



AMERICAN SOCIETY OF  
SAFETY PROFESSIONALS

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Division of the Secretariat  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

## CONSUMER PRODUCT SAFETY COMMISSION Safety Standard for Debris Penetration Hazards

**Agency:** Consumer Product Safety Commission  
**Date and Page:** Federal Register; July 21, 2022, 43687  
**Citation Number:** 16 CFR Part 1421  
**Agency/Docket Number:** [CPSC Docket No. CPSC–2021–0014]

Per direction of the July 21st Federal Register announcement, we submit the following correspondence and attached materials to address the following:

*The U.S. Consumer Product Safety Commission (Commission or CPSC) has determined preliminarily that there is an unreasonable risk of injury and death associated with debris penetration in off-highway vehicles (OHVs), including recreational off-highway vehicles (ROVs) and utility task/terrain vehicles (UTVs). To address these risks, the Commission proposes a rule to prevent debris penetration into the occupant area of an ROV/UTV. The Commission is providing an opportunity for interested parties to present written and oral comments on this notice of proposed rulemaking (NPR). Like written comments, any oral comments will be part of the rulemaking record.*

The [American Society of Safety Professionals \(ASSP\)](https://www.assp.org) is the oldest society of safety professionals in the world. Founded in 1911, we represent over 36,000 professionals advancing workplace safety and health in every industry, in every state and around the globe. ASSP members have set the occupational safety and health (OSH) community's standards for excellence, ethics, and practice for more than 100 years.



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## Technical Insights

ASSP asked members of our various [practice specialties](#) to review the proposal and offer any applicable insights and technical comments to the proposal.

CPSC noted:

*ROVs and UTVs are intended to be driven off-highway and have all-terrain capabilities; typical uses include farm work, hunting, recreation, trail riding, and competitive racing. These vehicles are often driven in wooded areas or trails, where the vehicles can be expected regularly to be driven over tree branches and sticks.*

Our practice specialty members noted that these vehicles are used in a wide variety of industries and environments in occupational settings. The ASSP [Oil, Gas, Mining & Mineral Resources Practice Specialty](#) noted that these vehicles are used in petrochemical environments, mining, mineral recovery operations. These vehicles are deployed to work environments and are not only used in wooded areas. CPSC also notes farming is impacted. It is important to note that CPSC recognize that large scale agricultural commercial operations would be impacted and not just the family farm. Commercial logging and forestry could also be impacted by this announcement.

We also heard from several members of our Public Sector Practice Specialty and noted this proposal could impact a number of Federal agencies if it were to be applied in that venue as well. It was pointed out the U.S. Border Patrol uses significant numbers of these vehicles and having speed limits on such equipment may not be feasible if used in these types of venues. We understand the focus of the proposal appears to be on recreational vehicles, but our members have consistently raised the question of scope and applicability.

ASSP also suggests that CPSC discuss this proposal with the National Institute for Occupational Safety and Health [NIOSH], under the Center for Disease Control. NIOSH has done extensive research on similar vehicles used in agricultural settings. While not exact to the proposal, we believe many of the aspects of design would be similar. NIOSH research on offroad equipment design for items such as tractor rollover might be beneficial to CPSC during finalization of this proposal.

In our view, the scope of the proposed rule is not clear with regards to implementation and applicability. As a result, ASSP recommends that the CPSC coordinate this proposal with the U.S. Occupational Safety and Health Administration and clarify the application of the rule regarding occupational settings. Occupational safety and health professionals, [OSH] would be in the position of addressing implementation in the workplace. Having some joint policy on this issue between the CPSC and OSHA may clarify and address issues before they arise.





CPSC noted:

*Limiting ROV and UTV Speed to a Maximum of 10 Miles per Hour In making their recommendation regarding this alternative, CPSC staff weighed both quantifiable factors and unquantifiable factors. If the Commission promulgated a rule limiting ROV and UTV speed to a maximum of 10 miles per hour, staff expects benefits, in the form of reduced societal costs, to be substantially less than that of the proposed rule. Testing conducted by SEA, Ltd. indicated many ROVs and UTVs are subject to debris penetration into the occupant area at speeds less than 10 mile per hour. Therefore, although staff would expect costs to manufacturers to be less, quantifiable net benefits would be less, as well. In addition, setting the maximum speed at 10 mph could have a negative impact on consumer acceptance of the requirement and result in costs, including time, inconvenience, and reduced consumer satisfaction, leading to substantial lost consumer surplus and utility of the product. Considering both the quantifiable and unquantifiable costs and benefits, staff determined that the net benefit of this alternative is less than that of the proposed rule. Therefore, the Commission is not adopting this alternative.*

ASSP agrees that setting a speed limit of 10 miles per hour would not be appropriate if this potential rule includes occupational implementation and uses. OSH Professionals use risk assessment to address hazards and exposures. The results of the risk assessment would guide organizational decisions on the deployment of these vehicles and their use and applicable speed limits.

CPSC does an outstanding job of recognizing and including the applicable voluntary national consensus standard addressing design issues of OHV's. ASSP has long been on record in support the use of applicable voluntary national consensus standards. We have included our position statement on the standards recognition issue as an appendix.

However, we do have concern with this language in the proposal:

*Rely on Voluntary Standards Development: The Commission could direct staff to work with voluntary standards development organizations to address the hazard. This alternative would allow ROHVA and OPEI member firms to determine collectively the degree, manner, and timing of debris penetration hazard mitigation, which could delay or reduce costs incurred by these firms to address the hazard. ROHVA and OPEI member firms supplied approximately 95 percent of the ROVs and UTVs sold in the United States in 2019. Non-member firms may choose not to comply with ROHVA and OPEI voluntary standards, and therefore, incur no associated costs. However, staff has been discussing debris penetration hazards with ROHVA and OPEI since 2018,*





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*without them making progress on standard development to adequately address this hazard pattern. Staff will continue to work with ROHVA and OPEI on voluntary standards, but do not know if, or when, a standard will be developed to adequately address this hazard. Until such voluntary standards are developed, staff expects the number and societal costs of injuries and fatalities associated with debris penetration hazards to remain at or near current levels on a per-vehicle basis. Therefore, the Commission is not adopting this alternative.*

It is not listed in the CPSC proposal, but we recommend that the following standard be reviewed for possible inclusion:

[ANSI/SVIA 1–2017: American National Standard for Four Wheel All-Terrain Vehicles – Equipment, Configuration, and Performance Requirements](#)

The standard is apparently still current and the [Federal Government through the CPSC](#) has already recognized this standard in the past along with some of its testing methodologies.

ASSP believes that the CPSC should reconsider adoption of the appropriate American National Standard[s]. Our experience indicates that consensus standards will be developed and approved before a governmental regulation is finalized. In addition, our experience is that the consensus standards will continue to evolve while a federal standard will not. The end result will not be beneficial for safety or product innovation. This is not in any way meant to be a criticism of the regulatory process but is based on our decades of experience with coordination and synergy between regulation and voluntary national consensus standards.

Finally, if requested, ASSP stands ready to apprise our membership of this proposal since a number of our members have a significant interest in this proposal, and we believe the Society can proactively and positively contribute.

Thank you for your time and attention to our comments. If we can be of any assistance in this matter, please feel free to contact ASSP.

Respectfully,

Christine M. Sullivan, CSP, ARM  
2022-23 ASSP President



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# AMERICAN SOCIETY OF SAFETY PROFESSIONALS

## POSITION STATEMENT ON

## THE ROLE OF CONSENSUS STANDARDS AND GOVERNMENTAL

## REGULATIONS IN OCCUPATIONAL SAFETY AND HEALTH

**Approved by the ASSP Board of Directors  
August 25, 1995, Reaffirmed June 2008, and June 2011  
June 2018, Reaffirmed With ASSE/ASSP Name Change**

**POSITION STATEMENT ON THE ROLE OF CONSENSUS STANDARDS IN**





## **OCCUPATIONAL SAFETY AND HEALTH**

The utilization of national consensus standards will be of increased importance to this country as the economy of the United States moves towards more of a global perspective. National consensus standards reflect the opinions of the professionals who work at all levels of the public and private sectors in technology development, manufacturing, training, financial analysis, personnel, academia as well as insight from the final end user. This balanced insight enables standards to be crafted in a way which not only benefits and protects users of the standard, but also furthers the interests of the businesses which have been created to meet user demand.

ASSP supports the increased utilization of consensus standards in the formulation of legislation and regulation for occupation safety and health. Governmental agencies such as OSHA, CPSC, NHTSA, etc... should be encouraged to utilize these consensus standards as they provide an efficient/effective alternative to traditional public sector rule making.

### **Policy Implementation**

ASSP advocates initiatives to encourage the utilization of national consensus standards as an effective/efficient option for meeting the demand of increased regulation/legislation in occupational safety and health since:

- National consensus standards have fewer procedural burdens
- The consensus method provides for a balance between competing interests
- The voluntary nature of consensus standards enables users to adapt provisions to meet unusual circumstances.
- Much lower standards development cost are obtained.

(Supporting white paper enclosed)





## **WHITE PAPER ON THE ROLE OF CONSENSUS STANDARDS AND GOVERNMENTAL REGULATIONS IN OCCUPATIONAL SAFETY AND HEALTH**

### Preface

The American Society of Safety Professionals acknowledges a responsibility to take an active role in the evolution of national policy with respect to safety and health standards and regulations. At all times, and especially in times of political reform, there is a need for government to receive the counsel of the safety and health community with respect to standards development and promulgation.

As we review over three (3) decades of social legislation and its enforcement under EPA, OSHA, CPSC, etc., Congress and the professional safety and health community are again raising questions as to what the role of occupational safety and health standards and regulation should be. Some legislators have proposed a more comprehensive program of standards and enforcement. Others have maintained that the proper place for standards development and enforcement is within the national consensus standards-setting framework. Others have supported a performance-oriented approach to safety and health standards.

While this paper primarily focuses upon occupation safety and health standards and regulation, the positions set forth here can be applied generically to other regulatory areas. Essentially the uses of national consensus standards in the regulatory process, unless warranted by legislation already in place, should be pursued along the lines suggested in the various venues of this paper.

### Introduction

To obtain a legislative compromise one of whose objective was to avoid delays that were inevitable if regulations were developed under the provisions of the Administrative Procedure Act, the Occupational Safety and Health Act of 1970 required the newly formed Occupational Safety and Health Administration (OSHA) to promulgate safety and health regulations using existing nationally recognized consensus standards. While this action did serve the congressional intent of quickly establishing a set of regulations for OSHA to enforce, it also resulted in the adoption of hundreds of regulations that were of minimum value in protecting workers. Although OSHA has done much to eliminate such nuisance regulations, enforcement of regulations with questionable value in the 1970's resulted in resentment from industry that lingers even today.

Yet another problem in OSHA's rapid adoption of consensus standards as regulations was that advisory provisions of voluntary consensus standards became mandatory provisions of government regulations. In other words, not only was the voluntary standard made into a mandatory regulation, but many advisory provisions that used the word "should" were made into mandatory provisions when OSHA







replaced the word "should" with "shall." The result was that some regulations were, as a practical matter, impossible to fully comply with. Many OSHA regulations were changed to address such concerns, but the experience seems to have damaged OSHA's reputation and credibility.

These developments also impacted the conduct of consensus standards committees. Many committees revised standards to clarify the original intent of provisions, more explicitly addressed exceptions to general provisions, narrowed the scope of the standards or otherwise reacted to developments at OSHA. Even today, members of consensus standards committees look beyond conveying general principles and concepts and concern themselves with exceptions to the rule, adverse impact on specific industries, legal implications of standards, and the potential for misinterpretation. Thus, as a result of OSHA and other factors<sup>1</sup>, the development and maintenance of consensus standards related to occupational safety and health has become a much more complicated and demanding endeavor.

Given that OSHA regulations now exist and given the cost and complexity of developing and maintaining consensus standards, one may question the value of consensus standards activities. Should consensus standards be withdrawn if they cover areas also covered by OSHA regulations? If so, what would happen if OSHA is eliminated? If no, what value is the consensus standard providing? What role should consensus standards play in occupational safety and health? What functions must be reserved for regulation?

To the above end this paper examines the proper role of consensus standards and government regulation in occupational safety and health. After describing the role of consensus standards to occupational safety and health, this paper concludes with a description of policies of the American Society of Safety Professionals intended to enhance this role.

## Discussion

### The Value of Consensus Standards Generally

When compared to government regulation, consensus standards have several advantages, including the following:

- fewer procedural burdens,
- consensus method,
- voluntary nature allows users to adapt provisions to meet unusual circumstances,
- much lower development cost.

These advantages lead to authoritative documents that can be quickly developed and modified, appeal to common sense, are flexible in application, and are cost effective when compared to the federal regulatory process.





It is important to note that the concept of consensus and the input of most, if not all, materially interested parties is critical to the consensus system. Care must be exercised in the makeup and organization of consensus committees to assure the integrity of the process. Without these attributes the validity of a consensus standard is suspect.

### When Government Regulation is Required

As previously stated, the validity of consensus standards is based on achieving consensus among all materially interested parties. It follows that government regulation is probably necessary when consensus cannot be achieved in the voluntary standards process, or when the voluntary standards process does not receive input and consider the views of all materially interested parties.

Government regulation is also required when a higher level of validity or greater objectivity is required for enforcement. Such may be a watershed issue for industry as OSHA is legislatively and administratively reformed. If industry wants high objectivity (i.e., little or no discretion or interpretation by OSHA compliance officers), then detailed and comprehensive regulations must exist. On the other hand, if industry wants less regulation and greater flexibility, then industry should consider greater application of voluntary standards in enforcement decisions made by OSHA compliance officers using their professional judgment. Given the appeal provisions allowed under OSHA this trade off appears worthwhile.

A potential danger in increased use of consensus standards is that the process will become targeted by special interests. However, viewed another way, increased use, and application of consensus standards by OSHA will motivate increased participation in the consensus process and thereby increase the quality and validity of consensus standard related to occupational safety and health. While the "political" intensity of the process may increase, each party in the process will proceed with the understanding that (1) consensus does not require unanimity, and (2) failure to reach consensus may result in federal regulation.

### The Value of Consensus Standards in Areas Addressed by Government Regulations

A practical concern to resource-limited standards developers is the extent to which support should be continued for consensus standards in areas addressed by government regulation. Consensus standards related to safety and health are perceived as less acceptable when OSHA regulations address the same issue, but nevertheless provide the following benefits:

- consensus standards can provide a useful "how to" supplement to OSHA regulations,
- consensus standards can influence revisions to OSHA regulations,
- unlike OSHA, consensus standards can address off-the-job safety and health issue,





- consensus standards address new issues and incorporate updated scientific information quickly while OSHA proceeds with its rulemaking process,
- consensus standards can provide a valuable reference for safety and health evaluations in cases where OSHA regulations have become outdated.

### The Relationship Between OSHA Regulations and Consensus Standards

What the preceding discussion suggests is that a complementary relationship should exist between OSHA regulations and consensus standards. As a matter of policy, OSHA should take advantage of valid consensus standards and use them in enforcement, mindful of the fact that consensus standards are not written to address every foreseeable circumstance. OSHA will spend less money developing regulations, and armed with common sense, consensus standards, and reasonable discretion, OSHA compliance officers can do their job more effectively. For the consensus standards developer, OSHA regulation can provide an alternative to stalemate when consensus cannot be achieved. In addition, such action is also in accordance with the approved, reaffirmed, and revised Office of Management and Budget Circular A-119 Federal Participation in the Development and Use of Voluntary Standards (See Appendix B). For those almost unresolvable issues of standards setting, the ASSP recommends more use of the negotiated rulemaking option as critical safety and health standards need to be available.

### ASSP Supports Consensus Standard Alternatives to Federal Regulation

ASSP encourages support of consensus standards activities and processes as an alternative to government regulation of occupational safety and health whenever conditions permit. When compared to government regulation, consensus standard activities allow for greater participation by ASSP professionals in the development of safety and health practices. Also, since consensus standards do not profess to address every possible situation, ASSP professionals also have greater influence in the application and interpretation of consensus standards than they do with federal regulations.

### Implications for OSHA Reform

ASSP encourages support of OSHA reforms that foster the use of consensus standards in enforcement when a standard does not exist, is inadequate, or is obsolete/dated. For safety professionals/practitioners to realize greater opportunities to apply their professional skill and judgement, consensus standards must, in some sense, be authoritative. Without such authority, safety and health professionals may not have sufficient influence and resources to properly do their jobs. For consensus standards to be authoritative, OSHA must be able to routinely rely on provisions of consensus standards in enforcement.





Since national consensus standards do not contemplate every possible scenario, there exists a need for interpretation of the standards based upon professional judgement. When such standards are used in the regulatory enforcement process, federal/state agencies should rely primarily, although not exclusively, upon the view of those who wrote the standards. Facilitation of agency needs should be provided promptly in a collegial manner.

### ASSP's View of Government Regulation

While government regulation appears fundamental to safety/health standardization, it should, nevertheless, be efficient, participative, and centralized. The regulated community will more likely view these characteristics as a value-added process where they are encouraged to provide input. Having regulations developed centrally reduces the need for each jurisdiction to prepare their own standards. Having multiple standards bodies presents many difficulties for the regulated community that has facilities in many jurisdictions.

Standards need to be written for the regulated community to readily understand and implement. If standards were more clearly written, compliance directives would not be needed as an interpretation would be obvious. Standards often appear written more for ease of enforcement or to help the solicitors prevail in legal proceedings. Enabling legislation may be necessary, in this situation, to achieve the desired results.

These regulatory standards often have some requirements which have little to do with achievement of safety and health objectives. Some of this may result from OSHA's approach in writing standards in a one-size-fits-all style. These standards should require only what is necessary to achieve a reasonable reduction in risk. Layers of documentation and written certifications are often extras that add compliance burden with little safety/health accomplishment. If enabling legislation is needed to obtain these results, such action may be necessary.

- Standards, developed by OSHA or any agency, need a user panel review before they are published in final form. Enabling legislation or appropriate regulation may be required to obtain this result.
- Standards covering similar issues in the same Part or across different Parts of OSHA standards should have the same requirements unless the hazards are very different.
- OSHA should have an active process to review standards and update them on a five (5) year cycle after a period of experience in application to harmonize them with the more current consensus standards.
- The standards making/regulatory process should factor in a requirement to allow visits of sites/personnel in the regulated community at any time in the development of a standard to





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review how issues proposed or being developed for regulation are currently being managed and the costs of managing these issues.

The above features should be put forth or considered as desirable tasks of rule-making when legislators or regulators move toward development of such regulatory standards.

### Conclusion

The ASSP supports a complementary relationship between OSHA regulations and consensus standards related to occupational safety and health which uses valid consensus standards enforcement, mindful of the fact that consensus standards are not written to address every foreseeable circumstance. ASSP points out that action of this nature may empower and enhance the professional stature of both ASSP members and OSHA compliance officers. Most importantly, such action will allow for a more efficient and responsive use of occupational safety and health resources thereby improving working conditions.

To further set in place the Society's view of national consensus standards per se Appendix A is provided. This policy position was approved by the Board of Directors on March 5, 1990. In essence the position looks at consensus voluntary standards apart from regulations while covering the range of issues involved in effectively participating in the uniquely American system of standards making.

