



AMERICAN SOCIETY OF
SAFETY PROFESSIONALS

November 22, 2022

U.S. Department of Transportation
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Training, Qualification, and Oversight for Safety-Related Railroad Employees

Agency: Federal Railroad Administration
Date: Federal Register; October 3, 2022
Agency/Docket Number: [Docket No. FRA–2020–0017, Notice No. 1]
RIN 2130–AC87
Regulation: 49 CFR Part 243
Topic: Training, Qualification, and Oversight for Safety-Related Railroad Employees

Per the October 2022 Federal Register announcement, we submit the following information to address this request:

In response to petitions for rulemaking, FRA proposes amending its regulation on Training, Qualification, and Oversight for Safety-Related Railroad Employees (Training Rule) to codify agency guidance and clarify existing requirements.

ASSP Background

[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 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 is supportive that the rule warrants additional review and potential clarifications.



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Comments from our members indicate the following:

- ✓ Clarification on where FRA regulatory impact transcends the U.S. Occupational Safety and Health Act. While our members have a good understanding of the synergy between OSHA and the FRA, having additional written clarification can assist in communication with stakeholders.
- ✓ Several members commented the current rule does not fully address the issue of hazardous materials training, which ought to be considered for some form of inclusion in this proposal so that training requirements are in one spot. As an example, FRA could consider including the requirements of CFR Part 174 (Carriage by Rail) into this section. We do know from member insight that some federal rail lines seem to be lacking in hazmat knowledge.

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)

We recommend that the FRA consider reviewing these two American National Standards for inclusion as references. If the FRA is interested in reviewing these standards, please let ASSP know and we will be pleased to provide copies of the standard for review by FRA personnel.





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[ANSI/ASSP Z490.1-2016 Criteria for Accepted Practices in Safety, Health and Environmental Training](#)

Scope: *This standard establishes criteria for safety, health and environmental training programs, including program management, development, delivery, evaluation and documentation.*

[ANSI/ASSP Z10.0 - 2019 Occupational Health and Safety Management Systems](#)

Scope: *This standard provides a management tool to improve performance, provide safe workplaces and reduce the risk of occupational injuries, illnesses and fatalities.*

Of interest, we have spoken with many of our members who work in the railroad industry. We are aware from their feedback that there is significant interest in the railroad industry relating to the implementation of safety management systems and impact on employees and contractors operating rail systems. We think this is important since much railroad safety has historically been focused on passenger safety. Clarity and application of this rule could potentially benefit rail employees and contractors who are involved in car renovation, maintenance work, supervision, etc....

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,

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2022-23 ASSP President

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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.

