

§ 536.5

49 CFR Ch. V (10–1–10 Edition)

model year in which the credit is used for compliance.

[74 FR 14452, Mar. 30, 2009, as amended at 75 FR 25727, May 7, 2010]

§ 536.5 Trading infrastructure.

(a) *Accounts.* NHTSA maintains “accounts” for each credit holder. The account consists of a balance of credits in each compliance category and vintage held by the holder.

(b) *Who may hold credits.* Every manufacturer subject to fuel economy standards under 49 CFR parts 531 or 533 is automatically an account holder. If the manufacturer earns credits pursuant to this regulation, or receives credits from another party, so that the manufacturer’s account has a non-zero balance, then the manufacturer is also a credit holder. Any party designated as a recipient of credits by a current credit holder will receive an account from NHTSA and become a credit holder, subject to the following conditions:

(1) A designated recipient must provide name, address, contacting information, and a valid taxpayer identification number or social security number;

(2) NHTSA does not grant a request to open a new account by any party other than a party designated as a recipient of credits by a credit holder;

(3) NHTSA maintains accounts with zero balances for a period of time, but reserves the right to close accounts that have had zero balances for more than one year.

(c) *Automatic debits and credits of accounts.* (1) Upon receipt of a verified instruction to trade credits from an existing credit holder, NHTSA verifies the presence of sufficient credits in the account of the trader, then debits the account of the trader and credits the account of the recipient with credits of the vintage, origin, and compliance category designated. Traded credits identified by a specific compliance category are deposited into the recipient’s account in that same compliance category. If the recipient is not a current account holder, NHTSA establishes the account subject to the conditions described in § 536.5(b), and adds the credits to the newly-opened account.

(2) NHTSA automatically deletes unused credits from holders’ accounts as they reach their expiry date.

(d) *Compliance.* (1) NHTSA assesses compliance with fuel economy standards each year, utilizing the certified and reported CAFE data provided by the Environmental Protection Agency for enforcement of the CAFE program pursuant to 49 U.S.C. 32904(e). Credit values are calculated based on the CAFE data from the EPA. If a particular compliance category within a manufacturer’s fleet has above standard fuel economy, NHTSA adds credits to the manufacturer’s account for that compliance category and vintage in the appropriate amount by which the manufacturer has exceeded the applicable standard.

(2) If a manufacturer’s vehicles in a particular compliance category have below standard fuel economy, NHTSA will provide written notification to the manufacturer that it has failed to meet a particular fleet target standard. The manufacturer will be required to confirm the shortfall and must either: submit a plan indicating how it will allocate existing credits or earn, transfer and/or acquire credits; or pay the appropriate civil penalty. The manufacturer must submit a plan or payment within 60 days of receiving agency notification.

(3) Credits used to offset shortfalls are subject to the three and five year limitations as described in § 536.6.

(4) Transferred credits are subject to the limitations specified by 49 U.S.C. 32903(g)(3) and this regulation.

(5) The value, when used for compliance, of any credits received via trade or transfer is adjusted, using the adjustment factor described in § 536.4(c), pursuant to 49 U.S.C. 32903(f)(1).

(6) Credit allocation plans received from a manufacturer will be reviewed and approved by NHTSA. NHTSA will approve a credit allocation plan unless it finds that the proposed credits are unavailable or that it is unlikely that the plan will result in the manufacturer earning sufficient credits to offset the subject credit shortfall. If a plan is approved, NHTSA will revise the respective manufacturer’s credit

account accordingly. If a plan is rejected, NHTSA will notify the respective manufacturer and request a revised plan or payment of the appropriate fine.

(e) *Reporting.* (1) NHTSA periodically publishes the names and credit holdings of all credit holders. NHTSA does not publish individual transactions, nor respond to individual requests for updated balances from any party other than the account holder.

(2) NHTSA issues an annual credit status letter to each party that is a credit holder at that time. The letter to a credit holder includes a credit accounting record that identifies the credit status of the credit holder including any activity (earned, expired, transferred, traded, carry-forward and carry-back credit transactions/allocations) that took place during the identified activity period.

§ 536.6 Treatment of credits earned prior to model year 2011.

(a) Credits earned in a compliance category before model year 2008 may be applied by the manufacturer that earned them to carryback plans for that compliance category approved up to three model years prior to the year in which the credits were earned, or may be applied to compliance in that compliance category for up to three model years after the year in which the credits were earned.

(b) Credits earned in a compliance category during and after model year 2008 may be applied by the manufacturer that earned them to carryback plans for that compliance category approved up to three years prior to the year in which the credits were earned, or may be held or applied for up to five model years after the year in which the credits were earned.

(c) Credits earned in a compliance category prior to model year 2011 may not be transferred or traded.

§ 536.7 Treatment of carryback credits.

(a) Carryback credits earned in a compliance category in any model year may be used in carryback plans approved by NHTSA, pursuant to 49 U.S.C. 32903(b), for up to three model years prior to the year in which the credit was earned.

(b) For purposes of this regulation, NHTSA will treat the use of future credits for compliance, as through a carryback plan, as a deferral of penalties for non-compliance with an applicable fuel economy standard.

(c) If NHTSA receives and approves a manufacturer's carryback plan to earn future credits within the following three model years in order to comply with current regulatory obligations, NHTSA will defer levying fines for non-compliance until the date(s) when the manufacturer's approved plan indicates that credits will be earned or acquired to achieve compliance, and upon receiving confirmed CAFE data from EPA. If the manufacturer fails to acquire or earn sufficient credits by the plan dates, NHTSA will initiate compliance proceedings.

(d) In the event that NHTSA fails to receive or approve a plan for a non-compliant manufacturer, NHTSA will levy fines pursuant to statute. If within three years, the non-compliant manufacturer earns or acquires additional credits to reduce or eliminate the non-compliance, NHTSA will reduce any fines owed, or repay fines to the extent that credits received reduce the non-compliance.

(e) No credits from any source (earned, transferred and/or traded) will be accepted in lieu of compliance if those credits are not identified as originating within one of the three model years after the model year of the confirmed shortfall.

§ 536.8 Conditions for trading of credits.

(a) *Trading of credits.* If a credit holder wishes to trade credits to another party, the current credit holder and the receiving party must jointly issue an instruction to NHTSA, identifying the quantity, vintage, compliance category, and originator of the credits to be traded. If the recipient is not a current account holder, the recipient must provide sufficient information for NHTSA to establish an account for the recipient. Once an account has been established or identified for the recipient, NHTSA completes the trade by debiting the transferor's account and crediting the recipient's account.