(*3*) Monitoring, as specified in the SMMP, is required.

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[FR Doc. 2010–9982 Filed 4–28–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2010–0055]

Federal Motor Vehicle Safety Standards; Cargo Carrying Capacity

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

ACTION: Denial of petitions for reconsideration.

SUMMARY: This document denies petitions for reconsideration of a final rule published December 4, 2007 which amended the Federal motor vehicle safety standards (FMVSS) Nos. 110 and 120 on tire selection and rims. The final rule addressed the problem of light vehicle, motor home and recreation vehicle trailer overloading by requiring manufacturers of light vehicles, motor homes, and recreation vehicle trailers to provide, among other matters, information to consumers about the vehicle's load carrying capacity.

DATES: The December 4, 2007 final rule became effective June 2, 2008. Today's document makes no changes to the regulatory text of that final rule

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Samuel Daniel, Office of Crash Avoidance Standards at (202) 366–4921. His FAX number is (202) 366–7002.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her FAX number is (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

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I. Summary of the December 2007 Final Rule

On December 4, 2007 (72 FR 68442) (Docket No. NHTSA–2007–0040), NHTSA published a final rule that amended Federal Motor Vehicle Safety Standard (FMVSS) Nos. 110 and 120 to address the problem of motor home and recreation vehicle trailer overloading. The final rule took effect on June 2, 2008. Standard No. 110 was renamed, *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR [Gross Vehicle Weight Rating] of 4,536 kilograms (10,000 pounds) or less.* Standard No. 120 was renamed, *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds).* Among other things, the December 2007 final rule amended the standards to require all motor homes and recreation vehicle (RV) trailers to bear a label that informs the consumer about the vehicle's load carrying capacity.

Over the years, the agency has received inquiries and complaints from the public about problems resulting from motor home and travel trailer overloading. Many overloading problems surface in the form of complaints about poor handling, reduced braking capabilities, tire failure and the premature failure of suspension components. NHTSA issued the final rule to address the problem of overloading, by helping consumers have a better idea of when the cargo carrying capacities of their motor homes and travel trailers are being met, and exceeded.[1]

The final rule addressed motor homes and RV trailers. The agency believed that many owners of these vehicles are unaware of their vehicle's cargo carrying capacity until a problem becomes apparent. State laws do not require motor homes and travel trailers to use roadside weighing stations as they do for heavy commercial vehicles. NHTSA believed that consumer information in the form of a required label will inform consumers of a motor home or travel trailer's cargo carrying capacity and will result in reduced overloading of the vehicles.

For motor homes and RV trailers, the final rule required labels that display the vehicle identification number (VIN), the weight of a full load of water, the unit weight of water and a cautionary statement that the weight of water is part of cargo. The rule required motor home labels to display the maximum weight of occupants and cargo, and RV trailer labels to display the maximum weight of cargo. In addition, for motor homes, the label must show the seating capacity of the vehicle—based on the number of safety belts in the vehicle—and must indicate that the tongue weight of a towed trailer counts as part of the motor home's cargo.

To promote a consistent conspicuous label location, the final rule specified that permanent load carrying capacity labels be affixed to the interior of the forward-most exterior passenger door on the right side of the vehicle and be visible. As an alternative, to address aesthetic considerations, the rule permitted manufacturers to place a temporary label to the interior of the forward-most exterior passenger door on the right side of the vehicle and to apply a permanent label in the area of the vehicle specified by FMVSS Nos. 110 and 120 for tire information.

In addition, the final rule adopted a threshold for correcting load carrying capacity information on FMVSS No. 110 vehicle placards, motor home occupant and cargo carrying capacity (OCCC) labels and RV trailer cargo carrying capacity (CCC) labels of the lesser of 1.5 percent of GVWR or 100 pounds in FMVSS Nos. 110 and 120. When weight is added between final vehicle certification and first retail sale, the load carrying capacity values on the labels

[1] The rulemaking commenced in response to a petition for rulemaking from Ms. Justine May, who asked NHTSA to amend FMVSS No. 120 in such a way that motor vehicles would be equipped with tires that meet maximum load standards when the vehicle is loaded with a reasonable amount of luggage and the total number of passengers the vehicle is designed to carry. Ms. May's reason for her petition was her family's personal experience with a fifth-wheel travel trailer. She stated that there was no information provided with her trailer stating its cargo carrying capacity. Ms. May believed that loading her vehicle with cargo for a trip placed it in an overloaded condition, resulting in tire blowouts. A discussion of motor home and recreational trailer loading problems can be found in the August 31, 2005 notice of proposed rulemaking (70 FR 51707, 51708) (Docket No. NHTSA–2005–22242).

must be corrected using one or a combination of the following methods: (a) Adding a load carrying capacity modification label within 25 mm of the existing vehicle (FMVSS No. 110) placard, and/or the motor home OCCC label, or RV trailer CCC label (FMVSS Nos. 110 and 120); (b) modifying the original permanent RV load carrying capacity label or vehicle placard with correct load carrying capacity weight values; or (c) replacing the original, permanent RV load carrying capacity label or vehicle placard with the same label or placard containing correct load carrying capacity weight values.

II. Petitions for Reconsideration

NHTSA received petitions for reconsideration from: The Association of International Automobile Manufacturers, Inc. (AIAM); Mr. Dennis Myhre; the National RV Dealers Association (RVDA), and a "joint petition" submitted by the National Automobile Dealers Association (NADA) and Specialty Equipment Market Association (SEMA) (hereafter referred to as "NADA/SEMA").[2]

The issues raised by the petitioners can be categorized as relating to the following: (a) The information that should be provided to consumers; (b) how the information should be displayed or conveyed to the consumer; (c) the weight that can be added to a vehicle after final vehicle certification and before first retail sale without triggering a requirement to re-label the vehicle; [3] and, (d) whether the re-labeling requirement should only apply to "alterers." There were also requests for changes that were outside of the scope of the rulemaking.

For the reasons discussed below, NHTSA is denying all of the petitions for reconsideration.

a. The Information That Should Be Provided to Consumers

1. Water Weight as Cargo

The final rule specified that the motor home occupant and cargo carrying capacity label (OCCC) must state the weight value that the combined weight of occupants and cargo should never exceed. Among other information, the label must provide the weight of a full load of water and the unit weight of water, and must inform consumers that the weight of water is part of the cargo weight. The final rule specified that for RV trailers, the cargo carrying capacity label (CCC label) must specify the weight value that the weight of cargo must never exceed, the weight of a full load of water, the unit weight of water and a caution that the weight of water is part of the cargo weight.

We explained in the final rule that information about on-board water weight is important because filled water tanks can be a significant portion of the vehicle's total cargo capacity. We stated that the level of on-board water can be assessed by the consumer. Further, campgrounds often provide water hook-ups, making it unnecessary sometimes for consumers to carry water. In such cases, the absence of water provides more capacity for cargo.

In a petition for reconsideration, Mr. Dennis Myhre asks that on-board water capacity be considered part of the unloaded vehicle weight (UVW) rather than cargo. He states that most owners fill their tanks completely before leaving home or a campground. He states: "Partially filling the fresh water tank can have negative effects on the ABS [antilock] braking system and steering control, and encouraging the consumer to 'drain' the fresh tank to compensate for carrying capacity is unrealistic and wasteful of our precious natural resources." The petitioner believes that manufacturers have told RV consumers for several years that fresh water is not part of the cargo carrying capacity of their RV, and consumers will now misunderstand the cargo carrying information provided by the new CCC label, and will overload their vehicle.

Agency Response

This request is denied. Although voluntary industry labels have used the term "CCC" to refer to the residual cargo capacity of an RV with a full water tank, we believe that the labels specified in the December 2007 final rule improve the conspicuity and clarity of the previous labels. The new labels emphasize to the consumer that the weight of water is part of cargo. The label clearly states: "The combined weight of occupants and cargo should never exceed *XXX* kg or *XXX* lb," followed by "Caution: A full load of water equals *XXX* kg or *XXX* lb of cargo." These explicit statements should facilitate the consumer's understanding that they must consider the weight of water as cargo.

An important part of the December 2007 final rule for motor homes and RV trailers is the requirement that either the permanent label or a temporary label must be displayed inside the front passenger door before the first retail sale of the vehicle. This requirement ensures that information about the vehicle capacity weight is noticed by the consumer. It is also intended to prevent consumers from buying RVs and later learning that the vehicle capacity weight does not satisfy their needs.

With respect to the labels to which consumers were exposed in the past, it is uncertain that consumers have associated the weight of water with the unloaded vehicle weight simply because the industry label had done so. Previous labels were usually in an obscure location; RV owners who contacted NHTSA usually were unaware of the cargo weight capacity of their vehicles or whether water weight was considered part of the UVW or cargo weight. For example, Ms. Justine May, whose petition commenced the rulemaking resulting in the December 2007 final rule, attributed repeated tire failures of her RV trailer to the absence of information on cargo weight limits for her RV.

We are denying the petition for reconsideration also because the presentation of water weight as a separate item on the label also highlights that there is a trade-off in useable cargo capacity between traveling with a full tank and traveling with a less than full tank. This information should enhance consumers' understanding that the amount of water carried in the water tanks affect the total load they wish to carry in their vehicles. With this information, consumers can make informed decisions about loading their vehicles for a particular trip (*e.g.,* whether more or less water will be carried to compensate for other cargo).

Accordingly, for the above reasons, we deny Mr. Myhre's petition requesting that the weight of onboard water be incorporated into the vehicle's UVW.

2. Dealers Wanting To Require Manufacturers To Weigh Each RV

The final rule requires manufacturers to report the allowable load carrying capacity. In the final rule, we require the statement: "The combined weight of occupants and cargo should never exceed *XXX* kg or *XXX* lbs" on motor homes, and the statement: "The weight of cargo should never exceed *XXX* kg or *XXX* lbs" on RV trailers. These statements are required to state weights that will not overload the vehicle. These requirements allow manufacturers to understate (but not overstate) the weight value for load carrying capacity. This will assure that when the consumer loads the vehicle to the stated load carrying capacity, the vehicle's GVWR

[2] Also signing the joint petition were the Automotive Service Association, the Marine Retailers Association of America, the National Marine Manufacturers, RVDA, the National Truck Equipment Association, and the Tire Industry Association.

[3] Several petitioners stated that the relief provided in the final rule, the lesser of 1.5 percent of vehicle GVWR, or 100 pounds was too low.

will not be exceeded. When the manufacturer states that the load carrying capacity must not exceed a certain weight value, it means that the stated load carrying capacity weight value plus the UVW is less than or equal to the GVWR. The manufacturer must consider product variability to ensure that the load carrying capacity plus the UVW does not exceed the GVWR.[4]

In its petition for reconsideration, RVDA requests that NHTSA require "all recreational vehicles, regardless of weight, be weighed by the final stage manufacturer after all options and equipment are installed, and that the actual weight of the unit be used to calculate the cargo carrying capacity disclosed to the consumer." The petitioner (associated RV dealers) reports that manufacturers used an "exemplar" method [5] to report the unloaded vehicle weight of RVs on a voluntary RV industry label, and that a dealer had been sued because it was discovered that the actual vehicle weight of some RV trailers was substantially greater than that reported on the label. RVDA is concerned that the exemplar method may not take into account unit-specific options, running changes in construction and materials, variations in the density of material used in units built to the same plans, and increases in the weight of wood due to humidity absorption if the exemplar unit was weighed during a drier time of year.

Agency Response

We are denying this request. In the past, manufacturers were not required by the FMVSSs to provide unloaded vehicle weights and the cargo carrying capacity (GVWR minus UVW, full fresh water and full LP-gas weight) of RVs over 10,000 pounds GVWR. We believe that the December 2007 final rule will eliminate the practices that led to overstating the vehicle carrying capacity for these vehicles. The preamble to the final rule (at 72 FR 68456) stated:

* * * we are requiring that the stated load carrying capacity not overload the vehicle. The GVWR of the vehicle must not be exceeded when the vehicle is loaded with the stated load carrying capacity. Manufacturers are permitted to understate the value of load carrying capacity to compensate for variances in manufacturing techniques, materials, and weighing techniques, however, under no circumstances is an overstated value of load carrying capacity permitted. Any inaccuracies due to scale tolerances and variances in manufacturing techniques or materials must be compensated for by appropriately increasing the safety factor between the allotted weight for occupants and cargo (or just cargo in the case of RV trailers) and the GVWR. Accordingly, the probability of moisture absorption by wooden structures before first retail sale should be considered in assigning the load carrying capacity.

Manufacturers are free to weigh each unit and apply a factor of safety for expected moisture absorption to arrive at the vehicle capacity weight, or they can weigh an exemplar unit and adjust for differences in option content, construction details and variations in material density as well as moisture absorption, applying appropriate factors of safety. Regardless, the amendments to FMVSS No. 120 require manufacturers to determine the accurate vehicle capacity weight. We do not believe there is a need to also require manufacturers to weigh each RV individually and provide the weight of the vehicle to the consumer. Accordingly, the request is denied.

3. Providing the UVW to Consumers on the RV Trailer CCC Label

The final rule does not require manufacturers of RV trailers to provide the unloaded vehicle weight (UVW) of the RV trailer on the new cargo carrying capacity (CCC) label, even though the UVW has to be obtained in order to calculate the cargo carrying capacity of the vehicle. In its petition for reconsideration, RVDA asks that NHTSA require that the UVW be disclosed on the RV trailer CCC label "because this information is critical to consumers as well as dealers during the sale and/or use of a travel trailer or fifth wheel, (towable)." According to RVDA:

* * * during the purchase of a towable, the UVW is subtracted from the towing capacity of the consumer's truck or tow vehicle ("tow vehicle") to determine how much cargo can be added to the RV without exceeding the towing capacity of the *tow vehicle. This calculation is not addressed by the rule which deals exclusively with the cargo carrying capacity of the RV itself.* (Emphasis in text.)

RVDA states that without a UVW label, "consumers and dealers will be forced to subtract the Gross Vehicle Weight Rating of the RV from the towing capacity of the tow vehicle to determine the cargo capacity of the tow vehicle." The petitioner states that this situation could "mislead consumers into believing that their tow vehicles could not pull trailers or fifth wheels which they, in reality, could safely pull by utilizing less than the full cargo capacity of the RV."

Agency Response

We are declining this request. The December 2007 final rule was in response to a petition from an RV trailer owner whose trailer experienced safety-related failures as a result of overloading that the owner attributed to insufficient information on vehicle capacity weight. NHTSA believed that the overloading of RVs was problematic and to alleviate the situation, better information was needed. The August 2005 NPRM (at 70 FR 51707) cited the Recreational Vehicle Safety Foundation's 2003 Annual Report to Industry, which found that 47 percent of the 442 RV trailers it weighed [6] in 2003 were overloaded. In contrast, the RVDA describes in its petition, a sales practice that results in customers buying trailers that are too heavy for their tow vehicle if they utilize the full cargo capacity of the trailer. We see no safety advantage to that situation.

In addition, the information sought by the petitioner (the UVW of the RV trailer) can be easily obtained by the dealer. We anticipate that RV dealers will now calculate the UVW of trailers by subtracting the vehicle cargo carrying capacity weight, which is now a labeling requirement, from the trailer's GVWR. Given that both the GVWR and the vehicle cargo carrying capacity weight are required to be labeled, and that the UVW can readily be determined by these factors, we see no safety reason to require manufacturers to also provide the UVW for RV trailers. For these reasons, the request is denied.

b. How the Information Should Be Displayed or Conveyed to the Consumer

1. Owner's Manual Requirements

In its petition, AIAM raises a concern about the relationship between the December 2007 final rule (which amended FMVSS Nos. 110 and 120) and 49 CFR part 575, *Consumer Information.* AIAM noted that 49 CFR 575.6(a)(4)(v) requires manufacturers, for vehicles that have a GVWR of 10,000 lb or less, to include information in the owner's manual (or if there is no owner's manual, in a separate document) [7]

[4] The amended standards require manufacturers to report a vehicle capacity weight value that can be verified by NHTSA during a compliance test (FMVSS No. 110 paragraphs S9.3.2 and S10.2; FMVSS No. 120 S10.4.2), but the standards do not specify how the manufacturer must determine vehicle capacity weight.

[5] According to RVDA's petition, the "exemplar" method of determining the unloaded vehicle weight appears to be the practice of weighing one vehicle and using its weight to represent all vehicles of that model regardless of differences in equipment, changes in materials or construction methods, or seasonal effects.

[6] Not claimed to be a scientific sampling, but an indication that overloading is very common.

[7] For convenience, in this discussion we refer to both documents as the "owner's manual." "Owner's manual" is defined in § 575.2(c).

regarding vehicle load limits, including instructions for locating and understanding the load limit information. Section 575.6(a)(4)(v)(B) requires the owner's manual to provide information for calculating total and cargo load capacities with varying seating configurations, including quantitative examples showing how the vehicle's cargo and luggage capacity decreases as the combined number of occupants increases.

AIAM asks NHTSA to clarify whether the part 575 consumer information vehicle loading information required in the owner's manual must be modified when the vehicle placard is adjusted in accordance with the requirements of the December 2007 final rule.

Agency Response

Our answer is the Part 575 information is not required to be modified. It is not the intent of the part 575 owner's manual language to include load capacity values specific to a particular vehicle. The § 575.6(a)(4)(v) requirement is for general information to be placed in the owner's manual, to inform customers about the capacities of their vehicles, the location of specific load capacity information (placard) on the vehicle, and how this information is calculated. Therefore, neither FMVSS No. 110 nor part 575 requires the owner's manual to have specific information regarding a vehicle's load capacities.

Further, because the part 575 information required is general and not specific to a particular vehicle, the load capacity information in the owner's manual need not be revised when revisions are made to vehicle capacity weight values due to weight additions to a vehicle prior to first sale. The required owner's manual language directs consumers to the vehicle placard required by FMVSS No. 110 for specific vehicle load capacity information. When vehicle placards are adjusted in accordance with requirements of the December 2007 final rule, the corrected information will be available to the consumer.

2. Other Means of Informing Consumers

In his petition for reconsideration, Mr. Myhre urges NHTSA "to incorporate their final ruling information not only in their products, but also in sales literature and Web sites, to better inform the RV Consumer." This request by Mr. Myhre raises issues that were not the subject of the NPRM or the final rule, and so the issues are outside the scope of rulemaking. However, we note that RV dealers and manufacturers are not prevented by the final rule from voluntarily providing information about their vehicles' load capacity values in sales literature and Web sites.

c. The Weight That Can Be Added to a Vehicle After Final Vehicle Certification and Before First Retail Sale Without Triggering a Requirement To Re-Label the Vehicle

The final rule addressed the obligation of manufacturers and dealers to re-label a vehicle when the manufacturer or dealer adds optional equipment and accessories to the vehicle after final vehicle certification and before first retail sale. The terms dealer, manufacturer, alterer, and service facility are used in this document to identify entities that are required to comply with the December 4, 2007 final rule amending FMVSS Nos. 110 and 120. When such equipment increases the vehicle's weight and decreases the weight allotted for passengers and cargo, NHTSA's position is that the manufacturer or dealer making the addition is obligated to revise, as necessary, the information on the vehicle placard required by FMVSS No. 110 and 120 that informs consumers of the vehicle's load carrying capacities. As to what is "necessary," the agency believes that small increases in weight are insignificant, and that it would be unnecessarily burdensome to require dealers to reprint labels with new information each time a small amount of weight is added to a vehicle.

To make clearer the obligation to re-label a vehicle, the December 2007 final rule amended FMVSS Nos. 110 and 120 to specify that, if weight equal to or less than the lesser of 1.5 percent of the vehicle's GVWR or 45.4 kilograms (kg)(100 lb) is added by the dealer before first retail sale, no additional action is required. If weight greater than the lesser of 1.5 percent of the vehicle's GVWR or 45.4 kg (100 lb) is added by the dealer before first retail sale, the dealer must take action (specified in the standards) to re-label the vehicle. The dealer is required to add a label that corrects or modifies the original load carrying capacity values.

The final rule raised the threshold to the lesser of 1.5 percent GVWR or 45.4 kg (100 pounds) from the threshold proposed in the NPRM. The NPRM had proposed a threshold of weight equal to or less than 0.5 percent of GVWR. That is, if weight greater than 0.5 percent of GVWR is added by the dealer before first retail sale, the dealer must add a label that corrects the original values.

In raising the threshold from that proposed in the NPRM, the agency stated in the final rule that setting the threshold of weight at the lesser of 1.5 percent of GVWR or 100 pounds "relieves passenger vehicle dealers of the responsibility for label changes in the vast majority of equipment sales without creating a practical safety problem." 72 FR at 68452. NHTSA stated: "The most commonly installed heavy item by dealers before first retail sale is a heavy duty Class IV trailer hitch for a pickup truck. Such hitches have an advertised shipping weight of less than 36.3 kg (80 lbs). A relatively small pickup truck for this hitch application would have a GVWR of 2721.6 kg (6000 lbs) or greater. This installation would involve equipment representing 1.33 percent of the vehicle's GVWR or less." *Id.*

NHTSA acknowledged that a vehicle with the maximum weight of added equipment of 1.5 percent of GVWR when also loaded to the maximum weight of passengers and cargo specified in the original label could exceed the tire load rating by 1.5 percent as a worst case. However, the agency determined that NHTSA tire research data (*see, e.g.,* Docket NHTSA 2000–8011 item 22) shows that fully inflated tires are not very sensitive to small overloads. Even in a high speed test rigorous enough to fail a third of the tire samples, tires that were slightly overloaded (taking into consideration the curvature of the test wheel) performed comparably to a sample of the same tire make/models with 10 percent less load. 72 FR at 68452. Thus, NHTSA determined a threshold of weight at the lesser of 1.5 percent of GVWR or 100 pounds reasonably balanced the interest of alleviating burdens on dealers and others to re-label the vehicle with load safety considerations.

Petitions for Reconsideration

1. Raising the Threshold

AIAM, RVDA, and joint petitioners NADA/SEMA petitioned for reconsideration of the threshold of the lesser of 1.5 percent of GVWR or 100 pounds, seeking a much higher threshold for the amount of weight a dealer could add to a vehicle without having to correct the vehicle placard. The petitioners generally seek to increase the threshold level to the larger of 3 percent of GVWR or 100 kg (220 pounds). AIAM states that the weight of combinations of added equipment could exceed the threshold in the final rule so that in many instances the dealers would have to correct the vehicle placard. AIAM states that NHTSA "presented no data to indicate the existence of a safety concern resulting from the addition of optional equipment for light vehicles generally or at the 100

kg [(220 lb)] level, and we are aware of none."

RVDA highlights what it believes to be a discrepancy in the final rule's discussion in the preamble and the regulatory text of S10.5 of FMVSS No. 120. Although throughout the preamble NHTSA consistently describes the threshold for re-labeling as weight exceeding "the lesser of 1.5 percent of the vehicle's GVWR or 100 pounds" for both FMVSS Nos. 110 and 120, RVDA points out that the regulatory text of the latter standard (S10.5.1 of FMVSS No. 120) refers to the threshold only as "weight exceeding 45.4 kg (100 pounds)."[8] 72 FR at 68464.

RVDA believes that the threshold should be uniform for both standards[9] and that it should be increased to "the greater of 3 percent GVWR or 100 kg (220 pounds)." The petitioner states that setting the threshold at 100 kg (220 lb) would be consistent with 49 CRF 595.7, *Requirements for Vehicle Modifications to Accommodate People with Disabilities.*[10]

NADA/SEMA also petitioned to increase the threshold to "the greater of 3 percent GVWR or 100 kg (220 lb)." The petitioners believe that the agency was mistaken in stating in the final rule that: "Most commenters suggested that the threshold be the lesser of 3 percent GVWR or 100 kg (220 lb)." NADA/SEMA state that it had urged NHTSA to adopt a threshold of "the *greater* of 3 percent GVWR or 100 kg (220 lb), not the *lesser*." (Emphasis in text.) Petitioners state that it had sought "a single minimum safe harbor: 220 lbs. Dealers and installers working on heavier vehicles would be free to calculate potentially higher safe harbors (*e.g.,* 3% of 10,000 pounds or 300 pounds)." The petitioners also state that information contained in AIAM's comment to the NPRM did not support NHTSA's statement in the final rule that trailer hitches weighing 36.3 kg (80 lb) are "the most commonly installed heavy item by dealers prior to first retail sale."

NADA/SEMA state that the 100 lb threshold "provides no meaningful relief" and does not relieve dealers of the responsibility to re-label in the vast majority of equipment sales. The petitioners state that dealers and installers often accessorize vehicles before first sale by "bundling groups of accessories in appearance or towing packages." "[T]hese combinations frequently exceed 100 pounds, but fall below 220 pounds, demonstrating a clear rationale for a minimum 220 pound threshold." The petitioners state that the 100 pound threshold is arbitrary and that it is unaware of any overloading-related safety concerns associated with properly installed accessories. NADA/SEMA believe that the 100 kg (220 lb) threshold from 49 CFR § 595.7 should be used. Petitioners state: "Simply put, if a 220 pound trigger threshold provides a level of safety for persons with disabilities, it should serve well for the motoring public generally."

Agency Response

NHTSA is denying the petitioners' request to amend the weight thresholds of the final rule. Increasing the weight thresholds as petitioners request is inconsistent with safety and the purposes of the rulemaking.

The purpose of the applicability threshold of the load carrying capacity modification label is to relieve dealers and service facilities from having to correct load carrying capacity information when *insignificant* amounts of weight are added to light vehicles and heavy RVs between final vehicle certification and first retail sale. 72 FR at 68452. The threshold is also geared toward ensuring that the load carrying capacity information remains reasonably accurate. That is, NHTSA determined that a safety risk would not be unreasonably heightened if the weight information provided on the original label did not reflect *insignificant* amounts of weight added by the dealer after the vehicle left the factory. As to what constitutes "insignificant" weight, the final rule sought to and provided dealers clear knowledge of what quantity of added weight triggers a requirement to re-label.

It was not the purpose of the amendment to substantially reduce re-labeling of vehicles by dealers when adding weight. The petitioners' complaint that the amendment "provides no meaningful relief" from dealers' responsibility to re-label is immaterial to whether the threshold should be increased. The governing factor for the agency in setting the threshold is whether failure to disclose the added weight on the consumer label withholds important safety information from the vehicle operator. Whether the final rule required dealers to re-label in a vast majority of sales or only in a small portion of sales is not the primary consideration of this rulemaking.

The agency determined that the threshold for added weight of the lesser of 1.5 percent of GVWR or 100 pounds relieves dealers of the responsibility for re-labeling "without creating a practical safety problem." 72 FR at 68452. NHTSA made this determination after considering data from the agency's tire research program showing that fully inflated tires were not very sensitive to "small overloads." *Id.* Petitioners provided no data or information showing that the threshold could be increased—more than doubled[11]—without negatively impacting vehicle handling and tire performance.

The agency cannot agree that the weights suggested by the petitioners are insignificant. NADA/SEMA discussed the Subaru Outback, which has a GVWR of 4,545 pounds with accessories. The petitioners state that a dealer could equip the Subaru with a front license plate (one pound), receiver hitch (43 pounds), cargo organizer (4 pounds), all-weather mats (12 pounds), splash guards (one pound), roof rack (24 pounds), roof bike mount (13 pounds), kayak carrier (11 pounds) and remote starter (3 pounds) for a total of approximately 112 pounds. Under the December 2007 final rule, since the total weight of these dealer-installed accessories would exceed the lesser of 1.5 percent of GVWR or 100 pounds,[12] the dealer modifying the vehicle would have to re-label the vehicle with information that lists the total weight of added equipment. The consumer would use this information to understand how he or she should adjust the load-carrying capacity of the vehicle.

Under the petitioners' view, the threshold should be raised to 220 pounds to relieve the dealer of the burden of re-labeling the vehicle.[13] In our judgment, the dealer should be required to re-label the vehicle. It is noteworthy that the dealer's accessories

[8] The threshold of "the lesser of 1.5 percent of GVWR or 45.4 kg (100 pounds)" is reflected in the text of FMVSS No. 110 (S10.1 of FMVSS No. 110).

[9] We note that FMVSS No. 120's (S10.5) reference to only 45.4 kg (100 kg)—*i.e.,* the absence of "1.5 percent of the vehicle's GVWR"—was intentional. FMVSS No. 120 applies to vehicles with a GVWR greater than 10,000 lb. 1.5 percent of a vehicle with a GVWR of 10,000 lb is 150 lb. Because it would be unnecessary for the threshold clause to state: "the lesser of [150 lb or more] or 100 lb," there was no need to include "1.5 percent of the vehicle's GVWR" in FMVSS No. 120.

[10] Part 595 provides limited exemptions from 49 U.S.C. 30122, the statutory provision prohibiting manufacturers, distributors, dealers, or motor vehicle repair businesses from "knowingly mak[ing] inoperative" any part of a device or element of design installed on or in a motor vehicle in compliance with an FMVSS. Subpart C enables the above-listed entities to modify vehicles to enable persons with disabilities to operate or ride as a passenger in a motor vehicle. Section 595.7(e)(5) states that the modification label required in Section 595.7(b) must "[i]ndicate any reduction in the load carrying capacity of the vehicle of more than 100 kg (220 lb) after the modifications are completed."

[11] 3 percent is double the 1.5 percent of GVWR specified in the final rule.

[12] 1.5 percent of the Outback's GVWR is 68 pounds.

[13] For the Outback, 220 pounds would be more than triple the 68 pound weight triggering the requirement to re-label under the final rule.

highlighted by the petitioners (trailer hitch, roof rack, kayak carrier) are designed to optimize the vehicle's cargo carrying capabilities. With these features, the consumer is encouraged to use the vehicle to carry as much cargo as possible. We believe that it is important to inform a consumer taking full advantage of these accessories that the dealer's accessories alone account for 112 pounds, a substantial amount that will impact the vehicle's overall cargo carrying capacity. The consumer should be made aware of this weight so that he or she will be able to account for it and adjust the amount of cargo or number of passengers eventually carried.

The weight threshold suggested by NADA/SEMA appears to unreasonably increase the risk of overloading for a number of vehicles. NHTSA evaluated a number of vehicles similar to the Outback to determine the effect of added weight when the vehicle is loaded to the limit of its occupant capacity. Taking the example of the Outback (4,545 pounds GVWR, vehicle capacity weight for passengers and cargo of 900 pounds), when the Outback is loaded to its 5-occupant capacity (assuming each passenger weighs 150 pounds), the residual cargo capacity for an unmodified vehicle is 150 pounds. When a dealer adds weight of 112 pounds, the residual cargo capacity is reduced to 38 pounds (150 pounds minus 112 pounds). Applying the December 2007 final rule's 1.5 percent of GVWR limit (or, in the case of the Outback, 68 pounds), the dealer would have to re-label the vehicle. However, if a 220-pound threshold were used, the dealer would not have to inform the consumer of the added weight of the accessories and associated reduced load-carrying capacity of the vehicle. Further, given the 150-pound residual cargo capacity for the Outback, if 220 pounds of accessories were added by the dealer and no re-labeling were required, a vehicle would be overloaded by 70 pounds when loaded to the full occupant capacity (even without an additional cargo load). The load carrying capacity information provided with the original vehicle would be incorrect and fail to inform the consumer of the overloading.

Listed below is information on representative model year 2005–2008 passenger vehicles. Note the cargo capacity remains after the vehicle seats the full number of persons in its seating capacity. It is assumed each person weighs 150 pounds.

Vehicle	GVWR (lb)	Seating capacity	Vehicle capacity weight (lb)	Cargo capacity (with 5 occupants) (lb)
Toyota Yaris	3300	5	845	95
Chevrolet Aveo	3348	5	858	108
Toyota Corolla	3585	5	850	100
Saturn Ion	3664	5	899	149
Honda Civic	3671	5	850	100
Ford Fusion	4240	5	850	100
Hyundai Sonata	4299	5	860	110
Ford FiveHundred	4800	5	950	200

A 220 pound threshold would result in the vehicles exceeding their GVWR when full passenger capacity weight is added even without an additional cargo load. With a 220 pound threshold, without the consumer knowing it, a vehicle could be overloaded simply by carrying the maximum number of occupants for which the vehicle is designed, even if no cargo were carried. Such an outcome is contrary to safety and contrary to the purpose of this rulemaking.

2. 49 CFR 595.7

With regard to petitioners' view that the 220 pound threshold should be acceptable since it is used in 49 CFR 595.7, we disagree.

NHTSA established 49 CFR part 595, subpart C, to assist persons with disabilities to operate or ride as passengers in motor vehicles. The regulation permits, to a carefully-regulated extent, the making inoperative of devices or systems installed in compliance with the Federal motor vehicle safety standards. In issuing this regulation, the agency weighed carefully and sought balance between the interests of increasing the mobility of the disabled with the safety protections afforded by FMVSSs that could not be maintained by the modifications needed to accommodate a disabled person. The agency recognized that some components that are the subjects of specific FMVSSs (such as steering columns, air bags, and seats) might have to be removed. Unlike the components new passenger vehicle dealers sometimes add on to new vehicles, the modifications envisioned by the § 595.7 regulation are usually substantial and involve a degree of reconstruction of the vehicle. Because the purpose and nature of the modifications contemplated by § 595.7 and FMVSS No. 110 and 120 are different, the weight thresholds are different.

The type of vehicle that is typically modified and how it is used after modification are different. Vehicles modified (in accordance with § 595.7) to accommodate operators or passengers with disabilities have historically been full-size vans and mini-vans with GVWRs of between 6,000 pounds and 9,000 pounds and a vehicle capacity weight between 1,000 pounds and 2,500 pounds. After modifications, these vehicles are unlikely to be used to haul heavy cargo or large numbers of passengers because of their special use. Thus, it is less likely that the vehicle's load-carrying capacity will be overloaded by a modifier's addition of weight less than 100 kg (220 lb).

Although there are differences between § 595.7 and FMVSS Nos. 110 and 120 that account for different weight thresholds, we note that the end result is similar: The modifications of the vehicle typically result in a re-labeling of the vehicle. Modifications made to accommodate the needs of handicapped drivers or passengers usually exceed 100 kg (220 lb). The § 595.7 modifications needed to accommodate operators and passengers with disabilities include the addition of platform lifts, door operators, floor, roof, and seat modifications, and hand controls. Generally, these modifications are designed to accommodate a particular person's needs. Some extensive modifications can add up to 700 pounds to the unloaded vehicle weight of the vehicle. Thus, modifiers have had to label the vehicle with the

modification label required in § 595.7(b) indicating the reduction in the load carrying capacity of the vehicle of more than 100 kg (220 lb). It is also noted that Part 595 applies to used vehicles as well as new vehicles.

For the reasons discussed above, we deny the requests to change the maximum threshold values to that of 49 CFR 595.7.

3. Use of a Single Weight Threshold Only, Not Percentage of GVWR

To reduce the threshold weight calculation errors that could result from the requirement that the threshold value for added weight be assigned as a percentage of the GVWR (such as that specified in the December 2007 final rule of 1.5 percent), RVDA and AIAM recommended that NHTSA require a single value for the threshold weight be used for all light vehicles.

We decline to make this change. NHTSA does not agree that a single value of threshold weight would be appropriate for all FMVSS No. 110 vehicles. While a larger vehicle could accommodate additional weight up to the fixed value threshold without adjusting its vehicle capacity weight, for lighter vehicles, adding the same fixed threshold weight value without adjusting the vehicle capacity weight label, could result in significant overload. The vehicles [14] we evaluated did not have the capacity to accommodate additional weight over the 100 pound threshold without being overloaded at vehicle capacity weight.

NHTSA believes dealers will be able to calculate the weight limits correctly. As a practical matter, vehicles with a GVWR of 6,600 pounds or less are guided by the 1.5 percent of GVWR limit[15] and vehicles with a GVWR above 6,600 pounds are limited to 100 pounds of additional weight. Calculating the weight limit of a vehicle (GVWR times 0.015) is straightforward and uncomplicated.

d. Applying FMVSS No. 110 Re-Labeling Requirements Only to Alterers

As discussed above, S10 of FMVSS No. 110, addressing weight added to a vehicle between final vehicle certification and first retail sale, specifies that if weight exceeding a threshold amount is added to a vehicle prior to first retail sale, a vehicle placard (required generally for all vehicle by S4.3) and cargo carrying capacity labels must be corrected. FMVSS No. 110, at S4.3.2, specifies for "altered vehicles" that a new vehicle placard be affixed to an altered vehicle, before first purchase of the vehicle, containing accurate information.

In 49 CFR 567.3, "alterer" is defined as a person who alters by addition, substitution or removal of components (other than readily attachable components) a certified vehicle before the first purchase of the vehicle other than for resale. Additionally, an "altered vehicle" is a completed previously-certified vehicle that has been altered other than by the addition, substitution, or removal of readily attachable components or by minor finishing operations, "in such a manner as may affect the conformity of the vehicle with one or more [FMVSSs] or the validity of the stated weight ratings or vehicle type classification." *Id.*

In their petition for reconsideration, NADA/SEMA petitioned NHTSA to amend S10 of FMVSS No. 110 to make it applicable only to vehicle "alterers". Petitioners ask that S10.1 be revised to state only that the placard required by S4.3.2 or S4.3.5 would have to be corrected. The petitioners believed that only vehicle alterers should be required to correct vehicle capacity weight information. Under petitioners' view, vehicle dealers who would not be considered alterers could add weight in excess of the weight threshold (the lesser of 1.5 percent of GVWR or 100 pounds) and not be required to correct the labeled vehicle capacity weight numbers.

Agency Response

We deny this request. The new requirements in FMVSS No. 110 at S10 and in FMVSS No. 120 at S10.5 are intended to apply to all regulated entities, including dealers and alterers, who add weight to applicable vehicles in excess of the specified thresholds (lesser of 100 pounds or 1.5 percent of GVWR) prior to first retail sale. Alterers make changes to vehicles that affect the vehicle to a greater extent than by adding, deleting, or changing readily attachable components, and must be held responsible for correcting vehicle labels as appropriate. At the same time, other regulated entities and dealers, who increase weight by adding "readily attachable components," must be responsible for correcting vehicle capacity weight information if the added weight is above the stated threshold.

The petitioners gave no safety rationale for their request to limit re-labeling requirements to alterers. To amend FMVSS No. 110 in the way the petitioners request would undercut the entire reason for the rulemaking that resulted in the December 4, 2007 final rule. For these reasons, the changes to FMVSS No. 110 asked for by the petitioners will not be made.

e. Issues Outside the Scope of Rulemaking

The following issues raised by NADA/SEMA and by Mr. Myhre are outside the scope of rulemaking of the December 4, 2007 final rule.

1. Dealers Changing Tire Placard

NADA/SEMA ask NHTSA to "restore the version of 49 CFR § 571.110 S4.3(d) published in 2002." This issue relates to previous rulemakings, starting with a November 2002 final rule that amended FMVSS No. 110 to specify that the tire size listed on the vehicle placard match the tire size installed as original equipment by the vehicle manufacturer. The November 2002 FMVSS No. 110 final rule, at S4.3(d), did not address the possibility that tires could be changed between vehicle certification and first sale to the retail customer. A June 2004 FMVSS No. 110 final rule requirement addressed the possibility of tire change by not permitting the tire size to be changed between manufacturer certification and first sale without changing the vehicle placard. In the 2004 FMVSS No. 110 final rule, we explained that dealers are not permitted to sell non-complying vehicles or take actions which would take a vehicle out of compliance with any applicable FMVSSs. Therefore, if a dealer substitutes tires in such a way that the placard is no longer accurate, the dealer must affix a new vehicle placard.

In the December 4, 2007 final rule on cargo carrying capacity, we noted that some commenters to the NPRM had re-raised old issues related to the previous tire placarding rulemakings. (*See* 72 FR at 68457.) Those comments were raising issues outside the scope of the rulemaking. In its petition for reconsideration, NADA/SEMA again commented on these issues. Since the issue is outside of the scope of the rulemaking at issue, we will not address the matter here.

2. Load Distribution

Mr. Myhre stated that for proper braking and steering control of any vehicle, consumers should be provided information about the distribution of the unloaded weight. He suggests requiring that the vehicle capacity weight at each corner of the motorhome be provided.

[14] The Toyota Yaris, Chevrolet Aveo, Toyota Corolla, Saturn Ion, Honda Civic, Ford Fusion, Hyndai Sonata, and Ford Five Hundred.

[15] 1.5 percent of 6,600 is calculated by multiplying 6,600 by 0.015, which results in 99.

Agency Response

This issue is outside the scope of the rulemaking, as noted in the final rule.[16] In the final rule, NHTSA stated that the rulemaking is intended to inform consumers of the load carrying capacity of the RV they are about to purchase and to remind them of the RV's load carrying capacity after purchase and during use. The agency recognized that the rule did not address requirements for providing information on how a particular vehicle's loads should be distributed.

The agency will continue to review consumer complaints and crash statistics to determine the extent of the RV load distribution problem, both motor homes and trailers. If appropriate, the agency will initiate projects to provide consumers with additional vehicle load distribution information. As NHTSA stated in the final rule, however, manufacturers are urged to provide consumers with as much guidance as possible in the vehicle's owner's manual relative to the proper distribution of cargo loads.[17]

III. Conclusion

For the reasons discussed above, NHTSA has denied the petitions for reconsideration. Today's document makes no changes to the regulatory text of the December 4, 2007 final rule.

Issued on April 23, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–9981 Filed 4–28–10; 8:45 am]

BILLING CODE 4910–59–P

[16] *See* 72 FR at 68457.

[17] *Id.*