

**§ 177.834 General requirements.**

\* \* \* \*

(o) \* \* \*

(3) An IM or UN portable tank equipped with a bottom outlet as authorized in Column (7) of the § 172.101 Table of this subchapter by assignment of a T Code in the appropriate proper shipping name entry, and that contains a liquid hazardous material of Class 3, PG I or II, or PG III with a flash point of less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, must conform to the outlet requirements in § 178.275(d)(3) of this subchapter.

**§ 177.835 [Amended]**

■ 60. In § 177.835, revise paragraphs (g)(3) introductory text and (g)(3)(ii) to read as follows:

**§ 177.835 Class 1 materials**

\* \* \* \*

(g) \* \* \*

(3) It is packed and loaded in accordance with a method approved by the Associate Administrator. One approved method requires that—

\* \* \* \*

(ii) That both the detonators and the container or compartment meet the requirements of the IME Standard 22 (IBR, see § 171.7 of this subchapter).

\* \* \* \*

■ 61. In § 177.840, paragraphs (a)(1) and (u) are revised to read as follows:

**§ 177.840 Class 2 (gases) materials.**

(a) \* \* \*

(1) *Cylinders.* Cylinders containing Class 2 gases must be securely restrained in an upright or horizontal position, loaded in racks, or packed in boxes or crates to prevent the cylinders from being shifted, overturned or ejected from the motor vehicle under normal transportation conditions. A pressure relief device, when installed, must be in communication with the vapor space of a cylinder containing a Division 2.1 (flammable gas) material.

\* \* \* \*

(u) *Unloading of chlorine cargo tank motor vehicles.* Unloading of chlorine from a cargo tank motor vehicle must be performed in compliance with Section 3 of the Chlorine Institute Pamphlet 57, “Emergency Shut-off Systems for Bulk Transfer of Chlorine” (IBR, see § 171.7 of this subchapter).

**§ 177.848 [Amended]**

■ 62. In § 177.848 in paragraph (g)(3)(vi) the wording “vehicle” is removed and the wording “transport vehicle” is added in its place.

Issued in Washington, DC, on September 6, 2011 under authority delegated in 49 CFR part 1.

**Timothy P. Butters,**

*Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.*

[FR Doc. 2011–23167 Filed 9–12–11; 8:45 am]

**BILLING CODE 4910–60–P****DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****49 CFR Part 393****[Docket No. FMCSA–2010–0271]****RIN–2126–AB30****Parts and Accessories Necessary for Safe Operation; Saddle-Mount Braking Requirements**

**AGENCY:** Federal Motor Carrier Safety Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) amends the Federal Motor Carrier Safety Regulations (FMCSRs) to eliminate the requirement for operational brakes on the last saddle-mounted truck or tractor in a triple saddle-mount combination, except when a full mount is present. This is in response to a petition for rulemaking from the Automobile Carriers Conference (ACC) of the American Trucking Associations (ATA), which stated that this requirement degrades the braking performance of these combinations because the lightly loaded axle of the last vehicle tends to lock up under heavy braking.

**DATES:** The final rule is effective October 13, 2011.

**ADDRESSES:** For access to the docket to read background documents, including those referenced in this document, or to read comments received, go to <http://www.regulations.gov> at any time and insert FMCSA–2010–1271 in the “Keyword” box, and then click “Search.” You may also view the docket online by visiting the Docket Management Facility in Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian J. Routhier, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 202–366–1225, or [brian.routhier@dot.gov](mailto:brian.routhier@dot.gov), 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 9

a.m. to 5 p.m. e.t., Monday through Friday except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Table of Contents for Preamble**

I. Privacy Act  
II. Abbreviations  
III. Legal Basis for the Rulemaking  
IV. Background  
V. Discussion of Public Comments  
VI. Discussion of Final Rule  
VII. Regulatory Analyses

**I. 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 the U.S. Department of Transportation’s (DOT) Privacy Act system of records notice for DOT Federal Docket Management System (FDMS) in the **Federal Register** published on January 17, 2008 (73 FR 3316) at <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**II. Abbreviations**

ABS antilock braking systems.  
ACC Automobile Carriers Conference.  
ATA American Trucking Associations.  
ATC ATC Transportation LLC.  
CMV commercial motor vehicle.  
DOT U.S. Department of Transportation.  
FMCSRs Federal Motor Carrier Safety Regulations.  
NATA National Automobile Transporters Association.  
NPRM notice of proposed rulemaking.  
RAI Link-Radlinski, Inc.

**III. Legal Basis for the Rulemaking**

This final rule 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 provides that “The 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)].

The braking amendments in this rule deal directly with the “safety of operation and equipment of \* \* \* a motor carrier” [49 U.S.C. 31502(b)(1)] and “standards of equipment of \* \* \* a motor private carrier” [49 U.S.C. 31502(b)(2)]. The proposal, adoption, and enforcement of such rules were authorized by the Motor Carrier Act of

1935. This rule rests squarely on that authority.

The Motor Carrier Safety Act of 1984 (the 1984 Act) provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to “prescribe regulations on commercial motor vehicle (CMV) safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles.” Although this authority is very broad, the Act also includes specific requirements: “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 the 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 rule is based on the authority of the 1984 Act, specifically the mandate to ensure that CMVs are maintained, equipped, loaded, and operated safely (49 U.S.C. 31136(a)(1)). By allowing the disconnection of brakes on the rearmost axle of vehicles towed in saddle-mount combinations, the rule will enhance the controllability of such combinations under hard braking and thus improve their operational safety. Section 31136(a)(2) requires FMCSA regulations to ensure that the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely. This provision is concerned primarily with potentially unreasonable demands placed on drivers by their employers (for example, schedules that encourage or require speeding); but to the extent subsection (a)(2) may refer to unsafe vehicles, the rule will make triple saddle-mount combinations safer for drivers to operate. Section 31136(a)(3) requires that the FMCSRs ensure that the physical condition of drivers is adequate to enable them to operate their vehicles safely. This rule does not deal with the physical condition of drivers. Finally, § 31136(a)(4) requires the Agency’s regulations to ensure that CMV operations do not have a deleterious effect on the physical condition of drivers. This requirement is related to subsection (a)(3) and is not directly addressed by this rule, although safer vehicles are obviously better for CMV drivers and all others who use the public highways.

Before prescribing any regulations, FMCSA must also consider their “costs and benefits” [49 U.S.C. 31136(c)(2)(A) and 31502(d)]. Those factors are discussed in the Regulatory Analyses section of this proposal.

#### IV. Background

ACC, which is part of ATA, represents motor carriers that transport motor vehicles ranging from automobiles to Class 8 trucks. Its members transport more than 96 percent of all trucks moved by the saddle-mount method. In January of 2007, ACC submitted a petition for rulemaking, contending that the use of operational brakes on the final truck or tractor in a triple saddle-mount combination degrades the braking performance of these combinations because the lightly loaded axle of the last vehicle tends to lock up under heavy braking, potentially increasing stopping distance.

Stopping distances are specified in the vehicle brake performance table at § 393.52(d) of title 49, Code of Federal Regulations, which requires many combination vehicles, including triple saddle-mounts, to be able to stop within 40 feet or less from an initial speed of 20 mph. The FMCSRs do not specify minimum stopping distances from higher speeds. They do, however, specify performance requirements for the emergency brakes, which deploy after the service braking system has failed. Under the emergency braking requirements in § 393.52(d), triple saddle-mounts must be able to stop within 90 feet or less from a speed of 20 mph. Further, § 393.71(a)(3) requires operational brakes on any wheel of a triple saddle-mount combination that is in contact with the highway.

#### Testing

Based on the results of braking tests performed on various triple saddle-mount combinations, as described below, ACC requested that FMCSA make two regulatory changes: (1) Amend § 393.71(a)(3) to eliminate the requirement for operational brakes on the last saddle-mounted truck in a triple saddle-mount combination; and (2) amend § 393.71(c)(4) to extend to triple saddle-mounts the existing requirement that a double saddle-mount with any vehicle full-mounted on it have effective brakes acting on those wheels in contact with the roadway.

In 1996 and 2002, ACC, then known as the National Automobile Transporters Association (NATA), sponsored brake performance tests conducted by Radlinski & Associates,

Inc. (RAI) <sup>1</sup> in East Liberty, Ohio. In support of its petition, ACC submitted these test results, as well as the results of supporting tests sponsored by ATC Leasing Company (ATC) <sup>2</sup> in 2003. RAI tested a total of 24 triple saddle-mount combinations in the two tests conducted for NATA and two additional combinations in the ATC test. Braking tests were conducted on various saddle-mount combinations, with and without antilock braking systems (ABS) on the lead unit. An overview of the tests and corresponding results from RAI were presented in the NPRM, and a copy of each test report is available in the docket referenced at the beginning of this document.

#### Analysis of Test Results in the NPRM

As discussed in the proposed rule, FMCSA agrees that these test results demonstrated that triple saddle-mount driveaway combinations (1) Are able to meet the performance requirements of § 393.52(d) at various combinations of vehicle weight and length with the brakes disconnected on the rearmost towed units (fourth truck), and (2) at higher speeds, perform better when there are no brakes on the rearmost towed unit. In addition, ACC’s request to amend the braking requirements for triple saddle-mount combinations is based on the same considerations FMCSA cited in a final rule that permits motor carriers to disconnect the service brakes on unladen converter dollies manufactured on or after March 1, 1998 <sup>3</sup> (70 FR 48008, Aug. 15, 2005). The axle weight of an unladen dolly is so low that the wheels lock up under hard braking. The last unit in a saddle-mount combination has higher axle weights than a converter dolly, but behaves in much the same way—*i.e.*, the axle in contact with the road locks up under heavy braking, reducing controllability and increasing the stopping distance of the vehicle.

#### V. Discussion of Public Comments

FMCSA received comments on the NPRM from ACC, ATC, ATA, and RAI. All of the commenters support the

<sup>1</sup> Radlinski & Associates is now known as Link-Radlinski, Inc.

<sup>2</sup> ATC Leasing Company is now known as ATC Transportation LLC.

<sup>3</sup> FMCSA noted that with the National Highway Transportation Safety Administration’s (NHTSA) March 10, 1995, final rule on ABS (60 FR 13216), the long-term need for this exception for unladen converter dollies will diminish. An ABS-equipped converter dolly will not have the stability and control problems observed with unladen converter dollies not equipped with ABS. Therefore, converter dollies manufactured on or after March 1, 1998, the effective date of the NHTSA requirement for ABS on converter dollies, are not covered by the exception.

proposed elimination of the requirement for operational brakes on the last truck or tractor in a triple saddle-mount combination, except when a full mount is present. They are equally unanimous, however, in noting that the proposed amendment of § 393.42(b)(2)(ii) would undermine the stated intent of the NPRM. Section 393.42(b)(2)(ii) currently exempts combinations utilizing one or two saddle-mounts from the requirement to have operational brakes on all wheels—but the proposed amendment of this provision would have effectively removed this exemption.

#### Exemption

RAI noted that the proposed amendment of Section 393.42(b)(2)(ii) would have effectively removed the exemption described above. ATC observed that the practical effect of the NPRM would be “to impose a significant regulatory requirement on the driveaway industry by imposing additional braking requirements on single and double saddle-mount combinations.” \* \* \* ATC, ACC, and RAI point out that this regulatory change would defeat the NPRM’s objective of improving the braking performance of saddle-mount combinations. ACC, ATA, and RAI recommended that § 393.42(b)(2)(ii) be removed. ATC proposed instead that § 393.42(b)(2) be revised using language that excepts the final towed vehicle in a triple saddle-mount combination from the requirement to have operative brakes on all wheels, while at the same time linking saddle-mounts implicitly to driveaway-towaway operations.

#### FMCSA Response

FMCSA agrees with the commenters that the proposed amendment to § 393.42(b)(2)(ii) would have introduced a new and unintended regulatory burden for single and double saddle-mount combinations. Under § 393.42(b)(2), motor vehicles being towed in single or double saddle-mount combinations “are not required to have operative brakes provided the combination of vehicles meets the requirements of § 393.52.” By removing this exemption, the proposed rule would have increased the cost of operating single and double saddle-mounts while diminishing their safety.

ACC, ATC, and ATA are correct that the braking performance studies on triple saddle-mount combinations discussed in the NPRM would apply equally to single and double saddle-mount configurations. Under this final rule, the FMCSRs continue to exempt single and double saddle-mount

combinations from the requirement to have brakes on all wheels provided the combination meets the requirements of § 393.52, except when a full mount is present. FMCSA made changes to the regulatory text to address these concerns.

#### Comments on the Summary in the NPRM

ATC takes issue with a statement in the “Summary” section of the NPRM that the FMCSRs currently require operational brakes on any wheel of a saddle-mounted vehicle that is in contact with the roadway; that statement is inconsistent with § 393.42(b)(2).

#### FMCSA Response

ATC is correct in contesting the NPRM’s statement that the FMCSRs currently require operational brakes on any wheel of a saddle-mounted vehicle in contact with the roadway. As discussed previously, § 393.42 currently exempts saddle-mounted vehicles, except triple saddle-mounts, from this requirement provided the combination of vehicles meets the requirements of 49 CFR 393.52. For those cases in which the combination cannot meet the performance requirements under § 393.52, brakes would be required.

#### Full Mounts

ATC, ACC, and ATA agree with the proposed amendments to § 393.71. RAI, however, advocates further amendment of § 393.71(c)(4) to require that not only double and triple saddle-mount combinations, but also single saddle-mounts, have operational brakes on the towed vehicle(s) when a full mount is present.

#### FMCSA Response

FMCSA agrees with RAI’s suggestion to broaden the applicability of § 393.71(c)(4) to include all saddle-mount configurations—single, double, and triple. The Agency amends this section accordingly.

### VI. Discussion of the Final Rule

This final rule amends § 393.42(a) and (b) and § 393.71(a)(3) and (c)(4) of the FMCSRs to exempt the fourth truck in a triple saddle-mount combination of vehicles from the requirement to have operative brakes on all wheels (provided the vehicles meet the requirements of § 393.52), except when a full mount is present. The basic exemption is provided in amended § 393.71(a)(3), with additional amendments under § 393.42(b)(2) and § 393.71(c)(4).

#### Section 393.42

In order to reduce confusion, the current exclusion language in paragraph (b)(2)(i) has been moved to paragraph (a). Additionally, new language has been added to paragraph (a) that requires brakes on all wheels of a fullmount, regardless of the number of vehicles in the configuration.

This rule retains the broad exception at § 393.42(b)(2), but now clarifies that it also applies to the last truck of triple saddle-mount combinations. Additionally, paragraph (b)(2) now contains a cross-reference to the amended regulation for triple saddle-mounts in § 393.71(a)(3).

#### Section 393.71

The final rule amends § 393.71(a)(3) to eliminate the requirement for operational brakes on the last saddle-mounted truck in a triple saddle-mount combination. In addition, as requested by RAI, the final rule also includes an amendment at § 393.71(c)(4) that removes the qualifier “double.” The requirement thus applies not only to double saddle-mounts, but also to any saddle-mount combination. In addition, the Agency makes an editorial change to improve readability.

### VII. Regulatory Analyses

#### Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563 (76 FR 3821, Jan. 21, 2011), and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Agency does not believe implementing this rule will create new costs or cause an adverse economic impact on the industry or the public. Therefore, a full regulatory evaluation is unnecessary.

FMCSA anticipates that this rule could result in several benefits, chief among them the increased safety performance of triple saddle-mount combination CMVs. By improving the braking performance of these CMVs, the rule could reduce the number of crashes in which they are involved. This improved braking ability will increase the mechanical integrity of these CMVs, providing a safety benefit.

Tests conducted by RAI in 1996, 2002, and 2003 support the argument that disconnecting the rearmost axle brakes of triple saddle-mount

combination CMVs improves their braking performance. FMCSA does not have quantifiable data, however, that would allow for an estimation of the number of CMV crashes this change in practice will prevent, and therefore cannot quantify this benefit.

This rule will also reduce regulatory burden on motor carriers by eliminating the requirement to connect the rearmost axle brakes on triple saddle-mount CMVs. As with any elimination of an existing regulation, reducing regulatory burden on motor carriers has the potential to lower associated compliance costs. These cost savings are likely to be modest, however, because the rule simply amends a practice that is not particularly laborious or time-consuming.

In addition, FMCSA does not expect that this rule will impose costs on affected motor carriers because the elimination of the current requirement will not require motor carriers to purchase new equipment, parts, or accessories or to modify or alter existing equipment or vehicles.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to determine whether rules could have a significant economic impact on a substantial number of small entities. The Agency's economic assessment demonstrates that this final rule will yield minor benefits while imposing no new costs. Consequently, I certify that this action will not have a significant economic impact on a substantial number of small entities.

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

This rulemaking does 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 \$141.3 million (which is the value of \$100 million in 2010 after adjusting for inflation) or more in any 1 year.

#### *Executive Order 12988 (Civil Justice Reform)*

This action meets 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 analyzed this action under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. The Agency determined that this rulemaking does not pose an environmental risk to health or safety that may disproportionately affect children.

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

This rulemaking does not effect a taking of private property or otherwise have takings implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### *Executive Order 13132 (Federalism)*

A rulemaking has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. FMCSA analyzed this action in accordance with Executive Order 13132. The rule will not have a substantial direct effect on States, nor will it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation.

#### *Executive Order 12372 (Intergovernmental Review)*

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. The Agency determined that no new information collection requirements are associated with this final rule.

#### *National Environmental Policy Act*

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published in the **Federal Register** on March 1, 2004 (69 FR 9680), that this action has the potential to produce a very small benefit to the environment if any reduction in crashes is realized. Therefore, this rule is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(bb) of Appendix 2. The Categorical Exclusion under paragraph 6(bb) relates to regulations concerning

vehicle operation safety standards that would apply to how these vehicles are operated. The Categorical Exclusion determination is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES**.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

#### *Executive Order 13211 (Energy Effects)*

FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency determined that it is not a "significant energy action" under that Executive Order because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy.

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

Highways and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

In consideration of the foregoing, FMCSA amends title 49, Code of Federal Regulations, subchapter B, chapter III, as follows:

#### **PART 393 [AMENDED]**

■ 1. The authority citation for part 393 is revised to read as follows:

**Authority:** 49 U.S.C. 31136, 31151, and 31502; Sec. 1041(b) of Pub. L. 102-240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.73.

■ 2. Amend § 393.42 by revising paragraphs (a) and (b)(2) to read as follows:

#### **§ 393.42 Brakes required on all wheels.**

(a) Every commercial motor vehicle shall be equipped with brakes acting on all wheels. This requirement also applies to certain motor vehicles being towed in a driveway-towaway operation, as follows:

(1) Any motor vehicle towed by means of a tow-bar when another motor vehicle is full-mounted on the towed vehicle; and

(2) Any saddle-mount configuration with a fullmount.

(b) \* \* \*

(2) Motor vehicles being towed in a driveway-towaway operation (including the last truck of triple saddle-mount combinations (see § 393.71(a)(3))) are not required to have operative

brakes provided the combination of vehicles meets the requirements of § 393.52.

\* \* \* \* \*

■ 3. Amend § 393.71 by revising paragraphs (a)(3) and (c)(4) to read as follows:

**§ 393.71 Coupling devices and towing methods, driveway-towaway operations.**

(a) \* \* \*

(3) When motor vehicles are towed by means of triple saddle-mounts, all but the final towed vehicle must have brakes acting on all wheels in contact with the roadway.

\* \* \* \* \*

(c) \* \* \*

(4) If a motor vehicle towed by means of a saddle-mount has any vehicle full-mounted on it, the saddle-mounted vehicle must at all times while so loaded have effective brakes acting on all wheels in contact with the roadway.

\* \* \* \* \*

Issued on: September 8, 2011.

Anne S. Ferro,  
Administrator.

[FR Doc. 2011-23344 Filed 9-12-11; 8:45 am]

BILLING CODE 4910-EX-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 101013504-0610-02]

RIN 0648-XA529

#### Atlantic Surfclam and Ocean Quahog Fisheries; 2012 Fishing Quotas for Atlantic Surfclams and Ocean Quahogs; and Suspension of Minimum Atlantic Surfclam Size Limit

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

**ACTION:** Temporary rule.

**SUMMARY:** NMFS suspends the minimum size limit for Atlantic surfclams for the 2012 fishing year. NMFS also announces that the quotas for the Atlantic surfclam and ocean quahog fisheries for 2012 will remain status quo. Regulations governing these fisheries require NMFS to notify the public in the **Federal Register** of the allowable harvest levels for Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone if the previous year's quota specifications remain unchanged.

**DATES:** Effective January 1, 2012, through December 31, 2012.

**ADDRESSES:** Written inquiries may be sent to: Regional Administrator, National Marine Fisheries Service, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930-2298.

**FOR FURTHER INFORMATION CONTACT:** Jason Berthiaume, Fishery Management Specialist, (978) 281-9177; fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** Section 648.72(c) of the regulations implementing the fishery management plan (FMP) for the Atlantic surfclam and ocean quahog fisheries authorizes the Administrator, Northeast Region, NMFS (Regional Administrator), to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surfclams. This action may be taken unless discard, catch, and biological sampling data indicate that 30 percent or more of the Atlantic surfclam resource is smaller than 4.75 inches (120 mm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.

At its June 2011 meeting, the Mid-Atlantic Fishery Management Council (Council) voted to recommend that the Regional Administrator suspend the minimum size limit for Atlantic surfclams for the 2012 fishing year. Commercial surfclam data for 2011 were analyzed to determine the percentage of surfclams that were smaller than the minimum size requirement. The analysis indicated that 4.3 percent of the overall commercial landings were composed of surfclams that were less than 4.75 inches (120 mm). Based on these data, the Regional Administrator concurs with the Council's recommendation and suspends the minimum size limit for Atlantic surfclams from January 1 through December 31, 2012.

The FMP for the Atlantic surfclam and ocean quahog fisheries requires that NMFS issue notification in the **Federal Register** of the upcoming year's quota, even in cases where the quota remains unchanged from the previous year. At its June 2011 meeting, the Council also voted that no action be taken to change the quota specifications for Atlantic surfclams and ocean quahogs for the 2012 fishing year (January 1 through December 31, 2013), and recommended maintaining the 2011 quota levels of 3.4 million bu (181 million L) for Atlantic surfclams, 5.333 million bu (284 million L) for ocean quahogs, and 100,000

Maine bu (3.524 million L) for Maine ocean quahogs, as announced in the **Federal Register** on December 27, 2010 (75 FR 81142).

#### Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 7, 2011.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011-23373 Filed 9-12-11; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100923469-1543-05]

RIN 0648-BA27

#### Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment (FW) 45; Adjustments for Fishing Year (FY) 2011

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

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** NMFS adjusts the differential days-at-sea (DAS) rate for common pool vessels for FY 2011 due to overages of FY 2010 catch levels. This measure will help prevent FY 2011 catch levels from being exceeded. NMFS also announces the amount of unused FY 2010 annual catch entitlement (ACE) carryover available to each sector in FY 2011, and adjusts the final number of vessels fishing in a sector in FY 2011.

**DATES:** Effective September 8, 2011 through April 30, 2012. Written comments must be received on or before September 28, 2011.

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2010-0198, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA-NMFS-2010-0198 in the keyword search. Locate the document you wish to comment on