

§§ 393.104(c), and 393.106(d), the final rule does not include the proposed wording that appeared in those sections. The remaining sections of the final rule have been renumbered accordingly.

#### Securement of Intermodal Containers and the Contents of Such Containers

The FMCSA is adopting commodity-specific requirements which would apply to intermodal cargo containers. The requirements being adopted today includes a provision allowing motor carriers the option of attaching tiedowns to the upper corners of loaded containers. The proposal would have required that all tiedowns be attached to the lower corners of the loaded containers. The agency agreed with commenters concerns about the need for flexibility in securing the containers.

The agency is including in the final rule a provision concerning the transportation of empty intermodal containers. Upon careful review of the model regulations and previously issued regulatory guidance, the agency determined that a less stringent provision concerning the securement of empty containers should be included. Empty intermodal containers have been transported safely on vehicles other than container chassis for many years. Frequently, the container(s) may overhand the front or rear of the trailer. However, as long as the containers are properly secured, motor carriers have been allowed to transport them in this manner. Since the empty containers are a fraction of the weight of fully laden containers, the securement methods needed to ensure safety are not as extensive as with loaded containers. The new language concerning empty containers is provided in § 393.126(d).

The agency is also adopting specific rules for metal coils transported in intermodal cargo containers. The agency does not believe the rules will create difficulties for motor carriers or shippers offering loaded containers for transportation.

For example, § 392.9(a) requires drivers to assure themselves that cargo is properly distributed and adequately secured before operating a commercial motor vehicle. Section 392.9(b) requires drivers to examine the cargo and load-securing devices during the trip and make adjustments when necessary to maintain the security of the load. Section 392.9(b) provides an exception for driver's of sealed commercial motor vehicles who have been ordered not to open the vehicle to inspect its cargo, or to drivers of vehicles loaded in a manner that makes inspection of the cargo impracticable. The requirements of § 392.9 when combined with the

explicit requirements concerning the securement of the contents inside intermodal containers would make it clear that each motor carrier and each driver must ensure that such loads are properly secured, when it is practicable to inspect the condition of loading.

#### Front End Structures on CMVs

Although the model regulations do not include a provision concerning front end structures (*i.e.*, headerboards) used as part of a cargo securement system, the FMCSA is retaining its current front-end structure rules for CMVs. The FMCSA is, however, revising its current rule (§ 393.106) by changing the applicability to cover CMVs transporting cargo that is in contact with the front-end structure of the vehicle. By contrast, the current rule establishes requirements for, and requires that vehicles be equipped with, front-end structures irrespective of whether the device is being used as part of a cargo securement system.

The current rules emphasize occupant protection rather than cargo securement. They assume that cargo that is not braced against a front-end structure could shift forward, and the structure would prevent the load from penetrating the driver's compartment. While this concept may have merit for certain types of cargo, we continue to believe that the best way to ensure driver safety is to have tougher standards to prevent the cargo from shifting forward. For example, if the vehicle is transporting metal coils, once the load begins to move forward, it is unlikely that a front-end structure would save the driver. However, by establishing new rules to better ensure that the coils do not move forward, we are more likely to accomplish the safety objective of saving lives and preventing injuries.

#### Specific Securement Requirements by Commodity Type

The FMCSA is adopting detailed requirements for the securement of the following commodities: logs; dressed lumber; metal coils; paper rolls; concrete pipe; intermodal containers; automobiles, light trucks and vans; heavy vehicles, equipment and machinery; flattened or crushed vehicles; roll-on/roll-off containers; and large boulders. During public meetings concerning the development of the model regulations, participants said that these commodities cause the most disagreement between industry and enforcement agencies as to what is required for proper securement.

The FMCSA notes that each of these commodities must be properly secured under the current performance-based

cargo securement rules. However, with the exception of metal coils, there is no detailed guidance for motor carriers and enforcement officials. We continue to believe that accidents may be prevented through the establishment of much more detailed rules that clearly spell out what is required to achieve the desired level of safety. The rules would eliminate most of the confusion about what constitutes an acceptable cargo securement system.

The FMCSA notes that the requirements for the securement of concrete pipe being adopted today does not include the provision requiring that ice be removed from pipe before it is loaded. The agency no longer believes that provision is necessary because most shipments of concrete pipe would not be covered with ice, and in those cases where ice was present, there may be no practicable means of deicing the pipe prior to it being loaded onto a CMV. Most shippers of concrete pipe would ensure to the greatest extent practicable that the pipe is not covered with ice immediately prior to transport. For those cases in which exposure to ice could not be avoided, motor carriers are strongly encouraged to take appropriate actions to ensure that load is properly secured before transport. However, the agency does not believe it is necessary to make the mere presence of any amount of ice on a concrete pipe a violation of the FMCSRs.

#### Use of Unmarked Tiedowns

The final rule does not include a prohibition on the use of unmarked tiedown devices. Although many of the participants in the harmonization group meetings and numerous commenters to the NPRM argue that the Federal cargo securement rules should include such a prohibition, we do not believe it is appropriate to establish such a rule at this time.

Before establishing a prohibition on the use of unmarked tiedowns, the FMCSA would have to quantify the potential economic burden on the motor carrier industry and those involved with the manufacture, sale, and distribution of unmarked securement devices. Since the FMCSA has no reliable information on the number of manufacturers, distributors, and retailers of unmarked tiedowns, the quality or strength of such devices, or the amount of these tiedowns currently in use by motor carriers and in retailers' stock, it would be inappropriate to prohibit these devices. However, in view of the potential safety hazards of motor carriers misidentifying unmarked tiedowns, the final rule includes a provision that unmarked welded steel