

II, 445 12th Street, SW., CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506 (c)(4).

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 286A at Elberton, and by adding Union Point, Channel 286C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05-11274 Filed 6-7-05; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA-2005-21259]

RIN 2126-AA88

Parts and Accessories Necessary for Safe Operation: Protection Against Shifting and Falling Cargo

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) is proposing to amend its September 27, 2002, final rule concerning protection against shifting and falling cargo for commercial motor vehicles (CMVs) engaged in interstate commerce in response to petitions for rulemaking from the American Trucking Associations (ATA), Forest Products Association of Canada, Georgia-Pacific Corporation and Weyerhaeuser, and in response to issues raised by the Canadian Council of Motor Transport Administrators (CCMTA), the Forest Resources Association, Inc., the Washington Contract Loggers Association and the Washington Log Truckers Conference, and the Timber Producers Association of Michigan and Wisconsin. The amendments are intended to make the final rule more consistent with the December 18, 2000, notice of proposed rulemaking (NPRM) and the North American Cargo Securement Standard Model Regulations the new rules are based upon. This rulemaking would also include several editorial corrections to the final rule.

DATES: Comments must be received by August 8, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA-2004-19608 by any of the following methods:

- **Web Site:** <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic site.
- **Fax:** 1-202-493-2251.
- **Mail:** Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.
- **Hand Delivery:** Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday

through Friday, except Federal Holidays.

• **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (RIN 2126-AA90). Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Chief of the Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 202-366-4009.

SUPPLEMENTARY INFORMATION: This notice is organized as follows:

- I. Legal Basis for the Rulemaking
- II. Background
- III. Petitions for Reconsideration
 - A. Summary of the Petitions for Reconsideration
 - B. FMCSA Response to the Petitioners
- IV. ATA Petition for Rulemaking
 - A. Summary of ATA Concerns
 - B. FMCSA Response to ATA Concerns
- V. CCMTA Concerns About the Relationship Between the Performance Criteria and Working Load Limits
 - A. Summary of CCMTA's Concerns
 - B. FMCSA Response to CCMTA
- VI. Forest Resources Association's Concerns About Section 393.116
 - A. Summary of the Forest Resource Association's Concerns

- B. FMCSA Response to the Forest Resources Association
- VII. Washington Contract Loggers Association and Washington Log Truckers Conference—Section 393.116
 - A. Summary of Washington Loggers' and Log Truckers' Concerns
 - B. FMCSA Response to Washington Loggers and Log Truckers
- VIII. Timber Producers Association of Michigan and Wisconsin—Section 393.116
 - A. Summary of the Timber Producers Association's Concerns
 - B. FMCSA Response to Timber Producers Association
- IX. Miscellaneous Amendments—
 - Manufacturing Standards for Tiedowns, Dressed Lumber, Metal Coils, Paper Rolls, Intermodal Containers, Flattened or Crushed Cars
 - A. Manufacturing Standards for Tiedowns
 - B. Dressed Lumber and Similar Building Products
 - C. Metal Coils
 - D. Paper Rolls
 - E. Intermodal Containers
 - F. Flattened or Crushed Cars
- X. Regulatory Analyses and Notices

I. Legal Basis for the Rulemaking

This rulemaking is based on the authority of the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984.

The Motor Carrier Act of 1935, as amended, provides that “[t]he Secretary of Transportation may prescribe requirements for: (1) Qualifications and maximum hours-of-service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours-of-service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation” (49 U.S.C. 31502(b)).

This NPRM proposes to amend regulations concerning protection against shifting and falling cargo (cargo securement), applicable to motor carriers of property, which were promulgated by FMCSA on September 27, 2002 (67 FR 61212). The cargo securement regulations deal directly with the “safety of operation and equipment of * * * a motor carrier (§ 31502(b)(1)) and the “standards of equipment of, a motor private carrier when needed to promote safety of operation” (§ 31502(b)(2)). The adoption and enforcement of such rules is specifically authorized by the Motor Carrier Act of 1935. This NPRM rests squarely on that authority.

The Motor Carrier Safety Act of 1984 provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to “prescribe regulations on commercial motor vehicle safety. The regulations

shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that: (1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators” (49 U.S.C. 31136(a)).

This NPRM deals with cargo securement. It is based primarily on § 31136(a)(1) and (2), and secondarily on § 31136(a)(4). This rulemaking would ensure CMVs are maintained, equipped, loaded, and operated safely by requiring that cargo be secured in a manner that prevents it from shifting upon a CMV to such an extent that the vehicle's stability or maneuverability is adversely affected, or falling from the commercial motor vehicle and striking another vehicle. Compliance with the cargo securement regulations is necessary to ensure vehicles are equipped with appropriate cargo securement devices, loads are properly positioned on the vehicle, and vehicles are operated safely without the risk of shifting or falling cargo.

The proposed regulations would provide improved guidance to CMV drivers who are often responsible for securing articles of cargo against movement, thereby ensuring the cargo securement responsibilities imposed on them by their employers do not, if fulfilled in accordance with the regulations, impair their ability to operate vehicles safely.

Finally, the rulemaking would ensure the operation of CMVs does not have a deleterious effect on the physical condition of the operators of vehicles by preventing articles of cargo from shifting forward into the driver's compartment, or shifting upon the vehicle to such an extent that the vehicle's stability or maneuverability is adversely affected and likely to cause a crash.

Therefore, FMCSA considers the requirements of 49 U.S.C. 31136 (a)(1), (2) and (4) to be applicable to this rulemaking action. The rulemaking would amend regulations concerning commercial vehicle equipment, loading and operations, prescribe regulations applicable to the responsibilities frequently imposed upon drivers to ensure their ability to operate safely is not impaired, and help to prevent serious injuries to CMV drivers that

could result from improperly secured loads.

With regard to 49 U.S.C. 31136(a)(3), FMCSA does not believe this provision concerning the physical condition of drivers is applicable to this rulemaking because this rulemaking does not concern the establishment of driver qualifications standards. This proposed rulemaking addresses safety requirements applicable to the cargo securement methods used by drivers who are often assigned the responsibility for ensuring that freight is restrained to prevent shifting upon or falling from the CMV, but it does not include issues related to the physical qualifications or physical capabilities of drivers who must complete such tasks.

FMCSA requests comments and information on all of these issues to enable the agency to evaluate the proposed changes. However, before prescribing any such regulations, FMCSA must consider the “costs and benefits” of any proposal (49 U.S.C. 31136(c)(2)(A)).

II. Background

On September 27, 2002 (67 FR 61212), FMCSA published a final rule revising its regulations concerning protection against shifting and falling cargo for CMVs operated in interstate commerce. The new cargo securement standards are based on the North American Cargo Securement Standard Model Regulations, reflecting the results of a multi-year comprehensive research program to evaluate the then-current U.S. and Canadian cargo securement regulations; the motor carrier industry's best practices; and recommendations presented during a series of public meetings involving U.S. and Canadian industry experts, Federal, State and Provincial enforcement officials, and other interested parties. The Agency indicated that the intent of the rulemaking is to reduce the number of crashes caused by cargo shifting on or within, or falling from, CMVs operating in interstate commerce, and to harmonize to the greatest extent practicable U.S., Canadian and Mexican cargo securement regulations. Motor carriers were given until January 1, 2004, to comply with the new regulations.

III. Petitions for Reconsideration

A. Summary of the Petitions for Reconsideration

FMCSA received separate petitions for reconsideration of the final rule from the Forest Products Association of Canada, Georgia-Pacific Corporation and Weyerhaeuser. However, each petition

requested the same changes to the final rule, for the same reasons. Therefore, for the purposes of this notice, the Agency refers to the Association and the two companies collectively as “the Petitioners.” A copy of each petition is included in the docket referenced at the beginning of this notice. Although each of the Petitioners considered its request to be a petition for reconsideration of the final rule, all the requests were submitted after the deadline provided in 49 CFR 389.35 (*i.e.*, petitions for reconsideration must be submitted no later than 30 days after publication of the final rule in the **Federal Register**). Therefore, the petitions are being treated as petitions for rulemaking in accordance with 49 CFR 389.35.

The Petitioners requested nine specific amendments to the final rule:

1. Revise § 393.102(d) to provide a third option regarding equivalent means of securement that would satisfy the performance criteria. The Petitioners believe the use of the term “immobilized” means the cargo securement system must not allow any movement at all which is in conflict with the reality that regardless of the securement system being used, there will be some movement.

2. Amend § 393.104 by removing the reference to “vehicle structures” from paragraph (b) and removing the reference to cuts and cracks from paragraphs (b) and (c). The Petitioners believe the reference to “vehicle structures” should only appear in § 393.104(c) and that the phrase “must not have any cracks or cuts” is problematic because most vehicles have minor areas of stress that could be considered cracks.

3. Revise § 393.106(a) to insert the proper paragraph numbers to encompass the commodity-specific rules. Section 393.106(a) incorrectly references §§ 393.122 through 393.142 instead of §§ 393.116 through 393.136.

4. Revise § 393.106(d) to explain in greater detail the methodology for determining the aggregate working load limit for a cargo securement system.

5. Revise the title of § 393.108 to include reference to friction mats, thereby avoiding the incorrect identification of friction mats as a tiedown.

6. Revise § 393.108(a) to include an example to clarify the working load limits of associated connectors and attachment mechanisms.

7. Revise § 393.110(a) to avoid suggesting that all types of cargo require the use of tiedowns to comply with the rules. The Petitioners recommend that paragraph (a) be revised so that it is

applicable only when tiedowns are being used.

8. Revise § 393.110(c) to avoid suggesting that individual articles of cargo are required to be blocked, braced or immobilized. The Petitioners requested that paragraph (c) be revised to be applicable only when blocking and bracing is being used.

9. Revise § 393.114(b)(1) to eliminate a typographical error: the paragraph incorrectly states “forward movement of any item of article” instead of “forward movement of any item or article.”

B. FMCSA Response to the Petitioners

1. Section 393.102(d)

FMCSA agrees with the Petitioners on this issue. Section 393.102(d) should be amended to explicitly state that the phrase “equivalent means of securement” includes loading arrangements in which the cargo fills a sided vehicle of adequate strength, and every article of cargo is in contact with, or sufficiently close to, a wall or other articles so that it cannot shift or tip if those articles are also unable to shift or tip. Although the Agency intended that use of the term “immobilized” in § 393.102(d) would encompass such loading arrangements as an option for satisfying the performance criteria in § 393.102(a), we agree the term could be construed to prohibit even the slightest of movements and consequently does not adequately express the full intent of § 393.102(d).

The proposed change to § 393.102(d) would clarify that van type trailers carrying cargo need not use tiedowns so long as cargo is loaded in such a way as to prevent cargo from shifting or falling during transport. The rule as originally written could be read to imply that all trailers with walls for restraining cargo (such as van type trailers) would have to use tiedowns when transporting cargo in order to prevent shifting of cargo. FMCSA did not intend to impose the use of tiedowns on cargo loaded on trailers with sidewalls that are of adequate strength, and which are loaded in such a way as to prevent cargo from shifting or spilling during transport. This section of the rule clarifies the conditions under which tiedowns are necessary, and those under which FMCSA considers sidewall restraints and proper loading to adequately contain cargo during shipment. This change was made in response to comments from industry representatives, including the following from the Weyerhaeuser Corporation:

“However, the sections of the proposed standard that cover general cargo (393.100 through 393.120) are confusing and far

removed from the principles of the Model Regulation. These sections appear to require tiedowns for cargo transported in sided vehicles at all times. Cargo that will not fall from or out of a vehicle and cargo that will not shift to the extent that the vehicle’s stability is adversely affected should not be subject to the requirements concerning tiedowns or other additional securement. The confusion in these proposed rules could lead to needless litigation based on the confusion and misinterpretation of the rules by shippers, carriers and enforcement agencies.”

Therefore, to avoid potential misunderstandings about the requirements by motor carriers, drivers and enforcement personnel, the Agency would revise § 393.102(d) to incorporate the change noted above.

2. Section 393.104(b) and (c)

FMCSA agrees with the Petitioners that the reference to “vehicle structures” should not appear in paragraph (b). The term “vehicle structures” should appear only in paragraph (c) of § 393.104. Paragraph (b) is intended to cover devices and components used to secure articles of cargo to the vehicle, while paragraph (c) is intended to focus on vehicle structures and anchor points. The Agency would revise paragraph (b) to remove the reference to “vehicle structures.”

FMCSA also agrees with the Petitioners that the use of the phrase “must not have any cracks or cuts” at the end of paragraphs (b) and (c) could be construed as prohibiting all cracks and cuts on cargo securement devices, systems or vehicle components used to secure cargo regardless of whether such imperfections adversely affect their performance for cargo securement purposes. This is not the Agency’s intent. As indicated in the preamble to the final rule (67 FR 61212, at 61220) the Agency indicated that the defects or deficiencies of concern were those that are capable of having an adverse effect on the performance of the cargo securement system. The Agency continues to believe this approach is appropriate and that a blanket prohibition against any visible damage, regardless of severity, is not warranted. Accordingly, FMCSA would revise §§ 393.104(b) and (c) to limit the prohibition against cracks or cuts to situations where the damage will adversely effect the performance of the cargo securement device.

3. Section 393.106(a)

The Petitioners are correct that § 393.106(a) of the final rule makes reference to the wrong sections when discussing the commodity-specific rules. Section 393.106(a) incorrectly

references §§ 393.122 through 393.142 when it should have made reference to §§ 393.116 through 393.136. Therefore, FMCSA would correct this error.

4. Section 393.106(d)

FMCSA agrees with the Petitioners that the current rules providing guidance on determining the aggregate working load limit should be revised. The Agency does not believe the revision needs to be as extensive as the Petitioners suggest.

The Petitioners are correct that the working load limit of a tiedown and its associated attachment point(s) is controlled by the weakest link. If a tiedown is stronger than the anchor points, the working load limit of the anchor points would be used to determine the working load limit of the tiedown, as installed. If an anchor point is stronger than the chain, synthetic webbing, wire rope, etc. connected to it, the tiedown is the weakest link and the working load limit for the tiedown should be based on that weakest link. FMCSA believes the weakest link concept for cargo securement systems is well understood by enforcement personnel, motor carriers and drivers, and reinforced by the Agency's definition of "tiedown" in § 393.5 and by § 393.108(a).

The definition of "tiedown," provided in 49 CFR 393.5, explains it is a combination of securement devices which forms an assembly that attaches articles of cargo to, or restrains articles of cargo on, a vehicle or trailer, and is attached to anchor points. Section 393.108(a) provides that the working load limit of a tiedown, associated connector or attachment mechanism is the lowest working load limit of any of its components (including tensioner), or the working load limit of the anchor points to which it is attached, whichever is less.

FMCSA believes the formula for determining the aggregate working load limit for tiedowns should be more simply stated as the sum of:

- (1) One-half the working load limit of each tiedown that goes from an anchor point on the vehicle to an attachment point on an article of cargo; and
- (2) The working load limit for each tiedown that goes from an anchor point on the vehicle, through, over or around the cargo and then attaches to another anchor point on the vehicle.

The Agency believes this straightforward wording, combined with the Agency's definition of tiedown and the explicit guidance to use the lowest working load limit of any of the components in a given tiedown when determining the working load limit for

that tiedown, will ensure motor carriers, drivers, and enforcement personnel better understand the aggregate working load limit requirement.

5. Section 393.108

FMCSA agrees with the Petitioners that the title of this section should be revised to more accurately reflect the role of friction mats in a cargo securement system. The current title provides the reader with no means of recognizing there is a paragraph therein concerning friction mats.

6. Section 393.108(a)

FMCSA disagrees with the Petitioners about the need for the inclusion of an example for determining the working load limit for a cargo securement system. While examples may be helpful they are not necessarily appropriate for publication in the Code of Federal Regulations. The Agency believes the revision of § 393.106(d) will resolve any remaining confusion regarding the process for determining the aggregate working load limit for a cargo securement system.

7. Section 393.110(a)

FMCSA agrees with Petitioners that § 393.110(a) should be revised so that the requirement is applicable only when tiedowns are being used. This change is consistent with the intent of the final rule and the Agency considers it to be an editorial correction.

8. Section 393.110(c)

FMCSA agrees with Petitioners that § 393.110(c) should be revised so that the requirement is applicable only when blocking, bracing or some other means of immobilization is being used. This change is consistent with the intent of the rule and the Agency considers it to be an editorial correction.

9. Section 393.114(b)(1)

FMCSA agrees with the Petitioners that the Agency should revise § 393.114(b)(1) to replace "forward movement of any item of article" with "forward movement of any item or article." This is an editorial correction and the Agency would make this change.

IV. ATA Petition for Rulemaking

A. Summary of ATA Concerns

On June 9, 2004, ATA filed a petition for rulemaking for reconsideration of the September 27, 2002, final rule. Because the petition was submitted well after the deadline for petitions for reconsideration provided in 49 CFR 389.35 (*i.e.*, petitions for reconsideration must be submitted no later than 30 days

after publication of the final rule in the **Federal Register**), FMCSA considers the ATA request to be a petition for rulemaking. A copy of the ATA petition is included in the docket referenced at the beginning of this document.

ATA requested FMCSA revise § 393.102(c) to adopt the forward and lateral acceleration values of 0.4 g (defined in § 393.5 as the acceleration due to gravity, 32.2 ft/sec² (9.81 m/sec²)) and 0.25 g, respectively, based on the Agency's December 31, 2003, enforcement policy memorandum. This issue is discussed in detail in the section concerning CCMTA's concerns about the relationship between the performance criteria and working load limits.

ATA also requested that the Agency remove § 393.104(f)(4) from the new cargo securement regulations. Section 393.104(f)(4) requires that all tiedowns and other components of a cargo securement system used to secure loads on a trailer equipped with rub rails, must be located inboard the rub rails whenever practicable. ATA believes the term "whenever practicable" is inherently subjective. Requiring securement devices to remain inboard whenever practicable means motor carriers must: Attach tiedowns directly to the underside of the trailer, potentially preventing proper securement; or, attach tiedowns using industry standard practices and risk being issued a fine or placed out of service by enforcement personnel who have a different interpretation of "practicable."

In addition, ATA requested FMCSA to revise § 393.118(d)(3)(iv)(B) concerning securement requirements for dressed lumber or similar building products. ATA believes the wording is confusing because it is being used to account for every load of more than two tiers of products. Furthermore, the use of the word "tier" is subject to being misinterpreted because the paragraph does not clarify whether the usage of the word "tier" is intended to cover the vertical, longitudinal or lateral direction.

B. FMCSA Response to ATA Concerns

FMCSA agrees with ATA that § 393.102(c) should be revised to use 0.4 g deceleration in the forward direction and 0.25 g acceleration in a lateral direction when determining whether the working load limit for cargo securement devices or systems would be exceeded. A more in-depth discussion of this issue is presented in the section of this notice addressing CCMTA's concerns.

With regard to § 393.104(f)(4), FMCSA has provided a clarification of the

requirement indicating that if the trailer is designed and equipped so that there is no other practicable means of attaching the tiedowns to the trailer so that they are prevented from becoming loose, unfastened or released while the vehicle is in transit—required by § 393.104(f)(3)—then attaching the tiedown to the rub rails should not be considered a violation of § 393.104(f)(4). However, based on the number of inquiries received from State enforcement officials and motor carriers, and understanding their perspectives in interpreting the regulation, the Agency agrees the requirement should be rescinded. The Agency does not believe it is possible to achieve uniform and consistent enforcement of this provision.

Although § 393.104(f)(3) was adopted to ensure that motor carriers do not expose tiedowns to potential damages if the vehicle rubs against a fixed object such as a highway barricade, this mode of failure for tiedowns appears to be extremely rare. Therefore, the Agency does not believe rescinding this paragraph would have an adverse impact on safety.

FMCSA agrees with ATA about the need to revise § 393.118(d)(3)(iv)(B). The current wording is ambiguous at best. FMCSA agrees the requirement should be interpreted to mean that if a stack contains three bundles, then the middle and top bundles must be secured by tiedowns in accordance with the provisions of §§ 393.100 through 393.114. If a stack contains more than three bundles, then one of the middle bundles and the top bundle must be secured by tiedown devices in accordance with the provision of §§ 393.100 through 393.114. The maximum height for the middle bundle that is secured must not exceed 6 feet above the deck of the trailer. Otherwise, the second bundle from the bottom of the stack must be secured in accordance with §§ 393.100 through 393.114. However, FMCSA does not agree with ATA's argument about the need for changing the terminology in this provision from "tier" to "stack." The Agency does not believe the continued use of the term "tier" has caused problems to date and points out that the petitioner has not identified any such occurrences.

V. CCMTA Concerns About the Relationship Between the Performance Criteria and Working Load Limits

A. Summary of CCMTA Concerns

CCMTA believes cargo securement devices and systems should be designed, installed and maintained to

ensure that the maximum forces acting on the devices or systems do not exceed the working load limit for the devices when the devices or systems are subjected to the forces generated by the deceleration and accelerations provided in the performance criteria. CCMTA argues the requirement that the aggregate working load limit be at least one-half times the weight of the article being secured does not ensure compliance with the prohibition against exceeding the working load limit when the performance criteria (0.8 g deceleration in the forward direction, 0.5 g in the rearward and lateral directions) are applied. To correct this discrepancy, CCMTA believes the working load limit formula needs to be adjusted to increase cargo restraining capacity. A copy of CCMTA's comments to the Commercial Vehicle Safety Alliance concerning FMCSA's requirements is included in the docket for this rulemaking.

B. FMCSA Response to CCMTA

FMCSA shares CCMTA's concerns about safety but the Agency does not believe, given the limited amount cargo securement-related crash data available, there is a need to establish more stringent requirements than the Agency adopted on September 27, 2002. The Agency believes cargo securement systems should be designed, installed, and maintained to ensure that the maximum forces acting on these devices and systems do not exceed the working load limit of the tiedowns, but only under normal operating conditions. This is because working load limit is defined in § 393.5 as the maximum load that may be applied to a component of a cargo securement system during normal service. The performance criteria of § 393.102(a) do not represent normal service or operating conditions. Specifically, 0.8 g deceleration in the forward direction is not a routine force that commercial motor vehicles are subjected to on a regular basis. The same may be said of 0.5 g acceleration in a lateral direction. The preamble to the final rule stated:

The values chosen are based on the researchers' analysis of previous studies concerning commercial motor vehicle performance. The analysis indicated that the highest deceleration likely for an empty or lightly loaded vehicle with an antilock brake system, with all brakes properly adjusted and warmed to provide optimal braking performance, is in the range of 0.8–0.85 g. However, a typical loaded vehicle would not be expected to achieve a deceleration greater than 0.6 g on a dry road.

The typical lateral acceleration while driving a curve or ramp at the posted advisory speed is in the range 0.05–0.17 g.

Loaded vehicles with a high center of gravity rollover at a lateral acceleration above 0.35 g. Lightly loaded vehicles, or heavily loaded vehicles with a lower center of gravity, may withstand lateral acceleration forces greater than 0.50 g. We continue to believe that the information presented by the researchers supports the use of the decelerations listed above.

FMCSA also considered the National Highway Traffic Safety Administration's (NHTSA) report "An In-Service Evaluation of the Reliability, Maintainability, and Durability of Antilock Braking Systems (ABS) for Heavy Truck Tractors," DOT HS 807 846, March 1992, which provides data concerning routine brake application pressures and the resulting forces. NHTSA used on-board electronic data monitors/recorders installed on 216 vehicles, 200 ABS equipped truck tractors, and 16 control vehicles. The data were accumulated over nearly 600,000 hours and 18 million miles of tractor operation. More than 13 million brake applications occurred during that time period, at all times of the year and during all types of weather. Brake pressures of 15 pounds per square inch (psi) or less (light braking) accounted for approximately 84 percent of the total braking time recorded. An additional 10 percent of brake applications were between 15 and 20 psi and almost all the remaining brake applications were below 45 psi (moderate to hard braking). Only 0.02 percent of the total braking time was at pressures of 75 psi or greater.

Eighty-five percent of the braking resulted in 0.19 g, or less, decelerations indicating light braking, and another 14.7 percent resulted in moderate-to-hard braking from 0.19 to 0.40 g. Deceleration levels above 0.40 g were only encountered in 0.11 percent of brake applications.

Based on the Agency's review of its stated objectives in the preamble of the final rule and the NHTSA research data, FMCSA believes it would be inappropriate to require that the working load limits for the tiedowns be equal to or greater than the forces they would be subjected to, based on the performance criteria under § 393.102(a). A requirement to ensure the working load is adequate for such performance limits would mean motor carriers must double the number of tiedowns currently required. The aggregate working load limit would have to be increased from ½ times the weight of the articles being secured to one times the weight of the articles being secured. This is not necessary given that 99.7 percent of the braking measured during NHTSA's study resulted in 0.40 g or less

deceleration. The current requirement that the aggregate working load limit be equal to at least ½ times the weight of the article ensures an appropriate level of safety because 0.40 g deceleration in the forward direction (from the NHTSA study), and about 0.25 g acceleration in the lateral direction appear to represent maximum deceleration and acceleration values under normal operating conditions. Generally, these values would not result in forces that exceed the working load limit for the tiedowns.

Because the 0.8 g deceleration in the forward direction and the 0.5 g accelerations in the lateral and rearward directions represent the most extreme operating conditions short of a crash, FMCSA believes the rules should require that the breaking strength of the cargo securement system must be sufficient to ensure the load remains in place up to these limits. Compliance with the prohibition against exceeding the working load limits would then be determined by using 0.4 g deceleration in the forward direction, 0.25 g in the lateral directions, and 0.5 g in the rearward direction—the rearward acceleration would remain unchanged because it results from the vehicle backing slowly into the loading dock. The Agency is revising § 393.102 to provide appropriate performance limits for use in determining compliance with the working load limit rules.

VI. Forest Resources Association Concerns About § 393.116

A. Summary of Forest Resources Association Concerns

The Forest Resources Association identified three issues of concern. First, the December 18, 2000, NPRM proposed that the aggregate working load limit for all tiedowns used to secure a stack of logs be one-sixth the weight of the logs. The paragraph under the proposed § 393.116 was omitted from the final rule and they have requested that it be restored.

Second, the Forest Resources Association requested that § 393.116 be amended to allow one tiedown per bunk, spaced equally between the standards, when transporting short length logs loaded lengthwise between the first two standards and between the last two standards. They believe the current wording requiring the use of two tiedowns is unnecessary given the bunks and standards.

Third, the group indicated that the final rule omitted requirements for the transportation of longwood logs loaded lengthwise. They requested the agency restore the language originally proposed for the transportation of longwood. A

copy of the Forest Resources Association's letter is included in the docket referenced at the beginning of this document.

B. FMCSA Response to the Forest Resources Association

FMCSA believes the Forest Resources Association's requests are reasonable and appropriate. The NPRM (65 FR 79050, December 18, 2000) included proposed requirements for the transportation of longwood on frame vehicles [§ 393.122(d)(2) of the proposal] and longwood on flatbed vehicles [§ 393.122(f)(4) of the proposal]. Sections 393.122(d)(3) and (f)(5) of the proposal would have provided that the aggregate working load limit for all tiedowns must be no less than one-sixth the weight of the stack of logs, for logs transported lengthwise. When the final rule was drafted, paragraphs (d)(2) and (3), and (f)(4) and (5) were inadvertently omitted. FMCSA would correct those errors.

With regard to allowing the use of one tiedown per bunk for short length logs loaded lengthwise between the first two standards and between the last two standards, FMCSA believes one tiedown is sufficient given the standards used to protect against lateral movement.

VII. Washington Contract Loggers Association and Washington Log Truckers Conference—§ 393.116

A. Summary of Washington Loggers and Log Truckers Concerns

The Washington Contract Loggers Association and Washington Log Truckers Conference also expressed concerns about § 393.116. These organizations are concerned that the new rules require tiedowns (as defined in § 393.5) for the transportation of logs on frame vehicles and appear to prohibit the continued use of wrappers—a tiedown-type device that encircles the entire load, which is then placed onto the frame vehicle with standards to keep the bundled logs in place. The groups presented photographs of several vehicle configurations requesting guidance whether the vehicles were considered frame vehicles, and require the use of tiedowns instead of wrappers. A copy of the Washington Contract Loggers Association and Washington Log Truckers Conference correspondence with FMCSA is included in the docket referenced at the beginning of this document.

B. FMCSA Response to Washington Loggers and Log Truckers

FMCSA has carefully reviewed the NPRM and the North American Cargo Securement Standard Model Regulations and determined § 393.116(e) should be amended to allow the use of wrappers that encircle the entire load at locations along the load that provide effective securement. The use of wrappers is currently allowed for the transportation of logs on pole trailers [see § 393.116(f)] and there is no discernible reason the use of wrappers and standards as a means of securing loads should be prohibited.

VIII. Timber Producers Association of Michigan and Wisconsin—§ 393.116

A. Summary of Timber Producers Association Concerns

The Timber Producers Association of Michigan and Wisconsin indicated the forest products industry has expressed an interest in using a crib-type system for transporting logs and pulpwood. Such systems are typically based, in whole or in part, upon a patented design “Apparatus for Constraining the Position of Logs on a Truck Trailer” (Patent No. U.S. 6,572,314 B2). These systems use stakes, bunks, a front-end structure, and a rear structure to restrain logs on trailers. The stakes prevent movement of the logs from side to side on the vehicle while the front-end and rear structures prevent movement of the logs from front to back on the vehicle. The intent of such systems is to enable motor carriers to transport logs without the use of wrapper chains or straps to secure the load, thereby expediting the loading and unloading process. Section 393.116 does not provide clear guidance whether these systems may be used without tiedowns.

B. FMCSA Response to Timber Producers Association

The agency explained in a clarification dated December 30, 2003, that, generally, the use of a crib-type log securement system, without wrappers or tiedowns, would satisfy the commodity-specific requirements of § 393.116, provided:

(1) All vehicle components in the crib-type system are designed and built to withstand all anticipated operational forces without failure, accidental release or permanent deformation. Stakes or standards that are not permanently attached to the vehicle must be secured in a manner that prevents unintentional separation from the vehicle in transit [49 CFR 393.116(b)(2)];

(2) Logs are solidly packed with the outer bottom logs in contact with, and

resting solidly against the stakes, bunks, bolsters or standards [49 CFR 393.116(c)(1)];

(3) Each outside log on the side of a stack of logs must touch at least two stakes, bunks, bolsters or standards. If one end does not actually touch a stake, it must rest on other logs in a stable manner and must extend beyond the stake, bunk, bolster or standard [49 CFR 393.116(c)(2)];

(4) The maximum height of each stack of logs being transported is below the height of the stakes and the front- and rear-end structures; and,

(5) The heights of the stacks are approximately equal so that logs in the top of one stack cannot shift longitudinally onto another stack on the vehicle.

The Agency further explained that § 393.116(b)(3), which requires that tiedowns be used in combination with the stabilization provided by stakes, bunks and bolsters to secure loads of logs, should not be considered applicable to the transportation of logs on crib-type vehicles under the conditions described above. However, § 393.116(c)(4), also concerning tiedowns, remains applicable for logs that are not held in place by contact with other logs or the stakes, bunks or standards. This means the decision whether tiedowns must be used is contingent upon how the logs are loaded onto the vehicle. If the tops of the stacks of logs are relatively level, then tiedowns would not be required when the logs are transported in crib-type vehicles. Uneven loads would require tiedowns on the taller stacks, and on logs that are not held in place by other logs, bunks or standards.

FMCSA is proposing to revise § 393.116(b)(3) to include an exception to the regulation requiring tiedowns to enable motor carriers to use crib-type trailers, without tiedowns, provided certain conditions are satisfied. The agency would also include a definition of "crib-type log trailer" under § 393.5. The term "system" is much more generic than "log trailer," and the agency believes "log trailer" would ensure less confusion because the issue appears to involve only trailers, at this time.

IX. Miscellaneous Amendments— Manufacturing Standards for Tiedowns, Dressed Lumber, Metal Coils, Paper Rolls, Intermodal Containers and Flattened Cars

A. Manufacturing Standards for Tiedowns

FMCSA would replace the current reference to the November 15, 1999,

edition of the National Association of Chain Manufacturers' Welded Steel Chain Specifications with the April 26, 2003, edition to ensure the most up-to-date edition of the standard is referenced in the regulations. These specifications cover properties and grades of welded chain for industrial and commercial uses, produced to accepted commercial tolerances. This change would not affect the table of working load limits or cause any other substantive change to the requirements motor carriers must satisfy. The agency would amend § 393.7, Matter incorporated by reference, and § 393.104(e) concerning manufacturing standards for tiedown assemblies.

B. Dressed Lumber and Similar Building Products

FMCSA would add a new paragraph to § 393.118(d) to include a fifth option for dressed lumber and building materials transported using more than one tier in a sided vehicle or container. The new paragraph would enable motor carriers to secure such loads in accordance with the general cargo securement provisions, §§ 393.100 through 393.114. Based on information from the Paper and Forest Industry Transportation Committee, the transportation of stacked units of dressed lumber and building products in sided vehicles or containers is common. However, the commodity-specific regulation does not include a provision to recognize this safe and effective option.

C. Metal Coils

FMCSA would propose adding a definition of "metal coil" to 49 CFR 393.5 to ensure uniform and consistent enforcement of § 393.120. The agency has received numerous telephone calls and several letters asking whether certain items comprised largely of metal must be secured in accordance with § 393.120. Although the previous cargo securement rules adopted in the 1970's included provisions applicable to the transportation of metal coils, there seemed to be a consensus the requirements were applicable to metal packaged as a roll. Questions concerning the applicability to metal packaged as a coil, spool, wind or wrap did not seem to arise. However, given the significant damage that would be caused if the load fell from the vehicle, there are clearly safety concerns about dense metal articles of cargo that are round.

Therefore, the Agency would propose a definition that captures round metal articles that present a significant safety risk to the traveling public if they are

not secured properly. This definition would ensure the applicability of the commodity-specific regulation for metal coils is applicable to such loads. The Agency would define a metal coil as an article of cargo comprised of mixtures, compounds or alloys commonly known as metal, metal foil, metal leaf, forged metal, stamped metal, metal wire or metal chain that are packaged as a roll, coil, spool, wind or wrap.

D. Paper Rolls

FMCSA would revise § 393.122(b)(4) to clarify the requirements concerning protection against tipping or falling sideways or forwards. The current wording has prompted requests for clarification because the requirements are not presented in a manner that makes clear the applicability of the banding, blocking, bracing or tiedown rules. Therefore, based on a review of the NPRM and model regulations, FMCSA would revise paragraph (b) to read as follows:

- If a paper roll is not prevented from tipping or falling sideways or rearwards by vehicle structure or other cargo, and its width is more than 2 times its diameter, it must be prevented from tipping or falling by banding it to other rolls, bracing or tiedowns.

- If the forwardmost roll(s) in a group of paper rolls has a width greater than 1.75 times its diameter, and it's not prevented from tipping or falling forward by vehicle structure or other cargo, then it must be prevented from tipping or falling forwards by banding it to other rolls, bracing, or tiedowns.

- If the forwardmost roll(s) in a group of paper rolls has a width equal to or less than 1.75 times its diameter, and it is restrained against forward movement by friction mat(s) alone, then banding, bracing or tiedowns are not required to prevent tipping or falling forward.

- If a paper roll or the forwardmost roll in a group of paper rolls has a width greater than 1.25 times its diameter, and it is not prevented from tipping or falling forwards by vehicle structure or other cargo, and it is not restrained against forward movement by friction mat(s) alone, then it must be prevented from tipping or falling by banding it to other rolls, bracing or tiedowns.

FMCSA would also revise § 393.122(d)(4) to explicitly prohibit the use of friction mats as the sole means of securing paper rolls on risers at the rear of a vehicle. A best-case scenario involves using a friction mat between the floor of the trailer and the riser, and a second friction mat between the riser and the paper roll. This means the motor carrier must rely on friction between the floor of the trailer and the

friction mat, friction between the friction mat and the bottom of the riser, friction between the top of the riser and the second friction mat, and friction between the mat and the bottom of the paper roll. Effectively securing a paper roll under these circumstances is difficult, if not impossible, because of the sometimes limited amount of surface area for the risers, and the coefficients of friction involved. FMCSA believes, based on information from the Paper and Forest Industry Transportation Committee, paper rolls on risers must be secured using blocking, bracing or banding the paper rolls together. To ensure the paper rolls on risers are properly secured the agency would amend § 393.122(d)(4).

E. Intermodal Containers

FMCSA would amend § 393.126 to explicitly require that all lower corners of the intermodal container must be secured to the container chassis with securement devices or integral locking devices that cannot unintentionally become unfastened while the vehicle is in transit. The current regulatory language requires containers to be secured to the chassis but does not explicitly state that all lower corners must be secured. The amendment will ensure that all containers transported on chassis are properly secured.

F. Flattened or Crushed Cars

FMCSA would revise the current blanket prohibition against the use of synthetic webbing so that webbing could be used as part of a cargo securement system provided no part of the webbing, regardless of whether edge protection or similar devices are used, comes into contact with the flattened or crushed cars. This action would be taken in response to concerns raised by motor carriers using wire rope or chain over the top of flattened or crushed cars, and synthetic webbing to connect the ends of the wire rope or chain to the anchor points on the transport vehicle. There is no readily apparent reason to believe this method of securing flattened or crushed cars presents a safety problem. Therefore, the current blanket prohibition should be revised to provide more flexibility, while ensuring the same standard of safety.

FMCSA would also make an editorial correction to § 393.132(c)(2)(i) concerning containment walls on vehicles used to transport flattened or crushed vehicles. Currently the paragraph in question provides an option for containment walls or comparable means on three sides which extend to the full height of the load and which block against movement of the

cargo in the forward, rearward and the lateral direction for which there is *no* (emphasis added) containment wall or comparable means. The agency is removing the “no” so that the rule clearly states the sidewall is only required to provide protection on the side of the vehicle for which it is installed.

X. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has preliminarily determined this proposed action would not be a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. This document was not reviewed by the Office of Management and Budget (OMB). We expect the proposed rule would have minimal costs, but the Agency has prepared a preliminary regulatory analysis and regulatory flexibility analysis. A copy of the preliminary analysis document is included in the docket referenced at the beginning of this notice.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA has considered the effects of this proposed regulatory action on small entities and determined that this proposed rule would not have a significant impact on a substantial number of small entities, as defined by the U.S. Small Business Administration’s Office of Size Standards.

This rulemaking proposal would make only minor amendments and editorial corrections to FMCSA’s September 27, 2002, final rule establishing new regulations concerning protection against shifting and falling cargo for CMVs operated in interstate commerce. The amendments would improve the clarity of certain provisions of the cargo securement regulations to ensure that the requirements are fully understood by motor carriers and enforcement officials. This proposed action would better enable motor carriers to meet the safety performance requirements of the final rule, while continuing to adhere to industry best-practices that have been shown to effectively prevent the shifting and falling of cargo.

Accordingly, FMCSA has considered the economic impacts of the requirements on small entities and determines preliminarily that this proposed rule would not have a

significant economic impact on a substantial number of small entities. A copy of the agency’s draft regulatory flexibility analysis is included in the docket listed at the beginning of this notice.

Unfunded Mandates Reform Act of 1995

FMCSA has preliminarily determined this proposal would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year.

Executive Order 12988 (Civil Justice Reform)

FMCSA has preliminarily determined this proposed action would meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The agency has preliminarily determined this proposed rulemaking would not be an economically significant rule and would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

FMCSA has preliminarily determined this proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FMCSA has preliminarily determined this proposed rulemaking would not have a substantial direct effect on States, nor would it limit the policy-making discretion of the States. Nothing in this document would preempt any State law or regulation.

Executive Order 12372
(Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposed rulemaking would not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.

National Environmental Policy Act

FMCSA has analyzed this proposed action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and has determined preliminarily this action would not have an effect on the quality of the environment. However, a preliminary environmental assessment (EA) has been prepared because the rulemaking is not among the type covered by a categorical exclusion. A copy of the preliminary environmental assessment is included in the docket listed at the beginning of this notice.

Executive Order 13211 (Energy Effects)

FMCSA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have determined preliminarily this proposal would not be a "significant energy action" under that order because it would not be economically significant and would not be likely to have a significant adverse effect on the supply, distribution or use of energy. The proposed rule would merely make minor amendments and editorial corrections to FMCSA's September 27, 2002, final rule establishing new regulations concerning protection against shifting and falling cargo for CMVs operated in interstate commerce. The proposed action has no effect on the supply or use of energy, nor do we believe it will cause a shortage of drivers qualified to distribute energy, such as gasoline, fuel oil or other fuels.

Issued on: May 26, 2005.

Annette M. Sandberg,
Administrator.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

In consideration of the foregoing, FMCSA would amend title 49, Code of

Federal Regulations, chapter III, as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102-240, 105 Stat. 1914; 49 U.S.C. 31136 and 31502; and 49 CFR 1.73.

2. Amend § 393.5 to add definitions of "crib-type trailer," and "metal coil" to read in alphabetical order as follows:

§ 393.5 Definitions.

* * * * *

Crib-type log trailer means a trailer equipped with stakes, bunks, a front-end structure, and a rear structure to restrain logs. The stakes prevent movement of the logs from side to side on the vehicle while the front-end and rear structures prevent movement of the logs from front to back on the vehicle.

* * * * *

Metal coil means an article of cargo comprised of elements, mixtures, compounds, or alloys commonly known as metal, metal foil, metal leaf, forged metal, stamped metal, metal wire, or metal chain that are packaged as a roll, coil, spool, wind, or wrap.

* * * * *

§ 393.7 [Amended]

3. Amend § 393.7(b)(3) by revising "November 15, 1999" to read "April 26, 2003."

4. Amend § 393.102 by revising paragraphs (c) and (d) to read as follows:

§ 393.102 What are the minimum performance criteria for cargo securement devices and systems?

* * * * *

(c) *Prohibition on exceeding breaking strength and working load limit ratings.*

(1) *Breaking strength.* Cargo securement devices and systems must be designed, installed, and maintained to ensure that the maximum forces acting on the devices or systems do not exceed the manufacturer's breaking strength rating under the conditions listed in paragraphs (a) and (b) of this section.

(2) *Working load limits.* Cargo securement devices and systems must be designed, installed, and maintained to ensure that the forces acting on the devices or systems under normal operating conditions do not exceed the working load limit for the devices. For the purposes of this paragraph, normal operating conditions means a deceleration up to 0.4 g in the forward direction, 0.5 g acceleration in the rearward direction, and 0.25 g acceleration in the lateral direction.

(d) *Equivalent means of securement.* The means of securing articles cargo are

considered to meet the performance requirements of this section if the cargo is—

- (1) Immobilized; or
- (2) Fills a sided vehicle that has walls of adequate strength, and each article of cargo within the vehicle is in contact with, or sufficiently close to a wall or other articles, so that it cannot shift or tip if those articles are also unable to shift or tip; or

(3) Secured in accordance with the applicable requirements of §§ 393.104 through 393.136.

5. Amend § 393.104 by removing paragraph (f)(4) and redesignating paragraph (f)(5) as (f)(4), revising "November 15, 1999" to read "April 26, 2003" after the publication title "National Association of Chain Manufacturers' Welded Steel Chain Specifications" in the table in paragraph (e); and by revising paragraphs (b) and (c) to read as follows:

§ 393.104 What standards must cargo securement devices and systems meet in order to satisfy the requirements of this subpart?

* * * * *

(b) *Prohibition on the use of damaged securement devices.* All tiedowns, cargo securement systems, parts and components used to secure cargo must be in proper working order when used to perform that function with no damaged or weakened components, such as but not limited to, cracks or cuts that will adversely affect their performance for cargo securement purposes, including reducing the working load limit.

(c) *Vehicle structures and anchor points.* Vehicle structures, floors, walls, decks, tiedown anchor points, headerboards, bulkheads, stakes, posts, and associated mounting pockets used to contain or secure articles of cargo must be strong enough to meet the performance criteria of § 393.102, with no damaged or weakened components, such as, but not limited to, cracks or cuts that will adversely effect their performance for cargo securement purposes, including reducing the working load limit.

* * * * *

6. Amend § 393.106 by revising paragraphs (a) and (d) to read as follows:

§ 393.106 What are the general requirements for securing articles of cargo?

(a) *Applicability.* The rules in this section are applicable to the transportation of all types of articles of cargo, except commodities in bulk that lack structure or fixed shape (e.g., liquids, gases, grain, liquid concrete, sand, gravel, aggregates) and are

transported in a tank, hopper, box, or similar device that forms part of the structure of a commercial motor vehicle. The rules in this section apply to the cargo types covered by the commodity-specific rules of § 393.116 through § 393.136. The commodity-specific rules take precedence over the general requirements of this section when additional requirements are given for a commodity listed in those sections.
* * * * *

(d) *Aggregate working load limit for tiedowns.* The aggregate working load limit of tiedowns used to secure an article or group of articles against movement must be at least one-half times the weight of the article or group of articles. The aggregate working load limit is the sum of:

- (1) One-half the working load limit of each tiedown that goes from an anchor point on the vehicle to an attachment point on an article of cargo; and
- (2) The working load limit for each tiedown that goes from an anchor point on the vehicle, through, over or around the cargo and then attaches to another anchor point on the vehicle.

7. Revise the title of § 393.108 to read as follows:

§ 393.108 How is the working load limit of a tiedown, or the load restraining value of a friction mat, determined?
* * * * *

8. Amend § 393.110 by revising paragraphs (a) and (c) to read as follows:

§ 393.110 What else do I have to do to determine the minimum number of tiedowns?

(a) When tiedowns are used as part of a cargo securement system, the minimum number of tiedowns required to secure an article or group of articles against movement depends on the length of the article(s) being secured, and the requirements of paragraphs (b) and (c) of this section. These requirements are in addition to the rules under § 393.106.
* * * * *

(c) If an individual article is blocked, braced, or immobilized to prevent movement in the forward direction by a headerboard, bulkhead, other articles which are adequately secured or by an appropriate blocking or immobilization method, it must be secured by at least one tiedown for every 3.04 meters (10 feet) or article length, or fraction thereof.
* * * * *

9. Amend § 393.114 by revising paragraph (b)(1) to read as follows:

§ 393.114 What are the requirements for front-end structures used as part of a cargo securement system?
* * * * *

(b) *Height and width.* (1) 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 or article of cargo being carried on the vehicle, whichever is lower.
* * * * *

10. Amend § 393.116 by revising paragraph (b)(3), inserting a new paragraph (b)(4) and revising paragraph (e) read as follows:

§ 393.116 What are the rules for securing logs?
* * * * *

(b) *Components of a securement system.*
* * * * *

(3) Tiedowns must be used in combination with the stabilization provided by bunks, stakes, and bolsters to secure the load unless the logs:

- (i) Are transported in a crib-type log trailer (as defined in 49 CFR 393.5), and
- (ii) Are loaded in compliance with paragraphs (b)(2) and (c) of this section.

(4) The aggregate working load limit for tiedowns used to secure a stack of logs on a frame vehicle, or a flatbed vehicle equipped with bunks, bolsters, or stakes must be at least one-sixth the weight of the stack of logs.
* * * * *

(e) *Securement of logs loaded lengthwise on flatbed and frame vehicles.* (1) *Shortwood.* In addition to meeting the requirements of paragraphs (b) and (c) of this section, each stack of shortwood loaded lengthwise on a frame vehicle or on a flatbed must be secured to the vehicle by at least two tiedowns. However, if all the logs in any stack are blocked in the front by a front-end structure strong enough to restrain the load, or another stack of logs, and blocked in the rear by another stack of logs or vehicle end structure, the stack may be secured with one tiedown. If one tiedown is used, it must be positioned about midway between the stakes.

(2) *Longwood.* Longwood must be cradled in two or more bunks and must either:

- (i) Be secured to the vehicle by at least two tiedowns at locations that provide effective securement, or
- (ii) Be bound by tiedown-type devices such as wire rope, used as wrappers that encircle the entire load at locations along the load that provide effective securement. If a wrapper(s) is being used to bundle the logs together, the wrapper is not required to be attached to the vehicle.
* * * * *

11. Amend § 393.118 by revising paragraph (d)(3)(iv)(B), replacing the

period at the end of paragraph (d)(4) with a semicolon (;) and “or,” and adding paragraph (d)(5) to read as follows:

§ 393.118 What are the rules for securing dressed lumber or similar building products?
* * * * *

(d) *Securement of bundles transported using more than one tier*
* * * * *

- (3) * * *
- (iv) * * *

(B) Secured by tiedowns as follows:

(1) If there are 3 tiers, the middle and top bundles must be secured by tiedowns in accordance with the general provisions of §§ 393.100 through 393.114; or

(2) If there are more than 3 tiers, then one of the middle bundles and the top bundle must be secured by tiedown devices in accordance with the general provision of §§ 393.100 through 393.114, and the maximum height for the middle tier that must be secured may not exceed 6 feet about the deck of the trailer; or

(3) Otherwise, the second tier from the bottom must be secured in accordance with the general provisions of §§ 393.100 through 393.114.
* * * * *

(5) When loaded in a sided vehicle or container of adequate strength, dressed lumber or similar building products may be secured in accordance with the general provisions of §§ 393.100 through 393.114.

12. Amend § 393.122 by revising paragraphs (b)(4) and (d)(4) to read as follows:

§ 393.122 What are the rules for securing paper rolls?

(b) *Securement of paper rolls transported with eyes vertical in a sided vehicle.* * * *

(4)(i) If a paper roll is not prevented from tipping or falling sideways or rearwards by vehicle structure or other cargo, and its width is more than 2 times its diameter, it must be prevented from tipping or falling by banding it to other rolls, bracing, or tiedowns.

(ii) If the forwardmost roll(s) in a group of paper rolls has a width greater than 1.75 times its diameter and it is not prevented from tipping or falling forwards by vehicle structure or other cargo, then, it must be prevented from tipping or falling forwards by banding it to other rolls, bracing, or tiedowns.

(iii) If the forwardmost roll(s) in a group of paper rolls has a width equal to or less than 1.75 times its diameter, and it is restrained against forward movement by friction mat(s) alone, then

banding, bracing, or tiedowns are not required to prevent tipping or falling forwards.

(iv) If a paper roll or the forwardmost roll in a group of paper rolls has a width greater than 1.25 times its diameter, and it is not prevented from tipping or falling forwards by vehicle structure or other cargo, and it is not restrained against forward movement by friction mat(s), then it must be prevented from tipping or falling by banding it to other rolls, bracing or tiedowns.

* * * * *

(d) *Securement of stacked loads of paper rolls transported with eyes vertical in a sided vehicle.* * * *

(4) A roll in the rearmost row of a layer raised using dunnage may not be secured by friction mats alone.

13. Amend § 393.126 by revising paragraph (b)(1) to read as follows:

§ 393.126 What are the rules for securing intermodal containers?

* * * * *

(b) *Securement of intermodal containers transported on container chassis vehicle(s).* (1) All lower corners of the intermodal container must be secured to the container chassis with securement devices or integral locking devices that cannot unintentionally become unfastened while the vehicle is in transit.

* * * * *

14. Amend § 393.132 by revising paragraphs (b) and (c)(2)(i) to read as follows:

§ 393.132 What are the rules securing flattened or crushed vehicles?

* * * * *

(b) *Prohibition on the use of synthetic webbing.* The use of synthetic webbing to secure flattened or crushed vehicles is prohibited except that such webbing may be used to connect wire rope or chain to anchor points on the commercial motor vehicle. However, the webbing (regardless of whether edge protection is used) must not come into contact with the flattened or crushed cars.

(c) *Securement of flattened or crushed vehicles.* Flattened or crushed vehicles must be transported on vehicles which have: * * *

(2)(i) Containment walls or comparable means on three sides which extend to the full height of the load and which block against movement of the cargo in the direction for which there is

a containment wall or comparable means, and

* * * * *

[FR Doc. 05-11332 Filed 6-7-05; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D. 022405B]

RIN 0648-AS92

Sea Turtle Conservation; Public Hearing Notification

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearing.

SUMMARY: The National Marine Fisheries Service (NMFS) is announcing its intent to hold public hearings in Massachusetts and New Jersey to inform interested parties of the proposed gear modification for the mid-Atlantic sea scallop dredge fishery and to accept public comments on this action.

DATES: NMFS will hold a public hearing in Fairhaven, MA on Thursday, June 16, 2005, from 7 p.m. to 9 p.m., eastern daylight time and in Cape May, NJ on Wednesday, June 22, 2005, from 7 p.m to 9 p.m., eastern daylight time.

ADDRESSES: The meeting locations are: Hampton Inn New Bedford, 1 Hampton Way, Fairhaven, MA 02719 (ph. 508-990-8500).

Cape May City Hall, 643 Washington St., Cape May, NJ 08204 (ph. 609-884-9525).

Written comments on the proposed rule, identified by RIN 0648-AS92, may be submitted by any one of the following methods: NMFS/Northeast Region Website: <http://www.nero.noaa.gov/nero/regs/com.html> Follow the instructions on the website for submitting comments.

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instruction on the website for submitting comments.

E-mail: scallopchainmat@noaa.gov Please include the RIN 0648-AS92 in the subject line of the message.

Mail: Mary A. Colligan, Assistant Regional Administrator for Protected Resources, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930, ATTN: Sea Turtle Conservation Measures, Proposed Rule

Facsimile (fax): 978-281-9394, ATTN: Sea Turtle Conservation Measures, Proposed Rule

FOR FURTHER INFORMATION CONTACT: Ellen Keane (ph. 978-281-9300 x6526), NMFS, One Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION: A proposed rule was issued on May 27, 2005 (70 FR 30660), which would require all vessels with a Federal Atlantic sea scallop fishery permit and a sea scallop dredge, regardless of dredge size or vessel permit category, to modify their dredge(s) when fishing south of 41° 9.0' N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone from May 1 through November 30 each year. Additional information on the justification for this action can be found in the proposed rule.

Copies of the Draft Environmental Assessment/Regulatory Impact Review and documents cited in the proposed rule can be obtained from <http://www.nero.noaa.gov/nero/regs/com.html> listed under the **ADDRESSES** portion of this document or by writing to Ellen Keane, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930 The public comment period closes at 5 p.m. EST on June 27, 2005.

In determining how to proceed with this proposed action, NMFS will consider the public comments received (either in writing or verbally during the public hearing) during the 30-day comment period.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ellen Keane, telephone 978-281-9328 x6526, fax 978-281-9394, at least 5 days before the scheduled meeting date.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: June 3, 2005.

P. Michael Payne,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05-11393 Filed 6-7-05; 8:45 am]

BILLING CODE 3510-22-S