

The Administrator signed the following document on January 28,2010, and we are submitting it for publication in the Federal Register. While we have taken steps to ensure the accuracy of this Internet version of the document, it is not the official version. Please refer to the official version in a forthcoming Federal Register publication or on GPO's Web Site. You can access the Federal Register at: www.gpoaccess.gov/fr/index.html.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 599

[Docket No. NHTSA-2009-0120; Notice 2]

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: Final rule.

SUMMARY: This final rule amends 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 allows 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 will allow the public to benefit from the availability of lower cost used vehicle parts from vehicles traded in under the CARS program and will provide disposal facilities with an opportunity to derive more revenue from those vehicles prior to crushing or shredding.

DATES: This final rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. *Petitions:* If you wish to petition for reconsideration of this rule, your petition must be received by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**.

ADDRESSES: If you submit a petition for reconsideration of this rule, you should refer

in your petition to the docket number of this document and submit your petition to:
Administrator, National Highway Traffic Safety Administration, 1200 New Jersey
Avenue, S.E., West Building, Washington, D.C. 20590.

The petition will be placed in the public docket. Anyone is able to search the
electronic form of all documents received into any of our dockets by the name of the
individual submitting the document (or signing the document, 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>.

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 Notice of Proposed Rulemaking

This final rule amends 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). Those rules were amended by
final rules published on August 5, 2009 (74 FR 38974), and September 28, 2009 (74 FR
49338).

On November 27, 2009, NHTSA published, in the **Federal Register**, a notice of
proposed rulemaking (November 27 NPRM) (74 FR 62275). The November 27 NPRM
proposed a rule change that 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. The
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 by 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. This time period was 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 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, meeting with disposal facility representatives,¹ 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 (an additional 180 days) 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 a reasonable time frame.

In the November 27 NPRM, the agency balanced the concerns of the disposal facilities and the public's interest in having access to cheaper used vehicle parts with two considerations that weighed against allowing more time to crush or shred trade-in vehicles. First, and most importantly, the agency was 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

¹ A memorandum summarizing the meeting has been placed in the docket. (Docket No. NHTSA-2009-0120-0020).

extending the deadline for crushing or shredding vehicles is mitigated substantially by the requirement that dealers disable the vehicles' engines within seven days after receipt of payment for the transaction and that vehicles be flagged by disposal facilities in the National Motor Vehicle Title Information System (NMVTIS) 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 was also concerned about the additional administrative burden that would result from 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 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 proposed 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 agency stated that the 90 additional days struck an appropriate balance between the public benefit of having cheaper used vehicle parts from the vehicles traded in under the CARS program and the interest in minimizing fraud and the administrative burdens on the agency.

As part of the certification forms currently required 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 had

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, NHTSA stated its intent 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. NHTSA also proposed adding language to section 599.401 to formalize the *de facto* change to the existing certification.

Summary of Comments Received and Agency's Response

NHTSA has considered all comments received by December 31, 2009. As of that date, NHTSA had received 84 comments on the proposed rule change. The overwhelming majority of comments received were from disposal facilities. NHTSA also received comments from a State automobile dealers association, State automobile recyclers associations, a national automobile recyclers association, and a national law enforcement support organization.

Of the 84 comments received, 79 commenters expressed full support for the proposal to extend by 90 days the deadline for disposal facilities to crush or shred a CARS trade-in vehicle. The commenters cited many reasons for supporting the rule. The most often cited reason for favoring the proposed extension was the economic benefit of having cheaper used vehicle parts available to consumers. Commenters also cited the environmental benefits of the proposed rule associated with more re-use of used vehicle parts. Commenters also noted, as did NHTSA in the November 27 NPRM, that the original rule was based on the expectation that disposal facilities would receive 250,000

vehicles over four months. Instead, disposal facilities received nearly 700,000 vehicles within less than one month. Many commenters noted that they hired more workers to process CARS trade-in vehicles. Finally, commenters supporting the proposed rule change also observed that winter weather conditions made the transport of mobile crushers to some parts of the country difficult.

Four commenters did not fully support the proposed rule changes, expressing a preference for a longer extension of time for crushing or shredding CARS trade-in vehicles. The New Hampshire Automobile Dealers Association and Barger Auto Parts simply expressed a preference for having a full year to crush or shred a vehicle, but both stated that they supported the proposed 90-day extension. Motor Pro Auto Recycling stated that, because the funding for the CARS program was tripled, it would be unfair not to at least double the amount of time required for crushing or shredding. One individual observed that, in North Dakota, the winter climate makes it difficult to move vehicles in disposal facilities and that it would be ideal if facilities had until the end of the summer of 2010 to crush or shred vehicles.

We have made no changes to the proposed rule based on these comments. Although we considered the reasons offered by the commenters in support of a longer period by which to crush or shred vehicles, nothing has altered the balance of interests discussed above and in the November 27 NPRM. The disposal facilities' economic interests and the public benefits must be balanced against the risk of fraud and the administrative burden of maintaining the CARS program. After consideration of all comments, the agency still believes that the 90-day extension strikes the appropriate balance.

One commenter, Howard Nusbaum, Administrator of the National Salvage Vehicle Reporting Program, expressed support for the 90-day extension as a reasoned compromise between the interests of the disposal facilities and the agency. However, Mr. Nusbaum offered two additional comments related to the involvement of salvage auctions in the disposal process. First, Mr. Nusbaum noted that there is no set time period by which salvage auctions must transfer CARS trade-in vehicles to disposal facilities. Mr. Nusbaum observed that the CARS program is, therefore, open-ended.

Second, Mr. Nusbaum noted that NHTSA does not know what is happening to a CARS trade-in vehicle between the time it is transferred from a dealer to a salvage auction and the time it is transferred from the salvage auction to the disposal facility. Mr. Nusbaum also observed that a salvage auction cannot submit a disposal facility's certification form prior to selling the vehicle, leaving the enforcement of a disposal facility's eligibility to participate in a salvage auction up to the auction. According to Mr. Nusbaum, the current rules create a gap in the audit trail that introduces an opportunity for fraud by making it difficult for NHTSA to know that a salvage auction is properly disposing of a vehicle. Mr. Nusbaum recommends setting a final end date for the CARS program, which would limit the amount of time salvage auctions could hold CARS trade-in vehicles.

NHTSA has made no changes to the proposed rule based on this comment. Mr. Nusbaum expressed support for the proposed 90-day extension. The remainder of his comments relate to issues that are not within the scope of the November 27 NPRM. Therefore, we will not address them in this rulemaking document. However, NHTSA

will treat Mr. Nusbaum's comments as a petition for rulemaking and will address them in a forthcoming notice to be published in the **Federal Register**.

For the reasons discussed above and in the November 27 NPRM, and having considered all of the comments received, NHTSA will adopt without change the amendments proposed in the November 27 NPRM.

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 Effective Date

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 the CARS 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 two subsequent amendments.

In the interest of openness and public participation, the agency determined that a 20-day public notice and comment period was warranted in the November 27 NPRM. 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 that 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, this final rule extending the deadline for crushing or shredding a trade in vehicle is effective immediately upon publication in the **Federal Register**. The 90-day extension from 180 days to 270 days would apply to all vehicles not yet crushed or shredded pursuant to the CARS program.

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 findings 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

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).

List of Subjects in 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. 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.

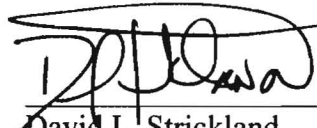
(a) * * *

(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: JAN 28 2010

A handwritten signature in black ink, appearing to read "D. Strickland", written over a horizontal line.

David L. Strickland
Administrator

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Requirements and Procedures for Consumer Assistance to Recycle and Save Program
Final Rule]