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#### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2012-0774" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Basis and Purpose

The S41 Swingbridge across Wando River mile 10.0, Cainhoy, Berkeley County, South Carolina has a vertical clearance of 6 feet in the closed position. The operating schedule as published in 33 CFR 117.939 states the draw of the S41 bridge shall open on signal if at least 12 hours notice is given. This regulation has been in effect since 1965.

Local mariners have asked the Coast Guard to evaluate the operating schedule to determine if more frequent openings would improve the accessibility of the waterway to maritime navigation. An estimated 400 recreational boats use the waterway in the local area. However, boaters upriver from the bridge have stated that the bridge's low vertical clearance and requirement for 12-hours notice prevents boaters from accessing waterways, like Charleston harbor and the ocean, on the downriver side of the bridge. The South Carolina Department of Transportation has advised that approximately 1000 to 3000 vehicles per day cross this bridge. The Coast Guard anticipates daily bridge openings during this test a positive impact on navigation with the increased use of the waterway by vessel traffic.

This deviation is effective from 8 p.m. on September 1, 2012 through 5 p.m. on December 31, 2012. The S41 Swingbridge shall open on the hour and the half hour, 24 hours-a-day, seven days-a-week.

Following the test deviation period, the Coast Guard will review the bridge logs from the bridge owner to evaluate the impact of this test on local marine traffic. The Coast Guard will also consider all comments and related materials submitted in response to this test deviation. The Coast Guard will then evaluate whether a permanent change to the operating schedule of the S41 Swingbridge is necessary, and under what conditions the bridge should open.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 10, 2012.

**B.L. Dragon,**

*Bridge Program Director, Seventh Coast Guard District.*

[FR Doc. 2012-20978 Filed 8-24-12; 8:45 am]

**BILLING CODE 9110-04-P**

#### ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 85, 86, 600, 1033, 1036, 1037, 1039, 1065, 1066, and 1068**

[EPA-HQ-OAR-2010-0162; FRL-9720-9]

#### **EPA's Denial of the Petition To Reconsider the Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Denial of petition to reconsider.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is denying the petition of Plant Oil Powered Diesel Fuel Systems, Inc. ("POP Diesel") to reconsider the final rules establishing emissions standards to reduce greenhouse gas emissions from on-road heavy-duty vehicles.

**DATES:** This denial is effective August 27, 2012.

**ADDRESSES:** EPA's docket for this action is Docket ID No. EPA-HQ-OAR-2010-0162. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA's Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Steven Silverman, Office of General Counsel, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564-5523; email address: [silverman.steven@epa.gov](mailto:silverman.steven@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

*Acronyms and Abbreviations.* The following acronyms and abbreviations are used in this Decision.

CAA Clean Air Act  
CO<sub>2</sub> carbon dioxide  
EV electric vehicle

EPA Environmental Protection Agency  
FR **Federal Register**  
FCV fuel cell vehicle  
GHG greenhouse gas  
GVWR gross vehicle weight rating  
HD heavy-duty  
N<sub>2</sub>O nitrous oxide  
NHTSA National Highway Traffic Safety Administration  
POP Diesel Plant Oil Powered Diesel Fuel Systems, Inc.  
PHEV plug-in hybrid electric vehicle  
RFS Renewable Fuel Standard  
RIN Renewable Identification Number  
VMT vehicle miles travelled

## I. Introduction

On September 15, 2011, the EPA issued final rules establishing standards limiting emissions of CO<sub>2</sub>, methane, nitrous oxide (N<sub>2</sub>O) and hydrofluorocarbons (greenhouse gases or GHGs) from on-road heavy-duty vehicles, including combination tractors, heavy-duty pickup trucks and vans, and vocational vehicles. 76 FR 57106 (September 15, 2011). In this joint rulemaking the National Highway Traffic Safety Administration (NHTSA), on behalf of the Department of Transportation, issued rules for fuel consumption from these vehicles at the same time. Together these rules comprise a coordinated and comprehensive Heavy-Duty (HD) National Program designed to address the urgent and closely intertwined challenges of reduction of dependence on oil, achievement of energy security, and amelioration of global climate change.

POP Diesel petitioned EPA to reconsider its greenhouse standards. Because the petition does not state grounds which satisfy the requirements of section 307(d)(7)(B) of the Act, and does not provide substantial support for the argument that the promulgated regulation should be revised, EPA is denying the petition.

## II. Standard for Reconsideration

Section 307(d)(7)(B) of the Clean Air Act (CAA) states that: “Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the

rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit. Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed pending such reconsideration, however, by the Administrator or the court for a period not to exceed three months.”

Thus, for reconsideration to be mandated, a petition for reconsideration must show why the objection or claim could not have been presented during the comment period—either because it was impracticable to raise the objection during that time or because the grounds for raising the objection arose after the period for public comment but within 60 days of publication of the final action (i.e. “the time specified for judicial review”). To be of central relevance to the outcome of a rule, an objection must provide substantial support for the argument that the promulgated regulation should be revised. See 76 FR 28318 (May 17, 2011) and other actions there cited.

Because all of the objections or claims raised in POP Diesel’s petition could have been presented to EPA during the rulemaking, EPA is denying the request for reconsideration. EPA also finds that the petitioner has not provided substantial support for the argument that the promulgated regulation should be revised and is denying the request for reconsideration for that reason as well.

## III. POP Diesel’s Petition for Reconsideration

POP Diesel filed a petition for reconsideration with EPA on November 14, 2011 and supplemented this petition on February 12, 2012. The company produces equipment intended to be installed after-market on diesel engines to permit the engines to operate on 100 percent untransesterified plant oil. February 12 Petition p. 12. The engine starts and shuts down on diesel from an original fuel tank during startup and shutoff but at all other times would run on 100 percent plant oil coming from an auxiliary tank. *Id.* POP Diesel states that engines operated on vegetable oils with its systems incur “only a modest fuel consumption penalty” but would have superior GHG performance if evaluated on a full lifecycle basis. November 14, Petition p. 13; February 12 Petition p. 22.

The objection raised in POP Diesel’s petitions is that EPA failed to

adequately consider the so-called rebound effect during the rulemaking. POP Diesel maintains that “[t]he GHG standards will have the effect of making diesel engines less expensive to operate on petroleum fuel, which may, in fact, spur demand and have the result of increasing overall energy consumption and likely, consumption of fossil fuels.” November 14, 2011 Petition p. 15. In its supplement to its original petition, POP Diesel elaborated on this objection, maintaining that the rules would increase GHG emissions from heavy-duty vehicles due to aspects of the rebound effect not accounted for in EPA’s analysis. Specifically, POP Diesel maintains that EPA underestimated the direct rebound effect and that a revised estimate of the direct rebound effect would result in an increase in greenhouse gas emissions. Also, POP Diesel maintains that there are indirect, “embedded energy” (increased energy use as a result of additional goods and services produced) and “frontier” (creation of new, energy-intense products) rebound effects which EPA failed to examine, instead only analyzing direct effects in the form of estimated increase in vehicle miles travelled (and increases in GHG and criteria pollutant emissions associated with that increase). February 12, 2012 Supplemental Petition p. 12. These objections are accompanied by a supporting declaration of Dr. Harry Duston Saunders (a published researcher in energy economics) likewise dated February 12, 2012.

POP Diesel does not address why this objection could not have been raised during the public comment period, as required by section 307(d)(7)(B). EPA discussed the rebound effect at length in the proposed rule. See 75 FR 74152, 74316–20 (November 30, 2010). The proposal included specific discussions of factors affecting the magnitude of the rebound effect, options for quantifying the effect (including aggregate estimates, sector-specific estimates, econometric estimates, and other modeling approaches), as well as quantified estimates of the effect which EPA thereupon applied in estimating the proposed rules’ impacts on GHG emissions, criteria pollutant emissions, as well as overall costs and benefits of the proposed program. *Id.* and 75 FR at 74290, 74313; see also Regulatory Impact Analysis: Final Rulemaking to Establish Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles, Docket #EPA–HQ–OAR–2010–0162–3634, pages 9–9 through 9–18. EPA received comments

on its approach to the rebound effect and responded to them as part of the rulemaking. 76 FR at 57326–30; see also Response to Comments Document at 14–24. It is therefore apparent that POP Diesel had the opportunity to present all of its objections regarding the rebound effect during the rulemaking. Indeed, POP Diesel properly acknowledges that its objections are “belate[d]”. February Petition p. 4.

A second reason that POP Diesel’s objections do not require EPA to reconsider the rule is that the declaration of Dr. Saunders is dated February 12, 2012, outside of the period specified for judicial review—i.e. November 11, 2011. Even if POP Diesel’s objections could not have been raised during the public comment period (which is not the case), the grounds for objection did not arise “during the time specified for judicial review”, as required by section 307(d)(7)(B).

POP Diesel also reiterates a number of arguments it already presented to EPA in its comments to the proposed rule. Specifically, the petition maintains that EPA should have evaluated all emission control technologies on a lifecycle basis (“[i]n considering only tailpipe emissions, rather than the full lifecycle GHG emissions of a technology and fuel that would result from a wells-to-wheels analysis, the Regulations arbitrarily favor and disfavor some alternatives over others”, February amended petition p. 7). EPA addressed these issues during the rulemaking. See 75 FR at 74198, 255–56 (proposal); 76 FR at 57246–47 (final rule) and Response to Comment Document at 16–157. EPA’s proposal likewise addressed the issues of whether compliance with the standards should be measured on a tailpipe or lifecycle basis, and what if any incentives were appropriate for advanced technologies and alternative fuel vehicles. See 75 FR at 74198, 255–56. Consequently, these are not issues which EPA is compelled to reconsider under section 307(d)(7)(B), since these objections could have been and were raised during the public comment period on the proposed rule. EPA also rejects the substance of the arguments raised in the petitions.<sup>1</sup>

#### A. Direct Rebound Effect

POP Diesel first maintains that EPA underestimated the extent of the direct rebound effect, and that assigning

different estimates of rebound effects to different heavy-duty vehicle classes (medium-duty pickups and vans, vocational vehicles, and combination tractors) was arbitrary. Saunders Affidavit paras. 35–36.<sup>2</sup> EPA explained its rationale for selecting VMT rebound values for these three categories of vehicles in both the proposed and final rules. In short, the values for vocational vehicles and combination tractors fall within the range of estimates presented in two available analyses of the HD rebound effect.<sup>3</sup> See 76 FR 57326–330. For medium-duty pickups and vans, EPA applied the light-duty VMT rebound effect estimate from the final rule establishing GHG standards for MYs 2012–2016 light-duty vehicles. *Id.* at 57329. EPA reasonably did so since there were no estimates of the direct rebound effect for medium-duty pickup trucks and vans (class 2b and 3) cited in the literature, and these classes of vehicles are used for purposes more similar to large light-duty vehicles than the other heavy-duty vehicle categories.

These values are based on the best available data and econometric methods<sup>4</sup> and reflect many of the components of the VMT rebound effect that POP Diesel alleges (mistakenly) that EPA ignored (*e.g.*, shifts of freight shipments from other transportation modes to trucking). At proposal, we explicitly requested, but did not receive, comment on all of the rebound estimates and assumptions in our

<sup>2</sup> Dr. Saunders cites Knittel, *Automobiles on Steroids*, for the proposition that “in the personal transportation sector of the United States, a rebound effect of 75% between 1980 and 2006 existing because most of the technical engine efficiency gains were offset by consumers choosing to take improvements in engine efficiency in the form of increased vehicle weight and substantial increases in average horsepower.” Saunders Affidavit para. 14. The Knittel study does not attribute any fleet shifts to a rebound effect, and also discusses the light-duty vehicle sector exclusively. The study therefore has no apparent relevance to the heavy-duty GHG rulemaking, or to a discussion of rebound effects.

<sup>3</sup> The first analysis, from Cambridge Systematics, Inc., was commissioned by the National Academy of Sciences and uses a range of freight elasticities in the literature combined with technology cost and fuel saving scenarios to estimate the potential magnitude of the HD rebound effect. See 76 FR 74328. The second analysis, conducted by NHTSA, is an econometric analysis that estimates short-run and long-run elasticities of annual VMT with respect to fuel cost per mile driven using data on national and state VMT and a variety of other variables such as GDP, the volume of imports and exports, and factors affecting the price of trucking services (*e.g.*, driver wages). *Id.* at 57329.

<sup>4</sup> The “Saunders study” discussed in the Saunders affidavit (Saunders Affidavit para. 31–36) was not presented to EPA during the public comment period, it reflects no expert peer review and, as Dr. Saunders acknowledges, examines the entire transportation sector rather than the medium- and heavy-duty vehicle sector covered under EPA’s rule.

proposed rule. 75 FR at 74320. EPA continues to believe that its estimate of direct VMT rebound effect in the final rule is reasonable.

#### B. Indirect Rebound Effects

POP Diesel also maintains that EPA should account for the energy and GHG emissions impact associated with the so-called “indirect” rebound effects (distinct from the “direct” rebound effect). These effects could arise from the decline in fuel costs as a result of the rule, which could make goods and services transported by the U.S. trucking industry less expensive. In turn, less expensive goods and services could result in increased consumption of goods and service in the overall economy. Producing extra goods and services requires that more energy be used. This extra energy use can be thought of as “embodied” in the extra goods and services. Hence the term for this type of indirect rebound effect is the “embodied energy” rebound effect. The increased energy use from this type of indirect rebound effect could result in increased greenhouse gas emissions. Saunders Affidavit para. 46 Appendix A. A further indirect rebound effect unaccounted for, according to the petition, is the “frontier” rebound effect whereby energy efficiency gains enable creation of completely new products which are themselves energy intensive. *Id.* para. 26.<sup>5</sup> POP Diesel maintains that these assorted indirect effects are of such magnitude as to create a “backfire” condition, negating all of the emission benefits of the rule.

EPA is not aware of any data to indicate that the magnitude of indirect rebound effects, if any, would be significant for this rule. Research on indirect rebound effects is nascent. The magnitude of effects from our rule postulated in the Saunders affidavit has no support in the literature,<sup>6</sup> reflects no

<sup>5</sup> The Saunders declaration does not provide any examples of potential “frontier” rebound effects from the heavy-duty GHG rule, besides “the rise of internet shopping” that allows people to buy products from distant locations instead of purchasing products locally. Increased internet shopping is a well established market trend, so we do not see how it could be reasonably attributed to the modest increase in truck fuel efficiency that our standards will bring about. Furthermore, there are many factors that have contributed to increased internet shopping, most notably the widespread use of computers and advances in internet applications, which took place and would likely continue to take place in the absence of any improvements in truck efficiency.

<sup>6</sup> Dr. Saunders cited only one published study quantifying indirect rebound effects (Druckman et al., 2011). Saunders affidavit para. 16. Although this UK-based study could offer insights into how to estimate indirect rebound effects in some contexts, the method may not be appropriate here for many

Continued

<sup>1</sup> EPA may permissibly respond to a request for reconsideration without triggering additional notice and comment opportunities for a petitioner or other entities. *Coalition for Responsible Regulation v. EPA*, No. 09–1322 (D.C. Cir. June 26, 2012) slip op. p. 39.

expert peer review, and in the end is speculative. It appears highly improbable that all of the GHG emissions benefits of this rule would be negated by putative indirect rebound effects. As discussed in the proposed and final rules, all of the fuel costs savings will not necessarily be passed through to the consumer in terms of cheaper goods and services. First, there may be market barriers that impede trucking companies from passing along the fuel cost savings from the rule in the form of lower rates; see 75 FR at 74320 and 76 FR at 57329–30. Second, there are upfront vehicle costs (and potentially transaction or transition costs associated with the adoption of new technologies) that would partially offset some of the fuel cost savings from our rule, thereby limiting the magnitude of the impact on prices of final goods and services. Furthermore, there are additional benefits to consumers associated with increased consumption of goods and services, which would be important to consider if we were assessing the overall costs and benefits associated with potential indirect rebound effects from our rule. EPA thus

reasons. First, the U.S. economy and consumer behavior is likely to differ from other countries (*e.g.*, Americans have different product and service preferences and our products and services have different levels of embedded energy). Similar data and models may not exist to replicate the UK study in a U.S.-context. Second, the study is designed to examine behavioral strategies (*e.g.*, lowering thermostats, reducing food waste, and biking instead of using a car) rather than improving technology. Among other things, the study does not consider capital expenditures associated with energy savings that could dampen any increase in consumption of additional goods and services (*e.g.*, our rule increases the cost of new vehicles, which offsets the fuel cost savings that trucking firms may pass along to shippers, which in turn, would dampen any decrease in product prices that shippers pass along to consumers). Third, the study does not consider the potential for economic restructuring in response to decreased energy consumption (*i.e.*, it does not consider “general equilibrium” effects), which could lead to either lower or higher energy consumption as a result of our rule. Fourth, the authors recognize that there is a major limitation of the study: they have only a very small number of expenditure categories in their model and there is considerable disparity in GHG intensities of commodities within each category (p. 3578). Fifth, the study does not directly explore the market mechanism through which our rule could influence the amount of goods and services consumed since it focuses on energy efficiency improvements that more directly increase consumers’ disposable income rather than the more complex and indirect pathway where greater truck fuel efficiency may result in lower-priced goods and services. Finally, the authors do not attempt to quantify the additional benefits to consumers associated with increased consumption of goods and services, which would be important to consider if we were assessing the overall costs and benefits associated with potential indirect rebound effects from our rule.

does not accept this speculative assessment.

### *C. Fuel-Based Rule Rather Than a Vehicle-Based Rule*

POP Diesel requests EPA to re-evaluate the weight given to various alternative technologies and fuels according to a lifecycle approach, and to decouple fuel efficiency policy from GHG emissions policy. February 12 Petition p. 2. In setting emissions standards for heavy-duty vehicles, EPA reasonably chose to consider the impact on GHG emissions of the fuels used by the different types of vehicles by measuring the tailpipe emissions of vehicles, including alternative fuel vehicles (which normally emit less GHG emissions than gasoline or diesel-powered vehicles).<sup>7</sup> In a separate program, the Congressionally mandated Renewable Fuels Standard (RFS) program, there are strong incentives for use of renewable diesel fuels and other renewable fuels. See 76 FR at 57124. This program is specifically designed to mandate increasing volumes of renewable fuel use in transportation fuels, including renewable fuel used in heavy-duty diesel vehicles. The definition of renewable fuel includes thresholds for reductions in lifecycle greenhouse gas emissions, compared to petroleum fuel. For example, specified volumes of biomass-based diesel fuel must be used in the diesel transportation sector, and biomass-based diesel is defined in part as a diesel fuel that achieves a 50 percent reduction in lifecycle greenhouse emissions compared to baseline petroleum diesel fuel. POP Diesel points out that its product is not presently eligible to receive Renewable Identification Number (RIN) credits under that program, but this is an issue which is properly considered under the RFS program, which contains the mechanisms for determining whether a diesel fuel qualifies as a renewable fuel.

EPA also does not accept the major premise of POP Diesel’s reconsideration petition and rulemaking comments. The company argues that it is arbitrary that

<sup>7</sup> POP Diesel’s statement that the rules arbitrarily assign zero emissions and zero fuel consumption to electric vehicles (February revised petition, p. 6) is also misplaced. In fact, compliance with the standards is measured identically for all medium- and heavy-duty vehicles and engines: at the tailpipe. See 76 FR at 57247. Electric vehicles have zero GHG emissions measured at the tailpipe. POP Diesel states further that the standards are arbitrary in the GHG-reducing weight given to some alternative technologies and fuels. POP Diesel’s complaint (February amended petition p. 6) that the rule provides incentives for use of certain advanced technologies such as hybrid electrification and hydrogen fuel cells questions legitimate policy choices unrelated to the issue of fuel use.

EPA has not established greenhouse gas emission standards for heavy-duty vehicles premised on use of their technology and its fuel. Under such a standard, the GHG level of a vehicle using POP Diesel would be tailpipe emissions adjusted by a factor reflecting the claimed reduction in lifecycle GHG emissions to produce the POP Diesel fuel. See, *e.g.*, November 14, 2011 Petition for Reconsideration pp. 1–2 (“If the Regulations did consider this technology, they could mandate much steeper reductions in greenhouse gas \* \* \* emissions by requiring every engine and vehicle manufacturer of medium- and heavy-duty engines and vehicles to comply with a corporate average for such emissions”).

The heavy-duty vehicle and engine GHG standards are fuel neutral in that they do not themselves require or assume that a vehicle or engine will be operated on a particular type of fuel. If POP Diesel’s technology helps manufacturers reduce tailpipe GHG emissions, then it will have the same opportunities as any other technology that manufacturers will use to meet the standards. Moreover, POP Diesel has not correctly characterized the agencies’ consideration of the interaction between the RFS program and the heavy-duty GHG standards. As explained in the final rule, the tailpipe 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>8</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.

Only where the vehicle or engine technology inherently demands a certain type of fuel do the standards account for that fuel use, by specifying the calculation procedure used to determine tailpipe emissions. This is the case with electric vehicles (EV), plug-in hybrid electric vehicles (PHEV), and hydrogen fuel cell vehicles, where the technology itself necessitates use of electricity rather than petroleum-based fuels.<sup>9</sup> Unlike EVs, PHEVs, or FCVs,

<sup>8</sup> See 76 FR 57124.

<sup>9</sup> Even so, the standards for medium- and heavy-duty EVs and PHEVs measure performance based on tailpipe emissions exclusively. See 76 FR at 57247. The MYs 2012–2016 standards for light-duty EVs and PHEVs do account for greenhouse gas emissions attributable to upstream electricity generation after a designated number of EVs and PHEVs are sold, but this upstream factor does not

there is nothing inherent in a diesel engine that compels use of the POP Diesel product. Therefore, a standard premised on that product's use would presuppose or require a market outcome which need not occur and would be infeasible and arbitrary.

Even if EPA were to assume that POP Diesel's claim of lifecycle emissions reductions are valid, and considered setting a vehicle emissions standard that assumed or required use of the POP Diesel technology and fuel, POP Diesel admits this would in fact lead to an increase in the actual GHG emissions from the vehicle. The only decrease in emissions would come from the claimed reduction in lifecycle GHG emissions that POP Diesel says would occur with use of their fuel. That would amount to adopting a vehicle emissions standard to promote a vehicle technology that does not reduce but instead increases the GHG emissions of the vehicle. The vehicle emissions standard would take that approach solely as a mechanism to mandate the use of a certain diesel fuel, based on emissions impacts associated with the fuel, not the vehicle. This would dramatically distort the purpose and structure of the vehicle emissions standard program, largely turning it into a de facto fuel program. There is no good reason to consider such a result here, especially where there already is a separate fuel based program, the RFS program, that is directly aimed at achieving the result POP Diesel seeks—a fuel program that achieves a reduction in lifecycle GHG emissions associated with the diesel fuel used by motor vehicles, through a mandate to use certain renewable diesel fuels.

A further reason this heavy-duty rule does not regulate GHG emissions from a lifecycle perspective, or include explicit consideration of plant-based fuels like the one utilized by POP Diesel's technology, is that it would no longer be possible to establish harmonized, performance-based tailpipe GHG emissions standards (EPA) and fuel efficiency standards (NHTSA). As discussed throughout the final rule, close coordination in this first heavy-duty rule enabled EPA and NHTSA to promulgate complementary standards that appropriately allow manufacturers to build one set of vehicles to comply with both agencies' regulations. See, e.g., 76 FR at 57107–108. This coordination was advocated by the President, *id.*, widely supported by stakeholders, and provides benefits for

industry, government, and taxpayers by increasing regulatory efficiency and reducing compliance burdens.

#### *D. Fleet-Wide Average Standards*

Finally, the petition maintains that EPA should impose corporate fleet averages for GHG emissions, asserting that EPA did so only for medium-duty engines and vehicles. *Id.* p. 23. In fact, the standards are effectively corporate averages. See EPA, Heavy-Duty Diesel Greenhouse Gas Response to Comment Document at p. 16–149—explaining that the rule allows averaging, banking, and trading of credits within the same “averaging set”, which means a manufacturer can comply through averaging across (for example) all of its vocational vehicles under 19,501 pounds GVWR; or all of its Class 6 and 7 vocational vehicles and tractors (that is, between all vehicles above 19,500 pounds GVWR and less than 33,001 pounds GVWR); or between all vehicles with GVWR greater than 33,000 pounds; or within the engine averaging sets (spark ignition engines, compression-ignition light heavy-duty engines, compression-ignition medium heavy-duty engines, and compression-ignition heavy heavy-duty engines). See sections 1036.740(a) and 1037.740(a). In any case, this issue again was one which was presented at proposal and addressed in the final rule. See 75 FR at 74250–54 (proposal) and 76 FR at 57238–240 (final). Consequently, POP Diesel has again failed to show why its objection can be raised outside the period for public comment, and in any case is mistaken. CAA section 307(d)(7)(B).

Accordingly, because POP Diesel has not stated grounds requiring or justifying reconsideration under section 307(d)(7)(B) EPA is denying its petition.

Dated: August 17, 2012.

**Lisa P. Jackson,**

*Administrator.*

[FR Doc. 2012–21032 Filed 8–24–12; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 369

[Docket No. FMCSA–2012–0020]

RIN–2126–AB48

### Rescission of Quarterly Financial Reporting Requirements

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** FMCSA withdraws its June 27, 2012, direct final rule eliminating the quarterly financial reporting requirements for certain for-hire motor carriers of property (Form QFR) and for-hire motor carriers of passengers (Form MP–1). After reviewing the adverse comment received from SJ Consulting Group in response to the direct final rule, the agency has determined that it would be inappropriate to allow the direct final rule to take effect. The FMCSA intends to publish a notice of proposed rulemaking in the near future proposing the elimination of the quarterly financial reporting requirements for Form QFR and Form MP–1.

**DATES:** The direct final rule published at 77 FR 38211, June 27, 2012 is withdrawn, effective August 27, 2012.

**FOR FURTHER INFORMATION CONTACT:** Ms. Vivian Oliver, Office of Research and Information Technology, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590; Telephone 202–366–2974; email [Vivian.Oliver@dot.gov](mailto:Vivian.Oliver@dot.gov).

#### **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation and Comments**

#### *A. Viewing Comments and Documents*

To view comments, go to <http://www.regulations.gov/#!docketDetail;D=FMCSA-2012-0020>. If you do not have access to the Internet, you may also view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

#### *B. Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the *Federal Register* (73 FR 3316).

### **II. Background**

On June 27, 2012, FMCSA published a direct final rule proposing to eliminate the quarterly financial reporting requirements for certain for-hire motor carriers of property (Form QFR) and for-hire motor carriers of passengers (Form MP–1), if no adverse comments were received by July 27, 2012. After

reflect a single means of generating electricity and so differs from POP Diesel's desired outcome, which is fuel specific. See 75 FR 25326, 25436–37 (May 7, 2010).