

**52.204-XX Basic Safeguarding of Contractor Information Systems.**

As prescribed in 4.1703, use the following clause:

**Basic Safeguarding of Contractor Information Systems (Date)**

(a) *Definitions.* As used in this clause—

*Clearing* means removal of data from an information system, its storage devices, and other peripheral devices with storage capacity, in such a way that the data may not be reconstructed using common system capabilities (*i.e.*, through the keyboard); however, the data may be reconstructed using laboratory methods.

*Compromise* means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred. This includes copying the data through covert network channels or the copying of data to unauthorized media.

*Data* means a subset of information in an electronic format that allows it to be retrieved or transmitted.

*Information* means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.

*Information system* means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

*Intrusion* means an unauthorized act of bypassing the security mechanisms of a system.

*Media* means physical devices or writing surfaces including but not limited to magnetic tapes, optical disks, magnetic disks, large scale integration memory chips, and printouts (but not including display media, *e.g.*, a computer monitor, cathode ray tube (CRT) or other (transient) visual output) onto which information is recorded, stored, or printed within an information system.

*Public information* means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public (44 U.S.C. 3502).

*Safeguarding* means measures or controls that are prescribed to protect information.

*Voice* means all oral information regardless of transmission protocol.

(b) *Safeguarding requirements and procedures.* The Contractor shall apply the following basic safeguarding requirements to protect information provided by or generated for the Government (other than public information) which resides on or transits through its information systems from unauthorized access and disclosure:

(1) *Protecting information on public computers or Web sites:* Do not process information provided by or generated for the Government (other than public information) on public computers (*e.g.*, those available for use by the general public in kiosks, hotel business centers) or computers that do not have access control. Information provided by or generated for the Government (other than public information) shall not be posted on

Web sites that are publicly available or have access limited only by domain/Internet Protocol restriction. Such information may be posted to web pages that control access by user ID/password, user certificates, or other technical means, and that provide protection via use of security technologies. Access control may be provided by the intranet (versus the Web site itself or the application it hosts).

(2) *Transmitting electronic information.* Transmit email, text messages, blogs, and similar communications that contain information provided by or generated for the Government (other than public information), using technology and processes that provide the best level of security and privacy available, given facilities, conditions, and environment.

(3) *Transmitting voice and fax information.* Transmit information provided by or generated for the Government (other than public information), via voice and fax only when the sender has a reasonable assurance that access is limited to authorized recipients.

(4) *Physical and electronic barriers.* Protect information provided by or generated for the Government (other than public information), by at least one physical and one electronic barrier (*e.g.*, locked container or room, login and password) when not under direct individual control.

(5) *Sanitization.* At a minimum, clear information on media that have been used to process information provided by or generated for the Government (other than public information), before external release or disposal. Overwriting is an acceptable means of clearing media in accordance with National Institute of Standards and Technology 800-88, Guidelines for Media Sanitization, at [http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88\\_rev1.pdf](http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_rev1.pdf).

(6) *Intrusion protection.* Provide at a minimum the following protections against computer intrusions and data compromise:

(i) Current and regularly updated malware protection services, *e.g.*, anti-virus, anti-spyware.

(ii) Prompt application of security-relevant software upgrades, *e.g.*, patches, service-packs, and hot fixes.

(7) *Transfer limitations.* Transfer information provided by or generated for the Government (other than public information), only to those subcontractors that both require the information for purposes of contract performance and provide at least the same level of security as specified in this clause.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts under this contract that may have information residing in or transiting through its information system, where such is provided by or generated for the Government (other than public information).

(d) *Other contractual requirements regarding the safeguarding of information.* This clause addresses basic requirements, and is subordinate to any other contract clauses or requirements that specifically address the safeguarding of information or information systems. If any restrictions or

authorizations in this clause are inconsistent with a requirement of any other such clause in this contract, the requirement of the other clause shall take precedence over the requirement of this clause.

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**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Part 535**

[NHTSA 2012-0126]

RIN 2127-AK74

**Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles**

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

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** The National Highway Traffic Administration (NHTSA) is denying the petition of Plant Oil Powered Diesel Fuel Systems, Inc. (“POP Diesel”) to amend the final rules establishing fuel efficiency standards for medium- and heavy-duty vehicles. NHTSA does not believe that POP Diesel has set forth a basis for rulemaking. The agency disagrees with the petitioner’s assertion that a failure to specifically consider pure vegetable oil, and technology to enable its usage, as a feasible technology in heavy-duty vehicles, led to the adoption of less stringent standards. NHTSA also disagrees with POP’s assertion that the agency failed to adequately consider the rebound effect in setting the standards.

**FOR FURTHER INFORMATION CONTACT:**

*For Non-Legal Issues:* James Tamm, Office of Rulemaking, National Highway Traffic Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590, Telephone (202) 493-0515.

*For Legal Issues:* Lily Smith, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590, Telephone: (202) 366-2992.

**SUPPLEMENTARY INFORMATION:****I. Background**

On September 15, 2011, NHTSA issued a final rule creating fuel efficiency standards for medium- and heavy-duty vehicles (“heavy-duty rule”) (76 FR 57106).

## II. The Petition

NHTSA received two petitions from POP Diesel. The first petition was dated November 15, 2011, and was received by the agency shortly thereafter. The second petition was dated February 12, 2012, and was received by the agency on February 27, 2012. Both petitions from POP Diesel were styled as petitions for reconsideration of the heavy-duty rule. Under 49 CFR part 553, a petition for reconsideration must be received within 45 days of the publication of a final rule; a petition received after that date is considered to be a petition for issuance, amendment or revocation of a rule under 49 CFR part 552, *i.e.*, as a petition for rulemaking. As both petitions were received more than 45 days after the final rule was published, they were considered by the agency as petitions for rulemaking under part 552. Based on the agency's review of the February 27 petition, the agency concluded that it contained sufficient original material to fully supplant (as opposed to simply amend) the November 15 petition. Therefore, this document responds to the February 27 petition ("POP Diesel Petition") according to the process prescribed in 49 CFR part 552.

In its petition, POP Diesel argued that NHTSA did not specifically consider pure vegetable oil, and POP Diesel's proprietary technology to enable its usage, as a feasible technology in medium- and heavy-duty vehicles. POP Diesel claimed that this, as well as a failure to consider the rebound effect,<sup>1</sup> led to the adoption of significantly less stringent standards and could encourage more fossil fuel consumption.

POP Diesel made the following specific arguments in support of its request for amending the standards:

1. The standards should have considered GHG emissions on a life-cycle basis, rather than focusing on tailpipe GHG emissions only. If the agencies had considered life-cycle GHG emissions, they would have apportioned credits to certain technologies and fuels differently.

2. The standards did not take into account technology which POP Diesel designs, engineers, manufacturers, and sells, which would enable a diesel engine to operate on pure vegetable oil fuel, and if they had, the agencies could have considered an alternative regulatory approach of imposing a

<sup>1</sup> The "rebound effect" refers to the fraction of fuel savings expected to result from an increase in fuel efficiency that is offset by additional vehicle use. If truck shipping costs decrease as a result of lower fuel costs, an increase in truck miles traveled may occur. See 76 FR 57326 (Sept. 15, 2011).

"manufacturer GHG emissions average, like the corporate average fuel economy standards in place for light duty vehicles."<sup>2</sup>

3. The standards do not accomplish their purpose of reducing greenhouse gas (GHG) emissions because the GHG standards fundamentally regulate fuel efficiency, and increasing fuel efficiency creates a "rebound effect," which the agencies did not adequately consider as part of their final rule analysis.

To address these concerns, POP Diesel specifically requested that the agency revise the final standards by doing the following:

A. "De-couple fuel efficiency policy from GHG emissions policy;"

B. "Impose a corporate fleet average for GHG emissions on all classes of manufacturers of engines and vehicles as the most effective way to ramp down such emissions across the medium- and heavy-duty market."<sup>3</sup>

C. Re-evaluate "the weight the Agencies give to various alternative technologies and fuels according to a [life-cycle] approach;"

D. Revise its analysis of the impact of the standards, in terms of GHG emissions, due to the "rebound effect," given information presented by POP Diesel;

E. "Recognize 100 percent plant oil as a viable renewable diesel engine fuel eligible to receive Renewable Identification Number ('RIN') credits under the Renewable Fuels 2 standard;"

F. "Grant POP Diesel's application for a RIN pathway for 100 percent plant oil derived from jatropha oil feedstock;"

The remainder of POP Diesel's petition contained background information on challenges that POP Diesel says pure vegetable oil has faced in the marketplace, regarding which the petitioner is involved in litigation. NHTSA does not believe that these portions of the petition necessitate a response, as they do not directly relate to or support POP Diesel's petition for rulemaking.

Additionally, POP Diesel's requests regarding obtaining a Renewable Identification Number for plant oil (Requests E and F above) cannot be directed at NHTSA, given that they pertain to EPA's regulations implementing the Renewable Fuel Standard.

NHTSA notes that POP Diesel has requested the agency to revise the "GHG

<sup>2</sup> NHTSA notes that the engine and vehicle standards are entirely separate in the heavy-duty rule. Aside from the class 2b-3 pickups and van standards, which are based on a full vehicle test, no vehicle standard would take into account the performance measurement of the fuel that the vehicle would ultimately operate on.

<sup>3</sup> See POP Diesel Petition at 2-3.

standards" throughout its petition.<sup>4</sup> NHTSA has no authority to, and did not, set GHG standards. Accordingly, POP Diesel's petition is denied. In the alternative, assuming that POP Diesel intended to petition NHTSA for a revision of the agency's fuel consumption standards, POP Diesel's petition is denied for the reasons discussed below.

## III. Discussion and Analysis

The following section will consider POP Diesel's requests, to the extent that they appeared to be directed at NHTSA, in turn.

### A. Decouple Fuel Efficiency Policy From GHG Emissions Policy

If POP Diesel meant to argue that the agencies should have chosen to regulate GHG emissions from a life-cycle perspective, or one that included consideration of plant-based fuels like the one utilized by POP Diesel's technology, rather than setting harmonized, performance-based fuel efficiency standards (NHTSA) and tailpipe GHG emissions standards (EPA), then the request is primarily directed at EPA, but NHTSA notes the following in response.

As discussed throughout the final rule, close coordination in this first heavy-duty rule enabled EPA and NHTSA to promulgate complementary standards that allow manufacturers to build one set of vehicles to comply with both agencies' regulations, as envisioned by the President. This coordination was widely supported by stakeholders and provided benefits for industry, government, and taxpayers by increasing regulatory efficiency and reducing compliance burdens. The harmonized structure of the final rule is also consistent with Executive Order 13563.<sup>5</sup>

Second, as stated above, NHTSA's statutory obligation is to create and administer a fuel efficiency improvement program—the agency does not have the option of *not* regulating fuel efficiency. See 49 U.S.C. 32902(k)(2). Insofar as NHTSA regulates fuel efficiency and EPA regulates GHG emissions, it makes sense for the agencies to harmonize their standards to the greatest extent possible—CO<sub>2</sub> represents the majority of GHG

<sup>4</sup> See POP Diesel Petition, *passim*.

<sup>5</sup> EO 13563 states that an agency shall "tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations," and "promote such coordination, simplification, and harmonization" as will reduce redundancy, inconsistency, and costs of multiple regulatory requirements.

emissions from motor vehicles, and is the natural by-product of carbon-based fuel consumption, so the same technologies that increase fuel efficiency (by reducing fuel consumption for a unit of work performed) reduce CO<sub>2</sub> emissions at the same time. Moreover, NHTSA has long maintained that a fundamental aspect of the country's need to conserve energy, which prompted the fuel efficiency standards, is to reduce GHG emissions associated with climate change in addition to securing energy independence through reduction of oil imports. Thus, NHTSA believes it is neither feasible nor desirable to "decouple" fuel efficiency policy from GHG emissions policy, given the extent to which the two are related.

And finally, to the extent that POP Diesel argued that fuel efficiency and GHG emissions are not related because of the rebound effect, NHTSA disagrees. Even if it somewhat decreases the degree of the connection, the rebound effect does not make the connection between improved fuel efficiency and reduced GHG emissions any less real. POP Diesel has not demonstrated otherwise.

*B. "Impose a Corporate Fleet Average for GHG Emissions on All Classes of Manufacturers of Engines and Vehicles as the Most Effective Way To Ramp Down Such Emissions Across the Medium- and Heavy-Duty Market"*

POP Diesel argued that the agency should have accounted for the "feasibility of equipping engines to operate on 100 percent untransesterified plant oil," and that if it had, it would have concluded that it should "regulate GHG emissions [by imposing] a manufacturer GHG emissions average, like the corporate average fuel economy standards in place for light duty vehicles \* \* \*"<sup>6</sup> Assuming that POP Diesel meant to say that NHTSA should have imposed average manufacturer *fuel efficiency* standards, the agency notes that no particular engine or vehicle model is subject to its own standard; rather each manufacturer of vehicles or engines must comply with standards for each regulatory category.<sup>7</sup> NHTSA also notes, although it appears that POP Diesel referred to the corporate average fuel economy standards for light-duty vehicles more for the "corporate average" element than for the metric, that the medium- and heavy-duty standards are based on the ability of

engines or vehicles to perform a certain amount of work (carry or haul weight) over a particular distance. This is a very different measurement than fuel economy, which is simply based on the amount of fuel consumed over a certain distance.

As discussed above, for this first regulatory phase of the medium- and heavy-duty vehicle fuel efficiency improvement program, NHTSA has adopted a fuel-neutral approach based on measurement of fuel consumption through measurement of tailpipe CO<sub>2</sub> emissions. NHTSA does not agree that expressly including POP Diesel's proprietary technology in its rulemaking analysis would change the agency's analysis in any substantive way that would support an amendment to the rulemaking either in terms of the agency's decision regarding levels of standard stringency, or in terms of the structure of the standards. 49 U.S.C. 32902(k)(2), the statutory provision granting NHTSA authority for the medium- and heavy-duty fuel efficiency improvement program, requires the agency to set maximum feasible standards that are "appropriate, cost-effective, and technologically feasible." The agency has neither the obligation to set standards under 49 U.S.C. 32902(k)(2) based on all potentially feasible motor vehicle technologies, nor the capacity to do so. The existing standards are performance-based, and not expressly predicated on the use of any specific technology. Manufacturers are free to use whatever technologies they choose to meet the standards, including POP Diesel's technology. This allows for innovation.

POP Diesel also mentioned EPA's Renewable Fuel Standards, and stated that because "pure plant oil is not eligible for the RFS," therefore the final rule does "not provide any incentive for the use of 100 percent plant oil or an engine specially equipped to run on this fuel."<sup>8</sup> NHTSA presumes that POP Diesel's argument was that if NHTSA had considered that the RFS does not include specific incentives for pure vegetable oil, the agency would have compensated for this by creating incentives within the heavy-duty rule. As explained above, the final rule was designed to be fuel-neutral. If POP Diesel's technology helps manufacturers reduce fuel consumption, then it will have the same opportunities as any other technology that manufacturers will use to meet NHTSA's standards. Moreover, NHTSA notes that POP Diesel has not correctly characterized NHTSA's consideration of the

interaction between the RFS program and the heavy-duty fuel efficiency standards. As explained in the final rule, NHTSA determined that the performance measurement of alternative fuels provides sufficient incentives for their use. While the agencies noted that incentives in the RFS pointed to a lack of a need for further incentives, the rule's treatment of alternative fuels was not premised on each alternative fuel being covered by the RFS Standard.<sup>9</sup> Indeed, other alternative fuels are similarly not covered by the RFS standard, such as liquefied natural gas, compressed natural gas, propane, hydrogen and electricity.

*C. Re-Evaluate "the Weight the Agencies Give to Various Alternative Technologies and Fuels According to a [Life-Cycle] Approach"*

NHTSA recognizes the potential benefits of increasing the use of any fuel type that reduces the nation's dependence on petroleum. As the President noted in his March 30, 2011 "Blueprint for a Secure Energy Future,"<sup>10</sup> biofuels are one such fuel type with the potential to reduce the nation's demand for oil. NHTSA commends efforts to develop alternative fuels for light-, medium- and heavy-duty vehicles, and POP Diesel's work to make pure vegetable oil a more viable alternative fuel is in line with this goal.

POP Diesel's technology allows the use of fuels that it states are less carbon-intensive than other fuels, and POP Diesel argued in its petition that by considering only tailpipe rather than life-cycle GHG emissions of technologies and fuels, the agencies arbitrarily favor certain technologies and fuels and disfavor others. While reducing GHG emissions is a direct outcome of improving the fuel efficiency of the medium- and heavy-duty on-road fleet, the task that Congress gave to NHTSA was specifically to improve fuel efficiency. Therefore, any consideration that NHTSA may give to GHG emissions in general, and life-cycle GHG emissions in particular, is in the context of that directive. The final rule is performance-based and does not dictate particular technology. As the agency noted in the final rule,<sup>11</sup> alternative fueled vehicles provide fuel consumption benefits that should be, and are, accounted for in the standard. However, the agencies' approach to fuels does not provide

<sup>6</sup> POP Diesel Petition at 2.

<sup>7</sup> This, along with the rule's allowance for averaging, banking, and trading of credits across "averaging sets," makes the standards effectively corporate averages.

<sup>8</sup> POP Diesel Petition at 7.

<sup>9</sup> See 76 FR 57124.

<sup>10</sup> [http://www.whitehouse.gov/sites/default/files/blueprint\\_secure\\_energy\\_future.pdf](http://www.whitehouse.gov/sites/default/files/blueprint_secure_energy_future.pdf).

<sup>11</sup> See 76 FR 57124.

additional incentives for fuels based on their petroleum content.

As POP Diesel noted, the agency calculates the fuel consumption performance of engines and heavy-duty pickup trucks and vans by measuring tailpipe CO<sub>2</sub> emissions and converting the measured value to an equivalent fuel consumption value. This method aligns with the EPA measurement method that is used to determine CO<sub>2</sub> emissions performance, and by aligning, promotes consistency in the national program. NHTSA recognized that it could have selected other methods of measuring fuel consumption, such as deriving fuel consumption performance based on gasoline or diesel energy equivalency.<sup>12</sup> However, the agency decided that maintaining consistency with the EPA measurement of CO<sub>2</sub> emissions to establish an aligned national program was the most appropriate approach for this first regulatory action.

This approach makes it unnecessary to distinguish among alternative fuel types in setting the standards, and this first phase of NHTSA's medium- and heavy-duty regulation does not include reductions in GHG emissions that do not translate directly to fuel consumption. Even if this were not the case, NHTSA believes that POP Diesel's claims regarding the commercial viability of pure vegetable oil and POP Diesel's proprietary technology to enable its usage in medium- and heavy-duty vehicles are speculative.

NHTSA recognized in the rule that this uniform approach to fuels may not take advantage of potential additional energy and national security benefits of increasing fleet percentages of alternative-fueled vehicles. More alternative-fueled vehicles on the road would arguably displace petroleum-fueled vehicles, and thereby increase both U.S. energy and national security by reducing the nation's dependence on foreign oil. However, for the reasons discussed above, the agency determined that the benefits of a harmonized initial program outweighed those potential benefits for this first phase of heavy-duty vehicle and engine standards.<sup>13</sup>

NHTSA continues to believe that the current fuel-neutral performance measurement is the most appropriate treatment of alternative fuels for this first phase of the heavy-duty fuel efficiency standards. As stated in the final rule, the agency intends to revisit this issue in the future to evaluate whether the fuel-neutral approach continues to provide greater benefits than alternative approaches.

#### *D. Revise the Final Rule Analysis of the Rebound Effect*

POP Diesel argued that due to the rebound effect, the final standards will in fact increase total GHG emissions beyond what would have occurred in the absence of the standards, rather than achieving the agencies' stated reductions in CO<sub>2</sub> emissions and fuel consumption.<sup>14</sup> POP Diesel stated that the agencies only considered the rebound effect in terms of improvements in "fuel economy" leading to increases in vehicle miles traveled (VMT), but should also have considered other direct effects,<sup>15</sup> "indirect" rebound effects,<sup>16</sup> and the "frontier" rebound effect, whereby improvements in energy efficiency promote the development or spread of new products that increase energy consumption and GHG emissions, such as when the availability of lower-cost trucking services leads to substitution of Internet shopping and home delivery via truck for conventional retailing.<sup>17</sup> POP Diesel may have meant to suggest that an analysis of the rebound effect that incorporates these aspects would have led the agencies to promulgate different standards, specifically, GHG standards based on fuel CO<sub>2</sub> content rather than fuel efficiency standards.

NHTSA notes that its statutory obligation is to create and administer a fuel efficiency improvement program—the agency does not have the option of *not* regulating fuel efficiency.<sup>18</sup> As for the question of whether the agency's analysis of the rebound effect in the final rule should have incorporated the aspects discussed in the POP Diesel petition, the agency believes that the agency's analysis of the rebound effect

represents the most reliable basis on which to project the increases in commercial truck use that will occur in response to improvements in their fuel efficiency.

NHTSA believes that its estimates of the increased use of different classes of trucks that are likely to result from the improvements in their fuel efficiency required by the rule are based on sound data and reliable econometric methods. Moreover, the agency is confident that these estimates reflect the various components of the direct rebound effect that POP Diesel alleges they ignore, because the measures of aggregate nationwide truck use from which they are derived fully incorporate historical shifts of freight shipments from other transportation modes to trucking, continuing reorganization of freight logistics toward increased reliance on trucking services, and shifts to more distant sources of supply for raw materials and longer deliveries of finished goods to final markets. The agency's estimates also incorporate the historical response of the use of trucking services to measures of economic activity that generate demands for shipping of raw materials and finished products, including aggregate economic output, foreign trade, and retailing. As the agencies acknowledged in their analysis, however, research on the magnitude of the rebound effect for heavy-duty vehicles has been limited;<sup>19</sup> for this reason, the agencies will monitor and conduct research on the subject in an ongoing effort to improve their estimates.

NHTSA also notes that any increases in economy-wide energy consumption and GHG emissions resulting from indirect rebound effects cannot reasonably be ascribed to the requirement that vehicle manufacturers achieve higher fuel efficiency levels. If the indirect effects that cause those increases were included in the rulemaking analysis, however, they would undoubtedly add significantly to the economic benefits from the rule. Responses to lower-cost trucking services, such as consumers' use of savings from lower prices of goods that utilize trucking services for their production and distribution to purchase other products that embody energy, as well as any increases in multi-factor productivity or frontier rebound impacts stemming from reduced truck energy consumption and lower shipping costs, represent important sources of *additional* economic benefits from requiring trucks to achieve higher fuel efficiency. Therefore, NHTSA does not

<sup>14</sup> See POP Diesel Petition, at 3–4.

<sup>15</sup> See POP Diesel Petition, at 4; "Exhibit 1" to POP Diesel Petition. Examples of direct rebound effects include shifts of some freight shipments from rail, barge, or other transportation modes to trucking, reorganization of freight shippers' logistics operations in ways that substitute increased use of trucking services for warehousing and inventory holding, shifts to more distant sources of supply for raw materials and expansion of market areas for finished goods, which entail longer trucking distances, reorganization of trucking firms' operations to emphasize objectives other than minimizing fuel consumption, such as use of lower-cost but less fuel-efficient vehicles for some shipments, less intensive truck maintenance, and less careful optimization of vehicle load factors, routing, and scheduling.

<sup>16</sup> *Id.* Examples of indirect rebound effects include increases in consumption of energy-intensive products as consumers reallocate savings from lower prices for goods shipped by truck to purchase other products, and "multi-factor productivity" rebound effects, where firms increase output levels and substitute increased use of trucking services for other production inputs.

<sup>17</sup> *Id.*

<sup>18</sup> See 49 U.S.C. 32902(k)(2).

<sup>19</sup> See 76 FR 57327–9.

<sup>12</sup> *Id.* at 57124–25.

<sup>13</sup> *Id.*

believe that consideration of POP Diesel's claims regarding indirect rebound effects would have led the agency to promulgate different standards.

For purposes of the final standards, we believe that the agency's analysis of the rebound effect represents the best available estimate of the increases in commercial truck use that may result from increases in their fuel efficiency, and the extent to which these increases in use will offset the fuel savings (and thus, CO<sub>2</sub> emissions) projected to result from the recently-adopted rules. Thus, while NHTSA agrees that the rebound effect is present, we believe that it is adequately accounted for in the final rule. We do not believe that we would have promulgated different standards if our analysis of the rebound effect had been done differently, as POP Diesel recommended.

#### IV. Conclusion

In consideration of the foregoing, NHTSA is denying the POP Diesel Petition. In accordance with 49 CFR part 552, this completes the agency's review of the petition for rulemaking.

**Authority:** 49 U.S.C. 32902; delegation of authority at 49 CFR 1.95.

Issued: August 13, 2012.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking,  
National Highway Traffic Safety  
Administration, Department of  
Transportation.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 424

[Docket No. FWS-R9-ES-2011-0073;  
Docket No. NOAA-120606146-2146-01;  
4500030114]

RIN 1018-AY62; 0648-BC24

#### Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Impact Analyses of Critical Habitat

**AGENCIES:** Fish and Wildlife Service, Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively referred to as the "Services" or "we"), propose to revise our regulations pertaining to impact analyses conducted for designations of critical habitat under the Endangered Species Act of 1973, as amended (the Act). These changes are being proposed as directed by the President's February 28, 2012, memorandum, which directed us to take prompt steps to revise our regulations to provide that the economic analysis be completed and made available for public comment at the time of publication of a proposed rule to designate critical habitat.

**DATES:** We will accept comments from all interested parties until October 23, 2012. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for FWS-R9-ES-2011-0073, which is the docket number for this rulemaking.

- *U.S. mail or hand delivery:* Public Comments Processing, Attn: FWS-R9-ES-2011-0073; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, PDM-2042; Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Request for Information section below for more information).

#### FOR FURTHER INFORMATION CONTACT:

Nicole Alt, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 4401 N Fairfax Drive, Suite 420, Arlington, VA 22203, telephone 703/358-2171; facsimile 703/358-1735; or Marta Nammack, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301/713-1401; facsimile 301/713-0376. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Executive Summary

*Why we need to publish a rule.* The Services have decided to revise our regulations to provide the public earlier access to the draft economic analysis supporting critical habitat designations, consistent with the President's

memorandum (Memorandum for the Secretary of the Interior, Proposed Revised Habitat for the Spotted Owl: Minimizing Regulatory Burdens, 77 FR 12985 (March 5, 2012)). The President's February 28, 2012, memorandum directed the Secretary of the Interior to revise the regulations implementing the Endangered Species Act to provide that a draft economic analysis be completed and made available for public comment at the time of publication of a proposed rule to designate critical habitat. Both transparency and public comment will be improved if the public has access to both the scientific analysis and the draft economic analysis at the same time. We are therefore publishing a proposed rule to achieve that goal and seeking public comments. Because the Act and its implementing regulations are jointly administered by the Departments of the Interior and Commerce, the Secretary of the Interior consulted with the Secretary of Commerce on the revision of this regulation. The proposed revisions would also address several court decisions and are informed by conclusions from a 2008 legal opinion by the Solicitor of the Department of the Interior. Specifically, we propose to revise 50 CFR 424.19 to clarify the instructions for making information available to the public, considering the impacts of critical habitat designations, and considering exclusions from critical habitat. The proposed rule is consistent with Executive Order 13563, and in particular with the requirement of retrospective analysis of existing rules, designed "to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

*This rule proposes the following changes:*

(1) We propose to change the title of § 424.19 from "Final Rules—impact analysis of critical habitat" to "Impact analysis and exclusions from critical habitat." We propose to remove the current reference to "[f]inal rules" to allow this section to apply to both proposed and final critical habitat rules. We propose to add the term "exclusions" in the title to more fully describe that this section addresses both impact analyses and how they inform the exclusion process under section 4(b)(2) of the Act for critical habitat.

(2) We propose to divide current § 424.19 into three paragraphs. The division into three paragraphs closely tracks the requirements of the Act under section 4(b)(2) and provides for a clearly defined process for considerations of exclusions as required under the Act.

(3) Proposed paragraph (a) would implement the direction of the