Date	Location	Contact information
October 14, 2008	Cisco Pittsburgh, 323 North Shore Drive, Pittsburgh, PA 15212, POC: Tom Schweizer, 412–237–6200 (main bldg phone). *Via Webcast:* 7 a.m. Mountain Daylight Savings Time ..... Cisco Englewood (Denver), 9155 East Nichols Avenue, Suite 400, Englewood, Colorado 80112, 720–875–2900 (main bldg phone), POC: Shannon Gonzales.	Office of Standards, Regulations and Variances 202–693–9440.

Persons may participate via audio only at the following locations. At these locations persons will not be able to make oral presentations.

Date	Location	Contact information
October 14, 2008	*Via Audio:* 9 a.m. Eastern Daylight Savings Time ..... The National Mine Health and Safety Academy, 1301 Airport Road, Beaver, WV 25813.	Office of Standards, Regulations and Variances 202–693–9440.
October 14, 2008	*Via Audio:* 8 a.m. Central Daylight Savings Time ..... Coal Mine Safety and Health, Coal District 11 Office, 135 Gemini Circle, Suite 213, Birmingham, AL 35209.	Office of Standards, Regulations and Variances 202–693–9440.

Persons will need an ID to enter all locations and may be subject to a security check.

The hearing will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. Requests to speak at the hearing should be made at least 5 days prior to the hearing date. Requests to speak may be made by telephone (202–693–9440), facsimile (202–693–9441), electronic mail *zzMSHA-comments@dol.gov* or mail (MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939). Because members of the public will be able to make oral presentations via videoconference at several locations, for scheduling purposes, MSHA encourages all parties wishing to speak to notify the Agency in advance.

Any unallocated time at the end of the hearing will be made available to persons making same-day requests to speak. Same-day requestors will speak in the order that they sign in at the hearing. At the discretion of the presiding official, the time allocated to each speaker for their presentation may be limited. Speakers and other attendees may also present information to the MSHA panel for inclusion in the rulemaking record.

The hearing will be conducted in an informal manner. Formal rules of evidence and cross examination will not apply. The hearing panel may ask questions of speakers. Speakers may ask questions of the hearing panel. MSHA will make a transcript of the hearing, post it on MSHA's Web site *http://www.msha.gov*, and include it in the rulemaking record. A link to the complete webcast will be placed on MSHA's Web site several days after the hearing.

MSHA will accept post-hearing written comments and data for the record from any interested party, including those not presenting oral statements, by midnight Eastern Daylight Savings Time on October 29, 2008.

Dated: September 22, 2008.

Richard E. Stickler,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. E8–22679 Filed 9–23–08; 4:15 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2006–24488]

Federal Motor Vehicle Safety Standards; Low Speed Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for reconsideration.

SUMMARY: This document responds to a petition for reconsideration of our 2006 final rule increasing the maximum gross vehicle weight rating (GVWR) for low speed vehicles (LSVs) to 3,000 pounds. The agency established a GVWR limit (initially set at 2,500 pounds) in order to provide an objective means to delineate between vehicles for which the limited LSV requirements are appropriate and those that can be designed to meet the full set of Federal motor vehicle safety standards. Our 2006 final rule increased the limit to 3,000 pounds, in order to accommodate the heavier weight of load-carrying LSVs and electric batteries. A petition for reconsideration was received from Electronic Transportation Applications (ETA), which seeks to further increase the GVWR limit for electric-powered LSVs to 4,000 pounds, as well as to add additional regulations to regulate braking performance and tire specifications. The agency is denying the petitioner's request for the reasons discussed in this document.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Gayle Dalrymple, Office of Crash Avoidance Standards, NVS–123, National Highway Traffic Safety Administration. Telephone: 202–366–5559. *Facsimile:* 202–493–2739, e-mail *gayle.dalrymple@nhtsa.dot.gov.*

For legal issues: Mr. Ari J. Scott, NHTSA Office of the Chief Counsel. Telephone: (202) 366–2992. Facsimile: (202) 366–3820, e-mail *ari.scott@nhtsa.dot.gov.*

Both officials can be reached by mail at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background of the LSV Rulemakings

NHTSA established Federal Motor Vehicle Safety Standard (FMVSS) No. 500, ''Low speed vehicles,'' in 1998 in response to the rising use of ''golf cars'' and neighborhood electric vehicles (NEVs). *See* 63 FR 33194. This new FMVSS and vehicles class definition responded to the growing public interest in using small vehicles to make short trips for shopping, social, and recreational purposes, primarily within retirement or other planned, self-contained communities. The definition of an LSV established in that rulemaking was, ''a 4-wheeled motor vehicle, other than a truck, whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface.

In 2005, NHTSA published a final rule amending the definition of LSVs by dropping the restriction on trucks, and instead establishing a 2,500 pound maximum GVWR. *See* 70 FR 48313. This allowed small vehicles designed for work-related applications within the intended communities, such as landscaping or delivery purposes, to be included within the definition of an LSV, without opening the category to unintended vehicles, such as street-sweepers or speed-modified passenger cars. Additionally, in 2006, in response to petitions for reconsideration from Dynasty Electric Car Corporation and Global Electric Motorcars (GEM), both manufacturers of electric LSVs, NHTSA increased the maximum GVWR for LSVs to 3,000 pounds. This was done, in part, to ''level the playing field'' between electric and gasoline-powered LSVs, by allowing for the additional weight in batteries required by electric vehicles. *See* 71 FR 20026.

II. Petition for Reconsideration

ETA, a corporation involved in providing vehicle testing services for the Department of Energy, submitted a petition for reconsideration, dated June 2, 2006, asking NHTSA to reconsider its decision on April 19, 2006 that amended FMVSS No. 500 to raise the maximum permissible GVWR for a LSV to 3,000 pounds. ETA requested that NHTSA accommodate the weight of batteries by raising the maximum GVWR of electric-powered vehicles still further to 4,000 pounds.[1] To address some of the side effects of that increase, ETA also suggested that the agency consider adopting brake performance and tire weight rating requirements for LSVs.

In its petition, ETA stated that there is a growing demand to reduce or eliminate the numbers of petroleum-fueled vehicles normally used in restricted areas, but that these vehicles need to be licensed for use on public roads as these areas are situated in or around public roadways. Further, it suggested that there is an increasing need in these operating environments for truck-like vehicles designed to carry cargo, such as for landscaping and maintenance matters.

ETA argued that the current GVWR limitation of 3,000 pounds hinders the development of electric LSVs that can function as trucks. Specifically, because of the stop-and-go driving conditions in which these trucks operate, the wear on their electric batteries necessitates extremely large batteries. According to ETA, these batteries can weigh as much as 600 pounds or more. Given the current GVWR limit and the need to provide cargo capacity, ETA said the weight of the batteries curtails the weight of the chassis. For example, ETA stated that an LSV with a 661 pound battery and a cargo capacity of 1,000 pounds cannot have a chassis weight greater than 1,339 pounds under the current GVWR limit. According to the petition, this creates a major hindrance to designing cargo carrying electric LSVs. ETA stated that this puts electric-powered LSVs at a disadvantage relative to gas-powered LSVs, which use gasoline as fuel, and thus can have more substantial chasses while remaining under the 3,000 pound limit.

ETA also argued that allowing larger vehicles to be classified as LSVs would spur production of vehicles in the small-truck market, because the need created by the current GVWR limit to design vehicles that comply with all FMVSS standards adds a substantial cost to vehicles produced in low quantities. ETA claimed that it could cost over $50 million to fully design and certify a vehicle to comply with the full requirements of the FMVSSs, a large burden on manufacturers of vehicles produced in small quantities. Finally, ETA claimed that the increase in the GVWR limitation would allow the importation and conversion of foreign highway speed vehicles that do not meet the FMVSSs for cars or trucks to meet LSV requirements.

[1] 71 FR 20026; Docket No. NHTSA–06–24488.

III. Agency Response

After carefully considering ETA's petition to increase the GVWR limit for electric-powered LSVs, we have decided to deny the petition. There are two primary reasons for this decision. The first is that we believe that vehicles over 3,000 pounds are capable of complying with the full requirements of the FMVSSs. Secondly, in line with our policy in establishing a GVWR limit for LSVs in the first place, we believe that increasing the GVWR limit would encourage the use of LSVs in circumstances where it could pose an unreasonable risk to safety. These reasons are described at greater length below.

a. Rationale for 3,000 Pound GVWR

As stated above, the definition of LSVs originally did not contain a maximum GVWR. The definition for an LSV established in that final rule was:

> A 4-wheeled motor vehicle, other than a truck, whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface.

The logic behind this rulemaking was that these vehicles were so small that they could not practicably meet the full regimen of FMVSSs required of other motor vehicles.[2] Trucks were excluded because in all of the public hearings and docket submissions relating to LSVs and their uses proponents described them as passenger vehicles. Also, there were existing large, slow-moving work-related trucks, such as street sweepers, that already met FMVSSs for their vehicle class that would have become excluded from those FMVSSs had trucks not been excluded from the definition of LSVs.

When reconsidering the LSV definition, NHTSA was presented with arguments that small, work-related trucks would be used in the same environments as passenger-carrying LSVs. The agency decided that this was a desirable option, and modified the definition of LSVs accordingly. A GVWR limitation was substituted for the ''other than a truck'' portion of the definition for several reasons. The first was to provide an objective means for delineating between the vehicles for which the LSV requirements are appropriate (*i.e.*, those vehicles that are too small to meet the full FMVSS requirements) and those vehicles that can be designed to meet the full set of FMVSSs. The second reason was that the low GVWR limit prevents attempts

[2] *See* 62 FR 1077, January 8, 1997.

to circumvent FMVSSs for cars, trucks, and multipurpose passenger vehicles by applying the LSV classification to vehicles types that are able to meet the standards.[3] These reasons are discussed in more detail below.

i. Limitation of LSVs to Appropriate Vehicles

In denying this petition to further increase the maximum GVWR for LSVs, the agency believes it highly important to reiterate the rationale for classifying vehicles as LSVs in the first place. In the original rulemaking, we noted that several States, such as Florida and California, had passed legislation permitting golf carts and NEVs to use public roads in some areas. However, because NHTSA considered those vehicles which traveled 20 mph or faster to be ''motor vehicles,'' they could not be manufactured unless they met the FMVSSs for passenger cars. Therefore, as we stated in the 1998 final rule, ''[t]his creates a conflict with the state and local laws because compliance with the full range of those standards is not feasible for these small vehicles.'' [4]

At the heart of the rulemaking regarding LSVs is that they were too small to meet the requirements of passenger cars, and would only be used in controlled, low-speed environments, where the risk of collision would be small. ETA's recommendation to increase the GVWR limits conflict with NHTSA's rationale for establishing the GVWR limitation with regard to this rationale. The contradiction is the fact that vehicles with a GVWR of over 3,000 are simply not too small to meet the full FMVSSs. In the NPRM discussing the rationale for a 2,500 pound GVWR limit, the agency presented a list of the GVWRs of a variety of fully FMVSS-compliant passenger cars and SUVs. This list is repeated here (this relates to model year 2003): [5]

Vehicle	Type	GVWR in pounds
Honda Insight	Passenger car	2,212
Toyota Echo	Passenger car	3,010
Hyundai Accent	Passenger car	3,310
Chevrolet Tracker	SUV	3,483
Honda Civic	Passenger car	3,485
Toyota Prius	Passenger car	3,615
Ford Focus	Passenger car	3,620
Toyota RAV4	SUV	3,841
Jeep Wrangler	SUV	4,450
Ford Ranger	Extended cab pick-up	4,800

A 2,500-pound GVWR limit was selected because it was lighter than all FMVSS-compliant passenger cars and SUVs, with the exception of the Honda Insight. It should be noted that the 2,500-pound limit considers the weight of the gasoline-powered Honda Insight, and then adds about 300 pounds to account for the additional weight of electric batteries over fuel.[6] As we stated above, the 2006 rule extended the limitation to 3,000 pounds. This, it was noted, still means that the Honda Insight was the only fully FMVSS-compliant passenger car to be lighter than the heaviest LSV.

However, if ETA's suggestion that electric LSVs have a maximum GVWR of 4,000 pounds, then they could be considerably heavier than many passenger cars, and even some SUVs, even factoring in a substantial allowance for the weight of the electric batteries. This would be inconsistent with NHTSA's rationale to make LSVs subject to less stringent safety requirements than passenger cars, in large part because they are ''too small'' to meet those requirements.

A second reason why raising the GVWR for electric LSVs is contrary to NHTSA's policy is that this would encourage the development of heavier, more substantial LSVs. In its petition, ETA stated that the current 3,000-pound GVWR limit limits the chassis to less than 1339 pounds.[7] This, it claims, will result in a ''lightweight chassis'' that will ''not provide much occupant protection in the event of a crash.'' ETA continues by saying that ''manufacturers should be encouraged to increase chassis mass and, therefore, strength to ensure proper occupant safety.''

In the 2003 final rule, in which NHTSA provided the rationale to change to a GVWR-based definition of LSVs, we said:

> We believe that, as LSVs become equipped with additional amenities, such as air conditioning, solid doors, and batteries for extended range, they lose the basic characteristics of a special vehicle designed for transportation within a planned, limited environment. Instead, these vehicles take-on the profile of a small, traditional passenger car vehicle, and in some cases, may be marketed as a small passenger car or as a substitute for a small passenger car. Even with a 25 mph speed limitation, we are concerned that LSVs that have characteristics and attributes of traditional passenger cars will be more likely to be used outside of planned communities and instead, more regularly mix with traffic.[8]

ETA's rationale for increasing the weight of LSVs accomplishes the very end that NHTSA sought to avoid by establishing the 2,500-pound, and later 3,000-pound, GVWR limitation. As ETA correctly points out, raising the maximum weight of electric LSVs would encourage the development of larger, sturdier models. This would, in turn, likely extend their use into areas beyond those that NHTSA intended LSVs to go, namely, outside of controlled, low-speed environments. While NHTSA has no desire to restrict the use of electric vehicles, as opposed to gasoline-powered vehicles, on the majority of public roads, we believe that the vehicles using those roadways should meet the full set of FMVSS requirements.

ii. Importation of Foreign Vehicles as LSVs

A second argument put forth in ETA's petition for reconsideration is that increasing the maximum GVWR for electric LSVs would allow the importation of foreign electric vehicles without their having to conform to the full FMVSS requirements. As ETA states, ''[t]hese vehicles are appealing as conversions to LSVs as they offer

[3] 70 FR 48316.

[4] 63 FR 33194.

[5] 68 FR 68321.

[6] *See* 70 FR 48317.

[7] This figure is derived from subtracting a 1,000-pound cargo capacity and a 661-pound battery from the 3,000-pound maximum GVWR.

[8] 70 FR 48316.

durable construction and the ability to carry heavier loads at lower costs than a full-speed [vehicle] or purpose-designed LSV.'' While we agree that acceding to ETA's request would have this effect, it is again an effect we hope to avoid.

To begin, we note that foreign made on-road motor vehicles, that are capable of high-speed use, are not eligible to be transformed into LSVs via the adoption of a speed-limiting governor. In a June 28, 2000 letter of interpretation to Mr. Thomas E. Dahl on this issue, we stated there are no circumstances under which the addition of a speed governing device to a high-speed vehicle would make the vehicle meet the definition of an LSV. After explaining that we established the LSV class because the vehicles were too small to meet the full FMVSS requirements, we stated that a common feature of this class appeared to be that they were capable of a maximum speed of 25 mph *as designed and manufactured.* This is still our interpretation of the regulation.

Furthermore, the agency has stated several times that one concern we have regarding the LSV classification is that it could be used as a mechanism to import foreign motor vehicles without first making them conform to the FMVSSs. For example, in the 2005 final rule, we stated that ''[t]he [2,500-pound] GVWR limit prevents attempts to circumvent FMVSSs for cars, trucks, and multipurpose passenger vehicles by applying the LSV classification to vehicle types that are able to meet the [full FMVSS] standards.'' [9] ETA's recommended 4,000-pound limit would permit the result we intended to prevent, and we view that as a reason to deny the petition.

b. Technology-Neutral Regulation

ETA's final argument is that the current GVWR limitation provides an advantage to gasoline-powered vehicles over electric vehicles. The agency is aware that, with current technology, the batteries needed to power an electric vehicle weigh substantially more than the fuel needed to power an internal combustion engine. This was considered to some extent in our original rulemaking establishing the 2,500-pound GVWR limit in 2005, and considered extensively in our 2006 rule increasing that limit to 3,000 pounds, a rule undertaken at the behest of two electric LSV manufacturers.

In the petitions that led to the 2006 rulemaking, NHTSA was presented with two differing solutions to this problem. The first, presented by Dynasty Electric Car Corporation, recommended a 2,500-pound GVWR restriction for internal combustion engine LSVs and a 2,800-pound GVWR restriction for electric LSVs. The second, recommended by GEM, requested that the GVWR limit be raised to 3,000 pounds for all LSVs, as this would accommodate electric LSVs with a cargo-carrying capacity of 1,000 pounds.

In the 2005 rule establishing the GVWR limitation, we discussed why we were not establishing different GVWR limitations for electric and gasoline-powered vehicles, despite the issue regarding the weight of the batteries. We noted that each propulsion type has its own advantages. While gasoline-powered vehicles are lighter, ''the fact that electric LSVs are successful in the market indicates that any advantage of the [internal combustion] vehicle due to greater load capacity under our GVWR restriction will be overcome by other attractions of the electric vehicle to consumers.'' [10] ETA, perhaps inadvertently, cites several of these advantages in its petition. These include the high cost of gasoline, government mandates to reduce or eliminate petroleum-fueled vehicles from fleets, and the environmental benefits of electric vehicles. Therefore, we do not believe it is necessary to increase the regulatory complexity by setting different GVWR limitations based on propulsion method.

Finally, we believe that 3,000 pounds is a level at which electric LSVs that perform cargo-carrying work are practicable to build. In the 2006 final rule, we quoted one of the petitioners, GEM, where it stated:

> All that GEM seeks in the U.S. market is a comparable ''level playing field'' by allowing LSV trucks to weigh as much as 3000 pounds GVWR, which would accommodate the electric batteries and an appropriate payload for LSV trucks.

We note that GEM currently produces a cargo-carrying electric LSV with a GVWR of 3,000 pounds or less. We noted on GEM's Web site the GEM eL XD, which has a GVWR of 3,000 pounds, a payload capacity of 1,450 pounds, a top speed of 25 mph, and a range of up to 40 miles.[11] This example illustrates that the current GVWR limit permits the development of cargo-carrying, electric LSVs.

IV. Conclusion

For the reasons stated above, we are denying ETA's petition to increase the maximum allowable GVWR to 4,000 pounds for electric LSVs. Furthermore, because we are not increasing the maximum allowable GVWR, we are denying ETA's recommendation to establish brake requirements and tire weight rating requirements in FMVSS No. 500.

Issued on: September 19, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8–22736 Filed 9–25–08; 8:45 am]

BILLING CODE 4910–59–P

[9] 70 FR 48316.

[10] 70 FR 48317.

[11] *See* GEM Web site, available at *http://www.gemcar.com.*

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2008–0154]

Federal Motor Vehicle Safety Standards; Medium Speed Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies petitions for rulemaking submitted by Environmental Motors, and Porteon Electric Vehicles, Inc. and Mirox Corporation. The petitioners requested that NHTSA commence rulemaking to create a new class of motor vehicles known as medium speed vehicles, which would have a maximum speed capability of 35 mph. The petitioners contemplated that these vehicles would be subject to a set of safety standards greater than those that apply to low speed vehicles but substantially less than the full set of safety standards that apply to other light vehicles such as passenger cars. The petitioners cited a number of reasons in support of their petition, the most significant of which related to potential environmental benefits. After carefully reviewing the petitions, we are denying them because the introduction of such a class of motor vehicles without the full complement of safety features required for other light vehicles such as passenger cars would result in significantly greater risk of deaths and serious injuries. While NHTSA agrees with the importance of environmental issues, the agency believes that it is neither necessary nor appropriate to significantly increase the risk of deaths and serious injuries to save fuel.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Gayle Dalrymple, Office of Crash Avoidance Standards, NVS–123. Telephone: 202–366–5559;