

ATV SAFETY

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER AFFAIRS,
INSURANCE, AND AUTOMOTIVE SAFETY

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

May 9, 2007

Printed for the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

39-697 PDF

WASHINGTON : 2010

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

DANIEL K. INOUE, Hawaii, *Chairman*

JOHN D. ROCKEFELLER IV, West Virginia	TED STEVENS, Alaska, <i>Vice Chairman</i>
JOHN F. KERRY, Massachusetts	JOHN McCain, Arizona
BYRON L. DORGAN, North Dakota	TRENT LOTT, Mississippi
BARBARA BOXER, California	KAY BAILEY HUTCHISON, Texas
BILL NELSON, Florida	OLYMPIA J. SNOWE, Maine
MARIA CANTWELL, Washington	GORDON H. SMITH, Oregon
FRANK R. LAUTENBERG, New Jersey	JOHN ENSIGN, Nevada
MARK PRYOR, Arkansas	JOHN E. SUNUNU, New Hampshire
THOMAS R. CARPER, Delaware	JIM DEMINT, South Carolina
CLAIRE McCASKILL, Missouri	DAVID VITTER, Louisiana
AMY KLOBUCHAR, Minnesota	JOHN THUNE, South Dakota

MARGARET L. CUMMISKY, *Democratic Staff Director and Chief Counsel*
LILA HARPER HELMS, *Democratic Deputy Staff Director and Policy Director*
CHRISTINE D. KURTH, *Republican Staff Director, and General Counsel*
KENNETH R. NAHIGIAN, *Republican Deputy Staff Director, and Chief Counsel*

SUBCOMMITTEE ON CONSUMER AFFAIRS, INSURANCE, AND
AUTOMOTIVE SAFETY

MARK L. PRYOR, Arkansas, <i>Chairman</i>	JOHN E. SUNUNU, New Hampshire
JOHN D. ROCKEFELLER IV, West Virginia	JOHN McCain, Arizona
BILL NELSON, Florida	TRENT LOTT, Mississippi
MARIA CANTWELL, Washington	OLYMPIA J. SNOWE, Maine
FRANK R. LAUTENBERG, New Jersey	GORDON H. SMITH, Oregon
THOMAS R. CARPER, Delaware	DAVID VITTER, Louisiana
CLAIRE McCASKILL, Missouri	JOHN THUNE, South Dakota
AMY KLOBUCHAR, Minnesota	

CONTENTS

Hearing held on May 9, 2007	Page 1
Statement of Senator Pryor	1

WITNESSES

Murray, David P., Counsel, Yamaha Motor Corporation, U.S.A., Willkie Farr and Gallagher, LLP	11
Prepared statement	14
Weintraub, Rachel, Director, Product Safety and Senior Counsel, Consumer Federation of America	2
Prepared statement	4

APPENDIX

Coleman, Hon. Norm, U.S. Senator from Minnesota, prepared statement	29
---	----

ATV SAFETY

WEDNESDAY, MAY 9, 2007

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER AFFAIRS, INSURANCE, AND
AUTOMOTIVE SAFETY,
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:35 p.m. in room SR-253, Russell Senate Office Building, Hon. Mark Pryor, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. MARK PRYOR, U.S. SENATOR FROM ARKANSAS

Senator PRYOR [presiding]: I want to thank our panel for being here and I want to certainly thank the staff, as always, for doing a great job.

Today we're going to talk about ATV safety, and before I introduce the witnesses, who are two great witnesses, and we look forward to hearing from you, let me say that we have a lot going on in the Senate today, a lot of hearings, there's a lot of floor activity on a judge right now, and some of our Senators we think will be here as the hearing progresses, but we're not 100 percent sure, because some just don't have confirmation on.

But let me go ahead and say that All-Terrain Vehicle safety is a very important topic, this Subcommittee looked at this last year. We looked at ATV safety, the history of that, and how circumstances have gotten us where we are today.

For example, in my State of Arkansas, ATVs play a vital role in both economic and recreational contexts. It could be people out in the hunting woods, or it could be work vehicles on the farm, but nonetheless, ATV use is very saturated in our State. I know for a number of other Senators who are on the Subcommittee, it's true as well.

The current contingencies and requirements for safety, as you all know, are derived from action plans created by the industry, and predominantly they're honored solely by domestic manufacturers. Recent statistics show that deaths and injuries related to ATV use continue to rise, and it's important for the Subcommittee to consider the role it can play to assist in the reduction of these occurrences.

Last year we asked the industry groups, and the consumer groups to come together, hopefully sit down in, either a meeting, or a series of meetings, to build consensus on proposed legislation on how to address ATV safety, as we move forward.

I look forward to hearing from the witnesses about the results of those meetings, and I hope we can have further progress and new developments in the future.

Finally, I'd like to thank Chairman Stevens for his interest in this issue, and the rest of the Committee for their involvement. Senator Stevens, of Alaska, who can't be here at the moment has talked to me separately, over the last several weeks, to talk about how important this is to him, obviously it is an issue that touches Alaska, and they have a high number—I don't know what that number would be, but a high per capita number, certainly, of ATVs in his home state.

What I'd like to do is introduce our two witnesses, give both of you about 5 minutes to make your opening statement, and then we'll ask questions.

First, Ms. Rachel Weintraub, Director of Product Safety and Senior Counsel, Consumer Federation of America.

Ms. Weintraub?

STATEMENT OF RACHEL WEINTRAUB, DIRECTOR, PRODUCT SAFETY AND SENIOR COUNSEL, CONSUMER FEDERATION OF AMERICA

Ms. WEINTRAUB. Thank you, Senator Pryor, and thank you for the opportunity to speak today.

I am Rachel Weintraub, Director of Product Safety, and Senior Counsel at Consumer Federation of America. CFA is a non-profit association of 300 consumer groups, with a combined membership of over 50 million people.

CFA was founded in 1968, to advance the consumer's interest through advocacy and education. CFA has been concerned about All-Terrain Vehicle safety since the 1980s, when three-wheel ATVs dominated the market. We opposed the consent decree between CPSC and ATV manufacturers in 1988, because it did not adequately protect consumers.

CFA petitioned CPSC in the 1990s, and in 2002, and challenged CPSC's abandonment of their ATV rulemaking in the 1990's. CFA and others prioritized ATV safety, because at least 136,700 people, including over 40,000 children, suffered serious ATV injuries in 2005 alone. Estimated ATV-related fatalities reached 767 in 2004. In 2005, ATVs killed at least 120 children, younger than 16, accounting for 26 percent of all fatalities.

At the June 2006 ATV hearing, Senator Pryor asked the testifying parties, including, among others, the American Academy of Pediatrics, Consumer Federation of America and representatives of the ATV industry to work together to develop mutually supported legislation. During the following September, CFA and a lawyer for an ATV manufacturer, provided comments to each other, and to Senate staff, on an ATV bill being drafted by then-Senator Allen, which did not lead to the introduction of a broadly supported ATV safety bill.

This past March, CFA and AAP met with Senate Commerce Committee staff, who expressed their desire for CFA and AAP to meet with representatives of the ATV industry to find a consensus on ATV safety legislation. CFA and AAP agreed—these unprecedented meetings consisted of open discussions on the draft legisla-

tion, and on broader ATV policy issues. These meetings were candid, productive, and set the stage for a positive working relationship.

At these meetings, CFA expressed its view that CFA wants to thwart a safety threat before it becomes apparent, but prioritizes working to solve the documented hazards of children riding all adult-sized ATVs. CFA is concerned that efforts to deal solely with imported ATVs will have a marginal benefit to the health and safety of Americans riding ATVs. The focus of ATV safety legislation must be on all ATVs, no matter how quickly the import sector may be growing.

CFA is concerned about legislation that would require all ATVs to meet the SVIA/ANSI ATV standard, especially with its proposed provisions, the standards are far too weak to curb ATV deaths and injuries. These standards are changing the way ATVs are categorized, shifting away from engine size, to a system based upon speed. No data exists to demonstrate whether children could safely operate ATVs at the speed limit suggested. The explanations for the speed limits are based on consumer preference, not on medical expertise, or safety.

The draft legislation also proposes to require that the manufacturers or importers of ATVs that are sold in the United States file ATV action plans with the CPSC. These action plans rely on fine-print ads, warning labels, and recommendations, enforced at the discretion of manufacturers. This voluntary approach, however, is failing to curb the rising tide of ATV deaths and injuries. Further, since CPSC has not provided compliance or enforcement information of these action plans to the public, it's not possible to evaluate the effectiveness of, or even compliance with, these agreements.

CFA provided the following list of policy proposals to be concluded in any meaningful ATV safety legislation. One, make the ban on the sale of adult-sized ATVs for use for children mandatory; two, institute guidelines for Federal lands that would prohibit child from riding adult-sized ATVs, require the use of helmets, ban passengers, ban riding on paved roads, and ban riding at night; three, create an incentive system in Federal law for States to pass strong ATV safety laws; four, ban the sale of three-wheel ATVs, issue a recall of all of those which remain in use; five, codify 90ccs as a threshold for adult-sized ATVs; six, require improvements in ATV marketing; seven, establish minimum stability requirements for ATVs; eight, issue a standard to reduce suspension failures; nine, improve ATV safety training; ten, require sale of helmet with an ATV; eleven, require CPSC to conduct a study evaluating a child's ability to operate vehicles at certain speeds. We also requested a GAO study, increase for CPSC funding, establish mandatory standards for speed-limiting devices, require improvements for brakes, requiring seat belts, roll cages, headlights and suggested language for a warning label.

On our priority issue of banning the sale of ATVs, we did not find agreement. However, we did find some agreement on the following issues: Federal lands, incentives for States, selling helmets with youth models, improvements for marketing and training, a CPSC study, a GAO study to—on CPSC's compliance efforts, and increasing funding for CPSC's ATV safety activities.

In conclusion, every year, more people—especially children—are killed or injured as they ride ATVs. The current voluntary approach to safety has allowed these deaths and injuries to increase. The draft legislation would merely apply a flawed approach to every ATV sold in the United States. The voluntary standards could potentially put children at even higher risk, by allowing them to operate faster ATVs.

The CPSC's rulemaking is similarly flawed. This is our opportunity to prevent families from losing a loved one, caring for a severely injured family member, and incurring the vast cost of medical care caused by the use of a recreational product—the ATV.

We urge the Subcommittee to take strong action, to curb the well-documented hazards of all ATVs. Thank you.

[The prepared statement of Ms. Weintraub follows:]

PREPARED STATEMENT OF RACHEL WEINTRAUB, DIRECTOR, PRODUCT SAFETY AND SENIOR COUNSEL, CONSUMER FEDERATION OF AMERICA

I. Introduction

Chairman Pryor, Ranking member Sununu and members of the Subcommittee, thank you for the opportunity to speak today and for holding this meeting. My name is Rachel Weintraub; I am Director of Product Safety and Senior Counsel at Consumer Federation of America (CFA). CFA is a non-profit association of 300 consumer groups, with a combined membership of more than 50 million people. CFA was founded in 1968 to advance the consumer's interest through advocacy and education.

Consumer Federation of America has been deeply concerned about the safety of all-terrain vehicles (ATVs) for many years. In fact, CFA has been involved in ATV safety issues since the 1980's when three-wheel ATVs dominated the market. We opposed the consent decree between CPSC and ATV manufacturers in 1988 because we felt that it did not adequately protect consumers. CFA petitioned CPSC in the 1990's and again in 2002, and legally challenged CPSC's abandonment of their ATV rulemaking in the 1990's. The Commission denied our most recent petition, CP-02-4/HP-02-1,¹ which requested that the U.S. Consumer Product Safety Commission ban the sale of adult-size four wheel all-terrain vehicles "ATVs" sold for use by children under sixteen years of age. We have testified before the Commission on two occasions in support of our petition² and testified before this Subcommittee eleven months ago.

II. ATV Death and Injury Data

CFA and other groups have been working extensively on ATV safety because of the deaths and injuries caused by ATVs. According to the latest data from CPSC on ATV deaths and injuries, released in November 2006,³ at least 136,700 people suffered ATV injuries that were serious enough to require emergency room treatment in 2005. Since 2001, there has been a statistically significant 24 percent increase in serious injuries. Children under 16 suffered over 40,000 injuries from ATVs, representing 30 percent of all injuries in 2005. Since 2001, there has been a statistically significant increase of 18 percent in the number of children under 16 seriously injured by ATVs. This age group incurred more serious injuries than any other. The estimated number of ATV-related fatalities reached 767 in 2004. In 2005, ATVs killed at least 120 children younger than 16, accounting for 26 percent of all fatalities. Between 1985 and 2005, children under 16 accounted for 36 percent of all injuries and 31 percent of all deaths.

¹ Consumer Federation of America filed the petition on August 20, 2002 along with the American Academy of Pediatrics, American College of Emergency Physicians, Bluewater Network, Danny Foundation for Crib & Child Product Safety; Kids in Danger, National Association of Orthopaedic Nurses and the U.S. Public Interest Research Group.

² CFA testified in the June 5, 2003 field hearing in West Virginia and in the March 2005 hearing on CPSC staff's briefing package.

³ U.S. Consumer Product Safety Commission, 2005 Annual Report on All-Terrain Vehicle (ATV)-Related Deaths and Injuries, November 2006. available on the web at <http://www.cpsc.gov/library/atv2005.pdf>.

III. Cost to Society

Our society suffers not only because ATVs cost the lives of almost 770 people each year in the United States. These deaths and the over 137,000 ATV injuries incurred each year also cost the Nation considerable amounts of money. An analysis of ATV deaths comparing data from 1999 to 2003 found that costs associated with ATV deaths have steadily increased. Costs associated with ATV deaths of children increased from \$493 million in 1999 to \$723 million in 2003. Costs associated with ATV deaths of adults increased from \$1,706 million in 1999 to \$2,517 million in 2003.⁴ The vast and tragic costs in both human and economic terms compel government action. With appropriate Federal and state regulations, lives as well as billions of dollars could be saved.

IV. Failure of the Current Voluntary Approach

CFA's recommended policy solutions are premised on the fact that the current approach to ATV safety—the industry's self-regulating approach—is not working. Not only has self-regulation by the ATV industry led to larger and faster ATVs and more children being killed and injured, but each year the number of deaths and injuries climb. These increases have frequently been by statistically significant margins and the Commission has routinely noted in annual reports of ATV deaths and injuries that these increases cannot be explained solely by rising ATV sales or usage. The failure of the current approach compels CPSC, Congress, and state governments to be involved, at least in part, through the enforcement of a mandatory standard.

In 2003, the CPSC issued the latest in a long line of studies documenting the dramatic increase in ATV injuries and deaths.⁵ In assessing trends between 1997 and 2001, the Commission provided compelling evidence that the industry is failing to protect consumers. CPSC concluded that:

- ATV-related injuries requiring emergency room treatment more than doubled, rising to 108 percent from 52,800 to 110,100, while the number of ATVs in use increased by less than 40 percent.
- Injuries suffered by children under 16 increased 66 percent to more than 34,000 in 2001. Meanwhile, the proportion of these children among the driving population grew by 13 percent.
- Injuries caused by bigger and more powerful ATVs, defined by the Commission as machines with engines bigger than 400 cc, shot up 567 percent, from 3,662 to 24,437, while the number of these machines in use grew by less than half as much.
- Less than 4 percent of injured ATV drivers received formal safety training from a dealer, salesperson or organized training program. This proportion is unchanged since 1997.
- More than 40 percent of drivers injured in 2001 stated that their ATV did not have warning labels or they did not know if it did at the time of their accident.
- Nearly 90 percent of children under 16 years of age were injured while riding adult-size ATVs, in spite of the industry's voluntary policy not to sell these machines for use by children. This proportion is also unchanged since 1997.

V. Weakness of CPSC Rulemaking

CFA is profoundly disappointed with CPSC's current rulemaking on ATVs. CFA objects to CPSC's proposal to re-categorize ATVs from a system based on engine size to a system based upon speed. CPSC provided no evidence supporting that children can safely operate ATVs at the suggested speed limits. Further, we are concerned that the categorization is based on flawed speed limiting devices. Also of deep concern to CFA is that categorization based on speed is one-dimensional and ignores other critical factors that have a major impact on the safe operation of these vehicles, especially as they relate to operation by children. The weight and size of the machine alone, as well as in relation to the weight of a child, are critically important factors that this proposed rule ignores. This rule would allow children to oper-

⁴Helmkamp, Jim, Ph.D., MS, FACE Director, West Virginia University Injury Control Research Center, Research Professor, Department of Community Medicine West Virginia University, Lawrence, Bruce A, Ph.D., Pacific Institute for Research and Evaluation, Calverton, Maryland published a letter to the editor with appeared in *Pediatrics* 2007; 119(1):223–225. The authors used the National Highway Traffic Administration model for determining the economic impact. This incorporates work loss and quality of life components to estimate the cost of reported ATV-related fatalities. The assumption was made that ATVs are motor vehicles, and in the absence of a specific model for ATV-related fatalities, the NHTSA model is used for ATV crashes.

⁵Levenson, Mark S., U.S. Consumer Product Safety Commission, "All Terrain Vehicle 2001 Injury and Exposure Studies," January 2003.

ate ATVs that have higher maximum speeds than what is currently suggested. No data supports moving in this dangerous direction.

We also have concerns about the lack of safety data supporting the creation of ATVs designed for two riders and the lack of lateral stability requirements. CFA fears that this rule will not only fail to curb the rising tide of deaths and injuries but could even place children even more at risk.

VI. Benefit of a Federal ATV Safety Law

A. Children Should Not Ride Adult-Size ATVs

The Commission, as well as the American Academy of Pediatrics (AAP), the American Academy of Orthopaedic Surgeons (AAOS) and the ATV industry's trade association, the Specialty Vehicle Institute of America (SVIA), have long-standing policies stating that it is inappropriate for children under 16 years old to operate or otherwise ride adult-size ATVs. CFA's petition and subsequent policy recommendations sought to give CPSC the necessary tools to enforce this guideline since no Federal mandatory ATV safety laws currently exist.

The Commission and experts in child health have concluded that children should not ride adult-size ATVs because ATVs are inherently difficult to operate for adults and beyond the development capability of children to control. However, the Commission's proposed rule and the draft voluntary standards fail to consider this complexity.

While there seems to be almost universal agreement among experts that children should not operate or ride adult-size ATVs, no mechanisms are in place to ensure that this does not happen. Unfortunately, we know that children do ride adult size ATVs and that too many children are getting killed and injured when they drive vehicles that are too large, too fast, and too powerful for them.

B. Federal Role in Improving ATV Safety

Federal regulation barring the sale of certain ATVs for children could significantly change legal and other dynamics facing the ATV industry, and dealers in particular. When the consent decrees were in effect, CPSC reported that compliance was consistently high. Compliance dropped dramatically when replaced with a voluntary approach. When the legal hammer was removed, dealers appear to have concluded that the risks of violating the voluntary standard are outweighed by the benefits associated with selling adult-size ATVs in violation of those standards. Ongoing monitoring by manufacturers failed to encourage widespread and consistent compliance. With a Federal regulation in place and stepped up enforcement by CPSC, we believe the legal dynamics would be very similar to those that existed under the consent decrees. If dealer compliance rises, then sales of adult-size ATVs for use by children would decline. Reduction in such sales would indirectly affect use, because a smaller number of adult-size ATVs would be available to this age group.

VII. Legislative Background

At the June 2006 hearing, Senator Pryor asked the parties who were testifying—including among others, the American Academy of Pediatrics (AAP), Consumer Federation of America (CFA) and representatives of the ATV industry—to work together to develop mutually supported legislation. During the following September, CFA and a lawyer for an ATV manufacturer provided comments to each other and to Senate staff on an ATV bill being drafted by then-Senator Allen. Those communications were narrowly tailored to discussions about the draft bill and did not lead to the introduction of a broadly supported ATV safety bill.

On March 1, 2007, CFA and AAP were invited to meet with Senate Commerce Committee staff to discuss the Senate staff's desire for CFA and AAP to meet with representatives of the all-terrain vehicle (ATV) industry to find a consensus on ATV safety legislation. CFA and AAP agreed to meet with ATV manufacturer representatives.

Our first meeting took place on March 14, 2007. At this meeting all parties openly presented their perspectives on the current draft legislation as well as on broader ATV policy issues. The first meeting was candid, productive and set the stage for a positive working relationship. We met again on March 26, 2007.

VIII. CFA's Position on ATV Import Legislation

At these meetings, CFA expressed its view on the draft legislation which would require all ATVs sold in the United States to meet voluntary safety standards and to have an ATV Action Plan on file with the Consumer Product Safety Commission. Since all of the major domestic manufacturers already have such Action Plans, this bill is aimed at creating a level playing field with imported ATVs that are coming in from China and other nations. While it is clear that the large ATV manufacturers

fear the rising percentage of less expensive, imported ATVs as an economic threat, there has been little evidence put forth indicating what percentage of ATV deaths and injuries are caused by these imported ATVs. CFA would like to thwart a safety threat before it becomes apparent but prioritizes working to solve the documented hazards of children riding adult-size ATVs.

In 2006, CFA reviewed ATV recalls undertaken by CPSC. We found that:

- For ATV recalls listing the country of manufacture, 20 were manufactured in the United States; 3 were manufactured in Canada; 3 were manufactured in Japan; 1 was manufactured in Taiwan; and 1 was manufactured in China.
- 91.7 percent of ATVs recalled involved units manufactured by major ATV manufacturers who are members of the Specialty Vehicle Institute of America (SVIA).⁶
- In 2005 alone, 94 percent (16 out of 17) of ATVs recalled were manufactured by major ATV manufacturers.

Thus, CFA is concerned that efforts to deal solely with imported ATVs will have a marginal benefit to the health and safety of Americans riding ATVs. The focus of ATV safety legislation must be on *all* ATVs, not merely those imported into the United States, no matter how quickly that sector may be growing. CFA is alarmed that the draft legislation does not seek to solve any of the existing ATV safety problems caused by the major ATV manufacturers. Thus, while seeking to prevent the sale of unsafe imported ATVs is a goal with which both CFA and AAP could concur, it cannot be the sole focus of any legislative proposal that purports to address “ATV safety.”

A. Weakness of SVIA/ANSI Voluntary Standard

CFA also has deep reservations about legislation that would require all ATVs to meet the SVIA/ANSI ATV standard. Especially with its proposed revisions, the standards are far too weak to curb ATV deaths and injuries. While the latest draft language of the bill makes compliance with the existing standard mandatory, the legislation allows for CPSC to make future versions of the standard the substantive requirements underlying the legislation. CFA has opposed these revisions and has provided extensive comments to the SVIA/ANSI ATV Standard Developer.

Our opposition is premised on the fact that these standards are changing the way ATVs have been traditionally categorized, shifting away from engine size to a system based upon speed. The SVIA/ANSI draft standard proposes to alter the age/size guidelines by creating a system that limits the maximum speeds of ATVs intended for use by children under the age of 16. The draft standard proposes a Category T (Transition Model) ATV, intended for children 14 or older with adult supervision, or by an operator 16 or older, with a maximum speed of 38 mph; Category Y-12 + ATVs, intended for children 12 or older, with a maximum speed of 30 mph; Category Y-10 + ATV, intended for use by children age 10 or older, with a maximum speed of 30 mph; and Category Y6 + ATVs, intended for children age 6 years old, with a maximum speed of 15 mph.

No evidence supports the development of the above-described categories. No data exists to demonstrate whether children could safely operate ATVs at the speed limits suggested. Further, the explanations for the speed limits are based upon consumer preference, not medical expertise or safety. In addition, the speed limits will be maintained by speed-limiting devices that we understand have a history of failure. Finally, we are concerned that the draft standard’s new categorization does not consider the implications of the weight of an ATV—a key factor in many devastating injuries when ATVs topple or roll over.

B. Weakness of ATV Action Plans

The draft legislation also proposes to require that the manufacturers or importers of all ATVs that are sold in the United States file “ATV Action Plans” with the CPSC. These Action Plans are a continuation of the substantive provisions of a court-approved consent decree between ATV manufacturers and the CPSC, which forced the industry to end production of highly dangerous three-wheel ATVs, and which expired in 1998. Since that time, major ATV manufacturers have been operating under voluntary “Action Plans.” These Action Plans rely on fine print in ads, warning labels, and recommendations enforced at the discretion of manufacturers. This voluntary approach, however, is failing to curb the rising tide of ATV deaths and injuries. Further, the CPSC has not provided compliance or enforcement infor-

⁶Polaris joined SVIA in September of 2005.

mation of these “Action Plans” to the public, thus not allowing for the opportunity to evaluate the effectiveness of, or even compliance with, these agreements.

IX. Results of Meetings between AAP, CFA and ATV Manufacturers

During the meetings among representatives of CFA, AAP, and ATV manufacturers, the parties not only expressed concern or support with the draft legislation, but CFA and AAP also provided a list of policies that should be included in any meaningful ATV safety legislation. This list of policies provided the framework for these meetings. The AAP’s list of recommendations includes:

1. *Children under 16 should not operate ATVs.*
 - A driver’s license should be required to operate an ATV.
2. *Alcohol use by operators of ATVs should be prohibited, with zero tolerance among 16- to 20-year-old operators.*
 - Zero tolerance policies for underage ATV operators.
3. *ATV use should be banned on paved roads.*
 - Use of ATVs should be allowed only on designated, well-maintained trails.
4. *Appropriate protective gear should be required to operate an ATV.*
 - ATV operators should be required to wear a helmet.
5. *Carrying passengers on an ATV should be prohibited.*
6. *ATVs should not be operated before sunrise or after sunset.*
7. *Manufacturers should redesign ATVs to improve safety.*
8. *National ban on children under 16 operating ATVs on Federal lands.*
9. *Other restrictions related to children under 16 operating ATVs on Federal lands.*

In addition to AAP’s recommendations for ATV safety, AAP made clear that their policies firmly oppose children under 16 riding any size ATV.

CFA also provided all parties with recommendations to be included in a legislative proposal. Included in the list below are CFA’s recommendations and reasoning for the provision as well as the industry’s response:

1. *Make the ban on the sale of adult size ATVs for use for children mandatory. Give manufacturers the tools to hold dealers accountable for known sales of adult-size ATVs for children.* CFA’s official position is that children under 16 should not ride adult-sized ATVs. This position is shared by CPSC and industry. This is an effort to codify industry’s golden rules and to give tools to manufacturers to hold dealers responsible when they knowingly sell adult-size ATVs to children.

The ATV manufacturers philosophically agreed that no child under age 16 should operate an adult machine. However, they would not agree to a ban on sale due to concerns regarding enforcement, potential liability for dealers who acted in good faith, and lack of control over parents’ choices regarding their children’s riding habits.

2. *Institute guidelines for Federal lands that:*
 - a. Prohibit children from riding adult size ATVs
 - b. Require the use of helmets
 - c. Ban passengers
 - d. Ban riding on paved roads
 - e. Ban riding at night

These provisions essentially mirror SVIA’s model law—including provisions to require helmets, and ban passengers, riding on paved roads, riding at night, and children on adult ATVs. These behaviors are all already included on warning labels on ATVs. Federal lands offer a unique opportunity for the Federal Government to institute best practices.

The ATV manufacturers were amenable to drafting language on all provisions except passengers, where they wished to allow passengers on two-up ATVs. They agreed to explore requiring CPSC to partner with USDA (USFS) and Interior (NPS, FWS, etc.) to develop regulations.

3. *Create a incentive system in Federal law for states to pass strong ATV safety laws that ban children from riding adult size ATVs, ban passengers, ban use on paved roads and at night, and require helmets and safety gear.* CFA noted that incentives could be a “carrot” (increased funds if laws are passed) or a “stick” (reduced funds if they are not).

ATV manufacturers are amenable to exploring potential incentives for states to pass restrictions along the lines of the SVIA model law.

4. *Ban the sale of three wheel ATVs. Issue a recall for all those which remain in use.* Three wheelers are still causing 10 percent of ATV injuries and have been documented to be even more unstable and unsafe than 4-wheelers.

ATV manufacturers agreed to ban sale of three-wheeled ATVs. Domestic manufacturers have not produced them for many years. However, ATV manufacturers refused to agree to a recall. The industry position is still that three-wheeled ATVs are not inherently unsafe.

5. *Codify 90ccs as the threshold for adult size ATVs.* CFA is particularly concerned that the voluntary standard and CPSC rulemaking are moving away from engine size as the classification basis for youth versus adult-size ATVs. CFA is concerned that this new categorization will lead to more children on larger, faster ATVs. CFA views this as critical to safety and views transitional ATVs as a cause of potential increases in deaths and injuries. CFA also argues that there is no basis in safety for speed limits of transitional and youth models.

On this issue, there is a fundamental disagreement between the parties. Industry believes a set of criteria (engine size, fit, top speed, etc.) is a better yardstick. Industry is responding to their view of what the market wants: kids are riding adult size ATVs because they seek more speed and power. The transitional ATVs are a response to this consumer demand.

6. *Require improvements in ATV marketing, particularly on the presentation of safety information:*

- a. set size limits for the font of safety information
- b. set guidelines for placement on pages
- c. limit marketing to children based on speed and power

Current marketing and advertising hides safety information in small font and in hard-to-access locations in advertisements. Safety information must be readable and more prominent. Riders should not be shown undertaking unsafe behaviors; children should not be marketed to using prohibited conduct, speed or power.

ATV manufacturers expressed a willingness to discuss options, but wished to be sure that any changes would apply to all manufacturers, not a subset. They expressed their willingness to discuss giving CPSC the authority to set standards on ATV marketing to children.

7. *Establish minimum stability requirements for ATVs. Require addition of a lateral stability test and improvements to the pitch stability equation by requiring a higher pitch stability coefficient. The current pitch stability computation should be abandoned.* Stability issues, such as those involved in causing rollovers, contribute to 45 percent of injuries, according to a CPSC examination of incidents from CPSC's 2001 injury study. Yet the voluntary standard does not include a lateral stability test. CPSC has not been able to conduct research due to limited funds. This is an issue of critical importance that has been overlooked.

The ATV manufacturers are opposed to this proposal. They argue that the issue is too variable to set useful requirements or standards.

8. *Issue a standard to reduce suspension failures.* Suspension failures are a basis for a large number of ATV recalls by numerous manufacturers in recent years. Even if quality assurance is a problem, as CPSC and manufacturers claim, this should be prevented by better standard.

ATV manufacturers oppose this proposal. They argue that such failures are usually due to quality assurance issues (e.g., failure of materials) not design problems.

9. *Improve standards for ATV training and requirements to make training free and geographically available.* According to a CPSC study, less than 4 percent of ATV purchasers take ATV training courses. Some anecdotal evidence suggests ATV trainings are not substantive and are located too far away from most buyers for realistic use.

ATV manufacturers expressed a willingness to discuss options, but were not sure of possibilities. They discussed current cash rebates and data on why training does not occur, including a high "no-show" rate. A number of states require children to have certification. ATV manufacturers also discussed adding this to model standards under proposals for standards in Federal lands.

10. *Require sale of helmet with ATV.* Helmet usage could likely reduce severity of injuries associated with head trauma.

ATV manufacturers stated that any helmet proposal must be restricted to children. They discussed the possibility of covering helmet usage under proposals for standards on public lands.

11. *Require CPSC to conduct a study evaluating a child's ability to operate vehicle up to 38 mph and conduct an analysis of the safety implications of operating an ATV at 30 and 38 mph.* This proposal is aimed at providing data to counter the trend

toward faster machines for youth. Both ATV industry and CPSC have set speed limitations for youth and transitional models without evidence justifying operability by a child or safety consequences.

ATV manufacturers were amenable to having a study, but would like CPSC to have broad authority to develop and tailor parameters. They do not wish to specify ages, speeds, etc. in legislation.

12. *Request GAO studies analyzing CPSC compliance efforts on the ATV Voluntary Action Plans; actual costs to society of ATV deaths and injuries; and an analysis of enforcement mechanisms to ensure compliance with existing state laws and the potential for enforcement of a Federal law.* CPSC has not made their compliance efforts publicly available, but inclusion in a Commissioner's statement implies compliance rates have dropped. CFA wrote a letter to CPSC's General Counsel requesting this data but has not received any information. This information is important to document realities of market compliance with voluntary system and effectiveness of current system. No broad-based studies document the cost to society of ATV deaths and injuries.

ATV manufacturers were open to a GAO study. They would like the study to include benefits of ATV usage (e.g., economic benefits) as well.

13. *Increase funding for CPSC's ATV safety efforts—specifically for enforcement and monitoring of dealer compliance.* Given CPSC's limited resources, the Agency needs additional funds to work on ATV compliance and regulatory efforts.

Industry representatives agreed.

14. *Establish mandatory standards for speed-limiting devices, including making them impervious to tampering or adjustment by consumers.* Current CPSC and industry proposals for youth and transitional vehicles depend upon use of speed-limiting devices that have a high failure rate and can be tampered with easily by youth. The industry has no standard for these devices.

ATV manufacturers would likely oppose this proposal. Industry representatives debated whether to provide for dealerships to be the sole entity with the ability to adjust speed Governors and decided that parents should have that control. The ANSI standard has performance specification for Governors that suffices.

15. *Require improvements to service brake performance.* Brake problems were the basis of a large number of ATV recalls in recent years. The consequences of brake failure include death or serious injury. Such consistent failures, even if caused by quality assurance problems, could be prevented by a standard.

ATV manufacturers oppose this proposal. They argue that such failures are usually due to quality assurance issues (e.g., failure of materials) not design problems.

16. *Require seatbelts.* Seatbelts would decrease severity of injury in crashes and rollovers.

ATV manufacturers oppose this proposal. Industry data shows seatbelts would cause more injuries in some circumstances.

17. *Require roll-cages.* Roll bars would decrease severity of injury in crashes and rollovers.

ATV manufacturers oppose this proposal. Industry data shows roll bars would cause more injuries in some circumstances.

18. *Require headlights or running lights on all ATVs to improve visibility.* There was discussion of whether lights could be bright enough to improve visibility without encouraging night riding.

ATV manufacturers were not certain of their support for this proposal. Current standards prohibit headlamps on youth ATVs to discourage nighttime riding. The proposed revised SVIA/ANSI standard would permit (not require) headlamps on youth models.

19. *The following language should appear on warning labels for all ATVs, "Even with ATV experience, youths have immature judgment and should never drive an ATV that is too large or too fast for them to operate. Children die and are seriously injured when they operate ATVs that are too large and too powerful for them."* This language best reflects reality of consequence of children riding adult size ATVs and would provide more effective warning to parents of consequences of children's operation of adult-size ATVs.

ATV manufacturers oppose this proposal. This language reportedly proposed tested poorly among parents, some of whom found it "offensive" since it referred to immature judgment among youth. They also stated that language was too broad. The differences with CPSC-mandated language could be problematic.

Thus, on our priority issue of banning the sale of adult size ATVs for use for children, we do not have agreement. We do have some basic philosophical agreement on the following issues: safety standards for Federal lands; incentives for states to pass strong ATV safety legislation; possible agreement on selling helmets with youth model ATVs; improvements to marketing and training; requiring CPSC to

conduct a study of a child's ability to operate an ATV at various speeds; requesting a GAO study on CPSC's compliance efforts and increasing funding for CPSC's ATV safety activities.

X. Role for States in Conjunction with Federal Role

We recognize that CPSC does not have the authority to take every action necessary to solve the full scope of the problems currently caused by ATVs. While CPSC can ban the sale of adult-size ATVs for use by children under 16, we urge CPSC and industry to support state efforts to set licensing and rider training requirements, prohibit riders from carrying passengers, and require ATV riders to wear helmets and other protective equipment. We also believe that, with the Federal and state governments taking strong action and providing more information to consumers, parental responsibility will increase as well.

XI. Conclusion

Each and every year, more people, especially children, are killed or injured as they ride ATVs. The current voluntary approach to safety has allowed these deaths and injuries not only to continue but to increase. Every year, hundreds of families have to deal with the loss of a loved one, face caring for a severely injured family member, and incur the vast costs of medical care caused by the use of a recreational product: the all-terrain vehicle. We urge this Subcommittee to take strong action to curb the well documented hazards of all-terrain vehicles.

Senator PRYOR. Thank you.

Mr. David Murray, partner, Wilkie, Farr & Gallagher, outside counsel to Yamaha Motor Corporation.

Now, let me say this, before you get started, I told you we were kind of busy around here? They just called a vote, and I have to leave in, say, 10 minutes. So, right after you finish you—5 or 10 minutes—as soon as you finish your opening statement, I'll run and vote, and then I'll, we'll come back and reconvene. Go ahead.

STATEMENT OF DAVID P. MURRAY, COUNSEL, YAMAHA MOTOR CORPORATION, U.S.A., WILLKIE FARR AND GALLAGHER, LLP

Mr. MURRAY. Thank you.

Good afternoon, Mr. Chairman, members of the Subcommittee. My name is David Murray, I'm a member of Willkie Farr & Gallagher, outside counsel to Yamaha. I've been involved in ATV matters for over 20 years, including the 1987 settlement of the Federal Government lawsuit that resulted in 10-year consent decrees ending the sale of new three-wheel ATVs, and governing the marketing and sale of four-wheel ATVs.

My wife and I have three boys, ages 9 to 14, I'm very pleased to have them here today, we ride ATVs together, as a family, and they're quite interested in this hearing.

I'm appearing on behalf of the major ATV companies, including Arctic Cat, BRP, Honda, Kawasaki, Polaris, Suzuki and Yamaha. I want to thank the Subcommittee for its ongoing interest in ATV safety, and for bringing the Consumer Federation of America, the American Academy of Pediatrics, and the companies together to discuss this important issue. To my knowledge, it's the first time that representatives of the three groups have sat down at the same table.

We found many areas of common ground, and while we have agreed to disagree on some topics, all of the discussions were in good faith, and very constructive.

Millions of Americans, including my family, safely operate and enjoy ATVs for a wide range of recreational and utility purposes.

There are more than 7.65 million ATVs in use around the country, and the number is growing. In 2006 alone, new vehicle sales topped 1.15 million units.

The draft ATV safety bill that the parties have been discussing with Subcommittee staff is urgently needed to address fundamental changes in the industry, and to protect American consumers.

Last June, the Subcommittee held an initial hearing on compliance with ATV standards. A representative of the U.S. Consumer Product Safety Commission testified that, while the major ATV companies comply with these standards, a significant number of new entrants—primarily from China and Taiwan—are selling ATVs that do not. The majority of these non-complying units are targeted to American children, and they're being sold over the Internet, and delivered directly to homes, or in big-box retail stores, and other non-traditional retail outlets.

The Industry's trade association, the Specialty Vehicle Institute of America, also submitted an engineering study of new-entrant ATVs, conducted by two former CPSC officials. The engineers examined four ATVs that were manufactured in China, and marketed for use by children under 16. All four Chinese ATVs failed to comply with critical provisions of the industry standards, and three of the four ATVs had such serious flaws, that the engineers recommended an immediate recall under the Consumer Product Safety Act. Just last week, the CPSC announced a recall of one of the units for numerous safety violations.

The Subcommittee also heard testimony on the ATV action plans that the major companies negotiated with CPSC in 1998. These action plans—as Senator Pryor pointed out—continue the core regulatory components of the Federal consent decrees. Under the plans, each company has agreed, one, to offer free, hands-on training to all new ATV purchasers and qualifying family members, plus cash, or other incentives, for taking the course.

Two, to restrict the marketing and sale of ATVs to children under 16 to models of 90cc engine displacement, or less.

Three, to conduct annual, undercover investigations of their dealers for compliance with the youth ATV sales restrictions.

And, four, to sponsor comprehensive safety information programs, including at the point of purchase, through our trade association, and in public schools, using the Weekly Reader, and other media.

American companies, such as Arctic Cat, and John Deere, and a Canadian company, BRP, signed on to the same ATV action plans when they subsequently entered the U.S. market. But, as CPSC testified last year, virtually none of the new-entrant companies from China or Taiwan have agreed to do so, despite repeated requests by the agency.

Many of these ATVs are being sold by new entrants, they're poorly manufactured, and they come with no offer of training, and little or no safety information, or product support. We've also supplied the Subcommittee, CFA, and the Academy with recent advertisements from some of these companies, promoting ATVs as large as 250cc with top speeds of 65 miles per hour, for children as young

as 12, and ATVs as large as 110cc with top speeds of 45 miles per hour, for children as young as 7.

Over the past 5 years, we've given CPSC copies of similar ads, engineering studies, and other information about new-entrant ATVs. But, as CPSC testified last June, because the current industry standards and action plans are voluntary, it is difficult and time-consuming for the agency to take enforcement action against new entrants under the CPSA. Indeed, it took CPSC nearly a year to recall only one of the four Chinese ATVs examined by this subcommittee last June.

During the same 5 years, new-entrant ATV sales in the U.S. have grown dramatically, from a few percent of the market in 2002, to nearly 35 percent of the market, in 2006. Power Products Marketing, a Minneapolis-based research and business consulting firm, has tracked new entrant sales since 2000. The firm issued a report, just this week, showing that new-entrant ATV sales doubled in the last year, growing from approximately 260,000 units in 2005, to nearly 400,000 units in 2006, or one-third of the market. Estimated 2007 sales will likely top one-half million units.

Since our hearing last June, new entrants have continued to flood the U.S. market with hundreds of thousands of substandard ATVs. Despite good intentions, the CPSC has been unable to take any enforcement action against most of these companies. These substandard ATVs pose unnecessary risks to U.S. consumers, and undermine the longstanding safety efforts of CPSC, consumer advocates and the major companies.

Appropriate Federal legislation is urgently needed to address this situation. The draft legislation we've discussed would require all ATV companies—whether domestic or foreign—to adhere to the same basic industry standards, and to provide adequate training, safety information, and product support under CPSC-approved action plans. It would also preserve the agency's ability to adopt mandatory standards for ATVs under its existing regulatory authority, and most importantly, it would give CPSC the tools to enforce the standards—including the ability to impose fines on companies that violate them—and the authority to work with Customs, to keep non-compliant products from entering the stream of commerce. The Act is fair, balanced, and should be enacted as soon as possible.

Senator PRYOR. Mr. Murray?

Mr. MURRAY. Yes, sir.

Senator PRYOR. I hate to cut you off there, but let me go run and vote, we'll go into a 5 to 10-minute recess here, but I just need to get over there and vote before my time runs out.

We'll be back in about 5 or 10 minutes.

Mr. MURRAY. Yes.

Senator PRYOR. Thank you.

Mr. MURRAY. Thank you.

[Recess]

Senator PRYOR. Let's reconvene and I'm sorry I had to cut you off there Mr. Murray. Had you finished your statement?

Mr. MURRAY. Yes I had, Senator, other than to just thank the Subcommittee again for its interest in this draft legislation, and its sponsorship of our meeting with CFA and the Academy.

[The prepared statement of Mr. Murray follows:]

PREPARED STATEMENT OF DAVID P. MURRAY, COUNSEL, YAMAHA MOTOR CORPORATION, U.S.A., WILLKIE FARR AND GALLAGHER, LLP

Good afternoon Mr. Chairman and members of the Subcommittee. My name is David Murray. I am a member of Willkie Farr & Gallagher LLP and outside counsel to Yamaha Motor Corporation, U.S.A. I have been involved in ATV matters for over 20 years, including the 1987 settlement of the Federal Government's lawsuit that resulted in 10 year consent decrees ending the sale of new three-wheel ATVs and governing the marketing and sale of four-wheel ATVs. My wife and I also have three boys, ages 9 to 14, who are here today. We enjoy riding ATVs as a family.

On behalf of the major ATV companies,¹ I want to thank the Subcommittee for its ongoing interest in ATV safety. I also want to thank the Subcommittee for bringing the Consumer Federation of America, the American Academy of Pediatrics, and the Companies together to discuss this important issue. To my knowledge, it is the first time that representatives of the three groups have sat down at the same table. We found many areas of common ground. And while we "agreed to disagree" on some topics, all of the discussions were in good faith and very constructive. Based on these efforts, we hope to continue to work with CFA, the Academy, and other interested parties to increase consumer awareness of the potential risks associated with ATV use, especially by children.

The draft bill that the parties have been discussing with the Subcommittee staff would be a critical step forward in promoting ATV safety. Millions of Americans, including my family, safely operate and enjoy ATVs for a wide range of recreational and utility purposes. There are more than 7.6 million ATVs in use around the country, and the number is growing. In 2006 alone, new vehicle sales topped 1.15 million.

Last June, this Subcommittee held an initial hearing on compliance with ATV safety standards. A representative of the U.S. Consumer Product Safety Commission testified that, while the major ATV Companies comply with the industry safety standards, a significant number of new entrants—primarily from China and Taiwan—are selling ATVs that fail these standards.² The majority of these non-complying units are targeted to American children and are being sold over the Internet and delivered directly to homes, or in "big box" retail stores and other non-traditional outlets.³ The industry's trade association, the Specialty Vehicle Institute of America, likewise submitted an engineering study of new entrant ATVs conducted by two former CPSC officials with more than 55 years' combined experience at the agency. The engineers examined four ATVs that were manufactured in China and marketed for use by children under 16. All four Chinese ATVs failed to comply with critical provisions of the industry standards. And three of the four ATVs had such serious flaws that the engineers recommended an immediate recall under the Consumer Product Safety Act.⁴ Just last week, the CPSC announced a recall of one of these units for inadequate stop engine switches, tire pressure gauges, tire labeling, and a failure to meet other basic safety requirements.⁵

The Subcommittee also heard testimony on the ATV Action Plans that the major companies negotiated with CPSC in 1998. These Action Plans continue the major regulatory components of the Federal consent decrees. Under the plans, each company has agreed:

- to offer free hands-on training to all new ATV purchasers and qualifying family members, plus cash or other incentives for taking the course;
- to restrict the marketing and sale of ATVs to children under 16 to models of 90cc engine displacement or less;
- to conduct annual undercover investigations of their dealers for compliance with the youth ATV sales restrictions; and

¹The major ATV Companies include American Honda Motor Co., Inc., American Suzuki Motor Corporation, Arctic Cat Inc., Bombardier Recreational Products, Inc., Kawasaki Motors Corp., U.S.A., Polaris Industries Inc., and Yamaha Motor Corporation, U.S.A.

²Annexed as Exhibit 1 are relevant excerpts of the testimony of Elizabeth Leland, Project Manager, ATV Safety Review Team, U.S. Consumer Product Safety Commission (June 6, 2006).

³See "Sales of Non-Traditional Brand ATVs Continue Rapid Growth in 2006," by Power Products Marketing (May 2007) (annexed as Exhibit 2).

⁴A copy of the Marchica & Deppa Engineering Report is annexed as Exhibit 3.

⁵A copy of the May 3, 2007 Recall Alert issued by the U.S. Consumer Product Safety Commission is annexed as Exhibit 4.

- to sponsor comprehensive safety information programs, both at point-of-purchase, through SVIA, and in public schools through the Weekly Reader organization and other media.⁶

American companies, such as Arctic Cat and John Deere, and a Canadian company, BRP, signed on to the same ATV Action Plans when they subsequently entered the U.S. market. But as CPSC testified last year, virtually none of the new entrant companies from China or Taiwan have agreed to do so, despite repeated requests from the agency.⁷ Many of the ATVs being sold by these new entrants are not only poorly manufactured, but they come with no offer of training and little or no safety information or product support. We have also supplied the Subcommittee, CFA, and the Academy with recent advertisements from these new entrants, which are promoting:

- ATVs as large as 250cc, with top speeds of 65 mph, for children as young as 12; and
- ATVs as large as 110cc, with top speeds of 45 mph, for children as young as 7.⁸

Over the past 5 years, we have given CPSC copies of similar ads, engineering studies, and other information about new entrant ATVs. As CPSC testified last June, because the current industry safety standards and Action Plans are voluntary, it is difficult and time-consuming for the agency to take enforcement action against new entrants under the CPSA.⁹ Indeed, it took CPSC nearly a year to recall only one of the four new entrant ATV models examined at the June hearing, despite the engineering study and evidence of defects provided by SVIA.

During the same 5 years, new entrant ATV sales in the U.S. have grown dramatically, from a few percent of the market in 2002 to nearly 35 percent of the market in 2006. In fact, it turns out that the sales chart that SVIA provided to the Subcommittee last June seriously underestimated new entrant ATV sales for 2006. Power Products Marketing, a Minneapolis-based research and business consulting firm, has tracked new entrant sales for nearly 10 years. The firm issued a report this week showing that new entrant ATV sales doubled in the last year, growing from approximately 260,000 units in 2005 to nearly 400,000 units in 2006—or one-third of the market. Estimated 2007 sales will likely top one-half million units. The following sales chart depicts this rapid growth:¹⁰

⁶A copy of Yamaha's approved ATV Action Plan is annexed as Exhibit 5. It is representative of the Action Plans that other major ATV Companies negotiated with the U.S. Consumer Product Safety Commission.

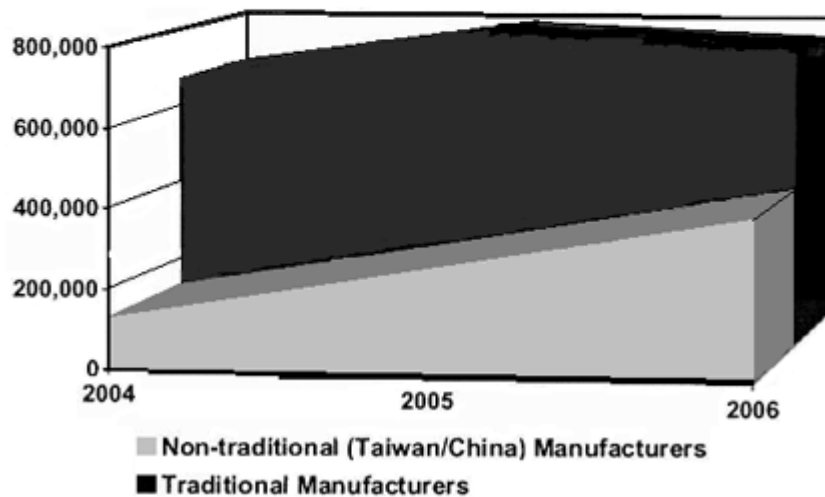
⁷See testimony of Ms. Elizabeth Leland (annexed as Exhibit 1).

⁸Representative examples of new entrant ATV advertising targeting children under 16 are annexed as Exhibit 6.

⁹See testimony of Ms. Elizabeth Leland (annexed as Exhibit 1).

¹⁰The chart is based on the market sales report annexed as Exhibit 2.

U.S. ATV Sales 2004 - 2006



In other words, since the last time we met, new entrants have continued to flood the U.S. market with hundreds of thousands of substandard ATVs. Despite good intentions, the CPSC has been unable to take any significant enforcement action against this rising tide. These substandard ATVs pose unnecessary risks to U.S. consumers and undermine the longstanding safety efforts of CPSC, consumer advocates, and the major companies. The major ATV Companies believe that appropriate legislation is urgently needed to address this situation.

The draft "All-Terrain Vehicles Standards and Compliance Act" would require all ATV companies, whether domestic or foreign, to adhere to the same basic industry standards and to provide adequate training, safety information, and product support under CPSC-approved Action Plans. The Act would also preserve the CPSC's ability to adopt other mandatory safety standards for ATVs pursuant to its existing regulatory authority. Most importantly, the Act would give CPSC the tools to enforce these standards, including (1) the ability to impose fines on companies that violate them and (2) the authority to work with Customs to keep non-compliant products from entering the stream of commerce. The Act is fair, balanced, and should be enacted as soon as possible.

The major ATV companies have also supported revisions to the draft legislation, in response to issues raised by CFA and the Academy. Some of these are reflected in the current draft and others are outlined in the position statements filed with the Subcommittee.¹¹ In other cases, we agree with the goals of CFA and the Academy, but we are concerned that their legislative suggestions may fall outside of this Subcommittee's jurisdiction, be infeasible or unworkable, or delay enactment of the bill, which is so urgently needed. Finally, even where we have "agreed to disagree" on some legislative suggestions, the major ATV companies have benefited from this process and look forward to continuing to work with CFA, the Academy, and other interested parties on areas of common ground.

¹¹ Copies of the written submissions are annexed as Exhibit 7.

On behalf of the companies, I want to thank the Subcommittee again for its interest in this draft legislation and its sponsorship of our meetings with CFA and the Academy. I look forward to your questions.

(The exhibits referred to are maintained in the Committee files.)

Senator PRYOR. Well, thank you. And like I said, I appreciate you all meeting together, and we have a great staff here and we're all eager to work with you to see if we can come up with some resolution here that's a win/win for everybody.

I would like to visit with both of you here for just a minute about your meetings. I guess, Ms. Weintraub, you said that the meetings were candid and productive, which is great, but is there, is there still room for common ground or are we at irreconcilable differences on the rest of the topics that you all discussed?

Ms. WEINTRAUB. Well, I think there definitely is room for more discussion. We came to agreement—at least general philosophical agreement—about a number of issues. So I think, our thinking was that we would provide all the information to the staff and then leave it up to staff to tell us what the next steps were.

But as I listed before, there are a number of issues that we did come to agreement. On some of the most important issues for CFA, we did not come to agreement. So, I'm not in a position yet to say where we'd be on something even if it were to take all of those issues because there's still room, we are not at the point at all where we have irreconcilable differences that we can't pursue.

Senator PRYOR. And Mr. Murray, what about your thoughts on irreconcilable differences or—

Mr. MURRAY. Well—

Senator PRYOR.—still room to discuss?

Mr. MURRAY. No, I'd like to start with the positive, because we have supported some revisions to the draft legislation that reflect issues raised by CFA and the Academy and in the position statements that we've submitted to the Subcommittee, we've also outlined some areas where we do have agreement.

There are certainly some areas where we agree in principle, but we're not sure that the proposals fall within the Subcommittee's jurisdiction or would be feasible. And, bottom-line, our concern is that this year alone there will be over a half million non-compliant ATVs imported into the U.S. So, we feel that the core components of the bill need to be enacted urgently.

And so we're very willing to continue to work with CFA, and the Academy and other interested parties on areas of common ground. We simply don't want to slow down this bill and getting it enacted.

Senator PRYOR. OK. Let me ask you, if I may, and I'll direct these to you, Mr. Murray. I'm not trying to put you on the hot seat, but Ms. Weintraub in her opening statement listed out a few areas that they would like to see included in legislation. The first one was children under 16 should be required to operate, should be required to have a driver's license when they operate an ATV. Does the company or the industry have a position on that?

Mr. MURRAY. We support model State legislation that includes a training requirement and a training certification requirement. A number of States have enacted that law, and require that children who operate on State lands be able to produce evidence of their cer-

tification. So, that's an area where we are already actively working with the States to enact that type of legislation.

Senator PRYOR. And under that model act, there, they get some sort of certificate when they've completed the training course?

Mr. MURRAY. That's correct.

Senator PRYOR. And so, that's what you support. Not a State-issued driver's license, but a certificate.

Mr. MURRAY. A certificate that demonstrates that they've taken an ATV safety training course. The course that we sponsor is about a 6-hour course. It includes both hands-on riding experience as well as some classroom-type instruction. It's done often around a picnic table, because you're out in areas where you can operate the vehicles.

Senator PRYOR. By the way, does either your company or the industry have an age limit in which you think someone of that age or younger should not be allowed to drive an ATV? Do you all have an age limit?

Mr. MURRAY. Yes, our voluntary standard specifies that the smallest units, the Y6 units, are for ages six and above and they're speed restricted. They come from the factory at 10 miles per hour and can be adjusted by parents with the specialized tool up to 15, but no more than that.

Senator PRYOR. And, if it's not a Y6, do you have a minimum age there for, like a 90cc or anything?

Mr. MURRAY. Currently the, what's called the Y12 model for ages 12 to 15, is restricted to a top speed of 30 miles per hour. And, that's a performance-based restriction that is in the ANSI voluntary standard, the industry standard. We've also agreed, Senator, in our action plans that we negotiated with the CPSC not to market ATVs larger than 90cc engine displacement for anyone younger than 16.

Senator PRYOR. OK. So, like on your Y12, I guess when I see that title, Y12, I think it's for 12 years old and up, is that—

Mr. MURRAY. That's correct.

Senator PRYOR. OK. In other words, so you think it's OK for 12 year olds and older to drive a Y12?

Mr. MURRAY. On properly sized units that are speed restricted.

Senator PRYOR. OK. And let me just ask about zero-tolerance on alcohol use for drivers. Do you all have a position on that?

Mr. MURRAY. Absolutely. Our main on-product label has an icon that shows no alcohol, drugs when you operate this vehicle. That's also part of our general safety instructions, it's in our DVDs, it's emphasized in our hands-on training program, and all of our safety literature.

Senator PRYOR. And on paved roads, that's another one of their issues. Do you all have a position on—

Mr. MURRAY. We recommend against operating ATVs on paved roads. These are off-road vehicles.

Senator PRYOR. And, do you do that in the safety video or in the owner's manual or on stickers on the vehicle or all of the above?

Mr. MURRAY. All of the above. If you were to take a look at our main ATV label, again, there's an icon right up at the very top that has a slash through. It's a road, a slash that says "Never operate on paved roads."

Senator PRYOR. Ms. Weintraub, let me ask you on the paved road issue. Is it your position or your organization's position that they should never be allowed on paved roads? Or that there should be warning labels and that the manufacturer should recommend that they not be allowed?

Ms. WEINTRAUB. We believe that ATVs should not be driven on paved roads.

Senator PRYOR. At all?

Ms. WEINTRAUB. At all.

Senator PRYOR. OK. Let me ask, I assume that protective gear, both of you all agree on that. What about, Mr. Murray, carrying passengers. I assume the industry position be as, if an ATV's not designed for passengers, you would say no passengers.

Mr. MURRAY. That's correct. And, that's been our consistent message. There are some units available on the market today that are designed for an operator and a passenger, but for those that are single-operator vehicles, again, we have on-product labels specific to the passenger warning and it's also reiterated in the main label. So that both the operator of the vehicle can see it, and then there's a label that's back where a passenger might mount the unit so that the passenger can see, independently, that they shouldn't be doing that.

Senator PRYOR. And, Ms. Weintraub's organization also said that ATVs should not be operated before sunrise or after sunset. What's the industry position on that?

Mr. MURRAY. We recommend against children under 16 operating ATVs after sunset and, in fact, the current industry standard prohibits having headlights on youth models, specifically for that purpose.

Senator PRYOR. OK.

Mr. MURRAY. Adult-sized ATVs that have headlights on them, we have warnings and instructions in our owner's manuals about the extra caution that should be taken if you find yourself out on a trail and it starts to get darker. You need to slow down, you need to be extra cautious in getting back to whatever your home base is.

Senator PRYOR. OK. I will say this, just on the headlight issue, for people who use them for hunting. A lot of times you go out before the sun comes up and get yourself positioned. So anyway, we can talk about that further.

Let's see, looking through some of these other guidelines—

Ms. Weintraub, you mentioned something about Federal lands. You think there ought to be a set of prohibitions or requirements on Federal lands.

Ms. WEINTRAUB. Right. Well, given the various rules of jurisdiction, the Federal Government does not have jurisdiction broadly to, to enact some of these regulations across the board. But, the Federal Government, obviously, does have jurisdiction over Federal lands. So, our thinking is that Federal land should be a paradigm of ATV safety.

Senator PRYOR. OK.

Ms. WEINTRAUB. So, that was, our recommendation. And we have a number of details about what we think should be in such a standard for Federal lands, many of which, you just stated before.

Senator PRYOR. OK. Ms. Weintraub, let me ask you now about three-wheel ATVs, as we call them, three-wheelers.

Ms. WEINTRAUB. Yes.

Senator PRYOR. Your organization takes the position that the sale of these should just be banned?

Ms. WEINTRAUB. Right.

Senator PRYOR. Should there be some sort of recall, or some sort of mechanism to try to get those out of the marketplace completely? And, if so, what should that look like?

Ms. WEINTRAUB. We believe there should be. As I'm sure you well know, the part of the consent decree that CFA felt was the strongest aspect was the provision that banned the production of new three-wheel ATVs. But there still remain three-wheelers in the used market. And recently, there have been some importers who may be bringing in three-wheel ATVs, as well.

Senator PRYOR. So, there are some new three-wheelers hitting the market.

Ms. WEINTRAUB. There may be. There's been some advertising. I don't know if they have been seen in the market, but the older three-wheelers make up about 10 percent, still, of injuries. So, even though they have been banned from new production since the late 1980s, they're still causing problems and we're seeing significant impact of them in the death and injury data. So, what we believe is a good solution is not only to make that ban permanent, but also to recall the ATVs, which we think should have been recalled at the time of the consent decree, to get those three-wheelers off the market.

Senator PRYOR. And in your view, how would the recall work? Would the manufacturers have to refund some money, would they give them credit for the purchase of a four-wheeler? I mean, how does that work?

Ms. WEINTRAUB. I think it depends. We're open to seeing how the details would work. The Consumer Product Safety Commission has mandatory and voluntary, recall authority, and it rarely uses its mandatory recall authority. So, really to be the most expeditious, the manufacturers would have to agree to a recall.

Senator PRYOR. OK. Mr. Murray, if you know, do you have an estimate on three-wheelers still out there in the U.S. that people are using?

Mr. MURRAY. It's a shrinking percentage. I know that and I know that there are some folks out there that love their three-wheelers and they're nursing them along. They haven't been sold as new products in this country for two decades. I can certainly find out that information and submit it to the record.

[The information previously referred to follows:]

The last survey of the three-wheel ATV population was conducted by Heiden Associates in 2001. The survey found that the number of three-wheel ATVs had declined forty percent (40 percent) between 1997 and 2001, from 1.25 million to 750,000. Assuming the same rate of decline, it can be estimated that the number of three-wheel ATVs has further decreased from 675,000 in 2002 to 405,000 in 2006. There would be only approximately 360,000 three-wheel ATVs in use by the end of this year.

According to the U.S. Consumer Product Safety Commission's most recent annual report of ATV-related accidents and fatalities (issued in December 2006), there were

an estimated thirty-three (33) fatalities associated with three-wheel ATVs in 2004—the most recent year for which CPSC has provided such estimates. These 33 fatalities involving three-wheel ATVs in turn represent only 4 percent (4 percent) of all CPSC's estimated ATV-related fatalities in 2004. Moreover, this percentage can be expected to decline in subsequent years in view of the continuing decrease in the number of three-wheel ATVs in use.

Senator PRYOR. I'm curious, she mentioned that the accidents or the injuries in ATVs, they make up about 10 percent of the stats there. I'm just curious if, I would think it would be, that 10 percent would be disproportionately high as compared to how many are actually out there. Because, you know, my understanding of a three-wheeler is it's much less stable than a four-wheel ATV. I'd love for you to supplement the record on that. We'll leave the record open for a few days.

Now, Ms. Weintraub, let me ask you about your 90cc threshold for adult-size ATV recommendation. Does that mean that an ATV will not be sold to or marketed to an adult that is smaller than 90cc? Tell me how that works?

Ms. WEINTRAUB. No, well, first of all, 90ccs is currently the demarcation for an adult-sized or youth-sized model. Anything over 90ccs is considered an adult-sized ATV. And, according to the voluntary standards, including the voluntary action plans, adult-sized ATVs, which are defined using the 90cc—greater than 90cc threshold—should not be sold for use for children.

But there are two broad problems. The first problem is that we're seeing, anecdotally, that there's not widespread compliance. Over the past years we've worked with a number of reporters who've done undercover surveys in different cities and both of them found that nine out of ten dealers would knowingly sell an adult-sized ATV for use for children. So, that's one part of the problem, and that's why we filed a petition with the Consumer Product Safety Commission. Basically, what we want to do is codify this 90cc threshold to make it mandatory, to give CPSC, as well as potentially, manufacturers, the tools to enforce that dealers not knowingly sell adult-sized ATVs for use for children.

The second problem, however, is that both the voluntary standards in their draft form, as well as the Consumer Product Safety Commission are moving away from this 90cc demarcation. They're both, the CPSC rulemaking, as well as the ANSI standard, are moving into categorization based upon speed for certain ages and we have many concerns about that. Mostly that it will be putting the industry and the Government's imprimatur on children riding even faster ATVs than they're allowed to now. And, there's no evidence supporting the fact that children could safely operate ATVs at the speeds given in these categorizations. Rather, the justification has been solely based on consumer preference.

Senator PRYOR. OK. Mr. Murray, let me ask you about one of the recommendations from Ms. Weintraub's organization to establish minimum stability requirements for ATVs. Does that cause a problem with the industry?

Mr. MURRAY. Well, it does in so far as these vehicles are rider active. I don't know, Senator, if you've ridden one, but you shift your weight and you're taught to do that, that's part of our training course. And, as a consequence, we spent a lot of time with the

CPSC back in the late 1980s and the early 1990s trying to see if we could develop stability measurement that would be applicable to these products. And, we weren't able to do that.

But at the same time, the Commission has twice studied the incidence of rollovers involving the products and they've not been able to find a correlation between stability and accidents. And so, even in their most recent review of ATVs, the Commission is not suggesting that there's any issue with the lateral stability of the ATVs, or any need for the adoption of a lateral stability measurement.

One of the benefits of this proposed bill though, Senator, is that if with product innovation and if with further research it turned out that there was a basis to have a valid measurement of, or stability coefficient for ATVs, the Commission would be able to take any industry standards that are developed in that area and incorporate them as part of the mandatory rule. So, we think it's better left to the standard-setting process. We haven't been able to crack that nut so far, but if we ever did, this bill would have the flexibility to allow it to become part of a mandatory rule.

Senator PRYOR. OK. Mr. Murray, I think it was you in your opening statement, mentioned Internet sales.

Mr. MURRAY. Yes.

Senator PRYOR. Especially from these imported ATVs? Do you think the Federal Government should either ban or regulate Internet sales?

Mr. MURRAY. Not at all, but I do think that by enacting the draft legislation the Congress would be able to codify that, if you're a company selling ATVs in the United States, you have to follow age restrictions that are appropriate for children in this country. And, you have to comply with those, whatever retail outlet or distribution channel you're using.

Senator PRYOR. OK. Ms. Weintraub, do you have a view of Internet sales? Should we either ban them or regulate them?

Ms. WEINTRAUB. I certainly think there are some inherent problems with complying with even the current ATV action plans in selling them on the Internet. For example, how do you know what age rider will be using them? I mean, obviously, there are problems in brick and mortar stores as well, but there definitely seems to be more barriers to finding out the age of the rider.

Further, there's other information, there are other forms that are currently being used that would have to be signed and back and forth, so I think it would complicate things. And, I think it could potentially make or irresponsible buying, even more possible.

Senator PRYOR. OK. Let me ask you, Ms. Weintraub, this graph that they put up about the increasing number and market share of imports, Do you accept those numbers?

Ms. WEINTRAUB. I don't know. I saw the report, I don't know, I'm not familiar with the entity that came up with them, so I'm not in a position to agree or disagree. The numbers seem high.

And as I said, we certainly don't want to allow a problem in terms, of deaths and injuries with these import issues to bubble up. We'd like to thwart the potential hazards before they occur, but we also want to actually deal with the documented problems caused by all ATVs.

Senator PRYOR. OK. Let me make sure I understand your position though, Ms. Weintraub. On the safety requirements for imported ATVs, do you think that the imported ATVs should meet the same safety standards that the domestically produced ATVs meet?

Ms. WEINTRAUB. We do, but it's a little bit complicated for us, because we have concerns with the current standards.

Senator PRYOR. Right.

Ms. WEINTRAUB. Yes.

Senator PRYOR. I understand, but at a minimum you think that they, all the imported ones should meet the same standards as the domestic.

Ms. WEINTRAUB. Sure. If we could improve the action plans, improve the voluntary standards, yes, certainly there should be a level playing field. Certainly.

Senator PRYOR. In other words, back when the consent decree was entered into, your organization was not completely supportive of that consent decree, you felt like it fell short in some areas? But, with that said, there were some good things in it also?

Ms. WEINTRAUB. Yes, especially the ban on production of new three-wheelers, yes.

Senator PRYOR. Now you've also, in your testimony, I think you mentioned dealer compliance. As I understand it, the dealer compliance has gone down since the sun-setting of the consent decree. I think that's correct, at least that's my understanding. How can we improve dealer compliance, from your standpoint, Ms. Weintraub?

Ms. WEINTRAUB. Well, we think that the best solution to dealer compliance is, instead of it being voluntary, making it mandatory, so that there will be consequences for lack of compliance. It will give manufacturers tools to make sure that their dealers are not knowingly selling the wrong-sized ATV for children and posing them at greater risk.

Senator PRYOR. In other words, not to put words in your mouth, but you'd like to see a Federal law, with some teeth in it, that requires the dealers to do certain things.

Ms. WEINTRAUB. Yes.

Senator PRYOR. Is that fair to say?

Mr. Murray, let me ask you. As I understand the statistics, you've seen—we have seen in this country an increase in the number of accidents and injuries and deaths related to ATVs. As I understand the statistics, that is not purely based on an increased number of ATVs in the U.S. today. What other factors might play into that?

Mr. MURRAY. Well, let me speak to that because we certainly feel that any ATV injury is one too many, but there has been a dramatic growth in the number of ATVs in use. And, despite this increase, the number of ATV injuries involving children under 16 decreased 10 percent from 2004 to 2005 and that's according to the CPSC's latest ATV report.

Senator PRYOR. So, does that mean in 1 year, it—

Mr. MURRAY. Yes, there was a 10 percent drop in the number of ATV-related accidents involving children under 16.

Senator PRYOR. Do you think that's part of a trend of do you think that was—

Mr. MURRAY. I sure hope so.

Senator PRYOR.—one you're. What would cause that trend if they are going down in the younger?

Mr. MURRAY. I think the concerted efforts of the CPSC, and the industry, to continue to raise awareness about the risks of children operating adult-size ATVs. Ninety percent, over 90 percent of injuries to kids are occurring when they're operating adult-size ATVs. And so, through consumer advocate groups like CFA and the Academy and the industry getting that message out, I think people are hearing it, and they're responding to it, and we're starting to see it in the accident data, which is very encouraging.

It's still too high and so we want to keep those efforts up. And we're very concerned that when you have one-third—and rapidly growing—of the market that is totally unregulated. I'm not aware of any other instance where two-thirds of a market is regulated and following actions that are good for consumer safety, and one-third is just completely unregulated. So, we've got to stem that problem and this bill would do that.

Senator PRYOR. Now you mentioned that the numbers have gone down 10 percent, for the younger ages, but what about in the general population?

Mr. MURRAY. When you look at the adjusted population, the injury risk per 10,000 vehicles has declined almost 10 percent since 2001 and it's at its lowest point since 1998.

Senator PRYOR. Ms. Weintraub, do you agree with that?

Ms. WEINTRAUB. Well, statistics can be interpreted in many different ways. According to the CPSC, the raw numbers, there's been an increase across the board in terms of people who've been injured as well as people who have been killed. And, there's been statistically significant increases since 2001, for example, in terms of injuries, there's been a 24 percent increase, so from 2001 to the most recent data.

Since 2001, there's been a statistically significant increase of 18 percent in the number of children under 16 seriously injured by ATVs. So, this problem continues to be epidemic, families' lives are irreparably and tragically affected by ATV deaths and injuries. And this number, these numbers are a cause of great concern, which is why CFA, American Academy of Pediatrics, and other organizations are working so hard to try to stem this tide.

We see the statistic that 90 percent of children who are injured on ATVs that are—they're actually injured on adult-size ATVs. We see that statistic as showing that the current system, the voluntary approach, is not working. And in looking at that statistic, our analysis is, well, what can we do to keep kids off of adult-size ATVs? And, it seems that laws with consequences would help that. Unfortunately, what the industry and the CPSC are doing, saying, "Well, let's change the definition of ATVs, and let's put kids on ATVs that actually go even faster."

Senator PRYOR. OK.

Mr. MURRAY. Senator, could I comment on that?

Senator PRYOR. Yes.

Mr. MURRAY. We're looking at what's being called a Transitional Model ATV, but we're doing it at the request of CPSC. CPSC asked industry and other interested parties to consider whether the cur-

rent 90cc restriction should be abandoned. Because we're finding, and we're hearing from parents, we're hearing from kids, we're hearing from dealers that when you get to be 14 or 15 years old, the 90cc unit is just too small. And, kids are not willing to operate it, they want to be on the adult-sized ATV. We don't want them on adult-sized ATVs.

And so, what we've done is we hired a human factors firm to work with our engineers, they've studied this issue, we've submitted this information to the CPSC, and what's being proposed would be a transitional model that would be a little bit larger, better size and fit for an adolescent. It would be set at 20 miles per hour coming from the factory and it would require a specialized tool that parents could use, over time, to increase the speed to 30 miles an hour, and ultimately to 38 miles an hour, to allow kids to learn how to operate them, to demonstrate their skills and their judgment. None of that's going to replace the need for adult supervision, but the CPSC is studying that proposal and I'm sure they're going to get some other proposals because this is a tough issue.

This bill would preserve the ability of CPSC ultimately to decide, in its expert judgment, whether this is a good idea or not. And if it's a good idea, then they would be able to incorporate that as part of the mandatory rule.

Senator PRYOR. OK. Mr. Murray, when you were giving the statistics a few minutes ago—

Mr. MURRAY. Yes.

Senator PRYOR.—you quantified what you said by a number of incidents or injuries per 10,000 ATVs. In other words, is it your contention that even though what Ms. Weintraub says is true about the raw data, when you put it in the context of the number of ATVs in the U.S. today, you're saying your statistics show that the numbers are actually going down? Not the raw numbers, but—

Mr. MURRAY. Right. These aren't my statistics, they're the CPSC's, and it comes from the CPSC's 2005 Annual Report. It shows that in, between 2004 and 2005 the number of accidents involving children under 16 dropped 10 percent, so that's just the raw number. The second figure that I referred to, was when you do adjust to population and so you're evening that out and you're looking at per 10,000 ATVs in use. The accident rate has also fallen 10 percent between 1999 and 2005.

Senator PRYOR. OK. Well, we'll look at those statistics and—

Mr. MURRAY. And, I'll be happy to submit a copy of this CPSC report for the record if it would be helpful.

Senator PRYOR. That'd be great. We probably have it, but we'll make sure if we don't we'll request it.

As you said, Ms. Weintraub, with statistics, you know, they can—

Ms. WEINTRAUB. Well, actually all of our data is from the same document, so it's just what we're highlighting.

Senator PRYOR. Well, it's the way you interpret it, as well.

Ms. WEINTRAUB. Right.

Senator PRYOR. I mean, it's kind of what you want to focus on and—

Ms. WEINTRAUB. Exactly.

Senator PRYOR.—how you interpret that. Let me ask a couple more questions here, then I'm going to let you go.

Mr. Murray, beyond the legislation that would require the so-called level playing field, where the imports have to comply with the same, it sounds like you are willing to discuss other requirements in law and it sounds to me like you're, you know, both of you have said that you're willing to try to find common ground on a variety of other issues. I'm not trying to put words in your mouth, but is that fair?

Mr. MURRAY. It is fair. For example, Senator, after our discussions with CFA—I believe it was last November or December—we agreed to include a provision in the draft bill that would ban sales of new three-wheel ATVs. We also specified some additional safety requirements for certain ATV components and characteristics. And then, as we've outlined in our position statements, there are a number of areas where we have agreement in principle. If it makes sense to include something in this bill and the Committee believes it's within its jurisdiction, we continue to be willing to work on it, but we're concerned that, we were here a year ago. In that timeframe, another 400,000 noncompliant ATVs were imported into the U.S. and this year we're going to reach over half a million. So we don't want good ideas to sacrifice the urgent need for getting this legislation enacted, and enacted quickly.

Senator PRYOR. Let me ask you about your voluntary action plans?

Mr. MURRAY. Yes.

Senator PRYOR. Are those consistent across the industry or does one manufacturer do one thing and another do another, and vice versa?

Mr. MURRAY. The domestic and foreign companies that have signed onto these action plans have signed on to substantially the same requirements. And these were all published in the Federal Register by the CPSC. The companies, in fact, were commended by the agency for having kept these provisions in place. And the problem we've had, Senator, as you know, is so many new companies have come in and, despite repeated efforts by the agency to get them to sign on to these same action plans, they have refused to do so. And this bill would make it a Federal requirement, that they get with the program. And, I think any responsible manufacturer who wants to participate in this market has no excuse for not doing so.

Senator PRYOR. OK. Mr. Murray, I know that you have a sense of urgency about trying to get some legislation done, but from your standpoint, would more meetings with the consumer groups, would that be beneficial? Is there value in doing that? Do you feel that with—and I'm not saying more time like months and months—but just more time together as you all are trying to work through issues, do you think you could find more common ground?

Mr. MURRAY. I think there are certainly areas where we can continue to work together. I think that as to this bill, we've now given the Subcommittee the areas where we've reached agreement or where we have reached an impasse, but the issue of, for example, Federal lands. We think that the safe practices of ATV use should be followed whether you're on public land, private land, State land,

Federal land. That's an area where, if we can work with CFA and the Academy and other interested parties, with Interior or with the Department of Agriculture, we're prepared to do that.

There's a lot that needs to be done at the State level. For example, Oklahoma just passed a law that requires kids operating ATVs to wear helmets. We all agree that needs to be done. Our industry has been the leading advocate of State ATV safety legislation. We've been encouraged that CFA is also supportive of that. That's an area where we can continue to meet and work together.

This bill is so clearly needed. One-third of this industry is totally unregulated and the enactment period under the draft that we've been discussing is a 5-month window. So, by the time that happens, Senator, another half million of these noncompliant ATVs are going to be in the United States.

Senator PRYOR. Ms. Weintraub, do you think there's benefit in you all sitting down further, and discussing further, or do you think you kind of reached the point of diminishing returns?

Ms. WEINTRAUB. Yes, I think there is—although I think the documents that your Committee has received very much articulate the positions of both sides: there are areas where we agree. And I think what would be beneficial would be to work out those areas and come up with language. Because we have, agreed on principle, philosophically, so getting to that next stage would be productive.

I just want to mention also, that we certainly feel urgency as well. We look, not necessarily in terms of the market, but in terms of the number of children and, adults as well, who are injured and killed. And we fear that if this train is moving and does not cover all ATVs, then we've missed a golden opportunity. So, we want to make sure that any legislation deals with the broader issues as well.

Senator PRYOR. Great. Well listen, I want to thank both of you all for coming. This has been very informative and even though we had a vote in the middle of this and a lot of committees going on, we'll definitely share this information with other Committee members, and many of their staffs are here represented right now.

What we'll do is, we'll leave the record open for 2 weeks. It's possible some Senators would like to do some follow-up questions with you, so don't be surprised if you get some written questions.

But, I want to thank you all for attending today, and being here. And again, this has been informative and helpful for the Subcommittee. And, if there's nothing further, I'll go ahead and adjourn us.

Thank you very much.

[Whereupon, at 3:42 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF THE HON. NORM COLEMAN,
U.S. SENATOR FROM MINNESOTA

I would like to thank Chairman Pryor for convening today's hearing on ATV safety issues and I appreciate the opportunity to provide the Committee with a Minnesota perspective on this matter.

Minnesota is home to two innovative and competitive manufacturers of ATVs—Arctic Cat and Polaris. To date, these companies have been pioneers in the development of various ATV safety features and have made numerous design changes to enhance the safety performance of their machines. In my discussions with the leadership of both companies I have been impressed with their commitment to protecting the safety and security of ATV riders, especially youth riders.

It is for this reason that I have been a strong advocate of legislation that requires that all ATVs comply with a baseline safety standard. For years, Minnesota's ATV manufacturers have promoted and implemented an extensive array of safety initiatives to reduce injuries and deaths on ATVs, including the offer of incentives to consumers to take hands-on safety training. These initiatives have been thoroughly vetted and analyzed by the Consumer Product Safety Commission (CPSC).

Minnesota's manufacturers have been forced to compete against a surge of imports from South Korea, Taiwan and China that have not been subject to any regulatory oversight. These "new entrants" have capitalized on the explosion of consumer support for ATVs by selling directly to the consumer and not requiring that retailers provide safety information about the products. The result is that nearly one-third of the sales to consumers in 2007 will be by manufacturers who do not offer the consumer the training which riders should complete to safely use these products. While this impacts Minnesota manufacturers, the biggest concern is for consumers who have the right to expect that all ATVs sold in this country meet a minimum safety standard. Sales of ATVs that do not meet minimum safety standards will hurt the consumer and ultimately the entire ATV industry.

Last year, the CPSC initiated a rulemaking proceeding that will eventually lead to a new standard governing the safety of ATVs. However, the new standard may not be finalized for several years. In the interim, the new entrants will continue to sell products to American consumers that do not meet the established industry's voluntary product standard and do not contain all of the safety information or free safety training.

As I stated last year, the existing regulatory regime is broken and must be fixed. All ATV manufacturers should be bound by the same standards and oversight. Adopting legislation which codifies the ANSI standard as a baseline until the CPSC adopts a more comprehensive standard is critically needed and long overdue.

With respect to the ANSI standard setting process, in the next few weeks, ANSI will publish a new standard that not only will contain the existing requirements for brakes, suspension and many other design, configuration and performance aspects of ATVs, but also will include requirements for on-product labels, operator's manuals, hang tags and compliance certification labels. These additional provisions include important ATV safety information which would be required to be provided with each ATV. This new standard is more comprehensive than the current standard, and compliance by all manufacturers with the new standard will result in safer products for consumers.

In closing, thank you for your leadership on this most important consumer safety issue. I look forward to working with you on this matter in the weeks and months ahead.

○