the 27 testing bodies they contacted expressed an interest in becoming accredited to do third party testing for ATVs. Currently, there is no laboratory that is accredited by a recognized laboratory inspection body to conduct such testing. Furthermore no laboratory has applied for CPSC acceptance of accreditation. CPSC staff has talked with two testing laboratories in the United States that have expressed interest in becoming accredited; they are reviewing the standard and evaluating what resources would be needed to conduct third party testing. It is not known how soon these laboratories can be prepared and accredited for such testing. CPSC staff also has talked with a third testing laboratory that says it is actively pursuing accreditation.

B. Current Barriers to Accreditation

Information available to CPSC staff indicates that there are four barriers that prevent testing bodies from becoming accredited to conduct third party testing. These barriers are: (1) the lack of a testing protocol, (2) a lack of awareness of the third party requirement, (3) the uncertainty surrounding the CPSIA Section 102 lead requirement, and (4) a lack of equipment and facilities for third party testing. Additional information about each of these barriers follows.

Lack of a Testing Protocol

There is no published testing protocol manual for the ANSI/SVIA 1-2007 standard. According to the SVIA, such a protocol would be used to ensure that test results could be repeated and would be comparable across those testing bodies that are engaged in third party testing. The SVIA has indicated that it will develop a draft protocol and provide it to CPSC staff for review and comment. CPSC staff supports this continued development of a protocol.

Lack of Awareness of the Third Party Requirement

Some laboratories, particularly those in China and other foreign countries, reportedly have been and may still be unaware of the third party testing requirement. This lack of awareness appears to be in spite of seminars, Webcasts, and other information provided by both the CPSC and the SVIA. It appears that continued and additional outreach to foreign ATV manufacturers and to domestic and foreign laboratories about the third party requirement is needed. This may be particularly important because, according to CPSC staff estimates, Chinese manufacturers in at least the years 2007, 2008, and 2009 held a dominant share of the youth ATV market. While none of the foreign manufacturers had action plans before enactment of the CPSIA, many now have an action plan approved by the Commission, and they appear ready to re-enter the ATV market, if they have not already done so.

Uncertainty about the Lead Stay of Enforcement

The SVIA noted in its comment that some ATV companies are no longer distributing or marketing youth ATVs due to an inability to meet the CPSIA Section 101 lead content requirement. Approximately four to five SVIA member companies that distributed youth ATVs prior to the enactment of the CPSIA are no longer distributing them for this reason. (It should be noted, however, that at least one company that is currently marketing youth ATVs reportedly *is* meeting the lead content requirement.) Similarly, many of the foreign companies, primarily Chinese, exited the youth ATV market; however, this may have been a function not only of the lead content requirements, but also of the need to learn about, develop, and submit for CPSC approval a mandatory action plan. The SVIA noted that many of the more than 40 domestic and foreign ATV manufacturers and distributors that have CPSC-approved action plans produce one or more youth model ATVs. Whether these ATVs meet the lead content requirements is not known.

The CPSC stay of enforcement of the lead content requirement for youth ATVs expires in May 2011. According to the SVIA, some of its member companies have indicated that they will not make a decision to reenter the youth ATV market until a decision is made regarding the lead stay of enforcement. For that reason, according to the SVIA, the companies have not approached third party testing laboratories about testing services or about becoming accredited as a third party testing laboratory.

Lack of Equipment, Facilities, and Experience

According to the SVIA, approximately one-third of the testing bodies it contacted stated that they did not have the requisite equipment or facilities to conduct third party ATV testing. However, the SVIA also noted that “several other companies in the U.S. and China reportedly have the capability to do all or nearly all of the testing required under the standard, but have no experience in actual conformance testing of youth ATVs.”

To test youth ATVs, laboratories would need to have a large, flat concrete or asphalt area for performing maximum speed and braking tests. A tilt table would be needed for determining whether the youth ATVs meet tilt table angle requirements. Areas for vehicle storage and servicing would also be needed.

The SVIA suggests that the cost to test laboratories for the investment in such facilities and equipment may be less appealing due to the relatively small numbers of youth models currently on the market. From a business investment perspective, the test laboratories have no certainty that the youth model ATV market will grow. If the ATV companies that have left the market due to the lead content requirement of the CPSIA do not plan to make a decision about re-entering the market until the lead stay of enforcement issue is resolved, then the testing laboratories have no certainty that the investment in equipment and facilities will provide a rate of return that makes it worthwhile for them to make such investment.

C. “Firewalled” Laboratories

CPSC staff is not aware of any ATV companies that are interested in accrediting their own internal testing facilities as a “firewalled” laboratory. SVIA’s member companies demonstrate compliance with the ANSI/SVIA 1-2007 standard by internal testing using a “reasonable testing program.” The ANSI/SVIA 1-2007 standard requires that each ATV bear a certificate indicating that it meets the requirements of the standard. In its comment in response to the FR notice, the SVIA noted that one of its member companies indicated that becoming a “firewalled” laboratory would be a “cumbersome and burdensome” process and other SVIA member companies indicated that they are not interested in having their in-house testing facilities accredited as third party testing bodies. According to the SVIA, the need to achieve and maintain “firewalled” certified compliance with a recognized accreditation inspection body would be burdensome.

D. Unavailability of Youth ATVs

The SVIA notes in its comment that enforcing the third party testing requirement for youth ATVs before there is third party testing body capability could lead to the reduction, if not the disappearance, of youth ATVs. A similar argument is posited regarding lifting the current stay of the lead requirement.

CPSC staff shares this concern. As has been noted in previous staff documents sent to the Commission, an analysis of incidents involving fatalities of children on ATVs that occurred in 1999 and 2000 showed that, for those incidents where driver age and engine size were known, 86 percent occurred when youth were driving adult ATVs. Additionally, a 2001 injury study showed that an estimated 89 percent of the child drivers, who were involved in an injury incident, were driving adult ATVs. In a more recent study characterizing ATV youth fatalities

from 2005, CPSC staff found that of the 85 incidents studied, the driver's age and the engine size of the ATV were known in 64 incidents. In 62 of these 64 incidents, the youths were driving adult ATVs. The CPSC has consistently emphasized that children should stay off of adult ATVs and should ride the appropriate category of youth ATVs.

It is possible that there are inventoried units of youth ATVs that could be sold before third party conformity testing bodies are accredited to test youth ATVs. (The third party testing requirement is applicable to ATVs manufactured or imported on or after the date by which the Commission decides that the requirement will be effective.) Information is not readily available to indicate the level of inventories of youth ATVs that currently exist, although trade press indicates that inventories of *all* ATVs were high during 2009, but were reduced during 2010. Furthermore, at least one company reportedly put on a "stop sale" of its youth ATVs even though there was a stay of enforcement of the lead content requirement. While it is possible that there could be inventoried youth ATVs available for sale between now and the time when third party conformity testing bodies are accredited to test new youth ATVs, CPSC staff does not know what this volume is and how soon inventories would be run down.

4. Options Available to the Commission

Given the nearness of the January 25, 2011 date specified in the Commission's December 1, 2010 FR notice, it is unlikely that there will be any third party testing bodies whose accreditation will be accepted by the CPSC to test youth ATVs manufactured or imported as of that date. The Commission, by law, cannot extend the requirement date by more than 60 days, which it has already done. Thus, to address the CPSIA requirement for third party testing of youth ATVs, the Commission could consider one of two options: (1) take no further action, or (2) implement, until a specified date, a conditional stay of enforcement of the third party testing requirement.

A. Take no further action

The Commission could decide to allow the extension date to expire and take no further action. If this option is chosen, all ATVs manufactured or imported after January 25, 2011, would be required to meet the third party testing requirement. Inasmuch as there are no laboratories that are accredited to conduct such testing, new youth ATVs could, at least temporarily, disappear from the market. If there were any inventoried youth ATVs in the distribution chain, they could be sold. Once any inventories were sold, however, youth ATVs would not be available for purchase and the likelihood of children riding adult ATVs would increase, because youth ATVs would not be available for purchase.

Choosing this option would send a strong signal to industry that the CPSIA requirement must be met immediately. It might hasten the progress of third party testing laboratory accreditation. However, any incentive to hasten the progress of accreditation by choosing this option could be diminished by the uncertainty regarding the stay of enforcement of the lead content requirement and the resulting concern about investing in facilities, personnel, and equipment for a market that may have no growth potential. This could convince companies to leave the youth ATV market altogether and increase the likelihood that no youth ATVs would be available.

B. Implement until a specified date a conditional stay of enforcement of the third party testing requirement

The Commission could decide to implement, until a specified date, a conditional stay of enforcement of the third party testing requirement. Choosing this option would allow additional time for (1) testing bodies to invest in the personnel, equipment, and facilities needed to conduct third party testing, (2) development of a testing protocol, and (3) accreditation of a sufficient number of testing facilities.

In addition, with certain conditions attached, this option could allow the CPSC to know what progress was being made toward having a sufficient number of laboratories available to perform third party conformity testing. The conditions could include, for example, the requirement that companies provide copies to the CPSC of their General Certificate of Conformity ("GCC") to first party testing, test reports, and periodic updates of the status and progress being made toward the accreditation of third party testing bodies.

The specified date could be, for example, November 27, 2011, as requested by industry, or a date set to coincide with a Commission decision on the lead content stay of enforcement, or any other date, as determined by the Commission. In considering the specified date, CPSC staff considered November 27, 2011, as well as a date of July 25, 2011, six months from the January 25, 2011, extension date.

In considering the later date, it appears that, because the SVIA requested the November 27, 2011, date, industry (or at least those companies that are members of the SVIA) anticipates being able to have third party testing conducted for its youth ATV models by that date. Whether industry selected this date based on the assumption that a decision by the Commission on lead content will occur by then, or on the knowledge that a sufficient number of testing laboratories would be accredited, is not known; regardless, the burden would be on the industry to meet this requested date or to explain why it cannot. A November 27, 2011 date also would allow the current youth ATV models on the market to continue to be sold.

In considering the earlier date, CPSC staff notes that if the lead content issue is not resolved, or if the youth ATV market is such that laboratories do not consider it worth their investment to become accredited testing bodies, then it is possible that there still will be insufficient or no availability of third party testing bodies. The Commission, as well as industry, may very well be in the same position in July as it is at the current time; although, if the stay were conditional and required reports of progress, then the CPSC would have received information about the status of efforts to accredit third party testing laboratories.

Regardless of the date selected, CPSC staff plans to begin conducting compliance testing of youth ATVs soon. There has been no evidence of noncompliance with the requirements of the mandatory standard by the companies that have action plans approved by the Commission. If CPSC staff's testing indicates noncompliance by a company that has certified their ATV model as compliant, then CPSC staff will apprise the Commission.

5. CPSC Staff Recommendation

CPSC staff recognizes that there are no accredited third party testing bodies for youth ATVs at this time, but also considers it important to establish accountability in meeting the CPSIA third party testing requirement. CPSC staff recommends that the Commission implement a conditional stay of enforcement until November 27, 2011.

The recommended conditions are that 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. Additionally, if and when requested by the Commission, an ATV company that manufactures or distributes a youth model ATV and has an approved action plan must submit a test report to the Commission. Further, an ATV company that manufactures or distributes a youth model ATV and has an approved action plan must provide a quarterly report, beginning in April 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 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?

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 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.

(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 in April 2011, July 2011, and October 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 and Field Operations, 4330 East West Highway, Bethesda, Maryland 20814; e-mail mtoro@cpsc.gov.

Dated: _____

Todd A. Stevenson, Secretary
Consumer Product Safety Commission