*(b) Fee for direct hook-up.* To the extent that a member of the public requests establishment of real-time integration of reporting services to run reports from another application, a one-time charge of $2,500 for the original integration must be paid by the requestor. This one-time charge covers the setup and certification required for an integrator to access the FPDS database and for technical assistance to help integrators use the web services. The fee will be paid to the FPDS contractor and credited to invoices submitted to GSA by the FPDS contractor.

[FR Doc. 04–28280 Filed 12–27–04; 8:45 am]

**BILLING CODE 6820–61–S**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 534

**[Docket No. NHTSA 2004–19940]**

**RIN 2127–AG97**

### Fuel Economy Standards—Credits and Fines—Rights and Responsibilities of Manufacturers in the Context of Changes in Corporate Relationships

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

**ACTION:** Final rule.

**SUMMARY:** This document establishes a new regulation governing the use of rights (credits) and liabilities (fines) under the Corporate Average Fuel Economy program in the face of changes in corporate relationships. This final rule fulfills a statutory responsibility to issue a regulation addressing these issues.

**DATES:** The rule is effective January 27, 2005.

Petitions for Reconsideration must be received by February 11, 2005. Petitions for reconsideration should refer to the docket and notice number of this document and be submitted to the Administrator of NHTSA 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. Otto Matheke, Office of the Chief Counsel, Suite 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (202–366–5263)

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**I. Introduction and History**

This final rule establishes a regulation governing the treatment of corporate assets and liabilities arising from the agency's Corporate Average Fuel Economy (CAFE) program in the face of changes in corporate relationships. It fulfills a statutory responsibility to define by regulation the use of CAFE credits and liabilities in light of changes in corporate structure.

In December 1975, Congress enacted the Energy Policy and Conservation Act (EPCA). The EPCA established the Corporate Average Fuel Economy (CAFE) program by adding a new Title V to the Motor Vehicle Information and Cost Saving Act. Congress has made various amendments to the fuel economy provisions since 1975, and the fuel economy provisions are now codified in Chapter 329 of Title 49 of the United States Code.

The CAFE statute requires that a manufacturer meet average fuel economy standards, as established by regulation, separately for fleets of light trucks, domestic passenger cars and imported passenger cars. A manufacturer's average fuel economy for a particular model year is calculated in accordance with 49 U.S.C. 32904. The establishment of CAFE standards and the calculation of average fuel economy is statutorily tied to ''automobiles manufactured by a manufacturer'' for any given model year. (49 U.S.C. 32902, 32904)

The statute specifically provides that, with regard to each individual fleet, a manufacturer may earn credits by exceeding the applicable standard and may use those credits, for three years forward and three years back, to offset any shortfalls in CAFE compliance applicable in a particular model year. Again the statute makes clear that the number of credits earned is tied to the volume of automobiles manufactured by the manufacturer. (49 U.S.C. 32903)

Manufacturers failing to meet the established fleet standard for a particular model year must, if they do not have credits available to offset their shortfall, pay fines to the United States Treasury. Over the history of the CAFE program, manufacturers have paid over 140 fines totaling more than $600 million. The highest fine ever paid by a single manufacturer was almost $28 million, with the average approximating $4 million.

The provisions of EPCA recognize that changes in corporate structures are common and that a ''manufacturer,'' as defined by the CAFE statute, may change in light of new corporate relationships. In 1980, Congress amended the definition of a manufacturer to explicitly contemplate corporate successors and predecessors. Congress recognized at that time that CAFE credits and responsibilities would become assets and liabilities in the course of such changes, and directed the Secretary of Transportation to promulgate regulations defining how such credits and responsibilities should be treated when corporate changes occur. (49 U.S.C. 32901(13))

The agency did not immediately move to establish the regulation Congress prescribed. Nonetheless, in 1991, the Administrator authorized the agency's Complaint Counsel to initiate an administrative complaint against the Chrysler Corporation (Chrysler). As Congress anticipated, structural corporate change gave rise to issues relating to the application of CAFE rights and responsibilities. Chrysler had purchased the assets of American Motors Company (AMC) and Chrysler had fallen short of an applicable CAFE. AMC had available credits that Chrysler wished to apply to its existing shortfall. Chrysler took the position that AMC's CAFE credits were available to the new corporate entity. Complaint Counsel disagreed and sought to impose CAFE fines for Chrysler's failure to meet the applicable CAFE standard.[1]

On January 8, 1992, an Administrative Law Judge issued an Initial Decision and Order. While expressing in dictum support for Complaint Counsel's position, the ALJ ruled that the agency could not enforce that position because it had not, as the statute anticipates, promulgated regulations in accordance with the Administrative Procedures Act. NHTSA's Administrator terminated the prosecution and directed the agency to initiate rulemaking. In an order dated March 31, 1992, NHTSA's Administrator found:

> Upon further consideration of the matters at issue in this proceeding, I have decided that NHTSA should prescribe regulations

[1] Complaint Counsel's position in the administrative proceeding was consistent with the position taken by the agency's Acting Chief Counsel in a 1990 letter to the Chrysler Corporation setting forth the agency's interpretation of the law as applied to Chrysler's acquisition of AMC. Pursuant to 49 CFR part 501.8(d)(5), the NHTSA Administrator has delegated to the Chief Counsel the authority ''to issue authoritative interpretations of the statutes administered by NHTSA and the regulations issued by the agency.''

pursuant to section 501(g) of the Act to define the extent to which predecessors and successors of manufacturers of automobiles should be included within the term 'manufacturer' for the purposes of the Act. I have therefore directed the Associate Administrator for Rulemaking to promptly commence such a proceeding.

While such a proceeding would provide helpful clarification and be consistent with the statute, in my view there is a great deal of doubt as to the correctness of the Administrative Law Judge's view that, in the absence of such regulations, an enforcement proceeding against Chrysler cannot proceed. Therefore, I am unwilling to allow the I.D. (Initial Decision) to become the Final Decision of this agency. On the other hand, I believe that continuation of this proceeding under these circumstances could result in an unnecessary expenditure of the resources of the agency and of Chrysler. Therefore, I have decided to take steps to terminate the proceeding at this time, without prejudice to the possible filing of a new administrative complaint against Chrysler following the issuance of the regulatory definitions referred to above.

The agency did not act immediately. In the early 1990s, the agency faced a variety of legal challenges raising numerous issues and focusing agency resources on the developing contours of the program. In April 1994, the agency began to consider a multi-year rulemaking to establish light truck CAFE standards for some or all of model years 1998–2006. (59 FR 16324). Congress responded by effectively ''freezing'' light truck standards. On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for FY 1996 was enacted. Pub. L. 104–50. Section 330 of that Act provided:

None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations * * * prescribing corporate average fuel economy standards for automobiles * * * in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

Similar language in subsequent Appropriations Acts continued the freeze through model year 2003. Ongoing debate about the efficacy of the CAFE program also led Congress to require a review of the program. The conference committee report for the Department of Transportation and Related Agencies Appropriations Act for FY 2001 directed NHTSA to fund a study by the National Academy of Sciences to evaluate the effectiveness and impacts of CAFE standards (H.R. Conf. Rep. No. 106–940, at 117–118).

On January 22, 2001, six months prior to submission of the NAS report to the Department of Transportation, the agency published a notice of proposed rulemaking (NPRM) advancing regulatory text intended to formalize Complaint Counsel's positions in the 1991–1992 administrative proceeding. (66 FR 6523)

## II. Applicable Statutory Provisions

The CAFE statute provides that a ''manufacturer of automobiles commits a violation if the manufacturer fails to comply with an applicable average fuel economy standard under section 32902 of this title. Compliance is determined after considering credits available to the manufacturer under section 32903 of this title.'' (49 U.S.C. 32911(b))

Section 32903 provides that ''when the average fuel economy of passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard * * * the manufacturer earns credits.'' Those credits may be applied to any of the 3 consecutive model years immediately proceeding or following the model year during which the credits were earned.

The statute defines a ''manufacturer'' as ''(A) a person engaged in the business of manufacturing automobiles, including a predecessor or successor of the person to the extent provided under regulations prescribed by the Secretary; and (B) if more than one person is the manufacturer of an automobile, the person specified under regulations prescribed by the Secretary.'' (49 U.S.C. 32901(a)(13)) The statute defines ''an automobile manufactured by a manufacturer'' as including ''every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufacturer, but does not include an automobile manufactured by the person that is exported not later than 30 days after the end of the model year in which the automobile is manufactured.'' [2]

During the 1990s, the agency provided its interpretation of the term ''automobile manufactured by a manufacturer.'' This term is crucial to this rulemaking because a manufacturer earns CAFE credits when the average fuel economy of the ''automobiles manufactured by a manufacturer'' exceeds the applicable CAFE standard for that model year. In response to a 1996 letter from Ford Motor Company seeking clarification with regard to whether vehicles produced by certain corporate affiliates could appropriately be included in its CAFE fleet, the agency reviewed the meaning of the phrase ''automobiles manufactured by a manufacturer,'' which by statute ''includes every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufacturer'' (except those exported within 30 days of the model year). The agency stated:

The term ''control'' a used in 32902(a)(4) is not defined elsewhere in Chapter 329 or the legislative history of the Chapter and its predecessor, the Motor Vehicle Information and Cost Savings Act. In past interpretations the agency has indicated that the term as used in the CAFE context may have the same definition as it has when used in a corporate law context. In the corporate law context, the issue of control is important for determining whether the controlling persons have violated any fiduciary duties to the corporation and other shareholders. Control in that sense refers to ownership of a large enough bloc of a company's stock to constitute effective voting control of the firm.

For the purposes of Chapter 329, control is important for determining a company's corporate average fuel economy and total production. For CAFE purposes, ''control'' is the ability to exercise a major influence over a company's average fuel economy and production. In addition to the ownership of a controlling bloc of stock, control for our purposes could be shown by control over the design and availability of certain models and other factors affecting production, sales mix and technological improvements.

(Letter from John Womack, Acting Chief Counsel, to Timothy Green of Ford Motor Company, dated September 19, 1996).

In sum, the statute provides that a manufacturer may earn credits when its fleet (consisting of every vehicle built by a manufacturer that controls it, is controlled by it or is under common control with it) exceeds the applicable CAFE standard for that model year. The statute anticipates that predecessors and successors will be included and that the Department would define such entities through regulation.

## III. The Notice of Proposed Rulemaking

In January 2001, the agency published its NPRM relating to the rights and responsibilities of manufacturers in light of changes in corporate relationships. The NPRM sought to formalize the agency's position during the Chrysler enforcement action of the early 1990s and addressed a number of corollary issues.

The regulatory text proposed in the NPRM would have made successors responsible for any civil penalties arising out of fuel economy shortfalls

[2] The statutory language relating to predecessors and successor was added to the statute as part of the 1980 amendments. That same set of amendments extended the credit period from one year carry forward and carry back to three years forward and back. Although the phrase ''automobile manufactured by a manufacturer'' was in the statute previously, Congress added the definition of that phrase in 1990. We take all of those definitions and provisions into account in reaching our conclusions in this rulemaking.

incurred by predecessors, as well as any shortfall if the companies had combined within the last model year. Credits in existence at the time the predecessor/successor relationship was established could only be used to satisfy the existing shortfalls of each company prior to the formation of the new corporate structure. Thus, the successor's existing credits could only be used first to satisfy its existing shortfalls and the predecessor's credits could only be used first to satisfy its existing shortfalls. Remaining credits could be used to offset future shortfalls of the new corporate entity.

The proposed regulatory text also addressed companies within control relationships. It suggested that each company coming within a corporate control relationship within a model year should be jointly and severally liable for any CAFE liabilities incurred by any of the other companies coming within the control relationship within that model year. The NPRM then set forth a number of additional ''specifications'' attempting to define, in general terms, the use of credits and incurring of liabilities within control relationships. Each ''specification'' was subject to the agreement of the other manufacturers, the availability of the credits, and other general restrictions.

The proposal presented in the NPRM was built upon the following notion: ''Credits earned by a particular manufacturer are only 'available to be taken into account with respect to the average fuel economy of *that* manufacturer,' for any of the three model years before, or after, the model year in which the credits are earned'' [3] (emphasis added).

NHTSA historically allowed successor manufacturers to use a predecessor's existing credits to satisfy the newly merged corporation's CAFE liabilities acquired after the merger has been finalized. By the same token, successors are generally responsible for predecessors' liabilities, and NHTSA has maintained this is the case under the CAFE program. Thus, the only issue regarding credits in the NPRM was whether a successor is entitled to use the existing CAFE credits of either itself or its predecessors to satisfy the other's existing CAFE liabilities. In the NPRM, the agency tentatively was of the view that the successor could not.

This position was based on two premises, one legal and one policy-driven. First, NHTSA maintained that EPCA established a priority of credit carryover that requires all credits first be used by the manufacturer earning the credits to satisfy its existing CAFE liabilities and before remaining credits are carried forward for use by that same manufacturer. NHTSA then stated that permitting a successor to use its predecessor's remaining credits to satisfy other existing liabilities would permit the remaining credits to be carried forward and then carried back to a manufacturer that did not possess those credits when it incurred the liabilities the credits would satisfy. Although the agency did not conduct a rulemaking as Congress contemplated before taking a view, NHTSA's tentative position since the Chrysler enforcement action has been that the statute does not support such a result.

Second, while recognizing Congress' intent to add flexibility to the CAFE program when amending the statute in 1980, the agency expressed concern that a successor should not be permitted to ''merge'' the CAFE credits of its predecessor companies because it believed that ''permitting such use of credits would discourage energy conservation. For example, to the extent that a successor had been planning to exceed standards in the future to earn credits that could be carried back to cover pre-acquisition shortfalls, permitting the successor to use the predecessor's previously earned credits to cover those shortfalls would remove the incentive to exceed those standards.'' 66 FR 6528.

As noted above, the agency proposed a number of ''specifications'' covering a variety of situations in which questions relating to the use of credits and liabilities might arise. The NPRM proposed the following definitions:

- *Control relationship* means the relationship that exists between manufacturers that control, are controlled by, or are under common control with, one or more other manufacturers.
- *Identity* means the relationship between a predecessor and a successor during the time in which the successor owns 50 percent or more of the assets, based on valuation, that had belonged to the predecessor.
- *Predecessor* means a manufacturer whose rights have been vested in and whose burdens have been assumed by another manufacturer.
- *Successor* means a manufacturer who has become vested with the rights and assumed the burdens of another manufacturer.

As set forth in the NPRM, the definitions of ''successor'' or ''predecessor'' are intended to reflect the ordinary corporate law meaning of those terms.[4]

## IV. Public Comments

The NPRM generated little public comment. Ford Motor Company raised fundamental objections to the definitional approach the agency had taken, pointing out that as applied to certain situations the approach created potentially unfair results inconsistent with the application of general principles of corporate law.

Ford claimed that a successor should not be responsible for all vehicles manufactured by the predecessor for the entire model year (defined as October 1–September 30). The company argued the NPRM would have forced companies to combine fleets before any control relationship had been established. Ford also noted that the NPRM stated its intent to be both simple and faithful to the overall statutory scheme and then argued that the agency had failed to do so. According to Ford, ''NHTSA's proposed rule short-circuits the statute and general principles of corporate successorship in its eagerness to achieve simplicity.''

Ford and DaimlerChrysler also contested the agency's proposed limitations on the use of predecessor's pre-existing CAFE credits. Ford argued: ''[I]n the final analysis, we see no reason why allowing a successor corporation to use pre-existing credits as it sees fit would be contrary to the intent of Congress. Credits are not being double-counted or being used for some improper purpose; no vehicles are being omitted from the CAFE calculations. The only real effect of this proposal would be to increase the likelihood that shortfalls will be subject to fines rather than covered with credits.''

## V. Post-NPRM CAFE Considerations

Since the promulgation of the NPRM, the CAFE program has received considerable analytic attention. Particularly in response to Congressional concerns, studies of the CAFE program have emerged that help us better understand how policy decisions are likely to affect the goal of achieving energy independence.

Congress directed the National Academy of Sciences, in consultation

[3] This language mirrors that in EPCA prior to its codification in 1994. The codification was not intended to have any substantive effect.

[4] The Revised Model Business Corporation Act (at § 11.02), incorporates these general principles by stating that a ''survivor corporation becomes vested with all the assets of the corporation(s)/entity that merged into the survivor and becomes subject to their liabilities.'' The states in which the major motor vehicle makers are incorporated each apply the same concept in their respective statutes. *See, e.g.*, 8 Del.C. § 259 (Delaware), Cal. Corp. Code § 1107(a) (California) and N.J.S.A. 14A:10–6 (New Jersey).

with the Department of Transportation, to evaluate the CAFE program and make recommendations to improve it. The NAS conducted a detailed review of the policies underlying the CAFE program and made recommendations for better achieving those policies. A draft of the NAS Report was available to the Department in June 2001 and the final report was published in January 2002.

The NAS recommended "the CAFE system, or any alternative regulatory system, should include broad trading of fuel economy credits. The committee believes a trading system would be less costly than the current CAFE system; provide more flexibility and options to the automotive companies; give better information on the cost of fuel economy changes to the private sector, public interests groups, and regulators; and provide incentives to all manufacturers to improve fuel economy. Importantly, trading of fuel economy credits would allow for more ambitious fuel economy goals than exist under the current CAFE system, while simultaneously reducing the economic cost of the program."

More recently, the Congressional Budget Office released an issue brief focusing on the economic costs of CAFE standards and comparing them with the costs of a gasoline tax that would reduce gasoline consumption by the same amount. The CBO noted the NAS's finding that enhancing the transfer of credits would encourage the creation of credits because firms able to produce them would be able either to use them as needed or to sell them to other firms. The CBO estimated that fuel economy credit trading could cut the cost of a 3.8 mpg increase in the CAFE standards by 16 percent, down from $3.6 billion per year to $3 billion per year.[5]

**VI. The Final Regulation**

We have considered the issues raised in the NPRM in light of the comments filed by Ford Motor Company and DaimlerChrysler, applicable concepts of corporate law and the policy analyses provided by the National Academy of Sciences and the Congressional Budget Office. We have also reviewed the legislative history and considered the issues with an eye towards the Congressional intent of providing flexibility while enhancing overall fuel efficiency. While this regulation does not directly implicate credit trading, the policy considerations are similar and, as the NPRM suggests, relevant to deciding how best to achieve the overall intent of the CAFE program.

Based on our review and consideration of all this information, we have decided to expand our initial stance on carry back credits so as to allow a successor to use a predecessor's existing credits to satisfy the successor's existing liabilities and vice versa. As proposed in the NPRM, the successor will be liable for all of the predecessor's liabilities and credits not used to satisfy existing liabilities may be used to satisfy subsequent liabilities, consistent with statutory requirements. We have also decided to assess a successor's CAFE assets and liabilities for the full model year during which the corporate merger occurred. In those instances in which the change in corporate relationships did not result in the establishment of a successor/predecessor relationship, but rather in a lesser form of corporate control, the corporations are free to determine which corporation will be responsible for the model year allocation of penalties, as long as they file a contract detailing respective responsibilities with NHTSA prior to the end of the model year.

We no longer find tenable the proposed position we had taken limiting a successor corporation's right to use CAFE credits earned by a predecessor corporation. As indicated above, the proposed position was based on two premises, one policy and one legal. The policy premise was a statement that permitting a successor corporation to use the CAFE credits of its predecessor corporation would not encourage CAFE credit building. Upon further consideration, we do not believe our tentative policy premise regarding incentives to earn additional credits is a valid reason for limiting successor corporations' ability to use CAFE credits earned by a predecessor.

Further, our preliminary legal analysis did not fully consider all the applicable statutory language nor did it apply the general corporate law principles it sought to instill in the definitions. The legal premise was explained in our proposal as an outgrowth of the statutory provision that credits earned by a particular manufacturer are "only available to be taken into account with respect to the average fuel economy of that manufacturer." We proposed to conclude that a successor corporation could not be considered to be that manufacturer with respect to the predecessor corporation, and so the statute would prohibit the successor corporation from using CAFE credits earned by a predecessor corporation to address CAFE shortfalls the successor corporation had before it acquired the predecessor.

We also proposed to define successors and predecessors in accordance with general principles of corporate law. Yet, even while doing so, we proposed a tentative conclusion different than the one that would result from applying those definitions and the same general principles. Under ordinary principles of corporate law, the reference to that manufacturer would not be read as prohibiting a successor from putting itself in the position of a predecessor corporation. Nor did we consider the import of the statutory phrase "automobiles manufactured by a manufacturer" when developing our preliminary analysis.

The agency proposed a reading of the CAFE statute contrary to ordinary principles of corporate law based on our preliminary policy conclusion that permitting the normal application of successor/predecessor principles of corporate law would frustrate the policies underlying the CAFE statute. In such circumstances, the proposed interpretation of the statute was intended to ensure that the underlying policies of the law were effectuated. However, we have now concluded that our policy view as to the impact of our reading of the statute does not in fact further the goals of the CAFE statute. Accordingly, we have no reason to read the CAFE statute in a way that is contrary to general principles of corporate law and we are not doing so in this final regulation.

*A. Definitions*

The NPRM proposed four definitions: Control relationship, Successor, Predecessor and Identity. The comments did not take issue with these definitions, but did object to the agency's proposal regarding the use of credits upon corporate restructurings. As explained in the NPRM, the term "identity" was proposed solely to provide structure to the agency's proposal that credits earned by a company that subsequently becomes part of another should expire and no longer be available to the acquiring manufacturer.

We are adopting in this Final Rule definitions of the terms "successor", "predecessor" and "control relationship" as proposed in the NPRM. As amended in 1980, the EPCA specifically directed the agency to develop regulations to include successors and predecessors within the structure of manufacturer's carry-back and carry-forward CAFE credit plans. The proposed definitions incorporate into that regulatory structure the

[5] The CBO estimated that CAFE standards would need to increase by 3.8 mpg (to 31.3 mpg for passenger cars and 24.5 mpg for light trucks) in order to reduce the amount of gasoline consumed by new vehicles by 10 percent.

common definition of successors and predecessors used in corporate law, providing successors with the rights and burdening them with the liabilities of their predecessors.

We believe it is necessary to define a control relationship because in many instances manufacturers are engaged in the corporate operations of another manufacturer to such an extent that they may have control over vehicle design or production but do not have so much control as to establish the successor/predecessor relationship contemplated under corporate law. We have decided against defining the term ''identity'' because under today's rule, the successor is not limited in using credits generated by the predecessor or in satisfying the predecessor's CAFE liabilities. To the extent a non-successor/predecessor control relationship is established, the allocation of rights and liabilities will be governed by contract.

The Final Rule also includes the following provision to help implement these definitions:

• ''Reporting Corporate Transactions.'' Manufacturers who have entered into written contracts transferring rights and responsibilities such that a different manufacturer owns the controlling stock or exerts control over the design, production or sale of automobiles to which a Corporate Average Fuel Economy standard applies shall report the contract to the agency as follows:

(a) The manufacturers must file a certified report with the agency affirmatively stating that the contract transfers rights and responsibilities between them such that one manufacturer has assumed a controlling stock ownership or control over the design, production or sale of vehicles. The report must also specify the first full model year to which the transaction will apply.

(b) The manufacturers may seek confidential treatment for information provided in the certified report in accordance with 49 CFR Part 512.

*B. CAFE Credits*

1. Legal Considerations

NHTSA has been provided with wide latitude to confer rights and develop constraints within the context of the successor/predecessor relationship. In light of this broad statutory authority, we have determined that our previous interpretation of § 32903 as prohibiting successor corporations from using a predecessor's existing credits to satisfy the successor's existing liability is too narrow.

The fuel economy credit provisions are set forth in 49 U.S.C. 32903, Credits for exceeding average fuel economy standards. Paragraph (a) of this section reads as follows:

> (a) Earning and period for applying credits. When the average fuel economy of passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard under section 32902(b)–(d) of this title (determined by the Secretary of Transportation without regard to credits under this section), the manufacturer earns credits. The credits may be applied to—
>
> (1) Any of the 3 consecutive model years immediately before the model year for which the credits are earned; and
>
> (2) To the extent not used under clause (1) of this subsection, any of the 3 consecutive model years immediately after the model year for which the credits are earned.

The language of the statute suggests that a manufacturer may use credits in any manner it chooses as long as existing liabilities are first satisfied and, potentially, those credits are not sold or otherwise traded to another manufacturer.[6] However, the language of § 32903 changed when the predecessor Motor Vehicle Information and Cost Savings Act, which was codified into § 32903 by Pub. L. 103–272 (July 5, 1994). Section 1(a) of that law stated that the laws being codified were being done so ''without substantive change.'' Therefore, it is appropriate to look to the language of the earlier statute when determining whether Congress intended to compel the agency to further restrict manufacturer use of credits.

Section 502(l)(1)(B) of the Motor Vehicle Information and Cost Savings Act stated:

> Whenever the average fuel economy of the passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard * * *, such manufacturer shall be entitled to a credit calculated under subparagraph (C), which—
>
> (i) Shall be available to be taken into account with respect to the average fuel economy of that manufacturer for any of the three consecutive model years immediately prior to the model year in which such manufacturer exceeds such applicable average fuel economy standard, and
>
> (ii) To the extent that such credit is not so taken into account pursuant to clause (i), shall be available to be taken into account with respect to the average fuel economy of that manufacturer for any of the three consecutive model years immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard.

NHTSA has historically maintained that this language of the Motor Vehicle Information and Cost Savings Act means that a credit earned by a particular manufacturer (or group of related manufacturers) is only available to be taken into account with respect to the average fuel economy of that manufacturer (or group of related manufacturers). In the NPRM (as well as in previous agency articulations of the issue), NHTSA maintained that this language allows only a manufacturer exercising control at the time the credit is earned to use the credit to satisfy a contemporaneous or preexisting liability.

However, support for this position cannot be found in the 1980 amendments to the statute that codified this provision, or indeed to its predecessor language in EPCA. Additionally, this position largely ignores the fact that the 1980 amendments, which adopted not only this language but amended the definition of a manufacturer to include successor/predecessor relationships which were to be defined by NHTSA, were made to increase the degree of manufacturer flexibility while retaining the overall intent of the original statute to promote fuel efficiency. Thus, in defining the terms ''successor'' and ''predecessor'' consistent with Congress' intent at the time, we must look not only to the overarching goal of improving fuel efficiency, but more specifically to the goal of increasing manufacturing flexibility.

CAFE standards were established in 1975 as part of a far-reaching piece of legislation designed to address growing dependency on foreign oil and dwindling domestic petroleum reserves. Congress determined that the best way to encourage the automotive sector to increase the fuel efficiency of its vehicles was to create a system under which manufacturers would be required to meet federally established fuel standards. These standards were to be sufficiently rigorous to promote the development of more fuel efficient vehicles, but not so rigorous as to result in the loss of employment in the automotive sector, then responsible for 1 out of every 9 jobs in the U.S. economy.

As part of that legislation, Congress established a limited credit program in which a manufacturer could earn credits for enhanced fuel efficiency. As part of its enforcement program, the Department of Transportation would determine a manufacturer's liability and

[6] The question as to whether the statute permits credit trading, either between manufacturers or between classes of light trucks, was raised in the agency's Advanced Notice of Proposed Rulemaking exploring CAFE reform options. *See* 68 FR 74908 (December 29, 2003).

then would determine whether the manufacturer had earned any credits the previous year. If so, those credits were to be applied to the liability and penalties would be reduced by existing credits on a one-to-one basis. Any credits not used to satisfy a previous year's liabilities could be retained to meet liabilities incurred in the following year, either as a direct reduction if penalties had not yet been paid, or as a refund.

A manufacturer was defined as ''any person engaged in the business of manufacturing'' and the Secretary of Transportation was ordered to ''prescribe rules for determining, in cases in which more than one person is the manufacturer of an automobile, which person is to be treated as the manufacturer'' 15 U.S.C. 2002 (1976 Ed.).

Five years later, domestic U.S. automobile manufacturers were in the midst of financial difficulties and one major manufacturer, Chrysler, was on the verge of bankruptcy. Congress decided the CAFE program needed to be amended so as to provide vehicle manufacturers with greater flexibility, thus decreasing the likelihood of layoffs in the automotive sector, while generally retaining the program's commitment to increased fuel efficiency.

As part of the 1980 amendments, Congress took several steps to increase manufacturer flexibility. First, it allowed low-volume manufacturers to request alternative CAFE standards for two or more years and exempted them from reporting requirements. Second, it provided additional flexibility in the CAFE standards for foreign manufacturers so as to encourage them to expand manufacturing operations into the U.S. Finally, and most importantly for this discussion, it provided manufacturers with greater flexibility in achieving CAFE standards in any particular year by allowing manufacturers to earn credits that could be used to offset liabilities incurred up to three years before and three years after the credits were earned.

Manufacturers without credits that discovered they were likely to end the model year with a shortfall were permitted to file a plan with NHTSA demonstrating how they would make up any shortfall within three years. Unless the plan was deemed unreasonable, NHTSA was to approve the plan, and penalties were deferred until the plan failed to produce the anticipated credits. As part of this legislation, the term ''manufacturer'' was amended to ''include[s] any predecessor or successor of such a manufacturer to the extent provided under rules which the Secretary shall prescribe.''

Under the scheme proposed in the NPRM, a successor's use of the CAFE credits of its predecessor corporations would be limited, placing a significant constraint on manufacturer flexibility. Yet, the successor would be held responsible for any CAFE liabilities of its predecessor companies. A successor corporation could well find itself responsible for previously incurred CAFE obligations, but without previously earned CAFE credits. Despite the statutory language, a ''manufacturer'' would no longer include the concept of successor and predecessor corporations as generally defined in corporate law. Instead, it would be subject to a different set of rules applicable only in the context of the CAFE program.

Further, the preliminary analysis set forth in the NPRM focused only on the statutory term ''manufacturer,'' but did not give due consideration to the import of the statutory term ''automobiles manufactured by a manufacturer.'' This latter term is the fulcrum of determining the CAFE performance of a particular vehicle fleet and, by statute, incorporates any vehicle manufactured by a manufacturer in a control relationship with another manufacturer. By definition, then, the statute anticipates including in a manufacturer's fleet vehicles sold by manufacturers other than the particular corporate entity that produced or sold the vehicle when there is a control relationship.

We believe it is unlikely that Congress expected the agency to develop a scheme under which there is no incentive to earn credits other than to make up for existing shortfalls. Nor is it a policy encouraging the development and sale of vehicle fleets exceeding applicable CAFE standards.

Indeed, as discussed above, Congress adopted amendments to the CAFE statute to provide for three-year carry-forward and carry-back compliance plans using credits to offset liabilities expressly to give manufacturers additional flexibility. Rather, it is more likely that Congress was well aware when it enacted provisions to extend CAFE credit planning that compliance with CAFE standards was premised on the fleet of ''automobiles manufactured by a manufacturer,'' and further that any individual fleet would include vehicles manufactured by companies in various control relationships. Congress chose to provide additional flexibility to manufacturers to meet CAFE standards while maintaining the ability of a manufacturer in a control relationship to calculate its corporate average fuel economy with regard to the automobiles sold by companies within that control relationship.

2. Policy Considerations

The NPRM was premised on the agency's preliminary belief that tight constraints on existing credits are necessary to encourage vehicle fleets to exceed applicable CAFE standards. The agency reasoned that allowing the transfer of CAFE credits as part of a corporate merger would not encourage good CAFE performance. Indeed, the agency believed that permitting the transfer of CAFE credits would discourage the development and sale of more fuel-efficient vehicles.

The NPRM offered the following example: ''To the extent that a successor had been planning to exceed standards in the future to earn credits that could be carried back to cover pre-acquisition shortfalls, permitting the successor to use the predecessor's previously earned credits to cover those shortfalls would remove the incentive to exceed those standards.'' 66 FR 6528. It did not, however, consider the incentive to companies to exceed standards in order to gain assets valuable to potential investors and acquirers.

The agency issued the NPRM without the benefit of the policy input and economic analysis developed during the NAS's review of the CAFE program. The NAS study is instructive in that it raises the prospect that treating credits as an asset that is potentially of value to others provides an increased incentive to create the asset. The preliminary conclusions stated in the NPRM did not consider that a successor company's ability to use CAFE credits might create valuable assets enhancing the value of a corporation to another.

In the NPRM, the agency only considered the prospect encountered in the earlier Chrysler enforcement action, *i.e.,* the successor possesses a shortfall that the predecessor's credits can alleviate. It did not consider the reverse situation in which a credit-rich manufacturer is acquiring a predecessor with sizeable CAFE liability. Ford raised this scenario in its comments. Ford offered the following example:

> If A, whose fleet is CAFE-positive, acquires B, whose fleet is CAFE-negative, it may not be possible for A to generate sufficient credits in the next three years to cover B's pre-existing shortfalls. A's product plans for the next three model years are basically set, and there is little A can do in the short term to improve its CAFE performance. Nor can A do anything to change B's CAFE-negative past. As a result, A may have no choice but to address B's shortfall by paying a fine—even

though A may have enough past credits to offset B's past shortfall. This outcome may add to the coffers of the U.S. Treasury, but it unfairly penalizes A and does nothing to serve CAFE's overall purpose of promoting energy conservation.

While Ford expressed its concerns in terms of equity, we believe the ability of a successor corporation to use its existing credits actually has the potential to encourage greater fuel efficiency. That is to say, a manufacturer has an incentive to earn credits above and beyond its actual need because a credit-rich manufacturer can use excess credits to reduce the cost of merging with an otherwise attractive manufacturer that is laden with CAFE liabilities.

The concern expressed in the NPRM was also premised on the notion that allowing a successor corporation to use credits by one of its predecessors to offset the liabilities of any other predecessor amounted to trading credits between manufacturers. This concern was premised on a preliminary belief that allowing a successor to use within the control relationship the credits earned by one of its constituent parts would ''retroactively'' apply credits to a ''manufacturer'' that did not earn them.

After reviewing the comments and applicable corporate law, we find that acknowledging the purchase and sale of corporate assets, including CAFE credits, or corporate liabilities, including CAFE obligations, does not amount to trading credits between manufacturers. Nor does it imply any retroactive application of credits. At any particular point of time, CAFE responsibility is gauged in accordance with the corporate structure in existence at that time.

If a company purchases the assets and liabilities of another manufacturer, in accordance with the contract between them, the successor manufacturer may be entitled to use the assets of its constituent parts as one company. If the successor has purchased the assets and liabilities of its constituent parts, it is entitled (consistent with its contract) to use those assets and liabilities to address the responsibilities of the company as they exist as of that time. For example, if Company A has CAFE liability in Year 1 and purchases the assets and liabilities of Company B midway through Year 2, combined Company C's assets and liabilities for CAFE purposes are determined with regard to its position, in terms of its CAFE responsibilities, as of Year 3. If the contract provides, combined Company C incurs all the liabilities and is entitled to all of the assets of its predecessor corporations. If within the three-year carry-forward carry-back time frame, the company is responsible for the liabilities and may use the credits applicable to the corporation as a whole.

Consistent with the express statutory terms construing a manufacturer's corporate average fuel economy in terms of the ''automobiles manufactured by a manufacturer,'' and consistent with general principles of corporate law, a successor corporation is entitled to use the assets and is responsible for the liabilities of its predecessor corporations as defined by their contractual relations. This includes the rights and responsibilities of companies in a position of control over, or who are controlled by, another corporation.

Our purpose, as set forth in the NPRM, is to encourage CAFE compliance in the vehicle fleet as a whole to reduce consumption of gasoline and to enhance the nation's energy independence. We now believe that the ability of successor corporations to use more freely the CAFE credits earned by each of their predecessor corporations enhances the value of those companies to others. And, perhaps more compelling, the ability of a successor corporation to use its own credits to satisfy the liabilities of a predecessor provides the successor with a valuable mechanism to reduce the overall cost of the acquisition. Thus, the effect of today's rule is to encourage companies on the one hand to maximize the number of credits it earns and on the other to join in corporate structures that help advance overall fleet fuel economy.

The NPRM also addressed other types of changes in corporate relationships, including the potential for corporate relations to dissolve. We believe our regulation properly addresses such dissolutions by focusing on the contractual agreements and by applying (as suggested in the NPRM) general principles of corporate law. Thus, we have included in the Final Rule a provision simply stating that dissolutions—like combinations—are subject to contractual agreements and should be available for use consistent with general principles of corporate law. We have, therefore, simplified the final regulation without altering the basic policy underlying the need to enhance energy independence.

*C. Acquisitions During a Model Year*

In the NPRM, we proposed to specify that ''(i)f one manufacturer becomes the successor of another manufacturer during a model year, all of the vehicles produced by those manufacturers during the model year are treated as though they were manufactured by the same manufacturer.'' The proposed specification also provided that ''(a) manufacturer is considered to have become the successor of another manufacturer during a model year if it is the successor on September 30 of the corresponding calendar year and was not the successor for the preceding model year.''

Ford argued that the proposed specification ''is clearly inconsistent with the CAFE statute.'' It noted that, as currently codified, 49 U.S.C. 32901(4) defines the term ''automobile manufactured by a manufacturer'' as including every automobile manufactured by a person that controls, is controlled by, or is under common control with a manufacturer * * *''

Ford argued that a problem with NHTSA's proposed rule is that it forces manufacturers to combine fleets before any control relationship has even been established. It cited the example of A's acquiring or taking control of B on August 1, 2002. Under the proposed rule, the fleets of A and B would be combined for all of model year 2002. However, Ford argued that it is improper to force A to include in its model year 2002 fleet a vehicle produced by B on October 2001.

Ford noted the agency's statement that fuel economy standards must apply to ''particular model years as a whole'' and not to ''separate parts of a model year.'' It stated that the agency is worried that, absent such a provision, ''one or both manufacturers would have two separate CAFE values * * * for the same model year.'' Ford claimed this is an implausible assumption. According to Ford, simply put, both manufacturers would file CAFE reports; manufacturer A would include those models produced after ''control'' was established and manufacturer B would include those vehicles produced before ''control'' was established. This would be the case even if B ceased to exist after the ''control'' date.

That company argued that a scheme which pretends that Manufacturer A ''controls'' Manufacturer B for an entire model year, even though the actual control relationship existed only for the last two months (or even the very last day) of that model year, is contrary to the statutory scheme. Ford argued that in setting up the ''control'' criterion, Congress intended to count in a manufacturer's CAFE fleet only those vehicles for which the manufacturer could fairly be held responsible. Ford argued that the fairest and most transparent way to address the issue is to have A take responsibility for only those vehicles produced by B after the control relationship is established.

We disagree. First, CAFE compliance and any remaining obligations are based on the total volume of vehicles sold during the course of the model year and are not determined until the end of the model year. (49 U.S.C. 32903(b)(1)) No administrative mechanism currently exists to separate CAFE compliance to account for mid-year changes in corporate relationships and we see no need to craft one. Under today's rule, an acquiring corporation inherits all CAFE liabilities and credits of the predecessor corporation for a period dating back three years. These assets and liabilities would be considered by both parties when negotiating the transfer of corporate interests, as would any assets and liabilities.

Accordingly, we do not believe that the successor corporation is in any way injured by the existing administrative structure. A successor corporation may, upon acquisition, take steps to mitigate any projected CAFE shortfall for its total fleet for that model year, including filing a plan to make up any shortfalls within the next three model years. Given today's determination that a predecessor's CAFE liabilities need not be satisfied solely through the payment of penalties, there is no imposition of an unreasonable burden.

Further, to ensure that the agency properly allocates CAFE credits and liabilities to the appropriate manufacturer in accordance with their corporate transaction, we have decided to include in the regulation a provision similar to that used in many of our Federal Motor Vehicle Safety Standards (FMVSS). New or upgraded FMVSS often include a ''phase-in'' schedule during which the standard becomes applicable to an increasing percentage of each manufacturer's new vehicle fleet. The agency has accounted for corporate transactions in this context by providing that a vehicle will be attributable as between manufacturers in accordance with express written contracts submitted to NHTSA. (*See, e.g.,* FMVSS 225 § 14.2.2 and 49 CFR part 596.6(b)(3)).

We have included a similar provision in this Final Rule to help the agency identify when a corporate transaction has resulted in the transfer of rights and responsibilities between manufacturers. To effect the corporate transaction, manufacturers are to submit a certified report to the agency stating that the transaction has or will transfer controlling stock interest or otherwise vest a new corporate entity with control over the design, production or sales of automobiles manufactured by another manufacturer.

Likewise, to the extent that a group of manufacturers within a control relationship allocates the group's CAFE credits and liabilities among the manufacturers within the group, the group of manufacturers shall file a copy of the agreement controlling the allocation at the end of each model year. In this way, NHTSA will be better able to administer its CAFE compliance program. All manufacturers in a control relationship shall be jointly and severally liable for any CAFE liabilities that are not collected from the manufacturer allocated responsibility for those liabilities.

## VII. Rulemaking Analyses and Notices

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document is not economically significant. It was reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has been determined to be significant under the Department's regulatory policies and procedures, given the public interest in the automotive fuel economy program.

The new regulation does not create any new obligations, other than the obligation to file with NHTSA evidence of a contractual relationship allocating CAFE credits and liabilities among various parties exercising control over the manufacture of a fleet of vehicles. It expands upon the same positions concerning predecessors and successors as we have previously taken in interpretation letters by permitting existing credits to be used to satisfy the existing liabilities of either party to a transaction establishing a successor/predecessor relationship.

As discussed earlier in this notice, if we did not adopt regulations governing the use of CAFE credits by predecessors and successors, a predecessor's unused credits would simply expire, since the only manufacturer that could use them would no longer exist. Similarly, there would be no way of offsetting a predecessor's remaining CAFE shortfalls in the absence of some provision concerning successors. The successor would thus be required to pay the predecessor's penalties, a responsibility which it assumed with the rest of the predecessor's obligations, but would have no ability to earn future credits to offset the predecessor's shortfalls.

To address this inequity, the regulation gives the successor all the rights the predecessor had with respect to the use of preexisting credits and the ability to earn future credits.

The provisions concerning the rights and responsibilities of manufacturers in other situations in which there have been changes in corporate relationships, *e.g.,* changes in control, are essentially a statement of our interpretation of the statute and reflect the same principles as the provisions relating to predecessors and successors.

### *B. Regulatory Flexibility Act*

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I hereby certify that proposed rule does not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. As discussed above, the regulation does not create any new obligations but simply adopts the same positions concerning predecessors and successors as we have previously taken in interpretation letters. Similarly, the provisions concerning the rights and responsibilities of manufacturers in other situations in which there have been changes in corporate relationships, *e.g.,* changes in control, are essentially a statement of our interpretation of the statute and reflect the same principles as the provisions relating to predecessors and successors. Moreover, as a practical matter, the acquiring corporations most likely to be affected by this regulation are not small businesses.

### *C. National Environmental Policy Act*

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act and determined that it does not have any significant impact on the quality of the human environment.

### *D. Executive Order 13132 (Federalism)*

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule has no substantial effects on the States, or on the current Federalism-State relationship, or on the current distribution of power and responsibilities among the various local officials.

### *E. Unfunded Mandates Act*

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). The rule does not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

*F. Executive Order 12778 (Civil Justice Reform)*

This rule does not have any retroactive effect. However, as we noted in the NPRM, we would, as a practical matter, consider the regulation in any enforcement action regarding predecessors and successors that involved conduct that occurred before the regulation became effective.

As discussed earlier, the regulation does not create any new obligations but expands the same positions concerning predecessors and successors as we have previously taken in interpretation letters and have previously applied in our administration of the statute. If we did not adopt special provisions governing the use of CAFE credits by predecessors and successors, a predecessor's unused credits would simply expire, since the only manufacturer that could use them would no longer exist. Similarly, there would be no way of offsetting a predecessor's remaining CAFE shortfalls in the absence of some provision concerning successors.

The rule addresses this inequity and gives the successor all the rights the predecessor had with respect to credits.

We would similarly consider the regulation in any enforcement action regarding other situations in which there have been changes in corporate relationships, *e.g.*, changes in control, that involved conduct that occurred before the regulation became effective. However, the provisions are essentially a statement of our interpretation of the statute.

States are preempted from promulgating laws and regulations contrary to the provisions of this rule. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

*G. Paperwork Reduction Act*

The agency has prepared the necessary paperwork under the Paperwork Reduction Act and submitted it to the Office of Management and Budget. PRA clearance is necessary because the final regulation includes a provision requiring the submission of agreements between companies in certain circumstances.

*H. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

*I. Executive Order 13045*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This regulatory action does not meet either of those criteria.

*J. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [7] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. This requirement is not relevant to this rulemaking action.

**List of Subjects in 49 CFR Part 534**

Fuel economy, Motor vehicles.

■ In consideration of the foregoing, chapter V of title 49 of the Code of Federal Regulations is amended by adding a new Part 534 to read as follows:

## PART 534—RIGHTS AND RESPONSIBILITIES OF MANUFACTURERS IN THE CONTEXT OF CHANGES IN CORPORATE RELATIONSHIPS



**Authority:** 49 U.S.C. 32901; delegation of authority at 49 CFR 1.50.

### § 534.1 Scope.

This part defines the rights and responsibilities of manufacturers in the context of changes in corporate relationships for purposes of the automotive fuel economy program established by 49 U.S.C. Chapter 329.

### § 534.2 Applicability.

This part applies to manufacturers of passenger automobiles and non-passenger automobiles.

### § 534.3 Definitions.

(a) *Statutory definitions and terms.* All terms used in 49 U.S.C. Chapter 329 are used according to their statutory meaning.

(b) As used in this part—

''Control relationship'' means the relationship that exists between manufacturers that control, are controlled by, or are under common control with, one or more other manufacturers.

''Predecessor'' means a manufacturer whose rights have been vested in and whose burdens have been assumed by another manufacturer.

''Successor'' means a manufacturer that has become vested with the rights and assumed the burdens of another manufacturer.

### § 534.4 Successors and predecessors.

For purposes of the automotive fuel economy program, ''manufacturer'' includes ''predecessors'' and ''successors'' to the extent specified in paragraphs (a) through (d) of this section.

(a) Successors are responsible for any civil penalties that arise out of fuel economy shortfalls incurred and not satisfied by predecessors.

(b) If one manufacturer has become the successor of another manufacturer during a model year, all of the vehicles produced by those manufacturers during the model year are treated as though they were manufactured by the same manufacturer. A manufacturer is considered to have become the successor of another manufacturer during a model year if it is the successor on September 30 of the corresponding calendar year and was not the successor for the preceding model year.

(c) Credits earned by a predecessor may be used by a successor, subject to availability of the credits and the general three-year restriction on carrying credits forward and the general

[7] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

three-year restriction on carrying credits backward.

(d) Credits earned by a successor may be used to offset a predecessor's shortfall, subject to availability of the credits and the general three-year restriction on carrying credits backward.

#### § 534.5 Manufacturers within control relationships.

(a) If a civil penalty arises out of a fuel economy shortfall incurred by a group of manufacturers within a control relationship, each manufacturer within that group is jointly and severally liable for the civil penalty.

(b) A manufacturer is considered to be within a control relationship for an entire model year if and only if it is within that relationship on September 30 of the calendar year in which the model year ends.

(c) Credits of a manufacturer within a control relationship may be used by the group of manufacturers within the control relationship to offset shortfalls, subject to the agreement of the other manufacturers, the availability of the credits, and the general three-year restriction on carrying credits forward or backward.

(d) If a manufacturer within a group of manufacturers is sold or otherwise spun off so that it is no longer within that control relationship, the manufacturer may use credits that were earned by the group of manufacturers within the control relationship while the manufacturer was within that relationship, subject to the agreement of the other manufacturers, the availability of the credits and the general restriction on carrying credits forward or backward.

(e) Agreements among manufacturers in a control relationship related to the allocation of credits or liabilities addressed by this section shall be filed with the agency within 60 days of the end of each model year in the same form as specified in section 534.6. The manufacturers may seek confidential treatment for information provided in the certified report in accordance with 49 CFR Part 512.

#### § 534.6 Reporting corporate transactions.

Manufacturers who have entered into written contracts transferring rights and responsibilities such that a different manufacturer owns the controlling stock or exerts control over the design, production or sale of automobiles to which a Corporate Average Fuel Economy standard applies shall report the contract to the agency as follows:

(a) The manufacturers must file a certified report with the agency affirmatively stating that the contract transfers rights and responsibilities between them such that one manufacturer has assumed a controlling stock ownership or control over the design, production or sale of vehicles. The report must also specify the first full model year to which the transaction will apply.

(b) Each report shall—

(i) Identify each manufacturer;

(ii) State the full name, title, and address of the official responsible for preparing the report;

(iii) Identify the production year being reported on;

(iv) Be written in the English language; and

(v) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(c) The manufacturers may seek confidential treatment for information provided in the certified report in accordance with 49 CFR part 512.

#### § 534.7 Situations not directly addressed by this part.

To the extent that this part does not directly address an issue concerning the rights and responsibilities of manufacturers in the context of a change in corporate relationships, the agency will make determinations based on interpretation of the statute and the principles reflected in the part.

Issued on: December 20, 2004.

**Jeffrey W. Runge,**

*Administrator.*

[FR Doc. 04–28237 Filed 12–27–04; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 300

**[I.D. 122104C]**

## Notification of U.S. Fish Quotas and an Effort Allocation in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area

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

**ACTION:** Final rule; notification of U.S. fish quotas and an effort allocation.

**SUMMARY:** NMFS announces that fish quotas and an effort allocation are available for harvest by U.S. fishermen in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area. This action is necessary to make available to U.S. fishermen a fishing privilege on an equitable basis.

**DATES:** All fish quotas and the effort allocation are effective January 1, 2005, through December 31, 2005. Expressions of interest regarding U.S. fish quota allocations for all species except 3L shrimp will be accepted throughout 2005. Expressions of interest regarding the U.S. 3L shrimp quota allocation and the 3M shrimp effort allocation will be accepted through January 12, 2005.

**ADDRESSES:** Expressions of interest regarding the U.S. effort allocation and quota allocations should be made in writing to Patrick E. Moran in the NMFS Office of Sustainable Fisheries, at 1315 East-West Highway, Silver Spring, MD 20910 (phone: 301–713–2276, fax: 301–713–2313, e-mail: *pat.moran@noaa.gov*).

Information relating to NAFO fish quotas, NAFO Conservation and Enforcement Measures, and the High Seas Fishing Compliance Act (HSFC) Permit is available from Sarah McLaughlin, at the NMFS Northeast Regional Office at One Blackburn Drive, Gloucester, Massachusetts 01930 (phone: 978–281–9279, fax: 978–281–9135, e-mail: *Sarah.McLaughlin@noaa.gov*) and from NAFO on the World Wide Web at *http://www.nafo.ca*.

**FOR FURTHER INFORMATION CONTACT:** Patrick E. Moran, 301–713–2276.

**SUPPLEMENTARY INFORMATION:**

### Background

NAFO has established and maintains conservation measures in its Regulatory Area that include one effort limitation fishery as well as fisheries with total allowable catches (TACs) and member nation quota allocations. The principal species managed are cod, flounder, redfish, American plaice, halibut, capelin, shrimp, and squid. At the 2004 NAFO Annual Meeting, the United States received fish quota allocations for three NAFO stocks and an effort allocation for one NAFO stock to be fished during 2005. The species, location, and allocation (in metric tons or effort) of these U.S. fishing opportunities, as found in Annexes I.A, I.B, and I.C of the 2005 NAFO Conservation and Enforcement Measures, are as follows:

| | | |
|---|---|---|
| (1) Redfish | NAFO Division 3M | 69 mt |
| (2) Squid (*Illex*) | NAFO Subareas 3 & 4 | 453 mt |
| (3) Shrimp | NAFO Division 3L | 144 mt |
| (4) Shrimp | NAFO Division 3M | 1 vessel/ 100 days |

Additionally, U.S. vessels may be authorized to fish any available portion