

Master Minimum Equipment List (MMEL)

(l) The dispatch relief conditions specified in paragraphs (l)(1) and (l)(2) of this AD are considered to be acceptable for continued operations if either the ice detection system or the low speed alarm system is inoperative:

(1) The airplane may be operated for a period of three days with the ice detection system inoperative, provided that, whenever operating in visible moisture at temperatures below 10 degrees C (50 degrees F):

(i) All ice protection systems are turned on (except leading edge deicing during takeoff), and

(ii) AFM limitations and normal procedures for operating in icing conditions are complied with.

(2) The airplane may be operated for a period of three days with the icing condition low speed alarm system inoperative, provided:

(i) It is not operated in known or forecast icing conditions, and

(ii) If icing conditions are inadvertently encountered, the autopilot must be disconnected and steps must be taken to exit icing conditions.

Note 2: Refer to MMEL/MEL system for complete dispatch requirements. Where a difference exists between this AD and the MMEL, the provisions of this AD prevail.

Alternative Methods of Compliance

(m) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(n) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(o) Except for the actions specified in paragraphs (a), (f), (g), (h), (i), (j), and (k) of this AD the actions shall be done in accordance with EMBRAER Service Bulletin 120-25-0258, dated May 14, 2001; EMBRAER Service Bulletin 120-30-0032, Change 01, dated June 13, 2001; EMBRAER Service Bulletin 120-25-0258, Change 01, dated August 30, 2001; EMBRAER Service Bulletin 120-30-0033, Change 01, dated September 6, 2001; and EMBRAER Service Bulletin 120-30-0033, Change 02, dated September 14, 2001; as applicable.

(1) The incorporation by reference of EMBRAER Service Bulletin 120-25-0258, Change 01, dated August 30, 2001; EMBRAER Service Bulletin 120-30-0033, Change 01, dated September 6, 2001; and EMBRAER Service Bulletin 120-30-0033,

Change 02, dated September 14, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of EMBRAER Service Bulletin 120-25-0258, dated May 14, 2001; and EMBRAER Service Bulletin 120-30-0032, Change 01, dated June 13, 2001, was approved previously by the Director of the Federal Register as of July 12, 2001 (66 FR 34083, June 27, 2001).

(3) Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Brazilian airworthiness directive 2001-05-02R1, effective date of September 30, 2001.

Effective Date

(p) This amendment becomes effective on October 22, 2001.

Issued in Renton, Washington, on October 3, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Part 1904**

[Docket No. R-02A]

RIN 1218-AC00

Occupational Injury and Illness Recording and Reporting Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is delaying the effective date of three provisions of the Occupational Injury and Illness Recording and Reporting Requirements rule published January 19, 2001 (66 FR 5916-6135) and is establishing interim criteria for recording cases of work-related hearing loss. The provisions being delayed are §§ 1904.10(a) and (b), which specify recording criteria for cases involving occupational hearing loss, § 1904.12,

which defines “musculoskeletal disorder (MSD)” and requires employers to check the MSD column on the OSHA Log if an employee experiences a work-related musculoskeletal disorder, and § 1904.29(b)(7)(vi), which states that MSDs are not considered privacy concern cases. The effective date of these provisions is delayed from January 1, 2002 until January 1, 2003. OSHA will continue to evaluate §§ 1904.10 and 1904.12 over the next year.

OSHA is also adding a new paragraph (c) to § 1904.10, establishing criteria for recording cases of work-related hearing loss during calendar year 2002. Section 1904.10(c) codifies the enforcement policy in effect since 1991, under which employers must record work related shifts in hearing of an average of 25dB or more at 2000, 3000 and 4000 hertz in either ear.

DATES: The amendments in this rule will become effective on January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Jim Maddux, Occupational Safety and Health Administration, U.S. Department of Labor, Directorate of Safety Standards Programs, Room N-3609, 200 Constitution Avenue, N.W., Washington, DC 20210. Telephone (202) 693-2222.

SUPPLEMENTARY INFORMATION:**I. Background**

In January, 2001 (66 FR 5916-6135), OSHA published revisions to its rule on recording and reporting occupational injuries and illnesses (29 CFR parts 1904 and 1952) to take effect on January 1, 2002. On July 3, 2001, the agency proposed to delay the effective date of Sections 1904.10 *Recording criteria for cases involving occupational hearing loss*, and 1904.12 *Recording criteria for cases involving work-related musculoskeletal disorders*, until January 1, 2003 (66 FR 35113-35115). In that notice, OSHA explained that, as a result of the regulatory review required by the Andrew Card memorandum (66 FR 7702), it was reconsidering the requirement in Section 1904.10 to record a case involving an occupational hearing loss averaging 10dB, or more. OSHA found that there were reasons to question the appropriateness of 10dB as the recording criterion, and asked for comment on other approaches and criteria, including recording losses averaging 15, 20 or 25dB. In view of the uncertainty concerning the appropriate criteria, OSHA preliminarily concluded that it should delay implementing the 10dB requirement for a year while it reconsidered the question. The proposal stated that if implementation of Section

1904.10 were delayed for a year, employers would continue to record hearing loss cases during that year using the 25dB criterion articulated in OSHA's 1991 enforcement policy (See 66 FR 35114-35115).

OSHA also stated that it was reconsidering the requirement in Section 1904.12 that employers check the MSD column on the OSHA Log for a case involving a "musculoskeletal disorder" as defined in that Section. This action was taken in light of the Secretary's decision to develop a comprehensive plan to address ergonomic hazards, and to schedule a series of forums to consider key issues relating to the plan, including the approach to defining an ergonomic injury. OSHA preliminarily found that it would be premature to define a musculoskeletal disorder for recordkeeping purposes before further progress has been made in developing the comprehensive ergonomics plan, and that a delay in the effective date of Section 1904.12 was therefore appropriate. 66 FR 35115. The Agency noted that the proposed delay would not affect the employer's obligation to record all injuries and illnesses, including musculoskeletal injuries and illnesses, that meet the criteria in Sections 1904.4-1904.7, regardless of whether a particular injury or illness would meet the definition of MSD found in Section 1904.12. *Id.*

The period for submission of comments on the proposed rule closed on September 4, 2001. After considering the views of interested parties, OSHA has determined that the effective date of Sections 1904.10(a) and 1904.12(a) and (b) should be delayed until January 1, 2003, and that a new paragraph (c) should be added to Section 1904.10 re-establishing a 25dB recording criterion for hearing loss cases for calendar year 2002.

II. Summary and Explanation of Final Rule

A. Recording Occupational Hearing Loss Cases

Section 1904.10 of the final recordkeeping rule requires employers to record, by checking the "hearing loss" column on the OSHA 300 Log, a case in which an employee's hearing test (audiogram) reveals that a Standard Threshold Shift (STS) in hearing acuity has occurred. An STS is defined as "a change in hearing threshold, relative to the most recent audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000 and 4000 hertz in one or both ears." The recordkeeping rule itself does not

require the employer to test employee's hearing. However, OSHA's occupational noise standard (29 CFR 1910.95), requires employers in general industry to conduct periodic audiometric testing of employees when employees' noise exposures are equal to, or exceed, an 8-hour time-weighted average of 85dB. If such testing reveals that an employee has sustained hearing loss equal to an STS, the employer must take protective measures, including requiring the use of hearing protectors, to prevent further hearing loss.

The old recordkeeping rule, which remains in effect until January 1, 2001, contained no specific threshold for recording hearing loss cases. In 1991, OSHA issued an enforcement policy on the criteria for recording hearing loss cases, to remain in effect until new criteria were established by rulemaking. The 1991 policy stated that OSHA would cite employers for failing to record work related shifts in hearing of an average of 25dB or more at 2000, 3000 and 4000 hertz in either ear. Subsequently, OSHA released interpretations stating that the employer could adjust the audiogram for aging using the tables in Appendix F of the Noise Standard, and that the employer was to use the employee's pre-employment audiogram as the baseline reference audiogram for determining a recordable hearing loss.

One of the major issues in the recordkeeping rulemaking was to determine the level of occupational hearing loss that constitutes a health condition serious enough to warrant recording. This was necessary because the final rule no longer requires recording of minor or insignificant health conditions. See, e.g., 66 FR 5931. OSHA proposed a requirement to record hearing loss averaging 15dB at 2000, 3000 and 4000 hertz in one or both ears. OSHA adopted the lower 10dB threshold in the final rule based in large part upon comments submitted by the Coalition to Preserve OSHA and NIOSH and Protect Workers' Hearing, asserting that "[a]n age-corrected STS is a large hearing change that can affect communicative competence." 66 FR 6008.

In its July 3 proposal to delay implementation of Section 1904.10, OSHA expressed reservations about whether 10dB is the appropriate threshold for recording hearing loss. The agency acknowledged that there is evidence that an STS may not be a serious health problem, particularly for employees who have not previously sustained hearing loss, and that a 10dB shift may not be a reliable criterion for recording purposes because of normal

variations in audiometric measurement (66 FR 35114). For these and other reasons, OSHA reopened the record to permit consideration of additional evidence and to explore alternative approaches (*Id.*).

Most commenters supported the proposed delay in implementation of Section 1904.10 (see, e.g., Exs. 3-1, 3-6, 3-14, 3-22, 3-25, 3-26, 3-29, 3-34, 3-49, 3-50, 3-54). The view expressed by Organization Resources Counselors, Inc. is representative. ORC (Ex. 3-49, p. 3) argued:

[T]he finding of a Standard Threshold Shift (STS) [is] a 'flag' for the implementation of a series of actions required by the OSHA standard on exposure to occupational noise. It was not intended, by itself, to be an indicator of illness, or impairment, but, rather, a sentinel event that triggers a series of actions that will prevent illness or impairment from occurring. As such a tool, it has been an effective protector of employee hearing, but does not, by itself, rise to the level of recordability. See also, e.g., Ex. 3-54 (American Iron and Steel Institute), Ex. 3-50 (National Association of Manufacturers and Can Manufacturers Institute).

Several commenters opposed the delay, with most citing the protective purposes served by recordkeeping requirements (see, e.g., Exs. 3-3, 3-4, 3-8, 3-9, 3-10, 3-11, 3-12, 3-17, 3-31). In a representative comment, the AFL-CIO argued that the requirement to record a 10dB hearing loss on the Log would aid in the early detection and prevention of occupational hearing loss. It stated (Ex. 3-24-1, p.3) that,

[r]ecording a 10 dB STS on Form 300 is a practical and reasonable means to assist in the early detection of a loss in hearing so that workplace intervention measures can be implemented to protect workers from the hazards of noise. Having employers continue to record shifts in hearing of an average of 25 dB * * * is too high a threshold of loss in hearing acuity to be sufficiently proactive in preventing worker hearing loss.

OSHA is not persuaded by this argument. As the AFL-CIO concedes (Ex. 3-24-1, p.6), Congress intended the recordkeeping system to capture non-minor injuries and illnesses. OSHA is reconsidering the finding that a 10dB shift in hearing acuity represents such a health condition, and intends to resolve this issue based on all the available evidence. In the meantime, there is sufficient question concerning the appropriateness of 10dB as a recording threshold to justify a limited delay in implementing Section 1904.10(a) and (b).

Delaying implementation of the 10dB threshold for a year while OSHA reconsiders the criteria for recording hearing loss cases will not deprive employers and employees of

information about noise hazards. The occupational noise exposure standard requires that employees in general industry be tested for hearing loss when noise exposure exceeds an 8-hour time-weighted average of 85dB, and that employees be informed, in writing, if a 10dB shift has occurred. The audiometric test records must be retained for the duration of the affected employee's employment. See 29 CFR 1910.95 (g), (m). The noise standard also specifies the protective measures to be taken to prevent further hearing loss for employees who have experience a 10dB shift, including the use of hearing protectors and referral for audiological evaluation where appropriate. See 29 CFR 1910.95 (g)(8). These requirements, which apply without regard to the recording criteria in the recordkeeping rule, will protect workers against the hazards of noise. The one-year delay in implementing Section 1904.10(a) and (b) will therefore not deprive employers and workers of the means to detect and prevent hearing loss.

Several commenters supported a requirement to record a hearing loss averaging 25 dB or more while OSHA reconsidered the 10dB criterion (see, e.g., Exs. 3-49, 3-54). The American Iron and Steel Institute (AISI) argued that the 25dB criterion should be included in the regulatory text to avoid any confusion about employers' compliance responsibilities during calendar year 2002. OSHA agrees with AISI on this point, and has added a new paragraph (c) to Section 1904.10 specifying the criteria to be used for the 2002 recording year. The AISI also recommended that OSHA continue its policy of allowing employers to correct employee's audiograms for aging (presbycusis) using the age correction tables in the occupational noise standard (Ex. 3-54). Since this was OSHA's policy in the past, the Agency has also included language to this effect in the new paragraph, 1904.10(c).

A few commenters urged OSHA to make sure that the State Plan States have the same recording criteria as federal OSHA (see, e.g., Exs. 3-22, 3-49). When OSHA issues a final determination for the recording of occupational hearing loss for calendar years 2003 and beyond, the states will be required to have identical criteria. However, the purpose of this notice is to maintain the status quo regarding the recording of occupational hearing loss for the year 2002, while OSHA reconsiders what the appropriate recording criteria should be. Therefore, the State Plan States will be allowed to maintain their policies for the recording of hearing loss during 2002.

B. Defining an MSD and Checking the MSD Column

Section 1904.12 provides that if an employee experiences a recordable musculoskeletal disorder (MSD), the employer must record it on the OSHA Log and must check the MSD column. For recordkeeping purposes, the rule defines MSDs as disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs that are not caused by slips, trips, falls, motor vehicle accidents or other similar accidents (see Section 1904.12(b)(1)). The Section also explains that in determining whether an MSD is recordable, the employer must use the same criteria that apply to other injuries and illnesses. To be recordable, the disorder must be work related, must be a new case, and must meet one or more of the general recording criteria. Section 1904.12 states that "[t]here are no special criteria for determining which musculoskeletal disorders to record," and refers the reader to other sections of the rule in which the basic recording criteria are found.

OSHA's purpose in including an MSD column on the Log was to gather data on "musculoskeletal disorders" as that term is defined in Section 1904.12. Two months after publication of the new recordkeeping rule, Congress disapproved OSHA's ergonomics standard under the Congressional Review Act (Pub. L. 107.5 Mar. 20, 2001). Following Congressional disapproval of the ergonomics standard, the Secretary announced that she intends to develop a comprehensive plan to address ergonomics hazards and scheduled a series of forums to consider basic issues related to ergonomics (66 FR 31694, 66 FR 33578). One of the key issues to be considered in connection with the Secretary's comprehensive plan is the approach to defining an ergonomic injury.

In the July proposal, OSHA preliminarily found that it would be premature to implement the new definition of MSD in Section 1904.12 before considering the views of business, labor and the public health community on the problem of ergonomic hazards. It also preliminarily found that it would create confusion and uncertainty to require employers to implement the new MSD definition while the Secretary was considering how to define an ergonomic injury under the comprehensive plan. 66 FR 35115. Many commenters supported the delay, citing reasons similar to those in the July 3 proposal (see, e.g., Exs. 3-1, 3-6, 3-14, 3-19, 3-20, 3-25, 3-26, 3-27, 3-29, 3-32, 3-35, 3-37, 3-38, 3-43, 3-

44, 3-49, 3-50, 3-54, 3-59, 3-61). OSHA continues to believe a delay is justified for these reasons.

Several commenters opposed a delay in implementing the recordkeeping rule's definition of MSD and the requirement to check the MSD column (see, e.g., Exs. 3-3, 3-8, 3-9, 3-10, 3-11, 3-12, 3-17, 3-21, 3-24, 3-28, 3-31, 3-36, 3-40, 3-42, 3-52). In a representative comment, the AFL-CIO argued that delayed implementation of Section 1904.12 will make it more difficult for employers, workers and OSHA to address workplace ergonomic hazards, and will seriously undermine OSHA's ability to enforce the general duty clause for ergonomic hazards (see Ex. 3-24-1, pp. 15-22).

OSHA does not agree with this assessment. Employers are required to record all injuries and illnesses meeting the criteria established in Sections 1904.4 through 1904.7 of the recordkeeping rule regardless of whether a particular injury or illness meets the definition of MSD in Section 1904.12. Thus, the delay in implementing Section 1904.12 will not reduce the number of cases recorded or affect the narrative description of the injury or illness that must be provided for each case. Employers who use the Log and injury reports to discover ergonomic hazards will be able to continue to do so, relying on the description-of-injury information and other data to identify soft-tissued disorders in their workplaces (Ex. 3-24-1, p. 15). Employees will continue to have access to the information provided in the Log and, under the new rule, to the information in the part of the Incident Report explaining how the incident occurred. Employers and employees will be able to categorize this injury and illness information in any manner they find useful.

The delay need not lead to the elimination of useful statistical data on MSDs, as the AFL-CIO suggests (Ex. 3-24-1, p. 16). The definition of MSD in Section 1904.12 is a new one. The Secretary is currently considering approaches to defining ergonomic injuries in connection with her comprehensive plan, and it is premature to say, at this point, what definition would be appropriate to produce useful data. To require employers to implement a new definition of MSD while the agency is considering the issue in connection with the comprehensive ergonomics plan could create unnecessary confusion which would not, in OSHA's view, be balanced by improvements in the national statistics.

Finally, OSHA notes that the delay in the implementation of Section 1904.12 will have no effect on the Department's enforcement of the general duty clause. The definition of MSD in that section has never been in effect, and has not been a factor in enforcement of the clause. The sole effect of the delay is that employers need not use the definition to categorize cases on the OSHA Recordkeeping Log for calendar year 2002. This recordkeeping issue does not affect an employer's obligation under the general duty clause. The employer remains obligated to free its workplace from recognized hazards that are likely to cause serious physical harm.

OSHA is adding a note following the introduction to Section 1904.12 to inform employers of the policy that will be in effect during 2002. The note also informs the employer that, instead of checking the column on the 300 Log for musculoskeletal disorders (since this column is being removed from the log), the employer is to check the column for "injury" or "all other illness," depending on the circumstances of the case.

In a related matter, paragraph 1904.29(b)(7)(vi) of the rule states that employers must consider an illness case to be a privacy concern case, and withhold the employee's name from the forms, if the employee independently and voluntarily requests that his or her name not be entered on the Log. The second sentence of the paragraph states that "[m]usculoskeletal disorders (MSDs) are not considered privacy concern cases." OSHA will be unable to enforce this requirement during the period of time that the definition of MSD in the rule is delayed. Accordingly, OSHA is adding a note to section 1904.29(b)(7)(vi) stating that the first sentence of that section takes effect on January 1, 2002, and the second sentence takes effect on January 1, 2003.

C. The 1904 Forms

Consistent with the above decisions, OSHA will issue new recordkeeping forms that have been modified to remove the MSD and hearing loss columns from the OSHA 300 Log of Work-Related Injuries and Illnesses and the OSHA 300A Summary of Work-Related Injuries and Illnesses. The instructions accompanying the forms have also been modified to reflect the decisions for the 1904 requirements that will be in effect during calendar year 2002.

Employers may obtain copies of the forms from OSHA's Internet homepage at www.osha.gov, or by contacting the

OSHA publications office at (202) 693-1888.

Paperwork Reduction Act

OSHA has submitted to OMB a request for approval of the information collection requirements of the final recordkeeping rule, including the effect on the rule's paperwork burden of the delay in implementation of Sections 1904.10 and 1904.12 until January 1, 2003, and the adoption of an interim 25dB recording criterion for hearing loss cases for calendar year 2002. OSHA will publish a subsequent Federal Register document when OMB takes further action on the information collection requirements in the recordkeeping rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601), the Assistant Secretary certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The rule does not add any new requirements, but merely delays the effective date of two sections of the rule. The delay will not impose any additional costs on the regulated public.

Executive Order

This document has been deemed significant under Executive Order 12866 and has been reviewed by OMB.

Authority

This document was prepared under the direction of John Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under Section 8 of the Occupational Safety and Health Act (29 U.S.C. 657) and 5 U.S.C. 553.

John Henshaw, Assistant Secretary of Labor.

29 CFR part 1904 is hereby amended as set forth below:

PART 1904—[AMENDED]

1. The authority citation for 29 CFR part 1904 is revised to read as follows:

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 3-2000 (65 FR 50017), and 5 U.S.C. 533.

2. Section 1904.10 of 29 CFR is amended by adding a note to the section, and by adding a new paragraph (c), to read as follows:

§ 1904.10 Recording criteria for cases involving occupational hearing loss.

* * * * *

(c) Recording criteria for calendar year 2002. From January 1, 2002 until December 31, 2002, you are required to record a work-related hearing loss

averaging 25dB or more at 2000, 3000, and 4000 hertz in either ear on the OSHA 300 Log. You must use the employee's original baseline audiogram for comparison. You may make a correction for presbycusis (aging) by using the tables in Appendix F of 29 CFR 1910.95. The requirement of § 1904.37(b)(1) that States with OSHA-approved state plans must have the same requirements for determining which injuries and illnesses are recordable and how they are recorded shall not preclude the states from retaining their existing criteria with regard to this section during calendar year 2002.

Note to § 1904.10: Paragraphs (a) and (b) of this section are effective on January 1, 2003. Paragraph (c) of this section applies from January 1, 2002 until December 31, 2002.

3. Section 1904.12 is amended by adding a note to the section, to read as follows:

§ 1904.12 Recording criteria for cases involving work-related musculoskeletal disorders.

* * * * *

Note to § 1904.12: This section is effective January 1, 2003. From January 1, 2002 until December 31, 2002, you are required to record work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs in accordance with the requirements applicable to any injury or illness under § 1904.5, § 1904.6, § 1904.7, and § 1904.29. For entry (M) on the OSHA 300 Log, you must check either the entry for "injury" or "all other illnesses."

4. Section 1904.29(b)(7)(vi) is revised to read as follows:

§ 1904.29 Forms.

* * * * *

(6) * * *

(7) * * *

(vi) Other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the log. Musculoskeletal disorders (MSDs) are not considered privacy concern cases. (Note: The first sentence of this § 1904.29(b)(7)(vi) is effective on January 1, 2002. The second sentence is effective beginning on January 1, 2003.)

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