

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 599**

[Docket No. NHTSA–2009–0120; Notice 1]

RIN 2127–AK67

Requirements and Procedures for Consumer Assistance To Recycle and Save Program

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the regulations 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 change would allow disposal facilities an additional 90 days, for a total of 270 days, to crush or shred a vehicle traded in under the CARS program. This additional time would allow the public to benefit from the availability of lower cost used vehicle parts from vehicles traded in under the CARS program and would provide disposal facilities with an opportunity to derive more revenue from those vehicles prior to crushing or shredding.

DATES: Submit comments on or before December 17, 2009.

ADDRESSES: You may submit comments electronically [identified by DOT Docket Number NHTSA–2009–0120] by visiting the following Web site:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- *Mail: Docket Management Facility:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* (202) 493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: 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 DOT's complete Privacy Act Statement in the *Federal Register* published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For questions, you may call David Jasinski, NHTSA Office of Chief Counsel, at (202) 366–5552.

SUPPLEMENTARY INFORMATION:**Current Rule and Proposed Change**

This proposed rule would amend the regulations implementing the Consumer Assistance to Recycle and Save (CARS) program, published on July 29, 2009, in the *Federal Register* (74 FR 37878), under the CARS Act (Pub. L. 111–32), and amended by final rules published on August 5, 2009 (74 FR 38974), and September 28, 2009 (74 FR 49338). The rule change would allow disposal facilities an additional 90 days, for a total of 270 days, to crush or shred a vehicle traded in under the CARS program. This additional time would allow the public to benefit from the availability of lower cost, used vehicle parts from CARS trade-in vehicles and would provide disposal facilities with an opportunity to derive more revenue from those vehicles prior to crushing or shredding thereby providing additional economic benefit from the CARS program.

Section 1302(c)(2) of the CARS Act grants the agency discretion to determine the appropriate time period in which a disposal facility must crush a vehicle. The rule currently requires a disposal facility that receives a vehicle traded in under the CARS program to crush or shred the vehicle within 180 days of receipt of the vehicle. 49 CFR 599.401(a)(3). After consulting with representatives of disposal facilities, the

agency determined that 180 days was an appropriate amount of time to allow a disposal facility to possess a car prior to crushing or shredding. The allowed time period was determined based upon an estimate that 250,000 vehicles would be traded in under the CARS program and that the program's duration would be four months.

Due to the enormous popularity of the CARS program, the initial \$1 billion in available funds were quickly depleted and, on August 7, 2009, Congress provided the CARS program with an additional \$2 billion (Pub. L. 111–47). On August 25, 2009, approximately one month after the CARS program began, the agency stopped accepting new submissions because the additional funds were also depleted. By that time, nearly 700,000 new vehicles had been sold under the CARS program.

Shortly after new CARS program transactions ceased and the majority of the dealers' transactions were reimbursed by NHTSA, a representative of disposal facilities requested a meeting with NHTSA officials to discuss the possibility of extending the 180-day time period for crushing or shredding a trade-in vehicle. Although disposal facilities initially expected to receive 250,000 CARS trade-in vehicles spread out over four months, disposal facilities actually received nearly 700,000 CARS trade-in vehicles. Further, the majority of the CARS trade-in vehicles were received within less than one month.

At a September 29, 2009, meeting¹ with disposal facility representatives, agency officials learned that some disposal facilities were experiencing substantial difficulty processing all of the CARS trade-in vehicles that were purchased from dealers or salvage auctions and that many disposal facilities anticipated significant difficulty in meeting the 180-day deadline to crush and shred these vehicles. The representatives also noted that the processing problems made it difficult for facilities to effectively inventory and sell parts from these vehicles, as authorized by the CARS Act. The disposal facilities suggested that, if they were able to hold a vehicle for more than 180 days prior to crushing or shredding, then consumers would have the benefit of cheaper used vehicle parts. The disposal facility representatives suggested that one year would be a suitable time to ensure that the public received the maximum benefit from used vehicle parts while simultaneously ensuring that the vehicles are crushed or shredded within

¹ A memorandum summarizing the meeting has been placed in the docket. (Docket No. NHTSA–2009–0120).

a reasonable time frame.

The agency must balance the concerns of the disposal facilities and the public's interest in having access to cheaper used vehicle parts with two considerations that weigh against allowing more time to crush or shred trade-in vehicles. First, and most importantly, the agency is concerned about possible fraud. The CARS Act contains an explicit Congressional instruction to take measures to prevent fraud and the statute's clear environmental objective is to ensure that the fuel inefficient trade-in vehicles are never again used on the highway. The risk of fraud related to extending the deadline for crushing or shredding vehicles is mitigated substantially by the fact that dealers are required to disable the vehicles' engines within seven days after receipt of payment for the transaction and that vehicles must be flagged by disposal facilities in the National Motor Vehicle Title Information System as scrap vehicles within seven days of receipt. Nevertheless, the risk of a vehicle returning to the highway is not fully eliminated until the vehicle is crushed or shredded.

The agency is also concerned about the additional administrative burden caused by extending the deadline for crushing or shredding vehicles. The agency is committed to enforcing the requirements of the CARS program, including the requirements that vehicles are not transferred prior to crushing or shredding, vehicles' engine blocks are not sold, and vehicles are crushed or shredded on site. The longer that disposal facilities are allowed to keep vehicles on their lots prior to crushing, the longer the agency must devote resources to ensuring that disposal facilities comply with the requirements of the CARS program.

After considering the relevant interests, the agency proposes to amend section 599.401(a)(3) to allow disposal facilities an additional 90 days, for a total of 270 days, to crush or shred a vehicle. The 90 additional days strikes an appropriate balance between the public benefit of having cheaper used vehicle parts from the vehicles traded in under the CARS program and the potential for fraud and the administrative burdens on the agency.

As part of the certification forms that disposal facilities are required to sign under section 599.400 and Appendix E, a disposal facility must certify that a CARS program trade-in vehicle will be crushed or shredded within 180 days after receipt of the vehicle. Because NHTSA has already received the majority of the 700,000 Disposal Facility

Certification Forms, it would be unnecessarily burdensome on both NHTSA and disposal facilities to require disposal facilities to submit new forms to NHTSA. Instead, if the proposed rule is adopted, NHTSA intends to treat the certifications on the forms already submitted as if they required disposal facilities to crush or shred a vehicle within 270 days of receipt. We also propose adding paragraph (d) to section 599.401 to formalize the *de facto* change to the existing certification.

Statutory Basis for This Action

This proposed rule would make amendments to regulations implementing the Consumer Assistance to Recycle and Save Act (CARS Act) (Pub. L. 111-32), which directs the Secretary to issue regulations implementing the Act.

APA Requirements and 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. The agency considered public notice and comment impracticable and used the statutory authority in the CARS Act to issue the CARS program regulations and the two subsequent amendments.

In the interest of openness and public participation, the agency has determined that a 20-day public notice and comment period is warranted for this proposed rule. Because the transaction submission portal was opened on July 27, 2009, the first vehicles would have been received by disposal facilities shortly thereafter. Therefore, the deadline for crushing or shredding some vehicles traded in under the CARS program would be as soon as approximately February 1, 2010 under the current regulations.

Although the agency recognizes that some vehicles traded in under the CARS program have already been crushed or shredded voluntarily well in advance of the 180 day deadline, basic fairness requires all vehicles traded in under the CARS program and not yet crushed or shredded be subject to the same deadline for crushing or shredding. Therefore, to ensure consistency, a final rule extending the deadline for crushing or shredding a trade in vehicle would need to be issued by approximately February 1, 2010. A 20-day comment period allows the agency time to solicit and consider public comment before issuing a final rule that would come into

effect before February 1, 2010, ensuring that all vehicles traded in under the program would be subject to the same time period for crushing or shredding.

Effective Date

The amendments would be effective immediately upon publication of the final rule in the **Federal Register**. The 90-day increase from 180 days to 270 days would apply to all vehicles not yet crushed or shredded pursuant to the CARS program.

Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES**. You may also submit your comments electronically to the docket following the steps outlined under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit the following to the NHTSA Office of Chief Counsel (NCC-110), 1200 New Jersey Avenue SE., Washington, DC 20590: (1) A complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential

treatment that complies with 49 CFR part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of Part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. In accordance with our policies, to the extent possible, we will also consider comments that Docket Management receives after the specified comment closing date. If Docket Management receives a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the Internet. To read the comments on the Internet, go to <http://www.regulations.gov> and follow the on-line instructions provided.

You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

Regulatory Analyses and Notices

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under Executive Order 12866, "Regulatory

Planning and Review." This action is limited to the proposed extension contained herein, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

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, the Paperwork Reduction 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.

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

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List of Subjects in 49 CFR Part 599

Fuel Economy, Motor vehicle safety.

In consideration of the foregoing, NHTSA proposes to amend 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. Section 599.401 is amended by revising paragraph (a)(3) and adding paragraph (d) to read as follows:

§ 599.401 Requirements and limitations for disposal facilities that receive trade-in vehicles under the CARS program.

(a) * * *

(3) Crush or shred the trade-in vehicle onsite, including the engine block and the drive train (unless with respect to the drive train, the transmission, drive shaft, and rear end are sold separately), using its own machinery or a mobile crusher, within 270 days after receipt of the vehicle from the dealer or salvage auction;

* * * * *

(d) A completed Disposal Facility Certification Form (Appendix E to this part) for an individual transaction, which includes a certification by the disposal facility that the trade-in vehicle will be crushed or shredded within 180 days of receipt by the disposal facility is deemed to be amended to include an extension of time such that the trade-in vehicle will be crushed or shredded within 270 days of receipt by the disposal facility.

Issued on: November 23, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9-28428 Filed 11-25-09; 8:45 am]

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