

South Carolina Department of Labor, Licensing and Regulation
Division of Labor
Office of Occupational Safety and Health
Columbia, South Carolina 29211

OSH Program Directive Number 78-1910.178-5

Subject: Powered Industrial Trucks, Chocks and Blocks.

Standard: Article VI, Section 1910.178 (k) (1) and (m) (7), Rules and Regulations, Commissioner of Labor, State of South Carolina.

Cross Reference to Federal Standards: 29 CFR 1910.178 (k) (1) and (m) (7).

Background: The purpose of this directive is for the enforcement of Article VI, Sections 1910.178 (k) (1) and (m) (7).

- a. The Occupational Safety and Health Review Commission rendered a decision that the U. S. Department of Labor is preempted in the enforcement of 29 CFR 1910.178 (k) (1) by the U. S. Department of Transportation (DOT) regulation 49 CFR 392.20, because the latter covers essentially the same working conditions. The Commission held that the Occupational Safety and Health Administration (OSHA) was preempted because 49 CFR 392.20 represented a sufficient “exercise” of DOT regulatory powers under Section 4 (b) (1) of the Occupational Safety and Health Administration.
- b. This decision also affects the enforcement of Section 1910.178 (m) (7). The first part of that standard, “Brake 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,” is similar in scope to Section 1910.178 (k) (1). Accordingly, enforcement of that portion of the standard as it applies to trucks and trailers is preempted by 49 CFR 392.20. Moreover the latter part of the standard requiring employers to check the flooring of trucks and trailers for breaks and weaknesses applies to the same working conditions as those covered by 49 CFR 393.94. Therefore, that part of the standard should not be enforced as it applies to trucks and trailers.
- c. DOT safety authority under the Motor Carrier Act extends only to regulation of motor carriers engaged in interstate commerce. Under DOT regulation 49 CFR 392.20 and 49 CFR 393.84,

DOT jurisdiction does not extend to vehicles “used wholly within a municipality or the commercial zone thereof,” as defined by the Interstate Commerce Commission (ICC), unless they are transporting a single hazardous item weighing over 2,500 pounds or bulk hazardous items weighing over 5,000 pounds.” (See 49 CFR 309.16, and 392.1 (c).)

- d. See also 39 CFR 1048 for ICC definition of commercial zones. In short, DOT jurisdiction extends to all vehicles which are not used exclusively in intracity operations or which are used in intracity operations to carry a single hazardous item weighing over 2,500 pounds or bulk hazardous items weighing over 5,000 pounds.

Interpretation: Accordingly, in light of the DOT exercising authority, the S. C. Department of Labor will cite or enforce only under Sections 1910.178 (k) (1) and 1910.178 (m) (7) in consonance with the preceding guidelines.

Effective Date: This instruction is effective upon receipt and will remain in effect until cancelled or superseded by amendment to the Rules and Regulations.

William M. Lybrand, Director
May 31, 1978