

TESTIMONY OF PAUL C. VITRANO
Subcommittee on Commerce, Manufacturing and Trade
Committee on Energy and Commerce
United States House of Representatives
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Chair Bono Mack, Ranking Member Butterfield and distinguished Members of the Subcommittee on Commerce, Manufacturing and Trade, thank you for the opportunity to testify on the urgent need for amendments to the Consumer Product Safety Improvement Act. I am Paul Vitrano, General Counsel of the Motorcycle Industry Council. MIC is a not-for-profit, national industry association representing nearly 300 manufacturers and distributors of motorcycles and all-terrain vehicles; motorcycle, ATV and recreational off-highway vehicle parts and accessories; and members of allied trades such as insurance, finance and investment companies, media companies and consultants.

The CPSIA was intended to protect children from ingesting lead from toys. However, the lead provision has had unintended consequences and I am here to testify about what many believe is one of the most absurd of those consequences. The CPSIA has effectively banned the sale of age-appropriate youth ATVs, motorcycles and snowmobiles because of the tiny amount of lead content in certain components. As a result, the Act has actually created unsafe situations for youth off-highway vehicle riders by reducing the availability of appropriately-sized, speed-restricted youth models. As you noted during the last hearing Chair Bono Mack, “the CPSC has made the judgment that the risk of lead exposure to children is outweighed by the risks that children face if youth ATVs are not available and they ride adult-sized ATVs instead.” The Act also has crippled key parts of our industry, costing manufacturing and dealership jobs across the country.

On behalf of our members, their thousands of dealers, youth off-highway enthusiasts and their families, the MIC urges Congress to fix this unintended ban. We appreciate that the Subcommittee has offered an initial draft reform bill and is holding this hearing to discuss it. Within the framework of the draft bill, the only way to fix the ban on youth ATVs, motorcycles and snowmobiles with certainty – and without imposing further needless costs and burdens on our industry and its customers – is to amend the range of “children’s products” – at least for these vehicles – to age 6 and under.

In the alternative, we ask you to consider adding a categorical exemption to the bill. There already is widespread bi-partisan support for a categorical exemption for youth motorcycles and ATVs. Representative Rehberg has authored The Kids Just Want to Ride Act, H.R. 412, which currently has 60 bi-partisan co-sponsors. And just last week, Senators Klobuchar and Tester offered a categorical exemption as an amendment to the small business bill which was on the Senate floor.

ATVs and motorcycles do not present any lead-related health risk to young riders, and Congress has made it clear that it never intended the lead content restrictions for toys to apply to these vehicles. It is time to correct this untenable situation by either lowering the age to 6 and under or adding a categorical exemption in the bill.

It is estimated that over 13 million Americans enjoy riding off-highway motorcycles and over 30 million enjoy riding ATVs. Safety of our riders – particularly our youngest riders – is a top

priority of the powersports industry. Vehicles, helmets and other gear and accessories are specially designed for youth riders to allow them to safely enjoy this family-friendly form of outdoor recreation.

In February 2009, however, ATVs and motorcycles designed and primarily intended for youth riders aged 6 to 12 became banned hazardous substances under the CPSIA because small amounts of lead – that pose no risk to youth – are imbedded in metal parts of those vehicles to enhance the functionality of those components.

As you know, the CPSC concluded that the language of the CPSIA prevented it from making common-sense decisions and resulted in the CPSC denying the powersports industry's petitions for exclusion from the lead content provision. The exclusion was denied despite the fact that the CPSC's own staff acknowledged that there was no measurable risk to children resulting from lead exposure from these products.

As a temporary stop-gap measure, the CPSC issued a stay of enforcement of the CPSIA's lead content limits in May 2009. Unfortunately, this stay of enforcement has proven unworkable.

Due to the risks, uncertainties and burdens of the law, many manufacturers and dealers are no longer selling youth model off-highway vehicles. Over half of the major ATV manufacturers are no longer selling the smallest youth models despite the stay, significantly reducing the availability of these vehicles for children.

The CPSC has acknowledged that the ban on youth off-highway vehicles creates a significant safety issue because it likely will result in children 12 years of age and younger riding larger and faster adult-size vehicles. CPSC studies show that almost 90% of youth injuries and fatalities occur on adult-size ATVs. In contrast, the CPSC's staff scientists acknowledge that the presence of lead in metal alloys in these youth models does not present a health hazard to children. The Commission also acknowledges that children riding these vehicles only interact with a limited number of metal component parts that might contain small amounts of lead, like brake and clutch levers, throttle controls, and tire valve stems.

We appreciate the Subcommittee's efforts to address the unintended consequences of the CPSIA. We ask that you keep in mind the following points as you work to provide young riders, their families and our industry with much-needed, long overdue relief.

First, the lead content in metal parts of ATVs and motorcycles poses no risk to kids. In 2009, Dr. Barbara Beck estimated that the lead intake from kids' interaction with metal parts is less than the lead intake from drinking a glass of water.

Second, everyone agrees that the key to keeping children safe on ATVs and motorcycles is by ensuring they ride the right-sized vehicles. The CPSIA has put kids at significant risk by reducing the availability of youth model vehicles. The CPSC has described this unintended consequence of the Act as a "more serious and immediate risk of injury or death" than any risk from lead exposure from these products.

Third, the CPSIA is needlessly harming the economy and costing jobs when everyone is trying to grow the economy and create jobs. In 2009, MIC estimated that a complete ban on youth model vehicles would result in about \$1 billion in lost economic value in the retail marketplace every year.

Fourth, motorcycles and ATVs are motor-powered machines, not toys or other articles kids wear or play with or, so the extent and nature of children's interaction with our vehicles is materially different. Young riders typically only touch a few parts of the vehicles, like handlebars and brake and clutch levers, and often with gloved hands.

Finally, ATVs and dirt bikes are stored outside the house, usually in garages, sheds or barns, and thus are much less likely than household items to be touched by young children. In addition to being remotely located, the vehicles have keys and use is controlled and supervised by parents.

As Representative Rehberg stated when introducing his bill to exclude youth ATVs and motorcycles from the Act's lead content restrictions, "the original legislation Congress passed was meant to keep kids safe from lead content in toys. Ironically, the overreaching enforcement wound up putting kids at risk by forcing them to use larger more dangerous machines that are intended only for adults."

Everyone agrees that the lead content restrictions for toys were never meant to apply to youth model motorized recreational vehicles. There are two obvious, common sense ways to fix this problem once and for all, without imposing further unnecessary regulatory costs and burdens on

our industry and customers. We urge you to exclude youth ATVs and motorcycles from the lead content provisions of the CPSIA by lowering the age range to age 6 and under or adding a categorical exemption in the bill.

I also would like to express the powersports industry's support for the Committee's recommended changes to the CPSIA database provisions. Industry has already experienced requests for misleading reports of harm to be posted on the government-run database. Indeed, one manufacturer recently received a database entry where a rider, who had been drinking prior to riding his ATV, rode off a cliff at night in the dark. Nothing in the report indicated any problem with the ATV. But nevertheless, because the death was "related to use of [a] consumer product," the CPSC has indicated that the ATV should be classified as being "unsafe" in the database. With the Commission having implemented the database the way it did, the database likely will become a repository of inaccurate information that defames manufacturers and misleads consumers. A guiding principle before anything is posted should be accuracy, and we believe the modest changes proposed in the draft legislation would result in a more useful database with accurate and relevant information for consumers.

Thank you. I would be happy to answer any questions.