



AMERICAN SOCIETY OF
SAFETY PROFESSIONALS

April 11, 2024

U.S. Department of Transportation
Dockets Management Facility
1200 New Jersey Avenue SE
Washington, DC 20590

ASSP Technical Comments Addressing DOT Highway Safety Improvement Program

Agency: U.S. Department of Transportation
Date: Federal Register; February 21, 2024
Agency/Docket Number: Docket No. FHWA-2023-0045
Topic: Highway Safety Improvement Program

Per the February 2024 Federal Register announcement, we submit the following information to address this request:

The purpose of this notice of proposed rulemaking (NPRM) is to update the Highway Safety Improvement Program (HSIP) regulations to address provisions in the Infrastructure Investment and Jobs Act (IIJA) (also known as the “Bipartisan Infrastructure Law” (BIL)) and reflect current priorities and state-of-practice. Specifically, FHWA proposes to amend the regulatory language to incorporate the Safe System Approach, clarify the scope of the HSIP to focus on the safety of all road users on the entire public road network, improve evaluation practices, streamline reporting efforts, and ensure States are collecting Model Inventory of Roadway Elements (MIRE) fundamental data elements. The proposed changes would clarify provisions regarding the planning, implementation, evaluation, and reporting of HSIPs that are administered in each State. These changes would further strengthen and advance the safety and equity priorities of the DOT National Roadway Safety Strategy (NRSS) and assist States with making safety gains designed to eliminate fatalities and serious injuries on the Nation's roads.



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ASSP Background

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

Technical Insights

Response from the members of our Transportation Practice Specialty noted their support of this call for comments and data via this *Notice of proposed rulemaking (NPRM)*.

General Technical Comments and Insights

ASSP had a significant number of comments from our members following a review of this proposal. Our overall comment is that this is a good direction for transportation safety. We also received comments from ASSP members noting:

- ✓ We noted that there is a reorganization, rewording and redefining of terms related to this legislation/program. These changes do not change the technical aspects of the initiative, but the clarifications make the intent of the legislation easier to understand.
- ✓ As the benefits of roundabouts are becoming more apparent and more of these intersections are being installed across the U.S., all new roundabouts should be designed for all forms of vehicular traffic where practical and/or space allows. Specifically, designs to accommodate large vehicles whenever possible in order to reduce the number of crashes in (and related to) these intersections, especially on designated truck routes or routes often used by trucks. In addition to improved designs, there should be an increased emphasis on training all drivers regarding driving/maneuvering safely through these intersections.
- ✓ All states & municipalities should (at the very least) paint all new or re-paint all existing highways/roadway lines and markers with high visibility paint on a regular basis. Doing this simple improvement would allow human drivers as well as non-human artificial intelligence [A.I.] drivers/vehicles and vehicle Advanced Driver Assistance Systems (ADAS) better visibility to make decisions and lessen confusion regarding navigating roadways safely, especially in low light/low visibility situations.
- ✓ All new roadways and existing roadways that will/do experience a large volume of “non-motorized/vulnerable road user” traffic should make allowances for designated access lanes (where possible) in order to safely accommodate these vehicles which are becoming more popular





(e.g.: electric bikes) as a primary means of personal transportation. If more designated well-marked lanes were available on more roadways, then the use of these types of vehicles would most likely increase which would be beneficial to everyone and the environment.

- ✓ Several ASSP members also commented that a shortage of law enforcement officers and/or enforcement technologies (ex. stationary driverless enforcement vehicles) could also be one of the underlying causes of increased negative driving behavior which often leads to crashes/fatalities on our nation's highways. Data and information we have seen indicates that motorists react positively and drive more compliantly/safely when enforcement efforts are underway on any given roadway. Since the shortage of law enforcement personnel could be a problem, the use of more driverless enforcement vehicles/devices/technologies could potentially allow enforcement agencies to increase their enforcement footprint without increasing the size of their staffs.
- ✓ ASSP has a position statement on distracted driving. We would encourage initiatives and programs to help prevent distracted driving. The ASSP position statement is:

Distracted driving is defined as any activity that could divert the driver's attention away from the primary task of driving. ASSP recognizes the risks to drivers and others from distracted driving and believes it is the responsibility of every driver to follow all applicable laws and regulations. ASSP promotes the establishment of policies, programs, practices, and regulations that promote safe driving.

Consensus Standards

As an advocate for workplace safety and OSH professionals, ASSP understands the importance of leading the discussion and evolution of voluntary safety standards. ASSP is the secretariat for 11 American National Standards Institute (ANSI) committees responsible for more than 100 safety standards. ASSP's role in the standards development process is to organize the committees and ensure the standards are developed, revised and published in a timely manner and in accordance with ANSI procedures.

ASSP has the following occupational [safety and health standards committees](#):

- ✓ Construction & Demolition Operations (A10)
- ✓ Walking/Working Surfaces (A1264)
- ✓ Ventilation Systems (Z9)
- ✓ Safety and Health Metrics (Z16.1)
- ✓ Fleet/Motor Vehicles (Z15)
- ✓ Confined Spaces (Z117.1)
- ✓ Lockout, Tagout and Alternative Methods (Z244.1)
- ✓ Fall Protection and Fall Restraint (Z359)



- ✓ Hydrogen Sulfide Training (Z390.1)
- ✓ OSH Training (Z490)
- ✓ Overall OSH [Z590]
- ✓ OSH Management (Z10; ISO 45001)
- ✓ Risk Management (ISO 31000)

ASSP suggests the following regarding our applicable voluntary national consensus standards, which warrant review and inclusion as references:

[ANSI/ASSP Z15.1-2017 Safe Practices for Motor Vehicle Operations](#)

Scope: The purpose of this standard is to provide organizations with a document for the development of policies, procedures and management processes to control risks associated with the operation of motor vehicles. It has been developed to assist organizations in defining and developing an effective safety and risk management program.

[ASSP TR-Z15.3-2019 Technical Report: Management Practices for the Safe Operation of Partially and Fully Automated Motor Vehicles](#)

Scope: This technical report describes practices for the safe management and operation of partially and fully automated motor vehicles (Levels 1-5, as defined in SAE J3016) that are (a) owned or operated by organizations in the private, public and non-governmental sectors and (b) used for organizational business. It supplements ANSI/ASSP Z15.1, Safe Practices for Motor Vehicle Operations, which is a comprehensive fleet safety management standard.

[ANSI/ASSP Z590.3-2021 Prevention through Design Guidelines for Addressing Occupational Hazards and Risks in Design and Redesign Processes](#)

This standard provides guidance on including prevention through design concepts within an occupational safety and health management system. Through the application of these concepts, decisions pertaining to occupational hazards and risks can be incorporated into the process of design and redesign of work premises, tools, equipment, machinery, substances, and work processes including their procurement, construction, manufacture, use, maintenance, and ultimate disposal or reuse. This standard provides guidance for a life-cycle assessment and design model that balances environmental and occupational safety and health goals over the life span of a facility, process, or product.





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Conclusion

Of interest, we have spoken with many of our members who work in the transportation industry. We are aware from their feedback that there is significant interest in this proposal relating to the implementation of enhanced safety on highways.

We also included our position statement addressing the use of voluntary national consensus standards in the regulatory process.

Thank you for your time and attention to our comments. If we can be of any assistance in this matter, please let us know.

Respectfully Submitted,

James R. Thornton, CSP, CIH, FASSP
2023-24 ASSP President

ASSP Headquarters Contact Information

Timothy R. Fisher, CSP, CHMM, CPEA, ARM, FASSP
Director, Standards Development and Technical Services
American Society of Safety Professionals
ASSP External Relations
520 N. Northwest Highway
Park Ridge, IL 60068
TFisher@ASSP.Org; 847/768-3411

Sue Trebswether
Director, Marketing/Communications
American Society of Safety Professionals
ASSP External Relations
520 N. Northwest Highway
Park Ridge, IL 60068
STrebswether@ASSP.Org
847/768-3433





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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 factors¹, 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 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 effective participating in the uniquely American system of standards making.

