



February 4, 2011

The Honorable Darrell Issa
Chairman
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Issa:

Thank you for this opportunity to provide comments about burdensome federal regulations that have had a profoundly negative impact on the powersports industry. We look forward to working with you in your new role as Chairman, and as you seek to provide oversight to shed light on, and to reduce the impact of, onerous regulations that stifle growth and opportunity.

The Motorcycle Industry Council ("MIC") is a national industry organization representing manufacturers and distributors of motorcycles, scooters, parts and accessories and members of allied trades.

While there are any number of regulations our industry could point to that are burdensome and that affect our member companies' bottom lines, one issue is at the forefront; the regulation adopted as a result of the Consumer Product Safety Improvement Act (CPSIA). The CPSIA, enacted in 2008, effectively bans the sale of youth products primarily intended for children age 12 and under that contain more than extremely low lead levels. While much of the initial discussion surrounding the legislation focused on toys, Congress ultimately settled on restricting the lead levels of an extremely broad range of children's products including youth size all-terrain vehicles (ATVs) and motorcycles.

Background:

When the CPSIA's new lead standard took effect in February 2009, all youth models of ATVs and dirt bikes designed and intended primarily for children 6 to 12 years of age became classified as banned hazardous substances because some components in these ATVs and dirt bikes – such as valve stems on tires, aluminum in brake components, and terminals on batteries – contain small quantities of lead, either for safety or functionality. This lead poses no risk for kids.

Missed Opportunities for CPSC to Apply Common Sense Regulation:

Congress enacted an exemption provision in CPSIA in order to allow CPSC to implement a regulatory process to exempt certain products that should not be included in the lead ban. In January 2009, MIC filed a petition with the Consumer Product Safety Commission (CPSC) requesting that its members' products be excluded from these new lead content provisions,

hoping that common sense would prevail in cases where scientific evidence shows there will be no increase in a child's blood lead level from exposure to these products. CPSC rejected the MIC's petition because it decided the CPSIA requires the rejection of a petition if a child could absorb "any" lead, even if there is no health risk to the child. This despite the fact that MIC's petition included an evaluation by toxicologists which noted; "We recognize that the statute refers to no lead absorption in the body; however, we believe that, as a scientific matter, the concept of "no lead absorption" would be reasonably interpreted by the scientific community to mean no measurable impact on blood lead."

CPSC had a second chance to take a common sense approach and provide relief for youth ATVs and motorcycles when it developed its accessibility guidelines that determine what components are considered accessible and therefore subject to the lead provisions of CPSIA. MIC's petition for exemption noted; "As the House Report on CPSIA explained in connection with the exception to the lead standards for inaccessible parts, the legislation's focus was on ensuring 'that any products granted an exception has no meaningful ability to expose a child to lead in such a way that could raise blood lead level.'" MIC's petition and CPSC itself made it clear that there is no threat to children from the small amounts of lead in certain component parts of youth ATVs and motorcycles. MIC and its members urged CPSC to define "accessibility" for purposes of youth off-highway vehicles (OHVs) as parts that the rider touches when seated in the riding position. The rationale for such an interpretation was that they are the only parts of the vehicle that youth riders usually touch, since maintenance should be performed by adults. By defining "accessibility" in this common sense way, CPSC would have drastically reduced the number of component parts subject to the lead content limits and made it possible for the manufacturers to comply. However, CPSC once again decided to regulate against common sense, imposing an accessibility guideline based on a "probe" test, whereby any component on any youth product that can be touched with a probe similar in size and shape to a pencil is deemed accessible.

Safety Impacts Resulting from CPSC's Unwillingness to Provide Effective Relief:

While the science clearly shows, and CPSC acknowledges, that there is no threat faced by children from the lead in youth OHVs, there is a very real threat created by the removal of youth ATVs and motorcycles from the market. The powersports industry developed youth machines to help keep children off of larger adult sized vehicles that are inappropriate for kids. CPSC's own data indicates that almost 90% of youth ATV injuries and fatalities occur on adult sized ATVs. Despite recognizing this very serious safety concern CPSC elected to ignore common sense and instead interpret CPSIA in the strictest terms possible.

Incomplete and Ineffective Relief from CPSC:

Recognizing the very real safety concerns, in May 2009 CPSC issued a stay of enforcement for the new lead standard that was specific to these industries. However, this provided only incomplete and ineffective relief for the powersports industry. The stay, which was put in place for two years and recently extended until December 2011, is a stop-gap measure that has not ended the ban on youth OHVs. While CPSC will not enforce against those who sell these products during the stay the industry remains vulnerable to lawsuits and actions by state

agencies. As a result the availability of youth ATVs and motorcycles has declined precipitously.

Impacts to Industry Resulting from CPSC's Unwillingness to Provide Effective Relief:

In 2009, MIC estimated a \$1 billion annual impact to our industry as a result of a complete ban on youth ATVs and motorcycles. Due to the risks of selling under the stay, half of the major ATV manufacturers are no longer selling youth models despite the stay. It is clear that CPSC's interpretation of CPSIA, and its resultant regulatory actions have delivered a huge blow to the powersports industry.

Need for Congressional Action:

Typically, our industry and others are surprised by the willingness of many federal agencies to promulgate regulation that bears little resemblance to laws enacted by Congress. In the instance of the CPSIA it is clear that CPSC has gone the other way and taken the strictest possible interpretation at every turn. The result is reduced safety for youth riders, a huge financial blow to the powersports industry and the need for Congress to act to amend the CPSIA to exclude youth ATVs and motorcycles or otherwise change the Act to stop the ban on these products.

Again, thank you for your efforts to reduce regulatory barriers to job creation. Please find attached testimony from MIC's General Counsel, Paul Vitrano, from a House Energy and Commerce Committee hearing last year. Also attached are two statements from powersports dealers that have been negatively impacted by the CPSIA.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane Taylor". The signature is fluid and cursive, with a long horizontal stroke at the end.

Duane Taylor
Director, Federal Affairs