

dural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(c) Nothing in this memorandum shall be construed to impair or otherwise affect:

(1) authority granted by law to a department, agency, or the head thereof; or

(2) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

SEC. 5. Publication.

The Secretary of Transportation is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 32903. Credits for exceeding average fuel economy standards

(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 subsections (a) through (d) of section 32902 (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 paragraph (1)¹ any of the 5 consecutive model years immediately after the model year for which the credits are earned.

(b) PERIOD OF AVAILABILITY AND PLAN FOR FUTURE CREDITS.—(1) Except as provided in paragraph (2) of this subsection, credits under this section are available to a manufacturer at the end of the model year in which earned.

(2)(A) Before the end of a model year, if a manufacturer has reason to believe that its average fuel economy for passenger automobiles will be less than the applicable standard for that model year, the manufacturer may submit a plan to the Secretary of Transportation demonstrating that the manufacturer will earn sufficient credits under this section within the next 3 model years to allow the manufacturer to meet that standard for the model year involved. Unless the Secretary finds that the manufacturer is unlikely to earn sufficient credits under the plan, the Secretary shall approve the plan. Those credits are available for the model year involved if—

(i) the Secretary approves the plan; and

(ii) the manufacturer earns those credits as provided by the plan.

(B) If the average fuel economy of a manufacturer is less than the applicable standard under subsections (a) through (d) of section 32902 after applying credits under subsection (a)(1) of this section, the Secretary of Transportation shall notify the manufacturer and give the manufacturer a reasonable time (of at least 60 days) to submit a plan.

(c) DETERMINING NUMBER OF CREDITS.—The number of credits a manufacturer earns under this section equals the product of—

(1) the number of tenths of a mile a gallon by which the average fuel economy of the passenger automobiles manufactured by the manufacturer in the model year in which the credits are earned exceeds the applicable average fuel economy standard under subsections (a) through (d) of section 32902; times

(2) the number of passenger automobiles manufactured by the manufacturer during that model year.

(d) APPLYING CREDITS FOR PASSENGER AUTOMOBILES.—The Secretary of Transportation shall apply credits to a model year on the basis of the number of tenths of a mile a gallon by which the manufacturer involved was below the applicable average fuel economy standard for that model year and the number of passenger automobiles manufactured that model year by the manufacturer. Credits applied to a model year are no longer available for another model year. Before applying credits, the Secretary shall give the manufacturer written notice and reasonable opportunity to comment.

(e) APPLYING CREDITS FOR NON-PASSENGER AUTOMOBILES.—Credits for a manufacturer of automobiles that are not passenger automobiles are earned and applied to a model year in which the average fuel economy of that class of automobiles is below the applicable average fuel economy standard under section 32902(a) of this title, to the same extent and in the same way as provided in this section for passenger automobiles.

(f) CREDIT TRADING AMONG MANUFACTURERS.—

(1) IN GENERAL.—The Secretary of Transportation may establish, by regulation, a fuel economy credit trading program to allow manufacturers whose automobiles exceed the average fuel economy standards prescribed under section 32902 to earn credits to be sold to manufacturers whose automobiles fail to achieve the prescribed standards such that the total oil savings associated with manufacturers that exceed the prescribed standards are preserved when trading credits to manufacturers that fail to achieve the prescribed standards.

(2) LIMITATION.—The trading of credits by a manufacturer to the category of passenger automobiles manufactured domestically is limited to the extent that the fuel economy level of such automobiles shall comply with the requirements of section 32902(b)(4), without regard to any trading of credits from other manufacturers.

(g) CREDIT TRANSFERRING WITHIN A MANUFACTURER'S FLEET.—

(1) IN GENERAL.—The Secretary of Transportation shall establish by regulation a fuel economy credit transferring program to allow any manufacturer whose automobiles exceed any of the average fuel economy standards prescribed under section 32902 to transfer the credits earned under this section and to apply such credits within that manufacturer's fleet to a compliance category of automobiles that fails to achieve the prescribed standards.

(2) YEARS FOR WHICH USED.—Credits transferred under this subsection are available to be used in the same model years that the manufacturer could have applied such credits

¹ So in original. Probably should be followed by a comma.

under subsections (a), (b), (d), and (e), as well as for the model year in which the manufacturer earned such credits.

(3) **MAXIMUM INCREASE.**—The maximum increase in any compliance category attributable to transferred credits is—

(A) for model years 2011 through 2013, 1.0 mile per gallon;

(B) for model years 2014 through 2017, 1.5 miles per gallon; and

(C) for model year 2018 and subsequent model years, 2.0 miles per gallon.

(4) **LIMITATION.**—The transfer of credits by a manufacturer to the category of passenger automobiles manufactured domestically is limited to the extent that the fuel economy level of such automobiles shall comply with the requirements under section 32904(b)(4), without regard to any transfer of credits from other categories of automobiles described in paragraph (6)(B).

(5) **YEARS AVAILABLE.**—A credit may be transferred under this subsection only if it is earned after model year 2010.

(6) **DEFINITIONS.**—In this subsection:

(A) **FLEET.**—The term “fleet” means all automobiles manufactured by a manufacturer in a particular model year.

(B) **COMPLIANCE CATEGORY OF AUTOMOBILES.**—The term “compliance category of automobiles” means any of the following 3 categories of automobiles for which compliance is separately calculated under this chapter:

(i) Passenger automobiles manufactured domestically.

(ii) Passenger automobiles not manufactured domestically.

(iii) Non-passenger automobiles.

(h) **REFUND OF COLLECTED PENALTY.**—When a civil penalty has been collected under this chapter from a manufacturer that has earned credits under this section, the Secretary of the Treasury shall refund to the manufacturer the amount of the penalty to the extent the penalty is attributable to credits available under this section.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1061; Pub. L. 110–140, title I, §104(a), Dec. 19, 2007, 121 Stat. 1501.)

section” are omitted because 15:2002(d) is omitted from the revised title as executed. The words “calculated under subparagraph (C)” (which apparently should be “calculated under subparagraph (D)”) are omitted as surplus. In clauses (1) and (2), the words “with respect to the average fuel economy of that manufacturer” are omitted as surplus. The words “year for which the credits are earned” are substituted for “year in which such manufacturer exceeds such applicable average fuel economy standard” to eliminate unnecessary words.

Subsection (b)(1) is substituted for 15:2002(l)(1)(A) to eliminate unnecessary words.

In subsection (b)(2)(A) is substituted for 15:2002(l)(1)(C)(i)–(iii) to eliminate unnecessary words.

In subsection (e), the words “as provided in this section for passenger automobiles” are substituted for “as provided for under paragraph (1)” for clarity. The text of 15:2002(l)(2) (last sentence) is omitted as expired.

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–140, §104(a)(1), substituted “subsections (a) through (d) of section 32902” for “section 32902(b)–(d) of this title” in introductory provisions.

Subsec. (a)(2). Pub. L. 110–140, §104(a)(2), substituted “paragraph (1)” for “clause (1) of this subsection,” and “5 consecutive” for “3 consecutive”.

Subsecs. (b)(2)(B), (c)(1). Pub. L. 110–140, §104(a)(1), substituted “subsections (a) through (d) of section 32902” for “section 32902(b)–(d) of this title”.

Subsecs. (f) to (h). Pub. L. 110–140, §104(a)(3), (4), added subsecs. (f) and (g) and redesignated former subsec. (f) as (h).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

§ 32904. Calculation of average fuel economy

(a) **METHOD OF CALCULATION.**—(1) The Administrator of the Environmental Protection Agency shall calculate the average fuel economy of a manufacturer subject to—

(A) section 32902(a) of this title in a way prescribed by the Administrator; and

(B) section 32902(b)–(d) of this title by dividing—

(i) the number of passenger automobiles manufactured by the manufacturer in a model year; by

(ii) the sum of the fractions obtained by dividing the number of passenger automobiles of each model manufactured by the manufacturer in that model year by the fuel economy measured for that model.

(2)(A) In this paragraph, “electric vehicle” means a vehicle powered primarily by an electric motor drawing electrical current from a portable source.

(B) If a manufacturer manufactures an electric vehicle, the Administrator shall include in the calculation of average fuel economy under paragraph (1) of this subsection equivalent petroleum based fuel economy values determined by the Secretary of Energy for various classes of electric vehicles. The Secretary shall review those values each year and determine and propose necessary revisions based on the following factors:

(i) the approximate electrical energy efficiency of the vehicle, considering the kind of vehicle and the mission and weight of the vehicle.

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
32903(a)	15:2002(l)(1)(B), (4).	Oct. 20, 1972, Pub. L. 92–513, 86 Stat. 947, §502(l); added Oct. 10, 1980, Pub. L. 96–425, §6(b), 94 Stat. 1826.
32903(b)(1) ..	15:2002(l)(1)(A).	
32903(b)(2) ..	15:2002(l)(1)(C).	
32903(c)	15:2002(l)(1)(D).	
32903(d)	15:2002(l)(1)(E).	
32903(e)	15:2002(l)(2).	
32903(f)	15:2002(l)(3).	

In this section, various forms of the words “apply credits” are substituted for various forms of “credits are available to be taken into account” to be more concise and to make more clear the distinction between when credits are available and to what years they may be applied.

In subsection (a), before clause (1), the text of 15:2002(l)(4) is omitted as surplus because of 49:322(a). The words “any adjustment under subsection (d) of this