

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****49 CFR Part 393**

[Docket No. FMCSA-97-2341]

RIN 2126-AA65 [Formerly FHWA RIN 2125-AD41]

Parts and Accessories Necessary for Safe Operation; Manufactured Home Tires

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

ACTION: Final rule.

SUMMARY: The FMCSA delays the termination date of the rule allowing the overloading of certain tires. Currently, tires used for the transportation of manufactured homes may be loaded up to 18 percent over the load rating marked on the sidewall of the tires, or in the absence of such a marking, 18 percent above the load rating specified in publications of certain organizations specializing in tires. The regulatory language allowing this overloading is scheduled to expire November 20, 2000, unless extended by mutual consent of the FMCSA and the Department of Housing and Urban Development (HUD). The delay of the termination date will enable motor carriers transporting manufactured homes to continue loading tires up to 18 percent above the load rating until December 31, 2001. In a separate document published elsewhere in today's **Federal Register**, HUD is taking the necessary action to delay its requirements for builders of manufactured homes. This action is in response to a petition for rulemaking from the Manufactured Housing Institute (MHI).

DATES: This rule is effective as of November 14, 2000.

ADDRESSES: You may submit written, signed comments, including the docket number that appears in the heading of this document, to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, or submit electronically at <http://dmses.dot.gov/submit>. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to be notified that we received your comments, you must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, MC-PSV,

(202) 366-1790; or Mr. Charles E. Medalen, Office of the Chief Counsel, MC-CC, (202) 366-1354, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Electronic Access**

You can access this document and all documents referenced in it by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Background

On February 18, 1998, the Federal Highway Administration (FHWA)¹ and the Department of Housing and Urban Development (HUD) jointly published a final rule amending, respectively, the Federal Motor Carrier Safety Regulations (FMCSRs) and an interpretation of the Manufactured Home Construction and Safety Standards (see 63 FR 8330). The FHWA and HUD reduced the amount of tire overloading allowed (at the time up to 50 percent above the tire manufacturer's load rating) on tires used to transport manufactured homes. As a result of the rulemaking, the maximum amount of loading on a manufactured home tire was reduced so that it cannot exceed the tire manufacturer's load rating by more than 18 percent. Manufactured homes transported on tires overloaded by 9 percent or more may not be operated at speeds exceeding 80 kilometers per hour (km/hr) (50 mph). The final rule allowed 18-percent tire overloading for a two-year period. The two-year period began on November 16, 1998, the effective date of the final rule, and will end on November 20, 2000.

In publishing the final rule and interpretative bulletin, the agencies indicated there was sufficient data to support the premise that overloading tires may be potentially unsafe. The agencies also indicated that unless both of them were persuaded by the end of the 2-year period that 18 percent overloading does not pose a risk to the traveling public, or have an adverse impact on safety or the ability of motor

carriers to transport manufactured homes, any overloading of tires beyond their design capacity would be prohibited after November 20, 2000.

MHI's Petition for Rulemaking

On August 7, 2000, the MHI filed a petition for rulemaking with the FMCSA and HUD to initiate a joint rulemaking to amend the agencies' rules to enable the manufactured home industry to continue to exceed the tire manufacturer's load rating by up to 18 percent, indefinitely. The MHI requested the following: (1) That the FMCSA amend 49 CFR 393.75(g), and (2) that HUD revise Interpretative Bulletin J-1-76 to 24 CFR 3280. The MHI recognized that it would be difficult, if not impossible, for the FMCSA and HUD to act on the petition and, if granted, complete the rulemaking before November 20, 2000. Therefore, the MHI also petitioned the FMCSA and HUD to provide interim regulatory relief from the November 20, 2000, deadline until the agencies could act on the petition. A copy of the MHI's petition for rulemaking is included in the docket referenced at the top of this document.

The MHI indicated that during the first 18 months of the two-year period in which 18-percent overloading was allowed, it sponsored studies of the safety risk associated with tire overloading. This work included a study of the movement of manufactured homes under actual operating conditions and a survey of principal manufacturers, transporters, and suppliers. The study involved observing and recording the results of 503 shipments of manufactured homes during a 12-month period from June 1999 through June 2000. The MHI believes the results of the study demonstrate that tire performance improved when the industry operated under the 18-percent overloading rule.

The MHI indicated that of the 3,708 tires used on the 503 manufactured home sections transported, there were 81 tire failures (a 2.2 percent tire failure rate). Only a fraction of these failures were attributed, in whole or in part, to the tires being overloaded. Of the 81 tire failures, 62 (76.5 percent) involved used tires indicating that "repeated usage" of tires may be more of a factor in the tire failure rate than tire overloading. The MHI believes the 2.2 percent tire failure rate represents a significant improvement given the estimated eight percent tire failure rate the FHWA and HUD presented in the April 23, 1996, notice of proposed rulemaking to establish the current tire loading rule (61 FR 18014). None of the 81 tire failures resulted in an accident causing

¹ The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106-159, 113 Stat. 1748, at 1750) established the FMCSA in the Department of Transportation. Rulemaking, enforcement, and other activities of the Office of Motor Carriers while part of the Federal Highway Administration, and briefly while operating independently of the FHWA as the Office of Motor Carrier Safety, are now the responsibility of the FMCSA.

damage to a manufactured home, other property, or personal injury. The 81 tire failures occurred on 61 of the 503 sections transported. The MHI stated:

The dramatic decrease in tire failures attributable, in whole or in part, to tire overloading beyond tire load ratings and the total absence of any accidents resulting in damage to the manufactured home, other property, or personal injury, based upon a representative sampling of manufactured homes transported throughout the country, demonstrates the lack of any safety risk associated with the permanent removal of the November 20, 2000 "sunset" date for the 118% Rule.

Delay of Termination Date

The FMCSA has met with officials from HUD to discuss the MHI's request. Both agencies believe that MHI's petition and its supporting documentation warrant a thorough review, but neither is able to complete an analysis before November 20, 2000, the termination date established by the 1998 final rule. The MHI reported that the tire failures observed during its data collection effort caused no property damage or personal injury. The FMCSA and HUD have no information from other sources about accidents involving the transportation of manufactured homes equipped with overloaded tires.

The FMCSA is therefore delaying the termination date of 49 CFR 393.75(g)—which allows 18 percent overloading of tires used to transport manufactured homes—from November 20, 2000, to December 31, 2001, to enable the FMCSA and HUD to review carefully the statistical data submitted by the MHI. If the two agencies decide that up to 18 percent should be made permanent, the FMCSA will issue a notice of proposed rulemaking (NPRM) and ask for public comment. In a separate document published elsewhere in today's **Federal Register**, HUD has taken action to extend authority for builders of manufactured homes to use axle and tire configurations permitted under the 18-percent rule.

Rulemaking Analysis and Notices

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest.

In this case, notice and comment are impracticable and unnecessary. Because the MHI submitted its petition and data so late that the FMCSA and HUD were unable to perform a comprehensive review and analysis before the expiration of the 18 percent overloading rule on November 20, 2000, the FMCSA had determined that notice and

comment rulemaking to evaluate the data and then extend the overloading rule would be impracticable. Notice and comment is also unnecessary since the delay does not change the substance of 49 CFR 393.75(g), and the available information suggests that the failure rate of tires used to transport manufactured homes has declined in the last two years; the failures that have occurred are not known to have caused accidents or injuries. The delay of the overloading rule to December 31, 2001, allows the agency to consider the data and request submitted by the MHI in a more orderly and thorough manner, without forcing the industry to make significant changes in their operations before we complete that process. Therefore, the FMCSA finds good cause under 5 U.S.C. 553(b) to dispense with prior notice and an opportunity to comment.

For the same reasons, the FMCSA finds, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for making the final rule effective upon issuance. Because the tire overloading prohibition in § 393.75(g) becomes effective on November 20, 2000, the final rule must be effective on or before that date. The delay will remain in effect until December 31, 2001.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. The final rule delays the termination date of § 393.75(g) until December 31, 2001, retaining the current rules concerning tire loading restrictions applicable to the interstate transportation of manufactured homes. Although the 1998 final rule establishing the current requirements was a significant regulatory action under section 3(f) of Executive Order 12866, the Office of Management and Budget (OMB) does not consider this partial delay of the final rule as a significant action. Thus, the Office of the Secretary of Transportation and OMB have concurred in the FMCSA's finding that this final rule is nonsignificant and they have declined review of this document.

Regulatory Flexibility Act

This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and 1996 amendments (enacted as chapter 8 of title 5, U.S. Code) because the original requirements did

not have a significant effect on a substantial number of small entities, and this delay does not change those requirements. Any future regulatory action on this issue will address any economic impacts, including impact on small businesses.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FMCSA has determined that the action does not have a substantial direct effect on the States or federalism implications that would significantly limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation, though States that accept Motor Carrier Safety Assistance Program (MCSAP) funds are required to adopt compatible motor carrier safety regulations applicable to intrastate commerce, including rules compatible with those in 49 CFR Part 393. This action will not have a significant effect on the States' ability to execute traditional governmental functions.

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.

Unfunded Mandates Reform Act of 1995

This rule 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 \$100 million or more in any one year.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this action does not affect any requirements under the PRA.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and

has determined that this action would not have any effect on the quality of the environment.

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)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will 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.

List of Subjects in 49 CFR Part 393

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

For the reasons discussed in the preamble, the FMCSA amends title 49, Code of Federal Regulations, chapter III, part 393 as follows:

PART 393—[AMENDED]

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

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

2. Amend § 393.75 to revise paragraph (g) to read as follows:

§ 393.75 Tires.

* * * * *

(g) *Tire loading restrictions for manufactured homes.* Tires used for the transportation of manufactured homes (i.e., tires marked or labeled 7-14.5MH and 8-14.5MH) may be loaded up to 18

percent over the load rating marked on the sidewall of the tire or, in the absence of such a marking, 18 percent over the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119 (49 CFR 571.119, S5.1(b)). Manufactured homes which are labeled (24 CFR 3282.7(r)) on or after November 16, 1998, must comply with this requirement. Manufactured homes transported on tires overloaded by 9 percent or more must not be operated at speeds exceeding 80 km/hr (50 mph). This provision will expire on December 31, 2001, unless extended by mutual consent of the Federal Motor Carrier Safety Administration and the Department of Housing and Urban Development after review of appropriate tests or other data submitted by the industry or other interested parties.

Issued on: November 14, 2000.

Julie Anna Cirillo,

Acting Assistant Administrator.

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