

levels of government, as specified in Executive Order 13132. Thus, the requirements of Section 6 of the Executive Order do not apply.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law No. 104-4, requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. Because this final rule will not have a \$100 million effect, no Unfunded Mandates assessment will be prepared.

Executive Order 12778 (Civil Justice Reform)

This rule does not have a retroactive or preemptive effect. Judicial review of this rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, we state that there are no requirements for information collection associated with this rulemaking action.

List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires, Penalties.

■ In consideration of the foregoing, 49 CFR Part 578 is amended as set forth below.

PART 578—CIVIL AND CRIMINAL PENALTIES

■ 1. Revise the authority citation for 49 CFR Part 578 to read as follows:

Authority: Pub. L. No. 101-410, Pub. L. No. 104-134, 49 U.S.C. 30165, 30170, 30505, 32304A, 32308, 32309, 32507, 32709, 32710, 32912, and 33115 as amended; delegation of authority at 49 CFR 1.50.

■ 2. In § 578.6, revise paragraphs (a)(2)(ii), (c)(2), (d), (f)(1), (g)(1) and (g)(2), to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

- (a) * * *
- (2) * * *

(ii) Violates section 30112(a)(2) of Title 49 United States Code, shall be subject to a civil penalty of not more than \$11,000 for each violation. A separate violation occurs for each motor

vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by this section. The maximum penalty under this paragraph for a related series of violations is \$16,650,000.

* * * * *

(c) * * *

(2) The maximum civil penalty under this paragraph (c) for a related series of violations is \$1,175,000.

(d) *Consumer information—(1) Crashworthiness and damage susceptibility.* A person that violates 49 U.S.C. 32308(a), regarding crashworthiness and damage susceptibility, is liable to the United States Government for a civil penalty of not more than \$1,100 for each violation. Each failure to provide information or comply with a regulation in violation of 49 U.S.C. 32308(a) is a separate violation. The maximum penalty under this paragraph for a related series of violations is \$575,000.

(2) *Consumer tire information.* Any person who fails to comply with the national tire fuel efficiency program under 49 U.S.C. 32304A is liable to the United States Government for a civil penalty of not more than \$50,000 for each violation.

* * * * *

(f) * * *

(1) A person that violates 49 U.S.C. Chapter 327 or a regulation prescribed or order issued thereunder is liable to the United States Government for a civil penalty of not more than \$3,200 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum civil penalty under this paragraph for a related series of violations is \$140,000.

* * * * *

(g) * * *

(1) A person that violates 49 U.S.C. 33114(a)(1)–(4) is liable to the United States Government for a civil penalty of not more than \$1,100 for each violation. The failure of more than one part of a single motor vehicle to conform to an applicable standard under 49 U.S.C. 33102 or 33103 is only a single violation. The maximum penalty under this paragraph for a related series of violations is \$350,000.

(2) A person that violates 49 U.S.C. 33114(a)(5) is liable to the United States Government for a civil penalty of not more than \$140,000 a day for each violation.

* * * * *

Issued on: January 26, 2010.

David L. Strickland,
Administrator.

[FR Doc. 2010-1957 Filed 2-1-10; 8:45 am]

BILLING CODE 4910-59-P

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 February 2, 2010. *Petitions:* If you wish to petition for reconsideration of this rule, your petition must be received by March 19, 2010.

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, SE., West Building, Washington, DC 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 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.

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

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: January 28, 2010.

David L. Strickland,
Administrator.

[FR Doc. 2010-2194 Filed 2-1-10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351-9087-02]

RIN 0648-XU15

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Greater Than or Equal to 60 Feet (18.3 Meters) Length Overall Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by pot catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2010 Pacific cod total allowable catch (TAC) specified for pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 28, 2010, through 1200 hrs, A.l.t., September 1, 2010.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2010 Pacific cod TAC allocated to pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI is 6,422 metric tons as established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2010) and inseason adjustment (74 FR 68717, December 29, 2009).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season directed fishing allowance of the 2010 Pacific cod TAC allocated to pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels greater than or equal to 60 ft (18.3 m) LOA using pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent,