

DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration

49 CFR Part 599

[Docket No. NHTSA-2009-0120]

RIN 2127-AK61

Requirements and Procedures for Consumer Assistance to Recycle and Save Program

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

ACTION: Final rule

SUMMARY: This final rule amends the regulation implementing the Consumer Assistance to Recycle and Save (CARS) Program, published on July 29, 2009 in the Federal Register, under the CARS Act. The rule adds an exception process for registered dealers who were prevented from submitting an application for reimbursement for a qualifying transaction prior to the announced August 25, 2009 deadline due to problems associated with the CARS electronic transaction system.

DATES: This final rule is effective September 28, 2009. A request for an exception must be postmarked no later than October 13, 2009.

ADDRESSES: A request for exception must be made in writing and mailed by United States mail to the NHTSA Administrator, 1200 New Jersey Ave SE, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: For questions, you may call David Bonelli, NHTSA Office of Chief Counsel, telephone (202) 366-5834.

SUPPLEMENTARY INFORMATION

Background

This final rule amends the regulation implementing the Consumer Assistance to Recycle and Save (CARS) Program, published on July 29, 2009 (74 FR 37878), with a previous amendment published on August 5, 2009 (74 FR 38974), under the CARS Act (Pub. L. 111-32). The rule adds an exception process for registered dealers who were unable to submit an application for reimbursement for a qualifying transaction prior to August 25, 2009, 8 pm EDT, NHTSA's announced deadline for the program. As detailed below, this exception process is available only where the delay is attributable to action or inaction by NHTSA.

Due to the enormous popularity of the CARS program, the available Federal funds were depleted in a short period of time. Based on daily projections of transactions, NHTSA determined that it was necessary to declare an August 24, 2009, 8 pm EDT deadline for completing CARS deals and an August 25, 2009, 8 pm EDT deadline for submitting applications for reimbursement. The agency received an overwhelming number of inquiries to the CARS hotline from dealers and consumers during the course of the program, and especially during the days immediately prior to the announced deadline. From these inquiries, we learned that dealers encountered problems in submitting applications for reimbursement as a result of problems caused by the agency's transaction system. Because the agency was unable to respond to and resolve some of these problems prior to the application deadline, some dealers who had made qualifying CARS deals and extended credits to consumers in accordance with the provisions of the rule were prevented from completing and submitting applications for reimbursement.

We are aware that some of these difficulties arose because of a feature that automatically locks a dealer out of the CARS transaction system and prevents the dealer from being able to re-enter the system without the agency's assistance. This occurred, for example, when a dealer inaccurately entered its account password into the system multiple times. Ordinarily, the dealer's password could be reset through a simple telephone call to the agency for technical assistance. However, due to the volume of transactions and inquiries, some dealers may have been unsuccessful in their attempts to get their passwords reset prior to the deadline.

We are aware also that some dealers were unable to submit an electronic application because of an automatic feature that precluded a submission with a State identification number, a trade-in vehicle's vehicle identification number (VIN), or a new vehicle's VIN that was previously entered into a draft application in the CARS system. This feature was designed to detect multiple transactions with the same persons or vehicles, errors, and attempted fraud. However, the application of this feature also blocks transactions where the draft application with the same State identification number or VIN was entered, but never submitted as part of a completed application. This might occur, for example, where a dealer enters a purchaser's State identification number, trade-in vehicle's VIN, and/or new vehicle's VIN as part of an application, but the deal is never completed between the parties. If the same or another dealer attempts to enter this same purchaser or vehicle information as part of another transaction, the system automatically rejects the application even if the purchaser, the trade-in vehicle, and the new vehicle have never been part of a completed CARS deal.

On most occasions where such problems occurred, a dealer was able to contact NHTSA officials to resolve the issue. However, due to the overwhelming number of transactions and inquiries that occurred as the application deadline approached, the agency was unable to respond to and resolve all dealer inquiries. As a result, some dealers may have been prevented from submitting an application for reimbursement, despite having made a qualifying CARS deal, where the dealer took ownership of the trade-in vehicle and transferred ownership and possession of the new vehicle to the purchaser.

Today's final rule establishes an exception process by which a dealer may apply for reimbursement of a CARS credit if it had made a binding CARS deal prior to the application deadline but was prevented from submitting an application for reimbursement prior to the deadline due to a hardship caused by the agency. This exception process is available only to dealers, and not to consumers, as the CARS Act authorizes payment only to dealers. However, the process also benefits consumers, by enabling a dealer to seek reimbursement from the agency for a legitimate transaction rather than seeking return of the vehicle or repayment of the credit from the consumer.

Exception Process

To qualify for the exception process, a dealer must have been prevented from submitting an application for reimbursement due to a hardship caused by the agency. Specifically, a dealer may request an exception if the dealer was locked out of the CARS system, contacted NHTSA for a password reset prior to the announced deadline, but did not receive a password reset. A dealer also may request an exception if its timely transaction was rejected by the CARS system due to a duplicate State identification

number, trade-in vehicle VIN, or new vehicle VIN that was never used for a submitted CARS transaction, if the dealer contacted NHTSA prior to the announced deadline to resolve the issue but did not receive a resolution. Finally, a dealer may seek an exception if it was prevented from submitting a transaction by the announced deadline due to another hardship attributable to NHTSA's action or inaction, upon submission of proof and justification satisfactory to the Administrator.

A request for an exception will not be granted if the dealer did not complete a qualifying vehicle sale/lease and trade-in vehicle transaction meeting the existing requirements of § 599.300 and § 599.301 prior to the August 24th deadline. A qualifying transaction requires that the dealer took ownership and possession of the trade-in vehicle and delivered ownership and possession of the new vehicle to the purchaser. A request for an exception also will not be granted if a dealer's inability to complete or submit an application was due to a reason other than action or inaction by NHTSA, such as technological difficulties in the dealer's own systems or processes. The exception process is not available for transactions that were successfully submitted on the CARS system but were subsequently rejected, as dealers have the opportunity to correct and resubmit their applications following rejection. The agency informed dealers on several occasions that any applications created in the system must be submitted, even if in incomplete form, prior to the application deadline, and the agency also informed the dealers that they would have the opportunity to correct any incomplete applications after the application deadline.

A dealer seeking an exception must describe in a written statement the basis for the exception and provide evidence that it was prevented from submitting an application

by the deadline due to action or inaction by NHTSA. Such evidence may include copies of correspondence, such as electronic mail, documenting that the dealer contacted the agency regarding issues with its application. The dealer also must present proof that a qualifying deal was made on or after July 1, 2009, but not later than August 25, 2009, 8 pm EDT, by submitting paper copies of all completed and signed supporting documents and certifications required under §599.302(c)(2) and (c)(3) of the rule.

All decisions granting or denying a request for exception will be made by the NHTSA Administrator or his or her designee. Finally, in order to bring finality to the CARS accounting process, all requests for exception must be postmarked no later than October 13, 2009.

Statutory Basis for This Action

This final rule makes amendments to implement the Consumer Assistance to Recycle and Save Act (CARS Act) (Pub. L. 111-32), which directs the Secretary to issue final regulations.

APA Requirements and Effective Date

The rule is being issued without first providing a notice and an opportunity for public comment. Section 1302(d) of the CARS Act provides that “notwithstanding” the requirements of section 553 of title 5, United States Code, the Secretary shall promulgate final regulations to implement the Program not later than 30 days after the date of the enactment of this Act. Due to the enormous success and popularity of the CARS program, the agency closed the program and issued an August 25, 2009, 8 pm EDT deadline for submission of applications for reimbursement. However, the agency is aware that there are completed valid transactions for which dealers were unable to submit

applications prior to the deadline. In order to ensure that dealers and consumers do not unwind these transactions because dealers were not reimbursed, the agency believes that it is important to promulgate an exception process for the final rule immediately. Therefore, the agency finds for good cause that providing notice and comment is impracticable and contrary to the public interest for these changes to the final rule. Drafting and issuing a proposed rule, providing a period for public comment, and addressing those comments in the final rule would be highly impracticable in the time available and would substantially inhibit the ability to make payment for granted exception requests.

For the above-mentioned reasons, the agency also finds that it has good cause to make this rule effective fewer than 30 days after the publication in the Federal Register. We believe it is necessary to provide these amendments immediately to ensure that payment for valid transactions submitted under the exception process permitted under this rule can be made. We also note that this rule relieves restrictions in the original final rule by permitting additional submissions of applications for reimbursement. It would, therefore, be inconsistent with Congressional intent, impracticable, and contrary to the public interest to delay the effective date of the regulation, which would, in turn, adversely affect payment for valid transactions.

Accordingly, the effective date of this final rule is September 28, 2009.

Regulatory Analyses and Notices

Because of the public and Congressional interest in the CARS program, this rulemaking is considered significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It was reviewed by the Office of

Management and Budget. The agency has discussed the relevant requirements of the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Executive Order 12988 (Civil Justice Reform), the National Environmental Policy Act, and the Unfunded Mandates Reform Act in the July 29, 2009 final rule cited above. This rule does not change the finding in those analyses.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. As part of this final rule, the agency must request information from participating dealers that encountered problems in submitting applications for CARS transaction reimbursement prior to the announced August 25, 2009 deadline due to action or inaction by NHTSA. Today's collection of information amends a previously approved collection, OMB Control No. 2127-0660, to address an exemption process by which a dealer may apply for reimbursement of a CARS credit if it had made a binding CARS deal prior to the application deadline but was prevented from submitting the application due to a hardship caused by the agency.

The agency has received approval from OMB to amend the following collection of information:

Title: CARS Program; Dealer and Buyer Transaction Information

OMB Control No. 2127-0660

Expiration date: January 31, 2010

NHTSA has been given OMB approval to collect an additional 2,000 responses, for a total of 1,000 additional burden hours. The total number of responses under this collection is 1,352,000, for a total of 372,350 burden hours.

Regulatory 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.

Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/search/footer/privacyanduse.jsp>.

List of Subjects

49 CFR Part 599

Fuel Economy, Motor Vehicle Safety.

In consideration of the foregoing, NHTSA hereby amends 49 CFR part 599 as set forth below.

PART 599—REQUIREMENTS AND PROCEDURES FOR CONSUMER ASSISTANCE TO RECYCLE AND SAVE ACT PROGRAM

1. The authority citation for Part 599 continues to read as follows:

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

2. Add Subpart F to read as follows:

Subpart F – Requirements and Procedures for Exceptions

599.600 Exceptions – applicability and requirements.

(a) *Applicability.*

(1) *Eligible Requesters.* To qualify for an exception under this subpart, a requester must be a dealer registered in accordance with the requirements of § 599.200.

(2) *Filing deadline.* A request for an exception must be postmarked no later than October 13, 2009.

(3) *Availability of funds.* An exception shall be approved under this subpart only if Federal funds are available for payment.

(4) *Exclusion.* No exception may be approved for an application for reimbursement that was successfully submitted to the CARS system.

(b) *Threshold requirements.* Subject to the requirements of § 599.600(a), a registered dealer may submit a request for exception and seek reimbursement of a CARS credit under this subpart if the dealer:

(1) prior to August 24, 2009, 8 pm EDT, completed a qualifying deal meeting the requirements of § 599.300 and § 599.301;

(2) took ownership and possession of a trade-in vehicle and transferred ownership and possession of a new vehicle to the purchaser; and

(3) prior to August 25, 2009, 8 pm EDT, attempted to submit an application for reimbursement meeting the requirements of § 599.302, but was prevented from submitting the application for any of the reasons identified in § 599.600(c).

(c) *Exception cases.* A dealer is eligible for an exception if:

(1) *Password rejection.* The dealer's account password was locked out and not reset by NHTSA;

(2) *Transaction rejection.* The application was rejected at submission because the dealer entered a State identification number, a trade-in vehicle VIN, or a new vehicle VIN that was already entered into the CARS program system, but that State identification number, trade-in vehicle VIN, or new vehicle VIN was never used for a CARS deal; or

(3) *Other hardship.* The dealer experienced any other hardship attributable to NHTSA action or inaction that the Administrator determines in his or her discretion should be redressed, consistent with the purposes of the CARS Act.

599.601 Procedures for requesting exception.

(a) *Submission.* A request for exception must be made in writing and mailed by United States mail to the NHTSA Administrator, 1200 New Jersey Ave SE, Washington, D.C. 20590.

(b) *Contents.* The request must include paper copies of the following materials:

(1) *Explanation of hardship.* A written explanation of a hardship identified in § 599.600(c) that prevented the dealer from submitting its transaction, and the steps the dealer took to contact the agency and timely resolve the issue;

(2) *Proof of hardship.* Documents evidencing that the dealer was unable to complete and submit an application for reimbursement prior to the deadline because of hardship caused by NHTSA. Documents may include copies of correspondence with the agency;

(3) *Documentation of qualifying transaction.* Paper copies of all supporting attachments required by §599.302(c)(2) which reveal that a qualifying CARS transaction, including the transfer of ownership and possession of the trade-in vehicle to the dealer and the delivery of ownership and possession of the new vehicle to the purchaser, was made prior to August 24, 2009, 8 pm EDT; and

(4) *Certifications.* Paper copies of all certifications provided in Appendix A to this part, signed by both the dealer and the purchaser.

(5) *Evidence of prior notice to NHTSA.* Evidence, if any, that the dealer attempted to contact NHTSA prior to August 25, 2009, 8 pm EDT, to request assistance with a problem described in § 599.600(c).

§599.603 Disposition of requests for exception.

(a) *In general.* Upon receipt of the request for exception, the agency will review the request to determine whether the exception should be granted and approved for payment.

(b) *Deciding official.* The NHTSA Administrator or his or her designee shall serve as the Deciding Official for all determinations under this subpart.

(c) *Incomplete requests.* A request for exception that fails to include all of the documents required under this subpart may be rejected without further review.

(d) *Denied requests.* If the Deciding Official denies the request, the requester will be informed in writing of the reasons for the denial of the request.

(e) *Granted requests.* If the Deciding Official grants the request, the requester will be notified by electronic mail, at the email address identified in § 599.200(c)(2)(iii), and the requester's application for reimbursement will be processed for payment by the

agency as a qualifying transaction in accordance with §599.304.

(f) *No appeals.* There are no appeals from the Deciding Official's decision.

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Issued on:

Ronald L. Medford
Acting Deputy Administrator

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Final Rule]

