

applicable vehicles or engines in accordance with 40 CFR part 1036, subpart C, and 40 CFR part 1037, subpart C.

(1) Each joint agreement must—

(i) Define how each manufacturer shares responsibility for the planned vehicles or engines.

(ii) Specify which manufacturer(s) will be responsible for the EPA certificates of conformity;

(iii) Describe the planned vehicles and engines in terms of the model types, production volumes, and model years (if known);

(iv) Describe which manufacturer(s) have engineering and design control and sale distribution ownership over the vehicles and/or engines; and

(v) Include signatures from all parties involved in the shared corporate relationship.

(2) After defining the shared relationship between the manufacturers, any contractual changes must be notified to EPA and NHTSA before the next model year's production of the applicable vehicles or engines begins.

(3) Multiple manufacturers must designate the same shared responsibility for complying with fuel consumption standards as selected for GHG standards unless otherwise allowed by EPA and NHTSA.

(b) NHTSA and EPA reserve the right to reject the joint agreement.

[81 FR 74237, Oct. 25, 2016]

PART 535—MEDIUM- AND HEAVY-DUTY VEHICLE FUEL EFFICIENCY PROGRAM

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AUTHORITY: 49 U.S.C. 32902 and 30101; delegation of authority at 49 CFR 1.95.

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§ 535.1 Scope.

This part establishes fuel consumption standards pursuant to 49 U.S.C. 32902(k) for work trucks and commercial medium- and heavy-duty on-highway vehicles, including trailers (hereafter referenced as heavy-duty vehicles), and engines manufactured for sale in the United States. This part establishes a credit program manufacturers may use to comply with standards and requirements for manufacturers to provide reports to the National Highway Traffic Safety Administration regarding their efforts to reduce the fuel consumption of heavy-duty vehicles and engines.

§ 535.2 Purpose.

The purpose of this part is to reduce the fuel consumption of new heavy-duty vehicles and engines by establishing maximum levels for fuel consumption standards while providing a flexible credit program to assist manufacturers in complying with standards.

§ 535.3 Applicability.

(a) This part applies to manufacturers that produce complete and incomplete heavy-duty vehicles as defined in 49 CFR part 523, and to the manufacturers of all heavy-duty engines manufactured for use in the applicable vehicles for each given model year.

(b) This part also applies to alterers, final stage manufacturers, and intermediate manufacturers producing vehicles and engines or assembling motor vehicles or motor vehicle equipment under special conditions. Manufacturers comply with this part by following the special conditions in 40 CFR 1037.620, 1037.621, and 1037.622 in which EPA allows manufacturer to:

(1) Share responsibility for the vehicles they produce. Manufacturers sharing responsibility for complying with emissions and fuel consumption standards must submit to the agencies a joint agreement as specified in 49 CFR 534.8(a);

(2) Have certificate holders sell or ship vehicles that are missing certain emission-related components to be installed by secondary vehicle manufacturers;

(3) Ship partially complete vehicles to secondary manufacturers;

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(4) Build electric vehicles; and
(5) Build alternative fueled vehicles from all types of heavy duty engine conversions. The conversion manufacturer must:

(i) Install alternative fuel conversion systems into vehicles acquired from vehicle manufacturers prior to first retail sale or prior to the vehicle's introduction into interstate commerce.

(ii) Be designated by the vehicle manufacturer and EPA to be the certificate holder.

(iii) Omit alternative fueled vehicles from compliance with vehicle fuel consumption standards, if—

(A) Excluded from EPA emissions standards; and

(B) A reasonable technical basis exist that the modified vehicle continues to meet emissions and fuel consumption vehicle standards.

(c) Vehicle and engine manufacturers that must comply with this part include manufacturers required to have approved certificates of conformity from EPA as specified in 40 CFR parts 86, 1036, and 1037.

(d) The following heavy-duty vehicles and engines are excluded from the requirements of this part:

(1) Vehicles and engines manufactured prior to January 1, 2014, unless certified early under NHTSA's voluntary provisions in § 535.5.

(2) Medium-duty passenger vehicles and other vehicles subject to the light-duty corporate average fuel economy standards in 49 CFR parts 531 and 533.

(3) Recreational vehicles, including motor homes manufactured before January 1, 2021, except those produced by manufacturers voluntarily complying with NHTSA's early vocational standards for model years 2013 through 2020.

(4) Aircraft vehicles meeting the definition of "motor vehicle". For example, this would include certain convertible aircraft that can be adjusted to operate on public roads.

(5) Heavy-duty trailers as defined in 49 CFR 523.10 meeting one or more of the following criteria are excluded from trailer standards in § 535.5(e):

(i) Trailers with four or more axles and trailers less than 35 feet long with three axles (*i.e.*, trailers intended for hauling very heavy loads).

(ii) Trailers intended for temporary or permanent residence, office space, or other work space, such as campers, mobile homes, and carnival trailers.

(iii) Trailers with a gap of at least 120 inches between adjacent axle centerlines. In the case of adjustable axle spacing, this refers to the closest possible axle positioning.

(iv) Trailers built before January 1, 2021, except those trailers built by manufacturers after January 1, 2018, and voluntarily complying with NHTSA's early trailer standards for model years 2018 through 2020.

(v) Note that the definition of "heavy-duty trailer" in 49 CFR 523.10 excludes equipment that serves similar purposes but are not intended to be pulled by a tractor. This exclusion applies to such equipment whether or not they are known commercially as trailers. For example, any equipment pulled by a heavy-duty vehicle with a pintle hook or hitch instead of a fifth wheel does not qualify as a trailer under this part.

(6) Engines installed in heavy-duty vehicles that are not used to propel vehicles. Note, this includes engines used to indirectly propel vehicles (such as electrical generator engines that power to batteries for propulsion).

(7) The provisions of this part do not apply to engines that are not internal combustion engines. For example, the provisions of this part do not apply to fuel cells. Note that gas turbine engines are internal combustion engines.

(e) The following heavy-duty vehicles and engines are exempted from the requirements of this part:

(1) *Off-road vehicles.* Vehicle manufacturers producing vehicles intended for off-road may exempt vehicles without requesting approval from the agencies subject to the criteria in § 535.5(b)(9)(i) and 40 CFR 1037.631(a). If unusual circumstances exist and a manufacturer is uncertain as to whether its vehicles qualify, the manufacturer should ask for a preliminary determination from the agencies before submitting its application for certification in accordance with 40 CFR 1037.205 for the applicable vehicles. Send the request with supporting information to EPA and the agencies will coordinate in making a preliminary determination as specified

in 40 CFR 1037.210. These decisions are considered to be preliminary approvals and subject to final review and approval.

(2) *Small business manufacturers.* (i) For Phase 1, small business manufacturers are exempted from the vehicle and engine standards of § 535.5, but must comply with the reporting requirements of § 535.8(g).

(ii) For Phase 2, fuel consumption standards apply on a delayed schedule for manufacturers meeting the small business criteria specified in 13 CFR 121.201 and in 40 CFR 86.1819–14(k)(5), 40 CFR 1036.150, and 40 CFR 1037.150. Qualifying manufacturers of truck tractors, vocational vehicles, heavy duty pickups and vans, and engines are not subject to the fuel consumption standards for vehicles built before January 1, 2022 and engines (such as those engines built by small alternative fuel engine converters) with a date of manufacturer on or after November 14, 2011 and before January 1, 2022. Qualifying manufacturers may choose to voluntarily comply early.

(iii) Small business manufacturers producing vehicles and engines that run on any fuel other than gasoline, E85, or diesel fuel meeting the criteria specified in 13 CFR 121.201 and in 40 CFR 86.1819–14(k)(5), 40 CFR 1036.150, and 40 CFR 1037.150 may delay complying with every new mandatory standard under this part by one model year.

(3) *Transitional allowances for trailers.* Through model year 2026, trailer manufacturers may calculate a number of trailers that are exempt from the fuel consumption standards of this part. Calculate the number of exempt box vans in a given model year by multiplying the manufacturer's total U.S.-directed production volume of certified box vans by 0.20 and rounding to the nearest whole number; however, in no case may the number of exempted box vans be greater than 350 units in any given model year. Repeat this calculation to determine the number of non-box trailers, up to 250 annual units, that are exempt from standards and certification requirements. Manufacturers perform the calculation based on their projected production volumes in the first year that standards apply; in

later years, use actual production volumes from the preceding model year. Manufacturers must include these calculated values and the production volumes of exempt trailers in their annual production reports required under § 535.8(g)(12).

(4) *Engines for specialty vehicles.* Engines certified to the alternative standards specified in 40 CFR 86.007–11 and 86.008–10 for use in specialty vehicles as described in 40 CFR 1037.605. Compliance with the vehicle provisions in 40 CFR 1037.605 satisfies compliance for NHTSA under this part.

(f) For model year 2021 and later, vocational vehicle manufacturers building custom chassis vehicles (*e.g.* emergency vehicles) may be exempted from standards in § 535.5(b)(4) and may comply with alternative fuel consumption standards as specified in § 535.5(b)(6). Manufacturers complying with alternative fuel consumption standards in § 535.5(b)(6) are restricted in using fuel consumption credits as specified in § 535.7(c).

(g) The fuel consumption standards in some cases apply differently for spark-ignition and compression-ignition engines or vehicles as specified in 40 CFR parts 1036 and 1037. Engine requirements are similarly differentiated by engine type and by primary intended service class, as described in 40 CFR 1036.140.

(h) NHTSA may exclude or exempt vehicles and engines under special conditions allowed by EPA in accordance with 40 CFR parts 85, 86, 1036, 1037, 1039, and 1068. Manufacturers should consult the agencies if uncertain how to apply any EPA provision under the NHTSA fuel consumption program. It is recommended that manufacturers seek clarification before producing a vehicle. Upon notification by EPA of a fraudulent use of an exemption, NHTSA reserves that right to suspend or revoke any exemption or exclusion.

(i) In cases where there are differences between the application of this part and the corresponding EPA program regarding whether a vehicle is regulated or not (such as due to differences in applicability resulting from differing agency definitions, etc.), manufacturers should contact the agencies to identify these vehicles and assess

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the applicability of the agencies' standards. The agencies will provide guidance on how the vehicles can comply. Manufacturers are required to identify these vehicles in their final reports submitted in accordance with § 535.8.

§ 535.4 Definitions.

The terms manufacture and manufacturer are used as defined in section 501 of the Act and the terms commercial medium-duty and heavy-duty on highway vehicle, fuel and work truck are used as defined in 49 U.S.C. 32901. See 49 CFR 523.2 for general definitions related to NHTSA's fuel efficiency programs.

Act means the Motor Vehicle Information and Cost Savings Act, as amended by Pub. L. 94–163 and 96–425.

Administrator means the Administrator of the National Highway Traffic Safety Administration (NHTSA) or the Administrator's delegate.

Advanced technology means vehicle technology under this fuel consumption program in §§ 535.6 and 535.7 and by EPA under 40 CFR 86.1819–14(d)(7), 1036.615, or 1037.615.

Alterers means a manufacturer that modifies an altered vehicle as defined in 49 CFR 567.3

Alternative fuel conversion has the meaning given for clean alternative fuel conversion in 40 CFR 85.502.

A to B testing has the meaning given in 40 CFR 1037.801.

Automated manual transmission has the meaning given in 40 CFR 1037.801.

Automatic tire inflation system has the meaning given in 40 CFR 1037.801.

Automatic transmission (AT) has the meaning given in 40 CFR 1037.801.

Auxiliary power unit has the meaning given in 40 CFR 1037.801.

Averaging set means, a set of engines or vehicles in which fuel consumption credits may be exchanged. Credits generated by one engine or vehicle family may only be used by other respective engine or vehicle families in the same averaging set as specified in § 535.7. Note that an averaging set may comprise more than one regulatory subcategory. The averaging sets for this HD program are defined as follows:

(1) Heavy-duty pickup trucks and vans.

(2) Light heavy-duty (LHD) vehicles.
(3) Medium heavy-duty (MHD) vehicles.

(4) Heavy heavy-duty (HHD) vehicles.

(5) Light heavy-duty engines subject to compression-ignition standards.

(6) Medium heavy-duty engines subject to compression-ignition standards.

(7) Heavy heavy-duty engines subject to compression-ignition standards.

(8) Engines subject to spark-ignition standards.

(9) Long trailers.

(10) Short trailers.

(11) Vehicle types certifying to optional custom chassis standards as specified in § 535.5(b)(6) form separate averaging sets for each vehicle type as specified in § 535.7(c).

Axle ratio or Drive axle ratio, k_a has the meaning given in 40 CFR 1037.801.

Basic vehicle frontal area has the meaning given in 40 CFR 1037.801.

Cab-complete vehicle has the meaning given in 49 CFR 523.2.

Carryover has the meaning given in 40 CFR 1037.801.

Certificate holder means the manufacturer who holds the certificate of conformity for the vehicle or engine and that assigns the model year based on the date when its manufacturing operations are completed relative to its annual model year period.

Certificate of Conformity means an approval document granted by EPA to a manufacturer that submits an application for a vehicle or engine emissions family in 40 CFR 1036.205 and 1037.205. A certificate of conformity is valid from the indicated effective date until December 31 of the model year for which it is issued. The certificate must be renewed annually for any vehicle a manufacturer continues to produce.

Certification has the meaning given in 40 CFR 1037.801.

Certified emission level has the meaning given in 40 CFR 1036.801.

Chassis-cab means the incomplete part of a vehicle that includes a frame, a completed occupant compartment and that requires only the addition of cargo-carrying, work-performing, or load-bearing components to perform its intended functions.

Chief Counsel means the NHTSA Chief Counsel, or his or her designee.