



VOSH PROGRAM DIRECTIVE: 02-399

SUBJECT: Chocking of Tractor Trailer under the Powered Industrial Truck Standard

A. Purpose.

This directive transmits to field personnel policies to ensure proper enforcement of §1910.178(k)(1) and 1910.178(m)(7).

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

B. Scope.

This directive applies to all VOSH personnel, and specifically to Occupational Safety Compliance and Consultation Services personnel.

C. Reference.

OSHA Instruction CPL 2-1.30 (October 19, 1999)

D. Cancellation.

Not Applicable.

E. Action.

The Chief Deputy Commissioner, Directors and Managers shall assure that the guidelines in this Directive are followed to ensure uniform enforcement of §1910.178(k)(1) and 1910.178(m)(7).

F. Effective Date.

August 15, 2000

Jeffrey D. Brown

Commissioner

Attachment: OSHA Instruction CPL 2-1.30 (October 19, 1999)

https://www.osha.gov/OshDoc/Directive_pdf/CPL_2-1_30.pdf

Distribution: Commissioner of Labor and Industry
Chief Deputy Commissioner
Directors and Managers
VOSH Compliance Staff
Cooperative Programs Staff
Legal Support Staff
OSHA Regional Administrator, Region III

When the guidelines, as set forth in this Program Directive, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms if, and where they are used, shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Regional Administrator

Commissioner of Labor and Industry

Area Director

Regional Director

Regional Solicitor

Attorney General or VOSH Office of Legal Support (OLS)

Agency

Department

Office of Statistics

VOSH Research and Analysis

Compliance Safety and Health Officer (CSHO) and/or Industrial Hygienist

CSHO

Field Inspection Reference Manual (FIRM)

VOSH Field Operations Manual (FOM)

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XI. Purpose. This instruction establishes policy to insure proper enforcement of 29 CFR §1910.178(k)(1) and §1910.178(m)(7).

II. Scope. This instruction applies OSHA-wide.

III. Cancellation. OSHA Instruction STD1-11.5 is canceled.

IV. References.

OSHA Instruction CPL 2.103, Field Inspection Reference Manual (FIRM), September 26, 1994.

29 C.F.R. §1910.178(k)(1) (Trucks and Railroad Cars) and §1910.178(m)(7) (Truck Operations (Brakes)).

49 C.F.R. §393.5, §393.40 (Required Brake Systems) and §393.41 (Parking Brake Systems).

SECRETARY OF LABOR v. MUSHROOM TRANSPORTATION COMPANY, INC., 1 BNA OSHC 1390, 1973-74 CCH OSHD 16,881 (OSAHRC Docket No. 1588, November 7, 1973).

V. Action Information.

A. Responsible Office. Directorate of Compliance Programs (DCP).

B. Action Offices. National, Regional, and Area Offices.

C. Information Offices. State Designees, Consultation Project Managers.

VI. Federal Program Change. This instruction describes a Federal program change for which State adoption is not required.

NOTE: In order to effectively enforce safety and health standards, guidance to compliance staff is necessary. Therefore, although States are not necessarily subject to the same jurisdictional limitations as OSHA and adoption of this instruction is not required, States are expected to have appropriate enforcement policies and procedures in place which are at least as effective as those of Federal OSHA.

VII. Definitions.

A. Agricultural commodity trailer. A trailer that is designed to transport bulk agricultural commodities at off-road harvesting sites and to a processing plant or storage location, as evidenced by a skeletal construction that accommodates harvest containers, a maximum length of 28 feet, and an arrangement of air control lines and reservoirs that minimizes damage in field operations.

B. Commercial Motor Vehicle. A self-propelled or towed vehicle used on the highways in interstate commerce if the vehicle has one or more of the following characteristics:

1. A gross vehicle weight rating or gross vehicle weight of a least 10,001 pounds.
2. Designed or used to transport more than 8 passengers (including the driver) for compensation.
3. Designed or used to transport more than 15 passengers (including the driver) not for compensation.
4. Used in transporting hazardous materials in a quantity requiring placarding under DOT regulations. See 49 U.S.C. §31132(1).

NOTE: This definition of “commercial motor vehicle” is similar to the definition of that term for the Surface Transportation Assistance Act (STAA) Whistleblower program (49 U.S.C. §31101 and §31105), but different from it with respect to passengers. The definition in §31132(1), which governs the DOT Office of Motor Carrier Safety program, should be kept in mind with respect to all Section 4(b)(1) questions involving commercial motor vehicles.

C. Heavy hauler trailer. A trailer with one or more of the following characteristics:

1. Its brake lines are designed to adapt to separation or extension of the vehicle frame; or
2. Its body consists only of a platform whose primary cargo carrying surface is not more than 40 inches above the ground in an unloaded condition, except that it may include sides that are designed to be easily removable and a permanent “front-end structure” as defined in Appendix A.

D. Pulpwood trailer. A trailer that is designed exclusively for harvesting logs or pulpwood and constructed with a skeletal frame with no means for attachment of a solid bed, body, or container, and with an arrangement of air control lines and reservoirs designed to minimize damage in off-road operations.

VIII. Application. These standards apply to all industries except agricultural operations.

IX. Background.

A. On November 7, 1973 the Occupational Safety and Health Review Commission rendered a decision that the Department of Labor is preempted from the enforcement of 29 CFR §1910.178(k)(1), which requires the setting of truck brakes and the chocking of wheels while the trucks are boarded by powered industrial trucks, by the Department of Transportation (DOT) regulation at 49 CFR §392.20. The Commission held that OSHA was preempted because 49 CFR §392.20 represented a sufficient “exercise” of DOT regulatory powers under Section 4(b)(1) of the OSH Act, covering essentially the same working conditions as the OSHA standard.

- B. The decision also prevented the enforcement of 29 CFR §1910.178(m)(7) to a large extent. The first part of that standard states, “Brakes shall be set and wheel blocks shall be in place to prevent movement of trucks, trailers or railroad cars while loading or unloading. Fixed jacks may be necessary to support a semitrailer during loading or unloading when the trailer is not coupled to a tractor.” Thus, the standard is similar in scope to 29 CFR §1910.178(k)(1).
 - C. However, the Commission stated that the DOT parking brake system rules at 49 CFR §393.40 and .41 did not bring the Section 4(b)(1) exception into play, as neither of these sections is meant to afford safety protection for forklift operators and terminal employees.
 - D. On October 30, 1978, OSHA issued Directive STD 1-11.5, which stated that 1910.178(k)(1) and 1910.178(m)(7) should not be enforced as they apply to trucks and trailers under the Motor Carrier Act (motor carriers engaged in interstate commerce).
 - E. On June 18, 1998 the Office of Motor Carrier Safety, Federal Highway Administration, rescinded Section 392.20 effective July 20, 1998.
- X. Citation Guidance. In light of the rescinding of Section 392.20, OSHA will enforce the requirements of 1910.178(k)(1) and 1910.178(m)(7) for trucks and trailers, except for agricultural commodity trailers, heavy haulers, and pulpwood trailers. The reason for this exception is that DOT rules, i.e., §393.41, continue to deal with the chocking of these vehicles.

However, regardless of these exceptions for agricultural commodity trailers, heavy haulers, and pulpwood trailers, failure to meet the requirements of 1910.178(k)(1) and 1910.178(m)(7) for these trailers may be cited in circumstances where the vehicle is not a “commercial motor vehicle” for the purposes of DOT jurisdiction. Furthermore, any

employer may be cited for failure to meet .178(k)(1) and .178(m)(7) with respect to trucks or trailers that it does not own, operate, or lease.

APPENDIX A

49 CFR § 393.106 FRONT-END STRUCTURE

TITLE 49--TRANSPORTATION

PART 393--PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Subpart I--Protection Against Shifting or Falling Cargo

Sec. 393.106 Front-end structure.

(a) General rule. (1) Except as provided in paragraph (g) of this section, every cargo-carrying motor vehicle must be equipped with a headerboard or similar device of sufficient strength to prevent load shifting and penetration or crushing of the driver's compartment.

(2) On and after the effective dates specified in paragraph (h) of this section, every cargo-carrying motor vehicle must have a front-end structure that conforms to the rules in this section.

(b) Location. The front-end structure must be located between the vehicle's cargo and the vehicle's driver.

(c) Height and width. The front-end structure must extend either to a height of 4 feet above the floor of the vehicle or to a height at which it blocks forward movement of any item of cargo being carried on the vehicle, whichever is lower. The front-end structure must have a width which is at least equal to the width of the vehicle or which blocks forward movement of any item of cargo being transported on the vehicle, whichever is narrower.

(d) Strength. The front-end structure must be capable of withstanding the horizontal forward static load specified in either paragraph (d)(1) or (2) of this section.

(1) For a front-end structure less than 6 feet in height, a horizontal forward static load equal to one half ($\frac{1}{2}$) of the weight of the cargo being transported on the vehicle uniformly distributed over the entire portion of the front-end structure that is within 4 feet above the vehicle's floor or that is at or below a height above the vehicle's floor at which it blocks forward movement of any item of the vehicle's cargo, whichever is less.

(2) For a front-end structure 6 feet in height or higher, a horizontal forward static load equal to four-tenths (0.4) of the weight of the cargo being transported on the vehicle uniformly distributed over the entire front-end structure.

(e) Penetration resistance. The front-end structure must be designed, constructed and maintained so that it is capable of resisting penetration by any item of cargo that contacts it when the vehicle decelerates at a rate of 20 feet per second per second. The front-end structure must have no aperture large enough to permit any item of cargo in contact with the structure to pass through it.

(f) Substitute devices. The requirements of this section may be met by the use of devices performing the same functions as a front-end structure, if the devices are at least as strong as, and provide protection against shifting cargo at least equal to, a front-end structure which conforms to those requirements.

(g) Exemptions. The following motor vehicles are exempt from the rules in this section:

(1) A vehicle which is designed and used exclusively to transport other vehicles, if each vehicle it transports is securely tied down by devices that conform to the requirements of Sec. 393.102.

(2) A pole trailer or semitrailer being towed by a truck tractor that is equipped with a front-end structure that conforms to the rules in this section.

(3) A full trailer being towed by a vehicle that is equipped with a front-end structure that conforms to the requirements of this section for a front-end structure.

(4) A full trailer being towed by a vehicle that is loaded in such a manner that the cargo on the towing vehicle conforms to the requirements of this section for a front-end structure.

(5) The rules in paragraphs (d) and (e) of this section do not apply to a motor

vehicle manufactured before January 1, 1974.

(h) *Effective dates.* Cargo-carrying motor vehicles which are not exempted by paragraph (g) of this section must conform to the rules in this section as follows:

<i>If the vehicle was manufactured--</i>	<i>It must conform to the rules in paragraph -</i>	<i>On and after--</i>
<i>Before Jan. 1, 1974</i>	<i>(a), (b), and (f).</i>	<i>October 1, 1973 or the date it was manufactured, whichever is later.</i>
<i>Before Jan. 1, 1974</i>	<i>(c)</i>	<i>January 1, 1975.</i>
<i>On or after Jan. 1, 1974</i>	<i>(a) through (f) inclusive.</i>	<i>The date it was manufactured.</i>

Paragraphs (d) and (e) of this section do not apply to a motor vehicle that was manufactured before January 1, 1974.

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