

Highway Administration, the Federal Railroad Administration, the Research and Special Programs Administration, and the Saint Lawrence Seaway Development Corporation of the U.S. Department of Transportation who are assigned to perform or assist in performing investigative, inspection or law enforcement functions; and (5) U.S. Trustees and Assistant U.S. Trustees, and bankruptcy analysts and other officers and employees of the U.S. Trustee System who have contact with creditors and debtors, perform audit functions, or perform other investigative or enforcement functions in administering the bankruptcy laws. No public comments were received.

Administrative law judges (ALJs) perform law enforcement functions under various federal laws. In recent years ALJs have been recipients of an increasing number of threats, often by litigants in proceedings before ALJs who have considerable property interests at stake. Presently, there are over 1000 ALJs in nearly 30 federal agencies. Some of the ALJs in the Social Security Administration and the Securities and Exchange Commission are currently covered by § 64.2 (x) and (w), respectively. While these ALJs comprise nearly 70% of all federal ALJs, there is no valid reason for not covering the others who experience similar risks. Accordingly, all administrative law judges have been added by paragraph (aa) of § 64.2.

The Office of Workers' Compensation Programs (OWCP) of the Department of Labor administers three workers' compensation laws: the Federal Employees' Compensation Act (FECA); the Longshore and Harbor Workers' Compensation Act (LHWCA) and its extension; and the Black Lung Benefits Act (BLBA). OWCP employees adjudicate and administer claims which result in the payment (or denial) of benefits under these respective laws. As part of this process, the employees conduct informal conferences and (under FECA) face-to-face hearings. The individual claims examiner's identity is well known to claimants, as are the supervisors and managers involved at all levels of the program. These employees' jobs involve a substantial risk of physical danger from some claimants and other members of the public who seek to influence the outcome of the claim or who are dissatisfied with the decisions rendered. In recent years, an increased number of threats and acts of violence have been directed against OWCP employees. There have been instances in which individuals have appeared in OWCP offices with vicious dogs, with

purported explosives strapped to them, and with firearms and other dangerous weapons. Accordingly, these OWCP employees have been added by paragraph (bb) of § 64.2.

Because of new paragraph (aa), reference to "administrative judges" in paragraph (w) has been deleted. Also, because section 6 of Pub. L. 102-365, 106 Stat. 975, September 3, 1992, added to section 1114 of title 18, U.S.C., "any officer or employee of the Federal Railroad Administration assigned to perform investigative inspection or law enforcement functions," reference to the Federal Railroad Administration has been deleted from paragraph (z).

On May 18, 1994, an interim rule with request for comments was published in the **Federal Register** amending part 64 of title 28, Code of Federal Regulations. Attorney General Order No. 1874-94, 59 FR 25815. One favorable comment was received. The Department has determined to issue the rule in final form without revision to the interim rule.

The Department of Justice has determined that this is not a "significant regulatory action" within the meaning of Executive Order 12866 and, accordingly, this rule has not been reviewed by the Office of Management and Budget. This order will not have a substantial impact on a significant number of small entities, thus a regulatory flexibility analysis has not been prepared pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Finally, this order does not have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

Accordingly, the interim rule amending 28 CFR part 64 which was published at 59 FR 25815 on May 18, 1994, is adopted as a final rule without change.

Dated: January 31, 1995.

Janet Reno,

Attorney General.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-048]

Logging Operations

AGENCY: Occupational Safety and Health Administration (OSHA).

ACTION: Final rule; partial stay of enforcement.

SUMMARY: On October 12, 1994, the Occupational Safety and Health Administration (OSHA) issued a new standard for logging operations (59 FR 51672). This notice stays enforcement of the following paragraphs of § 1910.266 until August 9, 1995: (d)(1)(v) insofar as it requires foot protection to be chain-saw resistant; (d)(1)(vii) insofar as it requires face protection; (d)(2)(iii) for first-aid kits that contain all the items listed in Appendix A; (f)(2)(iv); (f)(2)(xi); (f)(3)(ii); (f)(3)(vii); (f)(3)(viii); (f)(7)(ii) insofar as it requires that parking brakes be able to stop the machine; (g)(1) and (g)(2) insofar as they require inspection and maintenance of employee-owned vehicles; and (h)(2)(vii) insofar as it precludes backcuts at the level of the horizontal cut of the undercut when the Humboldt cutting method is used.

DATES: Effective on February 9, 1995. The partial stay will expire on August 9, 1995. The remaining requirements of § 1910.266 are unaffected by this document and will go into effect as scheduled on February 9, 1995, or as otherwise provided in the Final Rule.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Cyr, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N-3637, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219-8148.

SUPPLEMENTARY INFORMATION: On October 12, 1994, OSHA issued a final rule governing worker safety in logging operations. Among other things, this rule included requirements for: personal protective equipment; first aid kits at logging work sites; machine stability and slope limitations; discharge of hydraulic and pneumatic storage devices on forestry machines; protective structures on machines; machine braking systems; vehicle inspection and maintenance; and tree harvesting. Several parties have raised questions about certain aspects of these requirements. After considering their questions, the Agency has determined that a six-month delay in the effective date of some of the provisions is appropriate in order to allow time for it to clarify language in the regulatory text so that it most adequately expresses its intent with respect to some of these provisions, and to provide additional information on other provisions.

Stay of Enforcement of Certain Provisions of § 1910.266

Paragraph (d)(1)(v)—Foot protection. The final logging standard requires

employees to wear foot protection, such as heavy-duty logging boots, that among other things, protect against "penetration by chain saws." Some interested persons have misinterpreted this provision to require steel-toed boots, although the preamble to the final rule explained that the rule does not require steel-toed boots.

OSHA has decided to grant a six-month delay in the effective date of the portion of this provision that requires that foot protection be chain-saw resistant. (The remaining requirements of the foot protection provision will go into effect as scheduled on February 9.) This delay will enable OSHA to review the logging community requirements on available foot protection, including many types of heavy-duty leather logging boots currently used, kevlar boots, and foot coverings that provide adequate chain saw resistance. Finally, this delay will allow greater availability of new products that manufacturers are developing in response to the standard.

Paragraph (d)(1)(vii)—Eye and face protection. The logging standard requires loggers to wear eye and face protection meeting the requirements of OSHA's general personal protection equipment (PPE) standards when there is a potential for injury due to falling or flying objects. Some interested persons have interpreted this provision to require both eye and face protection in all cases.

OSHA has decided to grant a six-month delay in the effective date of this provision to the extent that it requires face protection. (The current effective date of February 9 will continue to apply to the eye protection requirement.) The delay will allow OSHA to clarify what the standard requires, and to better inform employers about available face protection that does not limit worker vision.

Paragraph (d)(2)(iii)—Annual approval of first-aid kits by a health care provider. Paragraph (d)(2) states that employers must provide and maintain adequate first-aid kits at each worksite, and that the number and contents of the kits must be reviewed annually by a health care provider. Some interested persons have interpreted the standard to require that a doctor inspect each kit annually.

OSHA has decided to grant a six-month delay in the effective date of the provision requiring annual health care provider review. The requirement that first-aid kits contain at least the items listed in Appendix A (paragraph (d)(2)(ii)) will go into effect as scheduled on February 9, 1995. During this period, OSHA will revise the

statutory language to clarify its original intent.

Paragraph (f)(2)(iv)—Slope limitations on machine operation. This rule states that logging machines shall not be operated on any slope greater than the maximum slope recommended by the manufacturer. Some parties have interpreted this provision to require manufacturers to specify maximum slopes that would be applicable in all field situations. OSHA is granting a six-month stay of this provision to clarify this point.

Paragraph (f)(2)(xi)—Discharge of stored energy from machine hydraulic and pneumatic storage devices. This provision requires that pressure or stored energy from hydraulic and pneumatic storage devices be discharged after the machine engine is shut down. Some parties have interpreted this provision to require discharge of air and water from all machine components, even when the presence of air or water pressure will not create a hazard for any employee. OSHA is granting a six-month delay in order to clarify this point.

Paragraph (f)(3)(ii)—Machine rollover protective structures. The final rule requires that all rollover protective structures (ROPS) be installed, tested and maintained in accordance with the Society of Automotive Engineers (SAE) J1040, April 1988, performance criteria for rollover protective structures (ROPS). OSHA has learned that some logging equipment currently in production has not yet been designed to meet the 1988 SAE criteria document. OSHA has decided to delay the effective date of this requirement for six-months in order to determine whether any additional extension may be appropriate.

Paragraph (f)(3) (vii) and (viii)—Machine operator cab protective structures. These provisions require that the lower portion of the operator's cab be enclosed with "solid" material that will prevent objects from entering the cab. Some parties have interpreted this provision to encourage the use of materials like steel plating that may restrict the operator's field of vision. OSHA is granting a six-month delay in the effective date of this provision in order to clarify this requirement.

Paragraph (f)(7)(ii)—Machine braking systems. This provision requires that each machine be equipped with "a secondary braking system, such as an emergency brake or a parking brake, which shall be effective in stopping the machine and maintaining parking performance." OSHA has since learned that the terminology used in this provision is inconsistent with that used

by some manufacturers. These manufacturers consider a secondary braking system to be a subsystem of the service brake system and that each subsystem should be capable of stopping the machine even though the other subsystem fails. The parking brake system is not designed to stop the vehicle in motion but rather to restrain it once movement has stopped; thus it is not considered a secondary system.

OSHA is granting a six-month delay in this provision only to the extent that it requires that parking brakes be able to stop the machine. During this period, employers must still assure that each machine has a service brake system that is capable of stopping the machine and a parking brake system that can hold the machine and its maximum load on any slope that the machine is operated. OSHA will revise the terminology in this provision to clarify its intent.

Paragraph (g) (1) and (2)—Inspection and maintenance of employee-owned vehicles. These provisions require that any vehicle used off public roads at logging work sites or to perform any logging operation, including employee-owned vehicles, be maintained in a serviceable condition. Some parties have interpreted this provision to require logging employers to inspect and maintain all vehicles, including those employee-owned vehicles that they allow on their logging sites.

OSHA is granting a six-month delay in the effective date of these provisions insofar as they apply to employee-owned vehicles. The additional time will enable OSHA to reexamine the record on this issue and clarify its intent of the standard.

Paragraph (h)(2)(vii)—Backcuts. This rule requires that backcuts be above the horizontal line of the undercut. OSHA is aware that when loggers use the Humboldt cutting method, in which the diagonal cut is below the horizontal cut of the undercut, the backcut is at the level of the horizontal cut. The Agency is granting a six-month delay in the effective date of this provision only to the extent that the rule does not permit loggers using the Humboldt method to place the backcut at the level of the horizontal cut. (OSHA emphasizes that backcuts may never be made below the horizontal cut.) OSHA will reexamine the record on this issue.

III. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The actions in this document are taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 1-90 (55 FR 9033), and 29 CFR part 1911.

Signed at Washington, DC., this 2nd day of February, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

For the reasons set forth above, 29 CFR part 1910 is hereby amended as follows:

PART 1910—[AMENDED]

1. The Authority citation for subpart R of 29 CFR part 1910 continues to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), or 1-90 (55 FR 9033), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.272, 1910.274, and 1910.275 also issued under 29 CFR part 1911.

Section 1910.272 also issued under 5 U.S.C. 553.

2. A note is added at the end of § 1910.266, to read as follows:

§ 1910.266 Logging operations.

* * * * *

Note: In the **Federal Register** of February 8, 1995, OSHA stayed the following paragraphs of § 1910.266 from February 9, 1995 until August 9, 1995:

1. (d)(1)(v) insofar as it requires foot protection to be chain-saw resistant.
2. (d)(1)(vii) insofar as it requires face protection.
3. (d)(2)(iii).
4. (f)(2)(iv).
5. (f)(2)(xi).
6. (f)(3)(ii).
7. (f)(3)(vii).
8. (f)(3)(viii).
9. (f)(7)(ii) insofar as it requires that parking brakes be able to stop the machine.
10. (g)(1) and (g)(2) insofar as they require inspection and maintenance of employee-owned vehicles.
11. (h)(2)(vii) insofar as it precludes backcuts at the level of the horizontal cut of the undercut when the Humboldt cutting method is used.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[FRL-5149-8]

Transportation Conformity Rule Amendments: Transition to the Control Strategy Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: This action aligns the timing of certain transportation conformity consequences with the imposition of Clean Air Act highway sanctions for a six-month period. For ozone nonattainment areas with an incomplete 15% emissions-reduction state implementation plan with a protective finding; incomplete ozone attainment/3% rate-of-progress plan; or finding of failure to submit an ozone attainment/3% rate-of-progress plan, and areas whose control strategy implementation plan for ozone, carbon monoxide, particulate matter, or nitrogen dioxide is disapproved with a protective finding, the conformity status of the transportation plan and program will not lapse as a result of such failure until highway sanctions for such failure are effective under other Clean Air Act sections.

This action delays the lapse in conformity status, which would otherwise prevent approval of new highway and transit projects, and allows States more time to prevent the lapse by submitting complete control strategy implementation plans. EPA is issuing this interim final rule, effective for a six-month period, without prior proposal in order to prevent previously unforeseeable delays in State ozone implementation plan development from causing widespread conformity lapsing. In a parallel action in this **Federal Register**, EPA is requesting comment on this interim final rule and on similar but permanent rule changes.

EFFECTIVE DATE: This interim final rule is effective on February 8, 1995 until August 8, 1995.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A-95-02. The docket is located in room M-1500 Waterside Mall (ground floor) at the Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8 a.m. to 4 p.m., Monday through Friday, including all non-government holidays.

FOR FURTHER INFORMATION CONTACT: Kathryn Sargeant, Emission Control

Strategies Branch, Emission Planning and Strategies Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. (313) 668-4441.

SUPPLEMENTARY INFORMATION:

I. Background

A. Transportation Conformity Rule

The final transportation conformity rule, "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," was published November 24, 1993 (58 FR 62188) and amended 40 CFR parts 51 and 93. The Notice of Proposed Rulemaking was published on January 11, 1993 (58 FR 3768).

Required under section 176(c) of the Clean Air Act, as amended in 1990, the transportation conformity rule established the criteria and procedures by which the Federal Highway Administration, the Federal Transit Administration, and metropolitan planning organizations determine the conformity of federally funded or approved highway and transit plans, programs, and projects to state implementation plans (SIPs). According to the Clean Air Act, federally supported activities must conform to the implementation plan's purpose of attaining and maintaining the national ambient air quality standards.

The final transportation conformity rule requires that conformity determinations use the motor vehicle emissions budget(s) in a submitted "control strategy" SIP (defined below), and the rule includes special provisions to address failures in control strategy SIP development. These failures include failure to submit a control strategy SIP, submission of an incomplete control strategy SIP, or disapproval of a control strategy SIP. Specifically, according to 40 CFR 51.448 (and 40 CFR 93.128), following these SIP development failures, no new or amended transportation plans or transportation improvement programs (TIPs) may be found to conform to the SIP after a certain grace period (i.e., the existing transportation plan and TIP are "frozen"), and eventually, the conformity status of the existing transportation plan and TIP lapses.

When the conformity status of the transportation plan and TIP lapses, no new project-level conformity determinations may be made, and the only federal highway and transit projects which may proceed are exempt or grandfathered projects. Non-federal