

## **What is a stay of enforcement?**

### **According to Law.com**

**Stay** is defined as a court-ordered short-term delay in judicial proceedings.

**In this case, the CPSC issued a short-term delay of enforcement of section 101(a) of the Consumer Product Safety Improvement Act of 2008**

### **What exactly did the CPSC stay?**

“...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.” CPSC page 1

### **Specific details of Stay**

“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.” CPSC Stay pg. 1.

“...that were manufactured before February 10, 2009, and to Youth Motorized Recreational Vehicles made on or after that date through April 30, 2011.” Page 19

“The stay with regard to Youth Motorized Recreational Vehicles made during this time period shall remain in effect for the life of those vehicles.” Page 19

Stay shall apply only to the following original equipment parts: “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.” CPSC page 19

“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.” CPSC page 20

**“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.” CPSC page 23**

“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. “ CPSC page 24

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 SVIA effective on April 13, 2009 ...” CPSC page 24

**How long will stay last?**

“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.” page 1

**When does the stay go into effect?**

“This stay of enforcement is effective on [insert date of publication in the Federal Register.]” page 2 (Has not been printed to date)

**Statutory authority cited by petitioners to exclude vehicles.**

“...filed a petition to exclude a class of materials under section 101(b)(1) of the CPSIA.” page 4.

**Why wasn’t youth-model motorcycles and ATVs excluded from the CPSIA?**

“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).” CPSC Stay pages 7-8.

**What is included in this stay?**

**“...replacement parts that have the same amount of lead content (or less) as the original part are included in our enforcement stay.”**

**“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 operation 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.” CPSC Stay pages 13 and 14.**

**“In such circumstances, enforcement discretion is the only means for the Commission to protect riders of youth ATVs.” CPSC Stay page 14.**

#### **Responsibility of Industry during stay**

**“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.” CPSC Stay page 17**

#### **CPSC feels stay is consistent with the overall intent of the CPSIA**

**“... 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.” CPSC Stay page 18**

