DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket NHTSA–98–3398]

RIN 2127–AF05

Federal Motor Vehicle Safety Standards; Retreaded/Regrooved for New Trailers

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Withdrawal of rulemaking.

SUMMARY: This notice withdraws rulemaking in connection with a petition from the Tire Retreading Institute (TRI) requesting that manufacturer-supplied retreaded tires be permitted for installation on new trailers. TRI said in its petition that there was no safety justification for the limitations on the use of retreaded tires, and that there would be significant environmental benefits from encouraging greater use of retreads.

NHTSA is withdrawing rulemaking because of its concern that safety could be degraded, since there is no safety standard establishing performance requirements for retreaded tires to be used on new trailers. Since there would be no means for the purchaser or this agency to assure the quality of retreads installed on new trailers, NHTSA is concerned that making the change in the petition could lessen safety.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Scott, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 366–8525.

SUPPLEMENTARY INFORMATION:

a. Tire Retreating Institute (TRI) Petition

In 1993, the Tire Retreading Institute (TRI) filed a petition asking the agency to permit trailer manufacturers and distributors and dealers to install retreaded tires on new trailers without any limitations. TRI said its petition that there was no safety justification for the limitations on the use of retreaded tires, and that there would be significant environmental benefits from encouraging greater use of retreads. Docket No. 95–43 was initiated in response to the Tire Retreading Institute (TRI) petition.

TRI asserted that the current restriction on the source of retreaded tires is not supported by safety considerations, by implication, asserting that retreaded tires are safe. TRI stated in its comments that the Environmental Protection Agency (EPA) had urged the industry to petition NHTSA to revise its regulations in this area.

TRI proposed new language for S5.1.3 of § 571.120, as follows:

> In place of tires that meet the requirement of Standard No. 119, a trailer may be equipped with retreaded tires if the sum of the maximum load ratings meets the requirements of S5.1.2 and the purchaser is informed in writing that the trailer is equipped with such retreaded tires.

b. History of NHTSA Tire Standard

FMVSS No. 120 requires that vehicles equipped with pneumatic tires for highway service be equipped with new tires that meet the requirements of either FMVSS No. 109 or FMVSS No. 119. However, in place of tires that meet FMVSS No. 119 paragraph S5.1.3 of FMVSS No. 120 permits a truck, bus, or trailer to—at the request of the vehicle purchaser—be equipped at the place of the vehicle's manufacture with used or retreaded tires owned or leased by the vehicle purchaser. Only the vehicle manufacturer can, per the request of the purchaser, install retreaded tires on a new trailer—dealers and distributors are prohibited. The sum of the maximum load ratings of the tires must meet the requirements paragraph S5.1.2 of the standard, which requires the sum of the maximum load ratings of the tires fitted to an axle to be equal to the weight rating of the axle system. Also, only tires originally manufactured to comply with FMVSS No. 119, as evidenced by a DOT symbol marked on the sidewall of tire, can qualify for the S5.1.3 exception.

These limitations on the use of retreaded tires were established because NHTSA has no safety standard for non-passenger car retreaded tires. Absent a safety standard, NHTS decided to establish some limitations—to help ensure reasonable safety—on the use of retreaded or regrooved tires on new trucks and trailers. With respect to retreads, the agency presumed that the trailer purchaser would impose a quality control program for the retreads given to the trailer manufacturer that would assure the purchaser that its new vehicle had appropriate tires.

FMVSS No. 120 was promulgated in a **Federal Register** notice dated January 23, 1976 (41 FR 3467) and became effective in phases between September 1, 1976 and September 1, 1979. Initially, the S5.1.3 exception applied only to used tires owned or leased by the vehicle purchaser, if the maximum load ratings were sufficient to carry the loads of the axles on which they were installed. This action was intended to accommodate ''mileage contract purchasers,'' a common practice in the commercial truck, bus, and trailer industry by which the purchaser's vehicles are equipped with tires purchased or leased from a supplier on a cost-per-mile basis.

NHTSA reviewed the standard after its issuance and noticed some minor errors and areas that required clarification. NHTSA published the Notice of Proposed Rulemaking (NPRM) on October 30, 1980 (45 FR 71834) proposing to amend S5.1.3 to permit the installation of retreaded as well as used tires, but limiting the exception to mileage contract purchasers only. The agency reasoned that suppliers who provided tires on a mileage contract basis had a contractual obligation to ensure that the tires were serviceable and safe for use on the vehicles for which they were intended. The agency further stated that this safeguard would not exist in the case of any other purchaser who was merely trying to save the cost of purchasing new tires, since a purchaser could send the vehicle manufacturer marginal or unsafe tires for mounting on a new vehicle.

c. NPRM (October 30, 1980)

In response to the NPRM dated October 30, 1980, thirteen comments were received by the docket—twelve of which opposed the provision limiting the exception to mileage contract purchasers. The commenters stated that it is common practice for all vehicle fleets, not just mileage contract purchasers, to send tires from their banks to vehicle manufacturers for mounting on the new vehicles that they order. Tire banks are composed of serviceable tires that have been removed from vehicles that are no longer in service. The commenters argued that the proposal in the NPRM to limit the used/retreaded tire exception to mileage contract purchasers would effectively eliminate the practice of maintaining tire banks, thereby increasing the cost for the vehicle fleets affected with no safety justification for doing so. Some commenters also argued that it made no sense for a purchaser to spend $65,000 to $75,000 for a new vehicle, then install unsafe tires on it. Finally, one commenter correctly noted that FMVSS No. 120 did not require that new vehicles be equipped with tires. Therefore, a purchaser could—if they chose to do so—order a new vehicle without tires, then install unsafe tires after delivery.

NHTSA was persuaded by those comments and decided not to limit the

use of used and retreaded tires only to mileage contract purchasers, but to widen the exception to permit all purchasers to provide their own tires. In addition, since all commenters who addressed the retreaded tire proposal supported it, NHTSA adopted that provision for inclusion in S5.1.3. NHTSA published the final rule promulgating the current provisions of FMVSS No. 120 on May 17, 1984 (49 FR 20822).

d. Federal Register Notice (June 1, 1995)

On June 1, 1995, NHTSA's **Federal Register** Notice solicited comments on TRI's petition and whether the standard should be further amended to permit manufacturers, distributors, and dealers—in addition to purchasers—to install used and/or retreaded tires on new trucks and buses. Also in the notice, NHTSA posed fourteen questions in an attempt to obtain data ranging from the percentage of purchasers that use tire contracts and/or tire banks to the environmental impact of granting the petition.

e. Agency's Decision

NHTSA received 13 comments in response to its notice. Three commenters clearly supported the idea of expanding the use of retreads on new trailers. TRI, the petitioner, repeated its request for that expansion in its comments, noting that NHTSA has no safety data showing that retreads are less safe than new tires. Dempster Industries, Inc. (a trailer manufacturer) and Becker Tire & Treading, Inc. (a retreader) both noted that recycling is important and the requested expansion would result in cost savings for all. Two other commenters did not oppose the idea of expanding the use of retreads on new trailers. The American Trucking Association (ATA) stated that retreads cost about half as much as new tires and that its members believe manufacturers and dealers are capable of installing suitable retreads on new trailers. ATA said that this should not present any serious problems if the customer is clearly told what he or she is getting. Fixible, a bus manufacturer, indicated that, while it did not oppose the change, that company would continue to install only new tires, unless retreads were provided by the purchaser.

Eight commenters opposed the expansion requested in the petition. Two tire manufacturers, Dunlop and Continental General Tire, both urged the agency to leave the requirements as they are. Dunlop noted that there is no Federal standard regulating these retreads and that allowing any retread to be used on new trailers would increase the number of tire failures experienced by new trailers. Both the Pennsylvania Department of Transportation and the Advocates for Highway and Auto Safety also noted the absence of any Federal standard for these retreads and recommended that any expansion in the use of retreads on new trailers should be accompanied by a new Federal standard for these retreads. The National Automobile Dealers Association opposed the expansion, arguing that the price difference for new vs. retreaded tires is insignificant when compared to the price of a new vehicle. Two trailer manufacturers opposed the proposed change. Big Tex Trailers stated that tires are critical to safety and the prior history of retreads is not known. In that company's view, the change requested would lessen safety. Sooner Trailer Manufacturing Co., Inc. commented that the National Association of Trailer Manufacturers, which represents manufacturers of trailers with a gross vehicle weight rating of less than 26,000 pounds, has adopted a recommendation that its members refrain from using retreads as original equipment on new trailers. Finally, the American Retreaders Association commented that it opposed the change and that its members believe the current regulatory provisions work well.

After considering these comments and reexamining this area, NHTSA has decided to terminate rulemaking on this petition. Standard No. 120 currently requires a quality control check of tires mounted on new vehicles other than passenger cars. If those tires are new tires, they must be certified as complying with NHTSA's safety standards for new tires. If the tires mounted on new vehicles are used or retreaded tires, the purchaser has furnished those tires to the vehicle manufacturer. Given the substantial investment the purchaser is making in a new vehicle, NHTSA has trusted purchasers to take adequate steps to assure that the tires given to the manufacturer are safe and suitable for use on the new vehicle.

Under the approach requested in TRI's petition, quality control of the tires on new trailers would be left up to vehicle manufacturers and dealers. As noted in the comments, there is no Federal safety standard for non-passenger car retreads. In addition, NHTSA is unaware of any voluntary consensus industry standard for these retreads. Given these circumstances, it would be very difficult for vehicle manufacturers and dealers to apply any uniform standards for quality control purposes. Absent uniform standards, it would be difficult to assure no degradation of safety of the tires installed on new trailers and other non-passenger cars.

NHTSA would reexamine this area if information becomes available indicating that adequate quality control could be assured, such as an industry standard, best practices of major retreaders, or other voluntary approaches, as well as, a possible Federal Safety Standard. Without assuring quality control of these retreads, NHTSA is concerned that the safety of tires on new trailers would be diminished.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: April 21, 1998.

Ricardo Martinez,

Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285 and 644

[I.D. 042098D]

Atlantic Tuna Fisheries; Atlantic Billfishes; Public Hearings

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

ACTION: Notice of additional public hearings.

SUMMARY: On April 9, 1998, NMFS published a document announcing a series of public hearings to receive comments from fishery participants and other members of the public regarding proposed Atlantic bluefin tuna (ABT) quota specifications and General category effort controls, tournament reporting for Atlantic billfishes, and an increase in minimum size limits for Atlantic blue marlin and Atlantic white marlin. NMFS announces two additional public hearings.

DATES: The additional hearings are scheduled as follows:

1. Monday, May 4, 1998, 7 to 9 p.m., Riverhead, NY.
2. Monday, May 4, 1998, 7 to 9 p.m., Toms River, NJ.

ADDRESSES: Written comments should be sent to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West