



Putting the Brakes on CPSC Overreach of Off-Road Vehicles

By Erik Pritchard, president and CEO of ROHVA, as published in [DC Journal](#), [Arizona Daily Star](#), [Omaha Star](#), Wyoming's [Douglas Budget](#).

Regulators at the Consumer Product Safety Commission have lost their way. The agency is responsible for 15,000 consumer products, from children's toys to gas stoves, and should focus on policing product defects and hidden hazards. Instead, CPSC has taken up a new cause — granting itself powers that Congress expressly withheld — to no one's benefit but CPSC's.

Under federal law, the CPSC can engage in rulemaking to prevent or reduce an unreasonable risk of injury but must withdraw when voluntary, non-governmental safety standards adequately address an identified hazard. Voluntary standards are established by consensus among all stakeholders interested in a product — government agencies, industry groups and consumer organizations. However, the CPSC has lost interest in collaboration and pulled back from its engagement with industry on these common and effective alternatives to government regulation.

Consider the CPSC's recent debacles. In October, the U.S. Court of Appeals for the D.C. Circuit unanimously ruled in favor of manufacturers to vacate CPSC's unjustified rulemaking for custom window coverings. The court held that CPSC failed to disclose factual material that might be used to question its rulemaking, conducted an incomplete and erroneous cost-benefit analysis, and was unable to justify the rule's onerous effective date.

Undaunted by the court's rebuke, the CPSC continues disregarding the legitimate role of voluntary standards development. The CPSC is now fixated on off-highway vehicles and rare "debris penetration" incidents. The industry addressed this issue through a multi-year effort that included the CPSC staff's participation and input. Nevertheless, the CPSC's appointed commissioners dismissed their staff's work and intended to publish a rule inferior to existing safety standards.

Thankfully, the Senate has a bipartisan effort to get some answers. Senators Joe Manchin of West Virginia, a Democrat, and Republicans Deb Fischer of Nebraska, John Barrasso and Cynthia Lummis of Wyoming, Ted Budd of North Carolina, and Jim Risch of Idaho have written a letter to CPSC stating the agency issued its proposed rule without sufficient evidence of risk to consumers and without regard to its adverse economic consequences. They asked the CPSC to withdraw the rulemaking.

“We have serious concerns regarding the rulemaking process and the substance of the proposed debris penetration rule. Moreover, we are concerned about the effect the rule would have on the availability of off-highway vehicles and on the economic footprint of the power sports industry,” the senators wrote.

Off-highway vehicles are used in every region of the country by farmers, small businesses, public land managers, the Forest Service, law enforcement, fire and emergency services, and the U.S. military, and by millions of American families who enjoy access to the great outdoors. If CPSC is allowed to issue its rule, Off-highway vehicle production will halt. New vehicles will not be available at any price. Small businesses employing 73,000 Americans will face financial harm or closure.

Finally, take note of the commission’s disingenuous effort to eliminate its regulations governing public disclosure of unfounded consumer complaints. Congress enacted “due process” mechanisms to limit such attacks 40 years ago. But the CPSC doesn’t like limits on its powers and seeks a way around the law. This is much bigger than any one industry.

Wasting taxpayer money on frivolous rulemaking and litigation, and subverting the will of Congress, is unacceptable. Using bogus rulemaking to acquire power outside congressional oversight must be stopped.