TESTIMONY OF PAUL C. VITRANO
Subcommittee on Commerce, Trade, and Consumer Protection
Committee on Energy and Commerce
United States House of Representatives
April 29, 2010

Chairman Waxman, Chairman Rush, Ranking Member Barton, Ranking Member Whitfield and distinguished Members of the Subcommittee on Commerce, Trade, and Consumer Protection, thank you for the opportunity to testify this morning on the need for amendments to the Consumer Product Safety Improvement Act. My name is Paul Vitrano. I am the 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 one of them. The CPSIA has effectively banned the sale of age-appropriate youth ATVs and motorcycles because of the lead content of certain components. As a result of its broad reach, the Act has inadvertently crippled an industry unrelated to the toy manufacturers that were the intended target of the lead provision. In addition, the resulting ban has resulted in unsafe situations for youth off-highway enthusiasts.

Therefore, the MIC urges the Committee to pass the Consumer Product Safety Enhancement Act (CPSEA) with Section 2 included to stop this unintended ban. Moreover, the CPSEA and/or any other legislative solution should include specific language that provides clarity to the Consumer Product Safety Commission (CPSC) regarding Congress' intent to stop this ban.

It is estimated that over 13.7 million Americans enjoy riding off-highway motorcycles and over 35 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.

The CPSC tried to temporarily address the ban by issuing a stay of enforcement of the CPSIA's new lead content limits in May 2009. Unfortunately, this stay of enforcement has proven unworkable. Due to the risks of selling under the stay, many manufacturers and dealers are no longer selling youth model off-highway vehicles and there is now a limited availability of these products for consumers. Half of the major ATV manufacturers are no longer selling youth models despite the stay. Sales of the smallest youth ATVs have decreased by 85% more than overall ATV sales during the stay.

The CPSC has acknowledged that the ban on youth off-highway vehicles creates a compelling safety issue because it likely will result in children 12 years of age and younger riding larger and faster adult-size vehicles. For example, CPSC studies show almost 90% of youth injuries and fatalities occur on adult-size ATVs. Again, the CPSC's staff scientists acknowledge that the presence of lead in metal alloys in these youth models – needed for functionality, durability and other reasons that are safety critical to the components – 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.

As a result, for over one year, MIC, its members, their dealers and many of the millions of Americans who safely and responsibly ride their off-highway motorcycles and ATVs with their children have urged Congress to amend the CPSIA to stop this unintended ban on youth motorized recreational vehicles. Off-highway vehicle stakeholders have sent over one million electronic messages and thousands of hand signed letters and made numerous calls and personal visits to Capitol Hill to advocate for a legislative solution to the ban.

Since the CPSIA ban took effect on February 10, 2009, we collectively have urged Congress to act for three important reasons:

First, the lead content in metal parts of ATVs and motorcycles poses no risk to kids. Experts estimate 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 youth safe on ATVs and motorcycles is having them ride the right sized vehicle. The CPSIA has unintentionally put kids at risk because youth ATV and motorcycle availability is limited. Unavailability of youth models results in what CPSC has described as a "more serious and immediate risk of injury or death" than any risk from lead exposure from these products.

Finally, the CPSIA is unnecessarily hurting the economy and jobs when everyone is trying to grow the economy and create jobs. MIC estimates that a complete ban on youth model vehicles would result in about $1 billion in lost economic value in the retail marketplace every year.

In recognition of the need to end the unintended ban on youth ATVs and motorcycles, CPSC Chairman Tenenbaum and the other Commissioners unanimously asked Congress to provide the Commission with flexibility to grant exclusions from the CPSIA lead content provisions,

specifically noting the need to address youth ATVs and motorcycles. The Energy and Commerce Committee's leadership has responded by proposing the CPSEA and the Act's accompanying report. We appreciate the efforts that you are undertaking to address the unintended consequences of the CPSIA and recognize that it has been difficult to address these issues given the varying interests involved in this process.

As Representative Rehberg stated when introducing his bill to stop the ban on ATVs and motorcycles, "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."

We believe that Congress never intended to ban youth model motorized recreational vehicles when it passed the CPSIA. We already have submitted evidence to CPSC sufficient to obtain exclusions for youth ATVs and motorcycles under the proposed language of the CPSEA. Ultimately, however, it is the CPSC that will interpret that language to determine whether or not to grant an exclusion for the metal parts of ATVs and motorcycles.

That is why the industry is strongly urging the Committee to provide as much clarity as possible in developing a legislative solution so that the CPSC is left with no doubt about Congress' intent to ensure the continued availability of youth model motorized recreational vehicles. Throughout our discussions, we have encouraged the Committee to include statutory language to provide the CPSC with explicit guidance. Although the Committee has not included this language in the proposed amendment, we do support the inclusion of report language accompanying this Act that defines the words "practicable" and "no measurable adverse effect."

The powersports industry supports Section 2 of the CPSEA. It also would welcome additional clarity either to expressly exclude our products – never intended to be included under the CPSIA in the first place – or to provide explicit guidance to CPSC to grant exclusions for youth ATVs and motorcycles. We urge Congress to complete its work, pass this bill and help solve this unintended consequence of the CPSIA once and for all.

Thank you.