



VOSH PROGRAM DIRECTIVE: 06-201

ISSUED: March 1, 2005

SUBJECT: Use of 1910.132(a) and 1926.95(a) to Require Use of Seat Belts in General Industry and Construction Vehicles Potentially Subject to Tip over Due to Operational or Workplace Hazards

A. Purpose.

This directive transmits to field personnel the interpretation of sections 1910.132(a) and 1926.95(a) to require the use of seat belts during the operation of general industry and construction vehicles. This interpretation includes, but is not limited to, motorized vehicles covered under sections 1926.601 and 602, 1910.178, and other construction or general industry vehicles which present the same hazard of potential tip over due to either method of operation or the presence of workplace hazards.

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.

C. Reference.

Occupational Safety and Health Review Commission (OSHRC) case law (see page 5).

Occupational Safety and Health Administration (OSHA) Directive CPL 2-1.28A, Compliance Assistance for the Powered Industrial Truck Operator Training Standards.

OSHA Interpretation from Richard E. Fairfax, Director, Directorate of Compliance Programs, OSHA, dated March 8, 2002 entitled, "Clarification of PIT requirements covering: fall protection and safety platforms, seatbelts, LP-gas storage, smoking, and eye wash stations."

D. Cancellation.

Not Applicable.

E. Action.

The Commissioner, Directors and Managers shall ensure that the procedures established in this directive are adhered to in inspections involving the operation of general industry and construction vehicles including, but not limited to, motorized vehicles covered under sections 1926.601 and 602, 1910.178, and vehicles of similar make and use which present the same hazard of potential tip over due to either method of operation or the presence of workplace hazards.

This directive applies to:

1. Closed cab vehicles such as dump trucks which are provided with original equipment seat belts from the manufacturer or as a dealer installed option, but may not be provided with a traditional roll over protective system (ROPS); and
2. All other general industry or construction vehicles that have been provided with seat belts from the manufacturer or as a dealer installed option and ROPS.

If the original equipment seat belts, provided by the manufacturer or as a dealer installed option, have been removed or damaged, sections 1910.132(a) or 1926.95(a) shall be cited for the employer's failure to "provide" seat belts.

If the vehicle was never supplied with seat belts by the manufacturer or as a dealer installed option, VOSH may cite an employer for the lack of seatbelt use when VOSH can document that an employer has been specifically notified about and offered a retrofit program by the manufacturer but has not retrofitted an applicable powered industrial truck. The decision to issue a citation will be made on a case-by-case basis. *[NOTE: Reference OSHA interpretation from Richard E. Fairfax, Director, Directorate of Compliance Programs, OSHA, dated March 8, 2002 entitled, "Clarification of PIT requirements covering: fall protection and safety platforms, seatbelts, LP-gas storage, smoking, and eye wash stations."]*

Use of seat belts **at all times** during operation of covered vehicles shall be enforced in general industry by citing section 1910.132(a) which provides:

"Protective equipment, including personal protective equipment for eyes, face, head and extremities...shall be provided, used, and maintained in a sanitary and reliable condition whenever it is necessary by reason of hazards of processes or environment...encountered in a manner capable of causing injury or impairment in the function of any part of the body through...physical contact."

Use of seat belts **at all times** during operation of vehicles as described above shall be enforced in the construction industry by citing 1926.95(a) which provides:

"Protective equipment, including personal protective equipment for eyes, face, head and

extremities...shall be provided, used, and maintained in a sanitary and reliable condition whenever it is necessary by reason of hazards of processes or environment...encountered in a manner capable of causing injury or impairment in the function of any part of the body through...physical contact.”

As described in the Background section below, a line of Occupational Safety and Health Review Commission (OSHRC) decisions holds that sections 1910.132(a) and 1926.95(a) can be used to enforce the use of seat belts in various kinds of vehicles subject to tip over.

F. Definitions.

For purposes of this directive, the term “method of operation” includes, but is not limited to the following:

If the covered vehicle, when driven at excessive speed, could cause the operator to lose control, causing the vehicle to become unstable (e.g., skid, tip over, or fall off a loading dock or other elevated walking or working surface);

If the covered vehicle can become unstable due to its ability to carry loads high off the ground. Moving loads upward, downward, forward, and backward can cause a shift of the center of gravity in the vehicle and can adversely affect its stability;

If the covered vehicle can become unstable when a load is raised or moved away from the vehicle (i.e., the vehicle’s longitudinal stability is decreased in such operational situations);

If the covered vehicle can become unstable when a load is not properly placed on the lifting mechanism, is unbalanced, or exceeds the manufacturer’s recommended lifting capacity; or

If the covered vehicle can become unstable during sharp turns due to its characteristic mode of steering, i.e., with the rear wheels while being powered by the front wheels.

For purposes of this directive, the term “presence of workplace hazards” includes, but is not limited to the following:

If the covered vehicle can become unstable while operating on rough, uneven, slippery or sloped surfaces;

If the covered vehicle has mechanical difficulties (e.g., malfunctioning brakes) which could cause the driver to lose control of the vehicle or limit the driver’s ability to take emergency avoidance measures;

If the covered vehicle is subject to operation in narrow aisles, blind spots or intersections where an operator could have to take emergency avoidance measures in the presence of expected or unexpected pedestrian traffic or employees working close to the path of travel; or

If the covered vehicle is subject to operation in the general vicinity of other motorized vehicles where an accidental collision could cause the covered vehicle to become unstable.

G. Effective Date.

March 1, 2005.

H. Expiration Date.

Not Applicable.

I. Background.

Federal OSHA, in the preamble to its Powered Industrial Truck Operator Training, Final Rule, discussed hazards associated with driving powered industrial trucks:

“For example, operators of sit-down rider trucks are often injured in tipover accidents when they attempt to jump clear of the vehicle as it tips over. Because the operator’s natural tendency is to jump downward, he or she lands on the floor or ground and is then crushed by the vehicle’s overhead guard. Therefore, operators of sit-down trucks need to be trained to remain in the operator’s position in a tipover accident and to lean away from the direction of fall to minimize the potential for injury.” (63 Fed. Reg. 66242).

“Driving a powered industrial truck at excessive speed can result in loss of control, causing the vehicle to skid, tip over, or fall off a loading dock or other elevated walking or working surface. This condition can be made more dangerous because the load being carried sometimes partially obscures the operator’s vision.” (63 Fed. Reg. 66242).

“Other characteristics of a powered industrial truck that affect safe truck operation are: the truck’s tendency to become unstable; its ability to carry loads high off the ground; and its characteristic mode of steering, i.e., with the rear wheels while being powered by the front wheels. Moving loads upward, downward, forward, and backward causes a shift of the center of gravity and can adversely affect the vehicle’s stability. When a load is raised or moved away from the vehicle, the vehicle’s longitudinal stability is decreased. When the load is lowered or moved closer to the vehicle, its longitudinal stability is increased.” (63 Fed. Reg. 66242).

“The workplaces where these trucks are being used also present a variety of different hazards. The safety of industrial truck operations can be decreased by workplace conditions such as rough, uneven, or sloped surfaces; unusual loads; hazardous areas; narrow aisles, blind spots or intersections; and pedestrian traffic or employees working close to the path of travel. Finally, there are hazardous work practices that relate to all trucks, including driving at excessive speed, poor loading, and carrying unauthorized passengers. In addition, poor truck maintenance can contribute to accidents.” (63 Fed. Reg. 66243).

Federal OSHA, in the preamble to its Powered Industrial Truck Operator Training, Final Rule, reviewed fatal accident studies involving powered industrial trucks:

“The single largest cause of accidents was vehicle tipovers....These tipovers were attributed to the following: (1) The vehicle was out of control (speeding, elevated loads, mechanical

problems, etc., 7 instances - 13 percent); (2) the vehicle was run/over the edge of the surface (4 instances - 8 percent); (3) the operator attempted to make too sharp a turn (excessive speed, unbalance load, etc., 4 instances - 8 percent); (4) an employee jumped from an overturning vehicle being pulled by an overturning vehicle (2 instances - 4 percent); (5) the vehicle skidded or slipped on a slippery surface (2 instances - 4 percent); (6) the wheels on one side of the vehicle ran over a raised surface or object (2 instances - 4 percent); and (7) the vehicle tipped over when struck by another vehicle (1 instance 2 - percent).” (63 Fed. Reg. 66245)

The VOSH Program has concluded that requiring the use of seat belts by operators of powered industrial trucks, and other vehicles covered by this directive (when the vehicles have been provided with seat belts and roll-over protective systems (ROPS)) through the enforcement of sections 1910.132(a) and 1926.95(a) will greatly assist in reducing the number of serious and fatal injuries to operators during tip over accidents. Use of the seat belt along with proper training will prevent the operator from attempting to jump free of the vehicle, and instead help him to “ride the load” down.

Following is a summary of Occupational Safety and Health Review Commission (OSHRC) case law concerning the use of sections 1910.132(a) and 1926.95(a) and 1926.28(a) to require the use of seat belts in general industry and construction vehicles:

§1910.132(a) cases

Babbit Logging, Inc., 14 OSHC 1295, 1296 (1989) - Review Commission Judge - affirmed violation of §1910.132(a) for failure to use seat belt by operator of logging skid cat (fatal accident).

Ed Cheff d/b/a Ed Cheff Logging, 9 OSHC 1883, 1889 (1981) - Review Commission Decision - affirmed violation of §1910.132(a) for failure to use seat belt by operator of logging tractor and rejected greater hazard defense because the company had not shown that alternative means of protecting employees are unavailable (company had not attempted to have plexiglass installed in the cab to protect the operators from branches, etc.).

§1926.95(a) cases

R. P. Industries, Inc., OSHRC Docket No. 00-1289 (EZ), (2000) - Review Commission Judge - affirmed violation of §1926.95(a) for failure to use a seat belt by the operator of a Caterpillar scraper that was involved in an accident.

Esprit Constructors, Inc., 18 OSHC 1179, 1182 (1997) - Review Commission Judge -affirmed violation of §1926.95(a) for failure to use a seat belt by the operator of a roller-compactor.

[**NOTE:** ALTHOUGH THIS DIRECTIVE SPECIFIES THE USE OF SECTIONS 1910.132(A) IN GENERAL INDUSTRY AND 1926.95(a) IN THE CONSTRUCTION INDUSTRY, THERE IS A LINE OF CASES SUMMARIZED BELOW THAT ALLOWS THE USE OF SECTION 1926.28(a) TO REQUIRE THE USE OF SEAT BELTS IN CONSTRUCTION VEHICLES.]

§1926.28(a) cases

Concrete Construction Co., 16 OSHC 1642, 1647 (1994) - Review Commission Judge - **affirmed** violation of §1926.28(a) for failure to use seat belt by operator of a loader equipped with a seat belt and roll over protection on a construction site.

Daniel Construction Company of Alabama, 9 OSHC 2002, 2005 (1981) - Review Commission Decision - **affirmed** violation of §1926.28(a) for failure to use seat belt by operators of earthmoving equipment equipped with a seat belt and roll over protection on a construction site. The CSHO concluded that “each operator was exposed to the danger of being thrown into the path of his vehicle if a seat belt was not used. In addition, these bulldozers were fitted with roll bars. The compliance officer testified that each operator could be pinned beneath the roll bar if his bulldozer overturned while being driven over the uneven terrain on the worksite. This testimony was not refuted.”

Able Contractors, Inc., 6 OSHC 2135, 2141 (1978) - Review Commission Judge - **affirmed** violation of §1926.28(a) for failure to use seat belt by operator of a front end loader equipped with a seat belt and roll over protection near a trench on a construction site. Construction industry in Montana requires use of seat belts by operators of forklifts near trenches.

Sweetman Construction Company, 3 OSHC 2056, 2057 (1976) - Review Commission Decision - **affirmed** violation of §1926.28(a) for failure to use seat belt by operator of a scraper equipped with a seat belt and roll over protection on a construction site. The employer’s “standing rule that seat belts be worn where provided evinces a clear recognition that the use of earth-moving equipment over uneven terrain posed the ‘hazardous condition’ that an operator might fall or be thrown from the equipment.

C. Ray Davenport
Commissioner

Distribution: Commissioner of Labor and Industry
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OSHA Area Office, Norfolk