

valid allotment claims for a small number of Alaska Native Veterans who have already applied.

Author: The principal author of this rule is Mike Haskins, Division of Conveyance Management, Bureau of Land Management, Anchorage, Alaska; assisted by Kelly Odom of the BLM's Regulatory Affairs Group, Bureau of Land Management, Washington, DC.

#### List of Subjects in 43 CFR Part 2560

Alaska, Homesteads, Indian lands, Public lands, Public lands—sale, and Reporting and recordkeeping requirements, Alaska Native allotments for certain veterans.

Dated: September 27, 2005.

#### Chad Calvert,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble and under the authority of the Alaska Native Veterans Allotment Act of 1998 (Section 432, Pub. L. 105–276) the BLM proposes to amend part 2560 of Title 43 of the Code of Federal Regulations as set forth below:

#### PART 2560—ALASKA OCCUPANCY AND USE

1. Revise the authority citation for part 2560 to read as follows:

**Authority:** 43 U.S.C. 1629g(e).

2. Revise paragraph (d) of § 2568.74 to read as follows:

#### § 2568.74 What else must I file with my application?

\* \* \* \* \*

(d) A legal description of the land for which you are applying. If there is a discrepancy between the map and the legal description, the map will control. The map must be sufficient to allow the BLM to locate the parcel on the ground. You must also estimate the number of acres in each parcel.

#### § 2568.77 [Removed and Reserved]

3. Remove and reserve § 2568.77.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 393

Docket No. FMCSA–2005–21323]

RIN–2126–AA91

#### Parts and Accessories Necessary for Safe Operation: Surge Brake Requirements

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

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

**SUMMARY:** In response to a petition for rulemaking from the Surge Brake Coalition, the Federal Motor Carrier Safety Administration proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to allow the use of automatic hydraulic inertia brake systems (surge brakes) on trailers operated in interstate commerce. A surge brake is a self-contained permanently closed hydraulic brake system activated in response to the braking action of the tow vehicle. The amount of trailer braking effort developed is proportional to the total trailer weight and deceleration rate of the tow vehicle. Currently, surge brakes are not considered by FMCSA to comply with the FMCSRs specifying that all brakes with which a motor vehicle is equipped must at all times be capable of operating, and that a single application valve must, when applied, operate all the service brakes on the motor vehicle or combination of motor vehicles. The intent of this rulemaking is to adopt performance-based brake system requirements to allow the use of surge brakes on certain combinations of commercial motor vehicles based upon engineering test data submitted by the Surge Brake Coalition.

**DATES:** Comments must be received by December 6, 2005.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number FMCSA–2005–21323 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–AA91). 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 for 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. Luke W. Loy, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 202–366–0676, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 9 a.m. to 5 p.m. e.s.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** This notice is organized as follows:

- I. Legal Basis for the Rulemaking
- II. Background
- III. Petition
- IV. 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 (49 U.S.C. 31131, *et seq.*).

The Motor Carrier Act of 1935, as amended, provides that “[t]he Secretary

of Transportation (Secretary) 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 located at 49 CFR 393.48 entitled "Brakes to be Operative," 49 CFR 393.49 currently entitled "Single Valve to operate all Brakes," which previously was interpreted as prohibiting the use of surge brakes on commercial motor vehicles (CMVs), and to add a definition to § 393.5 for surge brakes. Section 393.48 states that all brakes with which a motor vehicle is equipped must at all times be capable of operating. Section 393.49 requires that a single application valve must when applied operate all the service brakes on the motor vehicle or combination of motor vehicles. 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 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 surge brakes. The fundamental purpose of 49 CFR Part 393 Parts and Accessories Necessary for Safe Operation is to ensure that no employer is allowed to operate a commercial motor vehicle or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part. However, nothing contained in part 393 can be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by part 393, provided such

equipment and accessories do not decrease the safety of operation of the motor vehicles on which they are used. Compliance with the brake regulations is necessary to ensure vehicles are equipped with adequate braking capability to ensure control of the CMV. Before prescribing modifications to such regulations, FMCSA must consider the "costs and benefits" of any proposal (49 U.S.C. 31136(c)(2)(A)).

## II. Background

The Surge Brake Coalition petitioned FMCSA on February 28, 2002, to amend § 393.48 entitled "Brakes to be Operative" and § 393.49 entitled "Single Valve to Operate all Brakes," which have been interpreted as prohibiting the use of surge brakes on commercial motor vehicles. Coalition members include trailer manufacturers, parts suppliers, commercial users dependent upon trailers, trailer rental companies, and trade associations whose memberships comprise distinct segments of the trailer business. A copy of the petition is included in the docket referenced at the beginning of this document.

Section 393.48 states that all brakes with which a motor vehicle is equipped must at all times be capable of operating. Section 393.49 requires a single application valve must, when applied, operate all the service brakes on the motor vehicle or combination of motor vehicles. Regulatory guidance previously issued by the Agency (40 FR 50671, 50688, Oct. 31, 1975)<sup>1</sup> indicates the use of surge brakes on trailers operated in interstate commerce is inconsistent with the requirements of §§ 393.48 and 393.49.

*Section 393.48 Brakes to be Operative.* The Bureau's position regarding surge brakes has been that they did not comply with the requirements of Section 393.48 of the Motor Carrier Safety Regulations. The cited section requires, in part, that all brakes with which motor vehicles are required to be equipped must be operative at all times. A surge brake which is only operative under certain preset conditions would not be in compliance with this requirement. In other words, surge brakes, in general, are only operative when the vehicles are moving in the forward direction.

*Section 393.49 Single Valve to Operate All Brakes.* A surge brake would comply with the requirements of Section 393.49 as it specifically states

<sup>1</sup>The Federal Highway Administration's (FHWA) Bureau of Motor Carrier Safety (Bureau) (FMCSA's predecessor agency) published these motor carrier safety interpretations.

that the brake system shall be so arranged that one application valve shall, when applied, operate all of the service brakes on the motor vehicle or combination of motor vehicles. When the service brakes on a power unit towing a vehicle with surge brakes are applied, the brakes on both vehicles would be applied. The power unit brakes would be applied by its application valve and the surge brakes on the towed vehicle by the overrunning effect.

Subsequent regulatory guidance published by FHWA on November 17, 1993 (58 FR 60734, 60755) indicated that surge brakes did not comply with both §§ 393.48 and 393.49:

*Section 393.48 Brakes to be Operative.* Question 1: Do surge brakes comply with § 393.48? No. Section 393.48 requires that brakes be operable at all times. Generally, surge brakes are only operative when the vehicle is moving in the forward direction and as such do not comply with section 393.48.

*Section 393.49 Single Valve to Operate All Brakes.* Question 1: Does a combination of vehicles using a surge brake to activate the towed vehicle's brakes comply with § 393.49? No. The surge brake cannot keep the trailer brakes in an applied position. Therefore, the brakes on the combination of vehicles are not under the control of a single valve as required by § 393.49.

This guidance was also included in FHWA's April 4, 1997 (62 FR 16370, 16415 and 16416) publication, "Regulatory Guidance for the Federal Motor Carrier Safety Regulations."

## III. Petition

The Surge Brake Coalition proposed in their petition for rulemaking that § 393.48 be amended by:

1. Revising paragraph (a) to read:

*General rule.* Except as provided in paragraphs (b), (c), and (d) of this section, all brakes with which a motor vehicle is equipped must at all times be capable of operating.

2. Adding a new paragraph (d) to read:

*Surge brakes.* Paragraph (a) of this section does not apply to:

Any trailer with a gross vehicle weight rating (GVWR) of 12,000 lbs or less, equipped with inertial surge brakes when its GVWR does not exceed 1.75 times the GVWR of the towing vehicle; or

Any trailer with a GVWR greater than 12,000 lbs, but less than 20,001 pounds (lbs), equipped with inertial surge brakes when the GVWR does not exceed 1.25 times the GVWR of the towing vehicle.

The Petitioner also requested the following exception be added to § 393.49: "This requirement shall not apply to trailers equipped with surge brakes that satisfy the conditions provided in § 393.48(d)."

The Petitioner argues that surge brakes provide a safe, practical braking system for commercial motor vehicle combinations, especially for scenarios in which the trailer is likely to be towed by a variety of vehicles. For example, in the rental market, trailers are rented separately from towing vehicles, and towing vehicles frequently are not wired for electric brake controls. The Petitioner indicates that rental companies believe it is "prohibitively expensive and impractical" to install or adapt a brake control system on each towing vehicle every time they rent a trailer or piece of mobile equipment. The Petitioner estimates that over 25 percent of the rental trailer fleet is equipped with surge brakes.

The Petitioner believes surge brakes are a popular alternative to electric brakes because surge brakes activate automatically, adapt to the weight of the load, have fewer components, and require less maintenance. These features make surge brakes ideal for flatbed and van-type trailers with a GVWR of 20,000 lbs or less, and trailers serving the marine industry. The Petitioner also points out that manufacturers install approximately 250,000 surge brake systems annually on small to medium sized trailers.

#### *The Petitioner's Engineering Tests*

The Petitioner conducted brake performance tests at Exponent Failure Analysis Associates' (EFAA) Test and Engineering Center in Phoenix, Arizona. EFAA tested the braking performance of 16 different configurations of towing vehicles and trailers. The Petitioner used the services of a consulting engineer to interpret the test results and prepare the final report concerning the tests.

#### *Test Protocol*

1. *Straight-line braking:* Vehicle combinations were stopped from speeds of approximately 20 miles per hour (mph) or greater to determine whether the vehicle could meet the performance requirements under § 393.52. The vehicle combination was required to stay within a 12-foot-wide lane during the test and the stopping distance was measured.

2. *Brake holding on a 20 percent incline:* Using only the service brakes, the combination was stopped going up a 20 percent incline and required to remain stationary for at least 5 minutes.

3. *Braking in a turn:* The towing vehicle and trailer were driven on a circular, 12-foot-wide, 500-foot-radius test track of known coefficient of friction. The driver then applied the brakes to achieve maximum deceleration. The average deceleration was calculated.

#### *Test Vehicles*

##### *Trailers (GVWR):*

- 1999 U-Haul tandem axle auto transport (6,000 lbs GVWR), equipped with U-Haul surge brake actuator.
- 2000 Big Tex tandem axle, open cargo area, with side rails (14,000 lbs GVWR), equipped with Demco model DA20 surge brake actuator.
- Two 2001 Wells Cargo flatbed trailers with triple torsion axles (20,000 lbs GVWR). One trailer was equipped with a Titan model 20 surge brake actuator and the other with a Demco model DA20 surge brake actuator.

##### *Towing vehicles (GVWR):*

- 1993 Chevrolet C-1500 (6,100 lbs GVWR), curb weight 4,200 lbs. The vehicle was equipped with front disc brakes and rear drum brakes. The vehicle was also equipped with a rear-axle antilock braking system (ABS).
- 2001 Chevrolet K-3500 (11,400 lbs GVWR), curb weight 7,072 lbs. The vehicle was equipped with four-wheel disc brakes and four-wheel ABS.
- 2001 GMC Sierra (11,400 lbs GVWR), curb weight 7,476 lbs. The vehicle was equipped with four-wheel disc brakes and four-wheel ABS.

##### *Towing vehicle & trailer test combinations:*

- Unladen pickup truck/unladen trailer.
- Unladen pickup truck/full GVWR trailer.
- Full GVWR pickup truck/unladen trailer.
- Full GVWR pickup truck/full GVWR trailer.

##### *Test Results:*

• Vehicle combinations that included a heavy trailer (GVWR between 12,001 lbs and 14,600 lbs) complied with FMCSA's brake performance requirements under 49 CFR 393.52 when the GVWR of the trailer was 1.25 times that of the towing vehicle or less, including test runs with the towing vehicle and trailer loaded to their maximum GVWR.

• Vehicle combinations that included a medium-weight trailer (GVWR up to 12,000 lbs) complied with FMCSA's brake performance requirements when the GVWR of the trailer was 2 times that of the towing vehicle or less, including runs with the towing vehicle and trailer loaded to their maximum GVWR.

• Vehicle combinations that fall within the ratios of towing vehicle GVWR to trailer GVWR are capable of complying with 49 CFR 393.52, demonstrate stability and control during braking-in-a-curve tests, and are capable of being stopped and held stationary going up a 20 percent grade.

On August 13, 2004, FMCSA granted the Surge Brake Coalition's petition. FMCSA made a preliminary determination that the petitioner presented sufficient technical information to support its request that the Agency initiate a rulemaking to allow the use of surge brakes on certain combinations of vehicles. Although a limited number of vehicle configurations were tested, the Agency believes the tests adequately demonstrate safe ratios of the towing vehicle GVWR to the trailer GVWR that would be used to determine whether surge brakes may be used on a particular combination of vehicles.

The Agency does not believe that permitting the use of surge brakes, under the specific conditions noted in this proposal, is inconsistent with the original intent of §§ 393.48 and 393.49.

Section 393.48 requires that brakes be capable of operating at all times the vehicle is in operation on public roads. The intent of the requirement is that all commercial motor vehicles operating in interstate commerce have sufficient braking capability at all times. Based upon the information provided by the petitioner, FMCSA believes vehicles equipped with surge brakes, under the conditions being proposed in this rulemaking notice, would have sufficient braking capability at all times the vehicle combination is being operated on public roads, in interstate commerce. While surge brakes automatically release when the vehicle combination comes to a complete stop, the weight-ratio between the towing vehicle and the trailer being proposed today would ensure that the brakes on the towing vehicle are sufficient to maintain control of the combination when the surge brakes release automatically. Therefore, the agency believes the original intent of Section 393.48 would be satisfied by surge brake systems meeting the proposed requirements.

The petitioner contends that:

Technological advances in braking systems render the original purpose of § 393.49 and its "single-valve" criterion overly broad and excessively restrictive. FHWA [previously] developed this regulation as a materials-oriented specification to foreclose the shortcomings of and risks associated with the predominant braking system of the day,

wheel brakes and their use in conjunction with large tractors or power units.

The Agency agrees with the petitioner that advances in braking technology, and specifically in the instance of surge brakes, render the current single valve requirement in the § 393.49 design restrictive and not necessary or appropriate when considered specifically in the context of surge brakes installed on the small and mid-size trailers addressed by this proposal.

The Agency proposes to rename and revise § 393.49 to make its construction consistent with § 393.48, and to make it easier to quickly understand the general requirement and the exceptions, which would include one for surge brakes. A new title of "Control Valves for Brakes" is proposed for this section to be more representative of the different types of brake systems addressed.

The Agency is proposing to add a definition for surge brakes to § 393.5 to ensure a clear understanding of what is meant by the term "surge brakes," and to facilitate consistent application of the requirements being proposed.

If the proposed regulatory amendments are adopted, the Agency would withdraw the existing regulatory guidance provided as Question 1 to § 393.48 and Question 1 to § 393.49, originally published on November 17, 1993 (58 FR 60734) and republished on April 4, 1997 (62 FR 16370). These existing guidance questions addressing whether surge brakes meet the requirements of the standard would be replaced by the proposed regulatory text. Thus, the existing guidance would be superseded by the proposed regulatory text, and would be withdrawn.

The Agency requests comment on whether additional analysis is needed to support the Petitioner's assertion that vehicle combinations that include a heavy trailer (GVWR between 14,600 lbs and 20,000 lbs) would satisfy FMCSA's brake performance requirements under § 393.52 when the GVWR of the trailer is 1.25 times that of the towing vehicle or less. The agency is also requesting the submission of brake performance data and information relevant to all the other issues raised in the petition, and the proposed amendments to §§ 393.48 and 393.49.

The Agency emphasizes that the granting of the petition for rulemaking, and subsequent proposal to amend §§ 393.48 and 393.49 should not be construed as an exception to the brake performance requirements under § 393.52. Therefore, adoption of a final rule would not relieve motor carriers of their responsibility to ensure that any

commercial motor vehicle, or combination of commercial motor vehicles, operated in interstate commerce, comply with the brake performance requirements under § 393.52.

#### IV. Regulatory Analyses and Notices

##### *Executive Order 12866 (Regulatory Planning and Review) and DOT*

##### *Regulatory Policies and Procedures*

FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 due to novel policy issues in that it is the subject of both a regulatory reform nomination and an industry petition. This rule has generated a significant amount of public interest as it has been identified in the 2005 "Regulatory Reform of the U.S. Manufacturing Sector" as published by the Office of Management and Budget. We expect the proposed rule would have minimal costs. The Agency has prepared a preliminary regulatory analysis analyzing the costs and benefits of this undertaking. 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), the FMCSA has considered the effects of this regulatory action on small entities and determined on a preliminary basis that this proposed rulemaking would have minimal, but positive impact on a substantial number of small entities. This is because it removes a regulatory obstacle to the use of surge brakes on small and medium trailers. There are over 150 firms that manufacture trailers, about 300 firms that are in the boat delivery service, thousands of landscape and construction firms that may use trailers, and over 2,000 rental equipment firms that may offer trailers for rent. The majority of these firms are small businesses according to the definition provided by the Small Business Administration. No entity would be required to use surge brakes, and those currently using electric or other types of brakes have the option to continue with no change.

The change proposed is to allow a braking system that is not currently allowed. Many of these operations use small or medium trailers in their daily operations, which are subject to the FMCSRs if operated in interstate commerce, which currently do not allow the use of surge brakes. CMVs using such trailers are most likely to be operated in interstate commerce if the

operation is near a State boundary. This proposed regulatory action would help to promote more uniform requirements. This is because numerous State agencies responsible for motor carrier safety are faced with a current dilemma: specifically, enforcing Federal regulations prohibiting the use of surge brakes on trailers operated in interstate commerce, while allowing identical trailer combinations to operate on the same roads, under the same conditions, in intrastate commerce.

Accordingly, FMCSA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

##### *Unfunded Mandates Reform Act of 1995*

This rulemaking 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 will 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)*

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 proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We have determined preliminarily that this rulemaking would not concern an environmental risk to health or safety that may disproportionately affect children.

##### *Executive Order 12630 (Taking of Private Property)*

This proposed rulemaking 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. The FMCSA has preliminarily determined that this rulemaking would not have a substantial direct effect on States, nor would it limit the policy-making discretion of the States.

*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*

We have analyzed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and have determined preliminarily that 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)*

We have analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have determined preliminarily that it would not be a "significant energy action" under that Executive 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.

In consideration of the foregoing, FMCSA proposes to amend title 49,

Code of Federal Regulations, chapter III, as follows:

**List of Subjects in 49 CFR Part 393**

Highway safety, Motor carriers and Motor Vehicle Safety.

**PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION**

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 by adding a new definition for "Surge Brake" in alphabetical order to read as follows:

**§ 393.5 Definitions.**

\* \* \* \* \*

*Surge Brake.* A self-contained, permanently closed hydraulic brake system for trailers that relies on inertial forces, developed in response to the braking action of the towing vehicle, applied to a hydraulic device mounted on or connected to the tongue of the trailer, to slow down or stop the towed vehicle.

\* \* \* \* \*

3. Amend § 393.48 by revising paragraph (a) and adding paragraph (d) to read as follows:

**§ 393.48 Brakes to be operative.**

(a) *General rule.* Except as provided in paragraphs (b), (c), and (d) of this section, all brakes with which a motor vehicle is equipped must at all times be capable of operating.

\* \* \* \* \*

(d) *Surge brakes.* Paragraph (a) of this section does not apply to:

(i) Any trailer with a gross vehicle weight rating (GVWR) of 12,000 lbs or less, equipped with inertial surge brakes

when its GVWR does not exceed 1.75 times the GVWR of the towing vehicle; or

(ii) Any trailer with a GVWR greater than 12,000 lbs, but less than 20,001 lbs, equipped with inertial surge brakes when the GVWR does not exceed 1.25 times the GVWR of the towing vehicle.

4. Revise § 393.49 in its entirety, including a revised title, to read as follows:

**§ 393.49 Control valves for brakes.**

(a) *General rule.* Except as provided in paragraphs (b) and (c) of this section, every motor vehicle, the date of manufacture of which is subsequent to June 30, 1953, which is equipped with power brakes, must have the braking system so arranged that one application valve must when applied operate all the service brakes on the motor vehicle or combination of motor vehicles. This requirement must not be construed to prohibit motor vehicles from being equipped with an additional valve to be used to operate the brakes on a trailer or trailers or as provided in § 393.44.

(b) *Driveaway-Towaway Exception.* This section is not applicable to driveaway-towaway operations unless the brakes on such operations are designed to be operated by a single valve.

(c) *Surge brake exception.* This requirement is not applicable to trailers equipped with surge brakes that satisfy the conditions specified in 49 CFR 393.48(d).

Issued on: October 3, 2005.

**Annette M. Sandberg,**  
*Administrator.*

[FR Doc. 05–20297 Filed 10–6–05; 8:45 am]

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