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January 30, 2009

Dear Mr. Stevenson;

The attached petition from the MIC is critical to the health of my business and that of 1,000's of other motorsports dealers in America. I can fully appreciate the CPSC's concern over the health of our youngest citizens – including my own grandchildren. I would never knowingly sell any product that would harm the health of any child. Like most caring people I am appalled that lead-based products have been imported into our country that can cause serious harm to children. However, that said, I see no clear application of corrections that relates to the products we sell.

Yes, our products are sold to children under the age of 12, and they may contain certain minimal levels of substances deemed harmful by your agency. However, there is not even the remotest chance that any of these elements can be considered dangerous to children's health in the same vein as, say, lead based paint on a small toy that can easily be ingested or licked. Children do not eat their ATVs! This ruling is overreaching and will certainly cause irreversible economic harm to our industry and small business owners. Cooler heads need to prevail regarding the inclusion of motorsports products until verifiable evidence, if any exists, can pinpoint the actual danger of these products to children.

It is unconscionable not to proceed with due consideration in this matter.

Sincerely



James R. Boltz,

President, National Council of Motorcycle Dealer Associations
Director, Washington State Motorsports Dealer's Association
Owner, Cycle Barn Motorsports Group

dp/JB



Motorcycle Industry Council

January 28, 2009

VIA FEDERAL EXPRESS

Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East-West Highway, Room 502
Bethesda, MD 20814-4408

Re: PETITION FOR TEMPORARY FINAL RULE TO EXCLUDE A CLASS OF MATERIALS UNDER SECTION 101(b) OF THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT

Dear Mr. Stevenson:

Attached please find an original and five copies of a petition for a temporary final rule to exclude a class of materials under Section 101(b) of the Consumer Product Safety Improvement Act.

The Motorcycle Industry Council respectfully urges your prompt attention to this petition.

A handwritten signature in black ink, appearing to read "Paul Vitrano".

Paul C. Vitrano
MOTORCYCLE INDUSTRY COUNCIL
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Irvine, CA 92618

Counsel for Motorcycle Industry Council

**PETITION FOR TEMPORARY FINAL RULE TO EXCLUDE A CLASS OF
MATERIALS UNDER SECTION 101(b) OF THE CONSUMER PRODUCT SAFETY
IMPROVEMENT ACT**

Relief from the CPSIA's lead content requirements for youth all-terrain vehicles (ATVs) and youth off-highway motorcycles (OHMs) should be granted because lead-containing components, parts and accessories pose no risk of causing measurable increase in blood lead levels in children ages 12 and younger.

The Motorcycle Industry Council (MIC) is a not-for-profit industry association representing over 300 manufacturers and distributors of motorcycles, scooters, parts and accessories for powersports vehicles, and members of allied trades. MIC's members include the major manufacturers and distributors of OHMs: Honda, Kawasaki, KTM, Suzuki and Yamaha. Scores of other MIC members – mostly small U.S.-based businesses – rely on the sale of parts and accessories and services related to OHMs and ATVs. Select youth model ATVs and OHMs, and parts and accessories for those vehicles, are or have been intended primarily for use by children ages 6 to 12, and thus are subject to the lead content limits specified in Section 101 of the Consumer Product Safety Improvement Act (CPSIA), Pub. L. No. 110-314. Some components of, and parts and accessories for, youth ATVs and OHMs unavoidably contain small quantities of lead in excess of the CPSIA limits – although not in excess of the lead limits set forth in various European Union Directives for electronic devices and motorized vehicles and motorcycles. The lead in these components, parts and accessories is unavoidable either because small amounts of lead are needed for safety (such as facilitating the machining of tire valves, critical to assuring air retention) or functionality (such as the lead used in battery terminals, which is needed to conduct electricity), or because lead cannot feasibly be removed from recycled materials. Because these small quantities of lead are unavoidable, MIC's member

companies will need relief from the CPSIA requirements in order to continue to sell their products on or after February 10, 2009.

As indicated, such relief is appropriate because the best available evidence shows that lead-containing youth ATV and OHM components, parts and accessories -- even those that would be considered accessible to children under the CPSC's proposed accessibility regulations -- are nonetheless highly unlikely to be touched by children at all in most cases, and that any contact that does occur poses no risk to children ages 12 or younger.

The comment period for CPSC's proposed procedures for seeking an exclusion from the lead limits, however, does not close until February 17, 2009, and published reports indicate that the rulemaking for the adoption of such procedures may not be completed until sometime this summer. Thus, as a practical matter, it is impossible for the CPSC to complete rulemaking in time for affected manufacturers and distributors to seek and obtain new exclusions under the contemplated procedures before the February 10, 2009 effective date for the new CPSIA lead requirements. MIC's members cannot wait until the summer of 2009 to begin the process of seeking exclusions for the small but unavoidable (and harmless) quantities of lead in their youth ATV and OHM products.

Accordingly, through this petition, MIC joins some of its member companies in seeking emergency relief, in the form of a temporary final rule, granting a temporary exclusion from the lead limits for certain lead-containing materials (as specified below) in youth ATV and OHM components, parts and accessories. A grant of this petition will allow the CPSC's staff the time it needs for a thorough review of the public comments filed in response to its now-pending CPSIA regulatory proposals, and an orderly completion of the rulemakings, consistent with the Administrative Procedure Act. It also will allow MIC's member companies -- and their

thousands of dealers – to continue selling their products, while, at the same time, posing none of the risks to children that the CPSIA was enacted to prevent.

PETITION FOR A TEMPORARY FINAL RULE

Pursuant to Sections 3 and 101(b)(1) of the CPSIA, and this agency’s proposed implementing regulations, MIC hereby petitions for a temporary final rule excluding from the lead limits established for children’s products under the CPSIA the class of materials consisting of (i) lead battery terminals used in youth ATVs and youth OHMs and (ii) steel, aluminum, and copper alloys that are used in components of, and parts and accessories for, youth ATVs and youth OHMs and that contain lead in amounts not greater than those permitted by European standards for lead in motorized vehicles and motorcycles and electronic components and that are not otherwise inaccessible to children (and therefore exempt from the CPSIA). The grounds for this request are that the lead in such materials will not result in the absorption of any lead into the human body – taking into account normal and reasonably foreseeable use and abuse of such products by a child, as well as the aging of the products – nor have any other adverse impact on public health and safety. A proposed regulatory provision is included with this petition.¹

¹ This petition relates only to *accessible* lead in youth ATV and OHM components, parts and accessories. As the Commission has noted in its proposed interpretative rule on inaccessible component parts, “Section 101(b)(2) of the CPSIA provides that the lead limits will not apply to any component part of a children’s product that is not accessible to a child through normal and reasonably foreseeable use and abuse.” *See Children’s Products Containing Lead; Interpretative Rule on Inaccessible Component Parts*, 74 Fed. Reg. 2439 (Jan. 15, 2009). In the proposed interpretative rule, the Commission has preliminarily determined that “an accessible component part of a children’s product is one that a child may touch, and an inaccessible component part is one that is located inside the product and not capable of being touched by [a] child, whether or not such part is visible to a user of the product.” *Id.* at 2440. For example, certain internal engine components that may consist of lead-containing alloys are inaccessible to children through normal and reasonably foreseeable use and abuse under this proposed standard, and, therefore, are excluded from compliance with the CPSIA’s specified limits on lead levels. In addition, components of MIC’s members’ products that contain lead in amounts below the CPSIA’s limits (and, therefore, that are in compliance with the CPSIA) are not addressed in this

Because the Commission has recently published proposed procedures for exclusion determinations, and comments on those procedures are not due until February 17, 2009 (*see* 74 Fed. Reg. 2428, 2429 (Jan. 15, 2009)), there is no reasonable prospect that a petition for a final exclusion could be acted upon by the Commission prior to February 10, 2009, when the lead content requirements of the CPSIA go into effect. As set forth below, the CPSIA's restrictions on lead in products primarily intended for use by children 12 or younger may preclude MIC's member companies from selling certain youth ATVs and OHMs and parts and accessories for those vehicles. A temporary Final Rule, however, will allow the CPSC's staff the time it needs for a thorough review of the public comments filed in response to its now-pending CPSIA regulatory proposals, resulting in an orderly completion of the rulemakings, consistent with the Administrative Procedure Act. It also will allow MIC's member companies – and their thousands of dealers – to continue selling their products (while, at the same time, posing none of the risks to children that the CPSIA was enacted to prevent) pending completion of a proceeding addressing a subsequent petition that MIC and some of its members anticipate filing for a permanent exclusion for their products.

The Administrative Procedure Act confers authority on agencies to issue interim and temporary final rules without prior notice and comment “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. § 553(b). Here, the imminent compliance date for the lead limits in the CPSIA effectively precludes an opportunity for notice and comment on exclusion requests prior to the effective date of the CPSIA's lead content provisions. In similar circumstances, the

petition. Replacement and aftermarket parts, as well as accessories, containing accessible lead in the amounts specified above are included in the scope of this petition.

Commission has previously exercised its authority to issue an immediately effective final rule under the CPSIA. *See* Final Rule, Certificates of Compliance, 73 Fed. Reg. 68328 (Nov. 18, 2008). In this matter, the need for immediately effective regulatory action is at least as compelling as it was with regard to certificates of compliance. Accordingly, the Commission should issue an immediately effective temporary final rule, granting MIC's request on an interim basis, for such period of time as the Commission requires to complete the procedural rule on exclusion petitions and process a petition for permanent exclusion through a final decision. MIC and some of its members intend to file a petition for a permanent exclusion promptly after the Commission adopts a final rule specifying the procedures and requirements for seeking such exclusions.

MIC's requests are amply supported by the best-available, objective scientific evidence. The class of materials for which an exclusion is being sought are (i) lead battery terminals and (ii) components and parts supplied as original equipment or available as replacement or aftermarket parts and accessories made with copper, aluminum, and steel alloys – such as tire valve stems, and fittings and connectors made with copper (and brass) alloys, brake and clutch levers and other brake components, throttle controls, engine housings, and carburetors made with aluminum alloys, steel fasteners, and frames and structural or engine components made with steel alloys, among other components – that contain lead in amounts not greater than those permitted under the European Union's RoHS and End-of-Life Vehicles (“ELV”) Directives.²

The RoHS Directive (EU Directive 2002/95/EC (Jan. 27, 2003)) addresses “the restriction of the use of certain hazardous substances in electrical and electronic equipment.” In

² In this petition, following the practice in the RoHS and ELV Directives, MIC uses the term “copper alloys” to refer generically to copper and brass alloys. The requested exclusion for copper alloys should, therefore, be construed to cover brass alloys, as well.

its proposed exemptions for certain electronic devices, the CPSC has recognized that the RoHS Directive's functionality-based exemptions from the RoHS lead prohibitions are sufficiently protective of children to comply with CPSIA. The lead limits and exemptions in the RoHS Directive were derived from the ELV Directive, EU Directive 2000/53/EC (Sept. 18, 2000). Both directives stem from the EU's ongoing efforts to establish an "Integrated Product Policy" to address environmental issues over the life cycle of products. *See generally* Communication from the Commission to the Council and the European Parliament: Integrated Product Policy: Building on Environmental Life-Cycle Thinking.

In connection with a review of exemptions mandated by Annex II of the ELV Directive, the European Union has recently engaged in an exhaustive reexamination of the bases for exempting the various alloys and components, including those for which MIC seeks an exclusion here. That reexamination was conducted by an independent institute and involved a transparent process marked by extensive stakeholder participation and a thorough review of the state-of-the-art in materials properties, substitutability, and functionality. *See* Öko-Institut e.V., Final Report: Adaptation to Scientific and Technical Progress of Annex II, Directive 2000/53/EC (Jan. 16, 2008) ("Final ELV Report") (http://147.67.243.36/Public/irc/env/elv/library?l=/stakeholder_consultation/evaluation_procedure/reports/final_report/report_revision/_EN_1.0_&a=d).

The Final ELV Report recommended the retention of exemptions for lead in steel, aluminum, and copper alloys, and the exemption for lead batteries, noting the current lack of acceptable substitutes that do not contain lead for use in motorized vehicles and motorcycles. As set forth in greater detail below, the Final ELV Report exhaustively examined the uses of those alloys and components, the contribution that lead makes to such features as machinability,

strength, and corrosion resistance; and the availability (or lack thereof) of substitute materials that do not contain lead. The Final ELV Report concluded that, at the present time, there are no adequate replacements for the class of materials at issue in this petition, although potentially acceptable replacement alloys may become available in the future. This conclusion comports with the CPSC's proposed exemption for certain electronic devices, in which the CPSC tentatively concludes that there are, at present, no suitable substitutes for these particular lead-containing alloys.

The lack of available substitutes for the lead battery terminals and for steel, aluminum, and copper alloys used by MIC's members companies in their youth ATV and OHM components, parts and accessories supports the reasonableness of the relief requested in this petition, which seeks only limited exclusions for lead battery terminals and for lead in certain alloys at levels not in excess of those permitted under the RoHS and ELV Directives.

In addition, MIC submits a report prepared by Dr. Barbara D. Beck, Ph.D., DABT, an expert in toxicology and health risk assessment for environmental chemicals, especially metals and air pollutants; former Fellow in the Interdisciplinary Programs in Health at the Harvard School of Public Health; current Lecturer in Toxicology at Harvard; and principal of Gradient Corporation. *See Attachment A.* In that report, which is based on a thorough literature review and analysis of existing data concerning the alloys at issue in this petition, Dr. Beck states that she has determined that the lead content in brass, aluminum, and steel alloys in certain components of youth ATVs and OHMs does not present an exposure concern for children and that an exclusion is appropriate for such components. She bases this conclusion on an analysis showing that – even in worst-case scenarios and using projected intakes of lead greater than those expected to result from exposure to MIC's members' products – no measurable increase in

the blood lead levels of children ages 6 to 12 can be expected to result from their exposure to and contact with the materials for which this petition seeks an exemption.

Dr. Beck's focus on exposure effects on blood lead levels is consistent with the overall purposes of the lead level requirements of the CPSIA. As the House Report on the Act 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.*" H.R. Rep. 110-501, at 30 (2007) (emphasis added).

Finally, the relief requested here also is amply supported by available scientific evidence that children of the ages who are likely to use youth ATVs and OHMs do not typically engage in mouthing behaviors that are likely to involve youth ATV and OHM components, parts and accessories. See Stephen L. Young, Ph.D., Timothy P. Rhoades, Ph.D., P.E., CPE, & Julia K. Diebol, B.S.E., C.P.S.M., *Comments on Consumer Product Safety Improvement Act (CPSIA) Section 101 Lead in Children's Products: All-Terrain Vehicles and Off-Highway Motorcycles* at 4 (Applied Safety and Ergonomics, Inc. Oct. 31, 2008) (Attachment B). In addition, although the class of materials for which an exclusion is being sought by MIC includes components, parts and accessories that are accessible to children's hands, the best available scientific evidence shows that children between the ages of 6 and 12 – that is, the children for whom youth ATVs and youth OHMs are intended and marketed – do not engage in the hand-to-mouth behaviors commonly seen in younger children, and that, in the contexts in which MIC's members' products are generally used, hand-to-mouth activity could be expected to be minimal. See Stephen L. Young, Ph.D., CPE, Raina J. Shah, M.S.E., C.P.S.M., CPE, Timothy P. Rhoades, Ph.D., P.E., CPE, & Julia K. Diebol, B.S.E., C.P.S.M., *Report in Support of Petition for Temporary Final*

Exclusion Rule Under Consumer Product Safety Improvement Act (CPSIA) Section 101 Lead in Children's Products: All-Terrain Vehicles and Off-Highway Motorcycles at 4, 7 (Applied Safety and Ergonomics Jan. 27, 2009) (Attachment C).

In accordance with the Commission's proposed procedures and requirements for a Commission determination or exclusion, we are submitting the following information.

1. Requester's Identifying Information.

Paul C. Vitrano
MOTORCYCLE INDUSTRY COUNCIL
2 Jenner, Suite 150
Irvine, CA 92618

Counsel for Motorcycle Industry Council

2. Description of Class of Materials

The class of materials for which this petition seeks an exclusion are (i) lead battery terminals and (ii) steel, aluminum, and copper alloys containing lead in amounts up to those permitted under the RoHS and ELV Directives' exemptions.³ Such alloys are used in various original equipment, replacement and aftermarket components, parts and accessories, including, but not limited to, fittings and connectors, engine housings, chassis parts, frames, drive lines, spoke nipples, tire valve stems, cables and hoses, brake levers and other brake system components, clutch levers, and throttle controls.

3. Lead Content

The lead content of the battery terminals can be as much as 100%, although some battery terminals may have less lead. The lead content of the alloys for which an exclusion is being sought varies because the diverse applications of the alloys in MIC's members' products may

³ As noted above (at note 2), in this petition, following the practice in the RoHS and ELV Directives, MIC uses the term "copper alloys" to refer generically to copper and brass alloys.

require different lead levels for machinability, corrosion resistance, or other functional reasons. In addition, the lead content of the alloys also necessarily varies because, in some cases, the lead content results from the use of recycled aluminum and steel. In no case, however, does the lead content of products within the scope of this petition exceed the permissible lead content permitted under the exemptions set forth in the pertinent annexes to the RoHS and ELV Directives – that is, 0.35% lead by weight for steel alloys, 0.4% lead by weight for aluminum alloys, and 4% lead by weight for copper alloys.

4. Introduction of Lead in the Manufacturing Process

Lead is deliberately introduced into some members of the class of materials for which an exclusion is being sought in this petition in the process of preparing them according to precise standards and specifications that set forth the amounts of lead to be used for various applications and performance requirements. Lead also appears as an unavoidable result of the use of recycled materials.

5. Other Information Relevant to Lead Content

The Final ELV Report contains exhaustive discussions establishing that, in the current state of the art, lead is necessary in batteries and in the alloys for which an exclusion is being sought in order to assure safety, durability, and machinability.

Thus, for lead in steel, the report explains, “[l]ead is used in steel for improved machinability. By the addition of lead better chip fracturing, automation of the productive process, high cutting speed (low cycle times), longer tool life, better surface finish and more accurate dimension control can be achieved.” Final ELV Report at 11. In galvanized steel, lead “has important functions in the galvanizing process” itself. *Id.* at 12.

As the report also makes clear, although attempts have been made to develop alternatives to lead as a machinability enhancer in steel, none of the possible substitutes has performed as well as leaded steel. Thus, for instance, leaded steels have been shown to outperform bismuth, increased sulfur, tin, phosphorous, and calcium as additives to steel. *Id.* at 14. These “non-leaded alternative grades generally gave poorer chip form and surface finish.”

Bismuth provides some substitutability for lead under certain circumstances, but “the hot workability of bismuth steels is reduced compared to leaded steels. Hot workability is a fundamental requirement for steel production.” *Id.* As a result, “it is significantly harder for a steel roller to produce a bar with the same machining properties and surface integrity if the steel obtains its machining properties through bismuth rather than lead.” *Id.* Calcium also showed significant drawbacks as compared to lead (*id.* at 15), and “[s]teels containing tin generally did not show good performance in the machinability tests and thus, [were] not considered as a suitable replacement for lead in steel.” *Id.*

Similarly, although there are ongoing efforts to develop alternatives to lead for galvanized steel, there is currently a lack of adequate supplies of potential alternatives (for instance, bismuth), and technical problems with regard to drainage of excess zinc from the galvanized product and the quality of the surface finish remain. *Id.* at 16-17.

As a result, the Final ELV Report concludes that because of the lack of available alternatives, “the use of lead in steel for machining purposes and in galvanized steel at the current state of the art is unavoidable.” *Id.* at 18.

With regard to aluminum, the Final ELV Report explains that lead is found in aluminum either because it has been deliberately added for improved machinability or because the aluminum alloys contain lead as an impurity as a result of the production of the alloys from

scrap. *Id.* at 21. With regard to the deliberately added lead, the Final ELV Report concludes that leaded aluminum alloys are necessary for use in brake and clutch systems for safety-related reasons. Lead in aluminum alloys increases corrosion and wear resistance. Compared to tin- or bismuth-containing aluminum alloys, leaded aluminum alloys show higher resistance “against pitting corrosion in brake and clutch systems: at higher temperatures (>120 C) the adhesion of the anodised coating to the base material of lead-free alloys (e.g. tin and/or bismuth alloys) is stated to be negatively impaired in the presence of certain media like brake fluid.” *Id.* at 19; *see also id.* at 20 (stating that test results were submitted showing that, for aluminum parts in brake and clutch systems, tin and bismuth are not as resistant to pitting corrosion by contact with brake fluid as leaded aluminum parts). The Final ELV Report concludes that the exemption for leaded aluminum alloys in brake and clutch systems “seems to be justified especially since safety related parts are concerned.” *Id.* at 21.

As for recycled aluminum alloys – that is, “[a]luminum produced from recycled scrap metal” (*see id.*) – the Final ELV Report concludes that the removal or dilution of lead impurities in aluminum is not technically feasible on the scale needed for industrial purposes. *See id.* at 24-25.

With regard to copper alloys, the Final ELV Report notes that “[t]he lead that is embedded as tiny nodules in the matrix of these alloys has the function of a chip breaker and machinability enhancer. The formation of small chips, which can be removed automatically, is facilitated.” *Id.* at 26; *see also id.* at 28. The Final ELV Report notes, however, that there are potential substitutes for leaded copper alloys. At present, however, these alternatives to lead have a number of drawbacks. Thus, bismuth alloys are more susceptible to stress corrosion cracking, unfavorable chip form, and missing self-lubricating effects that result in higher tool

wear. *Id.* at 29. As a result, the enhanced machinability of leaded copper alloys, which, for instance, permits the creation of deep grooves in threaded parts such as valve stems that are needed to ensure secure cap and air valve fitment for safety reasons, supports an exclusion for leaded copper alloys, in accordance with the conclusion of the Final ELV Report.

With regard to lead battery terminal posts, the Final ELV Report discussion of lead-acid batteries is pertinent. It states that “[t]he stakeholder presented plausible information showing the technological superiority of lead-acid batteries. Their substitution by lead-free alternatives would reduce the functionality and reliability of vehicles, the use of lead in this function hence is unavoidable at the time being and in the near future.” *Id.* at 38.

The Final ELV Report’s conclusions strongly support the relief sought by MIC. Although technological feasibility is not the statutory touchstone for exclusions of the class of materials for which MIC is petitioning, it is clear that Congress intended the Commission to consider issues of technological feasibility in implementing the CPSIA. Thus, in explaining Section 101, the Conference Report on the CPSIA states that the CPSC is ultimately required to “lower the permissible lead level in children’s products to the lowest amount that is *technologically feasible*.” H.R. Rep. 110-787, at 66 (2008) (Conf. Rep.), *as reprinted in* 2008 U.S.C.C.A.N. 1112, 1113. The Final ELV Report supports the conclusion that, at the present time, feasible alternative materials are not available to substitute for the class of materials for which this petition seeks an exclusion. In the event that adequate, equally safe, functional, and machinable non-leaded substitutes become available, MIC member companies could explore their use. But in the present state of the art, if the petition were denied, the safety of youth ATVs and youth OHMs could be compromised, and MIC’s members could be forced to suspend or terminate their production and sale of such products.

6. Methods for Testing Lead Content

Standards-setting organizations, such as ASTM International and the International Standards Organization, set forth precise standards for the composition of metallic alloys for various purposes, as well as methods for determining the content of such alloys. These standards are used by suppliers of alloys used by MIC's member companies and their suppliers. Materials engineers use highly sophisticated preparation and quality control procedures to assure uniformity and consistency in the preparation of alloys for industrial and commercial uses.

7. Assessment of Manufacturing Processes

Lead is introduced into MIC's members' products through the use of steel, copper, and aluminum alloys into which lead is introduced deliberately according to precise specifications by the suppliers of the alloys, or through the use of recycled materials. Accordingly, this category is not applicable to this petition.

8. Lead In The Product, Lead Coming Out of the Product, Conditions Under Which Lead Comes Out of the Product, and Information Relating to a Child's Interaction With the Product.

A. Lead in the Product

As noted above, MIC seeks an exclusion for battery terminals, as well as for lead in steel, aluminum, and copper alloys only up to the amount permitted by the RoHS and ELV Directives.

B. Lead Coming Out of the Products: Amounts and Conditions

In her report (Attachment A), toxicology and health risk assessment expert, Dr. Barbara D. Beck, provides a comprehensive analysis of the amounts of lead that can be dislodged from the pertinent components of youth ATVs and youth OHMs via direct contact, which is the only relevant condition for lead to emanate from MIC's members' products. *See Attachment A at 3-*

9. Dr. Beck and her team focused principally on two components – the brake lever and the tire valve stem. The former was selected for analysis because it likely is the component, part or accessory with which children would have the most frequent and prolonged contact. The valve stem was selected not because contact is likely, but because it is a copper (or brass) component that, under the RoHS and ELV directives, is permitted higher concentrations of lead than are aluminum or steel alloys. Dr. Beck’s analysis concluded that the “estimated lead intake from brake levers and valve stems ranges from 0.015 to 0.050 $\mu\text{g}/\text{day}$.” *Id.* at 8.⁴ As Dr. Beck points out, “the default lead intake for diet used in the US EPA’s Integrated Uptake Biokinetic Model (IEUBK) . . . is 2.22 $\mu\text{g}/\text{day}$ for a 6 year old, and the default lead intake from water is 0.6 $\mu\text{g}/\text{day}$. The estimated intake from the [MIC’s members’] components is well below these background exposures to lead in food and soil.” *Id.* Dr. Beck goes on to show that a lead intake of “*ten times higher* than the maximum estimated intake from motorized recreational vehicle components”—that is, 0.5 $\mu\text{g}/\text{day}$ —“would have no discernable impact on blood levels in children.” *Id.* at 9 (emphasis added); *see also id.* (“estimated lead intakes from motorized recreational vehicle components are well below background intakes of lead from food and water” and “will not result in a measurable impact on blood levels in children”). In short, the impact on blood lead levels of the *de minimis* intake of lead that could foreseeably result from contact with MIC’s members’ products is simply *not detectable*. *See id.*

⁴ Preliminary wipe test data conducted for MIC member, American Honda Motor Co., on exemplar components show that the estimates relied upon by Dr. Beck are very conservative and may overstate the actual presence of lead in these components by a substantial degree. MIC and its members will continue to work on expanded data in connection with preparation of a petition for a permanent exemption.

C. Children's Interactions with the Products

MIC's members' youth ATV and OHM products are not intended for use by children under 6. Analyses of children's likely interactions with these vehicles have been prepared by Applied Safety and Ergonomics, Inc. and are attached at Attachments B and C. These analyses, which were performed by teams led by Stephen L. Young, Ph.D., CPE, a Senior Consultant at Applied Safety and Ergonomics, Inc., conclude that the children for whom these products are intended (those in the 6-12 age group) are highly unlikely to engage in the "mouthing" behavior common in children 3 years and younger. *See* Attachment B at 4. Moreover, these products and their components, parts and accessories are not the sort of objects typically subject to children's mouthing behaviors. *See id.*

Other contacts by children with the class of materials for which an exclusion is sought in this petition are possible, however. Although MIC warns against operating these vehicles without wearing protective gloves, it is possible that such contacts may on occasion include touching with bare hands. Nonetheless children ages 6 to 12 are similarly unlikely to engage in hand-to-mouth behaviors, such as thumb-sucking, that are characteristic of younger children, and also are unlikely to engage in other hand-to-mouth behaviors, such as nail biting, while engaged in activities involving youth ATVs and OHMs. *See* Attachment C at 2-4, 7.

In addition, as noted above, Dr. Beck's toxicological analysis demonstrates that any contacts foreseeably resulting from children's interactions with MIC's members' products would result in no detectable increases in blood level levels.

9. Best Available Evidence Unfavorable to the Petition

MIC is not aware of any objective, peer-reviewed, scientific evidence that is unfavorable to the request.