

Petition to the US Occupational Safety and Health Administration Requesting a Standard for Motor Vehicle and Traffic Safety

7/14/2002

Honorable John Henshaw
Assistant Secretary for Occupational Safety and Health
U.S. Department of Labor
Occupational Safety and Health Administration - Room S2315
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Henshaw:

The Rhode Island Committee on Occupational Safety and Health, a non profit occupational and environmental health resource center, and the Rhode Island Workers' Rights Board, Jobs for Justice, hereby petition the Occupational Safety and Health Administration (OSHA) to develop and implement a regulation on motor vehicle and traffic safety which rank among the primary causes of work related deaths and injuries in this country. The petitioners request the Assistant Secretary to exercise statutory authority under section 3(8) of the Occupational Safety and Health Act.

On Nov 19th, 2001, Rosa Ruis Barrera, a 22 yr old Guatemalan mother of three was killed when the van carrying workers from several fish processing companies in Narragansett RI overturned. These vans were subcontracted by the temp services to supply labor to these companies. Over the past few years temp agency transport of workers has become a safety issue for immigrant worker rights groups; complaints about the operational safety of vehicles and driving behavior were foremost. Temp agencies that specialize in providing immigrant workers often subcontract the transportation of these workers to independent drivers. It is unclear who is the responsible employer. Any obligation, however minimal, to provide safe transport is evaded.

OSHA has had little active role in investigating the majority of occupationally related motor vehicle accidents (outside construction) even though from 1980 to 1992, motor vehicle crashes were the leading cause of work-related deaths in U.S. Motor vehicles accounted for almost 24%

of all recorded occupational fatalities from 1980 to 1997, nationwide. According to the National Safety Council over 1300 of all recorded 6213 occupational fatalities reported in 1997 alone were highway accidents. And in 1995 there were over 89,000 non-fatal injuries involving motor vehicles. According to data developed by Eastern Research group for OSHA in 1990, approximately 2,100 fatalities and 91,000 lost workday accidents due to job related motor vehicle accidents occur each year.

Many workers are killed and injured when they are struck *while working on roadways*. Over 400 workers were killed from 1992 to 1998 while doing road and bridge repair and maintenance. During the 5-year period between 1995 and 1999 17 firefighters were struck and killed by motorists while providing emergency services along roadways. The New Mexico Attorney General has determined that design flaws in gas tanks of police vehicles are the cause of several fatalities among public safety personnel.

OSHA and Traffic Safety

OSHA is not without experience in the domain of this petition. Certain Occupational Safety and Health Administration regulations do address the safe operation of motor vehicles in particular occupational settings. OSHA does have specific standards regulating motor vehicles on construction sites 1926.601 and 1926 Part W, and for general industry. OSHA also has a standard for industrial trucks (forklifts). 1910.178

OSHA did inaugurate the standard setting process for a generalized motor vehicle safety rule in 1990. But after the publication of an announcement no further movement was observed. (And, the proposed rule was limited to training and use of occupant safety features. While safety restraints do represent an effective control they are one among several methods of control, and they are not sufficient. NIOSH determined that 13% of 2,158 motor vehicle fatalities they examined restraints had been used.)

A comprehensive OSHA proposal must address standard engineering and administrative controls such as mandates for purchasing occupant safety features, vehicle maintenance, work practices related to driving, i.e. fatigue. An increasing body of sustained work has- - and is- -evaluating links between shift work, hours of work, fatigue and traffic accidents (1.)

Various NIOSH publications and recommendations have now covered this terrain and offer a more appropriate and generalized framework to deal with motor vehicle and traffic safety as an occupational safety and health issue.

- ❑ ***Preventing Worker Injuries and Deaths from Traffic-Related Motor Vehicle Crashes*** July 1998 DHHS (NIOSH) Publication No. 98-142
- ❑ ***Traffic Hazards to Fire Fighters While Working Along Roadways***, DHHS (NIOSH) Publication No. 2001-143
- ❑ ***Building Safer Highway Work Zones*** NIOSH 2001-28

The National Safety Council has provided guidance on fleet safety, maintenance, and upkeep. Fleet Safety Program, ***Accident prevention Manual for Business and Industry***.

Other federal agencies have developed a variety of traffic related regulations.

- **The U.S. Department of Transportation** has requirements relating to the safe operation and equipment for commercial motor carriers under 49 CFR 350-399: Some specific requirements that could be suitably adopted to an OSHA rule include:
 - Drivers shall not operate a commercial motor vehicle while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle [49 CFR 392.3].
 - Motor carriers shall not schedule a run nor permit nor require the operation of any commercial motor vehicle between points in such period of time as would necessitate the commercial motor vehicle being operated at speeds greater than those prescribed [49 CFR 392.6].
 - Commercial motor vehicles shall not be driven unless the driver is satisfied that all parts and accessories are in good working order [49 CFR 392.7].
 - A commercial motor vehicle that has a seat belt assembly shall not be driven unless the driver is properly restrained with the seat belt assembly [49 CFR 392.16].
 - Commercial motor vehicle operators must comply with the maximum driving and on-duty time as set forth by 49 CFR 395.3(a)-(b), which gives definition to appropriate configuration of consecutive driving and off-duty hours.

➤ The National Highway Traffic Safety Administration **NHTSA**

The NHTSA (also under the U.S. Department of Transportation) is responsible for setting and enforcing safety performance and use standards for motor vehicle equipment under 49 CFR 500599. These standards concern vehicles manufactured in the United States. **NHTSA** also sets and enforces safety standards to ensure that motor vehicles and motor vehicle equipment imported into the United States measure up to current Federal motor vehicle safety standards.

NHTSA and the FHWA Office of Motor Carriers are responsible for overseeing State-sponsored or-conducted education and enforcement activities.

The 1990 OSHA proposal on vehicle safety was limited to the use of safety restraints and training. As we can see from the NIOSH documents and the FHWA and NHTSA rules, an appropriate OSHA standard must be broader.

In recent years research on the causes of traffic related accidents had moved beyond the issue of the wearing of restraints. (1) NIOSH found over 200 traffic fatalities that occurred even though restraints were in use. The litigation between Ford Motor and Firestone regarding tire safety and its relations to vehicle safety performance compels a new appraisal by OSHA of its original constraints within the 1990 proposal to address a range of traffic safety issues.

Fatigue plays a major role in worker safety in many occupations, and none more so than in transportation. The National Transportation Safety Board (NTSB), the federal agency responsible for investigating transportation accidents, issued a set of recommendations in 1989 to DOT to “modify the appropriate Codes of Federal Regulations to establish scientifically based hours-of-service regulations that set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human sleep and rest requirements.”

There has been halting progress but nonetheless a substantial body of research has accumulated (and is ongoing) which may serve OSHA well in the development of a motor vehicle rule.

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Petitioners' Request

OSHA promulgate a comprehensive Motor Vehicle Safety standard.

Elements of a OSHA Motor Vehicle standard

{ } Regarding motor vehicles:

- Provide vehicles with seat belts for the driver and every passenger, and require their use
- Establish schedules that allow drivers enough time to obey speed limits and that limit drivers' hours of service to prevent fatigued driving.
- Train drivers in safe driving practices and the proper use of vehicle safety features.

Regarding Vehicle performance and maintenance

- Establish procedures to ensure proper maintenance of all vehicle systems in line with manufacturers' recommended schedules. All such maintenance should be documented in writing.
- A written safety checklist should be performed at the start of each shift by a supervisor before allowing an employee to take possession of the vehicle
- Right for drivers to refuse to operate any vehicle they believe to be unsafe or not properly maintained without fear of discrimination, loss of pay or any other job related benefits.
- Newly purchased vehicles be equipped with appropriate occupant protection and other safety features.
- Establish schedule to retrofit older vehicles to meet current vehicle safety features

Requirements would extend to any subcontracted entity that an employer engages.

➤ **Protection of workers construction/road maintenance zones or performing public safety work:**

- Develop and implement a formal traffic control plan for work zone safety
- Workers provided and wear high-visibility clothing.
- Use assorted barriers, traffic calmers, and traffic controls when working on or near public roads

The petitioners mutually recognize that OSHA cannot position itself as the sole arbiter of all traffic safety issues, that state and national agencies, like NTSB, play key roles. But, given the data relating to work related traffic safety, OSHA cannot continue to play *no role*. OSHA must make an entrance in the play, and become part of the supporting cast that aims to lower the toll of death and injury on our nation's roadways. Thus, this petition.

Sincerely,

James Celenza

RI Committee on Occupational Safety and Health

741 Westminster St Providence RI 02903

Mathew Jerzyk

Workers Rights Board,

Jobs with Justice

278 Westminster St Providence RI 02903

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