

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 2, 2010.

**Beverly H. Banister,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2010-14215 Filed 6-11-10; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 535

[Docket No. NHTSA-2010-0079]

#### Notice of Intent To Prepare an Environmental Impact Statement for New Medium- and Heavy-Duty Fuel Efficiency Improvement Program

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

**ACTION:** Notice of intent; request for scoping comments.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), NHTSA plans to prepare an Environmental Impact Statement (EIS) to analyze the potential environmental impacts of the agency's new fuel efficiency improvement program for commercial medium- and heavy-duty on-highway vehicles and work trucks (referred to hereinafter as MD/HD vehicles). The EIS will consider the potential environmental impacts of new

standards starting with model year (MY) 2016 MD/HD vehicles, and voluntary compliance standards for MY 2014–2015 MD/HD vehicles, that NHTSA will be proposing pursuant to the Energy Independence and Security Act of 2007.

This notice initiates the NEPA scoping process by inviting comments from Federal, State, and local agencies, Indian tribes, and the public to help identify the environmental issues and reasonable alternatives to be examined in the EIS. This notice also provides guidance for participating in the scoping process and additional information about the alternatives NHTSA expects to consider in its NEPA analysis.

**DATES:** The scoping process will culminate in the preparation and issuance of a Draft EIS, which will be made available for public comment. To ensure that NHTSA has an opportunity to fully consider scoping comments and to facilitate NHTSA's prompt preparation of the Draft EIS, scoping comments should be received on or before July 14, 2010. NHTSA will try to consider comments received after that date to the extent the rulemaking schedule allows.

**ADDRESSES:** You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments by clicking on "Help" or "FAQs."

- **Mail:** Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- **Hand Delivery or Courier:** U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

- **Fax:** 202-493-2251.

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202-366-9826.

Note that all comments received, including any personal information provided, will be posted without change to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For technical issues, contact Angel Jackson, Fuel Economy Division, Office of International Policy, Fuel Economy and Consumer Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC

20590. Telephone: 202-366-5206. For legal issues, contact Carrie Gage, Legislation & General Law Division, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202-366-1834.

**SUPPLEMENTARY INFORMATION:** In a forthcoming notice of proposed rulemaking (NPRM), NHTSA intends to propose fuel efficiency standards starting with model year (MY) 2016 commercial medium- and heavy-duty on-highway vehicles and work trucks (hereinafter referred to collectively as MD/HD vehicles), and voluntary compliance standards for MYs 2014–2015 MD/HD vehicles, pursuant to the Energy Independence and Security Act of 2007 (EISA).<sup>1</sup> In connection with this action, NHTSA intends to prepare an EIS to analyze the potential environmental impacts of the proposed MD/HD vehicle fuel efficiency standards and reasonable alternative standards pursuant to the NEPA and implementing regulations issued by the Council on Environmental Quality (CEQ) and NHTSA.<sup>2</sup> NEPA instructs Federal agencies to consider the potential environmental impacts of their proposed actions and possible alternatives in their decisionmaking. To inform decisionmakers and the public, the EIS will compare the potential environmental impacts of the agency's preferred alternative and reasonable alternatives, including a "no action" alternative. As required by NEPA, the EIS will consider direct, indirect, and cumulative impacts and discuss impacts in proportion to their significance.

**Background.** The Energy Policy and Conservation Act of 1975 (EPCA) mandated that NHTSA establish and implement a regulatory program for motor vehicle fuel economy to meet the various facets of the need to conserve energy. As codified in Chapter 329 of Title 49 of the U.S. Code, and as amended by EISA, EPCA sets forth extensive requirements concerning the establishment of fuel economy standards for passenger automobiles (hereinafter referred to as "passenger cars") and non-passenger automobiles (hereinafter referred to as "light trucks"). Pursuant to this statutory authority, NHTSA sets Corporate Average Fuel Economy (CAFE) standards for

<sup>1</sup> Public Law No. 110-140, 121 Stat. 1492 (Dec. 19, 2007) (codified at 49 U.S.C. 32901 *et seq.*).

<sup>2</sup> NEPA is codified at 42 U.S.C. 4321-4347. CEQ's NEPA implementing regulations are codified at 40 CFR 1500-1508, and NHTSA's NEPA implementing regulations are codified at 49 CFR part 520.

passenger cars and light trucks.<sup>3</sup> NHTSA considers the environmental NEPA analysis when setting CAFE standards.

In December 2007, EISA provided DOT (and by delegation, NHTSA)<sup>4</sup> new authority to implement, via rulemaking and regulations, “a commercial medium- and heavy-duty on-highway vehicle<sup>5</sup> and work truck<sup>6</sup> fuel efficiency improvement program.”<sup>7</sup> This provision also directs NHTSA to “adopt and implement appropriate test methods, measurement metrics, fuel economy standards, and compliance and enforcement protocols that are appropriate, cost-effective, and technologically feasible for commercial medium- and heavy-duty on-highway vehicles and work trucks.”<sup>8</sup> This new authority permits NHTSA to set “separate standards for different classes of vehicles.”<sup>9</sup>

EISA also provides for lead time and regulatory stability. The new MD/HD vehicle fuel efficiency improvement program NHTSA adopts pursuant to EISA must provide not less than 4 full years of regulatory lead-time and 3 full model years of regulatory stability.<sup>10</sup> Consistent with these requirements, we tentatively plan to propose mandatory standards to begin no sooner than MY 2016, and to remain stable for 3 years. Although EISA prevents NHTSA from enacting mandatory standards before

MY 2016, NHTSA intends to propose an optional voluntary compliance standard for MYs 2014–2015 prior to mandatory regulation in MY 2016.

EISA further directs that NHTSA’s MD/HD rulemaking must be conducted in consultation with the Environmental Protection Agency (EPA) and the Department of Energy.<sup>11</sup>

On May 21, 2010, the President issued a memorandum to the Secretary of Transportation, the Administrator of NHTSA, the Administrator of the EPA, and the Secretary of Energy, that calls for coordinated regulation of the medium- and heavy-duty vehicle market segment under EISA and under the Clean Air Act.<sup>12</sup> NHTSA’s forthcoming proposal and EIS will be consistent with this directive.<sup>13</sup>

This Notice of Intent initiates the scoping process for the EIS under NEPA, 42 U.S.C. §§ 4321–4347, and implementing regulations issued by CEQ, 40 CFR Pt. 1500–1508, and NHTSA, 49 CFR Pt. 520. See 40 CFR 1501.7, 1508.22; 49 CFR 520.21(g). Specifically, this Notice of Intent requests public input on the scope of NHTSA’s NEPA analysis and the significant issues relating to the fuel efficiency standards for MD/HD vehicles beginning in MY 2016, and the optional voluntary compliance standards for MYs 2014–2015. As part of the NEPA scoping process, this notice briefly describes the alternatives NHTSA is currently considering for the MD/HD vehicle fuel efficiency improvement program.

*The Alternatives:* NHTSA’s upcoming NPRM will propose standards for MD/HD vehicles beginning in MY 2016, and voluntary compliance standards for MYs 2014–2015 MD/HD vehicles. This notice briefly describes a variety of possible alternatives that are currently under consideration by the agency, and seeks input from the public about these alternatives and about whether other alternatives should be considered as we

proceed with the rulemaking and the EIS.

The medium- and heavy-duty truck segment is very complex. The sector consists of many stakeholders, including engine manufacturers, truck manufacturers, trailer manufacturers, and truck fleet owners. Unlike the light-duty sector, there is a very large number of heavy-duty truck manufacturers which vary in size and level of build process integration. Some trucks are assembled by a body builder using components from an engine manufacturer, powertrain manufacturer, component suppliers, and chassis builder. Each of these stakeholders has an impact on the fuel efficiency of the truck. NHTSA is therefore developing alternatives which recognize the complex industry structure and provide increasing coverage of the opportunities for fuel consumption reduction.

In developing alternatives, NHTSA must consider EISA’s requirement for the MD/HD fuel efficiency program noted above. 49 U.S.C. 32902(k)(2) and (3) contain the following three requirements specific to the MD/HD vehicle fuel efficiency improvement program: (1) The program must be “designed to achieve the maximum feasible improvement”; (2) the various required aspects of the program must be appropriate, cost-effective, and technologically feasible for MD/HD vehicles; and (3) the standards adopted under the program must provide not less than four model years of lead time and three model years of regulatory stability. In considering these various requirements, NHTSA will also account for relevant environmental and safety considerations.

The alternatives that NHTSA currently has under consideration, in order of increasing fuel efficiency improvement, or fuel use reductions, are:

(1) *Alternative 1: No Action.* A “no action” alternative assumes that NHTSA would not issue a rule regarding a MD/HD fuel efficiency improvement program, and is considered to comply with NEPA and to provide an analytical baseline against which to compare environmental impacts of the other regulatory alternatives.<sup>14</sup> NEPA requires agencies to consider a “no action” alternative in their NEPA analyses and to compare the effects of not taking action with the effects of the reasonable action alternatives to demonstrate the different environmental effects of the action alternatives.<sup>15</sup> NHTSA refers to

<sup>3</sup> See *Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, Final Rule*, 75 FR 25324 (May 7, 2010).

<sup>4</sup> The Secretary delegated responsibility for implementing EPCA fuel economy requirements to NHTSA. 49 CFR 1.50, 501.2(a)(8).

<sup>5</sup> EISA added the following definition to the automobile fuel economy chapter of the United States Code: “commercial medium- and heavy-duty on-highway vehicle” means an on-highway vehicle with a gross vehicle weight rating of 10,000 pounds or more. 49 U.S.C. 32901(a)(7).

<sup>6</sup> EISA added the following definition to the automobile fuel economy chapter of the United States Code: “work truck” means a vehicle that—(A) is rated at between 8,500 and 10,000 pounds gross vehicle weight; and (B) is not a medium-duty passenger vehicle (as defined in section 86.1803–01 of title 40, Code of Federal Regulations, as in effect on the date of the enactment of [EISA]). 49 U.S.C. 32901(a)(19).

<sup>7</sup> 49 U.S.C. 32902(k)(2).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* For background on the MD/HD vehicle segment, and fuel efficiency improvement technologies available for these vehicles, see the report recently issued by the National Academy of Sciences. Transportation Research Board, National Research Council, Committee to Assess Fuel Economy Technologies for Medium- and Heavy-Duty Vehicles, *Technologies and Approaches to Reducing the Fuel Consumption of Medium- and Heavy-Duty Vehicles* (March 2010), pre-publication copy available at [http://www.nap.edu/catalog.php?record\\_id=12845](http://www.nap.edu/catalog.php?record_id=12845) (last accessed May 19, 2010) (hereinafter “MD/HD NAS Report”).

<sup>10</sup> 49 U.S.C. 32902(k)(3).

<sup>11</sup> 49 U.S.C. § 32902(k)(2).

<sup>12</sup> See The White House, Office of the Press Secretary, *Presidential Memorandum Regarding Fuel Efficiency Standards* (May 21, 2010), available at <http://www.whitehouse.gov/the-press-office/presidential-memorandum-regarding-fuel-efficiency-standards> (last accessed May 24, 2010); see also The White House, Office of the Press Secretary, *President Obama Directs Administration to Create First-Ever National Efficiency and Emissions Standards for Medium- and Heavy-Duty Trucks* (May 21, 2010), available at <http://www.whitehouse.gov/the-press-office/president-obama-directs-administration-create-first-ever-national-efficiency-and-em> (last accessed May 24, 2010).

<sup>13</sup> See <http://www.nhtsa.gov/fuel-economy> (last accessed June 4, 2010); see also <http://www.epa.gov/otaq/climate/regulations/420f10038.htm> (last accessed June 4, 2010).

<sup>14</sup> See 40 CFR 1502.2(e), 1502.14(d).

<sup>15</sup> CEQ has explained that “[T]he regulations require the analysis of the no action alternative even

this as the “No Action Alternative” or as a “no increase” or “baseline” alternative.

NHTSA is also proposing to consider four action alternatives, each of which would regulate the MD/HD vehicle fleet in a different way. These action alternatives would each cause the average fuel efficiency for the industry-wide MD/HD vehicle fleet to increase, on average, during the rulemaking period. The alternatives below represent the different regulatory approaches the agency is considering, in order of increasing fuel savings:

(2) *Alternative 2: Engine Only.* The EPA currently regulates heavy-duty engines, i.e., engine manufacturers, rather than the vehicle as a whole, in order to control criteria emissions.<sup>16</sup> Under Alternative 2, NHTSA would similarly set engine performance standards for each vehicle class, Class 2b through Class 8, and would specify an engine cell test procedure, as EPA currently does for criteria pollutants. MD/HD vehicle engine manufacturers would be responsible for ensuring that each engine could meet the applicable vehicle class engine performance standard when tested in accordance with the specified engine cell test procedure. Engine manufacturers could improve MD/HD vehicle engines by applying the combinations of fuel efficiency improvement technologies to the engine that they deem best achieve that result.

(3) *Alternative 3: Class 8 Combination Tractors.* Combination tractors<sup>17</sup> consume the largest fraction of fuel within the medium- and heavy-duty truck segment.<sup>18</sup> Tractors also offer significant potential for fuel savings due to the high annual mileage and high vehicle speed of typical trucks within this segment, as compared to annual

mileage and average speeds/duty cycles of other vehicle classes. This alternative would set performance standards for both the engine of Class 8 vehicles and the overall vehicle efficiency performance for the Class 8 combination tractor segment. Under Alternative 3, NHTSA would set an engine performance standard, as discussed under Alternative 2, for Class 8 vehicles. In addition, Class 8 combination tractor manufacturers would be required to meet an overall vehicle performance standard by making various non-engine fuel saving technology improvements. These non-engine fuel efficiency improvements could be accomplished, for example, by a combination of improvements to aerodynamics, lowering tire rolling resistance, decreasing vehicle mass (weight), reducing fuel use at idle, or by adding intelligent vehicle technologies.<sup>19</sup> Compliance with the overall vehicle standard could be determined using a computer model that would simulate overall vehicle fuel efficiency given a set of vehicle component inputs. Using this compliance approach, the Class 8 vehicle manufacturer would supply certain vehicle characteristics (relating to the categories of technologies noted immediately above) that would serve as model inputs. The agency would supply a standard Class 8 vehicle engine's contribution to overall vehicle efficiency, making the engine component a constant for purposes of compliance with the overall vehicle performance standard, such that compliance with the overall vehicle standard could only be achieved via efficiency improvements to non-engine vehicle components. Thus, vehicle manufacturers could make any combination of improvements of the non-engine technologies that they believe would best achieve the Class 8 overall vehicle performance standard.

(4) *Alternative 4: Engines, Tractors, and Class 2b through 8 Trucks.* This alternative would set engine fuel efficiency performance standards and overall vehicle fuel efficiency performance standards for Class 2b and 3 work trucks and Class 3 through Class 8 vocational trucks. This alternative essentially sets fuel efficiency performance standards for both the engines and the overall vehicles in the entire medium- and heavy-duty truck sector. Compliance with each vehicle class's engine performance standard

would be determined as discussed in the description of Alternative 2. Compliance with the tractor and vocational truck classes' overall vehicle performance standard (Class 3 through 8 trucks) would be determined as discussed in the description of Alternative 3. Compliance for the Class 2b and 3 work trucks would be determined through a fleet averaging process similar to determining passenger car and light truck compliance with CAFE standards.

(5) *Alternative 5: Engines, Tractors, Trucks, and Trailers.* This alternative adds a performance standard for fuel efficiency of commercial trailers to the fuel efficiency performance standards for Class 2b and 3 work truck and Class 3 through Class 8 vocational truck engines and the performance standard for the overall fuel efficiency of those vehicles, as described above.

Each of the alternatives proposed by NHTSA represents, in part, a different way NHTSA could establish a MD/HD vehicle fuel efficiency improvement program pursuant to EISA, considering each of the requirements above and NEPA's policies. The agency may select one of the above-identified alternatives as its Preferred Alternative or it may structure a MD/HD vehicle fuel efficiency improvement program in such a way that average fuel efficiency, or fuel savings, falls between the levels reflected in the alternatives proposed in this Scoping Notice. For example, as noted above, EISA requires that NHTSA provide a four-year regulatory lead-time to manufacturers. For each of the action alternatives, NHTSA will consider a voluntary early compliance program, which would provide for an early start date with a two year lead-time. This version of each alternative would allow the program to achieve greater and earlier reductions in fuel consumption than a rule with a four year lead-time.

Under NEPA, the purpose of and need for an agency's action inform the range of reasonable alternatives to be considered in its NEPA analysis.<sup>20</sup> The above alternatives represent a broad range of approaches under consideration for setting proposed MD/HD vehicle fuel efficiency standards and whose environmental impacts we propose to evaluate under NEPA.

As detailed below, NHTSA invites comments to ensure that the agency considers a full range of reasonable alternatives in establishing a MD/HD vehicle fuel efficiency improvement program and that the agency identifies the environmental impacts and focuses its analyses on all the potentially

*if the agency is under a court order or legislative command to act.* This analysis provides a benchmark, enabling decision makers to compare the magnitude of environmental effects of the action alternatives. It is also an example of a reasonable alternative outside the jurisdiction of the agency which must be analyzed. [See 40 CFR 1502.14(c).] \* \* \* Inclusion of such an analysis in the EIS is necessary to inform Congress, the public, and the President as intended by NEPA. [See 40 CFR 1500.1(a).]” *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 FR 18026 (1981) (emphasis added).

<sup>16</sup> There are several reasons for this approach. In many cases the engine and chassis are produced by different manufacturers and it is more efficient to hold a single entity responsible. Also, testing an engine cell is more accurate and repeatable than testing a whole vehicle.

<sup>17</sup> Class 8 combination trucks have a tractor and one or more trailers and a gross combined weight, i.e., a maximum weight rating, of up to 80,000 pounds, with higher weights allowed in specific circumstances. MD/HD NAS Report, *supra* note 9, at 1–7.

<sup>18</sup> *Id.* at 8–2.

<sup>19</sup> See the MD/HD NAS Report for discussions of the potential fuel efficiency improvement technologies that can be applied to each of these vehicle components. MD/HD NAS Report, *supra* note 9, Chapter 5.

<sup>20</sup> 40 CFR 1502.13.

significant impacts related to each alternative. Comments may go beyond the approaches and information that NHTSA used in developing the above alternatives and in identifying the potentially significant environmental effects. The agency may modify the proposed alternatives and environmental effects that will be analyzed in depth based upon the comments received during the scoping process and upon further agency analysis.

**Scoping and Public Participation:** The scoping process initiated by this notice seeks to determine “the range of actions, alternatives, and impacts to be considered” in the EIS and to identify the most important issues for analysis involving the potential environmental impacts of NHTSA’s MD/HD vehicle fuel efficiency improvement program.<sup>21</sup> NHTSA’s NEPA analysis for the MD/HD vehicle fuel efficiency standards beginning in MY 2016, and the voluntary MYs 2014–2015 standards, will consider the direct, indirect and cumulative environmental impacts of the proposed standards and those of reasonable alternatives.

While the main focus of NHTSA’s prior CAFE EISs (*i.e.*, the EIS for Model Years 2012–2016 Passenger Car and Light Truck CAFE Standards<sup>22</sup> and the EIS for Model Years 2011–2015 Passenger Car and Light Truck CAFE Standards<sup>23</sup>) was the quantitative and qualitative analysis of impacts to energy, air quality, and climate, it also addressed other potentially affected resources. NHTSA discussed the related direct, indirect, and cumulative impacts, positive or negative, of the alternatives on other potentially affected resources (water resources, biological resources, land use, hazardous materials, safety, noise, historic and cultural resources, and environmental justice).

For the current EIS, NHTSA intends to focus on the impacts in much the same manner as it did in the prior EIS, and will incorporate by reference any of the discussions from the February 2010 Final EIS that are relevant. NHTSA is currently considering analyzing environmental impacts related to fuel and energy use, emissions including GHGs and their effects on temperature

and climate change, air quality, natural resources, and the human environment. NHTSA also will factor into its impact analysis the cumulative impacts of the proposed MD/HD vehicle fuel efficiency standards starting in MY 2016, and the voluntary MYs 2014–2015 standards. In accordance with CEQ regulations, cumulative effects are “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such action.”<sup>24</sup> NHTSA specifically requests comment on how the agency should assess cumulative impacts, including those from various emissions source categories and across a range of geographic locations. For example, should we consider the incremental impact of MD/HD efficiency standards when considered with the impacts of other reasonably foreseeable actions that affect emissions in any portion of the motor vehicle sector? Or should NHTSA expand the incremental impact examination to all transportation sector emissions? Or should the agency limit the incremental impact analysis to environmental effects caused by emissions only from the MD/HD vehicle segment?

NHTSA anticipates considerable uncertainty in estimating and comparing the potential environmental impacts among alternatives related to climate change in particular. For instance, NHTSA expects that there will be considerable uncertainty associated with its estimates of the range of potential global mean temperature changes that may result from changes in fuel and energy consumption and GHG emissions due to a range of new MD/HD vehicle fuel efficiency standards. It also may be difficult to predict and compare the ways in which potential temperature changes attributable to new MD/HD vehicle fuel efficiency standards may, in turn, affect many aspects of the environment. NHTSA will work expeditiously to gather all relevant and credible information. Where information is incomplete or unavailable, the agency will acknowledge the uncertainties in its NEPA analysis, and will apply the provisions in the CEQ regulations addressing “[i]ncomplete or unavailable information.”<sup>25</sup>

Currently, NHTSA intends to rely primarily upon the Intergovernmental Panel on Climate Change (IPCC) 2007 Fourth Assessment Report, and

subsequent updates, reports of the U.S. Climate Change Science Program (CCSP) and the current U.S. Global Change Research Program (U.S. GCRP), and the EPA Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act and the accompanying Technical Support Document (referred to collectively hereinafter as the EPA Endangerment Finding), as sources for recent “summar[ies] of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment.”<sup>26</sup> NHTSA believes that the IPCC Fourth Assessment Report, the CCSP and U.S. GCRP Reports, and the EPA Endangerment Finding are the most recent, most comprehensive summaries available, but recognizes that subsequent peer-reviewed research may provide additional relevant and credible evidence not accounted for in these Reports. NHTSA expects to consider such subsequent information as well, to the extent that it provides relevant and credible evidence. NHTSA also expects to rely on the Final EIS it published in February 2010,<sup>27</sup> incorporating material by reference “when the effect will be to cut down on bulk without impeding agency and public review of the action.”<sup>28</sup>

In preparing this notice of public scoping to identify the range of actions, alternatives, and impacts to be analyzed in depth in the EIS, NHTSA has consulted with CEQ and EPA. Through this notice, NHTSA invites all Federal agencies, Indian Tribes, State and local agencies with jurisdiction by law or special expertise with respect to potential environmental impacts of proposed MD/HD vehicle fuel efficiency standards, and the public to participate in the scoping process.<sup>29</sup>

<sup>26</sup> 40 CFR 1502.22(b)(3); see 40 CFR 1502.21. The report and the IPCC’s earlier reports are available at <http://www.ipcc.ch/> (last visited March 11, 2008).

<sup>27</sup> See *Final Environmental Impact Statement, Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2012–2016*, Docket No. NHTSA–2009–0059–0140 (February 2010).

<sup>28</sup> 40 CFR 1502.21.

<sup>29</sup> Consistent with NEPA and implementing regulations, NHTSA is sending this notice directly to: (1) Federal agencies having jurisdiction by law or special expertise with respect to the environmental impacts involved or authorized to develop and enforce environmental standards; (2) the Governors of every State, to share with the appropriate agencies and offices within their administrations and with the local jurisdictions within their States; (3) organizations representing state and local governments and Indian tribes; and (4) other stakeholders that NHTSA reasonably expects to be interested in the NEPA analysis for the MD/HD vehicle fuel efficiency standards. See 42

<sup>21</sup> See 40 CFR 1500.5(d), 1501.7, 1508.25.

<sup>22</sup> See *Final Environmental Impact Statement, Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2012–2016*, Docket No. NHTSA–2009–0059–0140 (February 2010).

<sup>23</sup> See *Final Environmental Impact Statement, Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015*, Docket No. NHTSA–2008–0060–0605 (October 2008).

<sup>24</sup> 40 CFR 1508.7.

<sup>25</sup> See 40 CFR 1502.22.

Specifically, NHTSA invites all stakeholders to participate in the scoping process by submitting written comments concerning the appropriate scope of NHTSA's NEPA analysis and the significant issues for the proposed MD/HD vehicle fuel efficiency standards to the docket number identified in the heading of this notice, using any of the methods described in the **ADDRESSES** section of this notice. NHTSA does not plan to hold a public scoping meeting, because written comments will be effective in identifying and narrowing the issues for analysis.

NHTSA is especially interested in comments concerning the evaluation of climate change impacts, and the relative impact of an increased share of any emissions reduction resulting from the proposed MD/HD vehicle fuel efficiency standards coming from diesel fuel savings, as opposed to emissions reductions resulting from conventional gasoline savings analyzed in prior CAFE NEPA analyses. Specifically, NHTSA requests:

- Peer-reviewed scientific studies that have been issued since the EPA Endangerment Finding and that address or may inform: (a) The impacts on CO<sub>2</sub> and other greenhouse gas emissions that may be associated with any of the alternatives under consideration; (b) the impacts on climate change that may be associated with these emission changes; or (c) the time periods over which such impacts on climate may occur.

- Comments on how NHTSA should discuss or estimate the potential localized or regional impacts of decreased diesel fuel use, including potential upstream impacts (changes in fuel use and emissions levels resulting from the extraction, production, storage, and distribution of fuel), and comments on how NHTSA should estimate the potential impacts of these localized or regional changes on the environment.

- Comments on what time frame NHTSA should use to evaluate the environmental impacts that may result from setting MD/HD vehicle fuel efficiency standards, both indirect and cumulative.

- Peer-reviewed reports analyzing the potential impacts of climate change within the United States or in particular geographic areas of the United States. Such reports could be prepared by or on behalf of States, local governments, Indian tribes, regional organizations, academic researchers, or other interested parties.

- NHTSA understands that there are a variety of potential alternatives that could be considered that fit within the purpose and need for the proposed rulemaking, as set forth in EISA. NHTSA, therefore, seeks comments on how best to structure or describe a reasonable alternative for purposes of evaluating it under NEPA. Specifically, NHTSA seeks comments on what criteria should be used to structure such alternative, given the requirements for the new regulatory program under EISA, while being consistent with the statutory requirement of designing the program "to achieve the maximum feasible improvement." See 49 U.S.C. 32902(k)(2). When suggesting a possible alternative, please explain how it would satisfy the EISA requirements (in particular, how and why it would be appropriate, cost-effective, and technologically feasible) and give effect to NEPA's policies.<sup>30</sup>

In addition, as noted above, NHTSA requests comments on how the agency should assess cumulative impacts, including those from various emissions source categories and from a range of geographic locations. Also in regard to cumulative impacts, the agency requests comments on how to consider the incremental impacts from foreseeable future actions of other agencies or persons, and how they might interact with the MD/HD vehicle fuel efficiency improvement program's incremental cumulative impacts.

Two important purposes of scoping are identifying the significant issues that merit in-depth analysis in the EIS and identifying and eliminating from detailed analysis the issues that are not significant and therefore require only a brief discussion in the EIS.<sup>31</sup> In light of these purposes, written comments should include an Internet citation (with a date last visited) to each study or report you cite in your comments if one is available. If a document you cite is not available to the public online, you should attach a copy to your comments. Your comments should indicate how each document you cite or attach to your comments is relevant to the NEPA analysis and indicate the specific pages and passages in the attachment that are most informative.

The more specific your comments are, and the more support you can provide by directing the agency to peer-reviewed scientific studies and reports as requested above, the more useful your comments will be to the agency. For

example, if you identify an additional area of impact or environmental concern you believe NHTSA should analyze, or an analytical tool or model that you believe NHTSA should use to evaluate these environmental impacts, you should clearly describe it and support your comments with a reference to a specific peer-reviewed scientific study, report, tool or model. Specific, well-supported comments will help the agency prepare an EIS that is focused and relevant, and will serve NEPA's overarching aims of making high quality information available to decisionmakers and the public by "concentrat[ing] on the issues that are truly significant to the action in question, rather than amassing needless detail."<sup>32</sup> By contrast, mere assertions that the agency should evaluate broad lists or categories of concerns, without support, will likely not assist the scoping process for the proposed standards.

Please be sure to reference the docket number identified in the heading of this notice in your comments. NHTSA intends to correspond directly to interested parties by e-mail. Thus, please also provide an e-mail address (or a mailing address if you decline e-mail communications).<sup>33</sup> These steps will help NHTSA to manage a large volume of material during the NEPA process. All comments and materials received, including the names and addresses of the commenters who submit them, will become part of the administrative record and will be posted on the Web site at <http://www.regulations.gov>.

Based on comments received during scoping, NHTSA expects to prepare a draft EIS for public comment later this year and a final EIS to support a final rule in 2011.<sup>34</sup> In regard to NHTSA's decisionmaking schedule, the agency expects to issue a final rule in 2011 as well.

Separate **Federal Register** notices will announce the availability of the draft EIS, which will be available for public comment, and the final EIS, which will be available for public inspection. NHTSA also plans to continue to post information about the NEPA process and this MD/HD vehicle fuel efficiency improvement program rulemaking on its Web site (<http://www.nhtsa.dot.gov>).

<sup>32</sup> 40 CFR 1500.1(b).

<sup>33</sup> If you prefer to receive NHTSA's NEPA correspondence by U.S. mail, NHTSA intends to provide its NEPA publications via a CD readable on a personal computer.

<sup>34</sup> 40 CFR 1506.10.

<sup>30</sup> See 40 CFR 1502.14, *Alternatives Including the Proposed Action* (explaining what agencies should include in the alternatives section of an EIS).

<sup>31</sup> 40 CFR 1500.4(g), 1501.7(a).

Issued: June 9, 2010.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[Docket No. 100330171-0232-01]

RIN 0648-AY79

#### Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Framework

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes amendments to the framework regulations specifying procedures for implementing fishing capacity reduction programs (reduction programs) in accordance with the Magnuson-Stevens Fishery Conservation and Management (Magnuson-Stevens) Reauthorization Act of 2007. A reduction program pays harvesters in a fishery that has more vessels than capacity either to surrender their fishing permits including relevant fishing histories for that fishery, or surrender all their fishing permits and cancelling their fishing vessels= fishing endorsements by permanently withdrawing the vessel from all fisheries. The cost of the program can be paid by post-reduction harvesters, taxpayers, or others. The intent of a program is to decrease the number of harvesters in the fishery, increase the economic efficiency of harvesting, and facilitate the conservation and management of fishery resources in each fishery in which NMFS conducts a reduction program.

**DATES:** Comments must be received by July 29, 2010.

**ADDRESSES:** You may submit comments, identified by 0648-AY79, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>; or

Mail: Michael A. Sturtevant, Financial Services Division, NMFS-MB5, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments will be posted for public viewing after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Michael A. Sturtevant at the address specified above and also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer) or e-mail to [David\\_Rosker@ob.eop.gov](mailto:David_Rosker@ob.eop.gov), or fax to (202) 395-7825. Copies of the Initial Regulatory Flexibility Analysis (IRFA) and Regulatory Impact Review prepared for this action may be obtained from Michael A. Sturtevant at the above address.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Sturtevant at 301-713-2390 or [michael.a.sturtevant@noaa.gov](mailto:michael.a.sturtevant@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This **Federal Register** document is also accessible via the Internet at [www.gpoaccess.gov/fr](http://www.gpoaccess.gov/fr).

#### I. Statutory and Regulatory Background

Many U.S. fisheries have excess fishing capacity. Excess fishing capacity decreases earnings, complicates management, and imperils conservation. To provide for fishing capacity reduction programs, in 1996 Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by adding section 312(b)-(e) (16 U.S.C. 1861a(b)-(e)). The framework regulations to conduct these reduction programs were published as an interim final rule on May 18, 2000 (65 FR 31430) and codified as subpart L to 50 CFR part 600. To finance reduction costs, Congress amended Title XI of the Merchant Marine Act, 1936 (Title XI), by adding new sections 1111 and 1112. The Title XI provisions involving

fishing capacity reduction loans have been codified at 46 U.S.C. 53735.

This action proposes to amend subpart L to 50 CFR part 600 to implement the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Public Law 109-479) amendments for requesting and conducting fishing capacity reduction programs.

#### II. Magnuson-Stevens Reauthorization Act Changes

The Magnuson-Stevens Reauthorization Act requires several modifications to the framework regulations.

First, the Magnuson-Stevens Reauthorization Act contained a provision that states that, in addition to the appropriate fishery management Council or Governor of a State, a majority of permit holders in the fishery may request a buyback program. Such a program may be conducted if the Secretary determines that the program is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery. As a result of this change, NMFS is amending the definition of "Requester" and the regulations outlining the process for submission requests to allow permit holders, if they constitute a majority, to request a buyback program.

Second, the Magnuson-Stevens Reauthorization Act clarified that a permit holder relinquishes any future limited access system claims associated with the permit or vessel participating in a reduction program and that (if not scrapped) the vessel will be effectively prevented from fishing in Federal or state waters, or fishing on the high seas or in the waters of a foreign nation. The Magnuson-Stevens Reauthorization Act revised section 312(b)(2)(A) to recognize that the owner of a fishing vessel may be different from the permit holder. As a result of this change, NMFS is amending the regulations to require that, along with surrendering the permit authorizing the participation of the vessel in the fishery, for permanent revocation, both the vessel owner and the permit holder, if different from the vessel owner, relinquish any claim associated with the vessel or permit that could qualify such owner or permit holder for any present or future limited access system permit in the fishery for which the program is established or in any other fishery.

Third, the Magnuson-Stevens Reauthorization Act added Section 312(b)(5) regarding payment conditions stating that if a vessel is not scrapped,