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March 19, 2001

U.S. Department of Transportation
Dockets Management Facility
Room PL-401
400 Seventh Street, SW
Washington, DC 20590

Dear Sir/Madam:

Jerke Construction Co. submits the following comments in response to the Notice of Proposed Rulemaking, Docket No. FMCSA-97-2289, Development of a North American Standard for Protection Against Shifting and Falling Cargo.

Jerke Construction Co. basically provides crane services and we move crane parts and other construction equipment. We have already gone through load securement training. Jerke Construction Co. routinely transports loads subject to federal and state regulations and we frequently encounter varying and conflicting regulatory interpretations concerning proper load securement procedures.

Jerke Construction Co. fully supports FMCSA's goal of internationally harmonized and improved load securement regulations. However, we have concerns regarding a number of issues we believe warrant additional focus and revision prior to an effective final rule being issued.

In moving forward with this proposed rule, we support the need for clear and concise regulations that are:

- o easily understood by management, trainers, drivers, and the enforcement community;
- o trainable, i.e., the rules must be promulgated in such a fashion as to promote clear and consistent training; and
- o enforceable, i.e., the rules must provide the basis for consistent and uniform interpretations from the enforcement community. Violations should be (as with speed and other driver behavior issues) charged to the driver and not charged or attributed to the carrier or the vehicle.

As the proposal is presently written, we have serious reservations about the proposed definitions of direct and indirect tiedowns. We fear without significant improvement and clarification to these definitions, the final rule will be confusing and will not provide a sound basis for improved training and uniform enforcement, thus ultimately diluting the intended safety benefits, creating unwarranted out-of-service violations stemming from inconsistent interpretations, and costing hundreds of thousands of dollars in lost productivity on motor carriers.

We already have confusion on the amount of tie downs on our 30 feet to 50 feet boom sections and these proposed rules would only create more confusion and cause us to add more tie downs to a load that is already secured sufficiently.

Implementation Date

With regard to the proposed effective date of July 1, 2001, we do not believe sufficient time will be provided for quality driver training of for carriers to obtain new securement devices. Based on the complexity of the issue, we believe a minimum of 18 months will be required after a final rule is published before any carrier should be expected to come into full compliance with the rules.

Definitions

As stated in the comments of the SC&RA, the terms "article " and "article of cargo" are used throughout the proposed rule but have not been defined. To eliminate any confusion with regard to requirements for separate securement, we agree with the SC&RA position and definition of "article of cargo" and suggest it be added to 393.5. We agree that wherever the term "article" is now used alone that it be changed to "article of cargo." As such, an "Article of Cargo" is any element of a load needing securement to or in a vehicle. Items of cargo assembled with pallets or boxes or other types of containers may not need individual securement if the resulting palletized or contained articles of cargo are properly secured.

Prohibition - Use of Damaged Securement Devices 393.104 (b)

The proposal requires that securement devices or systems be free from deformation. We believe such a requirement would be extremely impractical and burdensome. With the nature and weight of loads typically being transported and the daily exposure of the securement systems, some devices, e.g., wooden dunnage, may experience some deformation without diminishing the integrity of the device or system. In fact, in many cases, wooden dunnage under certain loading conditions conforms to the shape of the cargo and subsequently helps secure and fasten the load.

As another example, it is virtually impossible to keep webbing free of minor cuts and abrasions -- the outer fabric of these materials are designed to handle such distress. The North American Uniform Out-of-Service Criteria places four-inch wide webbing out-of-service when it has cuts across its width totaling one inch. This is 25% of the webbing's width. We agree with this specific standard.

Determining the Number of Tiedowns 393.110

Proposed section 393.110 changes the number of tiedowns from that now required by sections 393.100 (b)(2) and (c)(4)(i). It has also eliminated the option presently given in 393.100 (b)(4) of achieving proper securement by means not specifically delineated in the rule itself. SC&RA believes the proposed changes will not improve safety but will add confusion to the proposed regulation by adding a weight category to these general rules; linking the new weight category to a placement interval of 5 feet; and adding to complexity when long cargo is involved. We believe the present rules pertaining to the number of tiedowns are effective and well understood and when complied with, no evidence exists to suggest deficiency.

Intermodal Containers 393.132

The proposal questions a motor carrier's ability to inspect the contents of intermodal containers and whether the cargo loaded in the containers is loaded in compliance with the proposed rules. From a practical standpoint, the vast majority of containers handled and transported by motor carriers are sealed containers. Motor carriers that transport containers rarely have any control over the way in which the cargo is loaded or secured within the container. These containers, including the cargo are tendered to the motor carrier without an opportunity for pre-inspection. Simply stated, the shippers must accept responsibility and certify that the load is in compliance

with the requirements. Motor carriers should not be accountable for the condition or the equipment, the weight of the container or the securement of the cargo within the containers.

We appreciate the opportunity to comment on this important rulemaking and trust a final rule will be promulgated that provides motor carriers and enforcement personnel with clear and effective direction.

Sincerely,

Keith Jerke
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